

Item 4.

Delegations of Authority to the Lord Mayor and Chief Executive Officer

File No: X109863 and X101731

Summary

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 (CEO) 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 the CEO to Executive 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 s377 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 s335 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.

The proposed changes to the Lord Mayor and CEO delegations were deferred at the extraordinary Council meeting on 10 October 2024 for consideration at a future meeting. The CEO subsequently requested Councillors to provide any questions and feedback on the proposed delegations by 1 November 2024 so that a follow up report to Council could be prepared.

This report and the proposed changes, incorporates the feedback received.

Recommendation

It is resolved that:

- (A) Council approve the Delegations to the Lord Mayor, as shown at Attachment C to the subject report;
- (B) Council approve the Delegations to the Chief Executive Officer, as shown at Attachment D to the subject report; and
- (C) 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 A and B to the subject report.

Attachments

- Attachment A.** Delegations to the Lord Mayor dated 22 August 2022
- Attachment B.** Delegations to the Chief Executive Officer dated 22 August 2022
- Attachment C.** Delegations to the Lord Mayor
- Attachment D.** Delegations to the Chief Executive Officer

Background

1. 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.
2. This review of the Delegations to the Lord Mayor and Delegations to the Chief Executive Officer (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

3. The Delegations to the Lord Mayor have been significantly re-worked but there are no substantive changes. The majority of changes relate to the re-ordering of wording for additional clarity and consistent format.
4. 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(o) which allows Council to determine that the Lord Mayor may exercise any other functions of the Council that the Council determines.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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

10. 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.
11. 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.
12. 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.
13. 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 (except in specific circumstances as set out in section 377(1A)),
 - (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, and
 - (u) any function under this or any other Act that is expressly required to be exercised by resolution of the council.
14. As with the Delegations to the Lord Mayor, the updated preamble in the Delegations to the CEO outlines the role of the CEO under s335 of the Local Government 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.

Budget and resource allocation

15. A number of delegations are no longer required in the category of budget and resource allocation. Association memberships are the subject of an annual report to Council. The Council reserved function relating to budget and resource allocation is not required as Council is not able to delegate the voting of expenditure and this restriction has no practical effect. 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.
16. 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 will occur a report will need to be brought to Council.
17. Where a contract was originally under \$250,000 and not awarded following a tender process, any variation which subsequently takes the value of that contract over \$250,000 requires an exemption from tender by resolution of Council in accordance with the Act. Contracts that are awarded and varied under delegation proceed through internal governance processes, including review and approval from legal, finance and procurement staff.
18. The limitation on approvals for concept designs has been reverted to the previous wording following councillor feedback. Council will continue to approve all major capital works projects..

19. 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 increased to \$500,000 in light of, 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

20. 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, references to enabling matters to be resolved contrary to Council resolution in planning litigation have been removed as Council no longer makes resolutions determining development applications.

Property, land use and related matters

21. 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.
22. 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.
23. 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.
24. The current CEO delegation 15 relates to approvals where the rental or fee does not exceed \$500,000 per annum and the term does not exceed 10 years (including options). It is now proposed that the CEO will have delegation to enter agreements provided that the rental or fee is proposed to be increased less than \$1,000,000 or the term is less than 15 years (including any options). It is noted that this does not override statutory processes required to be followed in relation to community land, such as compliance with the requirements of plans of management.

Planning and development

25. 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 including the introduction of Local Planning Panels. These limitations on delegation are accordingly no longer required.

Organisational structure and personnel matters

26. 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.
27. As a result of recent amendments to the Local Government Act, the legislative arrangements in relation to the employment of senior staff have changed. 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.
28. 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

29. 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 due to the presumption that all new services added 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

30. 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

31. 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.
32. 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.

33. The organisational impact of any change to the delegations is considered as part of the Delegation Review Group review and Executive endorsement process, before being recommended for approval by Council.

Relevant Legislation

34. Local Government Act 1993.
35. Local Government (General) Regulation 2021.
36. Electoral Funding Act 2018.

Public Consultation

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

KIRSTEN MORRIN

Executive Director Legal and Governance

Nellette Kettle, Manager Risk and Governance