

Review of Council Delegations

Tuesday, 10 May 2022
Council

Strategic Alignment - Enabling Priorities

Program Contact:
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Public

Approving Officer:
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Operating Officer

EXECUTIVE SUMMARY

Delegations allow Council to enable Officers, subsidiaries or other bodies to undertake duties or exercise powers on its behalf. Council last updated delegations of its statutory powers and functions in June 2021, pursuant to section 44 of the *Local Government Act 1999* (SA) (the Act) as well as its powers of delegation under other legislation. Delegations enhance decision-making processes and allow nominated routine matters to be resolved by the Administration while allowing Council to retain the right to act in any matter of its own accord.

The Minister for Transport and Infrastructure granted delegates to the Council under the Instrument of General Approval and Delegation (dated 22 August 2013) (General Approval). This report seeks adoption of the updated delegations following recent organisational changes.

RECOMMENDATION

THAT COUNCIL

1. In accordance with the Instrument of General Approval and Delegation to Council dated 22 August 2013 from the Minister for Transport and Infrastructure (the 'Instrument'), contained in Attachment A to Item 10.11 on the Agenda for the meeting of the Council held on 10 May 2022, Council revokes previous authorisation and hereby authorises the following person(s) pursuant to Clause A.7 of the Instrument to endorse Traffic Impact Statements for the purposes of Clause A of the Instrument provided that such person(s) shall take into account the matters specified in Clause A.7 of the Instrument in respect of Traffic Impact Statements:
 - 1.1. Anna McDonald
 - 1.2. Jarrad Parsons
 - 1.3. Julie Bellwood
 - 1.4. Penelope Bennett
2. In accordance with Clause A.7 of the Instrument (Attachment A), the Council is of the opinion that the following persons are experienced traffic engineering practitioner(s) for the purposes of preparing a Traffic Impact Statement as required by Clause A.7 of the Instrument:
 - 2.1. Amy Smith
 - 2.2. Anna McDonald
 - 2.3. Christian Bias
 - 2.4. Darren Mitchell
 - 2.5. Jarrad Parsons
 - 2.6. Jarrod Armitage
 - 2.7. Julie Bellwood

2.8. Penelope Bennett

3. In exercise of the power contained in, and in accordance with, Clause G.1 of the Instrument, the power contained in Section 33(1) of the Road Traffic Act 1961 and delegated to the Council pursuant to Clause G of the Instrument and contained in the proposed Instrument of Sub-Delegation set out at Attachment A "Minister of Transport Notice of General Approval" is hereby sub-delegated this 10 May 2022 to the person occupying the office of Chief Executive Officer of the Council subject to:
 - 3.1. the conditions contained in the Instrument; and
 - 3.2. any conditions contained in this Resolution or in the Instrument of Sub-Delegation; and
 - 3.3. the creation of a separate instrument in writing reflecting such sub-delegation under the Instrument and this Resolution.
 4. In accordance with Clause E.2 of the 'Instrument', 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:
 - 4.1. Amy Smith
 - 4.2. Anna McDonald
 - 4.3. Christian Bilas
 - 4.4. Darren Mitchell
 - 4.5. Jarrad Parsons
 - 4.6. Jarrod Armitage
 - 4.7. Julie Bellwood
 - 4.8. Penelope Bennett
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IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Enabling Priorities Appropriate legal delegations allow the Administration to achieve the goals, annual objectives and Council directives as established in the City of Adelaide Strategic Plan and Integrated Business Plan
Policy	Delegations are presented in accordance with Council's Application of Delegations Policy.
Consultation	Not as a result of this report
Resource	Not as a result of this report
Risk / Legal / Legislative	Without appropriate delegations, Council will be responsible for a burden of operational matters. Without further sub-delegations in place, the decisions of Council Officers may be subject to legal challenge.
Opportunities	Not as a result of this report
21/22 Budget Allocation	Not as a result of this report
Proposed 22/23 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
21/22 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 *Local Government Act 1999* (SA) (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. 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 Local Government Act 1999.
5. 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.
6. The instrument of delegation identifies:
 - 6.1. The statutory power or powers to delegate the powers or functions subject to the instrument of delegation.
 - 6.2. The statutory basis for any power to sub-delegate a delegated power or function.
 - 6.3. The conditions and limitations applying to the exercise of a delegated power or function.
 - 6.4. The identity of the delegate or delegates in respect of that power or function.
7. 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:
 - 7.1. Sub-delegate the powers under section 33(1) of the Road Traffic Act; and
 - 7.2. Authorise employees of the Council to exercise the powers under sections 17 and 20 of the Road Traffic Act.
8. 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.

ATTACHMENTS

Attachment A – Minister of Transport Notice of General Approval

- END OF REPORT -