

## Delegation - General Manager

*Responsible Officer: Group Manager People and Performance (Helen McNeil)*

### Recommendation

That Council approve the instrument of delegation for the position of General Manager as presented in [Attachment 2](#).

### Background

To allow the General Manager to undertake the duties of the role prescribed by the *Local Government Act 1993* (LG Act) and their contract of employment, Council may delegate to the position of General Manager any of the functions granted to it under the LG Act or any other Act, except for those functions listed in [section 377](#) (extract provided at [Attachment 3](#)).

Any delegations made by Council under section 377 must be reviewed within the first 12 months of each term of office.<sup>1</sup> The delegation to the General Manager made by the previous term of Council on 11 December 2019 ([Attachment 1](#)) is now due for review following the local government elections in December 2021.

#### 1. Revised delegation

Governance staff have reviewed the delegation made by the previous Council to the General Manager and recommend two substantive amendments relating to the acceptance of tenders and the threshold for debt write-off – See [Attachment 2](#).

#### Tenders

Under the current delegation, the General Manager may accept tenders valued up to \$250,000 (including GST) and tenders in excess of this value are currently accepted by resolution of Council.

The revised delegation proposes to increase this tender acceptance threshold to \$1,000,000 (including GST) subject to the legislative tendering requirements being fulfilled and an approved budget being present.

The purpose of this amendment is to provide:

- greater **operational efficiency** in the awarding of tenders/letting of contracts. This is important in competitive procurement activities where attracting suitable suppliers is challenging and time can often be 'of the essence' (for example, Future Water Project 2060 and the 2022 flood recovery), and;
- **business continuity**, particularly during periods when Council is unable to meet (for example, due to natural disasters, pandemics, and the period between the commencement of caretaker period to the first meeting of the new term of Council).

A notation has also been included in the revised delegation, stipulating the requirement to provide Council with a summary of all tenders accepted by the General Manager under their delegation to the next available Council meeting.

<sup>1</sup> [Section 380](#) *Local Government Act 1993* (NSW)

### Debt write-off

Under Council's existing 'Debt Management and Financial Hardship' and 'Revenue' policies the General Manager is authorised to write-off debts up to the value of \$1,000, including the power to sub-delegate this authority to certain Council staff.

It is recommended that this authority be captured within the Council issued delegation to the General Manager.

It is further proposed under cover of a separate report to this Council meeting, that the threshold for the write-off of debts by the General Manager be increased to \$5,000.00. The revised delegation has been drafted on the assumption that this recommendation is adopted by Council and can be amended should that recommendation not be accepted.

## **2. Existing checks and balances**

- Process controls

Under section 55 of the LG Act, Council is required to invite and conduct tenders in accordance with the provisions of the *Local Government (General) Regulation 2021* before entering into certain contracts – for example, a contract for goods or services estimated at \$250,000 or more.

- Financial controls

Prior to the commencement of each financial year, Council is presented with an Operational Plan and budget for approval in accordance with the Integrated Planning and Reporting requirements and financial management principles contained in the LG Act.

- Probity controls

Council is required under the *Government Information (Public Access) Act 2009* (GIPA Act) to keep and make publicly available on its website a register(s) of contracts valued at \$150,000 (including GST) or more in order to promote an open, fair and accountable Council.

The details that must be included in Council's contract register(s) under the GIPA Act are summarised in Attachment 4.

- Policy controls

The eligibility and evidentiary requirements for the write-off of debts, fees and/or charges by Council, the General Manager, and/or Council staff is established by Council through the adoption of a 'Debt Management and Financial Hardship' policy. (Attachment 5).

## **Finance**

Council's Long-Term Financial Plan includes substantial works particularly regarding the FWP 2060. This change will improve the required processes to implement the forecast projects.

## **Legal**

### Amendment to section 377 exceptions

In 2013, the Local Government Acts Taskforce provided a report to the Minister for Local Government setting out recommendations for local government reform in NSW.<sup>2</sup>

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<sup>2</sup> Local Government Acts Taskforce 'Report to the Minister for Local Government the Hon Don Page MP – A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988' dated 16 October 2016.

Acceptance of tenders was identified by the Taskforce as an operational function that should be capable of delegation to the General Manager (at the time, it was listed in section 377 LG Act as a function that could not be delegated to the General Manager<sup>3</sup>).

The purpose of this recommendation was to ensure that councils focussed on strategic decisions consistent with the Integrated Planning and Reporting Framework and empowered the General Manager to make the operational decisions necessary for the day-to-day management of council.

In 2016, the *Local Government Amendment (Governance and Planning) Bill 2016* was adopted by the NSW parliament and section 377 of the LG Act amended to allow the authority to accept tenders, other than tenders to provide services currently provided by council staff, to be delegated to the General Manager.

#### Contracts less than \$250,000

The process for undertaking procurement activities or awarding contracts valued at less than \$250,000, and/or are exempt from the section 55 LG Act tendering requirements, are regulated by Council's 'Procurement' Policy (Attachment 6) and associated procedures.

The revised delegation attached to this report will not impact this requirement.

#### Reporting debt write-off

In accordance with section 131 of the *Local Government (General) Regulation 2021* ('LG Regulation'), the General Manager must advise the Council of any bad debt written off (for example, because it would not be cost effective to attempt recovery) by written order of the General Manager.

Details of all rates or charges written off during the year are also required to be included in Council's Annual Report, as per section 132 of the LG Regulation.

### **Consultation**

The recommendation to increase the threshold for the acceptance of tenders was conveyed to Councillors in the context of the procurement strategy for the Future Water Project 2060, which was presented at the July 2022 Councillor workshop.

Section 55 of the LG Act regulates the process to be followed to engage the market (i.e. by ensuring a consistent, fair and equitable opportunity is extended to all prospective suppliers). It is important to note that should Council resolve to make the proposed delegation as recommended, this authority will apply to the award of all tenders and not just those made in the course of the Future Water Project 2060.

### **Conclusion**

A review of the Council issued delegation to the General Manager has been completed with amendments proposed to the threshold for accepting tenders and debt write-off, as outlined above.

#### Attachments

1. Delegation to General Manager dated 11-12-2019
2. Revised delegation to General Manager
3. Section 377 *Local Government Act 1993* (extract)

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<sup>3</sup> Section 377(1)(i) *Local Government Act 1993* – A council may delegate to the general manager any of the functions of the council other than the following: "[the acceptance of tenders which are required under this Act to be invited by the council](#)".

4. Summary of details to be included in contract registers under the *Government Information (Public Access) Act 2009*
5. '[Debt Management and Financial Hardship](#)' policy (via website)
6. '[Procurement](#)' policy (via website)

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