



CESSNOCK CITY COUNCIL

INSTRUMENT OF DELEGATION TO GENERAL MANAGER

Pursuant to section 377 of the *Government Act 1993* (NSW (LG Act)) and a resolution of the Cessnock City Council (“**Council**”) at its meeting held on Wednesday, 16 October 2024, Council:

1. Revokes all previous delegations of Functions the subject of this Instrument.
2. Delegates to the person who permanently holds the position of General Manager of Council (“**General Manager**”), or to the person who acts in that position from time to time, all of the functions, powers, duties, appointments and authorities of the Council that it may lawfully delegate under the LG Act, 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, or any Function which is taken to be conferred or imposed on the Council pursuant to section 381(1) of the LG Act) in force and as amended from time to time:
 - a) **Subject to** any condition or limitation on a Function specified in Schedule 1;
 - b) **Excluding** those Functions:
 - i. that are expressly prohibited from delegation as listed under Section 377 of the LG Act;
 - ii. which are expressly required by legislation to be exercised by a resolution of the Council; or
 - iii. which are expressly excluded from delegation by the terms of the Instrument of Delegation to the Council.
3. Requires that delegations and authorities are subject to, and are to be exercised in accordance with:
 - a) the requirements of the relevant Legislation;
 - b) any conditions or limitations set out in the **Schedule**; and
 - c) any resolution or policy, procedure or budget adopted from time to time by the Council.

4. Advises these delegations and authorities are effective from the date of the Resolution of the Council and remain in force until amended or revoked by a resolution of the Council.
5. Provides that notwithstanding any other provision of this Instrument, during a **Recess Period**, may, with the Mayor, determine matters not otherwise restricted from delegation, that would normally be referred to Council.
6. Provides that notwithstanding any other provision of this Instrument, during a **Recess Period**, Council delegates to the General Manager the authority to accept all tenders, except tenders to provide services currently provided by members of staff.
7. Confirms that in this delegation:
 - **“Functions”** means powers, authorities, duties and functions and anything ancillary or related to the exercise or performance thereof.
 - **“Internal Controlled Documents”** means protocols, guidelines, procedures, plans and other internal documents that are set of corporate rules that must be followed. Internal Controlled Documents usually relate to staff and do not impact the community.
 - **“Legislation”** means legislation enacted by the parliament of New South Wales and the parliament of the Commonwealth of Australia, including an Act, regulation made under an Act, by-law, rule or ordinance.
 - **“LG Act”** means the *Local Government Act 1993* (NSW) and as amended from time to time.
 - **“LG Regulation”** means the *Local Government (General) Regulation 2021* (NSW) and as amended from time to time.
 - **“EP&A Act”** means the *Environmental Planning and Assessment Act 1979* (NSW) and as amended from time to time.
 - **“Recess period”** means a period of time where there is a break in Council’s ordinary meeting schedule, specifically being:
 - Between the last meeting of Council for the calendar year and the first meeting of the following year, with the agreement of the Mayor, or in the absence of the Mayor, with the Deputy Mayor; and
 - Between the last meeting of the Council term and the day appointed for the next ordinary election; with the agreement of the Mayor, or in the absence of the Mayor, with the Deputy mayor, and remaining compliance with section 393(B)(1)(a) of the LG Regulation; and
 - Between the last day appointed for the ordinary election and the first meeting of the new Council term, with the agreement of the Mayor; and
 - Not the time between the Ordinary Council meeting schedule adopted for the calendar year by resolution of Council (when an extraordinary meeting can be called where decisions are required to be made as a matter of urgency).

Schedule 1: Limitations

Part A – Limitations applicable to specific statutory Function (if any)	
Legislation	Limitation (if any)
LG Act	The General Manager be delegated all of the delegable functions of the Council excluding those functions specified in clauses (a) to (u) of section 377(1) of the LG Act.
EP&A Act	<p>a) The General Manager may only determine development applications and section 4.55 applications under the <i>EP&A Act</i> where the application:</p> <ul style="list-style-type: none"> i. in the General Manager's opinion does not represent a significant variation of the Council's policy/environmental planning instruments or has been the subject of significant objection; or ii. has not been the subject of a written request made by at least three Councillors for the matter to be reported to the Council for decision.

Part B – Limitations applicable to Instruments of Delegation to / Appointment of Council		
Delegator	Instrument Name	Date Of Instrument
NSW Food Authority	<i>Instrument of appointment as an enforcement agency (sections 111, 111B and 111D of the Food Act 2003 (NSW))</i>	25 June 2024
Effect of Instrument		
Council is appointed in writing as an <i>enforcement agency</i> by the NSW Food Authority in respect of Cessnock City Council Local Government Area under section 111(4) of the <i>Food Act 2003 (NSW)</i> . As an enforcement agency, Council is to perform functions imposed or conferred upon Council as outlined in the Instrument dated 25 June 2024.		
Functions Delegated to General Manager		Limitations
<p>1) The functions conferred or imposed on the enforcement agency under the <i>NSW Food Act 2003 (NSW)</i>;</p> <p>2) The function of appointing one or more authorised officers under Division 3 of Part 9 of the <i>NSW Food Act 2003 (NSW)</i>;</p>		As set out in the Instrument of Appointment dated 25 June 2024

Delegator	Instrument Name	Date Of Instrument
Transport for NSW	<i>Temporary Delegation to Councils No.2: Traffic Management and Pedestrian Works</i>	12 December 2023

Functions Delegated to General Manager	Limitations
<p>The functions and powers of Transport for NSW under section 115(2) of the <i>Roads Act 1993</i> (NSW) to regulate traffic on a public road for purposes other than those set out in section therein, being the following types of pedestrian works:</p> <ul style="list-style-type: none"> i. Works to regulate parking; ii. Pedestrian crossings; iii. Pedestrian refuges; iv. Conversion of existing pedestrian ('zebra') crossings to raised pedestrian ('wombat') crossings; v. Footpaths and continuous footpaths; vi. Temporary or permanent works to enable alfresco dining; vii. Temporary or permanent works to improve or expand footpaths or pedestrian space; viii. Kerb buildouts to reduce crossing distance or manage vehicle speed; ix. Kerb modifications or median islands for tree planting, landscaping or water sensitive urban design; x. Treatments to manage vehicle speed including road humps, road cushions, raised intersections, chicanes and slow points; xi. Works to create (but not remove) bicycle parking, bicycle lanes, bicycle paths, shared paths, separated footpaths and contra flow access for bicycle riders. 	<p>The General Manager may exercise the functions only in accordance with the conditions and limitations set out by Transport for NSW in the Temporary Instrument of Delegation (12 December 2023).</p>
<p>Under section 122(b) of the <i>Road Transport Act 2013</i> (NSW), to install or display (or interfere with, alter or remove) any prescribed traffic control device as set out in the TfNSW "<i>Traffic Signs Database</i>" and indicated as "<i>Delegated to Council for Authorisation – Yes</i>", as required to give effect to functions exercised under this delegation, including any portable traffic control lights, but NOT any internally illuminated traffic control device.</p>	<p>The General Manager may exercise the functions only in accordance with the conditions and limitations set out by Transport for NSW in the Temporary Instrument of Delegation (12 December 2023).</p>

Delegator	Instrument Name	Date Of Instrument
Transport for NSW	<i>Delegation to councils: Regulation of Traffic</i>	31 October 2011
Functions Delegated to General Manager		Limitations
<ol style="list-style-type: none"> 1. Authorisation of prescribed traffic control devices pursuant to Division 2 of Part 5.3 of the <i>Road Transport Act 2013</i> (NSW); 2. Authorisation of special event parking schemes pursuant to Division 3 of Part 8 of the <i>Road Transport (General) Regulation 2021</i> (NSW) on public roads other than classified roads. 		<p>The General Manager may exercise the functions only in accordance with the limitations set out by Transport for NSW in the Instrument of Delegation (31 October 2021).</p>

Delegator	Instrument Name	Date Of Instrument
NSW Fair Trading	<i>Instrument of delegation under section 21 of the Plumbing and Drainage Act 2011</i> (NSW)	8 November 2012
Functions Sub-Delegated to General Manager		Limitations
<p>The exercise of following functions:</p> <ol style="list-style-type: none"> 1. To monitor compliance with the <i>Plumbing and Drainage Act 2011</i> (NSW). 2. To ensure any plumbing drainage work carried out does not threaten public health or safety. 3. To undertake any other functions conferred or imposed on the plumbing regulator by the <i>Plumbing and Drainage Act 2011</i> (NSW) other than: <ol style="list-style-type: none"> i. Receiving notices of work and other documentation required to be submitted to the plumbing regulator concerning proposed alternative solutions; ii. Authorising fitting for use in plumbing and drainage work; and iii. Initiating criminal or other proceedings as provided in Part 5 of the <i>Plumbing and Drainage Act 2011</i> (NSW). 		<p>The General Manager may exercise the functions only in accordance with:</p> <ol style="list-style-type: none"> i. the conditions set out by NSW Fair Trading in the Instrument of Delegation (8 November 2012), and ii. Council's resolution 142 from 12 December 2024.

Part C – General Limitations

The Council fixes the amount of \$10,000 as the amount above which rates, charges and debts owed to the Council may be written off only by resolution of the Council, pursuant to clauses 131(1), 131(2) and 213(2) of the *Local Government (General) Regulation 2021* (NSW).

The Council delegates authority to the General Manager to accept all tenders invited by Council except:

- (a) the value of the tender exceeds \$2,000,000 annually (including GST); or
- (b) the tender is to provide services currently provided by members of staff of the Council; or
- (c) the tender must be determined by Council under the requirements of the Local Government Act 1993 and Regulation.

The Council delegates authority to the General Manager to grant leases of Council property where the:

- (d) term of the proposed lease or licence is less than 10 years; or
- (e) total lease rentals payable to the Council are less than \$1 million (including GST) for the contract term.

The Council may direct at any time by resolution that a matter be referred to the Council for decision, in which event this delegation shall not apply to such particular matter unless and until such direction or resolution is revoked by further resolution.

General Manager's acknowledgement of Delegations of Authority

I, **Ken Liddell**, currently employed by the Council in the position of General Manager, do hereby acknowledge that I have read and understood this Instrument of Delegation and that I will perform these delegations and authorities in accordance with this Instrument of Delegation and my position description.



Ken Liddell

General Manager of Cessnock City Council

Date: Wednesday, 23 October 2024