



KEMPSEY
Shire Council

DIRECTOR CORPORATE SERVICES REPORT

9th May 2006

DCS5	ROLE OF COMMITTEES FILE: 433 PJH
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SUMMARY:

Reporting of the role of committees, particularly in respect to section 377 of the Local Government Act 1993.



DESCRIPTION:

At Council's meeting of 14th February 2006 following a submission of a Notice of Motion from Councillor Bowell the following resolution was carried: -

"That a report be submitted to Council clarifying the role of Committees, particularly in respect to Section 377 (General power of the Council to delegate) Local Government Act 1993."

In preparing this report it is proposed to attempt to clarify the roles and responsibilities in relation to the following: -

- Section 377 of the Act
- Standing committees
- Advisory committees and their delegations
- Directors and their delegations

Section 377 of the Local Government Act

Section 377 states: -

"A Council may, by resolution, 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 or 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 otherwise 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."*

Following on from this, section 378 allows the General Manager to delegate the functions delegated to him. This section reads: -

"378 Delegations by the general manager

- *The general manager may delegate any of the functions of the general manager, other than this power of delegation.*
- *The general manager may sub-delegate a function delegated to the general manager by the council to any person or body (including another employee of the council)."*

To summarise these two sections, they allow for Council to delegate functions to the General Manager or any other person or body and then the General Manager may delegate to any other person or body or to another employee.

Standing Committees

Section 260 of the Local Government (General) Regulation allows for a Council to establish such committees as it considers necessary. Section 260 states: -

260 Council may establish committees

- *A council may, by resolution, establish such committees as it considers necessary.*
- *A committee is to consist of the mayor and such other councillors as are elected by the councillors or appointed by the council.*
- *The quorum for a meeting of a committee is to be: such number of members as the council decides, or if the council has not decided a number—a majority of the members of the committee.*

It should be noted that the regulations specifically refer to committees consisting of the Mayor and other councillors. This council has a number of committees, that to get community involvement, have community members. As such these committees are not governed by the Act or Regulations and Council sets up these committees in accordance with our Code of Meeting Practice so that their procedures are generally consistent with the Act or regulations, but not governed by them.

With Committees where all members are Councillors, these committees must be open to the public and the meetings advertised.

Kempsey Shire Council only has one (1) such committee where all members are Councillors, being the Works Committee.

Advisory Committees

This Council has elected to establish most of its committees with community representation on them and has had committees with this makeup for many years.

In 1998 the Council considered options for streamlining its number of committees.

This report looked at whether some committees could be disbanded. At that time committees that were formulating business plans were identified for disbanding after the plans were adopted. These included the Plant committee, Airport committee, Saleyards committee and Caravan Park committee. These have since been disbanded although some only recently.

The 1998 report also recommended that apart from any Standing or Special committees that all other committees, which were basically advisory, should report to the appropriate Director rather than to Council. The Aboriginal Liaison Committee was considered a Special committee and would report to Council.

The suggested changes were adopted by the Council of the time on 8th April 1998.

At the current time the following committees are considered to be advisory committees in that they make recommendations which are considered by the appropriate Director. It is then up to each Director to adopt, reject or alternatively refer the matters to Council.

Australia Day
Coastal and Estuary
Ecologically Sustainable Development (ESD)
Kempsey Assistance Patrol (KAP)
Kempsey Masterplan
Land Release
Local Heritage
Macleay Development and Promotion
Macleay Floodplain Project
Macleay Flood Risk Management
Social Strategic Planning
SWR Masterplan
Stuarts Point Sewerage Liaison
Water and Sewerage Steering

In submitting his Notion of Motion, Councillor Bowell stated that *"as committees are exercising functions of Council delegated to them, Council has an obligation to know what these committees are doing."*

In response to this comment, Council has established each of its committees by resolution for a specific purpose and at the time usually determines the makeup of such committees eg. number of councillors and community members.

This current Council in June 2004, when appointing delegates and reviewing the committees resolved as follows: -

"That the first meeting of all committees be held prior to the August Council meeting and incorporate development of aims and objectives, terms of reference and membership, timeframes and standing orders and that the first item of each meeting be objectives of that committee and also an evaluation be conducted at the conclusion of each meeting."

This resolution in effect has delegated to the committees these functions and each committee, it is understood, has followed these directions and implemented these procedures. While the aims and objectives developed were not required by the resolution to be reported back to the Council for information (but many were), they would have been approved by the Director responsible for the committee.

While each committee's recommendations are not being reported back to Council unless the Director determines this necessary, each Councillor can request to have each committee's agendas and minutes provided to them so they know what the committees are doing.

Directors and their delegations

Also from Councillor Bowell's Notice of Motion it noted, *"the general powers of Council's Directors refers to any resolution, minute, report or policy which has been passed or adopted by the council, however there doesn't appear to be any record of a council resolution granting delegated authority to any Director to act under delegated authority on a recommendation of a committee."*

In addressing this issue, as stated above, in 1998 Council adopted a structure where the advisory committees would report to the appropriate Director.

Provided each Director's delegation provided for them to adopt or reject each recommendation before them from the committees, the procedures in place would not be in breach of the Act or Regulations.

To test this point we will use as an example the delegation to the Director Shire Services position. The delegation from the General Manager to the Director Shire Services states in part: -

"The General Manager of Kempsey Shire Council in order to provide for the expedient exercise and performance of Council's powers and duties and the efficient management of Council's business and responsibilities pursuant to Council's resolution of 15th December 1998, hereby delegates, under section 378 of the Local Government Act, 1993 to (name of officer), holding the position of Director Shire Services and to the person holding the aforementioned position in an acting capacity the exercise of Council's functions which includes its powers, duties and

authorities, contained in legislation and matters specified in schedule 1."

In the schedule are listed a number of functions and the sections, with relevant matters underlined, which would allow a Director to implement recommendations from an advisory committee are as follows: -

General Powers, Duties and Functions

- 1 To carry on such regular services and operations of the Council as are assigned to the Shire Services Department from time to time within the sums voted by the Council for expenditure thereon, and in accordance with the resolutions of the Council;*
- 2 To appoint, control, direct and dismiss servants of the Council employed from time to time in respect of such services and operations of the Council as are assigned to the Shires Services Department and in accordance with any direction given by the General Manager.*
- 3 To give effect in respect of such services and operations of the Council as are assigned to the Shire Services Department to the provisions made by or under the Act and any other Act conferring powers or imposing duties on the Council, and to any resolution, minute, report or policy which has been passed or adopted by the Council;*
- 4 To take such actions (not inconsistent with the Act or any Act conferring powers or imposing duties on the Council or with any resolution, minute, report or policy which has been passed or adopted by the Council) as deemed necessary to generally manage, control and administer such of the affairs of the Council as relate to such services and operations of the Council as are assigned to the Shire Services Department from time to time.*

In 1998 Council resolved that the advisory committees would report to the Directors. The above delegation (where underlined) certainly would provide for the Director to implement the recommendations of any advisory committee which reports to that Director. The exception would occur if a committee recommendation is not within the budget provision voted by Council or is in conflict any previous Council resolution. If so the Director would have to reject the recommendation or refer the matter to Council.

The delegations to each of the other Directors is also worded similarly to the above example.

In summary this Council's committee structure is designed to provide wide community input, assist the Director to carry out his functions and allow quick implementation of decisions. The number

of committees has been reduced from past years and a full review is done each year in September with the appointment of delegates.

REPORT IMPLICATIONS:

- *Environmental*

There are no direct environmental issues from this report. Council has committees which consider important environmental issues.

- *Social*

Council's procedure is to involve the community in its committees where appropriate and this is why a number of committees have community members.

- *Economic (Financial)*

There are no direct economic implications. It is each Directors responsibility to ensure committee recommendations are able to be implemented with budgets voted by Council.

- *Policy or Statutory*

The relevant provisions have been covered in this report being sections 377 & 378 of the Act, clause 260 of the Regulations and Council's delegations.

- *Directors Review*

The Recommendation is supported.

RECOMMENDATION:

That Council's committee reporting procedures continue as per present arrangements with all advisory committees reporting to the appropriate Director.

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G B Snape
DIRECTOR CORPORATE SERVICES