

ITEM 4. NON-RESIDENTIAL REGISTER METHODOLOGY AND PLAN 2017 - 2020

FILE NO: X001907.006

SUMMARY

Following changes to *City of Sydney Act 1988*, the City's Chief Executive Officer is required to:

- establish and maintain a register of people with potential eligibility to vote as non-residents at a City of Sydney election; and
- use this register to produce rolls of owners and occupiers and rate-paying lessees.

The legislation has some fundamental flaws which make compliance impossible. These flaws have been raised with the Office of Local Government.

The City developed a methodology and program plan to meet the legislative requirements on a best endeavours basis within the required timeframes. Council endorsed this methodology and program plan at its meeting on 10 August 2015.

The City implemented the endorsed methodology and program plan and produced electoral rolls of non-residents for the election on 10 September 2016. A post-election review of this implementation has been completed.

An updated methodology and plan to maintain the non-residential register to 2020 has been developed to incorporate findings from the review.

Council endorsement of the proposed Non-residential Register Methodology and Plan 2017 – 2020 is being sought.

RECOMMENDATION

It is resolved that Council:

- (A) note that it remains impossible for the City to fully comply with the amendments to the *City of Sydney Act 1988* regarding the non-residential register and rolls that commenced on 6 February 2015;
- (B) note that the inability of the City to fully comply with the amendments to the *City of Sydney Act 1988* represents a significant risk and may result in legal challenge, including challenge to the validity of the outcome of any City election;
- (C) endorse the Non-residential Register Methodology and Plan 2017 - 2020 to maintain the non-residential register to 2020, as shown at Attachment A to the subject report; and
- (D) note that a review of the Non-residential Register Methodology and Plan 2017 - 2020 by an independent auditor identified no very high, high, medium, or low risk findings and that this review was tabled at the Audit Risk and Compliance Committee meeting on 25 May 2017. A copy of this review was circulated to the Lord Mayor and Councillors by the CEO on 31 July 2017.

ATTACHMENT

Attachment A: Non-residential Register Methodology and Plan 2017 – 2020

BACKGROUND

1. The *City of Sydney Amendment (Elections) Act 2014* commenced on 6 February 2015 and imposes obligations on the City's Chief Executive Officer (CEO) to maintain a register of eligible non-residents.
2. The legislation is complex to enact, with some fundamental flaws. The City has raised a number of legislative issues with the Office of Local Government, most recently at a meeting on 28 June 2017. The issues raised are outlined in paragraph 16 below.
3. The City developed a set of business requirements and an associated methodology and program plan to meet the new legislative obligations. These documents are available on the City's website under the Council Meeting Archive of 10 August 2015. Council endorsed the Non-residential Electoral Register and Rolls Methodology and Program Plan at its meeting of 10 August 2015.
4. Implementation of the staged program plan has progressed in accordance with the endorsed methodology and program plan, apart from Stage 3. Councillors were informed of changes to Stage 3 by way of a Committee report in December 2015 and updated on progress by way of CEO Update in January 2016.
5. All required legislated deadlines were met for the 10 September 2016 City of Sydney local government election, including the production of verified non-residential rolls of owners and occupiers and rate-paying lessees.
6. Stage 6 of the program plan included a post-election review to identify possible changes to the proposed maintenance activities. This review has been completed.
7. An updated methodology and plan has been developed to reflect the findings of the review. The original methodology has been enhanced to deliver greater accuracy through improved engagement with potential non-residents.
8. The main methodological enhancements are:
 - (a) simplifying the application process by:
 - (i) reducing the amount of information required. Most owners will only need to supply their date of birth. Occupiers and rate-paying lessees will register on a two-sided form with no requirement for certified documents;
 - (ii) communicating by email;
 - (iii) offering online registration and confirmation of details; and
 - (iv) automatically enrolling eligible persons when possible.

To ensure the integrity of the non-residential register is maintained, the majority of information supplied will be verified against City, ASIC and NSW Electoral Commission data. All applicants will be required to make a declaration that the information they provide is true and correct and that they understand that giving false or misleading information is a serious offence and that the City may contact them and others to seek clarification on the details provided.

For details where external verification is not automated, such as lease details, an audit of one in 10 applications will occur. All applications (including online) will be reviewed by City staff. Where the City is unsure about the veracity of the details supplied, applicants will be required to supply additional details. Applicants' details will not be added to the non-residential register until the additional information supplied is verified. The initial audit ratio of one in 10 will be reviewed and adjusted as necessary once an error rate has been established.

- (b) Encouraging occupier registration by engaging their stakeholder networks.
9. The proposed methodology and plan is considered to be the City's best attempt to practically meet the legislative requirements, assuming that the legislative issues identified are not addressed.

KEY IMPLICATIONS

Strategic Alignment

10. The requirement for the City to maintain a register of people with potential eligibility to vote as non-residents at a City of Sydney election, and to use this register to produce rolls of owners and occupiers and rate-paying lessees, is a mandatory legislative requirement.

Organisational Impact

11. Maintaining the non-residential register will require dedicated internal resources, together with support from a range of existing units within the City.
12. The proposed structure and resourcing for the Council Elections Unit is outlined in section 3 of the methodology and plan. The plan requires 7.4 full time equivalents within the unit. Required ongoing assistance from other City units will include: data provision; systems support; stakeholder engagement; customer service; legal advice; and corporate support.
13. The establishment of the dedicated full time equivalent positions will ensure the impact on the City's business-as-usual operations is kept to a minimum.

Risks

14. Risks associated with the non-residential register are formally reviewed and updated on a monthly basis.
15. High level risks and associated treatment strategy are described in Section 3.5 of the attached methodology and plan.
16. The most serious risk remains that of legal challenge due to the impossibility of complying with the legislation. The primary mitigation measure for this risk is an ongoing dialogue with the Office of Local Government. Legislative issues raised with the Office of Local Government to date are:

	Issue	Change required to resolve	Impact/outcome of change
1	It is impossible to keep the Register accurate at all times as required in the legislation. Note that there is no such obligation on the CEO of the City of Melbourne under the City of Melbourne Act 2001 (Vic) or on the NSW Electoral Commissioner under the Parliamentary Electorates and Elections Act 1941	Accuracy of register and rolls is <i>best endeavours</i> or <i>genuine efforts</i> and not absolute. [City of Sydney Act 1988 18D(4)]	This would enable the City to meet its obligations under the legislation. All past & planned activities are considered the City's best endeavours to maintain the Register.
2	It is impossible for the City to meet legislated requirements for by-elections.	Timing requirements for a City of Sydney by-election are amended to ensure the City can meet its obligations under both the City of Sydney Act 1988 and the Local Government Act 1993. A minimum of six months would be required from a casual vacancy occurring to the by-election.	The City would be able to meet its obligations in terms of notifying applicants about the election date and of their requirement to vote at the upcoming election.
3	Corporation entitlement is unclear.	Include a definition of a corporation within the Act. [City of Sydney Act 1988 14]	The City can make a transparent determination of entitlement for entities such as incorporated associations, trade unions, statutory corporations etc.
4	In the case of occupiers and ratepaying lessees, the current wording of the requirement to answer questions can only be applied to persons who the City already knows are occupiers or ratepaying lessees. The City cannot penalise persons who it believes are occupiers or ratepaying lessees if they do not respond to requests for information because, under the existing legislation, the City cannot know whether persons meet the criteria to be ratepaying lessees or occupiers until they have responded.	That the City can require any person whom it believes <u>may be</u> a ratepaying lessee or an occupier of rateable land within the City of Sydney, to answer enrolment questions. [City of Sydney Act 1988 18D(6)(b)]	The City will be able to issue penalty notices to those potential occupiers and ratepaying lessees who do not respond to requests for information.

	Issue	Change required to resolve	Impact/outcome of change
5	On-line registration is not possible for corporation nominees.	Remove the requirement for corporation nominees to consent in writing to their nomination. [City of Sydney Act 1988 16AB(1)(d)]	The registration process would be simplified and on-line registration would be possible. This change would also reflect the standards for deemed and automatically enrolled persons who are not required to agree in writing to their enrolment. Note that the City: <ul style="list-style-type: none"> • cross-checks all nominations with ASIC data to confirm that nominees are current company officers • writes to all nominees to inform them of their eligibility following a successful nomination.
6	Nominees (deemed or otherwise) may not know that they are required to vote.	Addition of the requirement to inform all nominees (deemed or otherwise) of the inclusion of their enrolment details on the Register. [City of Sydney Act 1988 16AB, 16AC]	All nominees know of their possible requirement to vote as non-residents at City local government elections. This requirement is currently restricted to deemed nominees. If the requirement for written consent by nominees is removed, this should be included to ensure equity.
7	References to <i>parcels</i> of land are meaningless and confusing.	Replace instances of <i>parcels</i> of land with <i>rateable</i> land. [City of Sydney Act 1988 section 14(4)(a)].	Certainty around entitlement.
8	The NSW Electoral Commission cannot give the City <i>residential</i> addresses of entitled persons as it only knows <i>enrolled</i> addresses.	Replace references to <i>reside</i> or <i>residential</i> within the Act with <i>enrolled</i> . [City of Sydney Act 1988 18B (2) (d)(e) and (3) (c)(d), 18D (2)(b) and (8)(b)]	This change would enable the NSW Electoral Commission to comply with the legislation and supply enrolled addresses where required.
9	The NSW Electoral Commission will not give the City the <i>age</i> of entitled persons as it only knows their dates of birth.	Replace <i>age</i> with <i>date of birth</i> in the City of Sydney Act 1988 18D (8)(a)	This change would enable the NSW Electoral Commission to comply with the intent of legislation and supply dates of birth where required.
10	The opportunity for vote stacking where corporations and natural persons jointly own/occupy/lease rateable properties.	Insertion of an overriding clarifying provision that a maximum of two natural persons (whether individuals or corporation nominees) can ever be enrolled in relation to ownership, leasing or occupation of the same piece of rateable property.	This will give clarity and ensure there can be no vote stacking as the City will not be required to deem an unlimited number of natural persons where they own, lease or occupier jointly with one or more corporations and no nomination has been made.
11	The City is not provided with explicit protection from breaches of privacy legislation.	Exemption from the provisions of the Privacy and Personal Information Protection Act 1998 by insertion of equivalent of s 46(3) of the Parliamentary Electorates and Elections Act 1912.	This would bring City provisions into line with those applying to the NSW Electoral Commission.

	Issue	Change required to resolve	Impact/outcome of change
12	<p>Establishment of penalty notices may be subject to legal challenge.</p> <p>A <i>penalty notice</i> as defined in Local Government (General) Regulation 2005 3 is a notice served under section 679 of the Local Government Act. Sec 679 refers to penalties for offences committed under the Local Government Act (not City of Sydney Act).</p>	Amend legislation to enable a penalty notice to be issued under the City of Sydney Act.	The City can issue penalty notices without fear of legal challenge.
13	<p>Practical difficulties around the production of non-residential rolls outside an election period.</p> <p>City of Sydney Act 1988 section 18A (1) requires rolls to be prepared & updated following an election.</p> <p>Local Government Act 1993 302(2) requires the CEO to make the latest copy of the non-residential rolls available for public inspection. This would require continual verification by NSWEC.</p>	Amend the legislation to enable practical implementation.	Clarity around non-residential rolls availability for inspection. It is noted that other amendments proposed relating to the provision of information by the Electoral Commission may make it easier for the City to comply with this obligation.
14	Lack of a workable appeal process for inclusion or omission from the rolls.	Amend Local Government Act 1993 303(1) and Local Government (General) Regulations 2005 281 to enable an appeal process with a practical outcome.	A useful appeal process.
15	There is a lack of clarity regarding who should receive an enrolment letter.	<p>Replace:</p> <ul style="list-style-type: none"> • <i>believes is entitled</i> with <i>believe will be entitled</i> in City of Sydney Act 1988 18E(2)(e) and • <i>believes are entitled</i> with <i>believe will be entitled</i> in City of Sydney Act 1988 18E(3)(d) 	Clarity regarding who should receive an enrolment letter.

	Issue	Change required to resolve	Impact/outcome of change
16	There is lack of clarity regarding the information that can be provided to the City by NSWEC.	<p>Parliamentary Electorates And Elections Act 1912 section 41</p> <ul style="list-style-type: none"> • Add a section: <p>Council of the City of Sydney. The Electoral Commissioner must provide to the Council of the City of Sydney, free of charge, a list specifying electors and their particulars for the State of New South Wales in an electronic form determined by the Commissioner</p> <ul style="list-style-type: none"> (a) once a month (b) particulars of each elector to include enrolled given name, enrolled family name, date of birth and enrolled address and any other particulars as determined by the Electoral Commissioner. <p>Parliamentary Electorates And Elections Act 1912 section 42</p> <ul style="list-style-type: none"> • Add a section: <p>The permitted purposes in relation to the Council of the City of Sydney are:</p> <ul style="list-style-type: none"> (a) any purpose in connection with ensuring the City of Sydney non-residential register remains accurate as required in section 18D of the City of Sydney Act 1988 No 48. 	Ensures sufficient information is provided to the City to enable accurate and efficient maintenance of the register and clarifies the level of information that can be provided by NSWEC.

Social / Cultural / Community

17. Significant personal information, including full enrolled name and date of birth, is required to determine entitlement as a non-resident. Where there is no other source for these details, the City must contact all potential non-residents to request the details required to make a determination. All owners, occupiers and rate-paying lessees of rateable property in the City are potential non-residents.

18. The City had difficulty obtaining personal information from potential non-residents. The City sent a total of 174,721 communications directly to identified potential non-residents requesting information to determine entitlement prior to the election. The City received 37,675 completed form A's, a 21.6% response rate (form A requests personal and corporation information and is required for every applicant type). One of the challenges the City identified through focus groups was the limited interest in voting as a non-resident. Feedback from focus groups included the quote: *'I don't even want to vote in my own council, I'm definitely not interested in yours'*. Many people assumed the City has access to the full electoral roll and so should be able to find their electoral details without their involvement.
19. The proposed methodology and plan has been selected to minimise the burden of involvement by potential non-residents. However, it is likely that limited responses to requests for personal information from potential non-residents will continue.

Environmental

20. In the initial phase of establishing the register, sourcing personal details from potential non-residents consumed significant resources, especially paper, as multiple forms were required to be completed by most applicants. The proposed methodology and plan will reduce the environmental impact, as it includes a move from paper to electronic submission and review of details.

Economic

21. Keeping the register accurate will place a continual administrative burden on non-residents as they are required to confirm and update their details. This burden will be exaggerated for occupiers and rate paying lessees because of the requirement to demonstrate that monetary and occupation thresholds are met.

BUDGET IMPLICATIONS

22. Forecast costs up to and including the election in 2020 are described in Section 3.2 of the attached document. All costs exclude GST.
23. The forecast operational cost of maintaining the non-residential register is \$1.063M per annum where there is no election. During an election year, additional engagement, processing and legislated activities will increase the projected annual operational cost for maintaining the non-residential register to \$1.467M.
24. As is usual during an election year, the City will incur a cost for administering the election. This is estimated to be \$1.5M for the 2020 election.
25. Capital expenditure to enhance the Register IT system is forecast at \$550,000 annually for the next two financial years and \$100,000 in the election year.

RELEVANT LEGISLATION

26. *City of Sydney Act 1988*, Part 3.
27. *Local Government Act 1993* Chapter 10, Part 6, Division 2.
28. *Local Government (General) Regulation 2005*, Schedule 12.

CRITICAL DATES / TIME FRAMES

29. The City is required to keep an accurate register of non-residents at all times.
30. Legislated timeframes and their dates for the next local government election (LGE) are:

Activity	Legislated timeframe	Date for LGE 2020
Enrolment letters sent to all eligible non-residents	130 days before election	5 May 2020
Nomination cut-off	68 days before election	6 July 2020
Close of rolls	40 days before	3 August 2020
Election Date	<ul style="list-style-type: none"> • LGE: second Saturday in September in every fourth year after 2008 • To fill a casual vacancy: within 89 days of the casual vacancy occurring 	12 September 2020

31. If a casual vacancy occurs, it will not be possible to send enrolment letters within the required timeframe. This issue has been raised with, and acknowledged by, representatives of the Office of Local Government, but no legislative amendment has been made at this time.

OPTIONS

32. A number of possible options to maintain the Register have been considered. The overriding approach is to maximise compliance, while minimising the impact on applicants and cost. Each option was reviewed against these three considerations.
33. Doing nothing is not a viable option, as the City must maintain the non-residential register to meet its legislated obligations.

34. Other possible options:

Option	Reason rejected
Shut down, do nothing until 2019, and then re-populate the Register following a large scale communications campaign before local government election 2020	High risk as: <ul style="list-style-type: none"> • does not attempt to comply with the requirement for ongoing accuracy • the City could not deliver non-residential rolls were a by-election called • corporate knowledge to accurately populate the Register would have been lost • option costed as higher than ongoing maintenance • loss of relationships with Office of Local Government, NSW Electoral Commission and others who may want to engage with the City about the Register during the shut-down period
Mass communication with all occupiers and rate paying lessees on a quarterly basis to ensure entitlement thresholds are still met	<ul style="list-style-type: none"> • High cost • Requirement to respond on a quarterly basis would deter applications and reduce the accuracy of the Register
Retain paper based registration and updates	<ul style="list-style-type: none"> • Relatively high processing costs • Online submission allows applicants to be guided through the registration process in a personalised, user friendly way

PUBLIC CONSULTATION

35. Feedback from a range of external stakeholders has informed this plan, including the Office of Local Government, NSW Electoral Commission and community members who contacted the City's customer service.
36. During the election period the City received considerable feedback from members of the community about the engagement process for the establishment of the Non-residential Register. The proposed methodology reflects this feedback and is the City's best attempt to source the significant level of detail required about people and corporations, especially from those who have previously not responded to requests for information.
37. The City continues its dialogue with the NSW Electoral Commission in order to improve data exchange and verification. Issues remain regarding interpretation of legislative responsibilities. A meeting of staff from the City, the NSW Electoral Commission and the Office of Local Government took place on 28 June 2017 in an attempt to resolve these issues. A subsequent meeting between staff from the City and the NSW Electoral Commission has gone some way to resolving these differences. Finalising data exchange and verification protocols with the NSW Electoral Commission is included in the attached methodology and plan.

38. The City has had an ongoing dialogue with the Office of Local Government requesting legislative changes to enable improved compliance. The Office of Local Government has been made aware of how the requested changes would improve compliance. The attached methodology and plan has been developed to reflect the current legislative environment. If any changes are initiated by the Office of Local Government, the expected progression for the legislative change would allow adequate time for the methodology and plan to be updated.
39. Should Council endorse the attached methodology and plan, the City will submit a copy of to both the NSW Electoral Commission and the Office of Local Government for their information.

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