

# Agenda

## Council Meeting

**Monday, 20th September 2021**

Commencing at 6.30pm

via the Zoom Platform and live streamed

[kingston.vic.gov.au](http://kingston.vic.gov.au)

Tim Tamlin  
Interim Chief Executive Officer  
Kingston City Council



**Notice** is given that a Meeting of Kingston City Council will be held at 6.30pm at via the Zoom Platform and live streamed, on Monday, 20 September 2021.

**1. Apologies**

**2. Foreshadowed Declaration by Councillors, Officers or Contractors of any Conflict of Interest**

*Note that any Conflicts of Interest need to be formally declared at the start of the meeting and immediately prior to the item being considered – type and nature of interest is required to be disclosed – if disclosed in writing to the CEO prior to the meeting only the type of interest needs to be disclosed prior to the item being considered.*

**3. City Assets and Environment Reports**

3.1 Foreshore Cleaning Contract Matter..... 5

**4. Confidential Items**

Nil



### **3. City Assets and Environment Reports**



20 September 2021

Agenda Item No: 3.1

## FORESHORE CLEANING CONTRACT MATTER

Contact Officer: Astrid Di Carlo, Executive Manager, Legal

### Purpose of Report

The purpose of this report is to:

- provide Council with information in relation to the *Provision of Public Amenities Cleaning Contract* CON - 20/020 dated 5 August 2020 (Contract); and
- to recommend that Council resolves that the Chief Executive Officer (CEO) has power to act on behalf of the Principal (Council) without limitation in relation to the Contract.

### Disclosure of Officer / Contractor Conflict of Interest

No Council officer/s and/or Contractor/s who have provided advice in relation to this report have declared a Conflict of Interest regarding the matter under consideration.

### RECOMMENDATION

That Council:

1. Resolve that the Chief Executive Officer has power to act on behalf of the Principal (Council) in relation to the Provision of Public Amenities Cleaning Contract CON - 20/020; and
2. Resolve that this power to act on behalf of the Principal in relation to Provision of Public Amenities Cleaning Contract is not limited by the Instrument of delegation to the Chief Executive Officer, save in respect of entry into the Contract, or the making of an expenditure by Council under the Contract.

### 1. Executive Summary

Council awarded the Contract to Fernando Enterprises Australia Pty Ltd trading as Ausbright Facilities Management Pty Ltd (Ausbright) at a Council meeting on 27 July 2020. The Contract was entered into on 5 August 2020.

The purpose of the proposed resolution is to ensure that the CEO has power to act on behalf of the Principal in the exercise of the Principal's powers under the Contract, and that this power is not limited by the Instrument of delegation to the Chief Executive Officer (Instrument) save in respect of entry into the Contract and making an expenditure under the Contract.

### 2. Background

At the Council meeting on 27 July 2020, Council appointed Ausbright as the contractor to deliver the Contract.

At this meeting, Council also delegated authority to the CEO to extend the operation of the Contract beyond the Initial Contract Term for a further two periods of two years, up to the maximum of eight years, subject to satisfactory ongoing performance.

On 27 July 2020, Council also resolved by a separate agenda item that powers, duties and functions of Council listed in the Instrument be delegated to the CEO, subject to the conditions and limitations specified in the Instrument.

This delegation was revoked by Instrument of Delegation dated 23 August 2021, and relevantly replaced with an equivalent delegation.

### 3. Discussion

#### 3.1 Council Plan Alignment

Goal 1 - Our well-planned, liveable city supported by infrastructure to meet future needs

Direction 1.1 - Intergenerational land use planning for a sustainable community

Council's Foreshore, Open Spaces and amenities play a key role in making Kingston a great place to live. Council is committed to delivering high quality spaces for the community and this contract is a significant part in achieving this outcome.

#### 3.2 Consultation/Internal Review

The General Manager City Assets and Environment, Manager Open Space, Executive Manager Legal, and the CEO have been engaged as key stakeholders. Advice has also been sought from external lawyers specialising in contract law.

#### 3.3 Operation and Strategic Issues

The Instrument of Delegation resolved by Council on 23 August 2021 delegates to the CEO the power to:

- 1 determine any issue;
- 2 take any action; or
- 3 do any act or thing arising out of or connected with any duty imposed, or function or power conferred on Council by or under any Act.

Pursuant to section 14 of the *Local Government Act 2020 (Vic)*, Council is a body corporate with perpetual succession who, amongst other matters, is capable of doing and suffering all acts and things which bodies corporate may by law do and suffer and which are necessary or expedient for performing its functions and exercising its powers.

The Instrument delegates this power to the CEO subject to any limitations set out in the Instrument. The Instrument records at 1.1 that the delegate must not determine the issue, take the action, or do the act or thing if the issue action, act or thing involves the awarding of a contract or making an expenditure exceeding the value of \$850,000.

The value of the Contract is for \$427,531.59 (ex GST) per annum.

The resolution recommended in this report is not intended to have any impact on the Instrument of Delegation to the CEO as resolved by Council on 23 August 2021.

This report recommends Council adopt the resolutions to clarify that the CEO has power to act on behalf of the Principal in the exercise of the Principal's powers under the Contract.



**3.4 Options**

No options are applicable to this report.

**4. Conclusion**

This report recommends that Council resolve that the CEO has power to act on behalf of the Principal (Council) in the exercise of the Principal's powers under the Contract.

**4.1 Environmental Implications**

Amenity cleaning within parks, reserves and along the foreshore is required to ensure assets are cleaned and maintained in line with community expectations.

**4.2 Social Implications**

Amenity cleaning is an essential aspect of Council's provision of services particularly during this time of a pandemic.

**4.3 Resource Implications**

The resolutions ensure that resources are used appropriately within Council.

**4.4 Legal / Risk Implications**

Adoption of the resolutions by Council will assist to minimise risks for management of the Contract by the Principal.

Author/s: Astrid Di Carlo, Executive Manager, Legal  
Reviewed and Approved By: Samantha Krull, General Manager City Assets and Environment  
Tim Tamlin, Interim Chief Executive Officer