

Exemption from Tender - Copyright Agency Ltd Licence Agreement

File No: X113821

Summary

This report seeks an exemption from tender for the City of Sydney's copyright licence agreement, and requests Council extend its existing agreement with the Copyright Agency Ltd for a term of 5 years.

The City requires a copyright licence agreement to protect it against the risk of inadvertent breaches of copyright in its employees' use of newspaper articles and other media content.

The Copyright Agency Ltd, whose members are Australian journalists and authors, is the only Australian provider of copyright licences to organisations on behalf of their members for use of their work.

The City has held a copyright licence agreement with the Copyright Agency Ltd since 2018. The licence is required to be renewed annually to prevent the City from breaching copyright rules and facing the risk of financial penalties. The current agreement is due to be renewed in April 2025.

In accordance with section 55(3)(i) of the Local Government Act 1993 a tender is not required where, because of the unavailability of competitive or reliable tenders, a satisfactory result will not be achieved by inviting tenders. This exemption threshold is met because the Copyright Agency Ltd is the only organisation in Australia currently providing this service.

This report recommends that Council grant an exemption from tender for the City's copyright licence agreement, and requests Council renew its existing agreement with the Copyright Agency Ltd for a term of 5 years.

Recommendation

It is resolved that:

- (A) Council approve an exemption from tender in accordance with section 55(3)(i) of the Local Government Act 1993 for the City's copyright licence agreement;
- (B) Council note that a satisfactory result would not be achieved by inviting tenders for this work because the Copyright Agency Ltd is the only Australian provider of copyright licences to organisations on behalf of their members for use of their work; and
- (C) authority be delegated to the Chief Executive Officer to negotiate, execute and administer the renewal of the copyright licence agreement for a term of 5 years.

Attachments

Attachment A. Financial Implications (Confidential)

Background

1. Most literary works, such as newspaper articles and other third-party media content, are covered by copyright. Copying, sharing or digitally storing all or part of these works, for example in an email, presentation, report or records management system, usually requires permission from the copyright owner.
2. A copyright licence agreement allows for the use of third-party media content, protecting users against the risk of inadvertent breaches of copyright. The City of Sydney requires such a licence in order to protect itself and its employees.
3. The Copyright Agency Ltd, whose members are Australian journalists and authors, is the only Australian provider of copyright licences to organisations on behalf of their members for use of their work.
4. The City has held a copyright licence agreement with the Copyright Agency Ltd since 2018. The licence is required to be renewed annually to allow City employees to use, share and digitally store third-party media content, and to prevent the City from breaching copyright rules and facing the risk of financial penalties.

Performance Measurement

5. As this is a licence agreement rather than a contract, there are no key performance indicators against which to assess the provider. However, the City will periodically assess the agreement to ensure it continues to meet the organisation's needs.

Risks

6. The recommendations in this report have been made following a review of the requirement for the City to have such a licence in order to protect itself and its employees.
7. This approach is within the City's risk appetite, which states:
 - We are committed to complying with all applicable laws, regulations and financial reporting standards. We have no appetite for financial losses arising from non-compliance with legal and regulatory requirements.
 - We are committed to conducting our activities in full compliance with applicable laws, regulations and relevant industry standards.

Financial Implications

8. There are sufficient funds allocated for this licence agreement within the current year's operating budget and future years' forward estimates.

Relevant Legislation

9. The exemption from tender process has been conducted in accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2021.
10. Section 55(3)(i) of the Local Government Act 1993 states that a tender is not required where, because of the unavailability of competitive or reliable tenders, a satisfactory result will not be achieved by inviting tenders. This exemption threshold is met because the Copyright Agency Ltd is the only organisation in Australia currently providing this service.
11. Local Government Act 1993 - Section 10A provides that a council may close to the public so much of its meeting as comprises the discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.
12. Attachment A contains confidential financial information which, if disclosed, would:
 - (a) confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business; and
 - (b) prejudice the commercial position of the person who supplied it.
13. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.

Critical Dates / Time Frames

14. The current licence agreement expires on 31 March 2025. The new licence agreement must therefore be renewed by 1 April 2025.
15. As this licence is required to prevent the City from breaching copyright rules and facing the risk of financial penalties, this report recommends it is renewed for a term of five years to ensure ongoing compliance.

Options

16. An alternative option is to not renew the licence agreement. This option is not recommended because the licence is required to prevent the City from breaching copyright rules and facing the risk of financial penalties.

Public Consultation

17. As this licence is required to prevent the City from breaching copyright rules and facing the risk of financial penalties, and the Copyright Agency Ltd is the only Australian provider of such licences, no public consultation has been conducted.

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