ITEM 6

DELEGATION OF AUTHORITY OF COUNCIL TO THE GENERAL MANAGER

Report of Manager Technology and Administration (DW) 13/03/08

PROGRAM  Corporate Support

FUNCTION  Corporate Governance

STRATEGY  Review and where necessary improve Council's compliance with all relevant statutory allegations and accepted standards.

PRECIS

Section 380 of the Local Government Act 1993 stipulates that within twelve months after a general local government election, Council must review its previously approved delegations of authority.

The recent vacation of civic offices and appointment of three Administrators to act in lieu of Council can be regarded as the commencement of a new term of office of Wollongong City Council which justifies Council reviewing its delegations.

RECOMMENDATION

1  Council delegates to the General Manager all of the delegable functions of the Council, excluding those functions specified in clauses (a) to (u) of section 377(1) of the Local Government Act 1993 (NSW).

2  Council fixes the amount of $3000 as the amount above which debts, rates and charges owed to the Council may be written off only be resolution of the Council, pursuant to clauses 131(1) and 23(2) of the Local Government (General) Regulation 2000 (NSW).

3  Council delegates authority to the General Manager to grant leases of Council property where the total lease rentals payable to Council are less than $1,000,000.

4  Council delegates authority to the General Manager to grant leases for a term not exceeding 99 years and of a total lease value of less than $1,000,000 (including any option to renew) of airspace above and land below a public road, provided that the approval of the Director of Planning to the grant of that lease is first obtained.

BACKGROUND

General Delegation

To enable Council to function efficiently and effectively the powers that Council can be delegated by Council to the General Manager.

Section 380 of the Local Government Act 1993 stipulates that within twelve months after a general local government election, Council must review its previously approved delegations of authority.

The recent vacation of civic offices and appointment of three Administrators to act in lieu of Council can be regarded as the commencement of a new term of office of Wollongong City Council which justifies Council reviewing its delegations.

Section 377 of the Local Government Act 1993 enables Council, by resolution, to 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 -
• the appointment of a General Manager
• the making of a rate
• a determination under Section 549 as to the levying of a rate
• the making of a charge
• the fixing of a fee
• the borrowing of money
• the voting of money for expenditure on its works, services or operations
• 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)
• the acceptance of tenders which are required under this Act to be invited by the Council
• the adoption of a management plan under Section 406
• the adoption of a financial statement included in an annual financial report
• a decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6
• the fixing of an amount or rate for the carrying out by the Council of work on private land
• the decision to carry out work on private land for an amount that is less than the amount on rate fixed by the Council for the carrying out of any such work
• 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
• the power of the Council to authorise the use of reasonable force for the purpose of gaining entry to premises under Section 194
• a decision under Section 356 to contribute money or other grant financial assistance to persons
• the making of an application, or the giving of a notice, to the Governor or Minister
• this power of delegation
• any function under this or any other Act that is expressly required to be exercised by resolution of the Council.

The General Manager may then sub-delegate a function delegated to the General Manager, by the Council to any person or body (including another employee of the Council).

WRITING OFF OF DEBTS

The writing off of monetary amounts owed to the Council is governed by clauses 131 and 213 of the Local Government (General) Regulation 2005 (“LG Regulation”).

General debts are governed by clause 213 of the LG Regulation prescribed as follows:

(1) This clause does not apply to amounts owed to a council for rates or other charges for which the Act, or any other regulation in force under the Act, makes specific provision for writing off those amounts in specified circumstances.

(2) A council must from time to time, by resolution, fix an amount above which debts to the council may be written off only by resolution of the council.
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(3) A debt of or below that amount can be written off either by resolution of the council or by order in writing of the council’s general manager. In the absence of a resolution under subclause (2), the council’s debts can be written off only by resolution of the council.

(4) A resolution or order writing off a debt to a council must:
   (a) specify the name of the person whose debt is being written off, and
   (b) identify the account concerned, and
   (c) specify the amount of the debt,
   or must refer to a record kept by the council in which those particulars are recorded.

(5) A debt can be written off under this clause only:
   (a) if the debt is not lawfully recoverable, or
   (b) as a result of a decision of a court, or
   (c) if the council or the general manager believes on reasonable grounds that an attempt to recover the debt would not be cost effective.

(6) The fact that a debt is written off under this clause does not prevent the council concerned from taking legal proceedings to recover the debt.

Rates and charges owing to the Council are distinguished from general debts and governed by clause 131 of the LG Regulation, prescribed as follows:

(1) The council must, from time to time, by resolution, fix the amount of rates and charges above which any individual rate or charge may be written off only by resolution of the council.

(2) An amount of rates or charges of or below that amount can be written off either by resolution of the council or by order in writing of the council’s general manager. In the absence of a resolution under subclause (1), rates and charges can be written off only by resolution of the council.

(3) A resolution or order writing off an amount of rates or charges must:
   (a) specify the name of the person whose debt is being written off, and
   (b) identify the account concerned, and
   (c) specify the amount written off,
   or must refer to a record kept by the council in which those particulars are recorded.

(4) An amount of rates or charges can be written off under this clause only:
   (a) if there is an error in the assessment, or
   (b) if the amount is not lawfully recoverable, or
   (c) as a result of a decision of a court, or
(d) if the council or the general manager believes on reasonable grounds that an attempt to recover the amount would not be cost effective.

(5) The fact that an amount of rates or charges is written off under this clause does not prevent the council concerned from taking legal proceedings to recover the amount.

(6) The General Manager must advise the council of rates and charges written off by written order of the General Manager.

The LG Regulation provides for only two ways for amounts under the amount fixed by the resolution of the Council to be written off. Namely, either by:

1. Resolution of the Council; or
2. By order of the General Manager.

Once the resolution fixing an amount above which can only be written off by a Council resolution is adopted, the LG Regulations empower the General Manager to write off amounts below the monetary amount by order in writing (see clauses 131(2) and 231(3) of the LG Regulation).

For Council’s delegation to write off debt to properly reflect the provisions of the LG Regulation, it is recommended that a delegation in the form of Recommendation 2 be adopted by the Council:

**LEASE OF COUNCIL PROPERTY INCLUDING AIRSPACE ABOVE AND LAND BELOW ROADS**

The only relevant restrictions on the delegable powers dealing with land are contained in Section 377 (1)(h) of the LG Act. These provide that 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)” are not delegable by Council resolution to the General Manager.

The “leasing” of Council property, including air space above and land below roads, does not fall within these restrictions and can therefore be delegated to the General Manager pursuant to section 377.

In regard to the lease of airspace above and land below a road, the term of lease is limited to a term of 99 years (including any option to renew) and Section 149 (2) of the Roads Act 1993 (NSW) requires the approval of the Director of Planning for a lease to be secured before approval is granted by Council.

In accordance with Section 149 (4) of the Roads Act 1993, the term of lease for airspace above and for land below a road is limited to a term of 99 years (including any option to renew).

**CONCLUSION**

Council should approve the delegations contained within recommendations 1, 2 and 3 of this report.

All other headings have been considered but are not relevant.
ATTACHMENTS

There are no attachments for this report.