



AGENDA

EXTRAORDINARY COUNCIL MEETING

3 JUNE 2021

MEMBERSHIP: Councillors J Diffey, V Etheridge, D Grant, D Gumley, A Jones, S Lawrence, G Mohr, K Parker and J Ryan.

The meeting is scheduled to commence at 1.00 pm.

PRAYER:

O God, Grant that by the knowledge of thy will, all we may resolve shall work together for good, we pray through Jesus Christ our Lord. Amen!

ACKNOWLEDGEMENT OF COUNTRY:

"I would like to acknowledge the Wiradjuri People who are the Traditional Custodians of the Land. I would also like to pay respect to the Elders both past and present of the Wiradjuri Nation and extend that respect to other Aboriginal peoples from other nations who are present".

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CCL21/113 LEAVE OF ABSENCE (ID21/915)

CCL21/114 PUBLIC FORUM (ID21/916)

CCL21/115 ELECTION OF MAYOR AND DEPUTY MAYOR FOR THE REMAINDER OF THE COUNCIL TERM (ID21/912)

The Council had before it the report dated 31 May 2021 from the Chief Executive Officer regarding Election of Mayor and Deputy Mayor for the Remainder of the Council Term.

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CCL21/116 ELECTION OF MAYOR (ID21/913)

CCL21/117 ELECTION OF DEPUTY MAYOR (ID21/914)

REPORTS FROM STAFF:

- CCL21/118 NOTICE OF INTENTION FROM THE MINISTER FOR LOCAL GOVERNMENT TO ISSUE A PERFORMANCE IMPROVEMENT ORDER (ID21/919)** 7
- The Council had before it the report dated 1 June 2021 from the Chief Executive Officer regarding Notice of Intention from the Minister for Local Government to Issue a Performance Improvement Order.
- CCL21/119 DELEGATION OF AUTHORITY TO THE INTERIM CHIEF EXECUTIVE OFFICER (ID21/861)** 17
- The Council had before it the report dated 31 May 2021 from the Director Organisational Performance regarding Delegation of Authority to the Interim Chief Executive Officer.
- CCL21/120 POWER OF ATTORNEY FOR THE INTERIM CHIEF EXECUTIVE OFFICER (ID21/863)** 24
- The Council had before it the report dated 31 May 2021 from the Director Organisational Performance regarding Power of Attorney for the Interim Chief Executive Officer.



REPORT: Election of Mayor and Deputy Mayor for the Remainder of the Council Term

AUTHOR: Chief Executive Officer
REPORT DATE: 31 May 2021
TRIM REFERENCE: ID21/912

EXECUTIVE SUMMARY

As per Section 225 of the Local Government Act (the Act), an area must have a Mayor. The resignation of Councillor B Shields leaves a casual vacancy in the office of the Mayor. Section 230(4) of the Act states that a person elected to fill such a vacancy holds the office for the balance of the predecessor's term.

Section 295 of the Act stipulates:

- “(1) If a casual vacancy occurs in the office of a mayor elected by the councillors, the vacancy is to be filled at a meeting of the council to be held within 14 days after the occurrence of the vacancy.*
- (2) If the councillors fail to elect a mayor as required by this section, the Governor may appoint one of the councillors as the mayor.”*

The Office of the Mayor commences on the day the person elected to the office is declared to be so elected, as per Section 230(3) of the Act.

Schedule 7 of the Local Government (General) Regulation relating to the Election of Mayor by Councillors, provides:

1. Returning Officer

The Chief Executive Officer (or a person appointed by the Chief Executive Officer) is the returning officer.

2. Nomination

- (1) A councillor may be nominated without notice for election as mayor or deputy mayor.
- (2) The nomination is to be made in writing by two or more councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.
- (3) The nomination is to be delivered or sent to the returning officer.
- (4) The returning officer is to announce the names of the nominees at the Council meeting at which the election is to be held.

3. Election

- (1) If only one councillor is nominated, that councillor is elected.
- (2) If more than one councillor is nominated, the Council is to resolve whether the election is to proceed by preferential ballot, by ordinary ballot or by open voting.
- (3) The election is to be held at the Council meeting at which the Council resolves on the method of voting.
- (4) In this clause:
 - "ballot" has its normal meaning of secret ballot; and
 - "open voting" means voting by a show of hands or similar means.

Nomination papers are appended (**Appendix 1**) and may be delivered or sent to the undersigned either prior to or at the Extraordinary meeting.

Council, at its meeting held 12 September 2019, resolved as follows:

"That the office of Deputy Mayor be created and operate for the Mayoral term."

Nomination papers for the office of Deputy Mayor have been prepared and are available at **Appendix 2**. They may be delivered or sent to the undersigned either prior to or at the Extraordinary meeting

FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

POLICY IMPLICATIONS

There are no policy implications arising from this report.

RECOMMENDATION

1. **That the report of the Chief Executive Officer, dated 31 May 2021, be noted.**
2. **That the method of voting for the election of Mayor and Deputy Mayor be determined.**

Dean Frost
Chief Executive Officer

Appendices:

- 1 [Office of Mayor Nomination and Acceptance of Nomination 2021](#)
- 2 [Office of Deputy Mayor Nomination and Acceptance of Nomination 2021](#)

DUBBO REGIONAL COUNCIL

DUBBO

Date.....

The Chief Executive Officer
Dubbo Regional Council
DUBBO

Dear Sir

OFFICE OF MAYOR - NOMINATION PAPER

I hereby nominate Councillor _____ for election to the Office of Mayor of Dubbo Regional Council for the ensuing term.

.....
COUNCILLOR

.....
COUNCILLOR

ACCEPTANCE OF NOMINATION

I hereby accept such nomination.

.....
COUNCILLOR

DUBBO REGIONAL COUNCIL

DUBBO

Date

The Chief Executive Officer
Dubbo Regional Council
DUBBO

Dear Sir

OFFICE OF DEPUTY MAYOR - NOMINATION PAPER

I hereby nominate Councillor _____ for election to the Office of Deputy
Mayor of Dubbo Regional Council for the ensuing term.

.....
COUNCILLOR

.....
COUNCILLOR

ACCEPTANCE OF NOMINATION

I hereby accept such nomination.

.....
COUNCILLOR



REPORT: Notice of Intention from the Minister for Local Government to Issue a Performance Improvement Order

AUTHOR: Chief Executive Officer
REPORT DATE: 1 June 2021
TRIM REFERENCE: ID21/919

EXECUTIVE SUMMARY

On 31 May 2021, in accordance with Section 438C of the Local Government Act 1993 (the Act), the Minister for Local Government, The Hon. Shelley Hancock MP, wrote to the then Mayor, Councillor B Shields, and myself as Chief Executive Officer, giving notice of the her intention to issue a Performance Improvement Order, as per Section 438A of the Act (**Appendix 1**).

The proposed Performance Improvement Order, as attached at **Appendix 2**, identifies actions to be taken to improve the performance of Council.

Pursuant to Sections 438C(3) and (4) of the Act, the Minister has invited Council to make submissions in respect of the proposed Performance Improvement Order. If Council chooses to make submissions, they must be provided no later than seven days from the date upon which the notice was served, be seven days from 31 May 2021.

The Minister will consider all submissions made by the Council before deciding whether to issue the order. It is suggested that any such submissions be provided by way of resolution of Council in an open Council meeting.

FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

POLICY IMPLICATIONS

There are no policy implications arising from this report.

RECOMMENDATION

- 1. That Council notes the correspondence from the Minister for Local Government, The Hon. Shelley Hancock MP, dated 31 May 2021, as attached at Appendix 1.**
- 2. That Council determines its submission to the proposed Performance Improvement Order and submits any such submission by Monday, 7 June 2021.**

Dean Frost
Chief Executive Officer

BACKGROUND

On 31 May 2021, in accordance with Section 438C of the Local Government Act 1993 (the Act), the Minister for Local Government, The Hon. Shelley Hancock MP, wrote to the then Mayor, Councillor B Shields, and myself as Chief Executive Officer, giving notice of the Minister's intention to issue a Performance Improvement Order, as per Section 438A of the Act (**Appendix 1**).

REPORT

In consideration of the performance improvement criteria prescribed by clauses 413D and 413DA of the Local Government (General) Regulation 2005 (The Regulation), the Minister has outline the following reasons for proposing to issue a Performance Improvement Order:

1. There is evidence that Council has made changes that are deemed to be substantial to its *Payment and Provision of Expenses for the Mayor and Councillors Policy* without placing these on public exhibition as required by section 253 of the *Local Government Act 1993*.
2. There is evidence that some of the communications to senior Council staff from some councillors are unpleasant and intimidating. This is having an impact on the work health and safety of the Council staff.
3. There is evidence that some Council staff are feeling bullied and harassed by some councillors which has resulted in them having to seek medical advice and have time off work. This is having an impact on the work health and safety of Council staff.
4. There is evidence that because of the actions of some councillors, some Council staff are unable to effectively fulfil their roles because of concerns about intimidation and harassment thereby affecting the functioning of Council.
5. There is evidence that some councillors are making public allegations of wrongdoing by other councillors which is inconsistent with their obligations under the *Model Code of Conduct for Local Councils in NSW*.
6. There is evidence that the current conflict between councillors is eroding the community's confidence in Council and impacting on Council's reputation.
7. In my [the Minister's] opinion, a temporary adviser is necessary to oversee the implementation of the performance improvement order and to monitor councillors' compliance with the order.

The Minister is proposing to appoint a temporary advisory, under Section 438G of the Act, as it is her opinion that one is needed to:

1. Consult with Council's General manager to ensure that he/she is advised of communications between councillors and Council staff that are not in compliance with this order;
2. Provide advice and assistance to the council for the purpose of ensuring that it complies with the performance improvement order; and
3. Monitor the council's compliance with the performance improvement order.

The proposed draft Performance Improvement Order, as attached at **Appendix 2**, identifies actions to be taken to improve the performance of Council.

SUMMARY

Pursuant to Sections 438C(3) and (4) of the Act, the Minister has invited Council to make submissions to her in respect of the proposed Performance Improvement Order. Submissions must be made within seven days of 31 May 2021, being the date that the notice was served.

It is recommended that any such submissions be made via a resolution at an open meeting of Council. Submissions will then be taken into consideration when deciding whether to issue the Performance Improvement Order.

Appendices:

- 1 [↓](#) Notice of Intention - Performance Improvement Order - 31.05.2021
- 2 [↓](#) Draft Performance Improvement Order - 31.05.2021



The Hon. Shelley Hancock MP
Minister for Local Government

Ref: A771813

Clr Ben Shields and Mr Dean Frost
Mayor and Acting General Manager
Dubbo Regional Council
PO Box 81
DUBBO NSW 2830

Email: mayor@dubbo.nsw.gov.au;
Dean.frost@dubbo.nsw.gov.au

**NOTICE OF INTENTION TO ISSUE A PERFORMANCE IMPROVEMENT ORDER TO DUBBO
REGIONAL COUNCIL PURSUANT TO SECTION 438C AND SECTION 438A OF THE LOCAL
GOVERNMENT ACT 1993**

Dear Clr Shields and Mr Frost

In accordance with section 438C of the *Local Government Act 1993* (the Act) I hereby give notice of my intention to issue a Performance Improvement Order under section 438A of the Act, for actions to be taken, as identified in the proposed Performance Improvement Order, to improve the performance of the Dubbo Regional Council (Council).

Section 438B(2) of the Act requires me to consider the performance improvement criteria prescribed by clauses 413D and 413DA of the Local Government (General) Regulation 2005 before issuing a Performance Improvement Order and appointing a temporary adviser, specifically:

- (a) whether the council concerned has failed to comply with its legislative responsibilities, standards or guidelines,
- (b) whether there are significant risks facing the council that are not being addressed,
- (c) whether previous intervention attempts have failed,
- (d) whether council business is being disrupted and the council failing to exercise its functions,
- (e) repealed,
- (f) whether there is a pattern of poor or inappropriate behaviour, either by one or more councillors or members of staff of the council, that has not been rectified,
- (g) any other matter that, in the opinion of the Minister, is relevant to the issuing of the order.

And

In deciding whether to appoint a temporary adviser to a council, the Minister is to consider whether the appointment will, in the opinion of the Minister, assist the council to comply with, or implement actions under, the performance improvement order issued in respect of the council.

I have considered these mandatory criteria in the context of the factual findings listed below. On balance I have formed the preliminary view that action must be taken to improve the Council's performance.



The Hon. Shelley Hancock MP
Minister for Local Government

The reasons why I, as Minister, propose to issue a Performance Improvement Order (section 438A(3)(a))

1. There is evidence that Council has made changes that are deemed to be substantial to its *Payment and Provision of Expenses for the Mayor and Councillors Policy* without placing these on public exhibition as required by section 253 of the *Local Government Act 1993*.
2. There is evidence that some of the communications to senior Council staff from some councillors are unpleasant and intimidating. This is having an impact on the work health and safety of the Council staff.
3. There is evidence that some Council staff are feeling bullied and harassed by some councillors which has resulted in them having to seek medical advice and have time off work. This is having an impact on the work health and safety of Council staff.
4. There is evidence that because of the actions of some councillors, some Council staff are unable to effectively fulfil their roles because of concerns about intimidation and harassment thereby affecting the functioning of Council.
5. There is evidence that some councillors are making public allegations of wrongdoing by other councillors, which is inconsistent with their obligations under the *Model Code of Conduct for Local Councils in NSW*.
6. There is evidence that the current conflict between councillors is eroding the community's confidence in Council and impacting on Council's reputation.
7. In my opinion, a temporary adviser is necessary to oversee the implementation of the performance improvement order and to monitor councillors' compliance with the order.

The reasons why I, as Minister, propose to appoint a temporary adviser (section 438G)

In my opinion, a temporary adviser with requisite professional qualifications is needed to:

1. consult with Council's General Manager to ensure that he/she is advised of communications between councillors and Council staff that are not in compliance with this order;
2. provide advice and assistance to the council for the purpose of ensuring that it complies with the performance improvement order; and
3. monitor the council's compliance with the performance improvement order.

The terms of the proposed Performance Improvement Order, including the period for compliance with the order (section 438C(2)(a))

The attached proposed Performance Improvement Order is intended to form part of this notice. As required by section 438C(2)(a), the terms of the proposed Performance Improvement Order and period for compliance are specified in the proposed Order. As required by section 438A(3)(b), the actions required to be taken to improve the performance of the Council are specified in the proposed Performance Improvement Order.

The actions that may be taken by me, as Minister, if a Performance Improvement Order is not complied with (section 438C(2)(c))

If a Performance Improvement Order is not complied with, I may consider:

1. issuing a further Performance Improvement Order; and/or
2. issuing a compliance order (s.438HA)
3. temporarily suspending the Council under Chapter 13, Part 7 of the *Local Government Act 1993*.



The Hon. Shelley Hancock MP
Minister for Local Government

Invitation to make submissions to me regarding the proposed Performance Improvement Order (sections 438C(3) and (4))

I invite Council to make submissions to me in respect of the proposed Performance Improvement Order. Should Council choose to make submissions, they must be provided to me no later than 7 (seven) days from the date upon which this notice is served on it.

I will consider all submissions made to me by Council during this period before deciding whether to issue a Performance Improvement Order.

It is suggested that Council tables this notice at an open Council meeting and provides its submissions by way of resolution of the Council.

I have attached an information sheet about the process for the issuing of Performance Improvement Orders.

Signed on this 31st day of May 2021

Yours sincerely

A handwritten signature in black ink that reads 'Shelley Hancock'.

The Hon. Shelley Hancock MP
Minister for Local Government

Local Government Act 1993

Section 438A

Performance Improvement Order

I, the Honourable Shelley Hancock MP, Minister for Local Government, do, by this order pursuant to section 438A of the *Local Government Act 1993*, require Dubbo Regional Council, for the reasons specified in schedule 1 below, to undertake the actions described in schedule 2 below within the period specified in schedule 2.

I hereby appoint the person specified in Schedule 3 as a temporary adviser to Council to exercise the functions for the terms specified in Schedule 3.

I require councillors to enter into an undertaking in the form specified in Schedule 4.

This Order takes effect upon service on the Council.

Dated thisday of2021

The Hon. Shelley Hancock, MP.
Minister for Local Government

SCHEDULE 1

Reasons for Order – section 438A(3)(a)

1. There is evidence that Council has made changes that are deemed to be substantial to its *Payment and Provision of Expenses for the Mayor and Councillors Policy* without placing these on public exhibition as required by section 253 of the *Local Government Act 1993*.
2. There is evidence that some of the communications to senior Council staff from some councillors are unpleasant and intimidating. This is having an impact on the work health and safety of the Council staff.
3. There is evidence that some Council staff are feeling bullied and harassed by some councillors which has resulted in them having to seek medical advice and have time off work. This is having an impact on the work health and safety of Council staff.
4. There is evidence that because of the actions of some councillors, some Council staff are unable to effectively fulfil their roles because of concerns about intimidation and harassment thereby affecting the functioning of Council.
5. There is evidence that some councillors are acting in a way that seeks to interfere with the consideration of matters under Council's code of conduct.
6. There is evidence that some councillors are making public allegations of wrongdoing by other councillors, which is inconsistent with their obligations under the Model Code of Conduct for Local Councils in NSW.
7. There is evidence that the current conflict between councillors is eroding the community's confidence in Council and impacting on Council's reputation.
8. In my opinion, a temporary adviser is necessary to oversee the implementation of the

performance improvement order and to monitor councillors' compliance with the order.

SCHEDULE 2

Action required to improve performance – section 438A(3)(b)

In accordance with section 438A of the *Local Government Act 1993*, this order requires that:

1. Council places the amended *Payment and Provision of Expenses for the Mayor and Councillors Policy*, on public exhibition in accordance with section 253 of the *Local Government Act 1993*.
2. Council must within one month of the commencement of this order ensure that the General Manager reviews (if one exists) or develops a councillor request system to manage email requests from councillors that incorporates rules about the use of the councillor request system with a focus on ensuring that communications are respectful, the number of requests are reasonable and include provisions permitting the General Manager to impose limitations where disrespectful or excessive use of the system occurs.
3. Each councillor enters into a written undertaking, attached and forming part of this order, in the following terms:
 - a. To conduct themselves in a manner that does not constitute bullying or harassment of Council staff.
 - b. Refrain from any action that is, or could be seen to be, an action of reprisal against any member of Council staff for performing their functions and duties.
 - c. Refrain from making public statements or public allegations of wrongdoing, or implying wrongdoing, by any other Council official.
 - d. Use the current regulated processes for making of allegations of wrongdoing against any other Council official.
 - e. Refrain from interference in the consideration of matters under Council's code of conduct.

Period for compliance with Order

Compliance report one: A report on compliance with action item 3 that all councillors enter into an undertaking is due one week from the commencement of this order.

Compliance report two: A report on the review or development of a councillor request system is due six weeks from the commencement of this order.

Compliance report three: A report on the outcome of the public exhibition of Council's *Payment and Provision of Expenses for the Mayor and Councillors Policy* is due two months from the commencement of this order.

Final compliance report: A report on Council's compliance with actions in this order is due on 30 August 2021.

Evidence to be provided with the compliance report

Compliance report one: A copy of undertakings from all councillors.

Compliance report two: A copy of the councillor request system rules to be provided.

Compliance report three: A copy of the amended *Payment and Provision of Expenses for the Mayor and Councillors Policy* and submissions received by Council are to be included with the compliance report.

SCHEDULE 3

Appointment of temporary adviser

1. Pursuant to section 438G of the *Local Government Act 1993*, [NAME] is hereby appointed as a temporary adviser to Dubbo Regional Council to:
 - a. in consultation with Council's General Manager, ensure that he/she is advised of communications between councillors and Council staff that are not in compliance with this order;
 - b. provide advice and assistance to the council for the purpose of ensuring that it complies with the performance improvement order; and
 - c. monitor the council's compliance with the performance improvement order.

This appointment will cease upon [NAME] providing a report to me on Council's final compliance report.

Pursuant to section 438G(7) of the *Local Government Act 1993*, the temporary adviser shall be paid from the Council's funds for the period of the appointment as agreed to under the terms of the contract.

SCHEDULE 4

Councillor undertaking

I, Councillor [name] of Dubbo Regional Council do hereby give the following undertaking. I undertake to:

- a. Conduct myself in a manner that does not constitute bullying or harassment of Council staff.
- b. Refrain from any action that is, or could be seen to be, an action of reprisal against any member of Council staff for performing their functions and duties.
- c. Refrain from making public statements or public allegations of wrongdoing, or implying wrongdoing, by any other Council official.
- d. Use the current regulated processes for making of allegations of wrongdoing against any other Council official.
- e. Refrain from interference in the consideration of matters under Council's code of conduct.

Signed:

Name:

Dated thisday of2021



DUBBO REGIONAL
COUNCIL

REPORT: Delegation of Authority to the Interim Chief Executive Officer

AUTHOR: Director Organisational Performance
REPORT DATE: 31 May 2021
TRIM REFERENCE: ID21/861

EXECUTIVE SUMMARY

A Council may delegate to the Chief Executive Officer any of its functions other than those functions specifically detailed in Section 377. Section 380 of the Local Government Act requires that each Council must review all its delegations during the first 12 months of each term of office. A review has been completed and the proposed delegations to the interim Chief Executive Officer are attached to this report as **Appendix 1**.

FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

POLICY IMPLICATIONS

There are no policy implications arising from this report.

RECOMMENDATION

That the Delegation of Authority to the interim Chief Executive Officer be as contained in the document attached to the report of the Executive Manager People Culture and Safety, dated 31 May 2021 as Appendix 1.

Maria Crisante

Director Organisational Performance

REPORT

Section 377 of the Local Government Act, 1993 enables the Council to delegate the functions of the Council to the Chief Executive Officer. This section also specifies various functions such as making of a rate, fixing of a fee, borrowing of money, voting of money for expenditure and the acceptance of tenders where those services are already provided by council staff cannot be delegated.

The delegation of functions to the Chief Executive Officer enables the organisation to meet the needs of residents and other stakeholders in an effective and efficient manner. It means that decisions which reflect Council's policies, standards, codes and management and other plans can be made at appropriate levels within the Organisation. It also enables staff to be authorised to undertake functions under other legislation.

Section 380 of the Act provides that each council must review all its delegations during the first 12 months of each term of office. A review of the delegations to the Chief Executive Officer has been undertaken and the proposed delegations are now as attached to this report as **Appendix 1**.

Appendices:

[1](#) Delegation of Authority to the Chief Executive Officer



Delegation of Authority to the Chief Executive Officer

FEBRUARY 2021

Document Revision History	
Description	Date
Amended and adopted following merger of Dubbo City and Wellington councils	May 2016
Amended as a result of delegations with respect to the Defined Asset Management Policy as adopted August 2017	August 2017
Adopted by Council	26 February 2018
Updated title of General Manager to Chief Executive Officer	26 March 2018
Updated for Appointment of Acting Chief Executive Officer	22 February 2021
Notes	

PURPOSE

In accordance with Section 377 of the Local Government Act 1993, Council may, by resolution, delegate the General Manager (Chief Executive Officer) any of the functions of the Council with the exception of those functions as listed below. Such delegations assist the Chief Executive Officer to understand his/her authority to make decisions on behalf of the organisation. Delegating authority to the Chief Executive Officer is not a hindrance to effective decision-making, or a bureaucratic mechanism that slows decision-making. Rather, it provides the ability for the Chief Executive Officer to perform functions of Council to allow Council to concentrate on strategic issues.

This document outlines what functions are, and are not, delegated to the Chief Executive Officer and thereby the Chief Executive Officer has delegation to undertake all other functions.

DELEGATIONS

The Chief Executive Officer does not have the delegation to undertake the following in accordance with Section 377 of the *Local Government Act 1993* (the Act):

1. The appointment of a General Manager (Chief Executive Officer).
2. The making of a rate.
3. A determination under section 549 as to the levying of a rate.
4. The making of a charge.
5. The fixing of a fee.
6. The borrowing of money.
7. The voting of money for expenditure on its works, services or operations.
8. 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).
9. The acceptance of tenders to provide services currently provided by members of staff of the council.
10. The adoption of an operational plan under section 405.
11. The adoption of a financial statement included in an annual financial report.
12. A decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6.
13. The fixing of an amount or rate for the carrying out by the council of work on private land.

14. 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.
15. 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.
16. The power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194.
17. A decision under section 356 to contribute money or otherwise grant financial assistance to persons.
18. A decision under section 234 to grant leave of absence to the holder of a civic office.
19. The making of an application, or the giving of a notice, to the Governor or Minister.
20. This power of delegation.
21. Any function under this or any other Act that is expressly required to be exercised by resolution of the council.

Development Application Delegations

The Chief Executive Officer cannot approve Development Applications where:

1. A petition with eight or more signatures from separate households within the notification area has been received and the application has not been refused.
2. Where eight or more valid planning objections to the development application have been received from separate households within the notification area and the application has not been refused.
3. Development where there is major variation (more than a 10%) from Council's Development Standards under Clause 4.6 of the Dubbo LEP 2011 and Wellington LEP 2012 unless concurrence has been received from the State Government to determine particular matters under delegation.
4. Where two or more Councillors request a Development Application to be bought to Council.
5. Any matter subject to appeal where the matter has gone to a hearing or Section 34A Conference.
6. Applications having a major environmental impact on the locality and which involve land owned by Council.
7. Applications where income is to be forgone such as a reduction in developer contributions levied under an adopted Section 94 Plan or Section 64 Policy.

Delegations of Authority to the Chief Executive Officer

4

Voluntary Planning Agreements

- The Chief Executive Officer does not have the delegation to enter into Voluntary Planning Agreements (VPAs)

These matters must be referred to either Council or the Planning, Development and Environment Committee where appropriate for determination.

Other Matters

- **Writing Off Accounts**

The Chief Executive Officer does not have the delegation to approve the writing off of accounts greater than \$20,000. Write offs are reported to Council on an annual basis.

- **Writing Off Stores and Materials**

The Chief Executive Officer does not have the delegation to approve the write on and off stores and materials greater than \$10,000.

- **Leases**

The Chief Executive Officer cannot approve on behalf of Council:

- (a) Any lease or licence of land classified operational pursuant to s26 of the Local Government Act 1993 where:
 - i. The term (including any option(s)) exceeds 10 years
 - ii. The rent is less than fair market rent, but excluding any lease of licence for which tenders are required under the Local Government Act 1993 to be invited by the Council
- (b) Any temporary lease and/or licence of Crown Land controlled or managed by Council where the term exceeds 12 months.

- **Power of Attorney**

The Chief Executive Officer has delegation to sign documents on behalf of Council under Power of Attorney which give effect to Council's resolutions or in accordance with the Delegations to the Chief Executive Officer.



DUBBO REGIONAL
COUNCIL

REPORT: Power of Attorney for the Interim Chief Executive Officer

AUTHOR: Director Organisational Performance
REPORT DATE: 31 May 2021
TRIM REFERENCE: ID21/863

EXECUTIVE SUMMARY

Council has the ability to grant, by resolution, Council's power of attorney to the Chief Executive Officer allowing signing of documents following formal resolutions by Council. As the current Chief Executive Officer is due to return to his substantive position on 11 June 2021, it is recommended that Council rescind the Power of Attorney granted to him on 2 April 2021 to take effect on 11 June 2021 and grant the incoming interim Chief Executive Officer the power of attorney to facilitate the timely implementation of decisions of Council.

The power of attorney is prescribed, and not irrevocable or an enduring power of attorney. That is, the power of attorney can be terminated, revoked or suspended by Council at any time. The power of attorney must be registered for any dealings affecting land with the Land and Property Information Authority of NSW.

As Council's incoming interim Chief Executive Officer, Murray Alexander Wood, will be delegated Council's power of attorney commencing 11 June 2021 for a period of 12 months, or until permanent recruitment occurs. Council may terminate this power of attorney and reissue it to Council's next Chief Executive Officer in due course should it wish to do so.

FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

POLICY IMPLICATIONS

There are no policy implications arising from this report.

RECOMMENDATION

- 1. That the report of the Executive Manager People Culture and Safety, dated 31 May 2021, be noted.**
- 2. That Council rescind the power of attorney granted to the current Chief Executive Officer, Dean William Frost, to take effect on 11 June 2021.**
- 3. That Council delegate to the interim Chief Executive Officer, Murray Alexander Wood, the prescribed power of attorney in accordance with the draft General Power of Attorney attached to the report as Appendix 1.**
- 4. That Council authorise the Mayor and Deputy Mayor to execute the General Power of Attorney under the Common Seal of the Council.**
- 5. That Council rescind the power of attorney granted to the interim Chief Executive Officer upon appointment of a permanent Chief Executive Officer.**
- 6. That the Chief Executive Officer report to Council every three months on all documents signed under the prescribed Power of Attorney.**

Maria Crisante

Director Organisational Performance

REPORT

At its meeting held 22 February 2021, Council's Interim Chief Executive Officer, Mr Dean William Frost, was granted Council's Power of Attorney. As Mr Frost is due to return to his substantive position on 11 June 2021, it is necessary for Council to resolve the rescinding of Council's current power of attorney and the granting of the power of attorney to the interim Chief Executive Officer, Mr Murray Alexander Wood, for the duration of his term, which will be 12 months or until permanent recruitment occurs, at which time the power of attorney will be rescinded.

Council has the ability to grant, by resolution, Council's power of attorney to the Chief Executive Officer allowing signing of documents following formal resolutions by Council. It is recommended that Council grant the interim Chief Executive Officer the power of attorney to facilitate the timely implementation of decisions of Council.

The following information is provided to assist Councillors in making the determination as to whether power of attorney should be delegated to the Chief Executive Officer:

- (a) A prescribed power of attorney can be granted to the Chief Executive Officer to enable him/her to sign documents to give effect to resolutions of the Council made pursuant to its non-delegable functions under Section 377(1) of the Act.
- (b) A prescribed power of attorney can be granted to the Chief Executive Officer to enable him/her to sign documents to give effect to functions of the Council which the Council has validly delegated to the Chief Executive Officer under Section 377(1) of the Act.
- (c) If the Council resolves to grant a prescribed power of attorney to the Chief Executive Officer, the prescribed power of attorney should be registered in the General Register of Deeds at the NSW Land and Property Management Authority (LPMA) to enable the Chief Executive Officer to sign documents of title for registration at the NSW LPMA.
- (d) The signing of documents by the Chief Executive Officer under a prescribed power of attorney is a more expeditious way of implementing decisions of the Council rather than by affixing the Seal of Council to documents in the presence of two people (including at least one Councillor) in accordance with the requirements of clause 400 of the Regulation.
- (e) If the Council grants a prescribed power of attorney to the Chief Executive Officer, the prescribed power of attorney will not authorise the Chief Executive Officer to execute a document or do any act which will confer a benefit on the Chief Executive Officer unless the prescribed power of attorney expressly authorises the conferral of the benefit: Section 12(1) of the POA Act.
- (f) The Chief Executive Officer will maintain a register of documents signed under the prescribed power of attorney and report to Council every three months at its meetings on each document which the Chief Executive Officer has signed pursuant to the prescribed power of attorney.
- (g) The Council is free to terminate or suspend the prescribed power of attorney at any time after giving the prescribed power of attorney to the Chief Executive Officer.
- (h) An instrument revoking or terminating a registered power of attorney may also be registered by the Registrar-General in the General Register of Deeds.

The Powers of Attorney Act 2003 (POA Act) includes a provision for Councils to grant a power of attorney. The POA Act defines a “principal” in Section 3(1) as “the person giving the power”. “Person” is not defined in the POA Act, but is defined in Section 21(1) of the *Interpretation Act 1987* as including “an individual, a corporation and a body corporate or politic”. Under Section 220(1) of the *Local Government Act 1993 (the Act)*, a council is a body politic of the State with perpetual succession and the legal capacity and powers of an individual, both in and outside the State. Consequently, councils fall within the definition of a “principal” for the purposes of the POA Act and can give powers of attorney to individuals.

Section 377(1) of the Act provides that a council may, by resolution, delegate to its Chief Executive Officer or any other person or body, any functions of the council other than the functions listed in that Section. The functions listed in Section 377(1) of the Act must only be exercised by a council. In the exercise of these functions, such as the sale and purchase of land or the borrowing of money, ordinarily a council enters into a contract, agreement or loan facility by affixing its seal to the relevant document in the manner required by clause 400 of the *Local Government (General) Regulation 2005 (the Regulation)*. There is no reason why in the exercise of its non-delegable functions under Section 377(1) of the Act, a council cannot resolve that the signing of documents which give effect to the resolution be effected by its Chief Executive Officer. Making such a resolution does not result in a delegation of non-delegable functions, but simply provides for a more efficient process for the signing of relevant documents than by affixing the seal of the Council to those documents.

Additionally, in circumstances where a council, by resolution, delegates functions (other than those functions listed in Section 377(1) of the Act – such as the delegable functions of creating easements or leases), to its Chief Executive Officer or any other officer of the council, a council can resolve that the signing of documents which give effect to the delegated functions be done under power of attorney.

The POA Act permits the granting of prescribed powers of attorney, irrevocable powers of attorney and enduring powers of attorney. If Council resolves to give a power of attorney to the Chief Executive Officer, the power of attorney should be a prescribed power of attorney and not an irrevocable or enduring power of attorney. Irrevocable powers of attorney remain effective despite, among other things the bankruptcy, mental incapacity or death of the principal. Enduring powers of attorney remain effective, even if the principal lacks capacity through loss of mental capacity, after execution of the power of attorney. Such powers of attorney are not relevant where the principal is a body politic such as Council.

Although, the POA Act does not expressly empower a principal to terminate, revoke or suspend a prescribed power of attorney, it is clear from Division 2 of Part 6 of the POA Act and from Schedule 1 of the POA Act that a principal can terminate or revoke a prescribed power of attorney. A prescribed power of attorney terminates on the death or mental incapacity of the attorney and may be revoked by the principal at any time by written notice.

The Council will be free to terminate, revoke or suspend a prescribed power of attorney at any time after giving a prescribed power of attorney to the Chief Executive Officer.

Powers of attorney may be registered, but must be registered for any dealings affecting land in accordance with Section 52 of the POA Act. If any registered power of attorney is terminated, such termination can be registered.

Appendices:

[1](#)  Draft - Power of Attorney - Murray Wood

DUBBO REGIONAL COUNCIL
(Principal)

AND
MURRAY ALEXANDER WOOD

(Attorney)

GENERAL POWER OF ATTORNEY

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GENERAL POWER OF ATTORNEY

A general power of attorney is a legal document that allows you, the principal, to nominate one or more persons, referred to as attorneys, to act on your behalf. A general power of attorney gives the attorney the authority, if you choose, to manage your legal and financial affairs, including buying and selling real estate, shares and other assets for you, operating your bank accounts, and spending money on your behalf.

A general power of attorney ceases if you lose your mental capacity after its execution. If you wish the power of attorney to continue if you lose your mental capacity, use the enduring power of attorney prescribed form. An attorney under a general power of attorney cannot make decisions about your lifestyle or health. These decisions can only be made by a guardian, whether an enduring guardian appointed by you or a guardian appointed by the New South Wales Civil and Administrative Tribunal or the Supreme Court.

You may set whatever conditions and limitations on your attorney that you choose. An attorney must always act in your best interest. If your attorney does not follow your directions or does not act in your best interest, you should revoke the power of attorney. You or someone on your behalf should inform the attorney of the revocation, preferably in writing. The attorney must then immediately cease to act as your attorney. If anyone else, such as a bank, has been advised about the power of attorney, that person or entity should also be informed of the revocation.

The important information set out at the end of this form includes notes to assist in completing this form and more fully explains the role and responsibilities of an attorney.

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GENERAL POWER OF ATTORNEY

1. Appointment of attorney by the principal

DUBBO REGIONAL COUNCIL (Principal)

of Civic Administration Building, Church Street, Dubbo, NSW 2830, appoints

MURRAY ALEXANDER WOOD of

[Redacted Name]

to be its attorney (Attorney).

Nomination of substitute attorney

Not applicable

2. Powers

The Attorney may exercise the authority conferred on him by Part 2 of the Powers of Attorney Act 2003 to do anything on behalf of the Principal anything which the Principal may lawfully authorise an attorney to do. The Attorney's authority is subject to the conditions and limitations specified in Part 3 of this document.

Additional powers

Not applicable

3. Conditions and limitations

The following limits and/or conditions apply to the authority of the Attorney:

(a) This power of attorney is limited to the execution of documents which give effect to:

(i) resolutions of the Principal where resolutions are required for the exercise of any function of the Principal; and

(ii) functions of the Principal which have been delegated to the Attorney,

in accordance with the Local Government Act 1993.

(b) This power of attorney does not operate as a delegation of any function of the Principal for the purposes of Section 377 of the Local Government Act 1993.

4. Commencement

This power of attorney operates for up to 12 months commencing 11 June 2021.

5. Signing by principal to give effect to the appointment of the attorney

The Common Seal of DUBBO)	
REGIONAL COUNCIL was)	
hereunto affixed on this)	
day of _____ 2021 pursuant		_____ Mayor
to the authority conferred by		
Council resolution made		_____ Full Name
2021 in the presence of the		
Mayor and Deputy Mayor:		
_____ Deputy Mayor		
_____ Full Name		

DRAFT

6. Attorney responsibilities

Your attorney must do the following:

- (a) Keep your money and property separate from the attorney's money and property;
- (b) Keep reasonable accounts and records of your money and property;
- (c) Not benefit from being an attorney, unless expressly authorised by you;
- (d) Always act in your best interests; and
- (e) Always act honestly in all matters concerning your legal and financial affairs.

Failure to do so may incur civil and/or criminal penalties.

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IMPORTANT INFORMATION

- A power of attorney is an important and powerful legal document. You should get legal advice before you sign it.
- It is important that you trust the person you are appointing as attorney to make financial decisions on your behalf. Your attorney must be over 18 years old and must not be bankrupt or insolvent. If your financial affairs are complicated, you should appoint an attorney who has the skills to deal with complex financial arrangements.
- A power of attorney cannot be used for health or lifestyle decisions. You should appoint an enduring guardian under the Guardianship Act 1987 if you want a particular person to make these decisions. For further information, contact the New South Wales Civil and Administrative Tribunal or New South Wales Trustee and Guardian.
- Clause 2 of the power of attorney contains powers which will permit your attorney to use your money and assets for the attorney or anyone else as provided. You include those provisions in clause 2 if you want your attorney to have those powers.
- This power of attorney is for use in New South Wales only. If you need a power of attorney for interstate or overseas, you may need to make a power of attorney under their laws. The laws of some other states and territories in Australia may give effect to this power of attorney. However, you should not assume this will be the case. You should confirm whether the laws of the state or territory concerned will in fact recognise this power of attorney.
- Your attorney must keep the attorney's own money and property separate from your money and property, unless you are joint owners, or operate joint bank accounts. Your attorney should keep reasonable accounts and records about your money and property. The cost of providing and maintaining these records by the attorney may be recoverable from you.
- If your attorney is signing certain documents that affect real estate, the power of attorney must be registered at NSW Land Registry Services. Please contact NSW LRS on 1300 052 637 to see whether the power of attorney must be registered.
- An attorney must always act in your best interest. If your attorney does not follow your directions or does not act in your best interest, you should consider revoking the power of attorney. If you revoke the power of attorney you should notify the attorney, preferably in writing, that they are no longer your attorney. The attorney must stop acting immediately once they have knowledge of the revocation.
- This power of attorney does not automatically revoke earlier powers of attorney made by you. If you have made an earlier power of attorney that you do not want to continue, you must revoke the earlier power of attorney. It is advisable that you notify the attorney, preferably in writing, of the revocation, if you have not already done so. You should also give notice of the revocation to anyone who is aware of the earlier power of attorney, such as a bank.

NOTES FOR COMPLETION**Joint attorneys**

If you appoint more than one attorney, you should indicate whether the attorneys are to act jointly or jointly and severally. Attorneys who are appointed jointly are only able to act and make decisions together.

Attorneys who are appointed jointly and severally — that is, together or separately — are able to act and make decisions independently of each other. However, you can specify that a simple majority, if you appoint three or more attorneys, must agree before they can act.

Substitute attorney/s

If you appoint a substitute attorney, the substitute attorney will only have authority to act as your attorney if the first appointed attorney dies, resigns or otherwise vacates their position.

You can specify for whom the substitute is to act — for example, if you appoint A and B as attorneys and X and Y as substitutes, you can specify that X takes A's place if A vacates office.

Attorney vacates office

Section 5 of the Powers of Attorney Act 2003 states that there is a vacancy in the office of attorney if the attorney dies, resigns, becomes bankrupt, loses mental capacity or the authority to act is revoked.

If you have appointed a substitute attorney, it may be helpful that some sort of documentation evidencing the vacation of the original attorney is attached to this power of attorney when that vacancy happens. This will assist to satisfy a third party that the substitute attorney is entitled to act for you.

Further information

For information on powers of attorney, the attorney's duties and registration, contact NSW Land Registry Services www.nswlrs.com.au, the New South Wales Trustee and Guardian www.tag.nsw.gov.au, a solicitor or a trustee company.

The New South Wales Government's Planning Ahead Tools website www.planningaheadtools.com.au provides up-to-date information and resources about powers of attorney, enduring guardianship, wills and advanced care planning.