

## **ATTACHMENT C**

**DETAILED EXPLANATION OF THE CHANGES  
PROPOSED TO  
THE DELEGATIONS TO THE LORD MAYOR  
AND THE DELEGATIONS TO THE CHIEF  
EXECUTIVE OFFICER**



## Detailed explanation of the proposed changes to the Delegations to the Lord Mayor and the Delegations to the Chief Executive Officer

### Delegations to the Lord Mayor

1. 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. These are set out at Attachment A.
2. The following revisions are proposed to the current Delegations to the Lord Mayor:
  - (a) Clause 1(a) – the words “except as otherwise provided by the Local Government Act 1993” have been removed as set out in a new clause 1. This is not required, as the Lord Mayor must comply with the Act.
  - (b) Clause 2(b) – the reference to legislation has been removed as it is not necessary as set out in a new clause 3. The Lord Mayor must comply with all legislation.
  - (c) Clause 2(c) – has been reworded in a new clause 4 to provide greater clarity for interpretation. There is no change to the authority given.
  - (d) Clause 3(a) – has been amended. The proposed new clause 5 requires the Lord Mayor’s ‘prior consultation’ of the CEO before approving expenditure from contingency funds. This change from the current term ‘after consultation’ is simply to align it to the language used in the new clause 6 of the Delegations to the Chief Executive Officer.
  - (e) Clause 3(b) – has been reworded in a new clause 6 to improve readability. There is no change to the authority given.
  - (f) Clause 3(c) – has been removed. Enquiries made with operational areas has revealed that this delegation is not exercised. Decisions about waiving or reducing fees are made at an operational level by senior staff in compliance with legislative constraints and in accordance with the City’s Revenue Policy. This authority is also set out in the delegations from the Chief Executive Officer to Directors and Staff.
  - (g) Clause 4(a) has been amended. The word ‘media’ has been substituted for ‘press’ in a new clause 7 as it reflects contemporary language about issuing media statements.
  - (h) Clauses 4(b) and (c) – minor structural amendments to improve readability as set out in new clauses 8 and 9. There is no change to the authority given.
  - (i) Clause 4(d) – minor amendment to remove the words “and honorary citizenship” as an example of an honour awarded. This is set out in a new clause 10. The Lord Mayor does not award honorary citizenships.
  - (j) Clause 5 – there are a number of amendments to this clause, as it has been separated out under two new headings. These headings are: ‘Performance Management of the Chief Executive Officer’ (new clauses 11 to 18); and ‘Organisational Accountability’ (new clauses 19 to 23). The changes made to the clause are:

- (i) Clause 5(a) – has been amended. “(CEO Contract)” has been added to the clause to provide context as it is referenced in other clauses. The words “bonuses and incentives” have been removed, as these are not provided for in the standard contract for general managers in NSW. This is now clause 11 in the proposed delegations.
- (ii) Clause 5(b) – this delegation has been split to create new clauses 19 and 20 for improved readability. There is no change to the authority given.
- (iii) Clause 5(c) – has been removed. This clause in its present form is no longer required, due to the addition of a new s226(n) of the *Local Government Act 1993*, that states “in consultation with the councillors, to lead performance appraisals of the general manager”. The authority for the Lord Mayor to settle performance standards for the Chief Executive Officer has been incorporated into the new clause 13.
- (iv) Clause 5(d) – this delegation has been split to create new clauses 12 and 14 for improved readability. There is no change to the authority given.
- (v) Clause 5(e) – has been amended. Any decision to terminate the employment of the Chief Executive Officer must be made by Council in accordance with the standard contract for general managers in NSW. A new clause 16 has been drafted that requires a resolution of Council to provide authority to the Lord Mayor to take administrative action to terminate the Chief Executive Officer’s employment.
- (vi) Clause 5(g) – minor amendment. The words “including any termination payments to be made” have been replaced by “in accordance with the CEO Contract”. Any payments to be made to the Chief Executive Officer would be in accordance with the clauses of the CEO Contract. This is set out in a new clause 17.
- (vii) Clause 5(h) – this clause has not been amended and has been reproduced as a new clause 18. While authority exists for the Lord Mayor to appoint a director as the acting Chief Executive Officer (CEO) from time to time, on 23 November 2015, Council resolved that where the CEO is absent, Council temporarily appoint whichever of the Chief Operating Officer, the Director City Operations, the Director Legal and Governance, or the Chief Financial Officer is nominated in writing by the CEO. Where the CEO is absent and does not or cannot nominate a temporary appointee, the Chief Operating Officer is temporarily appointed as CEO until further resolution by Council.
- (viii) Clause 5(l) – has been reworded in a new clause 23 to remove the words “reasonably considers” as it is expected the Lord Mayor will act reasonably, and in accordance with the Code of Conduct. There is no change to the authority given.
- (k) Clause 6 – has been restructured to improve the readability of the document as set out in new clauses 24 and 25. There is no change to the authority given.
- (l) Clause 7 – minor change to structure of this clause as set out in a new clause 26. There is no change to the authority given.
- (m) Clause 8 – has been restructured and reworded to improve the readability of the document in a new clause 27. New subclauses 27(a) and 27(b) have been added

to provide clarity as to what constitutes the period commonly referred to as a recess period. There is no change to the general authority given to the Lord Mayor during a period the Council is in recess.

### **Delegations to the Chief Executive Officer**

3. 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. These changes are set out in Attachment B.
4. The following revisions are proposed to the Delegations to the Chief Executive Officer:
  - (a) Interpretation clauses – have been amended to create a new ‘E’ that incorporates context clauses that were previously set out under the heading “The Council of the City of Sydney:” This is to improve the readability of the document.
  - (b) Council reserved functions (not to be exercised by the CEO) have been moved towards the back of the document. The proposed delegations commence with a new section titled ‘Specific CEO Delegated Functions’. This has been done to remove, where possible, the exception format of the delegations and to improve understanding. This new section sets out what the Chief Executive Officer can do. Specific changes to any clauses are explained in the following points.
  - (c) Clauses 1 and 2 – have been restructured to form new clauses 1 to 4. These have been drafted to clearly set out the framework for authority given to the CEO. There is no change to the authority given in these new clauses.
  - (d) Clause 6 – has been incorporated into the new clause 4. It has been removed from the exception section of the delegation. The clause requires the CEO to exercise functions delegated in a manner consistent with Council’s policies and decisions. There is no change in authority given.
  - (e) ‘Budget and Resource Allocation’ clauses 7 to 14 have been separated out and are contained in both the ‘Specific CEO Delegated Functions’ and ‘Council Reserved Functions’ sections of the document. This has been done to improve clarity about what the Chief Executive Officer can do. The changes proposed to the clauses are:
    - (i) Clause 7 – there is no change. This becomes a new clause 19.
    - (ii) Clause 8 – this clause has been removed. The recent changes to the Local Government Act define the role of the general manager, including ‘to conduct the day-to-day management of the council in accordance with strategic plans, programs, strategies and policies of the council’.
    - (iii) Clause 9 – this clause has been reworded in a new clause 6 to improve readability
    - (iv) Clause 10 – has been amended. This is now clause 20. Many senior managers believe this clause in its current form creates ambiguity about when consideration by Council is required. Specifically, what constitutes the ‘final’ design of new capital works items requiring Council approval can be

subjective. There is also a view that it unnecessarily captures minor works and can erode operational efficiency. It is proposed that the clause be amended to read “the approval of concept designs for all major capital works”.

- (v) Clause 11 – there is no change. This becomes a new clause 21.
- (vi) Clause 12 – has been amended to describe what the Chief Executive Officer can do. The new clause 6 states: subject to “the prior consultation of the Lord Mayor”, the Chief Executive Officer can authorise expenditure from operational contingency funds. This clause has previously required the approval of the Lord Mayor for such expenditure. The change to ‘prior consultation’ is proposed for consistency with other delegations.
- (vii) Clause 13 – there is no change. This becomes a new clause 22.
- (viii) Clause 14 – there is no change. This becomes a new clause 23.
- (f) Clauses 16 to 18 – ‘Organisation Structure and Personnel Matters’ clauses – There are very minor changes proposed to the wording of these clauses set out in new clauses 8 through 10. There is no change to the authority given.
- (g) ‘Legal Proceedings’ clauses have been separated out and are contained within both the ‘Specific CEO Delegated Functions’ and ‘Council Reserved Functions’ sections of the document. This has been done to improve clarity about what the Chief Executive Officer can do. The changes proposed to the clauses are:
  - (i) Clause 22 – has been amended to separate out what the Chief Executive Officer can and cannot do. A proposed clause 11 gives authority to the Chief Executive Officer to commence proceedings for urgent injunction proceedings. The proposed new clause 31 moderates the new clause 11 to ensure there is no change to the authority given.
  - (ii) Clause 23 – has been amended to separate out what the Chief Executive Officer can and cannot do. A proposed new clause 12 gives authority to the Chief Executive Officer to give legal instructions contrary to a resolution of Council to resolve planning and regulatory appeals. The proposed new clause 32 moderates the new clause 12 to ensure there is no change to the authority given.
- (h) ‘Property, Land Use and Related Matters’ clauses have been separated out and are contained within both the ‘Specific CEO Delegated Functions’ and ‘Council Reserved Functions’ sections of the document. This has been done to improve clarity about what the Chief Executive Officer can do. The changes proposed to the clauses are:
  - (i) Clause 24 – has been amended to separate out what the Chief Executive Officer can and cannot do. Proposed new clauses 13 and 14 give authority to the Chief Executive Officer to approve the occupation and use of public land, crown land or other land managed by Council up to thresholds expressed in the current delegation. A proposed new clause 33 moderates the new clauses 13 and 14 to ensure there is no change to the authority given.
  - (ii) Clause 25 – there is no change. This becomes a new clause 34.

- (iii) Clause 26 – has been amended to separate out what the Chief Executive Officer can and cannot do. Proposed new clause 15 gives authority to the Chief Executive Officer to grant owner’s consent to lodge applications for development on property or land owned or managed by Council. A proposed new clause 35 moderates the new clause 15 to ensure there is no change to the authority given.
- (i) New clause 5 – new authority for the Chief Executive Officer (CEO). On 1 October 2016, a change to the *Local Government Act* 1993, came into force which included 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.

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.*

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. 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.

Council will continue to be informed about all tenders that are being prepared, developed and processed through the weekly CEO update.

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 that 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 that Council received 159 tender reports and that all were resolved in line with Executive and staff recommendations. Seventeen concerned total contract values exceeding \$5M.

All contracts awarded by the Council with a value that is greater than \$150,000 are listed on the City of Sydney web site in accordance with the *Government Information (Public Access) Act 2009*.