



**The Office of the General Manager**

28 February 2025

Council Governance Team  
C/ - [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)

Dear Sir / Madam

**Willoughby City Council Submission: "*Model Meeting Code Amendments*"**

Willoughby City Council appreciates the opportunity to provide comment on the "***Model Meeting Code Amendments***" that has been prepared by the Office of Local Government.

Please find attached Council's submission on this matter.

For further information on this submission, please contact [REDACTED]

[REDACTED]

GENERAL MANAGER





# Willoughby City Council Submission

## OLG “Model Code of Meeting Practice amendments”.

February 2025

## About Willoughby City

The City of Willoughby occupies 23 square kilometres on the lower north shore of Sydney, with its own CBD of Chatswood and a large part of St Leonards. Located 8.5 kilometres north of the Sydney CBD, Willoughby City incorporates the suburbs of Artarmon, Castle Cove, Castlecrag, Chatswood, Middle Cove, Naremburn, Northbridge and Willoughby, as well as parts of Gore Hill, Lane Cove North, St Leonards and Roseville.

The Lane Cove River and the foreshore of Middle Harbour feature treasured bushland, while our City's residential areas are home to more than 81,000 people. Industrial and commercial zones support approximately 73,000 jobs and a gross regional product of \$11.5 billion. The City of Willoughby's population is forecast to grow to 104,000 in 2041. During the same period, the City expects to support approximately 530 new workers per year.

Council has 12 Councillors and a popularly elected Mayor and four wards.

## Overall Feedback

Willoughby City Council appreciates the opportunity to make a submission on the *Model Code of Meeting Practice amendments* (amended Model Code). In principle, Council supports changes to simplify the Model Code.

Our feedback on the amended Model Code covers seven key areas:

- Councillor briefing sessions
- dealing with disorderly behaviour in Council meetings
- public forums
- motions requiring expenditure of funds
- questions with notice
- voting on planning decisions, and
- time limits on council meetings.

The timing of this consultation process during the December and January period, where Councillors are in recess and staff are on leave limits the opportunity to have more fulsome discussion on the OLG's Discussion Paper.

Please also review Council's previous submission on the Councillor Conduct and Meeting Practice Discussion Paper.

Given the significance of the proposed changes, Council respectfully suggests undertaking workshops or further consultation with Councillors and the sector. Council is willing to participate in future discussions on this matter.

## **Councillor briefing sessions**

The *Councillor Conduct and Meeting Practice: A New Framework* discussion paper and the omission of councillor briefing sessions from the *amended Model Code of Meeting Practice*, suggests that feedback indicates there is a lack of transparency with decisions being made in closed to the public briefing sessions.

In our experience, decisions are not made at briefings. Briefings enable staff and Councillors to better understand the context and complex matters, work through strategic considerations or consulting directly with Councillors. These are important elements of working together and do not diminish the purpose and function of Council reports to inform decision making at Council meetings.

The requirement for all briefings to be public may reduce candid and informal discussions that have an indirect benefit of positive team and relationship building and developing a high performing Council.

In the event that Councillor briefings are open to the public, it may result in extension of Council meeting duration due to the need to provide explanatory information to additional questions during public meetings. This may also reduce the number of items Council can deal with at each Council meeting, thereby reducing the efficiency of Council decision making processes.

Our Council disagrees with Mayors being provided rights to access information that is not also available to all Councillors, by way of informal discussion with General Managers. Councillor briefings are one way for all Councillors to receive information on equal terms.

## **Dealing with disorderly behaviour in meetings**

Council understands the OLG's desire for councils to self-regulate, however the proposed framework forces a large amount of responsibility and power to Mayors, which could reduce their capacity to maintain positive working relationships between the elected Council.

The proposed powers for Mayors to expel Councillors from meetings and suspend their payments may place an additional burden on Mayors and should be considered carefully. There is a level of discomfort with the proposed increased power for Mayors to suspend Councillors' fees and it is recognised that this may differ for Mayors that are popularly elected versus those elected by the Council.

Councillors are not paid for the service they provide to our local communities, apart from receiving a small allowance. As such, our Council believes that the issuing of Penalty Infringement Notices for minor or insignificant breaches is an unreasonable step.

We also feel that issuing Penalty Infringement Notices to members of the public who refuse to leave Council Chambers should be a last resort, and that developing a new process for this rare occurrence may not be necessary.

## **Motions requiring the expenditure of funds, including Notices of Motion and Mayoral Minutes**

Under the amended model code, there will be no requirement for general managers to prepare a report in response to notices of motion. There will also be no requirement for general managers to prepare a report for notices of motion (deletion of clauses 3.12 and 3.13), that require expenditure of funds. Notices of motion, mayoral minutes and motions without notice that require expenditure of funds, will no longer be required to identify a funding source. It will be up to councils to determine the funding source.

We support the intent of these changes to depoliticise the general managers position and the added benefit of reduced administrative burden on council staff in preparing responses to notices of motion. However we raise the following concerns for consideration:

Councils are required to adopt Operational Plans, Delivery Programs and Long Term Financial Plans under the Integrated Planning and Reporting Framework. Resolutions resulting in expenditure of funds that are not already accounted for in the above plans, will impact the delivery of services and projects adopted within the plans.

Operational Plans and Long Term Financial Plans are carefully prepared to balance the aspirations of the community (as defined in the Community Strategic Plan) and the services and infrastructure as defined in the Delivery Program with the limited and stretched financial resources of council.

The current clause 3.12 provides a level of protection and provides focus on the financial implications of a notice of motion. The clause provides a right of reply for the general manager to highlight the availability of funds or otherwise and ensures that financial sustainability is at the forefront of decisions made by council. Removing this clause has the capacity to create significant negative impacts to annual budgets and long term financial plans and as such has the capacity to cause financial distress in the short or long term without highlighting this risk before a decision is made.

Reports from the general manager in response to notices of motion, mayoral minutes and motions without notice that require expenditure of funds, aim to identify available funding sources, which may include any impacts that the expenditure will have on previously adopted services and projects. These reports assist councillors to make sound financial decisions when considering such motions or mayoral minutes.

Therefore, Council supports the retention of the current clause 3.12 and supports the removal of the current clause 3.13 as the current clause 3.13 has the potential to politicise the role of the general manager, and serves as an unwarranted hindrance to councillors debating the activities and projects council should undertake, recognising that the implementation of such activities or projects may involve a process of prioritisation in the context of the budget process. Consistent with this approach council supports the removal of current clauses 9.10 and 10.9.

#### **Questions with Notice**

The removal of clause 3.15, which prevents councillors from asking questions with notice that comprise a complaint against the general manager or a member of staff, could lead to situations that seriously impact the General Manager (GM) and/or a staff member. Council strongly disagrees with the deletion of clause 3.15.

Allowing councillors to raise complaints publicly will impose difficulty on council to reconcile the operation of the removal of clause 3.15 with sections 10A to 10D of the Local Government Act, particularly with respect to 10A(2)(a) of the LG Act which states that the meeting can be closed to the public where information about personnel matters concerning particular individuals (other than Councillors) exists.

Such questions could potentially make defamatory statements about officers that expose the councillor asking the question (in the first instance) and the Council (organisation), the General Manager and council staff (as publishers of the business papers) to liability. Defamatory statements may not necessarily be mitigated by inclusion in a closed agenda because publishing to other councillors (who are privy to the closed agenda) may be sufficient to establish liability. In the meeting the same considerations regarding defamation apply, particularly in light of live webcasting.



Allowing councillors to raise complaints publicly or suggest staff (including the GM) of wrongdoing in a public forum could cause staff to feel embarrassed, humiliated, upset, and possibly harassed or bullied.

This could harm their mental health and staff morale and may breach the Council's duty to protect staff under work health and safety laws. For example, the Code of Practice for Managing Psychosocial Hazards requires councils to manage risks to psychological health. Our internal bullying procedure, as well as the Bullying clause in the Award, could also be breached if any claims were unfair or unsubstantiated or made in an inappropriate manner. This could lead to increased workers compensation claims due to psychological impacts which has a cost and work impact on council and co-workers. Psychological claims are more likely to be successful if it can show a fair and due process was not undertaken.

To avoid these issues, we request a referral to a straightforward process for handling concerns. For instance, councillors could first write to the General Manager to work out the best way to deal with an issue privately and respectfully, rather than raising it in public. In addition, the General Manager has a statutory role in managing staff and the effective operation of the organisation. Removal of clause 3.15 undermines this role and does not meet the requirements for making a complaint under the Code of Conduct or Complaints Management Policy and Procedure.

With regard to Industrial Relations, Council has internal performance and disciplinary processes that are in line with the agreed section of the LG Award and accepted Industrial Relations practices. These provide a structured process for managing complaints or performance issues and take into account rules for investigations such as having a fair process, allowing for claims to be put to an individual and for them to respond, access to a support person etc. By raising complaints in a public forum this will undermine the capacity for the General Manager to investigate complaints fairly, for due process to be followed and also could lead to increased industrial disputation.

With regard to the General Manager's contract, the OLG Guidelines for the Appointment and Oversight of General Managers sets out clear steps to be taken in the performance management of a General Manager including the management of any serious performance issues. These should be followed to avoid and potential contract issues or other claims.

**Mayor to determine if a response should be provided to a question with notice** - Council notes that Mayors may determine that a question with notice is out of order at the meeting the question with notice (QWN) is asked. If a QWN is ruled out of order, this determination should be made prior to the agenda being published, to prevent the publishing of a question that is out of order. This will require mayors to undertake additional work in the preparation of agendas for council meetings.

The following point is raised on page 8 of the consultation paper: *A new model code of conduct*

*Providing that the Mayor, not the GM has discretion on whether council staff should respond to questions with notice.*

This is inconsistent with clause 3.16 of the model code (or 3.13 of the amended code) which maintains that the general manager may determine if they or their nominees provide a response to a question with notice.

While Council supports the intent to depoliticise the general manager's position, we believe that giving mayors the ability to determine if staff should respond to questions with notice, oversteps administrative reporting lines. General Managers will also be more attuned to contextual or operational issues operational capacity to respond to questions with notice and to Industrial Relations matters where these may be applicable, given the proposed deletion of clause 3.15.

Further, it places additional pressure on Mayor's, where there may be a perception that a request for a response to certain questions are being sought for political advantage.

### **Public Forums**

Council notes that the amended model code maintains that public forums may be held prior to meetings of the council and committees of councillors, which is consistent to the current Code.

Our Council believes it is important for a council to be able to decide for itself whether such forums be held at or prior to meetings depending on the circumstances of the individual council, particularly given the lack of any power to mandate attendance by councillors at public forums.

Council opposes the removal of those clauses proposed to be replaced by the new clause

*4.2 The council may determine the rules under which the public forum is to be conducted,*

as it is felt that removing any guidance as to the way in which public forums are to be held is unduly onerous for council.

### **Voting on Planning Decisions**

Council supports the addition of clauses 11.12 and 11.13 in the new Model Meeting Code.

With regard to clause 11.12, this is Willoughby Council's current practice. However, it should be noted that for some decisions, an initial report will assess the underlying proposal, and a second report will provide the results of public exhibition. The second report may rely on the assessment of the first report, particularly if no submissions are made or if the submissions can be addressed with minor changes. Our interpretation of the proposed clause 11.12 is that the current practice would still be satisfactory noting the first report (which is usually attached to the post exhibition report) still provides an assessment received by the Council prior to the matter put before the Council for decision.

With regard to clause 11.13, Council is comfortable with accommodating this requirement by ensuring any amended motion includes reasons.

### **Time limits on meetings**

Council does not support the change to clause 18.1 of the amended model code, which omits the requirement for councils to specify an end time for council meetings. The current provision for meeting end time assists councils to maintain appropriate standards for work, health and safety for both staff and Councillors. Changing this clause to allow council to set meeting end times only from 'time to time' will likely result in increasing duration of Council meetings, and health and safety concerns for staff and councillors.

Under the Code of Conduct and the Work Health and Safety Act, councils are required to provide a safe work place for both Councillors and staff and it is no longer acceptable to expect that staff should work shifts of an unreasonable duration, nor to expect Councillors to attend unreasonably long meetings after a full day of work and family commitments. A failure to set boundaries to ensure good work practices and a safe working environment, will leave councils and general managers exposed to liability.

Additionally, when Council meetings extend beyond reasonable time limits, the opportunity for community members to engage with Council is reduced and the capacity for councillors to make quality decisions is greatly impacted.