

ITEM 2 DELEGATION TO THE GENERAL MANAGER

A review of the General Manager's Delegation has recently been undertaken. This report provides a summary of the review of the General Manager's Delegation and provides commentary on a draft Instrument of Delegation to the General Manager that is presented to Council for consideration.

RECOMMENDATION

- 1 Any previous delegation to the General Manager be revoked.
- 2 Council delegate to the General Manager the "General Manager's Delegation (Instrument of Delegation)" attached as Attachment A.

REPORT AUTHORISATIONS

Report of: Todd Hopwood, Manager Governance and Customer Service
Authorised by: Renee Campbell, Director Corporate Services - Connected + Engaged City

ATTACHMENTS

- 1 Draft Instrument of Delegation to the General Manager

BACKGROUND

The wording of the current delegation to the General Manager, was adopted 3 September 2018 and is as follows:

1. *Council delegate to the General Manager all delegable functions of the Council, but excluding:*
 - a. *Those functions specified in clauses (a) to (u) of section 377 (1) of the Local Government Act 1993*
 - b. *The granting of leases of Council property where the total lease rental payable to Council for the term of the lease is more than \$1M (including GST)*
 - c. *The granting of leases of Council property where the term of the lease is for 10 years or more*
 - d. *The acceptance of tenders required to be invited pursuant to section 55 of the Local Government Act 1993 as at the date of this delegation*
2. *Council fix the amount of \$3,000, as the amount above which any individual rate charge or debt owed to the Council may be written off only by resolution of the Council pursuant to clauses 131(1) and 213(2) of the Local Government (General) Regulation 2005.*

In general, the current wording of the delegation to the General Manager is comprehensive, with only a small number of exclusions. The local Government Act was amended in 2019 to lift the tender threshold to \$250,000. However the words "as at the date of this delegation" in clause 1(d) had the effect of maintaining the delegation to the General Manager at \$150,000 in relation to Tenders.

The proposed amendments were presented to the June meeting of Council's Audit Risk and Improvement Committee and the Committee endorsed the amended delegation being presented to council at the earliest opportunity.

PROPOSAL

To inform the next iteration of the delegation to the General Manager, a review has been undertaken in relation to delegations provided to General Managers of other councils of a similar size and nature as Wollongong City Council.

Following the review, it is proposed to recommend a varied delegation in the following areas:

- Value of tenders that can be accepted by the General Manager
- The amount above which Council must resolve to write off rate charges or debts
- Permanently approve increased delegations during Christmas shutdowns and caretaker periods prior to each election

The review of the delegations provided to the General Managers of the 13 largest councils in New South Wales is summarised below:

Council	Limit on Acceptance of Tenders	Limit on Writing off Debt
Canterbury-Bankstown	Up to \$2 Million	Up to \$10k
Blacktown	Up to \$250k Up to \$500k for “transformational Program” tenders	Up to \$10k
Central Coast	No limit	
Northern Beaches	No limit	Up to \$20k
Parramatta	Up to \$250k	
City of Sydney	Up to \$5 Million	Up to \$100k
Cumberland	Up to \$500k	Up to \$10k
Sutherland	No limit	Up to \$10k
Liverpool	Up to \$2 Million	Up to \$20k
Wollongong	Up to \$150k	Up to \$3k
Fairfield	No Limit	
Penrith	No Limit	Up to \$2k
Lake Macquarie	No Limit	Up to \$5k

Procurement (Tender) Delegations

Of the 12 other councils compared, six councils have no limit on the value of tenders the General Manager can accept, one council sets a \$5Million limit, two set a limit of \$2Million, one sets a limit of \$500k, and two councils set the limit at the \$250k tender threshold in the legislation.

It is important to note two things in relation to General Managers who have no limit on their delegations in relation to tenders. Firstly, they are still bound by the limitations to accepting tenders in s377(i) of the Act that requires a council resolution for the “*acceptance of tenders to provide services currently provided by members of staff of the council*”, i.e. outsourcing.

Secondly, the General Manager is not obliged to consider every tender and staff at those councils have advised that the General Manager often refer tenders to the Council for consideration, based on their own informal risk assessment, or perception of controversy and Councillor interest.

The above information generally shows that the majority of large councils delegate to the General Manager/CEO a value well above the tender threshold or place no limit at all. This is because larger councils generally have more Tenders/contracts that are of a large value and there are significant efficiency gains in having tenders signed off at General Manager/CEO level.

Impact of a Low Tender Threshold in the Delegation

There is a significant gain in efficiency that can occur in having the General Manager sign off on a tender as opposed to the Council. These efficiencies are generally time related and caused by the fixed timetables and lead times that come with the requirement to write council reports to obtain a resolution to approve acceptance of a tender.

In the last 2 years Council has undertaken 75 tenders. Provided below is the number of tenders (and cumulative value) broken up within common value thresholds that could be used to set the delegation to the General Manager for accepting tenders.

Tender Value	Number of Tenders	Cumulative % Tenders conducted	Total Value	Cumulative % total of spend
Up to \$250,000	22	29.3%	\$3,808,785	6.5%
\$250,000 to \$499,999	24	61.3%	\$8,338,556	20.7%
\$500,000 to \$999,999	16	82.7%	\$11,231,075	39.9%
\$1,000,000 to \$4,999,999	11	97.3%	\$18,635,333	71.7%
Above \$5,000,000	2	100%	\$16,546,073	100%

If a tender is approved by the General Manager as opposed to Council, this will create time savings and administrative efficiencies. It is estimated that on average the decision-making process could be reduced by 4-6 weeks for tenders approved by the General Manager.

In addition, it will lift Council’s standing with major and regular suppliers for a number of reasons. Firstly, all businesses will appreciate the value of a quicker decision-making process on major procurements. Faster decision making, particularly at lower levels, can also assist Council’s efforts to encourage local / smaller suppliers to participate in the tender process and bid for work with Council.

Secondly, at present Council requires tender respondents to provide an undertaking that they hold/guarantee the prices in their tender submission for a period of 90 days to allow the tender process to be finalised. Council regularly receives feedback that this is a disincentive to prospective suppliers, and may lead to less submissions being made or higher prices being submitted.

Recommended Tender Delegation Value

To strike a balance between administrative efficiency and maintaining oversight by the elected Council of significant tender activities it is recommended that the level at which the General Manager be delegated the authority to accept tender be set at \$500,000.

Based on the historical tender data for the last two financial years, provided earlier in this report, a delegation set at \$500,000 would see approximately 23 tenders per year approved by the General Manager. This equates to 61.3% of tender processes, but only 20.7% of total expenditure on tenders.

It should be noted that under s377(i) of the Act the Council can only delegate the power to accept Tenders to the General Manager. Only the Council, by resolution, can determine to reject a tender or reject and negotiate with another party. This ensures that any Tender processes that have unforeseen issues arise in the process and require an alternate outcome will all continue to be considered by the Council.

Delegation to write off individual rate charges or debts owed to the Council

At present the General Manager can write off individual rate charges or debts owed to the Council up to a maximum limit of \$3,000. This amount is restrictive and is inconsistent with other reviewed councils that generally have this delegation limit set up to \$10,000. As there is an administrative burden that comes with presenting low value amounts to Council for approval to be written off, it is believed that a delegated limit of \$10,000 would strike a balance between administrative efficiency and appropriate oversight by Council.

Delegation to the General Manager during recess and caretaker periods

At present the General Manager is not automatically delegated an increase in authority in the Christmas / New Year recess period and during the caretaker period before elections. As a result, Council, at the final meeting of each calendar year and of each Council term, must delegate to the General Manager appropriate additional authorities to ensure that the business of Council can continue to be undertaken in these periods when Council either cannot meet or is not constituted. This creates an administrative burden undertaking the same process up to 5 times each council term. The draft Instrument of Delegation includes a clause that will allow this authority to be delegated in the main instrument of delegation, without the need for Council to re-consider this every year.

CONSULTATION AND COMMUNICATION

The draft Instrument of Delegation was presented to Council's Audit Risk and Improvement Committee at the meeting held on 16 June, 2021 for consideration and comment. The ARIC provided advice on the draft delegations to the General Manager, with particular emphasis on the delegation to accept tenders. The ARIC encouraged the draft delegations to be presented to Council at the earliest opportunity to allow the realisation of the potential efficiency gains that may arise from an amended delegation to the General Manager.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2028 Goal 4 "We are a connected and engaged community".

It specifically delivers on core business activities as detailed in the Governance and Customer Service, Service Plan 2021-22.

SUSTAINABILITY IMPLICATIONS

The proposed amendments to the General Manager's delegation are all aimed at promoting a more efficient delivery of Council services, particularly those that rely on major procurement processes. Increased efficiency in the procurement process will translate to potential efficiencies gained through service delivery.

RISK MANAGEMENT

Procurement and acceptance of tenders presents a significant risk to Council and procurement in any public organisation is always a high-risk activity and a significant number of controls need to be put in place to ensure confidence that procurement processes are free from influence and corruption and the outcomes provide best value to the community.

Council has developed and implemented a comprehensive approach to procurement with layers of controls and probity to offer significant confidence that procurement objectives are met in an efficient and appropriate manner. Assurance can be taken from the recent NSW Audit Office Performance Audit on Procurement Management, which found no areas of concern with Council's policies, procedures and framework.

In relation to the above flagged issues, there is no greater risk in the General Manager accepting tenders as staff provide the same reports and background material to the General Manager as they do to Council when they consider tenders. The fact that council implements the same rigorous probity and governance oversight presently for quotations over \$75,000 demonstrates that there are no increased risks in relation to procurement outcomes and probity arising from the General Manager accepting tenders.

The Quarterly Review includes a listing of all contracts entered into by Council during the quarter that are greater than \$50,000. It is intended to highlight those that have been determined through tender by the General Manager in the Quarterly Review.

FINANCIAL IMPLICATIONS

There are no direct financial implications that arise from the adoption of an amended delegation to the General Manager.

CONCLUSION

There are significant efficiency gains that can be achieved in major procurements and to a lesser extent for the writing off of rates and charges if the Delegation to the General Manager is increased in these areas. The recent NSWAO Procurement Audit provides evidence that an increase in the procurement delegation would not present any significant change in risk profile for Council.

GENERAL MANAGER'S DELEGATION

(Instrument of Delegation)

Pursuant to section 377 of the *Local Government Act 1993* and a resolution of the Council at its meeting held on 13 September, 2021 Wollongong City Council:

1. revokes all delegations granted to the General Manager prior to the date of this Instrument; and
2. delegates to the General Manager, or to the person who acts in that position, all of the functions, powers, duties and authorities of the Council that it may lawfully delegate under the *Local Government Act 1993*, any other Act, regulation, instrument, rule or the like (including any functions, powers, duties and authorities delegated to the Council by any authority, body, person or the like):
 - i. other than those functions prescribed in section 377(1) of the *Local Government Act 1993* as functions which may not be delegated; andsubject to
 - ii. the Restrictions set out in Column 2 in respect of those functions listed in Column 1 of Schedule 1 of this Instrument, and
 - iii. compliance with any applicable resolution of the Council.
3. Fixes the amount, pursuant to clause 213 of the *Local Government (General) Regulation 2021*, above which debts to the council may be written off only by resolution of the council to be \$10,000. A debt of or below that amount can be written off, by order, in writing by the General Manager.
4. Notwithstanding any other provision of this Instrument, Council delegate to the General Manager the authority to accept all tenders, except tenders to provide services currently provided by members of staff, during the following Council recesses:
 - i) Between the last meeting of the Council for the calendar year and the first meeting of the Council in the following year, subject to consultation with the Lord Mayor. Consultation can occur with the Deputy Lord Mayor, in the absence of the Lord Mayor; and
 - ii) Between the last meeting of the Council term and the day appointed for the next ordinary election; subject to consultation with the Lord Mayor, and remaining compliant with section 393B(1)(a) of the *Local Government (General) Regulation 2021*; and
 - iii) Between the day appointed for the ordinary election and the first meeting of the new Council term, subject to consultation with the Lord Mayor.

SCHEDULE 1

	Column 1	Column 2
	Function*	Restriction**
1.	General use of Delegation	The General Manager cannot use the delegation in relation to those functions specified in clauses (a) to (u) of section 377(1) of the <i>Local Government Act 1993</i>
2.	Granting of Leases on Council Property	The General Manager cannot do so if: <ul style="list-style-type: none"> i) the term of the proposed lease or licence exceeds ten years, or ii) the rental payable to Council for the term of the lease does exceeds \$1,000,000 (including GST)
3.	Acceptance of Tenders invited by Council	The General Manager cannot do so if: <ul style="list-style-type: none"> i) if the value of the tender exceeds \$500,000 (including GST), or ii) if the tender is to provide services currently provided by members of staff of the council.

Notes to assist with interpretation

* To avoid doubt, the list of functions in Column 1 is not to be read as the list of total functions delegated to the General Manager pursuant to this Instrument. Column 1 merely lists those functions which are subject to restrictions as specified in Column 2.

** To avoid doubt, any monetary amount shown is inclusive of GST where applicable.