

POLICY

There is no policy in relation to this matter.

CONCLUSION

With the exception of the Economic Development and Tourism Committee all Committees received less nominations than the available positions on the Committee so it is considered appropriate to accept all nominations to allow these Committees to commence meeting.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager Governance and Customer Service, Todd Hopwood, who can be contact on 9710 0817.

File Number: 2015/937

GOV011-17 MAYOR'S DELEGATION

Attachments: Nil

EXECUTIVE SUMMARY

- Council at its meeting held on 26 September, 2016 delegated a new instrument of delegation to the Mayor.
- Subsequently a Notice of Motion was considered seeking to limit the Mayor's delegated authority when a decision would exceed adopted budget.
- The Notice of Motion was deferred pending a further report setting out the impacts on the Instrument of Delegation should the motion be carried.
- A review has been undertaken identifying the changes should the motion be carried.

REPORT RECOMMENDATION

That the legal advice regarding the Mayor's Delegation be noted.
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PURPOSE

The purpose of this report is to provide legal advice as sought in Notice of Motion MOT012-17 identifying the changes that will occur to the Mayor's delegated authority if the motion is carried.

BACKGROUND

On 26 September 2016 Council reviewed the Mayor's delegation as set out in CCL018-17. As a result Council delegated to the Mayor the delegations contained in the Instrument of delegation attached as Appendix A.

On 24 October 2016 Councillor Simpson moved to amend the Instrument of delegation and Council resolved to defer the Notice of Motion pending the provision of this advice.

DISCUSSION

The proposed changes as set out in MOT012-17 are as follows:

1. *Except in urgent and/or extenuating circumstances and with the concurrence of the Deputy Mayor and the General Manager, the Mayor's delegated authority not extend in a manner that would result in the Mayor binding or otherwise committing Council to any decision that result in payments to external parties the entering into or amendment of any leases or Council providing goods, services or infrastructure outside of Council's existing adopted budget.*
2. *For the removal of any doubt, this Motion is not applicable in respect of the Mayors current delegated authority concerning the settlement of legal activities.*

The changes that will occur to the Mayor's delegated authority if the motion is carried are set out below.

1. **Claims against Council** – no change.
2. **Community Management Committees** – no change.
3. **Conferences, meetings, seminars and courses** – change required to address circumstances when the payment to external parties will be outside Council's existing adopted budget. Changes required are marked up as follows:

With the concurrence of the General Manager approve the attendance of Councillors at any seminar, conference, meeting or course, PROVIDED THAT such delegation is not exercised if there is a Council meeting between the date of the request and the closing date for registrations AND PROVIDED THAT if it is outside Council's existing adopted budget ONLY in urgent or extenuating circumstances AND with the concurrence of the Deputy Mayor as well.

4. **Correspondence** – no change.
5. **Council recess** – Changes required are marked up as follows:

Notwithstanding any other provision of this Delegation, with the concurrence of the General Manager, deal with and make decisions in respect of any matter that requires a resolution of the Council in the following periods PROVIDED THAT if it is outside Council's existing adopted budget ONLY in urgent or extenuating circumstances AND with the concurrence of the Deputy Mayor as well.

- a. *between the last meeting of the Council for the year and the first meeting of the Council for the following year.*
- b. *between the last Meeting of a Council term and the first Meeting of the newly elected Council. **

* **IMPORTANT NOTE:** the introduction of the new section 234(5) *Local Government Act* 1993 will have an impact on the Mayoral status during caretaker mode which may result in clause (b) above having no effect. Section 234(5) LGA provides:

"The office of a mayor elected by councillors becomes vacant if the mayor ceases to hold office as a councillor."

6. **Executive** – no change except to clause (c) which is marked up as follows:

Approve attendance of the General Manager at any seminar, conference or course PROVIDED THAT if it is outside Council's existing adopted budget ONLY in urgent or extenuating circumstances AND with the concurrence of the Deputy Mayor

7. **Expulsion from Council meeting** – no change.
8. **Industrial** – this authority requires Council's ratification of terms of settlements ONLY where the terms of settlement varies hours of labour, rates of pay or industrial instruments. In the event that terms of settlement of an industrial dispute result in committing or binding council to pay external parties etc and it fell outside Council's existing adopted budget then changes required to this authority are marked up as follows:

With the concurrence of the General Manager, to deal with industrial disputes, subject however to the Council's ratification of the terms of settlement prior to such being made when such terms vary hours of labour, rates of pay or industrial instruments PROVIDED THAT such delegation is not exercised if the terms of settlement result in committing council to payment(s) to external party(ies) AND if it is outside Council's existing adopted budget ONLY in urgent or extenuating circumstances AND with the concurrence of the Deputy Mayor as well.

9. **Media** – No change.

10. **Venues for meetings of Council and Committees** – changes marked up as follows:

In consultation with the General Manager, determine that Meetings of the Council be held in alternate venues where it is considered that having regard to the nature of the specific matter to be considered and the likely number of persons to be in attendance, the Administration Centre would not be suitable PROVIDED THAT such if holding the meeting in the alternate venue results in committing council to payment(s) to external party(ies) the entering into any lease AND if it is outside Council's existing adopted budget THEN ONLY in urgent or extenuating circumstances AND with the concurrence of the General Manager and Deputy Mayor.

BUDGET AND RESOURCES

The amendments sought to the Instrument of delegation would result in the Mayor not having any authority to make decision which would impact Council's existing adopted budget unless the situation were urgent or there were extenuating circumstances and then only with the concurrence of the Deputy Mayor and the General Manager.

POLICY

In accordance with s380 of the *Local Government Act 1993* Council reviewed the Mayor's delegation within the first 12 months of the Council term. The delegation is in accordance with section 377 of the *Local Government Act 1993* and the Notice of Motion is within the time period allowed by section 380 of the *Local Government Act 1993*.

CONCLUSION

The changes that will occur to the Mayor's delegation if the motion is carried are set out in the body of this report. The provision of this advice now allows council to consider MOT012-17 that was deferred pending receipt of legal advice on this matter.

Further, if the motion is carried when considered by Council, it is recommended that the General Manager's Instrument of delegation be reviewed and amended if required.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the General Counsel, Elizabeth Espinosa, who can be contacted on 9710 0478.

File Number: 2016/258385

SUTHERLAND SHIRE COUNCIL
DELEGATION TO THE OFFICE OF MAYOR

Subject to Section 377 and Section 379 of the Local Government Act 1993 Council delegates to the Mayor, on an ongoing basis, the following functions (to be exercised in a manner consistent with Council's policies and decisions as applicable from time to time):

CLAIMS AGAINST COUNCIL

With the concurrence of the General Manager, authorise the settlement of claims made against the Council, in excess of \$100,000 but not exceeding \$500,000 where the Mayor and General Manager are both satisfied that the Council's interests would best be served by avoiding the matter being determined by a court or other person or body.

COMMUNITY MANAGEMENT COMMITTEES

With the concurrence of the General Manager, approve the appointment of members to Community Management Committees as delegates of the Council.

CONFERENCES, SEMINARS, MEETINGS AND COURSES

With the concurrence of the General Manager, approve the attendance of Councillors at any seminar, conference, meeting or course, PROVIDED THAT such delegation is not exercised if there is a Council meeting between the date of the request and the closing date for registrations.

CORRESPONDENCE

Sign correspondence that does not require the consideration of the Council.

COUNCIL RECESS

Notwithstanding any other provision of this Delegation, with the concurrence of the General Manager, deal with and make decisions in respect of any matter that requires a resolution of the Council in the following periods:

- a. between the last meeting of the Council for the year and the first meeting of the Council for the following year.
- b. between the last Meeting of a Council term and the first Meeting of the newly elected Council.

EXECUTIVE

- (a) Approve temporary appointments to the role of General Manager when the incumbent is absent on leave or otherwise, or the position of General Manager is vacant.
- (b) Consider and approve or otherwise deal with all leave applications submitted by the General Manager PROVIDED THAT applications for leave in excess of 10 weeks shall be referred to the Council for determination.
- (c) Approve attendance of the General Manager at any seminar, conference or course.

EXPULSION FROM COUNCIL MEETING

Exercise the power of expulsion from meetings of Council, pursuant to Clause 258 of the Local Government (General) Regulation 2005, as amended.

INDUSTRIAL

With the concurrence of the General Manager, to deal with industrial disputes, subject however to the Council's ratification of the terms of settlement prior to such being made when such terms vary hours of labour, rates of pay or industrial instruments.

MEDIA

- (a) To advise and respond to enquiries from the media on matters relative to the affairs of the Council and the Sutherland Shire generally.
- (b) To issue media releases, in consultation with the General Manager, on behalf of the Council.

VENUE FOR MEETING OF THE COUNCIL AND COMMITTEES

In consultation with the General Manager, determine that Meetings of the Council be held in alternate venues where it is considered that having regard to the nature of the specific matter to be considered and the likely number of persons to be in attendance, the Administration Centre would not be suitable.

CONFIDENTIAL REPORTS FROM OFFICERS

In accordance with Section 10A(1) of Local Government Act 1993, the following matter will be considered in the Closed Session:

**GOV001A-17 PROPOSED VOLUNTARY PLANNING AGREEMENT KIRRAWEE BRICKPITS,
566-594 PRINCES HIGHWAY, KIRRAWEE**

Section 10A(2)(d)(ii) Commercial Information of a Confidential Nature:

This matter is being considered in Closed session as it relates to commercial information the disclosure of which would be likely to confer a commercial advantage on a competitor of the council. On balance, the public interest in preserving the confidentiality of information relating to council's commercial activities outweighs the public interest in maintaining openness and transparency in council decision-making because the disclosure of this information could allow competitors to council's commercial activities to gain a commercial advantage.