

## SHELLHARBOUR CITY COUNCIL

### DELEGATIONS & SUB-DELEGATIONS TO THE CHIEF EXECUTIVE OFFICER\*

Section 377 of the *Local Government Act 1993* empowers a Council, by resolution, to delegate to the Chief Executive Officer any of the functions of the Council (excluding those functions specified in clauses (a) to (u) of section 377(1) of the *Local Government Act 1993*).

The Council of the City of Shellharbour resolves as follows:

#### 1. Specific limitations

The Council of the City of Shellharbour delegates to the Chief Executive Officer all of the delegable functions of the Council subject to the following limitations:

- (a) The Chief Executive Officer may not delegate any of the functions set out in Schedule 1 to this Instrument of Delegation.
- (b) All functions delegated to the Chief Executive Officer must be exercised in accordance with the applicable statutory requirements, as well as any resolution or policy adopted by the Council from time to time.
- (c) The Chief Executive Officer shall not authorise works that have not been listed or had funds allocated in the Council's adopted budget unless, in the Chief Executive Officer's opinion, the expenditure is necessary to respond to an emergency, community safety issue or potential public liability issue. Any such expenditure must be reported to the next Ordinary Meeting of the Council.
- (d) The Chief Executive Officer does not have authority to determine development applications, applications to modify a development consent, applications for determinations and decisions subject to review and applications for a complying development certificate in the following circumstances:
  - (i) where a submission by way of an objection to the application has been submitted to Council during the public notification period, unless in the Chief Executive Officer's opinion, the objection:
    - (A) is unreasonable; or
    - (B) can be satisfied by the imposition of a condition of consent,
  - (ii) the development involves designated development as defined in the *Environmental Planning & Assessment Act 1979*,
  - (iii) the development does not comply with any adopted Council policy (including a development control plan) unless, in the Chief Executive Officer's opinion compliance with the policy is unreasonable and unnecessary in the circumstances,

- (iv) the development does not comply with a development standard unless in the case of a non-compliance with a development standard:
  - (A) in the case of Shellharbour Local Environmental Plan 2013 the Chief Executive Officer is satisfied of the matters prescribed by clause 4.6(4)(a) and the concurrence of the Planning Secretary has been obtained.
  - (B) in the case of Shellharbour Rural Local Environmental Plan 2004, the Chief Executive Officer is satisfied of the matters prescribed under clause 64A(4)(a) and the concurrence of the Planning Secretary has been obtained.
  - (C) in the case of Shellharbour Local Environmental Plan 2000 the Chief Executive Officer is satisfied of the matters prescribed by clause 90(4)(a) and the concurrence of the Planning Secretary has been obtained.
  - (D) in the case of *State Environmental Planning Policy (Precincts—Regional) 2021* at Appendix 5, the delegate is satisfied of the matters prescribed by clause 23 and the concurrence of the Planning Secretary has been obtained.
- (vii) the development has an estimated value exceeding \$20million.
- (e) The Chief Executive Officer does not have the authority to accept tenders over the value of \$500,000 (exclusive of GST).

## 2. Write-off of sundry debts

The Council fixes the amount of \$5,000 as the amount above which sundry 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 2005* (NSW).

## 3. Shell Cove Project

Council delegates to the Chief Executive Officer authority with respect to the Shell Cove Project (**Project**) to:

- (i) Negotiate amendments to the Management Agreement with Australand Corporation (NSW) Pty Limited (**Australand**);
- (ii) Facilitate the acquisition of Harbour Land as defined by the Management Agreement and agreed to by Council resolution;
- (iii) Manage all financial aspects of the Project under the Management Agreement;
- (iv) Appoint and remove Council's members of the Shell Cove Management Committee;
- (v) Resolve disputes between the Council and Australand with respect to the Project in accordance with the Management Agreement; and
- (vi) Instruct Council's Shell Cove Management Committee members.

subject only to the limitations set out in Schedule 1 to this Instrument of delegation.

### Definitions

In this Instrument:

**Authorisations** means all authorisations, leases, licences, permits, approvals and consents of Council which are necessary or desirable to enable the carrying out of the Project.

**Management Agreement** means the development agreement known as the Management Agreement between Council and Australand (as amended).

For the avoidance of doubt, this clause overrides the limitations and exclusions set out in clause 1(d) of this instrument of delegation.

#### 4. Calderwood Urban Development Project

Council delegates to the Chief Executive Officer:

- (i) All the functions of the Council under the EPA Act relating to the Calderwood Urban Development Project; and
- (ii) Other functions of the Council in respect of the Calderwood Urban Development Project, including but not limited to the issuing of approvals and orders under the *Local Government Act 1993* and *Roads Act 1993*,

subject only to the restrictions set out in Schedule 1 to this instrument of delegation.

For the avoidance of doubt, this clause overrides the limitations and exclusions set out in clause 1(d) of this instrument of delegation.

#### Definitions

In this instrument:

**Calderwood Urban Development Project** means the development the subject of the concept plan approval granted by the Minister to Major Project Application No. 09\_0082 on 8 December 2010.

**Function** means a function of the Council within the meaning of the *Local Government Act 1993* that is capable of being lawfully delegated by the Council to the Chief Executive Officer under s377 of the *Local Government Act 1993*.

**EPA Act** means the *Environmental Planning and Assessment Act 1979*.

**Chief Executive Officer** means the person appointed by the Council pursuant to s334 of the *Local Government Act 1993* to the position of general manager, and a person appointed by the Council pursuant to s336 of the *Local Government Act 1993* to act in the vacant position of general manager.

**Minister** means the Minister for the time being administering the *Environmental Planning and Assessment Act 1979*.

#### 5. Leases and Licences

Without limiting the delegations given to the Chief Executive Officer under any other Resolution of Council, Council delegates to the Chief Executive Officer the function of negotiating, signing and executing the following leases and licences:

- (a) Residential Leases for a term not exceeding 12 months,
- (b) Leases and Licences -
  - a. With a maximum rental or fee not exceeding \$200,000 (exclusive of GST) for the term and a term not exceeding 5 years (including any period for which the lease or licence could be renewed by the exercise of an option) over community land,
  - b. With a maximum rental or fee not exceeding \$200,000 (exclusive of GST) for the term and a term not exceeding 10 years (including any period for which the

- lease or licence could be renewed by the exercise of an option) over operational land,
- (c) Leases and Licences of air space above or land below the surface of any public road for which Council is the roads authority for a term not exceeding 5 years,
  - (d) Leases under Part 10, Division 2 of the Roads Act 1993 (NSW),
  - (e) Short term licences under section 2.20 of the Crown Land Management Act 2016 (NSW).

All new leases and licences are to be reported to Council for information.

## **6. Liquor Licensee**

Carry out the functions of a licensee under the Liquor Act 2007 with respect to the Shell Cove Tavern (The Tavern at The Links Shell Cove), at Golf Drive, Shell Cove, in accordance with the conditions of the Hotel Liquor Licence.

## **7. Giving Effect to Delegated Powers**

Subject only to the specific restrictions and limitations set out in this or any other Resolution of Council, Council delegates to the Chief Executive Officer the authority to do all things reasonable and necessary to carry out the delegated functions, including but not limited to:

- (a) The development and implementation of strategies, policies, plans, budgets, programs and the like;
- (b) Making applications, written proposals, representations or submissions on behalf of the Council;
- (c) Negotiating and signing contracts, agreements and other legally binding documents on behalf of the Council; and
- (d) Taking such compliance or regulatory action on behalf of the Council as the Chief Executive Officer deems necessary.

## **8. Disclosure Officer**

In accordance with Council's Internal Reporting (Public Interest Disclosure) Policy, the Chief Executive Officer is identified as a Disclosure Officer within the meaning of the Public Interest Disclosures Act 2022.

## **9. Delegation under an Act or Instrument**

Council delegates to the Chief Executive Officer any function that is delegated to Council by a government agency under any Act or instrument, subject to the terms and conditions of the instrument of delegation. Where permitted by the instrument of delegation, the Chief Executive Officer may sub-delegate the function to a Council employee in accordance with the terms and conditions of the relevant instrument of delegation.

In this instrument:

**Government agency** includes a Minister of the Crown, a statutory body representing the Crown, or the delegate or other authorised representative of such a Minister or body.

## Chief Executive Officer's Delegations, Sub-Delegations & Authorisations


Section 378 of the *Local Government Act* empowers the Chief Executive Officer to delegate any functions of the Chief Executive Officer and sub-delegate the functions of Council which Council has delegated to the Chief Executive Officer, to any person or body (including another employee of Council).

In accordance with Section 378 of the *Local Government Act 1993*, I **Michael Archer**, Chief Executive Officer\* of the Council of the City of Shellharbour hereby:

1. Delegate and sub-delegate (as the case may be) the functions identified in the **attached Register of Delegations** to the corresponding Council employment positions specified in the third column marked "Position";
2. Authorise and appoint (as the case may be) the Council employment positions to the corresponding appointment and authorisation identified in the **attached Register of Delegations** in the third column marked "Position"; and
3. Revoke all previous delegations, sub-delegations, appointments and authorisations made by the Chief Executive Officer of the Council of the City of Shellharbour.

Any variation to the **attached Register of Delegations** may only be authorised by the Chief Executive Officer and only takes effect when the Chief Executive Officer signs the revised Register of Delegations.

Where a position title is referred to in the **Register of Delegations** and the position title changes during the applicable period of the Register, then any reference to the former position title shall be read as a reference to the new position title.



Chief Executive Officer\*

Date: 7/12/2023

(\* The Chief Executive Officer is Council's title for its general manager, appointed in accordance with s.334 of the *Local Government Act 1993*. Council resolved to change the position title to Chief Executive Officer at its meeting on 1 September 2020 – Resolution No 161)

## Schedule 1 – Functions Not Delegated

The following functions are not permitted to be delegated to a general manager, in accordance with section 377 of the *Local Government Act 1993* (NSW).

Unless otherwise stated, references to section numbers are to be read as references to the *Local Government Act 1993*.

- (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 the council's 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 to provide services currently provided by members of staff of 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) the power of delegation set out in section 377,
- (u) any function under the *Local Government Act 1993* or any other Act that is expressly required to be exercised by resolution of the council.

**Except that** the above restrictions do not apply to any functions relating to the granting of financial assistance if—

- (a) the financial assistance is part of a specified program, and
- (b) the program is included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and

- (c) the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year, and
- (d) the program applies uniformly to all persons within the council's area or to a significant proportion of all the persons within the council's area.