

8.1 COUNCIL RECESS PERIOD 2023-24 - DELEGATED AUTHORITY TO THE CHIEF EXECUTIVE OFFICER

TRIM Ref: D23/102823
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Authoriser: David MacLennan, Chief Executive Officer
Attachments: Nil

RECOMMENDATION:

That Council **DELEGATES BY ABSOLUTE MAJORITY**, pursuant to section 5.42 of the *Local Government Act 1995*, to the Chief Executive Officer, the power to deal with any items of business that may arise between 13 December 2023 and 5 February 2024, and which are not the subject of delegated authority already granted by Council, subject to:

1. Reports being issued to all Council Members for a period of three business days prior to the delegated decision being made and no requests for 'call-in' of the matter being received from Council Members;
2. Reports being displayed on the City's website for a period of three business days prior to the delegated decision being made;
3. A report summarising the items of business dealt with under delegated authority being submitted for information to Council at its Ordinary Meeting to be held on 13 February 2024; and
4. A Register of Items Approved under this Delegated Authority is being kept and made available for public inspection on the City's website during the period that the delegation applies.

PURPOSE OF REPORT:

To obtain Council's approval to deal with some matters not already delegated to the Chief Executive Officer (CEO) arising during the 2023-24 Council recess period.

BACKGROUND:

Council will be in recess after the Ordinary Council Meeting on 12 December 2023 until the Council Briefing on 6 February 2024. Arrangements need to be made to enable urgent items of business that arise during this period to be dealt with by the CEO.

DETAILS:

The Council recess period is from 13 December 2023 to 5 February 2024, inclusive. A Council resolution (absolute majority) is required to allow the CEO to make a decision on matters which may arise during this period for which no delegated authority already exists. Matters which require an absolute majority decision are not able to be delegated, and will be considered at the 13 February 2024 Ordinary Meeting of Council.

Reports relating to decisions proposed to be made using the recess period delegations will be issued to all Council Members for review and comment for a period of three business days. This will allow Council Members to either comment on the proposed decision, and for those comments to be considered prior to any decision being made, or to 'call-in' the matter, thereby preventing the delegation being exercised. If a matter is called in then it would be referred to the 14 February 2024 Ordinary Meeting of Council.

CONSULTATION/ADVERTISING:

There is no statutory requirement for consultation with the community or Council Members in respect to items proposed to be decided under delegated authority during the recess period. Items being processed under delegated authority will be referred to Council Members for comment and 'call-in' for a period of three days prior to the delegated decision being made.

LEGAL/POLICY:

Under Section 5.42 of the *Local Government Act 1995 (Act)*, Council may, by absolute majority, delegate to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act, other than those referred to in section 5.43. Section 5.42(2) provides specifically that:

“(2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*”

Section 5.43 of the Act includes the following:

“5.43 Limits on delegations to CEO

A local government cannot delegate to a CEO any of the following powers or duties —

- a) *any power or duty that requires a decision of an absolute majority of the council;*
- b) *accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;*
- c) *appointing an auditor;*
- d) *acquiring or disposing of any property...*
- e) *...*

RISK MANAGEMENT IMPLICATIONS:

Low: Council approval of the delegation of its power over the recess period is necessary to ensure business continuity for the City. Elected Members will have the opportunity to “call in” any matters proposed to be determined by Administration pursuant to this recess delegation, which mitigates the risk of any decisions being made contrary to Council’s position.

STRATEGIC IMPLICATIONS:

This is in keeping with the City’s *Strategic Community Plan 2018-2028*:

Innovative and Accountable

Our community is aware of what we are doing and how we are meeting our goals.

We are open and accountable to an engaged community.

FINANCIAL/BUDGET IMPLICATIONS:

Nil.

COMMENTS:

Administration advises that it is aware of one potential item that may arise during the council recess period for which the CEO does not have delegation to determine.

The City’s [“Register of Delegations, Authorisations and Appointments”](#) provides that Council has delegated the power to accept tenders up to the value of \$250,000 to the CEO.

Tender RFT IE216/2022 for Traffic Management is expected to be submitted during the recess period, as the timeframe required to renew the contract is limited a decision will need to be made prior to the end of the recess period.

The procurement is for three + one year and the estimated value is \$6 Million. The tender will cover traffic management for all City capital and maintenance works, as well as event management. The major industry provider has exited and this requires Administration to seek tenders beyond the WALGA panel.

Main Roads WA has made changes to the Traffic Management Company Registration Scheme. These changes come into effect on 1 December 2023 and include the introduction of a new minimum pay rate and entitlements for all traffic management staff. Administration wishes to complete the procurement without delay.