

Item 5.

Report on City of Sydney Suppliers and Investments in Relation to the Boycott, Divestment and Sanctions Campaign

File No: X101909

Summary

At the 24 June 2024 Council meeting, Council resolved that the Chief Executive Officer be requested to prepare a report on the City's processes that impose restrictions on financial investment and procurement activities as result of evidence of human rights abuses, weapons supply and how they pertain to the Boycott, Divestment and Sanctions Campaign.

The report was to review divestments that have or may be undertaken to ensure that these occurred in adherence with the Council's Investment Policy. This policy prohibits investments in financial institutions involved in any human rights violations. Such violations may include the illegal occupation of the settlements in Palestinian territories, and the supply of weapons.

Advice was also requested on any legislative and/or legal considerations that may affect Council's ability to implement restrictions of this nature. In addition, recommendations covering any changes that Council make to existing suppliers and investments, to ensure that Council is not purchasing from companies involved in weapons or human rights abuses were requested.

The 24 June 2024 Council resolution also noted that the United Nations Office of the High Commissioner for Human Rights maintains a database of companies involved in one of ten defined activities (paragraph 96 A/HRC/22/63) that raise particular human rights violations concerns.

In response, staff have undertaken a review of the various elements of the June 2024 Council resolution. All of the City's existing financial investments and contractual relationships have been reviewed against the UNHCR register. No current investments or contractual relationships with entities included on the register were found.

To ensure that the UNHCR register is considered in future, a number of principles have been developed. These will guide future decisions in relation to the UNHCR list and are set out below:

- We will monitor the UNHCR list to identify any impacts arising from changes and bring any relevant updates to Council.
- We will implement processes as part of our sourcing strategies to ensure that we consider the UNHCR list as part of the process, subject to relevant laws.
- We will review all procurements to ensure that we are not entering new procurement agreements with entities on the UNHCR list, subject to compliance with relevant laws.
- We may from time to time spend money with entities on the list when it is necessary to do so for compliance purposes. Every endeavour will be made to keep such expenditure to a minimum.

- We will implement ongoing processes to ensure we are aware of any changes to the UNHCR list and bring any relevant updates to Council.
- We will assess each procurement and if application of these principles will cause a breach of laws, the principles will not be applied for that particular procurement.

Recommendation

It is resolved that:

- (A) Council note the review of City of Sydney suppliers and investments in relation to the United Nations Office of the High Commissioner for Human Rights database of companies involved in one of ten defined activities (paragraph 96 A/HRC/22/63) that raise particular human rights violations concerns;
- (B) Council note that staff have examined all existing financial investments and contractual relationships and reviewed them against the UNHCR register;
- (C) Council note that no existing investments or contractual relationships with entities included on the register were found;
- (D) Council endorse the proposed principles, set out in the body of this report, that will guide future decisions in relation to the UNHCR list and note that the principles will be available on the City's website;
- (E) Council note that the Investment Policy already includes clauses which prohibit investments in financial institutions associated with human rights abuses;
- (F) Council note the Modern Slavery Policy, which prohibits procurement from entities associated with human rights abuses; and
- (G) Council note that the Chief Executive Officer will review the application and relevance of these resolutions after two years, with the outcome of that review to be reported to Council via the CEO Update.

Attachments

Nil.

Background

1. At the 24 June 2024 Council meeting, Council resolved that the Chief Executive Officer be requested to prepare a report on the City's processes that impose restrictions on financial investments and procurement activities as result of evidence of human rights abuses, weapons supply and how they pertain to the Boycott, Divestment and Sanctions Campaign.
2. The report was to review divestments that have or may be undertaken to ensure that these occurred in adherence with the Council's Investment Policy. This policy prohibits investments in financial institutions involved any human rights violations. Such violations may include the illegal occupation of the settlements in Palestinian territories, and the supply of weapons.
3. Advice was also requested on any legislative and/or legal considerations that may affect Council's ability to implement restrictions of this nature.
4. In addition, recommendations covering any changes that Council makes to its suppliers and investments, to ensure that Council is not purchasing from companies involved in weapons or human rights abuses.
5. The Council resolution of 24 June 2024, also noted that the United Nations Office of the High Commissioner for Human Rights maintains a database of companies involved in one of ten defined activities (paragraph 96 A/HRC/22/63) that raise particular human rights violations concerns.
6. In response, staff have undertaken a review of the City's financial investments and procurement policies and practices against the various elements of the June 2024 Council resolution. All of the City's existing financial investments and contractual relationships and have been reviewed against the UNHCR register. No investments or contractual relationships with entities included on the register were found.
7. To ensure that the UNHCR register is considered in future, a number of principles have been developed. These will guide future decisions in relation to the UNHCR list and are set out below:
 - We will monitor the UNHCR list to identify any impacts arising from changes and bring any relevant updates to Council.
 - We will implement processes as part of our sourcing strategies to ensure that we consider the UNHCR list as part of the process, subject to relevant laws.
 - We will review all procurements to ensure that we are not entering new procurement agreements with entities on the UNHCR list, subject to compliance with relevant laws.
 - We may from time to time spend money with entities on the list when it is necessary to do so for compliance purposes. Every endeavour will be made to keep such expenditure to a minimum.
 - We will implement ongoing processes to ensure we are aware of any changes to the UNHCR list and bring any relevant updates to Council.

- We will assess each procurement and if application of these principles will cause a breach of laws, the principles will not be applied for that particular procurement.
8. These principles will be referenced by staff as they develop investment recommendations and across the broad range of the City's procuring activities.
 9. The City's Investment Policy which is reviewed and updated annually sets out Council's investment objectives to safeguard the City's cash and investment portfolio, achieve appropriate rates of return and manage the portfolio to ensure sufficient liquidity to meet Council's business objectives. It includes investment criteria to frame investment decisions, risk management parameters, and investment governance standards to ensure transparency, internal controls and performance management. It already includes clauses which prohibit investments in financial institutions associated with human rights abuses.

Key Implications

Organisational Impact

10. There is not anticipated to be significant organisational impact as a result of the adoption of these principles. Organisational impact may arise from time to time in relation to the particular application of the principles to a specific procurement. In these cases the impact will be assessed and recommendations will be made as appropriate in the circumstances.

Risks

11. There is a minimal risk that the City's procurements will be delayed or impacted by the adoption of the principles in this report, which is within Council's risk appetite. It is noted that the principles will not be applied in particular procurements where there is a risk of breach of the law, consistent with Council's commitment to complying with all applicable laws and regulations in relation to financial matters.
12. There is a risk to the City's reputation and image arising from taking a position in relation to these matters. It is considered that this approach is within the City's risk appetite which states:
 - We acknowledge that a diversity of views exist in our community and it will not always be possible to provide a positive outcome for every member of the community.
13. The City's Risk Appetite Statement indicates that it will tolerate adverse media or social media scrutiny where actions or decisions have been carefully considered and documented. It is considered that the proposed approach, relying on the endorsed list of the UNHCR and applying all applicable laws, represents a careful and considered response to the request by Council.

Legal Implications

14. It is possible to implement the recommendations in this report under the Local Government Act 1993 (NSW) (Act), provided that Council continues to comply with its obligations under the Act. These include:
 - (i) any procurement guidelines issued by the Office of Local Government pursuant to s23A of the Act; and
 - (ii) operating in compliance with the principles for local government set out in Chapter 3 of the Act, including:
 - (a) ensuring best possible value for residents and ratepayers;
 - (b) acting fairly, ethically and without bias in the interests of the local community;
 - (c) considering social justice principles in decision making; and
 - (d) ensuring decisions are transparent and decision makers are accountable for decisions and omissions.
15. Regarding other legal considerations, in some circumstances implementation of the recommendations in this report may cause the City to breach provisions of the Competition and Consumer Act 2010 (Cth). Specifically, this would occur when, in carrying out a business:
 - (i) an arrangement established by the City undertaking a procurement process has the effect of substantially lessening competition; or
 - (ii) the City uses its market power when procuring in a way that substantially lessens competition.
16. Whether a breach is likely will depend on the detail of each particular procurement process and the extent of the City's market power. If the City has a significant impact on the particular market, staff will not be able to implement the recommendation in this report for that particular procurement. Staff will assess each procurement and if application of these principles will cause a breach of laws, the principles will not be applied for that particular procurement.

Relevant Legislation

17. Local Government Act 1993 (NSW).
18. Competition and Consumer Act 2010 (Cth).

Critical Dates / Time Frames

19. This approach and the proposed principles will be reviewed after 2 years. The outcomes of the review will be reported to Council via the CEO Update.

Options

20. It is possible for Council not to make any further resolutions in relation to these matters. In these circumstances staff would continue to act in accordance with existing Council policies, including the Investment Policy and the Modern Slavery Policy. As noted above, no divestments or contract cancellations were required following a consideration of current staff activities when this matter was reviewed.

Public Consultation

21. There is no requirement for public consultation for this report.
22. Councillors were provided with an update on this matter in November 2024, consistent with the matters outlined in this report.

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