

# Instruments of Delegation

## to Lord Mayor; Development Applications Committee; and Chief Executive Officer

October 2024



City of  
Newcastle

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# INTRODUCTION

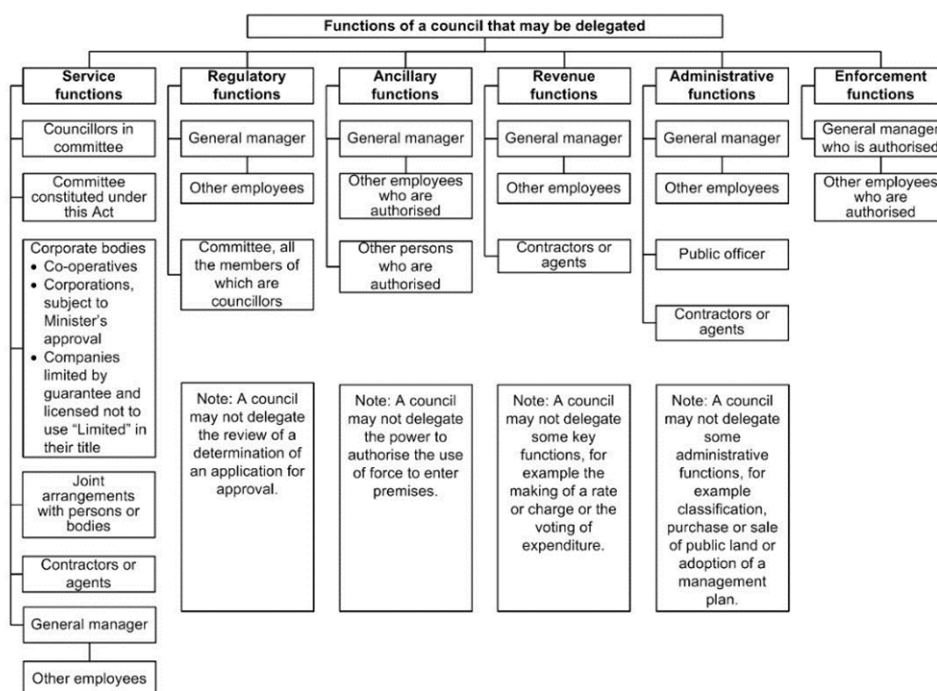
## Purpose

- 1.1. The purpose of the Instruments of Delegation is to document functions of the Lord Mayor, the Development Applications Committee and the CEO.

## Legislative context

The Instruments of Delegation are pursuant to and consistent with:

- 1.2. Section 377 of the Act which permits the Council to delegate to the CEO any of its functions except for the non-delegable functions. Refer to Part 1(a) of this document.
- 1.3. Section 226 of the Act which sets out the role of the Lord Mayor. Refer to Part 2 (a) of this document.
- 1.4. Section 335 of the Act which sets out the role of the CEO. Refer to Part 4 (a) of this document.
- 1.5. Section 381 of the Act which permits the Council to delegate functions under other Acts to the CEO and the CEO to delegate to staff to be exercised on a day-to-day and operational basis. Council cannot delegate directly to staff. Chapter 12 of the Act provides as set out in clause 2.1:



## Delegation of functions

- 1.6. Council delegates functions as follows:
  - (a) To the Lord Mayor - set out in Part 2 (b).
  - (b) To the Development Applications Committee - set out in Part 3.
  - (c) To the CEO - set out in Part 4 (b).
- 1.7. The Instruments of Delegation should be construed as:
  - (a) operating in a manner which is valid and within the general power of Council under the Act;

- (b) being subject to, and is to be exercised in accordance with, the requirements of any relevant legislation, any other legislative instrument or resolution of Council, and exercised in a manner not inconsistent with Council policies;
- (c) not limiting the Lord Mayor or CEO's ability to carry out such other functions and exercise such other powers as the Council may determine from time to time by resolution of Council, or as may be functions of the Lord Mayor or CEO under the Act or under any other relevant legislation; and
- (d) all previous delegations of functions the subject of this Instrument of Delegation are revoked.

## PART 1 - ELECTED COUNCIL

### a. Reserved for Council

The following are non-delegable functions of the elected council in accordance with section 377 of the Act:

Reference	Function
Local Government Act - section 377 of the Act	<ul style="list-style-type: none"> <li>(a) The appointment of a general manager,</li> <li>(b) The making of a rate,</li> <li>(c) A determination under <a href="#">section 549</a> as to the levying of a rate,</li> <li>(d) The making of a charge,</li> <li>(e) The fixing of a fee,</li> <li>(f) The borrowing of money,</li> <li>(g) The voting of money for expenditure on its works, services or operations, (that is approving council's budget)</li> <li>(h) The compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment),</li> <li>(i) The acceptance of tenders to provide services currently provided by members of staff of the council,</li> <li>(j) The adoption of an operational plan under <a href="#">section 405</a>,</li> <li>(k) The adoption of a financial statement included in an annual financial report,</li> <li>(l) A decision to classify or reclassify public land under division 1 of part 2 of chapter 6,</li> <li>(m) The fixing of an amount or rate for the carrying out by the council of work on private land,</li> <li>(n) The decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work,</li> <li>(o) The review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82a of the <a href="#">environmental planning and assessment act 1979</a>,</li> <li>(p) The power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under <a href="#">section 194</a>,</li> <li>(q) A decision under <a href="#">section 356</a> to contribute money or otherwise grant financial assistance to persons,</li> <li>(r) A decision under <a href="#">section 234</a> to grant leave of absence to the holder of a civic office,</li> <li>(s) The making of an application, or the giving of a notice, to the governor or minister,</li> <li>(t) This power of delegation,</li> </ul>

Reference	Function
	<p>(u) any function under this or any other Act that is expressly required to be exercised by resolution of the council.</p> <p>(1A) Despite subsection (1), a council may delegate its functions relating to the granting of financial assistance if--</p> <ul style="list-style-type: none"> <li>(a) The financial assistance is part of a specified program, and</li> <li>(b) The program is included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and</li> <li>(c) The program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year, and</li> <li>(d) The program applies uniformly to all persons within the council's area or to a significant proportion of all the persons within the council's area.</li> </ul>

**b. Reserved for Council - additional functions**

The following are additional functions of the elected council:

Reference	Function
Tenders	<p><b>Tenders</b></p> <p>The awarding of tenders called pursuant to section 55 (1) of the Act where the value is greater than \$1m. This financial limitation only applies to tenders called by City of Newcastle. It does not apply to the awarding of contracts by third party entities that Council has formed or participated in forming.</p>

## PART 2 - LORD MAYOR

### a. Functions of the Lord Mayor

The following are functions of the Lord Mayor in accordance with section 226 of the Act:

Reference	Function
Functions of the Lord Mayor - section 226 of the Act	<ul style="list-style-type: none"><li>(a) To be the leader of the council and a leader in the local community,</li><li>(b) To advance community cohesion and promote civic awareness,</li><li>(c) To be the principal member and spokesperson of the governing body, including representing the views of the council as to its local priorities,</li><li>(d) To exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council,</li><li>(e) To preside at meetings of the council,</li><li>(f) To ensure that meetings of the council are conducted efficiently, effectively and in accordance with this Act,</li><li>(g) To ensure the timely development and adoption of the strategic plans, programs and policies of the council,</li><li>(h) To promote the effective and consistent implementation of the strategic plans, programs and policies of the council,</li><li>(i) To promote partnerships between the council and key stakeholders,</li><li>(j) To advise, consult with and provide strategic direction to the general manager in relation to the implementation of the strategic plans and policies of the council,</li><li>(k) In conjunction with the general manager, to ensure adequate opportunities and mechanisms for engagement between the council and the local community,</li><li>(l) To carry out the civic and ceremonial functions of the mayoral office,</li><li>(m) To represent the council on regional organisations and at inter-governmental forums at regional, State and Commonwealth level,</li><li>(n) In consultation with the councillors, to lead performance appraisals of the general manager,</li><li>(o) to exercise any other functions of the council that the council determines.</li></ul>

**b. Instrument of Delegation to the Lord Mayor**

In accordance with, and subject to, sections 226(o) and 377 of the Act, the Lord Mayor is delegated the following functions:

Reference	Function
Recess Period and decisions in the case of emergencies	To exercise the functions of the elected Council during a Recess Period in accordance with Annexure A - Recess Period, where there are grounds to support that a decision of the elected Council cannot be delayed during a Recess Period
	In the event of an emergency, or an order by legislation or government authority, that prevent Council from being able to meet (either in person or in an electronic form), Council enters into a 'Recess Period' until the emergency is concluded, and that the Lord Mayor may exercise the functions of the elected Council in accordance with Annexure A - Recess Period
Notice to Councillors and report to Council when exercising policy making functions between meetings in the case of necessity	<p>When exercising, in cases of necessity, the policy-making functions of the governing body of the Council between meetings of the Council, in addition to the functions set out in section 226 (d) of the Local Government Act, the Lord Mayor must give all Councillors written notice at least 24 hours before the exercising of this power, including all relevant business papers or reports relating to the decision.</p> <p>Any such decisions made by the Lord Mayor pursuant to such delegation is to be reported to the next meeting of Council.</p>



## PART 3 - DEVELOPMENT APPLICATIONS COMMITTEE

### a. Instrument of Delegation to the Development Applications Committee

In accordance with, and subject to, section 377 of the Act, the Development Applications Committee is delegated the following functions:

Reference	Function
Development Applications	<p>1 To determine development applications under the Environmental Planning and Assessment Act 1979 (NSW) if:</p> <ul style="list-style-type: none"> <li>(a) The development application has an estimated cost exceeding \$15 million;</li> <li>(b) City of Newcastle (CN) has received 25 or more individual written objections emanating from individual households, during the formal notification period, to the development application that CN has been unable to resolve in discussions with the objectors or that CN has been unable to address by appropriate conditions to the development application;</li> <li>(c) CN Officers recommend approval of a development application that involves a variation to a development standard of an environmental planning instrument, where the extent of the proposed variation is assessed to be greater than 10%;</li> <li>(d) Two or more Councillors submit a request in writing that the development application be determined by the Development Applications Committee.</li> </ul> <p>2 The delegations in this Instrument are subject to, and are to be exercised in accordance with, the requirements of the relevant legislation and any resolution of Council.</p> <p>3 All previous delegations of functions the subject of this Instrument be revoked.</p> <p>4 For the purpose of this Instrument, function includes powers, authorities and duties and anything ancillary or related to the exercise or performance of that function.</p> <p><u>Exception</u> The delegations under this Instrument of Delegation during Council's Recess Period, in which case the determination of all Development Applications is delegated jointly to the Lord Mayor and CEO as outlined at Annexure A - Recess Period (except those limited by relevant legislation).</p>

## PART 4 - CHIEF EXECUTIVE OFFICER

### a. Functions of the CEO

The following are functions of the CEO in accordance with section 335 of the Act:

Category	Function
Functions of the CEO - section 335 of the Act	<ul style="list-style-type: none"><li>(a) To conduct the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council,</li><li>(b) To implement, without undue delay, lawful decisions of the council,</li><li>(c) To advise the mayor and the governing body on the development and implementation of the strategic plans, programs, strategies and policies of the council,</li><li>(d) To advise the mayor and the governing body on the appropriate form of community consultation on the strategic plans, programs, strategies and policies of the council and other matters related to the council,</li><li>(e) To prepare, in consultation with the mayor and the governing body, the council's community strategic plan, community engagement strategy, resourcing strategy, delivery program, operational plan and annual report,</li><li>(f) To ensure that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their functions,</li><li>(g) To exercise any of the functions of the council that are delegated by the council to the general manager,</li><li>(h) To appoint staff in accordance with the organisation structure determined under this Chapter and the resources approved by the council,</li><li>(i) To direct and dismiss staff,</li><li>(j) To implement the council's workforce management strategy,</li><li>(k) Any other functions that are conferred or imposed on the general manager by or under this or any other Act.</li></ul>

**b. Instrument of Delegation to the CEO**

1. The CEO be delegated all functions of Council except the functions reserved for Council (as set out in Part 1), the functions delegated to the Lord Mayor (as set out in Part 2), and the functions delegated to the Development Applications (as set out in Part 3).
2. In accordance with, and subject to, sections 335 (g) and 377 of the Act, the CEO is delegated the following additional functions:

Category	Function
Recess Period	Where there are grounds to support that a decision of the elected Council cannot be delayed during a Recess Period, to exercise the functions of the elected Council in accordance with Annexure A - Recess Period.

## **ANNEXURE A - RECESS PERIOD**

General authority of Council during a Recess Period:

- (a) Where there are grounds to support that a decision of the elected Council cannot be delayed during a Recess Period, to exercise the functions of the elected Council other than:
  - i. the functions reserved by the elected Council itself in accordance with section 377 of the Act; and
  - ii. those powers and functions delegated to the CEO.

Delegations to the Lord Mayor during Recess Period

- (b) This authority may be exercised subject to:
  - i. such delegations are to be exercised following receipt by the Lord Mayor of reports or other business papers in a form similar to the form of reports or other business papers normally submitted to Council or a Committee of Council;
  - ii. those reports or other business papers are to be circulated to Councillors at least three business days prior to the exercise of delegations;
  - iii. where written objections by a majority of Councillors on any one item are received by the Lord Mayor, stating relevant reasons for objection, the item is to be deferred until the next relevant meeting of Council; and
  - iv. any such decisions made by the Lord Mayor pursuant to such delegation is to be reported to the next meeting of Council.

Delegations to the Lord Mayor and CEO during Recess Period

- c. Where the decision relates to a determination of applications for development consent under the Environmental Planning and Assessment Act 1979 (Development Application) that would have otherwise been determined by the Development Applications Committee, the Lord Mayor is authorised to co-determine the Development Application with the CEO in accordance with the process set down in the CEO's Instrument of Delegation.

Notes:

This delegation is effective from midnight on the day of the last Council meeting, prior to the Recess Period, up to the time of commencement of the first meeting at the conclusion of the Recess Period. The Recess Period will be confirmed by resolution of the elected Council.

This clause does not limit the Lord Mayor's authority pursuant to section 226(d) of the Act to exercise in the cases of necessity, the policy-making functions of the governing body of Council between meetings of Council.

## **Annexure B - Definitions**

**Act** means the Local Government Act (NSW) 1993

**CEO** means the Chief Executive Officer

**Chief Executive Officer** means the General Manager appointed under the Act

**CN** means the City of Newcastle

**Council** has the same meaning as provided in the Act

**DAC** means Development Applications Committee, a committee of the whole established by Council under section 355(b) of the Act

**Decisions of Council** means decisions made by the Council from time to time;

**Function** means the functions conferred or imposed on councils by or under the Act

**Recess Period** means a period of time where Council has, by resolution of Council, specifically determined a break in Council's ordinary meeting schedule. A Recess Period does not include:

- a) the time between meetings (an extraordinary meeting can be called where decisions are required to be made as a matter of urgency); or
- b) the time between Council terms (that is the period between the day of the last ordinary council meeting and the date of declaration of a new elected Council)

**Resolution of Council** means a decision made by the Elected Council at an ordinary council meeting, extraordinary council meeting or a committee of council meeting

# Document Control

<b>Policy Title:</b>	Instruments of Delegation - Council reserved functions, Lord Mayor, CEO and Development Applications Committee
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## Related Document Information, Standards & References

<b>Related Legislation:</b>	Local Government Act 1993 Environmental Planning and Assessment Act 1979	This Act and associated Regulations are integral to the framework described in this policy
<b>Related Policies (Council &amp; Internal):</b>	Delegations and Authorisations Policy	Executive Director Corporate Services & CFO / Executive Manager Legal & Governance
<b>Related Procedures, Guidelines, Forms, WHS Modules/PCD's, Risk Assessments, Work Method Statements:</b>	Nil	

## Relevant Newcastle 2040 Theme/s

<b>Term / Abbreviation</b>
Liveable, Sustainable, Creative, Achievable Together

## Version History

<b>Version No - ECM - Date</b>
Instrument of Delegation to Lord Mayor, Chief Executive Officer, Development Applications Committee - v1- (this Instrument) - Amendment by resolution of Council 3 December 2024 to Part 2(b) Instrument of Delegation to Lord Mayor (addition regarding s226(d))
Instrument of Delegation - CEO - v1=3866709 (2013), v2=4770694 (2015), v3=5928008 (2019), v4=6362976 (2020), V5=7909289
Instrument of Delegation Lord Mayor - V1=3866710 (2013), V2=4770693 (2015), V3=5928010 (2019), V4=6362974, V5=7304497 (2022)
Instrument of Delegation Development Application Committee V1=4542843 (2013), V2=5421873 (2017), V3=7885314 (2022)