

MUSWELLBROOK SHIRE COUNCIL

INSTRUMENT OF DELEGATION TO GENERAL MANAGER

On Tuesday, 28 March, 2023 the Muswellbrook Shire Council ("**Council**") resolved that:

1. All previous delegations of Functions the subject of this Instrument be revoked.
2. The person who from time to time holds the position of General Manager of Council ("**General Manager**"), being at the date of this instrument Derek Finnigan, be delegated authority under section 377 of the LG Act, to exercise and/or perform on behalf of Council the Council's Functions under all Legislation in force and as amended from time to time:
 - 2.a **Subject to** any condition or limitation on a Function specified in Schedule 1; and
 - 2.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.
3. The General Manager be sub-delegated authority to exercise and/or perform on behalf of Council the Functions delegated to the Council under, and in accordance with, the instrument of delegation to the Council set out in **Schedule 2, excluding** those Functions which are pursuant to the terms of the delegation to the Council may not be sub-delegated.
4. The General Manager be conferred authority to carry out the Policy Authorities listed in **Schedule 3** and undertake any administrative actions necessary to carry out those Policy Authorities.
5. The General Manager be delegated any Function which is taken to be conferred or imposed on the Council pursuant to:
 - 5.a The Local Government Act 1993 and regulations made thereunder;
 - 5.b The Environmental Planning and Assessment Act 1979 including:
 - i. Section 4.55(1) of the Environmental Planning and Assessment Act, 1979 (modifications involving a minor error, mis-description or miscalculation); and
 - ii. Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979 (modifications involving minimal environmental impact); and
 - 5.c All other legislation (including regulations, statutory rules and the like made thereunder) under which Council has powers, authorities, duties and functions, subject section 381(1) of the Local Government Act 1993 (as amended).
6. In the absence of the General Manager that a person appointed by resolution to act as General Manager assume all Functions, delegations, and sub-delegations of the General Manager for the period only of the absence of the General Manager unless otherwise resolved by the Council.
7. These delegations and authorities are subject to, and are to be exercised in accordance with:
 - 7.a the requirements of the relevant Legislation;
 - 7.b any conditions or limitations set out in **Schedule 1** and **Schedule 3**; and

- 7.c any resolution or policy, procedure or budget adopted from time to time by the Council.
8. 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.
9. In this delegation:
- **“Functions”** means powers, authorities, duties and functions and anything ancillary or related to the exercise or performance thereof.
 - **“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* as amended.

Schedule 1: Limitations

Part A – Limitations applicable to specific statutory Function (if any)	
Legislation	Limitation (if any)
N/A	N/A
Part B – General Limitations	
<p>Except where Council by special resolution provides otherwise, the delegation to determine matters under the Environmental Planning and Assessment Act 1979:</p> <p>i. in which the capital investment value of the development specified in the development application exceeds \$3,000,000 or</p> <p>ii. which are for, or in any way related to:</p> <ul style="list-style-type: none"> a) restricted premises; b) food and drink premises used for, or proposed to be used for, the sale of alcohol, but not including modification or alterations that will not increase the floor area or increase the trading hours of the premises; c) electricity generating works; d) mines and extractive industries, but not including businesses proposed on land zoned R1, R2, R5, B1, B2, B3, B4, B5, IN1 or IN2 that support mining and extractive industries; e) waste disposal facility; f) subdivisions into more than five lots; g) works alongside or adjoining any river or urban drainage system (excluding any waterway outside the urban areas of Muswellbrook, Denman and Sandy Hollow) that anticipate non- compliance with Section 25 of Muswellbrook DCP 2009 or Council’s Rivers and Drainage Channels Policy. 	

- iii. which anticipate any non-compliance with any development standard in Part 4 of the Muswellbrook Local Environmental Plan 2009 (or any equivalent LEP applicable to the Muswellbrook Local Government Area);
- iv. that despite the proposal complying with provisions in the Local Environmental Plan and Development Control Plan, the proposal received more than five (5) unique objections during the notification process; or
- v. where the determination has been delegated to the Development Assessment Committee.

Note:

For the avoidance of doubt and except where the context otherwise requires, terms used in this clause 3, Schedule 2 have the meanings ascribed to them in the Environmental Planning and Assessment Act 1979 and regulations and statutory instruments made thereunder (as amended) if they are defined.

Schedule 2: Instruments of Delegation to Council

Delegator	Instrument Name	Date Of Instrument
N/A	N/A	N/A

Schedule 3: Policy Authorities

Code	Policy Authority	Conditions / Limitations (if any)
L011	•	N/A

Pursuant to a Resolution of the Council at its meeting of Tuesday, 28 March, 2023,
Minute No. 327 – 28/03/2023

Cr Steve Reynolds
Mayor / Councillor

Date: Tuesday, 28 March, 2023

Review date:

General Manager's acknowledgement of Delegations of Authority

I Derek Finnigan, 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.

General Manager of Muswellbrook Shire Council

Date: 28/03/2023

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