

Strategic Alignment - Enabling Priorities

Program Contact:

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Approving Officer:

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EXECUTIVE SUMMARY

As required by Section 44 of the *Local Government Act 1999 (SA)*, a review of the delegations of Council's powers and functions to the Chief Executive Officer has occurred following recent legislative amendments associated with the *Statutes Amendment (Local Government Review) Act 2021* and other minor legislative changes. As a result of this review this report seeks updated delegations from Council to Chief Executive Officer.

Due to the legislative changes, updated delegations are required for the *Fines Enforcement and Debt Recovery Act 2017*, *Heavy Vehicle National Law (schedule to the Heavy Vehicle National Law (South Australia) Act 2013)*, *Independent Commission Against Corruption Act 2012*, *Liquor Licensing Act 1997*, *Local Government (Elections) Act 1999*, *Local Government Act 1999*, *Ombudsman Act 1972*, *Planning, Development and Infrastructure Act 2016* (and associated Regulations and Planning and Design Code and Practice of Directions of Powers of a Council) and *State Records Act 1997*.

RECOMMENDATION

THAT COUNCIL

1. Hereby delegates on this day 14 June 2022, pursuant to the power contained in Section 44 of the *Local Government Act 1999 (SA)*, the powers and functions under the following legislation contained in the proposed Instruments of Delegation, as set out in Attachment A to Item 10.4 on the Agenda for the meeting of the Council held on 14 June 2022, to the person occupying 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 contained in in the proposed Instrument of Delegation:
 - 1.1. Fines Enforcement and Debt Recovery Act 2017
 - 1.2. Independent Commission Against Corruption Act 2012
 - 1.3. Liquor Licensing Act 1997
 - 1.4. Local Government Act 1999
 - 1.5. Local Government (Elections) Act 1999
 - 1.6. Ombudsman Act 1972
 - 1.7. Planning, Development and Infrastructure Act 2016, Regulations, Planning & Design Code and Practice Directions of Powers of a Council as:
 - 1.7.1 A Council
 - 1.7.2 A designated authority
 - 1.7.3 A designated entity
 - 1.8. State Records Act 1997

2. Notes that such powers and functions as delegated in paragraph 1 may be further delegated by the Chief Executive Officer in accordance with Section 44 and 101 of the *Local Government Act 1999 (SA)* as the Chief Executive Officer sees fit, unless indicated herein or in Attachment A.
 3. In exercise of the powers contained in Section 22B of the *Heavy Vehicle National Law (South Australia) Act 2013*, hereby delegates, from 14 June 2022, to the person occupying the office of Chief Executive Officer, the powers and functions under the *Heavy Vehicle National Law (South Australia) Act 2013* contained in the proposed Instrument of Delegation contained within Attachment A to Item 10.4 on the Agenda for the meeting of Council held on 14 June 2022, subject to the conditions and/or limitations contained in the proposed Instrument of Delegation.
 4. Provides that such powers and functions delegated under paragraph 3 of the recommendation may be further delegated by the Chief Executive Officer as the Chief Executive Officer sees fit and in accordance with the *Heavy Vehicle National Law (South Australia) Act 2013* unless otherwise indicated in the proposed Instrument of Delegation.
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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.
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. 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.
 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. The Local Government Association (LGA) provides updated delegation templates on a quarterly basis that the City of Adelaide uses to ensure sector consistency and visibility over legislative amendments. The updated templates identify the required delegation changes to be actioned as a result of legislative amendments.
 5. The *Heavy Vehicle National Law (schedule to the Heavy Vehicle National Law (South Australia) Act 2013)* contains express provisions for the delegation of powers and duties, therefore it is provided as a separate recommendation for Council in this report.
 6. The updated delegations proposed in this report are required due to operational and administrative changes in legislation and do not pose significant impacts to council operations.
 7. Delegations under the following legislation require updates as a result of operational amendments and correction of minor errors contained within the previous LGA template as described in paragraph 4 made to the various Acts summarised within Link 1 view [here](#) and listed below as follows:
 - 7.1. *Fines Enforcement and Debt Recovery Act 2017* – amendment to delegation under Section 20(19)(c) to correct minor error.
 - 7.2. *Independent Commission Against Corruption Act 2012* - an addition of a delegation under Section 56A(1)(b) to correct minor error.
 - 7.3. *Liquor Licensing Act 1997* - amendment to four provisions to correct minor errors.
 - 7.4. *Local Government Act 1999 (SA)* –amendments have been made to various delegations in relation to the *Statutes Amendment (Local Government Review) Act 2021* specifically relating to ensuring particular documentation is made available for inspecting, purchasing and viewing at Council’s principal office which is no longer required.
 - 7.5. *Local Government (Elections) Act 1999* – an addition of a delegation relating to appointing persons to the office(s) that remain unfilled where not all vacancies are filled following a supplementary election, and removal of delegation relating to the need to provide a copy of the voters roll to a nominated candidate for election in printed form.
 - 7.6. *Ombudsman Act 1972* - an addition of 12 provisional delegations relating to the reduced functions of ICAC and implementation of further responsibilities on the Ombudsman in relation to receiving reports and conducting investigations.
 - 7.7. *Planning, Development and Infrastructure Act 2016*, Regulations, Planning & Design Code and Practice Directions of Powers of a Council as a Council, designated authority and a designated entity. various minor amendments including in relation to Certificate of Occupancy, State Planning Practice Directions and report from fire authority.
 - 7.8. *State Records Act 1997*- an amendment to a delegation to correct minor error.
 - 7.9. *Heavy Vehicle National Law (schedule to the Heavy Vehicle National Law (South Australia) Act 2013)* - minor amendment to delegation to correct minor error.
 8. If the Council resolves to grant the delegations provided for in the attached instrument 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.
 9. These delegations supersede the previous delegations, but not any decisions of the Council or decisions previously made pursuant to delegated authority nor are such decisions affected by these new delegations.
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DATA AND SUPPORTING INFORMATION

Link 1 - Table of amended Acts requiring Delegation Updates

ATTACHMENTS

Attachment A – Updated Delegations to Chief Executive Officer

- END OF REPORT -