

**Meeting Date: Tuesday 17 March 2020**  
**Location: Council Chambers, Level 1A, 1 Pope Street, Ryde**  
**Time: 7.30pm**

*Council Meetings will be recorded on audio tape for minute-taking purposes as authorised by the Local Government Act 1993. Council Meetings will also be webcast.*

**NOTICE OF BUSINESS**

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**1 DELEGATIONS TO THE GENERAL MANAGER IN HIS ABSENCE**

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**Report prepared by:** Manager - Corporate Governance  
**File No.:** GRP/09/5/15 - BP20/221

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**REPORT SUMMARY**

As advised, Council on Friday 6 March 2020, invoked its Business Continuity Plan in light of the evolving situation with the COVID-19 (Coronavirus).

A key mitigation strategy of the plan is to ensure the continued operation of the elected body (Council) and its Executive Team. However the evolving nature of the impact of COVID-19 may result in disruptions to normal operations and the mechanics of both of the elected body and of Councils leadership team.

In response to this threat this report seeks Council's approval for the temporary delegation of any function of Council should the need arise due to restrictions on Councils ability to conduct the operations of the Governing body (Council). This is subject to certain restrictions and reporting and replicates a similar practice used for Council recesses. The report also addresses the delegation to the General Manager if the incumbent is away for any reason.

**RECOMMENDATION:**

- (a) That Council pursuant to Section 226(d) and Section 377 of the Local Government Act 1993, delegate authority to the Mayor and/or Deputy Mayor, and the General Manager jointly to exercise any functions of Council that may lawfully be delegated under Section 377 of the Local Government Act. This should be enacted in the event that the need arises which would limit the orderly operations of Council in regards to the operation of the governing body of elected members, including the ability to convene Ordinary and Extraordinary meetings and subject to the restrictions outlined in point (b) and point (c) below.
- (b) That a list of any matters considered under such delegated authority be submitted for Council's information via Board Vantage as soon as possible following the execution of such delegation and be formally reported to the next available schedule Ordinary Meeting of Council.
- (c) That this temporary delegation of authority only be put into effect if the elected Council is unable to meet because of a lack of a quorum from Councillors being affected by the virus. Further that this temporary delegation be put into effect if Council is unable to conduct ordinary meetings of Council due to restrictions imposed by relevant authorities and if no reasonable alternative or provision is made through the Office of Local Government in relation to the conduct of meetings i.e. via the use of technology.

**ITEM 1 (continued)**

- (d) That this temporary delegation also apply in light of any legislative change, direction or advice arising as a direct result of the Covid-19 situation
- (e) That further, to ensure continuity of the role of the General Manager and pursuant to Section 351 of the Act, that Council endorse the following.
1. That on and from the date of this resolution, until 30 September 2020, if the appointed General Manager is sick or otherwise absent from work for a period of 2 consecutive business days], the person holding the position of Director - Corporate Services be temporarily appointed to the position of General Manager, on and from the following day, such appointment being subject to:
    - (a) the maximum period of appointment being the period so specified by Section 351(2) of the Local Government Act,
    - (b) the appointment terminating on the day prior to the day that the General Manager returns to work;
    - (c) the person not being unable or unwilling to be so appointed.
  2. That if the person specified in paragraph 1 is unable or unwilling to act as General Manager, the person holding the position of Director - City Planning and Environment be appointed, subject to paragraph 1, as alternate.
  3. That if the person specified in paragraph 2 is unable or unwilling to act as General Manager, the person holding the position of Director - City Works be appointed, subject to paragraph 1, as alternate.
  4. That if the person specified in paragraph 3 is unable or unwilling to act as General Manager, the person holding the position of Director - Customer and Community Services be appointed, subject to paragraph 1, as alternate.

That a person temporarily appointed as General Manager in accordance with this resolution to have, during that period, all the delegations of the General Manager given by the Council.

**ATTACHMENTS**

- 1 Local Government Act 1993 - Section 377: General Power of the Council to Delegate

Report Prepared By:

**John Schanz**  
**Manager - Corporate Governance**

Report Approved By:

**Steven Kludass**  
**Director - Corporate Services**

## ITEM 1 (continued)

### Report

There is a very high likelihood that the ordinary operations of Council will be impacted by the COVID-19 virus. Council has already taken steps to invoke its Business Continuity plan and accompanying Pandemic Plan and is actively preparing for the likely impacts as much as possible.

Council has established a Crisis Management team (CMT) and CMT sub group and has been actively monitoring all relevant advices issued in relation the spread of COVID-19. Council is in particular being guided by the advice received from the NSW Department of Health and other relevant authorities related to the virus. This is with a view to maintain a safe workplace and also to maintain those services and functions that are considered to be essential to both Council and the Community.

The purpose of this report however is to ensure the continuity of Council leadership in light of the pandemic impacts. This includes the elected body as well as Councils operational leadership through the General Manager and Executive team.

The CMT has identified that there could be the following situations that impact on the normal functioning of both Council and its management;

- Further restrictions being placed by relevant authorities that restrict the ability of Council to convene ordinary or extraordinary meetings of Council;
- The possibility of Council not being able to convene due to meetings being inquorate as a result of Councillors not being able to attend due to the impacts of COVID-19;

As a risk management strategy it is proposed to provide a temporary delegation of Council functions to the Mayor and/or Deputy Mayor, and the General Manager should such an event occur.

Further to this, the Office of Local Government issued circular 20-06 *Novel Coronavirus (COVID-19) Development Updates* on 10 March 2020 (**Enclosure 1**) which in part recommended that:

*“Councils should also review their delegations as a matter of urgency to ensure that decisions can be made quickly in response to any developments outside of the normal council meeting cycle”.*

The General Manager has a number of delegations in relation to operational issues of Council, including the safety and welfare of staff. However, the potential impact of the spread of COVID-19 to the effective and orderly operations of the elected Council needs to be considered and managed.

## ITEM 1 (continued)

Council has in the past adopted a solution to cover the scheduled recess over the Christmas and New Year period when no ordinary meetings of Council are due to take place. This is standard industry and Council practice and has worked well in the past. It is recommended that a similar approach be taken to account for the likely impact of COVID-19. This is a unique and challenging situation and Council needs to be able to respond fluidly to situations where there may be an event that would normally require a Council resolution.

The relevant legislative aspects covering this situation are set out below;

Section 226(d) of the Local Government Act 1993 (the Act) states the role of the Mayor as:

*“(d) to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council,”*

In addition, Section 377 of the Act provides Council with the general power of the Council to delegate *... to the general manager or any other body (not including another employee of the council) any of the functions of the council under this or any other Act....*

A number of caveats are also proposed to be put in place concerning the execution of these temporary delegated powers. These include:-

- That the temporary delegation come into place only if the need should arise which would limit the orderly operations of Council in regards to the operations of the governing body of elected members (including the ability to convene Ordinary and Extraordinary meetings) and subject to further restrictions as outlined below.
- That a list of any matters considered under such delegated authority be submitted for Council's information via Board Vantage as soon as possible following the execution of such delegation and be formally reported to the next available scheduled Ordinary Meeting of Council.
- That this temporary delegation of authority only be put into effect if the elected Council is unable to meet because of a lack of a quorum from Councillors being affected by the virus. Further that this temporary delegation be put into effect if Council is unable to conduct ordinary meetings of Council due to restrictions imposed by relevant authorities and if no reasonable alternative or provision is made through the Office of Local Government in relation to the conduct of meetings i.e. via the use of technology.

## ITEM 1 (continued)

### Continuity of Management

As mentioned earlier, a key mitigation strategy of Councils approach to the COVID-19 situation is to ensure the continued operation of Council's elected body and it's Executive Team. This report seeks Council's approval for a temporary delegation effectively endorsing replacements for the General Manager should he require leave.

This delegation lists all of the Directors and enables the appointment of one of them to take the role of Acting General Manager should the need arise. This is considered prudent in the current situation.

The relevant legislation is Section 351 of the Local Government Act which states;

(1) If a position (including a senior staff position) within the organisation structure of the council is vacant or the holder of such a position is suspended from duty, sick or absent:

- (a) the council, in the case of the general manager's position, or
- (b) the general manager, in the case of any other position,

may appoint a person to the position temporarily.

(2) A person who is appointed to a position temporarily may not continue in that position:

- (a) if the holder of the position is on parental leave-for a period of more than 24 months, or
- (b) in any other case-for a period of more than 12 months.

It should also be noted that all Directors and Managers are reviewing and setting up acting arrangements in response to the situation arising from COVID-19.

ITEM 1 (continued)

ATTACHMENT 1

**LOCAL GOVERNMENT ACT 1993 - SECTION 377**  
**General power of the council to delegate**

**377 General power of the council to delegate**

- (1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council, other than the following:
  - (a) the appointment of a general manager,
  - (b) the making of a rate,
  - (c) a determination under section 549 as to the levying of a rate,
  - (d) the making of a charge,
  - (e) the fixing of a fee,
  - (f) the borrowing of money,
  - (g) the voting of money for expenditure on its works, services or operations,
  - (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),
  - (i) the acceptance of tenders which are required under this Act to be invited by the council,
  - (j) the adoption of an operational plan under section 405,
  - (k) the adoption of a financial statement included in an annual financial report,
  - (l) a decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6,
  - (m) the fixing of an amount or rate for the carrying out by the council of work on private land,
  - (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,
  - (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 Environmental Planning and Assessment Act 1979 ,
  - (p) the power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194,
  - (q) a decision under section 356 to contribute money or otherwise grant financial assistance to persons,
  - (r) a decision under section 234 to grant leave of absence to the holder of a civic office,
  - (s) the making of an application, or the giving of a notice, to the Governor or Minister,
  - (t) this power of delegation,
  - (u) any function under this or any other Act that is expressly required to be exercised by resolution of the council.
- (2) A council may, by resolution, sub-delegate to the general manager or any other person or body (not including another employee of the council) any function delegated to the council by the Director-General except as provided by the instrument of delegation to the council.