

COUNCIL MEETING: 24 MAY 2022

REPORT 4 ANNUAL REVIEW REGISTER OF DELEGATED AUTHORITY

Minor amendments to CNP 02 – Disposal of Property Delegation to correct administrative errors and the inclusion of an additional condition for Disposition other than land must be in accordance with policies and procedures.

The following pages in the report attachments are replaced:

- BS Report 04 Delegated Authority Review 2021-22 Att 4.1 - ADDITIONAL INFO - CNP 02 to replace pages 333-335 in **Attachment 4.1**
- BS Report 04 Delegated Authority Review 2021-22 Att 4.3 - ADDITIONAL INFO - CNP 02 – Amendments to replace pages 397-399 in **Attachment 4.3**

**Officer Amended Recommendation** is now (changes in red):

That Council:

1. Adopts the 2021-2022 Annual Review of Delegated Authority, as shown at Attachment 4.1 (including replacing Attachment 4.1 pages 333-335 with an amendment to CNP02 – Disposal of Property) as its own review for the purposes of s. 5.46 of the Local Government Act 1995 for the 2021-2022 financial year.

2. Under s.3.47A and s.3.48 of the *Local Government Act 1995*, adopts the DA-LWE 10 Disposal of Sick or Injured Impounded Animals indefinitely, as per Attachment 4.2.

3. Under r.11(2)(j) and r.21A of the *Local Government (Functions and General) Regulations 1996*, adopts the DA-CPM 05 Varying Contracts and Exercising Contract Extension Options indefinitely, as per Attachment 4.2.

4. Under r.11 of the *Local Government (Functions and General) Regulations 1996*, adopts the DA-CPM 06 Tenders for Goods and Services – Exempt Procurement indefinitely, as per Attachment 4.2.

5. Under the *Local Government (Uniform Local Provisions) Regulations 1996*, adopts the following four delegations indefinitely, as per Attachment 4.2;

- DA-LUP 01 Private Works on, over or under Public Places;
- DA-LUP 02 Public Thoroughfare – Dangerous Excavations;
- DA-LUP 03 Obstruction of Footpaths and Thoroughfares; and
- DA-LUP 04 Crossing – Construction, Repair and Removal.

6. Under the *Local Government Act 1995* adopts the DA LOC 03 City of Mandurah Local Laws – Administration indefinitely, as per Attachment 4.2.

7. Adopts the following delegations indefinitely, with amendments, as per Attachment 4.3 (including replacing Attachment 4.3 pages 397-399 with an amendment to CNP02 – Disposal of Property):

- DA-BUI 03 Building Orders;
- DA-CMS 03 Cat Act 2011;
- DA-CPM 02 Invite Expressions of Interest and Tenders;
- DA-CPM 04 Rejecting and Accepting Expressions of Interests and Tenders;
- DA-FCM 06 Defer, Grant Concessions for, or Waive Fees or Write off Debts;
- DA-EMS 01 Bush Fires Act 1954 - Variations to Burning Times;

<b>ADDITIONAL INFORMATION FROM DIRECTOR OF BUSINESS SERVICES</b>
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- DA EMS 03 Bush Fires Act 1954 – Prosecution;
- DA-LWE 06 Disposal of Impounded Goods and Vehicles;
- DA-PAD 01 Development Applications for Single Houses;
- DA-PAD 04 Local Development Plans;
- DA-TFT 01 Parking Administration;
- DA CNP 02 Disposing of Property;
- DA-FCM 04 Non-Rateable Status for Land;
- DA-BUI 01 Building and Demolition Permits;
- DA-BUI 04 Smoke Alarms - Alternative Solutions;
- DA-BUI 05 Private Swimming Pool Safety Barriers;
- DA-BUI 02 Occupancy Permits and Building Approval Certificates;
- DA-CMS 04 Dog Act 1976;
- DA-GVN 06 Revoking Suspension of Decisions under Objection;
- DA-LWE 02 Directions in Relation to Development Matters;
- DA-LWE 08 Infringement Notices;
- DA-LWE 09 Graffiti Vandalism;
- DA-PAD 02 Development Application (excluding Single Houses);
- DA-PAD 03 Structure Plans; and
- DA -FMC 07 Payment Arrangements for Unpaid Rates and Service Charges and Other Debtors.

8. Readopts the remaining delegations indefinitely, with no amendments, as per Attachment 4.1 (including replacing Attachment 4.1 pages 333-335 with an amendment to CNP02 – Disposal of Property):

- DA-EMS 02 Bush Fires Act 1954 – General;
- DA-FCM 03 Investment of Funds;
- DA-LWE 01 Prosecutions/Recovery of Unpaid Rates, Service Charges, Fees and Charges;
- DA-LWE 07 Authorised Officers/Persons;
- DA-LOC 01 Trading Permits;
- DA-LOC 02 Alfresco Dining Permits;
- DA-PBH 03 Food Act 2008;
- DA-PBH 04 Food Act 2008 – Appointments;
- DA-PBH 10 Public Health Act 2016 - Functions of an Enforcement Agency;
- DA-PBH 11 Public Health Act 2016 - Reports by Enforcement Agency;
- DA-PBH 12 Health (Asbestos) Regulations – Enforcement;
- DA-TFT 02 Closing of Certain Thoroughfares to Vehicles; and
- DA-FCM 06 Defer, Grant Concessions for, or Waive Fees or Write off Debts.

9. Rescind delegation DA-PAD 05 Preparation and Endorsement of Responsible Authority Reports as per Attachment 4.4.

10. Adopts amendments to POL-LUP 08 Planning and Development Responsibilities as per Attachment 4.5.

\*ABSOLUTE MAJORITY REQUIRED\*

### Council Properties

<b>Delegation</b>	<b>DA CNP 02 Disposing of Property</b>
<b>Category</b>	Council Properties
<b>Delegator</b>	Council
<b>Express power to delegate</b>	<i>Local Government Act 1995:</i> s. 5.42 Delegation by local government s.5.43 Limitations on delegations to the CEO
<b>Express power or duty delegated</b>	<i>Local Government Act 1995:</i> s. 3.58 Disposing of property under this section. s. 3.18(1) Disposing of property, not covered by s. 3.58, in order to perform the necessary functions under the <i>Local Government Act 1995</i> .
<b>Function</b>	<ol style="list-style-type: none"> <li>1. Authority to determine the method of disposal and dispose of property to: <ol style="list-style-type: none"> <li>a) the highest bidder at public auction s.3.58(2)(a); or</li> <li>b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender s.3.58(2)(b).</li> </ol> </li> <li>2. Authority to dispose of property by private treaty only in accordance with section 3.58(3) and prior to the disposal, to consider any submissions received following the giving of public notice s.3.58(3).</li> </ol>
<b>Delegates</b>	Chief Executive Officer
<b>Conditions</b>	<p><b>Disposal of the land (lease and license)</b></p> <p>The following conditions relate to the disposition of land by lease or license:</p> <ol style="list-style-type: none"> <li>1. Approve and determine the appropriate method to dispose of property in accordance with s3.58 of the <i>Local Government Act 1995</i>.</li> <li>2. Disposal of land is limited to: <ul style="list-style-type: none"> <li>• Matters specified in the Annual Budget or in any other case, requires a specific resolution of Council; and</li> <li>• Disposal of land is limited to a maximum value of \$150,000 (including options); and</li> <li>• Satisfies the conditions below:</li> </ul> </li> </ol> <p><u>Lease &amp; Licence –Not for Profits Entities</u></p> <ul style="list-style-type: none"> <li>• The term and options to extend the term does not exceed a total of 5 years;</li> <li>• Cannot exceed the lease period that the City holds the head lease for, if applicable;</li> <li>• No breach of the current agreement has occurred; and</li> <li>• The conditions of the lease or licence is consistent with standard leasing practices of the City.</li> </ul> <p><u>Licence - Commercial Entities</u></p> <ul style="list-style-type: none"> <li>• The licence term is less than 3 years;</li> <li>• Cannot exceed the licence period that the City holds the head licence for, if applicable;</li> <li>• Rent aligns with current independent market valuation carried out no more than 2 years from the proposed licence commencement date; and</li> <li>• The licence conditions are consistent with standard leasing and licencing practices with the City.</li> </ul> <p>Note: This only applies to licences for commercial entities. All leases for commercial entities must be approved by Council.</p>

	<p><u>Assignment of Leases/Licences</u></p> <ul style="list-style-type: none"> <li>• The assignee continues to meet all terms and conditions of the current lease/licence;</li> <li>• No extension nor variation of the lease/licence is available;</li> <li>• Relevant checks are conducted confirming the new business has no bankruptcy listed against the directors, or any court action pending; and</li> <li>• The lease/licence is currently not in breach.</li> </ul> <p><u>Sublease/ Sublicence (where the City is the sublessor or sublicensor)</u></p> <ul style="list-style-type: none"> <li>• The head lessee/licensee remains fully responsible for terms and conditions of head lease/licence,</li> <li>• The purpose of the sublease/ sublicence is consistent with purpose or similar purpose of the head lease/licence; and</li> <li>• Term of sublease/sublicence does not exceed head lease/licence.</li> </ul> <p><b>Disposition other than land</b></p> <p>The following conditions relate to the disposition of property (other than land) may be undertaken:</p> <ul style="list-style-type: none"> <li>• Where the market value of the property is determined as being less than \$20,000 (F&amp;G r.30(3) excluding disposal); or</li> <li>• its market value is less than \$20 000; or the entire consideration received by the local government for the disposition is used to purchase other property, and where the total consideration for the other property is not more, or worth more, than \$75 000; and</li> <li>• Council has resolved to dispose of property via Council resolution or in the Adopted Budget; and</li> <li>• In any case, be undertaken to ensure that the best value return is achieved however, where the property is determined as having a nil market value then, as a minimum, the disposal must ensure environmentally responsible disposal; and</li> <li>• must be in accordance with Council and City policies and procedures.</li> </ul>
<b>Statutory framework</b>	<p>Local Government Act 1995:  s.3.58 Disposing of Property  s3.18 General Functions  Local Government (Functions and General) Regulations 1966:  r. 30 Disposing of property exempt from s. 3.58</p>
<b>Date adopted</b>	TBC
<b>Adoption references</b>	TBC

## Council Properties

<b>Delegation</b>	<b>DA CNP 02 Disposing of Property</b>
<b>Category</b>	Council Properties
<b>Delegator</b>	Council
<b>Express power to delegate</b>	<p><i>Local Government Act 1995:</i>  s. 5.42 Delegation by local government  <a href="#">s.5.43 Limitations on delegations to the CEO</a></p>
<b>Express power or duty delegated</b>	<p><i>Local Government Act 1995:</i>  s. 3.58 Disposing of property under this section.  s. 3.18(1) Disposing of property, not covered by s. 3.58, in order to perform the necessary functions under the <i>Local Government Act 1995</i>.</p>
<b>Function</b>	<p><del>To dispose of property by public auction or by private treaty, in accordance with section 3.58 or otherwise.</del></p> <p>1. <a href="#">Authority to determine the method of disposal and dispose of property to:</a>  a) <a href="#">the highest bidder at public auction s.3.58(2)(a); or</a>  a)b) <a href="#">the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender s.3.58(2)(b).</a></p> <p>2. <a href="#">Authority to dispose of property by private treaty only in accordance with section 3.58(3) and prior to the disposal, to consider any submissions received following the giving of public notice s.3.58(3).</a></p>
<b>Delegates</b>	Chief Executive Officer
<b>Conditions</b>	<p><del>The delegation may only be exercised in relation to:</del></p> <p><del>a) a disposition, other than a lease or licence, valued under \$250,000; or</del>  <del>b) a disposition that is a lease or licence, valued under \$150,000 per year (including rental payments only); or</del>  <del>c) A disposition which is provided for in the Annual Budget; or</del>  <del>d) A disposition which is authorised by Council resolution.</del></p> <p><del>This delegation must be exercised in accordance with s. 3.58 of the <i>Local Government Act 1995</i> and r. 30 and r. 31 of the <i>Local Government (Functions and General) Regulations 1996</i>.</del></p> <p><del>This delegation must be exercised in accordance with all relevant Council or CEO policies, and procedures.</del></p> <p><del>The exercise of this delegation in relation to land is permitted only in the following circumstances:</del></p>

## Disposal of the land (lease and license)

The following conditions relate to the disposition of land by lease or license:

1. Approve and determine the appropriate method to dispose of property in accordance with s3.58 of the Local Government Act 1995.
2. Disposal of land is limited to:
  - Matters specified in the Annual Budget or in any other case, requires a specific resolution of Council; and
  - Disposal of land is limited to a maximum value of \$150,000 (including options); and
  - Satisfies the conditions below:

### Lease & Licence –Not for Profits Entities

- ~~The lease or licence is held by a Not for Profit organisation outlined in regulation 30(2)(b) of the Local Government (Functions and General) Regulations 1996;~~
- The term and options to extend the term does not exceed a total of 5 years;
- Cannot exceed the lease period that the City holds the head lease for, if applicable;
- No breach of the current agreement has occurred; and
- The conditions of the lease or licence is consistent with standard leasing practices of the City.

### Lease & Licence - Commercial Entities

- The ~~lease or~~ licence term is less than 32 years;
- Cannot exceed the licence period that the City holds the head licence for, if applicable;
- Rent aligns with current independent market valuation carried out no more than 2 years from the proposed licence commencement date; and
- The licence conditions are consistent with standard leasing and licencing practices with the City.

Note: This only applies to licences for commercial entities. All leases for commercial entities must be approved by Council.

### Assignment of Leases/Licences

- The assignee continues to meet all terms and conditions of the current lease/licence;
- No extension nor variation of the lease/licence is available;
- Relevant checks are conducted confirming the new business has no bankruptcy listed against the directors, or any court action pending; and
- The lease/licence is currently not in breach.

### Sublease/ Sublicence (where the City is the sublessor or sublicensor)

- The head lessee/licensee remains fully responsible for terms and conditions of head lease/licence.
- The purpose of the sublease/sublicence is consistent with purpose or similar purpose of the head lease/licence; and
- Term of sublease/sublicence does not exceed head lease/licence.

## Disposition other than land

The following conditions relate to the disposition of property (other than land) may be undertaken:

- Where the market value of the property is determined as being less than \$20,000 (F&G r.30(3) excluding disposal); or
- its market value is less than \$20 000; or the entire consideration received by the local government for the disposition is used to purchase other property, and where the total consideration for the other property is not more, or worth more, than \$75 000; and
- Council has resolved to dispose of property via Council resolution or in the Adopted Budget; and
- In any case, be undertaken to ensure that the best value return is achieved however, where the property is determined as having a nil market value then, as a minimum, the disposal must ensure environmentally responsible disposal; and
- must be in accordance with Council and City policies and procedures.

<b>Statutory framework</b>	Local Government Act 1995: s.3.58 Disposing of Property s3.18 General Functions Local Government (Functions and General) Regulations 1966: r. 30 Disposing of property exempt from s. 3.58
<b>Date adopted</b>	TBC
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