

**ITEM 6. DELEGATIONS OF AUTHORITY TO THE LORD MAYOR AND THE
CHIEF EXECUTIVE OFFICER - INCLUDING CHANGES ARISING
FROM AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1993**

FILE NO: S083948

SUMMARY

Under Section 380 of the Local Government Act 1993, each council must review its delegations during the first 12 months of each term of office.

Until such time as this review is conducted, the existing delegations to the Lord Mayor and Chief Executive Officer (CEO) remain in force.

The delegations to the Lord Mayor and the delegations to the CEO were last reviewed by Council in May 2013.

The proposed changes to be made to the delegations to the Lord Mayor are the result of recent changes to legislation, and a comprehensive review to ensure policy alignment and clarity. In some cases authority has been removed, as the delegation is not exercised.

Changes proposed to the Delegations to the Chief Executive Officer are also in response to changes in legislation to more effectively align authority with outcomes. Other changes are proposed to improve clarity. The Delegations to the Chief Executive Officer have been amended to specify what the CEO can do in the first section of the document. Clauses listed after the heading 'COUNCIL RESERVED FUNCTIONS (NOT TO BE EXERCISED BY THE CEO)' continue to specify what the CEO is unable to do. These amendments will remove the current complex syntax of exceptions to exceptions in the document.

The Local Government Act 1993 was amended on 1 October 2016 to allow council General Managers to approve all tenders. It is proposed that the delegations be amended to reflect the provisions of the Act to a limited extent by giving a new authority for the CEO to approve tenders up to the value of \$5M to alleviate the administrative burden of procurement on Council. The proposed \$5M threshold, which applies to the value over the entire term of the contract, will ensure Council continues to consider major contracts for services and capital works at the City.

The legislative amendments that commenced on 1 October 2016 also provide for new authority to be given to a General Manager to determine grant applications. It is proposed that Council not delegate this function to the CEO. The Council and committee meeting process continues to provide an important mechanism for members of the community and other stakeholders (including grants applicants) to provide meaningful and direct feedback to Councillors, whereas tenders, by their very nature, contain limited public domain information and afford limited opportunity for community feedback. Tenderers cannot contact or address councillors during a tender process.

In addition to these delegations to the Lord Mayor and the CEO, there are specific delegations arising from resolutions of Council which facilitate the implementation of a specified authority. On 22 July 2013, Council resolved to approve a delegation to the CEO giving authority to exercise the Minister's functions under s59 of the *Environmental Planning and Assessment Act 1979*. On 23 November 2015, Council endorsed a standing resolution for nominated directors to be temporarily appointed as the CEO during an absence by the CEO from office. It is proposed that these specific delegations continue in force as they will lapse on completion of the relevant matter.

The review of the delegations has identified the need for a minor change to the City's Code of Conduct to enable the Lord Mayor and Councillors to direct their respective staff. That amendment is outlined in Attachment D.

RECOMMENDATION

It is resolved that Council:

- (A) endorse the Delegations to the Lord Mayor, as shown at Attachment A to the subject report;
- (B) endorse the Delegations to the Chief Executive Officer, as shown at Attachment B to the subject report;
- (C) confirm all other delegations by Resolution of Council continue in force; and
- (D) endorse the Code of Conduct, as shown at Attachment D to the subject report.

ATTACHMENTS

Attachment A: Delegations to the Lord Mayor

Attachment B: Delegations to the Chief Executive Officer

Attachment C: Detailed explanation of the changes proposed to the Delegations to the Lord Mayor and the Delegations to the Chief Executive Officer

Attachment D: Code of Conduct (with the proposed changes to clause 6.3 shown in ***bold, italics text***)

BACKGROUND

1. Under Section 380 of the *Local Government Act 1993*, each council must review its delegations during the first 12 months of each term of office.
2. Until such time as this review is conducted, the existing delegations to the Lord Mayor and Chief Executive Officer remain in force.
3. All functions delegated by Council to the Lord Mayor and Chief Executive Officer are contained in the *Local Government Act 1993*, the *City of Sydney Act 1988* and other relevant legislation.
4. The proposed changes to be made to the delegations to the Lord Mayor are the result of recent changes to legislation, and a comprehensive review to ensure policy alignment and clarity.
5. Changes proposed to the delegations to the Chief Executive Officer are also in response to changes in legislation to more effectively align authority with outcomes. Changes are also proposed to improve clarity. Wherever possible, the delegations to the Chief Executive Officer have been restated in the positive. There are no longer exceptions to exceptions within the proposed delegations.
6. The legislative amendments that commenced in 2016 also provided for new authority to be given to a general manager to determine grant applications. It is proposed that Council not delegate this function to the CEO. The Council and committee meeting process continues to provide an important mechanism for members of the community and other stakeholders (including grants applicants) to provide meaningful and direct feedback to Councillors, whereas tenders, by their very nature, contain limited public domain information and afford limited opportunity for community feedback. Tenderers cannot contact or address councillors during a tender process.

PROPOSED AMENDMENTS

Delegations to the Lord Mayor

7. There have been a number of amendments to the structure of the Delegations to the Lord Mayor. This mainly relates to the numbering convention for the clauses. Many of the proposed revisions have been made to improve the readability and clarity of existing clauses.
8. Amendments also reflect legislative changes, such as the removal of former clause 5(c) relating to performance reviews of the Chief Executive Officer which is no longer required given the addition of a new s226(n) in the *Local Government Act*.
9. The Delegations to the Lord Mayor are set out at Attachment A. A detailed explanation of the proposed changes to the Delegations to the Lord Mayor are set out at Attachment C.

10. The current review has identified a need to amend the Model Code of Conduct adopted by the City to ensure that both the Lord Mayor and Councillors are able to direct their respective staff. It is proposed that the City's Code of Conduct will be amended concurrently with approving the new delegations by inserting a new clause that gives a clear exemption to the limit on directing Council staff. A proposed new Code of Conduct clause 6.3 will confirm the authority of the Lord Mayor to direct Council staff working in the Office of the Lord Mayor. A similar authority will also be given to all City Councillors to direct their support staff (Attachment D).

Delegations to the Chief Executive Officer

11. There are a number of amendments proposed to the Delegations to the Chief Executive Officer as a result of recent changes to the *Local Government Act 1993*, and to improve understanding of the delegations given. For example, within the current delegation there are exceptions to exceptions that can be confusing.
12. On 1 October 2016, changes to the *Local Government Act 1993* came into force, with the key change enabling an extension of the delegation power of a council to include the acceptance of a tender by a general manager. The exception to this is tenders for services that are currently provided by council staff. Tenders for these services must still be approved by council.
13. This change to the Act adopts a recommendation made by the 'Local Government Acts Taskforce' in their report in October 2013. Context for the proposed change to the delegation is provided by recommendation 3.3.8 of that report being:
 - (1) *that the provisions of the Act relating to delegations be reviewed to ensure that they are streamlined, written in plain language and are reflective of the roles and responsibilities of the council and the general manager to facilitate the efficient, effective and accountable operation of local government.*
 - (2) *that the exceptions to delegations of an operational nature not be carried forward to the new Act, ensuring the council focuses on strategic decisions, consistent with IPR. These would include for example:*
 - *acceptance of tenders*
 - *provision of minor financial assistance to community groups*
 - *delegation of regulatory functions to another council or shared services body.*
14. The proposed threshold of \$5M for tenders that can be approved by the CEO presents an opportunity to alleviate the administrative burden of procurement on Council. Council's input into the important initial phase of procurement remains unchanged. Council briefings on the City's major service contracts will be presented to provide assurance that service specifications are appropriate for both Council and community needs.
15. Council will also continue to receive and consider scoping reports for prospective capital projects. The design and development of new and enhanced infrastructure will continue to have stakeholder input to ensure community needs are met.
16. Council will continue to be informed about all tenders that are being prepared, developed and processed through the weekly CEO update.

17. The \$5M threshold aligns to the City's current quarterly reporting for major projects and medium contracts for recurrent services. This value is sufficient to reduce the administrative overhead of reporting the majority of tenders to Council, while still ensuring all major contracts for services and capital works are given consideration by Council. An analysis of tenders considered by Council in 2015 and 2016 shows Council received 159 tender reports and all were resolved in line with Executive and staff recommendations. Seventeen concerned total contract values exceeding \$5M.
18. The Delegations to the Chief Executive Officer are set out in Attachment B.
19. A detailed explanation of the proposed changes to the Delegations to the Chief Executive Officer are set out at Attachment C.

RELEVANT LEGISLATION

20. Section 380, Local Government Act 1993

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Chief Executive Officer

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