

Panel of Conduct Reviewers and Administrative Changes to Code of Conduct

File No: S077038.004

Expression of Interest No: SSROC E2017-01

Summary

This report provides details of the expressions of interest received for the establishment of a Panel of Conduct Reviewers appointed by the Southern Sydney Regional Organisation of Councils (SSROC).

On 13 May 2019, Council adopted a Code of Conduct and Procedures for the Administration of the Code of Conduct as issued by the Office of Local Government (OLG).

The Code and Procedures contain a comprehensive framework to guide the management of allegations of breaches of Council's Code of Conduct by staff, Councillors and the Chief Executive Officer. This framework includes the requirement for a panel of conduct reviewers comprised of persons independent of Council. Conduct reviewers are responsible for reviewing allegations of breaches of the Code of Conduct by Councillors or the Chief Executive Officer.

An expression of interest was called by SSROC in April 2017 to establish a regional Panel of Conduct Reviewers for participating member Councils of the SSROC region to draw upon on an "as required" basis.

It was agreed by the SSROC selection committee that the recommended applicants for inclusion in the SSROC regional panel are those applicants indicated in Confidential Attachment B.

The SSROC Panel of Conduct Reviewers was appointed for a four-year period until 15 June 2021. It is recommended that Council adopt the Panel for the remaining period of time.

This report recommends that Council adopt the Panel of Conduct Reviewers (Confidential Attachment B) appointed by the Southern Sydney Regional Organisation of Councils (SSROC).

The Office of Local Government released guidance material on the Model Code of Conduct in August 2019. This together with further consultation with the Office of Local Government has also led to minor administrative changes to the City's Code of Conduct. These changes include removing "volunteers" from the definition of "council official" and adding a definition of "contractors".

Recommendation

It is resolved that:

- (A) Council adopt the Panel of Conduct Reviewers appointed by the Southern Sydney Regional Organisation of Councils, until 15 June 2021, as shown at Confidential Attachment B to the subject report;
- (B) authority be delegated to the Chief Executive Officer to negotiate, execute and administer the contracts relating to the panel;
- (C) Council adopt the amended City of Sydney Code of Conduct, shown at Attachment A to the subject report; and
- (D) Council note that the Chief Executive Officer has been delegated authority to make minor amendments to the Code of Conduct and the Procedures for the Administration of the Code of Conduct, as required from time to time, subject to all Councillors being informed of any such changes as per Council resolution of 13 May 2019.

Attachments

Attachment A. City of Sydney Code of Conduct September 2019

Attachment B. SSROC Panel of Conduct Reviewers (Confidential)

Background

1. The New South Wales Government has a comprehensive framework to guide the management of allegations of breaches of a council's code of conduct by staff, councillors or the general manager. Details are contained within the Office of Local Government's (OLG) Model Code of Conduct and Procedures for the Administration of the Model Code of Conduct.
2. The 2018 Model Code of Conduct for Local Councils in NSW and Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW were prescribed on 18 December 2018. The Office of Local Government advised that Councils should review their existing panels of conduct reviewers and determine to appoint a new panel using the expression of interest process prescribed under the Procedures if they have not done so in the past four years. Councils may appoint shared panels with other councils including through a joint organisation or another regional body associated with the councils.
3. Council adopted the previous panel of independent conduct reviewers in July 2013. All members of the City's panel were drawn from the panel appointed by the Southern Sydney Regional Organisation of Councils (SSROC).
4. In May 2017, an expression of interest was called by SSROC from suitably qualified individuals who wished to be placed on a regional Panel to fulfil the function of a code of conduct reviewer for participating member councils of the SSROC region. The Panel is open to SSROC member councils to draw upon on an "as-required" basis to review complaints made under each council's Code of Conduct and Procedures.
5. Specific requirements for panel members were:
 - (a) an understanding of local government;
 - (b) knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the Public Interest Disclosures Act 1994;
 - (c) knowledge and experience of one or more of the following: investigations, law, public administration, public sector ethics, alternative dispute resolution; and
 - (d) meeting the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6 of the Procedures for the Administration of the Code of Conduct.
6. The evaluation panel determined that submissions would be assessed on the basis of the experience of the Respondents and their respective organisations and the pricing attached to the submission. If all Respondents were evaluated to have the same experience and knowledge of local government the evaluation would come down to the pricing requested.
7. The evaluation panel selected a panel of eight; the Panel has been appointed for a four-year period.
8. Whilst SSROC has managed the process and will maintain the Panel, it will not be involved in any specific matter. Council will deal directly with individuals from the Panel as required. The contractual arrangements will be solely between the Council and the conduct reviewer(s).

9. The manner of dealing with complaints is set out in the Procedures for the Administration of the Code.
10. The OLG released guidance material on the Model Code of Conduct in August 2019. This together with further consultation with the OLG has led to minor administrative changes to the City's Code of Conduct.
11. A council may choose to extend the application of the Code to persons that are not "council officials" such as volunteers, contractors and wholly advisory committees. This extension is not a compulsory requirement of the Model Code of Conduct.
12. It is recommended that amendments are made to the definition of Council Official to provide clarity and enable efficient implementation of the Code. It is proposed that the definition of Council Official be changed to:

Council Official: includes councillors, members of staff of a council, administrators, council committee members, delegates of council, contractors and members of wholly advisory committees and, for the purposes of clause 4.16, council advisers.

13. Removing "volunteers" from the definition of "council official" is recommended because the City's volunteers range from Bushcare volunteers who spend a few hours volunteering, to those who participate in more formal volunteering programs. It is not possible for the Code of Conduct to be universally applied across the range of the City's volunteers.
14. It is also recommended, again for the purposes of the clarity and utility of the City's Code of Conduct, that the following definition be added:

Contractor: agency staff engaged by Council.

Financial Implications

15. Council will enter into an individual arrangement with each person / organisation appointed to conduct reviews of complaints made under the Code of Conduct. Fees will be charged for each appointment as per the fee structure provided by the conduct reviewer in Attachment B.
16. There are sufficient funds allocated for this project within the current year's operating budget and future years' forward estimates.

Relevant Legislation

17. Section 440 (3) of the Local Government Act 1993 required that a council must adopt a Code of Conduct that incorporates the provisions of the Model Code.
18. Attachment B contains confidential commercial information of the person/organisation which, if disclosed, would:
 - (a) confer a commercial advantage on a person or company with whom Council is conducting (or proposes to conduct) business; and
 - (b) prejudice the commercial position of the person or company who supplied it.
19. 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

20. The term of the City's panel of conduct reviewers has concluded. Therefore the Council must establish a new panel of conduct reviewers in accordance with the requirements of the Procedures for the Administration of the Code of Conduct.

Options

21. Council has the option of developing its own panel of conduct reviewers, however, this is considered to duplicate the work SSROC has already undertaken on our behalf and is not recommended.

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