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**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**CCL 22/02/2022 – ADOPTION OF INSTRUMENT OF DELEGATION**

ITEM-12	<b>PAGE 3</b>	<b>Attachment A:</b>	Instrument of Delegation to the Lord Mayor Dated 22 February 2022
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# Instrument of Delegation to the Lord Mayor

Dated: ~~24 March 2020~~ 22 February 2022



In accordance with, and subject to, section 377 of the *Local Government Act 1993 (Act)*, Council delegates to the Lord Mayor, on an ongoing basis, the following functions:

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## DELEGATIONS

### 1. Leadership and policy direction

- a) to be the leader of the Council and a leader in the local community;
- b) to advise, consult and provide strategic direction to the Chief Executive Officer, except as otherwise provided by the Act.

### 2. Management of Council meetings and business

- a) to preside at Council meetings;
- b) to call and schedule meetings of Council and ~~Council Committees of Council and briefings of Councillors and inspections by Councillors;~~
- c) to request the Chief Executive Officer to include items on the agenda for all meetings of Council and ~~Council Committees of Council,~~ subject to the Act and the *Local Government (General) Regulation 2005-2021 (Regulation)* and any other Act or Regulation. Provided that if the Council has by resolution determined that a specific item should be placed on its agenda, the function exercised under this delegation must be exercised in accordance with that resolution.

**Commented [A1]:** This is an administrative update to more accurately reflect the Committees of Council (Public Voice, Briefing and Development Applications)

**Commented [A2]:** This is an administrative update to more accurately reflect the Committees of Council (Public Voice, Briefing and Development Applications)

**Commented [A3]:** This reflects changes to the legislation that came into force in 2021

### 3. External relations and representations

- a) to act as the official spokesperson of the ~~elected Council~~ City of Newcastle;
- b) to determine:
  - i. who should represent Council on external organisations and committees and inter-agency working parties, where Council has not determined a representative; and
  - ii. who should represent Council at civic ceremonial and social functions, where the Lord Mayor is unable to attend and Council has not determined its representative,

*Provided that before a determination is made that a staff member should so represent Council, the Lord Mayor must consult with the Chief Executive Officer.*

- c) to determine who will exercise Council's Local Government NSW (LGNSW) voting rights from among the Councillor attendees;
- d) ~~to determine who will exercise Council's Australian Local Government Association (ALGA) voting rights from among the Councillor attendees;~~
- e) to act as a Council nominated director on Newcastle Airport Pty Ltd, Greater Newcastle Aerotropolis Pty Ltd, Newcastle Airport Partnership, Greater Newcastle Aerotropolis Partnership, Newcastle Airport Partnership Company 1 and Newcastle Airport Partnership Company 2.

**Commented [A4]:** This is a new proposal and is consistent with item 3(c). The effect is that a report to Council to obtain a resolution determining who will exercise the voting rights at the annual National General Assembly will no longer be required. In accordance with the Councillor Expenses and Facilities Policy, any Councillor may express an interest in attending.

### 4. Organisational Accountability and Performance Management

- a) to exercise Council's functions under the Chief Executive Officer's Contract of Employment having regard to any functions of a performance review panel or policy in effect;

- b) to obtain external legal advice in relation to the appointment, conduct and performance of the Chief Executive Officer, and related issues;
- c) to negotiate and settle terms of a contract of employment with the Chief Executive Officer including determining the appropriate remuneration, bonuses and incentives in accordance with relevant Council resolutions (as required), the Chief Executive Officer's Contract of Employment and relevant Council policies;
- d) to review, approve and implement governance and accountability structures and processes for the performance of the organisation and to oversee the performance of the Chief Executive Officer (and, through the Chief Executive Officer, the performance of the organisation and program areas within the organisation);
- e) to settle performance standards, and plan, and carry out performance reviews, of the Chief Executive Officer, in accordance with any performance review panel or policy in effect;
- f) to accept the resignation of the Chief Executive Officer;
- g) to appoint a Director as an Acting Chief Executive Officer from time to time as might be required by the absence of the Chief Executive Officer for any reason;
- h) to take other administrative action in connection with the Chief Executive Officer's Contract of Employment including but not limited to the approval of annual leave.

#### 5. Staffing and structure of the Lord Mayor's office

- a) In respect of the Lord Mayor's Office (**LMO**), to:
  - i. determine the structure;
  - ii. determine the number and description of all staff positions;
  - iii. allocate expenditure of the LMO within its overall budget;
  - iv. be fully and formally consulted in respect of the appointment (or dismissal) of all staff;
  - v. allocate tasks on a day to day basis;
 in consultation with the Chief Executive Officer.
- b) to determine requests for the waiver or reduction of fees in accordance with Council's adopted budget and pre-determined categories.

#### 6. 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;
  - ii. those powers and functions delegated to the Chief Executive Officer.
- b) 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 Chief Executive Officer in accordance with the process set down in the Chief Executive Officer's Instrument of Delegation.

- c) This authority 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, 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 ~~Council 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 ~~three 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.

**Commented [A5]:** This is an administrative update to more accurately reflect the Committees of Council (Public Voice, Briefing and Development Applications)

**Commented [A6]:** Amendment reflects voting at a Council meeting whereby items are determined by a majority vote.

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.

#### 7. ~~COVID-19 Pandemic~~Emergency provisions

- a) In the event of an emergency ~~that there are further changes to public health advice~~, 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 ~~public health advice or order is lifted~~ emergency is concluded, and ~~that~~ that the Lord Mayor may exercise the functions of the elected Council in accordance with clause 6.
- b) ~~Council decisions be exercised in consultation with the Council in accordance with the Section 6 of the adopted Instrument of Delegation to the Lord Mayor.~~

**Commented [A7]:** As a consequence of Council's experiences with responding to the COVID-19 pandemic, this change is recommended to reflect that there may be other emergency situations, such as a flood or earthquake, that may prevent the elected Council from meeting. This provision continues to allow Council to respond to changes to public health orders and other legislative consequences of the COVID-19 pandemic. The effect is that, if Council is unable to meet, the provisions of the clause 6 relating to the Recess Period apply.

#### INTERPRETATION

- a) **Chief Executive Officer** means the General Manager appointed under the Act;
- b) **Decisions of Council** means decisions made by the elected Council from time to time;
- c) **Policy/Policies of the Council** means references to policies adopted by the elected Council from time to time;
- d) **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:
- i. the time between meetings (an extraordinary meeting can be called where decisions are required to be made as a matter of urgency); or
  - ii. 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).

This Instrument of Delegation should be construed as:

- a) operating in a manner which is valid and within the powers conferred on Council under the Act;

- b) not limiting the Lord Mayor's ability to carry out such other functions and exercise such other powers as the Council may determine from time, to time or as may be functions of the Lord Mayor under the Act.

*All previous delegations of functions the subject of this Instrument of Delegation are revoked.*

# Instrument of Delegation to the Lord Mayor

Dated: 22 February 2022



In accordance with, and subject to, section 377 of the *Local Government Act 1993 (Act)*, Council delegates to the Lord Mayor, on an ongoing basis, the following functions:

## DELEGATIONS

### 1. Leadership and policy direction

- a) to be the leader of the Council and a leader in the local community;
- b) to advise, consult and provide strategic direction to the Chief Executive Officer, except as otherwise provided by the Act.

### 2. Management of Council meetings and business

- a) to preside at Council meetings;
- b) to call and schedule meetings of Council and Committees of Council;
- c) to request the Chief Executive Officer to include items on the agenda for all meetings of Council and Committees of Council, subject to the Act and the *Local Government (General) Regulation 2021 (Regulation)* and any other Act or Regulation. Provided that if the Council has by resolution determined that a specific item should be placed on its agenda, the function exercised under this delegation must be exercised in accordance with that resolution.

### 3. External relations and representations

- a) to act as the official spokesperson of the City of Newcastle;
- b) to determine:
  - i. who should represent Council on external organisations and committees and inter-agency working parties, where Council has not determined a representative; and
  - ii. who should represent Council at civic ceremonial and social functions, where the Lord Mayor is unable to attend and Council has not determined its representative,

*Provided that before a determination is made that a staff member should so represent Council, the Lord Mayor must consult with the Chief Executive Officer.*

- c) to determine who will exercise Council's Local Government NSW (LGNSW) voting rights from among the Councillor attendees;
- d) to determine who will exercise Council's Australian Local Government Association (ALGA) voting rights from among the Councillor attendees;
- e) to act as a Council nominated director on Newcastle Airport Pty Ltd, Greater Newcastle Aerotropolis Pty Ltd, Newcastle Airport Partnership, Greater Newcastle Aerotropolis Partnership, Newcastle Airport Partnership Company 1 and Newcastle Airport Partnership Company 2.

### 4. Organisational Accountability and Performance Management

- a) to exercise Council's functions under the Chief Executive Officer's Contract of Employment having regard to any functions of a performance review panel or policy in effect;
- b) to obtain external legal advice in relation to the appointment, conduct and

performance of the Chief Executive Officer, and related issues;

- c) to negotiate and settle terms of a contract of employment with the Chief Executive Officer including determining the appropriate remuneration, bonuses and incentives in accordance with relevant Council resolutions (as required), the Chief Executive Officer's Contract of Employment and relevant Council policies;
- d) to review, approve and implement governance and accountability structures and processes for the performance of the organisation and to oversee the performance of the Chief Executive Officer (and, through the Chief Executive Officer, the performance of the organisation and program areas within the organisation);
- e) to settle performance standards, and plan, and carry out performance reviews, of the Chief Executive Officer, in accordance with any performance review panel or policy in effect;
- f) to accept the resignation of the Chief Executive Officer;
- g) to appoint a Director as an Acting Chief Executive Officer from time to time as might be required by the absence of the Chief Executive Officer for any reason;
- h) to take other administrative action in connection with the Chief Executive Officer's Contract of Employment including but not limited to the approval of annual leave.

#### 5. Staffing and structure of the Lord Mayor's office

- a) In respect of the Lord Mayor's Office (**LMO**), to:
  - i. determine the structure;
  - ii. determine the number and description of all staff positions;
  - iii. allocate expenditure of the LMO within its overall budget;
  - iv. be fully and formally consulted in respect of the appointment (or dismissal) of all staff;
  - v. allocate tasks on a day to day basis;
 in consultation with the Chief Executive Officer.
- b) to determine requests for the waiver or reduction of fees in accordance with Council's adopted budget and pre-determined categories.

#### 6. 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;
  - ii. those powers and functions delegated to the Chief Executive Officer.
- b) 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 Chief Executive Officer in accordance with the process set down in the Chief Executive Officer's Instrument of Delegation.
- c) This authority 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, 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.

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.

## 7. Emergency provisions

- a) 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 clause 6.

## INTERPRETATION

- a) **Chief Executive Officer** means the General Manager appointed under the Act;
- b) **Decisions of Council** means decisions made by the elected Council from time to time;
- c) **Policy/Policies of the Council** means references to policies adopted by the elected Council from time to time;
- d) **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:
  - i. the time between meetings (an extraordinary meeting can be called where decisions are required to be made as a matter of urgency); or
  - ii. 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).

This Instrument of Delegation should be construed as:

- a) operating in a manner which is valid and within the powers conferred on Council under the Act;
- b) not limiting the Lord Mayor's ability to carry out such other functions and exercise such other powers as the Council may determine from time, to time or as may be functions of the Lord Mayor under the Act.

*All previous delegations of functions the subject of this Instrument of Delegation are revoked.*

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## CCL 22/02/2022 – ADOPTION OF INSTRUMENTS OF DELEGATION

- ITEM-12**      **Attachment B:**    Instrument of Delegation to the Chief Executive Officer  
Dated 22 February 2022
- Page 15:**        Instrument of Delegation to the Chief Executive Officer  
                                 – with tracked changes
- Page 19:**        Instrument of Delegation to the Chief Executive Officer  
                                 – final version

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**DISTRIBUTED UNDER SEPARATE COVER**

**Instrument of Delegation to the  
Chief Executive Officer**  
Dated ~~24 March 2020~~ 22 February 2022



- A. This Instrument of Delegation recognises that certain functions are conferred on the Chief Executive Officer under section 335 of the Local Government Act 1993 (Act), including the day-to-day management of Council.
- B. Pursuant and subject to section 377 of the Act, Council delegates to the person holding the position of Chief Executive Officer from time to time Council's Functions under the Act and all other acts and regulations in force and as amended from time to time conferring Functions on Council subject to any conditions or limitations in Schedule 1.
- C. The Chief Executive Officer is authorised to act as a Council nominated director on Newcastle Airport Pty Ltd, Greater Newcastle Aerotropolis Pty Ltd, Newcastle Airport Partnership, Greater Newcastle Aerotropolis Partnership, Newcastle Airport Partnership Company 1 and Newcastle Airport Partnership Company 2.

**SCHEDULE 1: LIMITATION OF FUNCTIONS DELEGATED TO THE CHIEF EXECUTIVE OFFICER**

**GENERAL**

- 1. the functions which are required by or under the Act or by or under any other act or instrument to be exercised by the governing body of the Council, this includes but is not limited to the functions listed in section 377 (1) of the Act;
- 2. functions and authorities delegated to the Lord Mayor;

**POLICY AND PROCEDURE**

- 3. the power to make or amend Council Policy;
- 4. the release for public exhibition and comment of any plan or policy, which is required by legislation to be exhibited;
- 5. the exercise of functions in a manner not consistent with the policies and decisions of Council, or reasonable and lawful direction of the Lord Mayor;

**BUDGET AND RESOURCE ALLOCATION**

- 6. approving Council's budget;
- 7. the setting of priorities for Major Projects ~~and Major Asset Preservation Programs;~~
- 8. variation to Major Projects (projects exceeding \$5m) exceeding an amount of 10% above the approved project budget;
- 9. the approval of the final design in relation to any new capital works item and any other capital works item specified by Council in the budget approval process where the budget exceeds \$5m;

**Commented [A1]:** This refers to a reporting structure no longer used by CN and can be deleted. Reference to "priorities for Major Projects" remains appropriate.

10. the awarding of contracts for any tender called pursuant to section 55 (1) of the Act where the value is greater than \$1m. ~~T~~(his 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);
11. writing off bad debts or waiving fees and charges, for amounts above \$10,000 (including GST);

#### ORGANISATIONAL STRUCTURE AND PERSONNEL MATTERS

12. the approval of the organisation structure at Director level, except for transitional or temporary arrangements;
13. the appointment of Senior Staff Contract positions unless prior consultation with Council has occurred, (the CEO may make transitional or temporary arrangements);
14. entering into a new enterprise agreement except after consultation with Council;

#### COUNCIL OPERATIONS AND SERVICES

15. carrying out new non-core services not already approved by Council;
16. variation of any existing Council service that would have overall negative implications for Council in terms of cost or service delivery, except
  - a) in the event ~~that there are further changes to public health advice~~of an emergency, or an order by legislation or government authority, including in relation to the COVID-19 Pandemic, and variation of service is required in order to comply, after consultation with the Lord Mayor and Council where reasonably possible.
17. setting or altering the Schedule of Fees and Charges, except in accordance with the relevant categories as determined within the Council's Operational Plan;

#### LEGAL PROCEEDINGS

18. the giving of instructions to Council's legal representatives to commence legal proceedings in the NSW Supreme or Federal Courts, except in relation to an urgent injunction proceedings and after consultation with the Lord Mayor where practical and possible (provided that the status of all NSW Supreme and Federal Court proceedings will be reported to Council);
19. the giving of instructions in legal proceedings contrary to a resolution of Council except in planning or regulatory appeals where instructions can be given to resolve an appeal;

#### PROPERTY, LAND USE AND RELATED MATTERS

20. granting of approvals to occupy and use public land (as defined in the Act), crown land or any other land managed by Council except approvals:
  - i. with a maximum rental or fee not exceeding \$150,000 per annum and a term (all leases with a term exceeding 5 years entered into under delegated authority by the Chief Executive Office

**Commented [A2]:** As a consequence of Council's experiences with responding to the COVID-19 pandemic, this change is recommended to reflect that there may be other emergency situations, such as a flood or earthquake, which may mean a service has to be temporarily varied. This provision continues to allow CN to respond to changes to public health orders and other legislative consequences of the COVID-19 pandemic. The effect remains the same, that a variation may be required to enact legislation prior to the elected Council being able to meet to determine to vary a service. For example, the temporary closure of the Art Gallery to enact the Public Order relating to the COVID-19 Pandemic.

(or delegate) will be reported to the elected Council on a quarterly basis);

- ii. relating to a temporary use of public land (as defined in the Act) or crown land (including parks and open spaces) not exceeding forty consecutive days; or
- iii. with such approvals being reported to Council in the Quarterly Report.

21. adoption of a plan of management for community land;

### CULTURAL

22. the development or formation of relationships with other cities, including sister city agreements;

23. the approval of civic and ceremonial events;

24. the granting of civic honours;

### PLANNING AND DEVELOPMENT

25. determination of applications for development consent under the Environmental Planning and Assessment Act 1979 (Development Application) that are to be referred to the Development Applications Committee.

Limitation 25 does not apply during a Recess Period where the Instrument of Delegation to the Development Applications Committee is placed on hold, in which case the determination of all Development Applications is delegated jointly to the Lord Mayor and Chief Executive Officer (except those limited by relevant legislation) provided:

- i. such delegation is exercised following receipt by the Lord Mayor and Chief Executive Officer 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 ~~Council 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 three Councillors on any one item are received by the Lord Mayor or Chief Executive Officer, stating relevant reasons for objection, the item is to be deferred until the next relevant Development Applications Committee meeting ~~of Council~~; and
- iv. any such decisions made by the Lord Mayor and Chief Executive Officer pursuant to such delegation is to be reported to the next meeting of Council.

**Commented [A3]:** This is an administrative update to more accurately reflect the Committees of Council (Public Voice, Briefing and Development Applications)

#### This Instrument of Delegation:

- a) Recognises that the Chief Executive Officer may be delegated any function which is taken to be conferred or imposed on Council pursuant to section 381 of the Act.
- b) Is subject to, and is to be exercised in accordance with, the requirements of the relevant legislation and any resolution of Council.

- c) Is not intended to limit the Chief Executive Officer's ability to carry out such other functions and exercise such other powers as the Council may determine from time to time or as may be functions of the Chief Executive Officer under the Act.
- d) Should be construed as operating in a manner which is valid and within the powers conferred on the Council under the Act.

#### INTERPRETATION

- a) **Chief Executive Officer** means the General Manager appointed under the Act.
- b) **Decisions of Council** means resolutions made by the elected Council from time to time.
- c) **Policy/Policies of Council** means policies adopted by the elected Council from time to time.
- d) **Recess Period** means a period of time where Council has by resolution of Council specifically determines a break in Council's ordinary meeting schedule. A Recess Period does not include:
  - (i) The time between meetings (an extraordinary meeting can be called where decisions are required to be made as a matter of urgency).
  - (ii) 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).

*All previous delegations of functions the subject of this Instrument are revoked.*

# Instrument of Delegation to the Chief Executive Officer Dated 22 February 2022



- A. This Instrument of Delegation recognises that certain functions are conferred on the Chief Executive Officer under section 335 of the Local Government Act 1993 (Act), including the day-to-day management of Council.
- B. Pursuant and subject to section 377 of the Act, Council delegates to the person holding the position of Chief Executive Officer from time to time Council's Functions under the Act and all other acts and regulations in force and as amended from time to time conferring Functions on Council subject to any conditions or limitations in Schedule 1.
- C. The Chief Executive Officer is authorised to act as a Council nominated director on Newcastle Airport Pty Ltd, Greater Newcastle Aerotropolis Pty Ltd, Newcastle Airport Partnership, Greater Newcastle Aerotropolis Partnership, Newcastle Airport Partnership Company 1 and Newcastle Airport Partnership Company 2.

## **SCHEDULE 1: LIMITATION OF FUNCTIONS DELEGATED TO THE CHIEF EXECUTIVE OFFICER**

### **GENERAL**

- 1. the functions which are required by or under the Act or by or under any other act or instrument to be exercised by the governing body of the Council, this includes but is not limited to the functions listed in section 377 (1) of the Act;
- 2. functions and authorities delegated to the Lord Mayor;

### **POLICY AND PROCEDURE**

- 3. the power to make or amend Council Policy;
- 4. the release for public exhibition and comment of any plan or policy, which is required by legislation to be exhibited;
- 5. the exercise of functions in a manner not consistent with the policies and decisions of Council, or reasonable and lawful direction of the Lord Mayor;

### **BUDGET AND RESOURCE ALLOCATION**

- 6. approving Council's budget;
- 7. the setting of priorities for Major Projects;
- 8. variation to Major Projects (projects exceeding \$5m) exceeding an amount of 10% above the approved project budget;
- 9. the approval of the final design in relation to any new capital works item and any other capital works item specified by Council in the budget approval process where the budget exceeds \$5m;

10. the awarding of contracts for any tender 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;
11. writing off bad debts or waiving fees and charges, for amounts above \$10,000 (including GST);

### **ORGANISATIONAL STRUCTURE AND PERSONNEL MATTERS**

12. the approval of the organisation structure at Director level, except for transitional or temporary arrangements;
13. the appointment of Senior Staff Contract positions unless prior consultation with Council has occurred, (the CEO may make transitional or temporary arrangements);
14. entering into a new enterprise agreement except after consultation with Council;

### **COUNCIL OPERATIONS AND SERVICES**

15. carrying out new non-core services not already approved by Council;
16. variation of any existing Council service that would have overall negative implications for Council in terms of cost or service delivery, except
  - a) in the event of an emergency, or an order by legislation or government authority, including in relation to the COVID-19 Pandemic, and variation of service is required in order to comply, after consultation with the Lord Mayor and Council where reasonably possible.
17. setting or altering the Schedule of Fees and Charges, except in accordance with the relevant categories as determined within the Council's Operational Plan;

### **LEGAL PROCEEDINGS**

18. the giving of instructions to Council's legal representatives to commence legal proceedings in the NSW Supreme or Federal Courts, except in relation to an urgent injunction proceedings and after consultation with the Lord Mayor where practical and possible (provided that the status of all NSW Supreme and Federal Court proceedings will be reported to Council);
19. the giving of instructions in legal proceedings contrary to a resolution of Council except in planning or regulatory appeals where instructions can be given to resolve an appeal;

### **PROPERTY, LAND USE AND RELATED MATTERS**

20. granting of approvals to occupy and use public land (as defined in the Act), crown land or any other land managed by Council except approvals:
  - i. with a maximum rental or fee not exceeding \$150,000 per annum and a term (all leases with a term exceeding 5 years entered into under delegated authority by the Chief Executive Office (or delegate) will be reported to the elected Council on a quarterly basis);

- ii. relating to a temporary use of public land (as defined in the Act) or crown land (including parks and open spaces) not exceeding forty consecutive days; or
- iii. with such approvals being reported to Council in the Quarterly Report.

21. adoption of a plan of management for community land;

## **CULTURAL**

22. the development or formation of relationships with other cities, including sister city agreements;

23. the approval of civic and ceremonial events;

24. the granting of civic honours;

## **PLANNING AND DEVELOPMENT**

25. determination of applications for development consent under the Environmental Planning and Assessment Act 1979 (Development Application) that are to be referred to the Development Applications Committee.

Limitation 25 does not apply during a Recess Period where the Instrument of Delegation to the Development Applications Committee is placed on hold, in which case the determination of all Development Applications is delegated jointly to the Lord Mayor and Chief Executive Officer (except those limited by relevant legislation) provided:

- i. such delegation is exercised following receipt by the Lord Mayor and Chief Executive Officer 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 three Councillors on any one item are received by the Lord Mayor or Chief Executive Officer, stating relevant reasons for objection, the item is to be deferred until the next relevant Development Applications Committee meeting; and
- iv. any such decisions made by the Lord Mayor and Chief Executive Officer pursuant to such delegation is to be reported to the next meeting of Council.

### **This Instrument of Delegation:**

- a) Recognises that the Chief Executive Officer may be delegated any function which is taken to be conferred or imposed on Council pursuant to section 381 of the Act.
- b) Is subject to, and is to be exercised in accordance with, the requirements of the relevant legislation and any resolution of Council.
- c) Is not intended to limit the Chief Executive Officer's ability to carry out such other functions and exercise such other powers as the Council may determine from time to time or as may be functions of the Chief Executive Officer under the Act.

- d) Should be construed as operating in a manner which is valid and within the powers conferred on the Council under the Act.

## INTERPRETATION

- a) **Chief Executive Officer** means the General Manager appointed under the Act.
- b) **Decisions of Council** means resolutions made by the elected Council from time to time.
- c) **Policy/Policies of Council** means policies adopted by the elected Council from time to time.
- d) **Recess Period** means a period of time where Council has by resolution of Council specifically determines a break in Council's ordinary meeting schedule. A Recess Period does not include:
  - (i) The time between meetings (an extraordinary meeting can be called where decisions are required to be made as a matter of urgency).
  - (ii) 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).

*All previous delegations of functions the subject of this Instrument are revoked.*

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## CCL 22/02/2022 – ADOPTION OF INSTRUMENTS OF DELEGATION

- ITEM-12**      **Attachment C:**      Instrument of Delegation to the  
Development Applications Committee  
Dated 22 February 2022
- Page 25:**      Instrument of Delegation to the Development  
Applications Committee  
– with tracked changes
- Page 27:**      Instrument of Delegation to the Development  
Applications Committee  
– final version

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# Instrument of Delegation to the Development Applications Committee



Dated: ~~24 March 2020~~ **22 February 2022**

- 1 The Development Applications Committee (DAC), which is a committee of the whole established by Council under section 260 of the *Local Government (General) Regulation 2005 2021* (NSW) (**Regulation**) be delegated authority to determine development applications under the *Environmental Planning and Assessment Act 1979* (NSW) (subject to limitations in **Schedule 1**) if:
  - 1.1 the development application has an estimated cost exceeding \$~~40~~ **20** million;
  - 1.2 ~~Council~~ **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 ~~Council~~ **CN** has been unable to resolve in discussions with the objectors or that ~~Council~~ **CN** has been unable to address by appropriate conditions to the development application;
  - 1.3 ~~Council~~ **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%;
  - 1.4 ~~two~~ **three** or more Councillors submit a request in writing that the development application be determined by the Development Applications Committee.
- 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.
- 3 All previous delegations of functions the subject of this Instrument be revoked.
- 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.

## INTERPRETATION

- a) **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:
  - i. the time between meetings (an extraordinary meeting can be called where decisions are required to be made as a matter of urgency); or
  - ii. 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).

### Schedule 1: Limitations

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 Chief Executive Officer (except those limited by relevant legislation).~~

*Refer to Instrument of Delegation to the Lord Mayor, and Instrument of Delegation to the Chief Executive Officer.*

**Commented [A1]:** This reflects changes to the legislation that came into force in 2021

**Commented [A2]:** This will mitigate a risk that significant DAs with a cost exceeding \$10m are unduly delayed simply because of the requirement to be determined by DAC due to their cost. Clauses 1.2 – 1.4 provide 'safeguards' to enable complex or controversial DAs to be considered by DAC.

**Commented [A3]:** The 'call-in' requirement remains in the delegations, however will be increased from two or more Councillors to three or more Councillors, so as to be consistent with the number of Councillors per Ward in the Newcastle Local Government Area

**Commented [A4]:** This change is proposed to link to the Instruments of Delegation to the Lord Mayor and CEO which provide a process for dealing with matters during the Recess Period.

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# Instrument of Delegation to the Development Applications Committee



Dated: 22 February 2022

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  - 1.1 the development application has an estimated cost exceeding \$20 million;
  - 1.2 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;
  - 1.3 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%;
  - 1.4 three or more Councillors submit a request in writing that the development application be determined by the Development Applications Committee.
- 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.
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