

Review of Council Delegations

Strategic Alignment - Enabling Priorities

Public

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City Finance and Governance
Committee

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EXECUTIVE SUMMARY

Council may delegate its statutory powers and functions pursuant to Section 44 of the *Local Government Act 1999* (SA) (the Act) and powers of delegation under other legislation.

As required by Section 44 of the Act, a review of the delegations of Council's powers and functions to its Chief Executive Officer has been conducted.

Delegations allow Council to enable Officers, subsidiaries or other bodies to undertake duties or exercise powers on its behalf. In doing so, Council retains the right to act in any matter of its own accord. This review extends to delegations made to the Adelaide Central Market Authority (ACMA) and Adelaide Economic Development Agency (AEDA). Delegations enhance decision-making processes and allow nominated routine matters to be resolved by the Administration.

City of Adelaide has used the Delegations framework provided by the Act which supports all member councils to comply with sound governance practices and meet regulatory requirements. The LGA works closely with its legal partner, Norman Waterhouse Lawyers, to provide a consistent package of resources that are de-risked, quality assured and save councils time and money.

This report therefore seeks adoption of the updated delegations.

RECOMMENDATION

The following recommendation will be presented to Council on 26 September 2023 for consideration

THAT THE CITY FINANCE AND GOVERNANCE COMMITTEE RECOMMENDS TO COUNCIL

THAT COUNCIL

1. Resolves to grant the delegation of powers and functions of the Council as provided for in the attached instrument of delegation (Attachment A to Item 4.13 on the Agenda for the meeting of the City Finance and Governance Committee held on 19 September 2023).
2. Such powers and functions may be further delegated by the Chief Executive Officer in accordance with Section 44 and 101 of the Act as the Chief Executive Officer sees fit, unless indicated herein or in the Schedule of conditions contained in each proposed Instrument of Delegation.
Planning, Development and Infrastructure Act 2016 (Instrument A)
3. That Council resolves to grant the delegation of powers and functions under the *Planning, Development and Infrastructure Act 2016*, exercising the power contained in Section 44 of the Act as provided for in the attached instrument of Delegation (Attachment A) to the person occupying or acting in the office of Chief Executive Officer of the Council subject to the conditions and/or limitations, if any, specified herein or in the Schedule of Conditions the proposed Instrument of Delegation.
4. Such powers and functions may be further delegated by the Chief Executive Officer in accordance with Section 44 and 101 of the Act as the Chief Executive Officer sees fit, unless indicated herein of the Schedule of Conditions contained the proposed Instrument of Delegation.

Planning, Development and Infrastructure Act 2016 (Instrument B)

5. That Council resolves to grant the delegation of powers and functions under the *Planning, Development and Infrastructure Act 2016*, exercising the power contained in section 100 of the *Planning, Development and Infrastructure Act 2016*, as provided for in the attached instrument of Delegation (**Attachment A** to Item 4.13 on the Agenda for the meeting of the City Finance and Governance Committee held on 19 September 2023) to the person occupying or acting in the office of Chief Executive Officer of the Council subject to the conditions and/or limitations, if any, specified herein or in the Schedule of Conditions in the proposed Instrument of Delegation.
6. Such powers and functions may be further delegated by the Chief Executive Officer in accordance with Section 100(2)(c) of the *Planning, Development and Infrastructure Act 2016* as the Chief Executive Officer sees fit, unless otherwise indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation.

Adelaide Central Market Authority

7. That Council resolves to grant the delegation of powers and functions as provided for in the attached instrument of delegation (**Attachment B** to Item 4.13 on the Agenda for the meeting of the City Finance and Governance Committee held on 19 September 2023), exercising the powers contained in section 44 of the Act to the Adelaide Central Market Authority subject to the conditions and/or limitations, if any, specified herein or in the proposed instrument of Delegation.

Adelaide Economic Development Agency

8. That Council resolves to grant the delegation of powers and functions as provided for in the attached instrument of delegation (**Attachment C** to Item 4.13 on the Agenda for the meeting of the City Finance and Governance Committee held on 19 September 2023), exercising the powers contained in section 44 of the Act to the Adelaide Economic Development Agency subject to the conditions and/or limitations, if any, specified herein or in the proposed instrument of Delegation.

Road Traffic Act 1961 General Approval

9. That Council resolves to grant the sub-delegation of powers under the *Road Traffic Act 1961* as provided for in the attached instrument of delegation (**Attachment D** to Item 4.13 on the Agenda for the meeting of the City Finance and Governance Committee held on 19 September 2023).
10. In accordance with the Instrument of General Approval and Delegation to Council (dated 22 August 2013) from the Minister for Transport and Infrastructure (**General Approval**), the Council authorises the following person(s) pursuant to Clause A.7 of the General Approval to endorse Traffic Impact Statements for the purposes of Clause A of the General Approval provided that such person(s) shall take into account the matters specified in Clause A.7 of the General Approval in respect of Traffic Impact Statements:
 - 10.1. Julie Bellwood
 - 10.2. Jarrad Parsons
 - 10.3. Penelope Bennett
11. In accordance with Clause A.7 of the General Approval the Council is of the opinion that the following person(s) is/are experienced traffic engineering practitioner(s) for the purposes of preparing a Traffic Impact Statement as required by Clause A.7 of the General Approval:
 - 11.1. Julie Bellwood
 - 11.2. Amy Smith
 - 11.3. Christian Bilas
 - 11.4. Darren Mitchell
 - 11.5. Jarrad Parsons
 - 11.6. Jarrod Armitage
 - 11.7. Penelope Bennett
 - 11.8. Stephanie Papandrea
 - 11.9. Michael Lee
 - 11.10. Justine Austin
12. In accordance with Clause E.2 of the General Approval, the Council is of the opinion that the following person(s) has (have) an appropriate level of knowledge and expertise in the preparation of Traffic Management Plans:

- 12.1. Julie Bellwood
 - 12.2. Amy Smith
 - 12.3. Christian Bilas
 - 12.4. Darren Mitchell
 - 12.5. Jarrad Parsons
 - 12.6. Jarrod Armitage
 - 12.7. Penelope Bennett
 - 12.8. Stephanie Papandrea
 - 12.9. Michael Lee
 - 12.10. Justine Austin
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IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Enabling Priorities
Policy	Not as a result of this report
Consultation	Internally to ensure the appropriate sub-delegations will be in place following the delegation of the powers and functions contained in the Attachments to this report.
Resource	Not as a result of this report
Risk / Legal / Legislative	Without the appropriate delegations, sub-delegations and authorisations in place, the decisions of Council Officers may be subject to legal challenge. In addition, should Council choose not to delegate its statutory powers and functions then all decisions will be required to go to Council for resolution.
Opportunities	Not as a result of this report
23/24 Budget Allocation	Not as a result of this report
Proposed 24/25 Budget Allocation	Not as a result of this report
Life of Project, Service, Initiative or (Expectancy of) Asset	Not as a result of this report
23/24 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	Not as a result of this report
Other Funding Sources	Not as a result of this report

DISCUSSION

1. Section 44 of the Act provides that the Council's powers, functions and duties under that Act and any other Act, may be delegated by the Council to a Council Committee, a Subsidiary of the Council, an employee of the Council, or an employee of the Council occupying a particular office or position.
 2. The Council may still act in its own right in any matter, and when it does so the delegate should not act or exercise any delegated power or function. In addition, all delegations of the Council can be revoked at will and do not, except in limited circumstances, prevent the Council from acting in a matter itself.
 3. A delegation must be clear, certain and specific and it is for this reason that purported blanket delegations of "all the powers and function under this Act hereby delegated to..." will not withstand legal scrutiny. All delegations should set out the specific power, by reference to the Section in the Act which is being delegated.
 4. City of Adelaide adopts the instruments of delegation which contain the specific powers and functions of the legislation, prepared for the Local Government Association, for use by all councils.
 5. Where an Act provides an express power of delegation then any delegation made under that Act should be made pursuant to that express power of delegation rather than Section 44 of the Act. The following Acts contain express provisions for the delegation of powers and duties:
 - 5.1. *Food Act 2001*
 - 5.2. *Supported Residential Facilities Act 1992; Supported Residential Facilities Regulations 2009, and*
 - 5.3. *Heavy Vehicle National Law (schedule to the Heavy Vehicle National Law (South Australia) Act 2013)*
 6. Section 44 of the Act also requires that Council must have a recorded list of all delegated functions and powers. The recorded list must be made available to the public, pursuant to Schedule 5 of the Act.
 7. This review of the instrument of delegation recognises changes made to relevant legislation, and the introduction of new legislation, since the last review. Typographical changes have also been made.
 8. It is important to note that the powers and functions may be further delegated by the Chief Executive Officer in accordance with Section 44 and 101 of the Act as the Chief Executive Officer sees fit, unless indicated herein or in the Schedule of conditions contained in each proposed instrument of delegation.
 9. The instrument of delegation identifies:
 - 9.1. The statutory power or powers to delegate the powers or functions subject to the instrument of delegation.
 - 9.2. The statutory basis for any power to sub-delegate a delegated power or function.
 - 9.3. The conditions and limitations applying to the exercise of a delegated power or function.
 - 9.4. The identity of the delegate or delegates in respect of that power or function.
 10. The Minister for Transport and Infrastructure granted delegations to the Council under the Instrument of General Approval and Delegation (dated 22 August 2013) (General Approval). The General Approval permits the Council to:
 - 10.1. Sub-delegate the powers under section 33(1) of the *Road Traffic Act 1961*; and
 - 10.2. Authorise employees of the Council to exercise the powers under sections 17 and 20 of the *Road Traffic Act 1961*.
 11. An instrument of sub-delegation and an instrument of authorisation are attached as **Attachment D**. The General Approval requires that the Council's decision to grant an authorisation be recorded in a written instrument signed by the Chief Executive Officer on behalf of the Council.
 12. If the Council resolves to grant the delegations provided for in the attached instruments of delegation, then previous delegations of the powers and functions subject to the instrument of delegation will be revoked from the date on which the delegations in the attached instrument of delegation come into operation.
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ATTACHMENTS

Attachment A - Delegations to the Chief Executive Officer

Attachment B - Delegations to the Adelaide Central Market Authority

Attachment C - Delegations to the Adelaide Economic Development Agency

Attachment D – Minister of Transport Notice of General Approval

- END OF REPORT -