

Resolution of Council

6 April 2020

Item 4.1

Emergency Delegations to the Lord Mayor - Coronavirus Pandemic

Memorandum by the Chief Executive Officer

To Council:

The Coronavirus (COVID-19) pandemic is continuing to escalate quickly in the face of best endeavours to mitigate its spread and impacts. In this rapidly changing environment it is prudent to strengthen contingent administrative arrangements to ensure the continuity of essential services to the community, the work health and safety of City employees and councillors, and for the purposes of ensuring public safety.

The Office of Local Government has recently advised in Circular 20-09 that councils should review their delegations as a matter of urgency to ensure that decisions can be made quickly in response to any developments outside of the normal council meeting cycle, noting that Council's functions (other than those specified in section 377 of the Local Government Act 1993) can be delegated to the Chief Executive Officer, the Lord Mayor or another body such as a committee.

COVID-19 has given rise to a humanitarian and economic crisis on a large scale the like of which has not been seen for the best part of a century or more. Its far-reaching impacts are being felt by many people and organisations around the globe. The situation changes on an hour by hour basis.

Council continues to demonstrate leadership within the community and the local government industry with its responses to date to the challenges of COVID-19. The very high levels of seriousness, urgency and growth in risks, and related disruptions require constant reassessment. Agility in dealing with critical decisions around securing and deploying resources is paramount in the current environment.

Council is now facing increased risks around civic governance and resource decision making that are central to ensuring delivery of core services without seriously compromising the health and wellbeing of the community and staff. The business as usual approach to civic governance is likely to be inadequate if it is not safe enough or otherwise impractical for Council to convene ordinary or extraordinary meetings in the coming months as a result of COVID-19, including in the event of illness or incapacity by Councillors.

For the purposes of managing the rapidly evolving crisis and to ensure business continuity, immediate contingency arrangements should be put in place to enable Council to act swiftly in the best interests of the Council and the community under the circumstances.

Given the rapidly changing and evolving situation it is prudent to grant emergency powers to the Lord Mayor for a limited duration to ensure that crucial services can be provided and cover critical contingencies that may arise.

It is recommended that a contingency arrangement for decision making outside of Council meetings be put in place until such time as the pandemic has ended, or unless terminated by Council before that date. The need for these emergency delegations will be reviewed after six months, reflecting the timing adopted by the NSW Government in relation to its recent legislative amendments to deal with this issue.

This memorandum recommends that Delegation 27 of the Delegation to the Lord Mayor (General Authority of Council During Recess) be temporarily revoked and replaced with a broader delegation allowing the Lord Mayor to make decisions of Council in emergency situations.

Should the Lord Mayor need to exercise this delegation, the following conditions of exercise would apply. The Lord Mayor may only exercise these emergency delegations:

1. After a report in such a form as would ordinarily be presented to Council has been circulated electronically to all councillors, councillors have been given 24 hours to consider the report, and a majority of councillors have given support for the proposed resolution in writing (including by email); or
2. In such circumstances where the Lord Mayor and Chief Executive Officer determine that the time to comply with the conditions of exercise in condition 1 above would exacerbate the risk to service continuity, employee work health and safety, and/or public safety, the Lord Mayor will provide a report to all councillors within 24 hours of their exercise, advising, as a minimum: of the exercise of the delegations, reasons for exercising the delegations, and the circumstances as to why the conditions of exercise in condition 1 could not be met.

The Chief Executive Officer will provide a consolidated report once a month to all Councillors specifying any actions taken by the Lord Mayor under the delegation adopted by Council.

Whilst these emergency delegations are intended to be granted to the Lord Mayor, and it is hoped that the Lord Mayor would be in a position to exercise them if required, it is necessary to have a contingency hierarchy in place, should the Lord Mayor not be able to exercise these delegations for reason of illness or incapacity. Should this be the case, it is intended that the emergency delegations would automatically pass to the Deputy Lord Mayor and Chief Executive Officer or Acting Chief Executive Officer (in that order).

Additionally, in order to enable critical services to be procured in the most efficient and effective way possible, it is recommended that an amendment be made to the current delegations to the Chief Executive Officer to enable contracts up to \$10 million to be dealt with under delegation, up from the existing \$5 million, and to increase the capacity to vary contracts to 20% of the approved contract sum or contract contingency (up from the existing 10%), up to a limit of \$10 million. This will enable the City to act more swiftly to engage providers, commence projects, procure services, extend existing contracts and assist the local economy in every way possible through this difficult period. Procurement under this delegation will continue to be in accordance with the requirements of the Local Government Act 1993, which at this time continue to require a tender for amounts over \$250,000. Reports will continue to be provided to Council of any tenders approved and contracts entered into under this delegation in accordance with current processes.

In addition, following the adoption of a resolution in the Lord Mayoral Minute at the 30 March 2020 Extraordinary Meeting of Council allowing the variation of existing grant agreements, it is recommended that authority be delegated to the Chief Executive Officer to enter into any contracts or documentation to give effect to that resolution. This will allow for existing grant agreements to be varied as efficiently as possible.

In these rapidly revolving and unprecedented times, maintaining a proactive approach to contingency planning and risk mitigation for COVID-19 is vital as part of the ongoing program to serve and protect the interests of Council and the community.

Recommendation

It is resolved that:

- (A) Council temporarily amend Delegation 27 of the Delegations to the Lord Mayor with Emergency Delegations to the Lord Mayor - Coronavirus Pandemic, as shown at Attachment A to the subject memorandum, noting they will be reviewed no later than six months after the date of being made;
- (B) Council note that amended Delegation 27 (Emergency Delegations) may be exercised by the Deputy Lord Mayor or the Chief Executive Officer or Acting Chief Executive Officer (in that order) should the Lord Mayor or Deputy Lord Mayor be unable to exercise these Emergency Delegations by reason of illness or incapacity;
- (C) Council temporarily amend the Instrument of Delegations to the Chief Executive Officer dated 7 August 2017 (as amended by resolution dated 29 October 2018) by amending Delegation 5 to remove the reference to "\$5 million" and replacing with "\$10 million", noting that this will be reviewed no later than six months after being made;
- (D) Council temporarily amend the Instrument of Delegations to the Chief Executive Officer dated 7 August 2017 (as amended by resolution dated 29 October 2018) by amending Delegation 6 to remove the reference to "10%" and replacing with "20% (up to a limit of \$10 million)", noting that this will be reviewed no later than six months after being made; and
- (E) authority be delegated to the Chief Executive Officer to enter into any contracts or documentation to allow grant recipients to vary their deliverables under existing grant agreements for the next six months, in accordance with resolution (D) of the 30 March 2020 Lord Mayoral Minute.

MONICA BARONE

Chief Executive Officer

Attachments

Attachment A. Temporary Delegation 27 - Delegations to the Lord Mayor

Moved by the Chair (the Lord Mayor), seconded by Councillor Miller –

It is resolved that:

- (A) Council temporarily amend Delegation 27 of the Delegations to the Lord Mayor with Emergency Delegations to the Lord Mayor - Coronavirus Pandemic, as shown at Attachment A to the subject memorandum, noting they will be reviewed no later than three months after the date of being made;
- (B) Council note that amended Delegation 27 (Emergency Delegations) may be exercised by the Deputy Lord Mayor or the Chief Executive Officer or Acting Chief Executive Officer (in that order) should the Lord Mayor or Deputy Lord Mayor be unable to exercise these Emergency Delegations by reason of illness or incapacity;
- (C) Council temporarily amend the Instrument of Delegations to the Chief Executive Officer dated 7 August 2017 (as amended by resolution dated 29 October 2018) by amending Delegation 5 to remove the reference to "\$5 million" and replacing with "\$10 million", noting that this will be reviewed no later than three months after being made;
- (D) Council temporarily amend the Instrument of Delegations to the Chief Executive Officer dated 7 August 2017 (as amended by resolution dated 29 October 2018) by amending Delegation 6 to remove the reference to "10%" and replacing with "20% (up to a limit of \$10 million)", noting that this will be reviewed no later than three months after being made; and
- (E) authority be delegated to the Chief Executive Officer to enter into any contracts or documentation to allow grant recipients to vary their deliverables under existing grant agreements for the next three months, in accordance with resolution (D) of the 30 March 2020 Lord Mayoral Minute.

A show of hands on the motion resulted in an equality of voting as follows:

Ayes (5) The Chair (the Lord Mayor), Councillors Kok, Miller, Scully and Thalís

Noes (5) Councillors Chung, Firster, Scott, Phelps and Vithoukás.

The Lord Mayor exercised her casting vote in favour of the motion. The motion was declared carried.

Motion carried.

X008482

City of Sydney Council

Temporary Delegation 27 – Delegations to the Lord Mayor

General authority of Council between meetings

27. to exercise the powers, authorities, duties and functions of Council that are lawfully able to be delegated between meetings of the Council, in order to ensure provision or continuity of essential Council services and functions; the protection of employee and councillor work health and safety; and/or public safety;

provided:

- 1) a report in such a form as would ordinarily be presented to Council has been circulated electronically to all councillors, councillors have been given 24 hours to consider the report, and a majority of councillors have given support for the proposed resolution in writing (including by email); or
- 2) in such circumstances where the Lord Mayor and Chief Executive Officer determine that the time to comply with the conditions of exercise in condition 1 above would exacerbate the risk to service continuity, employee work health and safety, and/or public safety, the Lord Mayor will provide a report to all councillors within 24 hours of their exercise, advising, as a minimum: of the exercise of the delegations, reasons for exercising the delegations, and the circumstances as to why the conditions of exercise in condition 1 could not be met.

27A. Should the Lord Mayor be unable to exercise Delegation 27 for reason of illness or incapacity, this delegation automatically passes to:

- a) the Deputy Lord Mayor, or
- b) the Chief Executive Officer (or any person formally acting in that capacity), if the Deputy Lord Mayor is unable to exercise them for reason of illness or incapacity.