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Mayor

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Governance Team
Office of Local Government
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Dear Governance Team

Model Meeting Code amendments

Thank you for the opportunity to provide feedback on proposed amendments to the Model Code of Meeting Practice for Local Council in NSW (Model Meeting Code).

At its February 2025 ordinary council meeting, Northern Beaches Council resolved (032/25) to endorse a submission to the Office of Local Government (OLG).

This letter constitutes the submission of Northern Beaches Council.

Initial comments

Council understands the consultation in respect of the draft Model Meeting Code and the consultation paper is part of a staged process to overhaul the councillor conduct framework and further changes will be released over the course of 2025.

As stated in Council's submission on the OLG's discussion paper entitled *Councillor conduct and meeting practices – A new framework dated September 2024* (discussion paper), Council supports transparency of Council decision making and initiatives to appropriately recognise the status of local government and role of councillors. It also welcomes opportunities to increase complaints handling efficiencies, in particular, those that deliver cost savings for local government. However, as set out in that submission and as outlined below in relation to the consultation draft, there are various initiatives proposed which are unclear, misconceived or unhelpful.

Council is concerned at the pace of the proposed changes, which do not allow sufficient time for the OLG to give proper consideration to feedback provided by councils or industry bodies as part of the consultation processes. While comments closed on the discussion paper on 15 November 2024, this current and subsequent consultation on the consultation draft of the Model Meeting Code, a complex and technical document, was published just one month later on 17 December 2024.

It is also premature to proceed with changes to the Model Meeting Code when these changes are linked to other proposals (including amendments to the *Local Government (General) Regulation 2021*), the details of which have not yet been shared and which councils and the community have not had an opportunity to consider. It is imperative that all proposed amendments to the existing regime can be considered in their entirety to understand properly the implications of what is envisaged. To do otherwise would not be reasonable.

It is observed that the proposed new Model Meeting Code, in its current form, will result in significant changes to the operation of council meetings including how staff participate, the role of the general manager, the role of councillors and the role and powers of the mayor in chairing the meeting. Given this, it is recommended that suitable time, training and support is provided to all councils to enable a smooth transition when the new Model Meeting Code is prescribed and to assist councils prepare for and implement the changes. No indication has been given that appropriate resources or time will be provided to facilitate this.

In relation to the key questions raised in the consultation paper for consideration, Council provides the following high-level responses:

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

No

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

Yes

- ***Will the proposed amendments have any unintended consequences?***

Yes

- ***Are there any other amendments the Government should consider?***

Yes

Details regarding why Council has this position are provided below.

Detailed remarks

At the outset, it is noted the Government's position on banning briefings has been maintained despite there being significant feedback from the industry to the contrary. As per Council's previous submission, we do not support the proposed banning of briefings and the reasons we previously provided are still relevant. These reasons included:

- The practice of briefing councillors has been in place for many years and cannot be said to be a recent development. Briefings occur to ensure elected officials have the opportunity to obtain background advice and ask questions before they make significant and binding decisions in a public forum that impact the community.
- The practice reflects an increased desire from councillors to be more fully engaged, knowledgeable and professional in their decision making. Just as local communities are more engaged with the advent of social media and new technologies, it is important that councillors also have the opportunity for greater engagement. As such, councillors seek greater information to inform their strategic decision making. The practice is likely also

linked to the increased professional capabilities of councillors that are enshrined in the NSW Government's capability framework for councillors and councillor professional development.

- It is important to provide a forum where councillors can ask detailed questions, including those that may be relevant for their professional development. Councillors have expressed the concern that they may be impeded in seeking advice and asking questions if they are unable to have briefings. They have also identified that the absence of such opportunity will result in less efficient and less robust decision making, which would decrease the confidence of the community in local government.
- The proposition that all information provided to councillors should be provided in a public meeting also does not acknowledge the size, scale and complexity of the operations of local government organisations. For context, Northern Beaches Council is a large organisation with an income of \$425 million. It provides a broad mix of services including management of 80 kilometres of coastline, 39 beaches, 122 sports fields, 254 playgrounds, 2 aquatic centres, 5 art galleries, 9 daycare centres, 39 community centres, 600 kilometres of stormwater assets and 844 kms of local roads. It would be challenging to provide the level of information required to support councillors to undertake their very broad functions all in a public environment. It would also add a significant administrative burden and cost through the additional resources required associated with the public briefing of councillors.
- There are already significant protections enshrined in legislation to ensure that councils operate in a transparent manner. Among other things, the provisions of the *Local Government Act 1993* and the *Government Information (Public Access) Act 2009* (GIPA Act) oblige councils to operate transparently. Significant decisions may only be made by the governing body of a council in a public meeting under the *Local Government Act 1993* including as a result of the limitations contained in section 377. These meetings are required to be open to the public and may only be closed in very limited circumstances as set out in Part 1 of Chapter 4 of the *Local Government Act 1993*. Further the GIPA Act establishes a proactive, open approach to gaining access to government information in NSW and these provisions already apply to briefing materials.
- The proposed changes with regards to briefings are inconsistent with the practices of State government. Members of parliament and ministers regularly receive information and briefings from public servants in closed environments outside the public meetings and deliberations of Parliament. This includes receiving oral briefings, the holding of meetings with constituents and stakeholders and internal meetings between offices.
- It is also not clear how the proposed banning of briefings may impact councils receiving briefings from NSW Government department representatives as happens currently on key issues. It does not also consider how engagement with local State or Federal MPs should occur. This may lead to a degradation of clear communication between the tiers of government and their representatives.
- Insofar as it is still proposed that the mayor should be entitled to briefings and not all councillors, this is incongruous with the principles behind the change. The proposal could lead to the weaponisation of information. Further, the provision of briefing materials to mayors and not councillors, may create an increase in requests from other councillors seeking to get access to information provided to the mayor. More information on whether mayors may share any briefing information with other councillors at their discretion is necessary.

We provide the following further comments regarding specific clauses in the consultation draft Model Code of Meeting Practice:

- **Former clauses 3.12, 3.13 and 10.9 – Removing the provisions for the general manager to provide advice on strategic, financial or policy implications in relation to notices of motion**

It is Council's view these provisions did not 'politicise' the role of the general manager and should remain. These clauses help to ensure motions generated by staff report and by notice of motion receive the same level of consideration and review. This is an important assurance mechanism and provides for stronger checks and balances of decisions that impact the strategic direction of councils and the community. Deleting this provision is contrary to good decision-making principles and indeed the recent comprehensive reforms associated with the operations of the Audit, Risk and Improvement Committees, for example. General managers should be entitled to provide frank and fearless advice to the governing body, consistent with the foundations of the Westminster system.

- **Former clause 3.15 – Deleting the prohibition on questions comprising a complaint**

It is not clear how removing this clause, which prohibited a councillor from asking a question with notice that comprised a complaint against staff or implied wrongdoing by staff, aligns with the intentions of the Government including a more streamlined complaints process. More explanation is needed on the rationale for allowing complaints about staff or the general manager to be aired in council business papers. There is a risk that complaints being published in council business papers, before due process has been applied, will lead to a risk of defamation claims and/or risk of psychosocial issues and claims. There is also a risk of this mechanism being used for inappropriate political advantage.

It further appears starkly contrary to contemporary workplace practice. Last year, SafeWork NSW released its [Psychological Health and Safety Strategy 2024–2026](#). Under the Strategy, SafeWork NSW has stated that it will increase regulatory action against high-risk and large businesses, as well as government agencies. This is designed to ensure compliance with the new psychosocial hazard laws.

There are other mechanisms for complaints to be raised and as such this change is not considered appropriate.

- **Former clause 3.23 and updated clause 9.17– Removal of statement of ethical obligations from business paper and obligation to ask questions respectfully**

The amendments proposed through the removal and update of these 2 clauses do not align with the stated intent to restore dignity to the council chamber. Clause 3.23 was introduced in the last iteration of the Model Code of Conduct and simply seeks to remind councillors of their oaths and affirmations of office. It aligns with the desire for increased probity in council decision making, something being strongly pursued by the ICAC.

Further, the arbitrary removal of the word 'respectfully' from the updated clause 9.17 relating to the manner in which questions may be asked, not only removes a layer of control the mayor and/chairperson can have over the decorum of the meeting but significantly lowers the bar for the tone of public discourse. The comments made at the previous point are relevant as are the comments made by Council in our submission on the discussion paper, which included:

- Councillors, as leaders of the organisation, set the tone from the top. This is a pillar of good governance and supports positive organisational culture. This responsibility requires councillors to be held to standards higher than that of the community.
 - It is not unreasonable to expect councillors to adhere to clear and unambiguous behavioural standards to council staff.
 - This is inconsistent with the approach taken by the OLG over many years which has seen the need to introduce various model policies to guide councillor behaviour in even greater detail than is set out in the code of conduct. The Model Councillor and Staff Interaction policy and the Model Social Media Policy are examples of this. The introduction of such documents has been driven by, among things, the desire to manage corruption risks.
- **Clause 5.19 – Amendments to limit councillors attending by audio visual connection**

These new mandatory amendments will preclude councillors from attending meetings remotely due to working commitments and when they travel for personal reasons. This may limit the ability of councillors who have full time jobs to participate fully and may limit the field of people able to be councillors. Our experience using the current framework is that the opportunity for councillors to participate remotely has only been used when required, is not oversubscribed and has been successful.
 - **New clause 5.44 and former clause 5.44 – Determination of staff attendance by the council**

This amended clause transfers the responsibility of determining staff attendance at a council meeting from the general manager to the council. More clarity on how this clause is intended to be practically implemented is needed given that staff do not report individually to the council. Insofar as councillors will have direct influence over staff, this would be contrary to recent advice provided by ICAC and could constitute a corruption risk.
 - **Clauses 9.3 and 9.5 & new clauses 3.25 and 3.27 - The implication of councillors not being present**

Further clarification is required in relation to the phrase 'all councillors are present'. It is our experience that, while councillors may be present at a meeting, they can leave during items (due to disclosures of interest or other reasons) or from time to time throughout debate. The clause needs to be clarified whether it only applies in the event a councillor leaves the chamber or meeting entirely (or whether it also applies to ad hoc and brief departures) as the proposed changes are confusing.
 - **Former clause 10.24 - Removing the ability of council to reduce the time limit for speeches**

At Northern Beaches Council, we have reduced the speeches to 3 minutes, with an opportunity for an extension subject to a council decision. With 15 councillors, this provision assists in providing councillors an equal opportunity to speak while allowing the council to efficiently manage the business and agenda before it in a timely manner. An unintended consequence of this proposed change for larger councils may be greater use of 'motion be put' to expedite debate on a matter which limits debate more than a reduced speaking time applicable to everyone. This potential consequence is inconsistent with the stated intention of the changes proposed.

- **New clauses 15.15 and 15.16 – Expulsion from meetings**

These clauses provide the option for councils to determine whether the mayor may expel a councillor or not without a council resolution. It is understood a cornerstone of the Government's consultation paper and proposed changes is to give mayors greater powers to manage a meeting. We note the caution expressed in our previous submission regarding the proposal to increase the powers of the mayor to preside over council meetings as this may also lead to potential for mayors to use, or be perceived to use, this power for political advantage. Nevertheless, the options provided by these clauses appear inconsistent with the intent of the proposed changes. Further, the introduction of 'rolling' acts of disorder from one meeting to another (see clauses 15.12 and 15.13) will only prolong matters and disrupt meetings, which is contrary to the intent of the proposed changes to more efficiently manage conduct matters.

- **Clause 16.1 – Conflicts of interest**

The references to the Code of Conduct will need to be updated following the implementation of the councillor's 'aspirational' version. No guidance is provided in the consultation draft as to what is envisaged.

- **Clause 17.6 – Rescinding or altering council decisions**

While there are no proposed changes to this clause, it is worth noting that the fixed number of councillors required to sign a notice of motion to alter or rescind a resolution – 3 – is not proportional to the different number of councillors on councils across NSW. For example, 3 councillors constitute 20% of Northern Beaches Council's governing body of 15 councillors, but 50% of Blayney Shire Council (3 out of 6 councillors). For a large governing body, the clause allows a small component of the governing body to call for a rescission or alteration of a decision, whereas half of a small governing body is needed for a similar action. This creates inconsistency and disproportionality across the sector.

Thank you again for the opportunity to share Northern Beaches Council's views, I look forward with interest to hearing more following the outcome of the consultation process.

Should you require any further information or assistance in this matter, please contact [REDACTED]

[REDACTED]
Mayor