



Date 27 February 2025

Reference File: F09299

Office of Local Government
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NOWRA NSW 2541
councillorconduct@olg.nsw.gov.au

Dear Sir / Madam,

A New Model Code of Meeting Practice – Consultation Draft

Introductory remarks

The following is prepared in response to OLG Circular 24-23 in which the OLG has released a further consultation paper on proposed changes to the Model Code of Meeting Practice. There are similar themes in this Consultation Draft as those outlined in previous Circular 24-17 'Discussion Paper – Councillor Conduct and Meeting Practices'. Blue Mountains City Council provided a response to Circular 24-27 and that is attached to this submission as **Appendix A**.

Overall, Blue Mountains City Council has major concerns with a number of the proposed changes to the Model Code of Meeting Practice.

As detailed below, proposed changes in some cases do not promote transparency, do not support integrity, do not support informed decision making of the Council, have serious potentially adverse implications for the sound financial management of councils and raise the potential for increased workplace health and safety issues including psycho-social claims by staff and councillors.

The proposed reforms and changes to the Code of Meeting Practice, assume councils in NSW operate in a uniform way. However, some councils, including Blue Mountains City Council, do not operate with Committees of Council. Also following changes introduced in 2018 by the NSW Government, Development Applications in Greater Sydney and elsewhere are not briefed or even considered or determined in Council Meetings by Councillors. These applications are considered and determined by Local Planning Panels or delegated staff operating under Ministerial direction.

The proposed changes assume an inherent lack of confidence by the community in the decision making of a council and that current council meetings lack dignity or reverence and are not civil. This is a very unfair and an overly generalised assessment, given that the vast majority of council governing bodies operate effectively and within the Local Government Act and the Code of Conduct - despite cost shifting and significant resource constraints including vertical imbalance in the distribution of revenue to local government when it provides the majority of built infrastructure to community's in NSW.

The occasional misconduct of a few individual one or more councillors should not be diminishing the overall sound performance of most councils in NSW, operating effectively in terms of transparent decision making and community engagement.

Decision making by a council is done transparently through public monthly meetings. The business papers for meetings are made available to the public. The public are able to contact their elected representatives, attend Council meetings, speak to items being considered at the council meeting. Resolutions (decisions) are made publicly available in the minutes and the audio stream made available to the public.

Each level of government is important, and it is unfair to assume local governments in NSW are ineffective because of various conduct matters associated with a few individual councillors.

Many of the issues being raised through this reform are already addressed in the existing Code of Meeting Practice.

Comments on “A new model of meeting practice”, Consultation Draft (December 2024) and proposed amendments to Model Code

Policy Objectives (Page 6)

- **Conferring powers on mayors to expel councillors for acts of disorder**
This proposed Policy Objective is already a part of the current code. Under clause 15.14 of the current code *“All chairpersons of meetings of the council and committees of council are authorised under this code to expel any person, including any councillor, from a council or committee meeting for the purposes of section 10(2)(b) of the Act”*.
- **Requiring councillors to apologise for an act of disorder at a meeting**
This proposed Policy Objective is already a part of the current code. Under clause 15.11 of the current code *“The chairperson may require a councillor to apologise without reservation for an act of disorder, to withdraw a motion or amendment, and where appropriate, to apologise without reservation”*
- **Expanding the grounds for mayors to expel members of the public from the chamber for acts of disorder**
See first dot point above. A mayor can already expel any person (including members of the public) for disorderly conduct.
- **Enabling the issue of a penalty infringement notice where members of the public refuse to leave a meeting after being expelled**
Under clause 15.20 of the current code *“If a councillor or a member of the public fails to leave the place where a meeting of the council is being held immediately after they have been expelled, a police officer or any person authorised for the purpose by the council or person presiding, may, by using only such force as necessary, remove the councillor or member of the public from that place, and if necessary, restrain the councillor or member of the public from re-entering the place for the remainder of the meeting”*.

Additionally, under clause 15.13 of the current code – *“If disorder occurs at a meeting of the council, the chairperson may adjourn meeting for a period of not more than 15 minutes..... This clause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of councillors”*.

The point of acts of disorder is usually mired in either councillors or members of the public wanting to subvert processes and be heard. Under the current code, the mayor as chairperson

can adjourn the meeting, ask that everyone leave the chambers and that the person in question be removed, either by rangers or police.

Adding a penalty infringement notice into this process adds limited if any value. If a person is intending to commit an act of disorder and risk being forcibly removed from the chambers by police, a small fine is unlikely to be any kind of deterrent. Additionally, Police can already issue fines for resisting and failure to follow a lawful direction.

- ***Promoting transparency and addressing corruption risks by banning councillor briefing sessions***

It is important to note that briefing sessions are NOT a decision-making function. They allow for the dissemination of information to councillors with greater lead time than the public distribution of business papers a few days prior to a council meeting. Briefing sessions simply allow staff to “brief” councillors in a safe environment on often complex matters that will be coming to the formal council meeting for transparent consideration and decision making.

Briefings ahead of council meetings provide a forum for councillors to ask questions and clarify understanding. They can also include legal advice and commercial-in-confidence information and confidential information about individuals that would not be included in any public business papers.

Councillor briefings are used to ensure councillors can more deeply understand, question or clarify proposals on which they are to deliberate. This is the basis of sound governance. Recognition of this overriding governance principle seems entirely absent from the Review or considered unnecessary for local government.

Promoting transparency, integrity and public participation (Page 7)

- ***It is the Government’s expectation that any material provided to councillors, other than the mayor, related to decisions to be made must only be provided in a publicly open council meeting or committee meeting.***

We have concerns that this creates asymmetry of information between the mayor and the rest of the governing body. Decisions made by council are done so publicly at council meetings. All information to inform the decision are contained in the business paper. Items that have confidentiality aspects are dealt with in confidential session. It is unclear how a system where the mayor has more information on an item at a council meeting than any other member of the governing body ensures transparency of governance and decision making.

- ***Proposal to require information considered at closed meetings to be made public after it ceases to be confidential***

Under clause 14.22 of the current code, the resolutions made during a meeting closed to the public must be made public as soon as practicable. The information considered is not necessarily made available. It is important to note that the grounds for a meeting or part of a meeting be closed to the public are defined under clause 14.1:

- a) personnel matters concerning particular individuals (other than councillors),
- b) the personal hardship of any resident or ratepayer,
- c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
- d) commercial information of a confidential nature that would, if disclosed:
 - i. prejudice the commercial position of the person who supplied it, or
 - ii. confer a commercial advantage on a competitor of the council, or
 - iii. reveal a trade secret,
- e) information that would, if disclosed, prejudice the maintenance of law,

- f) matters affecting the security of the council, councillors, council staff or council property,
- g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
- h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
- i) alleged contraventions of the council's code of conduct.

For subclauses a and b, the information would never cease to be confidential. For all remaining subclauses, the information is unlikely to cease needing to be confidential.

The provision of information is already covered under the Government Information Public Access Act (GIPAA). The GIPAA provisions require government agencies to complete a legislated assessment against the public interest test that will result in the release / partial release of government information. Furthermore, the process to access this information under the GIPAA legal framework provides rights of review to applicants and administrative review of those decisions through the NSW Civil and Administrative Tribunal.

Removing the GIPAA mechanism and replacing it with a policy-based position provides less opportunity for information to be distributed in accordance with public interest considerations and compromise privacy and confidential considerations for government agencies, individual members of the public named in reports and commercial interests.

We would seek to know what protections are being proposed by the Office of Local Government to be provided to councils that release information determined not to be confidential after a period of time. Release of information that may be disputed by members of the public, third party organisations, companies, corporations etc. Noting that GIPAA provides the legal framework for consultation and public interest testing.

- ***Requiring recordings of meetings to be published on council websites for longer.***
This council has no issue with this suggestion and currently has five (5) years of recordings publicly available on the council website.
- ***Councils must not make final planning decisions without a staff report containing assessment and recommendations.***
Planning matters for this council are not managed or considered at all by the governing body at a council meeting. Following changes introduced in 2018 by the NSW Government, Development Applications in Greater Sydney and elsewhere are not briefed or even considered or determined in Council Meetings by Councillors. These applications are considered and determined by Local Planning Panels or delegated staff operating under Ministerial direction.
- ***Councils to give reasons where they make a decision on a planning matter that departs from the staff recommendations.***
See dot point above. Planning matters for this council are not managed or considered at all by the governing body at a council meeting.

Promoting the dignity of the council chamber (page 8)

- ***The mayor will be permitted to call extraordinary meetings without a request and the restrictions on mayoral minutes will be removed.***
It is unclear from the consultation draft how this proposal would promote the dignity of the council chamber. It is also unclear if there would be any limitations on this. Would a mayor be

able to call an extraordinary meeting every day over an extended period of time as a mechanism to browbeat councillors into agreeing to a resolution?

- **Requiring councillors to stand when addressing a meeting or when the mayor enters the chambers.**

This is ableist. It does not account for councillors with mobility issues and / or unable to stand. While exceptions could be made, it would result in the 'otherising' of councillors with disabilities. Australia's Disability Strategy strongly supports the community participation through inclusive governance structures. It is not inclusive to have systems with requirements for able bodied persons and people with disabilities to get treated differently due to their disability where there is no need to highlight that difference.

- **Removing the option for councils to reduce the duration of speeches.**

This could result in the local government version of the American Government 'filibuster'. It is open to abuse and has a history in the American system for prolonging debate and delay, preventing a vote. It is a defined and intentional political strategic play and there is more than enough research on the negative impacts of this on democracy. In addition, not having time limits for councillor speeches may lead to long council meetings or need for additional extraordinary meetings. It is not conducive to Work Health and Safety to allow meetings to go for lengthy periods.

- **Making clear to the community that decisions are made in council meetings and not in other forums that the community can't access, like briefing sessions.**

As stated a number of times in this submission, under the current code of meeting practice, **all decisions of council are made at a council meeting**. Briefing sessions are not decision making sessions and have never been used as such by BMCC.

Depoliticising the role of the general manager (page 9)

- **General Managers will not be required to prepare reports on notices of motions with financial implications or to identify potential sources of funding.**

This is a very high risk proposed change that could easily result in serious financial management issues for a council. It is inappropriate for a council to resolve issues without a current view of the financial situation and impacts of those decisions. It also goes against one of the objectives of this consultation draft, that council meetings are more transparent. It is far less transparent for council meetings where the public are not informed of the financial implications of decisions being made.

- **Conferring responsibility on the council to determine which staff are required to attend council meetings.**

Under section 335 of the *Local Government Act* the functions of the General Manager include appointing staff (h), directing and dismissing staff (i) and to implement the council's workforce strategy (j). To have councillors directing which staff are to attend council meetings raises industrial relations risks for the council. The council can determine the types of support required for council meetings. However, it would be inappropriate for council to determine exact staff they want in attendance.

Restricting councils from holding briefing sessions (page 8)

- As stated a number of times in this submission, under the current code of meeting practice, all decisions of council are made at a council meeting. **Briefing sessions are not decision-making forums.**

- **Information is to be provided to councillors through and clear and established channels.**

In relation to the specific dot points in the consultation draft document comments are made below relative to each point:

- *Request for information through the councillor request system* – This is not a change and is currently case
- *General information to assist councillors understanding of sector wide issues should be received from the general manager (and other external sources)* – This is currently done via briefings from the relevant expert staff and / or external expert (ICAC or other government agency)
- *Training materials to come through established training programs* – Current training of councillors includes training as part of briefings from an external source (LGNSW etc) or an expert staff member
- *Information to enable councillors to understand the function, service delivery standards, strengths, weaknesses and opportunities of council operations should be provided in periodic workshop format (e.g. an annual strategic planning workshop)* – local governments generally have over \$1 Billion worth of assets and multi million dollar budgets to manage. They provide an eclectic mix of very complex and diverse services. Briefings provide an opportunity to regularly assist councillors to understand the finances that they are fully responsible for managing, the different functions, service delivery standards, strengths, weaknesses and opportunities of each service within council operations. To only do that once a year in a limited high level strategic planning day is absurd would compromise the councillors truly understanding the depth and scope of operational council.
- **Information requiring a specific decision or resolution of council is to be provided through the business papers of a council meeting.**
As stated a number of times in this submission, under the current code of meeting practice, all decisions of council are made at a council meeting. Briefing sessions are not decision-making sessions

Draft Marked Up Model Code of Conduct

- **Removal of clause 3.12 “If the general manager considers that a notice of motion submitted by a councillor for consideration at an ordinary meeting of the council has legal, strategic, financial or policy implications which should be taken into consideration by the meeting, the general manager may prepare a report in relation to the notice of motion for inclusion with the business papers for the meeting”**
The removal of this clause creates significant risks to individual councillors who could be legally liable for failing to disclose etc and to the governing body as a whole making decisions without full information. It is not clear how the removal of this clause aligns to the promoted objective of greater transparency and integrity. The removal of this clause will result in less transparency and less integrity for the public on the implications of decisions being made. It may also lead to Work, Health and Safety issues resulting from legal, financial or other implications for individual councillors.
- **Removal of clause 3.13 “A notice of motion for the expenditure of funds other than those already provided for in the council’s current adopted plan must identify the source of funding for the expenditure”.**
This is a very high risk proposed change that could easily result in serious financial management issues for a council. It is inappropriate for a council to resolve issues without a

current view of the financial situation and impacts of those decisions. It also goes against one of the objectives of this consultation draft, that council meetings are more transparent. It is far less transparent for council meetings where the public are not informed of the financial implications of decisions being made.

- **Removal of clause 3.15 “A councillor is not permitted to ask a question with notice that compromises a complaint against the general manager or a member of staff of the council, or a question that implies wrongdoing by the general manager or a member of staff of the council”.**

The removal of this clause opens up significant psychosocial risks in the workplace. Allegations in the form of questions without any evidence in a public forum goes against every tenet of natural justice. This has potential to result in legal action and significant adverse Work Health and Safety for staff and councillors.


- **Removal of clause 3.23 “Business papers for all ordinary and extraordinary meetings of the council and committees of the council must contain a statement reminding councillors of their oath or affirmation of office and their obligations under the council’s code of conduct to disclose and appropriately manage conflicts of interest”.**

It is unclear what value is created by the removal of this clause. This is particularly so when considering one of the objectives of the proposed changes is for greater transparency and integrity.

- **Removal of clauses 3.33-3.38 on councillor briefing sessions.**

As stated a number of times in this submission, under the current code of meeting practice, all decisions of council are made at a council meeting. Briefing sessions are not decision-making sessions. In fact current clause 3.37 states “Councillors must not use pre-meeting briefing sessions to debate or make preliminary decisions on items of business they are being briefed on and any debate and decision making must be left to the formal council or committee meeting at which the item of business is to be considered”.

Yours faithfully


ROSEMARY DILLON
Chief Executive Officer


Mayor

APPENDIX A – Previous submission



Date 27 November 2024

Reference File: F09299

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Dear Sir / Madam,

Councillor Conduct Framework Discussion Paper

The following is prepared in response to OLG Circular 24-17 in which the OLG has released a discussion paper on proposed changes to Councillor conduct and meeting practices.

The need for change – returning local democracy to councils

General comments:

- The implication of this section is that currently local government in NSW is not effective. The report states:

“Effective local government comes when councillors are visibly in control of their councils. How councillors act and how appropriately and transparently decisions are made at meetings is critical in demonstrating to the community that their elected representatives understand the consequences of their decisions, and then make the best possible decisions they can for their community as a whole. Unfortunately, the existing councillor conduct framework is not delivering on the need for transparency or the necessary degree of respect in the community for the role councillors have.”

- We would argue that most councils (as governing bodies), are operating fairly effectively and within the Local Government Act and the Code of Conduct, despite cost shifting and significant resource constraints including vertical imbalance in the distribution of revenue to local government when it provides the majority of built infrastructure to community's in NSW.
- The conduct or misbehaviour of one or more councillors should not be diminishing the overall sound performance of most councils as governing bodies in NSW – operating fairly effectively in terms of transparent decision making and community engagement.
- Each level of government is important and it is unfair to assume local governments in NSW are ineffective because of various conduct matters associated with individual councillors.
- The issue is not the Code of Conduct but rather how it is administered and implemented.

- The report focuses a lot on “councillors” and less on “the Council” operating as the governing body. It doesn’t clearly separate the different roles of a Councillor versus the role of the Council as governing body as outlined in the LG Act. This confuses some of the matters outlined in the paper.
- False implication in this section that decision making by “councillors” is not transparent – Any and all decision making by “a Council”, as the governing body, is done transparently through public monthly meetings. The business papers for meetings are made available to the public. The public are able to contact their elected representatives, attend Council meetings, speak to items being considered at the council meeting. Resolutions (decisions) are made publicly available in the minutes and the audio stream made available to the public.
- The statement that ‘*closed council briefing sessions are being used to make decisions away from public view*’ is simply false and seriously misleading. NO decisions are made in briefing sessions. Briefing sessions at our Council simply allow staff to “brief” councillors in a safe environment on often complex matters that will be coming to the formal council meeting for transparent consideration and decision making. Briefings ahead of council meetings provide a forum for councillors to ask questions and clarify understanding.
- Decisions are only made by means of resolutions at public council meetings - with support of explanatory business papers that are distributed prior to the meeting. The outcomes of Council decision making are minuted and made publicly available.
- The report conflates many different issues that are not necessarily related. This makes it difficult to answer on one issue when its embedded with other unrelated issues. For example, the current Code of Conduct is clear. The issue is the administration and interpretation of the Code (since the *Cornish v Secretary, Department of Planning, Industry and Environment [209] NSWSC 1134*). Since *Cornish* and since not getting response on conduct matters from OLG, most councillor conduct matters have just been ignored.
- Briefings of Councillors by staff are not relevant to the Code of Conduct as it is not about transparent decision making, it is about behaviour and governance around declarations. Our Council has Councillor (not Council) briefings which are not decision making forums.
- At the moment we have a Code of Conduct that applies to both Councillors and staff. This proposal would mean that staff will be held to a more defined standard of behaviour when both staff and councillors would be considered “public officials” by watch dog agencies such as ICAC.
- Increased frivolous complaints are crowding out the ability of the OLG to adequately deal with councillors not complying with conduct expectations – It is unclear how this discussion paper actually addresses this. In fact, a separate body of councillors who will hear and judge the behaviour of other councillors is likely to increase frivolous (and politically motivated) complaints.
- The negative aspects of the implementation of the current Code of Conduct for councillors is that since the Supreme Court decision of *Cornish v Secretary, Department of Planning, Industry and Environment [209] NSWSC 1134*, the ONLY disciplinary power available for Code of Conduct breaches by councillors is censuring. That has been the case since October 2019. OLG circular 19-25 advised that “• The Office of Local Government (OLG) is currently considering the implications of the decision and will provide further guidance to councils once it has done so”. Councils are still awaiting the outcomes of the considerations of the OLG – we have been waiting for over 5 years.

- There is a real concern that after 5 years, it appears the outcome is simply to reduce the Code of Conduct to three themes of:
 - Pecuniary conflicts of interest
 - Significant non-pecuniary conflicts of interest
 - (Aspirational) Councillor misbehaviour

With no attempt to address the issues raised in [209] NSWSC 1134.

The paper proposes strengthening the role of OLG as the sector regulator, with expanded investigation powers for serious conflict of interest breaches. This proposal is supported in principal. Doing this should not mean that Councils are no longer able to implement briefings

What are the principles of change?

Q: Are we missing anything in the principles of change?

Response:

The principles listed in the discussion paper are already inherent in the way local government works. The OLG, through the model code of conduct, has a responsibility to articulate in clear terms how, where and in what practical ways that the elected councillors implement the principles.

- Council leadership and decision making is paramount – All decisions made by the Council are supported by a business paper outlining the issues PRIOR to a council meeting, are available to the public to comment on PRIOR to a decision being made and are available in a transparent format through the minutes and the available audio file of the meeting being publicly available. Nothing in this discussion paper would change that.
- Freedom of Speech – councillors currently have the opportunity and democratic responsibility to speak freely about issues affecting their local community prior to decisions being made by the Council at a council meeting. Nothing in this discussion paper would change that. However, the current model code of conduct requires the Councillor to uphold and represent the decisions of council per s 232 (f) of the Local Government Act. This limits their ability to speak freely. How does this provision align to that requirement. Alternatively, freedom of speech should not be confused with or affect the Councillors ability to enter the decision-making processes of the council with an open mind to the matters being considered, as required by s 232 (b) of the Local Government Act. This notion of freedom of speech for Councillors becomes confusing against the requirements of the Act and needs to be well-defined by the code of conduct.
- Transparency and accountability – issues can currently be considered and debated by councillors and the general public. The Code of Meeting Practice provides the framework for this. Nothing in this discussion paper would change that.
- Significant penalties should only be imposed by a judicial or quasi-judicial body – The capacity for a judicial or quasi-judicial body to hear and consider code of conduct complaints would be an improvement. However, this discussion paper does not seem to propose that. Instead, the proposal is to put complaints to a selected group of councillors to judge the behaviour of other councillors. This would open up the significant risk of party politics at play in that consideration and compromise the process it is meant to be improving.

- A strong and proportionate local government regulator – The role of OLG as defined in this section is appropriate. However, it is not clear how this discussion paper goes any way to improve or change the current activities of the OLG.
- Subsidiarity – Decisions are currently made by local government for the local area. It is not clear how the proposed changes in this discussion paper would change that in any way. In fact, the proposal is to set up an external body of councillors to judge and review other councillors. It is difficult to determine how this aligns with ‘decisions are made at the level closest to those impacted by those decisions’.
- Justice is timely and proportionate – This is of course a truism. However, it is unclear how this discussion paper would assist in this goal.

Potential changes to the code of conduct and oath of office

General comments:

There are general concerns with the statement in the discussion paper that “It is important to make the new Code of Conduct an aspirational code of expected behaviours, instead of enforceable for local councillors”. Proper conduct should be an expected and enforceable position, rather than a high ideal. It is more practical, and rooted in reality, to have real standards for behaviour than to believe it would lovely if everyone just desired to be a good person.

Making the Code of Conduct only “aspirational” signals a total lack of consideration for the psycho-social and general well being of Councillors and Council staff. If there are no significant consequences for poor behaviour and inappropriate conduct, then the NSW state government and the OLG are saying its ok for the well being of others to be adversely impacted by the conduct of a minority or in some cases a majority. That is not ok. And may result in WHS action and psycho-social claims if the decision is made to not have clearly defined standards of expected conduct behaviour.

An aspirations code of conduct does not provide sufficient clarity and standards of conduct for staff, and for staff and councillor interactions. The proposed aspirational code for councillors creates a gap in standards for staff and delegates of the council, and how councillors can and should/not interact with them.

Q: What are the key elements of an aspirational Code of Conduct that should be enshrined?

Response:

Blue Mountains City Council does not agree with only having “an aspirational Code of Conduct”. However, even if you have an “aspirational” code, there still needs to be defined absolute minimum standards of conduct. People aspire to be good drivers, but it doesn’t mean we don’t need driving rules.

The links for the ‘Code of Conduct for members of the legislative Assembly of NSW’ and the ‘Parliament of NSW Members; Code of Conduct’ were reviewed and assessed against the current Model Code of Conduct put out by OLG. There are far greater explanations and example of conduct expectations in the current OLG model code. In particular, in relation to bullying, work health and safety, caucus voting, record keeping, privacy and confidentiality, use of public resources, pecuniary and non-pecuniary interests. It is an interesting proposal to have a high-level aspirational goal of propriety without defining what that looks like.

Perhaps there is a middle path in making the OLG code aspirational but with clearly defined standards of conduct.

Council is concerned that an “aspirational code of conduct” will create opportunity for undefined or questionable behaviours to go unaddressed or unresolved.

Q: What are your views about aligning the Oath of Office to the revamped Code of Conduct?

Response:

The Oath of Office would need to be several pages long for an incoming councillor to make an Oath in relation to expected behaviours.

While potentially impractical due to the length of an all-encompassing oath, aligning the Oath of Office to the Code of Conduct would create a demonstration of affirmative commitment on the part of the Councillor to abide by the requirements of the role of Councillor per the Local Government Act and to abide by the code of conduct. Subject to the code of conduct adequately describing the requirements of the function (not just an “aspirational code of conduct”) this is supported.

Potential changes to the definitions and assessment of councillor misbehaviour

General comments:

It is not clear from the discussion paper whether the plan is just to recreate what is in the current Model Code of Conduct into the legislation. If so, the issue would be that conduct becoming of a public official can evolve and expectations change over time. Hard legislation takes longer and is more cumbersome to amend than a model code of conduct.

Q: Conflicts of interest - Is the proposed pecuniary interest framework appropriate? Is anything missing?

Response:

It is supported that the proposed definition of pecuniary interests for NSW councillors align to the NSW members of parliament definitions, with the inclusions proposed. An increased role and responsibility on the OLG to seek information from Councillors, and to investigate to allegations is supported.

Designated persons processes are not addressed by the proposal. Declarations of conflict of interest are reported and managed publicly through the Council meeting. The process for designated persons returns is considered antiquated, redundant and exposes elected Councillors and staff to harassment and safety risks because of the requirement to complete a public register which includes their personal information. It is recommended that the designated persons requirements be repealed. If not fully disposed of, it is recommended that the OLG take an active role in designated persons returns by receiving, reviewing and managing the returns directly.

Q: Non-pecuniary interests - Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

Response:

“Major or minor” or “significant or insignificant” non-pecuniary conflict of interest is difficult to understand and apply consistently due to the case-by-case nature of conflict management. Ultimately Councillors should remain vigilant about disclosure of pecuniary and non-pecuniary interests and the appropriate management of any such conflict that arises. The OLG should provide ‘without prejudice’ advice and support to Councillors seeking to declare and best manage their conflict of interest.

Q: Property developers and real estate agents - Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

Response:

The proposed legislative response to this relates to the councillor themselves. It is not clear in the discussion paper whether this would also apply to a councillor that was married to, in a personal relationship with, related to or lives in a house with a property developer or real estate agent.

Q: Councillor misbehaviour in public office - Is this the appropriate threshold to face a Privileges Committee?

Response:

We disagree with the entire concept of the Privileges Committee.

Q: How else can complaints be minimised?

Response:

There are concerns in the establishment of a Privileges Committee. This aspect of the discussion paper is fraught with risk. Who gets to decide who has the privilege of being on this privilege committee? How would that committee be called to account for their behaviour and actions? The Privileges Committee has the very real risk of falling into inappropriate party politics. This is particularly true for any independent councillors or councillors from minor parties. The Privileges Committee is likely to be made up of mayors, ex-mayors etc from the two major parties. What framework would be in place to ensure consistency of review and action? The proposed Privileges Committee approach is not supported.

Perhaps the NSW State Government could adequately resource the OLG so it can actually do its job in supporting Councils in addressing Councillor Code of Conduct matters. Our Council's experience is that in the past we have received inadequate support relative to multiple requests for assistance and action in addressing multiple Councillor Code of Conduct matters and that the assistance and advice provided was not adequate. We are still waiting for a response from a letter sent in 2020 regarding a Councillor conduct matter.

As previously stated, if the goal is to minimise code of conduct matters being sent to OLG, then serious consideration should be given to supporting the subsidiarity principle of resolving as many as possible at the local level. This means allowing councils to have access to a range of means to resolve minor and less significant conduct issues such as:

- Strong censuring options for the local governing body to impose including public notification
- Mandatory training being required for those deemed by Mayor/ CEO as not being compliant with Code
- Framework for confidential council reports for the governing body to resolve on appropriate disciplinary outcomes within allowed guidelines
- Use of external reviewers to guide the local council decision making
- Options for CEO and/ or Mayor to provide performance feedback and work with the Councillor on improving their conduct
- A clearly articulated framework of standards of behaviour rather than an "aspirational code of conduct"

Q: Addressing inappropriate lobbying - What key features should be included in lobbying guidelines and a model policy?

Response:

Councillors may be lobbied in relation to all manner of community interest areas and are not only development application related. Broadly defined lobbying guidelines are supported.

Dispute resolution and penalty framework**General Comments:**

The discussion paper proposes that the issue with the current process for processing of complaints is a problem because the OLG has a different standard required for referrals made to them than the conduct reviewers engaged by councils. Therefore, the discussion paper proposes to entirely remove the first review. This seems to be an interesting response to the problem. Particularly considering one of the principles defined on page 7 of the discussion paper is subsidiarity (decisions are made at the level closest to those impacted by the decision).

It would be a better approach to instead have OLG provide the review framework required so that the majority of complaints can be reviewed and managed at the local level AND that any complaints that do need to be escalated to OLG will be at the standard required for OLG.

As an alternative approach that retains the 'one step' ethos of this proposal, would be that all complaints about Councillor conduct be referred directly to the OLG for the OLG to appoint and manage the referral to an independent reviewer, and to determine the complaint at arm's length from the Council. Thus, removing the role of the General Manager to determine the conduct reviewer allocation, and of the council to determine the reviewer's recommendation. The OLG may then take an unbiased and equitable approach to the management of breaches of the code of conduct.

Similarly, as proposed the OLG should receive, oversee and manage complaints about conflict of interest matters via this single centralised structure for assessment and review of conduct.

As outlined above, the proposed Local Government Privileges Committee is not supported. Centralised management of conduct reviews by experienced investigators under the management of the OLG is supported.

Q: Giving OLG the power to issue penalty infringement notices - What level of PIN is appropriate?

Response:

Like all penalty infringement notices issued, the level of PIN will be effective for some, not all and will depend on circumstances. For those with more disposable income the deterrence aspect of a PIN will be at a level higher than those without the same level of disposable income. It is expected that the level of PIN would be commensurate to the severity of the breach.

Q: NSW Local Government Privileges Committee- Are the penalties proposed appropriate, and are there any further penalties that should be considered?

Response:

We disagree with the entire concept of the Privileges Committee (see previous response).

The cost of the process by the Privileges Committee should not be borne by the Council. That would seem to be quite unfair to both the council and the residents of that council area. A councillor

misbehaving in public office and the council (and by extension the ratepayers) that is already impacted by that, has to pay to have the councillor dealt with.

All of the penalties listed in the Discussion paper for the Privileges Committee would be more useful and impactful if they could occur at the local level, or in a framework administered and managed by the OLG directly.

Q: Referral of significant sanctions to appropriate tribunal or body - Are the existing sanctions available under the Local Government Act sufficient?

Response:

The sanctions under the Local Government Act are sufficient and it would be appropriate to have a tribunal or quasi-judicial body impose those sanctions.

Q: Referral of significant sanctions to appropriate tribunal or body - Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

Response:

They should be referred to a Tribunal.

Restoring dignity to council meetings

General Comments:

This assumes that dignity needs to be restored to Council meetings. Our Council meetings are well run and the Code of Meeting practice is working well in setting standards of behaviour for everyone in attendance.

The existing Code of Meeting Practice does provide for the Mayor to expel councillors and others from the chambers. To give further powers to fine and issue infringement notices carries risk of party politics. Some mayors in NSW are voted in by the public. Some are voted in by the other councillors. There are situations where mayors voted in by other councillors might have a conflict of interest in targeting specific councillors for poor behaviour when it might impact their chances of being voted in as mayor again next time.

Q: Proposed reforms to the Model Code of Meeting Practice - Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

Response:

The current powers to expel are sufficient.

However, if there is a safety risk to Councillors, officers and/or attendees of a meeting, immediate actions to expel the person and secure the site must be taken. In this regard, part 15.11 b) of the Model Code of Meeting Practice, defines an act of disorder to be "assaults or threatens to assault another councillor or person present at the meeting". An act of disorder of this type by a councillor or member of the public should result in immediate expulsion from the meeting, should not have option for apology, withdrawal or retraction by the offending person, and should not require a 15 minute recess (per part 15.13) to enact this immediate expulsion by the Chair or security personnel present.

Q: Banning briefing sessions - Are there any other measures needed to improve transparency in councillor deliberations and decision making?

Response:

Council holds Councillor Briefings in accordance with the OLG Councillor Handbook (2024) which states:

“Councils may hold workshops for the purpose of conducting in-depth discussions on certain topics. Formal decisions are not made at workshops but these sessions provide the time needed to explore more important or complex issues in detail. A workshop may involve councillors, council staff and invited participants.

Workshops should not be used for detailed or advanced discussions where agreement is reached and/or a de-facto decision is made. Any detailed discussion or exchange of views on an issue, and any policy decision from the options, should be left to the open forum of a formal council or committee meeting. Workshops or briefing sessions are supported by some to develop councillor knowledge and expertise, and to assist them to discharge their role as public officials.”

Banning briefing sessions or only allowing sessions where public can participate is a terrible suggestion. Council briefing sessions are not decision-making forums, rather they simply provide an opportunity for staff to “brief” councillors on papers going to formal Council Meetings, where decisions are then made by the Council as a whole acting as the governing body.

Previous reforms of local government in NSW aimed to strengthen the role of the governing body or Council to operate more as a Board with significant financial and other responsibilities in running a City. Not allowing Councillors who make up the Governing Body, or the Board, to be briefed ahead of meetings in a safe environment where they can ask questions to clarify their understanding, is simply a ridiculous proposition. Many matters are commercial in confidence as well and can't be discussed with community present.

The example provided in seeking to ban briefing sessions only reinforces the OLG's disconnect with the prescribed practices of local government in NSW as evident in much of the Review document:

As an example, development applications should be considered in the public domain.

Following changes introduced in 2018 by the NSW Government, development applications in Greater Sydney and elsewhere are not briefed or even considered or determined in Council Meetings by Councillors. These applications are considered and determined by Local Planning Panels or delegated staff operating under Ministerial direction.

Compounding the problems with the OLG example, and in direct contrast, the Minister for Planning's Local Planning Panels Direction – Operational Procedure 2022 prescribes under s9.1 of the EP&A Act 1979 that the panel may adjourn where:

“a panel briefing is required to hear confidential or sensitive information or to deliberate before reconvening for voting and determination”.

This is clear recognition of the need for the panel to brief without the public.

Similarly, the Minister's guidelines prescribe the process for site visits and panel briefings of development applications. This process does not include or countenance public involvement in that briefing process beyond a written record. The procedures prescribe:

“.... panel briefings are solely to be used to identify and clarify issues with a proposal”.

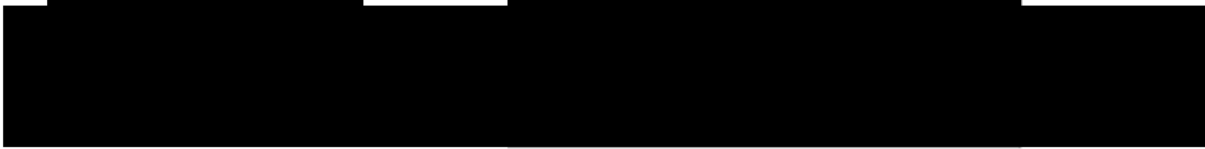
This is precisely the function of councillor briefings. How can the OLG position be reconciled with the Minister for Planning's best practice function for panel briefings - the same approach adopted by councillors in briefings for decades – and yet the OLG can now be suggesting that such a necessary and sound governance function should not be available to councillors?

Councillor briefings are used to ensure councillors can more deeply understand, question or clarify proposals on which they are to deliberate. This is the basis of sound governance. Recognition of this overriding governance principle seems entirely absent from the Review.

There are a number of reasons why briefings with only staff and Councillors present are important. Much like cabinet-in-confidence meetings, councillor briefings allow for information that may have legal professional privilege attached or commercial in confidence information etc. Councillors do not make decisions in briefing sessions. Actual decisions are made in Council meetings with the public present, papers available to councillors and the public beforehand, with the public being able to register to speak on any item, and minutes and audio file available afterwards. The proposal to ban briefing sessions carries a real risk that councillors will be less informed in their Council meeting decision making processes.

To further cloud the issue, the discussion paper proposes the Mayor is exempt from these restrictions and can have access to information that the other councillors don't have. There would then be an expectation of decision making by the Council with an asymmetry of information within the governing body. Even if the Mayor then shared information received from the General Manager to other Councillors, there is a risk that the relay of information might distort it unintentionally, or not fully convey what might otherwise have been provided more comprehensively to all Councillors from a staff presentation.

Yours faithfully



Chief Executive Officer

Mayor