

## Item 14

### Adoption - Key City of Sydney Governance Documents

**File No:** S121629.017, X109863 and X101731

#### Summary

##### Code of Conduct

Section 440(7) of the Local Government Act 1993 (the Act) requires that Council review the City's Code of Conduct within the first 12 months after each ordinary election and make such adjustments as it considers appropriate.

Council must adopt a code of conduct and procedures that incorporate the provisions of the model code and procedures. The 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 last updated by the Office of Local Government in August 2020. The current Code of Conduct and Procedures for the Administration of the Code of Conduct (Procedures) are based on the 2020 Model Code of Conduct and Procedures. No changes are proposed to the Code of Conduct or Procedures as part of this review.

It is noted that the Office of Local Government has recently published a Discussion Paper proposing potential changes to the Code of Conduct in relation to councillors. Any amendments to the Model Code of Conduct will be reported to Council with proposed amendments where appropriate.

##### Councillor Meetings with Registered Lobbyists and Property Developers Policy

The Councillor Meetings with Registered Lobbyists and Property Developers Policy was adopted on 8 April 2024. It requires a review following every Council election. No changes are proposed to the Councillor Meetings with Registered Lobbyists and Property Developers Policy as part of this review.

##### Delegations to the Lord Mayor and the Delegations to the Chief Executive Officer

Section 380 of the Local Government Act 1993 requires that each Council review all of its delegations during the first 12 months of each term of office. The existing delegations to the Lord Mayor and the Chief Executive Officer remain in force until Council has approved the revised delegations.

The Delegations to the Lord Mayor and the Delegations to the Chief Executive Officer were last reviewed by Council in August 2022. Temporary delegations made in response to the Covid-19 pandemic were removed throughout this period as they expired.

A full review of both registers has been undertaken in line with a recent significant review of the Register of Delegations from CEO to Directors and staff. This review of the Delegations to the Lord Mayor and Delegations to the CEO has taken the opportunity to update the format, reflect amendments to legislation, consolidate and clarify the delegations where possible and minimise duplication.

The Delegations to the CEO are currently structured to include both specific CEO delegated functions and Council reserved functions (in addition to those reserved under section 377 of the Act). In many cases this results in duplication and lack of clarity. It is proposed that the updated Delegations to the CEO clearly state the role of the CEO under section 335 of the Act and that Council delegates all powers and functions to the CEO other than those specifically reserved under legislation, delegated exclusively to the Lord Mayor from time to time or as set out in a list of specific limitations.

## Recommendation

It is resolved that:

- (A) Council adopt the City of Sydney Code of Conduct shown at Attachment A to the subject report;
- (B) Council adopt the City of Sydney Procedures for the Administration of the Code of Conduct as shown at Attachment B to the subject report;
- (C) Council adopt the Councillor Meetings with Registered Lobbyists and Property Developers Policy as shown as Attachment C to the subject report;
- (D) authority be delegated to the Chief Executive Officer to make amendments to the City of Sydney Code of Conduct, Procedures for the Administration of the Code of Conduct and the Councillor Meetings with Registered Lobbyists and Property Developers Policy, in order to correct any minor drafting errors, update the form attached to the Councillor Meetings with Registered Lobbyists and Property Developers Policy from time to time as required and to finalise design and accessible formats for publication;
- (E) Council note that the Office of Local Government may develop and publish an updated model code of conduct and procedures and a further report will be brought to Council if required;
- (F) Council note that the Office of Local Government may develop and publish lobbying guidelines and a model policy and a further report will be brought to Council if required;
- (G) Council approve the Delegations to the Lord Mayor, as shown at Attachment F to the subject report; and
- (H) Council approve the Delegations to the Chief Executive Officer, as shown at Attachment G to the subject report;
- (I) Council revoke the existing Delegations to the Lord Mayor dated 22 August 2022 and Delegations to the Chief Executive Officer dated 22 August 2022 as shown at Attachments D and E to the subject report.

**Attachments**

- Attachment A.** City of Sydney Code of Conduct
- Attachment B.** City of Sydney Procedures for the Administration of the Code of Conduct
- Attachment C.** Councillor Meetings with Registered Lobbyists and Property Developers Policy
- Attachment D.** Delegations to the Lord Mayor dated 22 August 2022
- Attachment E.** Delegations to the Chief Executive Officer dated 22 August 2022
- Attachment F.** Delegations to the Lord Mayor
- Attachment G.** Delegations to the Chief Executive Officer

## Background

### Code of Conduct and Procedures for the Administration of the Code of Conduct

1. Under section 440 of the Local Government Act 1993 councils must review their adopted codes of conduct within 12 months of the election and make such adjustments as they consider appropriate.
2. Councils must adopt a code of conduct that incorporates the provisions of the Model Code of Conduct prescribed by the Regulation. There have been no changes to the Model Code or Model Procedures for the Administration of the Code of Conduct by the Office of Local Government (OLG) since 2020.
3. A council's adopted code of conduct may also include provisions that supplement the Model Code of Conduct provided that these provisions are not inconsistent with the Model Code of Conduct.
4. The City has kept its Code of Conduct consistent with the Model Code for many years, and last updated the Code of Conduct in 2020 following minor changes to the Model Code of Conduct and the Model Procedures.
5. The OLG review of the regulatory framework for dealing with councillor misconduct which commenced in 2022 is ongoing. Most recently the OLG released a Councillor Conduct and Meeting Practices Discussion Paper on 5 September 2024, with submissions closing on 15 November 2024. The City will make a submission as part of this process.
6. Accordingly, no changes are proposed to the existing Code of Conduct and Procedures as part of this review. The OLG communications will continue to be monitored and a further report will be brought to Council if required.
7. Councillors receive Code of Conduct training at the commencement of the new Council term and when any changes are made to the Code. Staff receive induction training on commencement with the City and undertake regular refresher training.

### Councillor Meetings with Registered Lobbyists and Property Developers Policy

8. Council adopted a new Councillor Meetings with Registered Lobbyists and Property Developers Policy on 8 April 2024. This policy requires City of Sydney Councillors to record and submit details of meetings with registered lobbyists and property developers. These records are published on the City's website.
9. In recent investigations the Independent Commission Against Corruption (ICAC) has considered the corruption risks associated with the lobbying of councillors and made corruption prevention recommendations.
10. Among other things, ICAC has recommended that the OLG develop guidelines to enhance transparency around the lobbying of councillors.
11. The OLG has advised that it is developing guidelines to enhance transparency around the lobbying of councillors and a model policy on lobbying to support councils to implement the guidelines.

12. The Councillor Meetings with Registered Lobbyists and Property Developers Policy operates to supplement the provisions of the Code of Conduct. It includes a provision that the policy be reviewed and put to Council for endorsement following every Council election.
13. The Policy is recommended for adoption without any change in substance. The only recommended change being removal of the commencement date as it is no longer relevant.

#### **Delegations to the Lord Mayor and Delegations to the Chief Executive Officer**

14. This review of the Delegations to the Lord Mayor and Delegations to the CEO has taken the opportunity to update the format, reflect amendments to legislation, consolidate and clarify the delegations where possible and minimise duplication.

#### Delegations to the Lord Mayor

15. The Delegations to the Lord Mayor have been significantly re-worked but there are only a few substantive changes. The majority of changes relate to the re-ordering of wording for additional clarity and consistent format.
16. The preamble now outlines the role of the Lord Mayor under section 226 of the Act for more guidance. The additional delegations listed in this register, as powers rather than limitations, reference section 226(0) which allows Council to determine that the Lord Mayor may exercise any other functions of the Council that the Council determines.
17. Delegation 4 currently includes a provision relating to other chairpersons, rather than the Lord Mayor. This appears to be a delegation to Chairs other than the Lord Mayor and this power is already established in the Act and the code of meeting practice. It is recommended that this delegation be deleted.
18. A new delegation has been added for clarity that the Lord Mayor has authority to approve civic and ceremonial events. This is consistent with the role of the Lord Mayor under the Act and was always excluded from the Delegations to the CEO but not expressly included in the Delegations to the Lord Mayor.
19. The Lord Mayor's delegations include four delegations relating to the performance management of the CEO. These have been combined in the current update for clarity and simplification. The new delegation makes it clear that all performance management of the CEO is in accordance with the Act.
20. The delegations to the Lord Mayor relating to organisational accountability are inconsistent with functions and powers under the current provisions of the Act, Regulations and the focus on the role of the Audit, Risk and Compliance Committee (ARCC) as set out in the Office of Local Government's Audit and Risk Guidelines. Any requests for audits of the organisation should be raised through the Chair of the ARCC, rather than directly through the Chief Internal Auditor. It is recommended that these delegations be deleted except for the delegation to obtain direct and independent advice relevant to Council functions.
21. There are some other minor wording changes for the purpose of clarity in relation to the authority to obtain legal services and the delegation of authority during recess but these changes do not substantially amend the relevant delegations.

Delegations to the CEO

22. The Delegations to the CEO are currently structured to include both specific CEO delegated functions and Council reserved functions (in addition to those reserved under section 377 of the Act). In many cases this results in duplication and lack of clarity.
23. Previous limitations on the CEO's delegation that are either addressed through another pathway, such as legislation, or are now obsolete due to legislative changes, have been removed. In addition, concurrence requirements have been removed where possible, such as the reference to the internal governance processes dealing with tenders and contract variations.
24. Section 377 of the Local Government Act lists specific Council reserved functions which cannot be delegated and require Council resolution. The balance of Council's functions are delegated to the CEO. Under section 378 of the Act, the CEO may delegate any of their functions, other than this power of delegation.
25. Council reserved functions under section 377 of the Act are:
  - (a) the appointment of a general manager,
  - (b) the making of a rate,
  - (c) a determination under section 549 as to the levying of a rate,
  - (d) the making of a charge,
  - (e) the fixing of a fee,
  - (f) the borrowing of money,
  - (g) the voting of money for expenditure on its works, services or operations,
  - (h) the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment),
  - (i) the acceptance of tenders to provide services currently provided by members of staff of the council,
  - (j) the adoption of an operational plan under section 405,
  - (k) the adoption of a financial statement included in an annual financial report,
  - (l) a decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6,
  - (m) the fixing of an amount or rate for the carrying out by the council of work on private land,
  - (n) the decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work,
  - (o) the review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the Environmental Planning and Assessment Act 1979,

- (p) the power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194,
  - (q) a decision under section 356 to contribute money or otherwise grant financial assistance to persons,
  - (r) a decision under section 234 to grant leave of absence to the holder of a civic office,
  - (s) the making of an application, or the giving of a notice, to the Governor or Minister,
  - (t) this power of delegation,
  - (u) any function under this or any other Act that is expressly required to be exercised by resolution of the council.
26. The updated preamble in the Delegations to the CEO outlines the role of the CEO under s335 of the Act. The effect of the Delegations to the CEO is that Council delegates all powers and functions to the CEO other than those specifically reserved under legislation, delegated exclusively to the Lord Mayor from time to time or as set out in a list of specific limitations.

#### Budget and resource allocation

27. A number of delegations and limitations in the category of budget and resource allocation are deleted in the updated document. These include the limitation relating to association memberships as these are the subject of an annual report to Council. The reservation prohibiting the CEO from making donations contrary to Council resolution is also not required as donations contrary to resolutions or policy are not permitted in any event.
28. The delegations regarding variations to contracts have been reworded for clarity and to remove references to concurrences and organisational processes, consistent with the approach of making the documents as simple and clear as possible. The focus for variations is to ensure that contracts which were not originally approved by Council are not varied so as to exceed the \$5 million limit. Where this is proposed a report will need to be brought to Council.
29. The limitation on approvals for concept designs has been clarified with new wording making it clear that the CEO cannot approve concept designs for capital works projects with an estimated project cost of more than \$5 million.
30. The current Council reserved function prohibits the CEO from authorising any expenditure greater than \$250,000 excluding GST per project from the capital contingency funds. It is proposed that this amount be increase to \$500,000 in light of, in particular, significant increases in construction costs in recent years. In most instances this contingency spending will be occurring under existing contracts so additional tender processes will not be required.

Legal Proceedings

31. It is recommended that the current limitations relating to legal proceedings be combined, which will enable proceedings to be commenced in the Supreme and Federal Courts provided the Lord Mayor has been consulted. All significant legal matters are reported to Council in the CEO update and quarterly reports. In addition, specific delegations enabling matters to be resolved contrary to Council resolution in planning litigation matters have been removed as Council no longer makes resolutions determining development applications meaning this delegation is no longer required.

Property, land use and related matters

32. The CEO's delegation to grant owner's consent to the lodgement of an application to carry out development on significant property or land owned or managed by Council is currently subject to some qualifications.
33. The current wording of the limitations is legally unclear as they refer to granting owner's consent subject to a time limit which is not consistent with the concept of owners consent for applications (provided once and for all time). This limitation is not required as significant works will come to Council for approval under other scoping reports or planning approvals and is recommended for removal.
34. It is proposed to increase the threshold at which leasing and licensing matters will be reported to Council to improve the ability of the organisation to efficiently respond to commercial leasing opportunities.
35. The current CEO delegation 15 is limited to approvals where the rental or fee does not exceed \$500,000 per annum and the term does not exceed 10 years (5 years plus one 5 year option). It is now proposed that the CEO will have delegation to enter agreements provided that the rental or fee is less than \$1,000,000 or the term is less than 15 years (including any options).

Planning and development

36. The current Delegations to the CEO also include a number of council reserved functions relating to determination of applications for development consent relating to, for example, the erection of buildings of more than 3 storeys and approval to demolish heritage items or entire residential buildings. The role of Council in determining these matters has been superseded following multiple changes to planning legislation over time including the introduction of Local Planning Panels. These limitations on delegation are accordingly no longer of any practical effect.

Organisational structure and personnel matters

37. The current delegations include both specific delegations to the CEO and Council reserved functions in relation to organisational structure and personnel matters. For example, the CEO currently has delegation (with some consultation requirements) to appoint senior staff, make structural changes involving M3 managers and enter into any significant enterprise agreement.



38. As a result of recent amendments to the Local Government Act 1993, councils no longer have the function of determining senior staff positions within their organisation structure. These amendments mean that the governing bodies of councils and the CEO will have the following responsibilities in determining the organisation structure of a council:
- Council is required to approve the resources to be allocated to the employment of staff after consulting the CEO, and
  - the CEO is in turn responsible for determining the organisation structure of the council after consulting with Council as governing body and for all other staffing matters.
39. The provisions in the CEO Delegations relating to organisational structure and personnel matters have been deleted due to these legislative changes as they are no longer applicable or required.

#### Council Operations and Services

40. The limitations on delegation currently restrict the CEO from carrying out new 'non-core' services not already approved by Council. The term 'non-core' has been removed in new limitations for clarity as all new services added to Council's operations would be additional to Council's core functions and should be determined by Council.

### **Key Implications**

#### **Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision**

41. Sustainable Sydney 2030-2050 Continuing the Vision renews the communities' vision for the sustainable development of the city to 2050. It includes 10 strategic directions to guide the future of the city, as well as 10 targets against which to measure progress. These policies are aligned with the following strategic directions and objectives:
- (a) Direction 1 - Responsible governance and stewardship - by prescribing a common standard of behaviour and ethics for staff and councillors, improving transparency for the community as to the nature of meetings held by Councillors with registered lobbyists and property developers and by ensuring the proper and effective exercise of the City of Sydney's powers and functions by delegation in accordance with the Local Government Act 1993.

#### **Organisational Impact**

42. There are no impacts from this report in relation to the Code of Conduct and Procedures or the Councillor Meetings with Registered Lobbyists and Property Developers Policy as it is recommended that no changes be made to the existing documents.
43. Councillors will be trained in the Code of Conduct and Councillor Meetings with Registered Lobbyists and Property Developers Policy as part of the induction process.
44. The organisational impact of any change to the delegations has been considered as part of the Delegation Review Group review and Executive endorsement process, before being recommended for approval by Council. A review of delegations to staff will be undertaken once the new Delegations to the CEO are endorsed.

### **Relevant Legislation**

45. Local Government Act 1993.
46. Local Government (General) Regulation 2021.
47. Electoral Funding Act 2018.

### **Public Consultation**

48. No public consultation is required for the documents the subject of this report.

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