

5 February 2025

Deputy Secretary
Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

Attention: Council Governance Team

By email: olg@olg.nsw.gov.au

Dear Mr Whitworth

Model Meeting Code amendments

Reference is made to Council Circular 24-23 dated 17 December 2024 inviting submissions on proposed amendments to the Model Code of Meeting Practice for Local Council's in NSW (**Model Meeting Code**).

Mosman Council at its meeting on 4 February 2025 considered a report on the consultation draft of the Model Meeting Code and resolved to lodge the following submission.

Submission on consultation draft Model Meeting Code

Introduction

The proposed amendments to the Model Meeting Code appear to have no regard to the concerns expressed by the industry (including Mosman Council) in the September 2024 review of the Councillor Conduct Framework Review (**the Review**).

Council remains concerned with the proposal to ban briefing sessions and repeats the rationale for this concern already raised by Council in its submission on the Review:

Banning briefing sessions

1. It is difficult to understand the rationale behind the proposed ban on pre-meeting briefing sessions in the absence of the public, as is the proposal for the restriction to not apply to the Mayor. It is an extremely unhelpful notion that Council is unable to consider information of relevance to an issue that may be going before Council for a decision, and to conduct proper discussion and dialog in an informal setting.
2. Mosman Council infrequently conducts strategic workshops and briefings to better understand issues and tease out detail in matters such as management plans, budgets and development control plans. These are in preparation for considering a final staff report on a matter where it is deliberated, and a decision is made at a public Council meeting. This is the same way that State Cabinet and State agencies function when they

are determining matters such as planning proposals and conducting service level discussions.

3. To suggest that all proceedings of a workshop can occur during a Council meeting is illogical and inconsistent with the objectives to make Council meetings accessible, streamlined and efficient.
4. Where Mosman Council does hold a workshop on a matter prior to it being determined at a Council meeting, the staff report to Council would generally refer to the fact that a workshop was held and indicate its purpose. Council would be comfortable if the proposed changes to the framework continued to allow workshops to be held but mandated a requirement to disclose in reports to Council deciding the matter that a workshop was held and its purpose.
5. Further, the discussion paper focuses on the consideration of development applications and councillors being privately briefed by staff. Council questions the relevance of this scenario to most councils, particularly metropolitan councils that operate local planning panels to determine development applications independent of the elected body. Council appreciates the need for transparency, however if the intent of the briefing ban is to promote transparency in the determination of development applications, then Council suggests this is of no relevance to most councils as they do not decide development applications.
6. Further, Council also receives briefings from stakeholders in the community that are not related to matters for determination before Council. For instance, Council has briefing sessions from time to time with organisations and agencies such as Taronga Zoo and Transport for NSW on activities within the Mosman local government area that do not necessarily require a determination by Council. Such briefings are a valuable resource for councillors and should not be banned.
7. If the intent of the proposed ban is solely the prohibition of caucusing, Mosman Council is supportive of such a measure, as this is a practice not conducted by Council. However, without a definition of a “closed to the public briefing session” or “pre-meeting briefing”, there is a risk that valuable briefings and workshops involving councillors, staff and experts would also be prohibited. The proposed changes need to explicitly state what is trying to be achieved. As it stands, the discussion paper proffers more questions than answers in this matter.
8. The proposition that the Mayor is exempt from the ban of pre-meeting briefings by staff is accepted, however, there is nothing in the discussion paper that suggests whether the Mayor must keep that information confidential or may share it with councillors either individually or collectively or outside of or at a Council meeting. Should such a ban progress, more guidance would be needed for the Mayor.
9. In conclusion, Council supports the banning of caucusing however would want to have certainty that it can continue to conduct briefings and workshops to explore and investigate matters as opposed to making a decision away from the public forum. It is important to note there is no outcome from workshops and briefing sessions at Council. They are a forum for the dissemination and consideration of information and discussion that allow councillors to better understand an issue, and to not make a decision. Debate on the decision occurs at the Council meeting as it should.

Objections to specific amendments proposed in consultation draft of Model Meeting Code

Apart from this generic concern surrounding the banning of briefing sessions, Council also

makes comment in relation to the following specific amendments in the consultation draft Model Meeting Code which are of significant concern (noting the reference to the clause number is to the existing clause number):

Clauses 3.8 and 3.27	Allowing councils to determine to solely provide notice and business papers by means other than electronic form is a retrograde step not consistent with modern standards and community expectations. The clauses should remain unchanged.
Clause 3.10	Removing the time limit in which councillors may lodge a notice of motion for inclusion in the agenda for a council meeting and replacing it with the Council's determination of a "reasonable time" creates uncertainty and is not consistent with good governance practices. The clause should remain unchanged.
Clauses 3.12 to 3.13	The removal of staff oversight of notices of motion to identify legal, strategic, financial or policy implications conflicts with good governance practices together with fraud and corruption principles. The general manager's guidance and advice in these matters cannot be seen by any reasonable person as politicalisation of the general manager's role. It is a function to ensure Council is acting within its powers and ethically and at the highest probity standards. The clauses should remain to continue to provide these very important protections.
Clause 3.15	Allowing a councillor to ask a question with notice concerning complaints against and wrongdoing by the general manager or staff member is inappropriate on many levels and conflicts with conduct, privacy, and fraud and corruption principles. The clause should remain.
Clauses 3.33 to 3.38	The removal of provisions to prohibit pre-meeting briefing sessions is not supported in any form and the clause should remain. Mosman Council's rationale is clearly set out in Council's submission on the Councillor Conduct Framework Review dated 8 November 2024 which is repeated above under <u>Banning briefing sessions</u> . The clauses should remain.
Clause 5.43	The attendance of other staff (other than the general manager) at a meeting is not a matter for determination by a council and should remain with the general manager. The proposed amendment to allow councils to determine which staff members shall attend a meeting to allow it to deal with business on the agenda is inappropriate on many levels including fraud and corruption and probity matters. It conflicts with the powers of the council under the <i>Local Government Act 1993</i> , as a council cannot direct any member of staff (other than the general manager). It is the general manager's role under the <i>Local Government Act 1993</i> to direct staff. The general manager may choose to consult with the mayor regarding attendance of staff. The clause should remain.
Clause 7.1	The requirement for councillors and staff to stand when the mayor enters the meeting chamber is a matter for individual councils and should be left as such. Many councils, including Mosman, have worked to provide a more accessible and informal setting in which to conduct meetings to ensure greater community participation. Modern reform includes no longer wearing specific councillor robes, alderman and mayoral wigs and sitting on elevated Mayoral chairs. This approach reflects the move away from the former high theatre and formality of civil proceedings in most

	government jurisdictions and it is regressive to insist that councils now be forced to adopt this antiquated practice. Further it is impractical given the presence of members of the public at meetings. The requirement for councillors and staff to stand when addressing the mayor, and the required form of address to the Chair during the formal proceedings of a meeting, provides more than adequate deference to the role of Mayor and does not need further embellishment.
Clause 9.10	The removal of the requirement for a mayoral minute to identify the source of funding for any recommendation to incur expenditure conflicts with good governance practices together with fraud and corruption principles, on the same rationale as set out under clauses 3.12 to 3.13 above. The clause should remain.
Clause 9.18	The rationale behind the removal of the requirement for councillors to ask questions “respectfully” is unclear. Its inclusion is a helpful reminder on conduct and its removal serves no purpose. The clause should remain.
Clause 10.9	The removal of the requirement for a motion or an amendment to a motion to identify the source of funding for any recommendation to incur expenditure conflicts with good governance practices together with fraud and corruption principles, on the same rationale as set out under clauses 3.12 to 3.13 and clause 9.18 above. The clause should remain.
Clause 10.24	The removal of the ability of a council to resolve to shorten the duration of speeches from five minutes to expedite council business at a meeting is a retrograde step. Mosman Council has for many years limited speakers to three minutes and this has operated extremely well noting that extensions of time will be reasonably granted when circumstances warrant. There has been no apparent issue with councillors not having enough time to debate issues. This option to vary the time limit should be retained.
Clause 12.2	The Note to this clause should be amended to clarify the councillors and staff will only stand when addressing the meeting outside of the public forum / committee of the whole proceedings. See Clause 7.1 above.
Clauses 13.2 and 13.3	The inclusion of Part 13 clarifying the dealing with items by exception is supported, noting that it would be beneficial for provision to be added to: <ul style="list-style-type: none"> • Clause 13.2 clarifying that the chairperson may request the general manager to act as the secretariat in identifying items to be dealt with by exception and developing the appropriate motion to be moved • Clause 13.3 clarifying that items of business where members of the public are present to address the meeting must also not be adopted by exception

Remaining proposed amendments in consultation draft of Model Meeting Code

The remaining proposed amendments to the Model Meeting Code are acceptable and present no significant concerns for Council given that their application appears either reasonable or progressive.

Consideration of key questions about the consultation draft of Model Meeting Code

In summary, Council has also considered the key questions set out in the consultation draft discussion paper and responds as follows:

- Will the proposed amendments made in the consultation draft of the Model Meeting Code achieve the policy outcomes identified in the paper?

Response:

Partially.

Banning properly managed briefing sessions will not in any way promote transparency, integrity and public participation.

The initiatives to depoliticise the role of general manager including allowing Council to commit to expenditure without a properly considered funding source, are misguided, unnecessary and poor governance practice. Such measures will only contribute to fraud and corruption, and probity risks.

The proposal to allow Council to direct staff to attend meetings and for councillors to ask public questions about staff complaints and wrongdoing is dangerous and completely at odds with accepted good practice.

- Are there any other amendments you would suggest that will achieve these policy outcomes?

Response:

No.

The proposed amendments that Council has concerns about are misguided and do not contribute to a policy outcome. The current measures are appropriate.

- Will the proposed amendments have any unintended consequences?

Response:

Yes.

Consequences of the proposed ban on briefing sessions are set out under Banning briefing sessions section above.

Consequences of high risk of financial mismanagement, impropriety, fraud and corruption and probity failures associated with Council committing to expenditure without a funding source is set out in the table to Objections to specific amendments proposed in consultation draft of Model Meeting Code section above in relation to clauses 3.12, 3.13, 9.10 and 10.9

- Are there any other amendments the Government should consider?

Response:

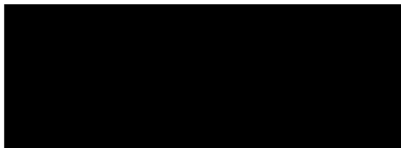
Yes.

Specific proposals are set out under Objections to specific amendments proposed in consultation draft of Model Meeting Code section above.

Thank you for the opportunity to comment on the consultation draft.

Please direct any enquiries to Council's Manager Governance, [REDACTED] on (02) 9978 4000 or council@mosman.nsw.gov.au.

Yours sincerely

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Dominic Johnson
GENERAL MANAGER