

Contact: David Morris
Our Ref: DJM:LM:180620

28 March 2018

Mr P Jackson
Hobart City Council
GPO Box 503
HOBART TAS 7001

By email jacksonp@hobartcity.com.au

Dear Mr Jackson

Further advice - Election of Deputy Mayor

We refer to our advice dated 2 March 2018 and note that you have sought further advice on whether or not it is possible for the Council to appoint more than one person as deputy mayor, to serve in that position sequentially. In our opinion, that option is not open to the Council.

The position of deputy mayor is created pursuant to the *Local Government Act 1993 (LGA)*. The role and functions are established in the LGA¹ and the process for electing the deputy mayor is specified in the LGA².

The opportunity for the Council to elect a deputy mayor only occurs if the circumstances in s.43A (no nomination for deputy mayor), s.44(4) (office of deputy mayor becomes vacant) or s.44(5) (the deputy mayor is acting as mayor or is temporarily absent) have arisen. Otherwise, the deputy mayor is elected through a separate election held in accordance with Part 15 of the LGA.³

S.44(5) states (with our emphasis):

*If the deputy mayor is acting as mayor or is temporarily absent **for any period**, the councillors may appoint **one of their number** to act as deputy mayor during **that period**.*

The extent of the Council's powers to elect a deputy mayor are to elect:

- (a) one of their number;
- (b) for the period during which the deputy mayor is acting as Lord Mayor.

¹ ss.26 and 27

² Part 4

³ s.43(2) of the LGA

In our view, this provision should be interpreted to mean that only one of the Aldermen may be appointed to act as deputy mayor for the whole of the period in which the Deputy Mayor will act as Lord Mayor.

As we understand it, Alderman Ron Christie (who was elected Deputy Mayor) is currently acting as Lord Mayor after the resignation of Alderman Sue Hickey. It is intended that he acts in this role until the next elections which are due to be held in October 2018. The period he is acting as Lord Mayor is therefore approximately 8 months.

We acknowledge that s.44(5) states that the Council *may* appoint a deputy mayor.⁴ While our view is that this means that the Council is not required to follow this procedure and appoint an Alderman to act as deputy mayor, there is no other process for the appointment of a deputy mayor in these circumstances.

S.44(5) provides the Council with the power to appoint a deputy mayor; the Council has no power to appoint a deputy mayor other than in compliance with that subsection. It is not the case that s.44(5) provides one option for the Council to appoint a deputy mayor, and that it may choose a different process for doing so if s.44(5) is not relied upon.

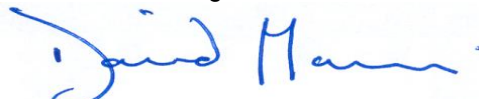
It is our view that if Council purported to appoint an acting deputy mayor (or a sequence of deputy mayors), outside the power in s.44(5) then it would be acting ultra vires, or outside its powers. This may mean that any steps taken by the acting deputy mayor may be invalid.

We do not wish to take an overly restrictive interpretation of s.44(5) but it seems to us that the proposed roster or "round robin" approach to the role of deputy mayor is not in keeping with the balance of the LGA. The position of deputy mayor is a significant one; a person is elected to that office and is expected to serve a full term except in the circumstances in which s.44(5) applies or they are unable to do so.

If the legislature had intended for the process to be more flexible, we expect that s.44(5) would have included the words "or for part of that period" at the end of the subsection. This would allow one Alderman to be appointed for part and then another Alderman for another part, and so on.

Please let me know if you would like to discuss this matter.

Yours faithfully
Simmons Wolfhagen



David Morris

Partner | Local Government, Environment, Planning & Development Law
david.morris@simwolf.com.au

⁴ As we have stated previously, we strongly hold the view that good governance requires that the Council appoint a deputy mayor, given the length of time that the Deputy Mayor will be acting as Lord Mayor. The word "may" in s.44(5) is probably used so that the Council does not need to appoint a deputy mayor if the Deputy Mayor will be *acting as mayor or is temporarily absent* for only a short period of time.