Submission to NSW Office of Local Government
MODEL MEETING CODE AMENDMENTS

Thank you for your ample notice about the proposed radical overhaul of the *Model Code of Meeting Practice for Local Councils in NSW*. I understand that it is your Office's anticipation that the Minister for Local Government will prescribe the new model in the early part of this year (along with its gazetting). I appreciate that the newly elected councils throughout the State would be keen to revise their own codes and the new Model Code taking effect early this year would allow more than ample time for those new councils to carry out those revisions given that *Local Government Act* section 360 (3) gives councils a maximum of twelve months after the ordinary election to do so.

As an act of robust self-discipline I shall restrict my comments to only three matters.

1. An end to private councillor pre-meeting briefing sessions.

I fully support the Minister's intentions here as recorded in his media release of 17 December last and his page 4 foreword at https://www.olg.nsw.gov.au/wp-content/uploads/2024/12/A-new-model-code-of-meeting-practice-%E2%80%93-Consultation-draft-1-1.pdf

I shall demonstrate my support by countering certain contentions (that I have encountered) that oppose the Minister.

a) A contention opposing the Minister's excellent position is that private workshops between senior staff and councillors allow councillors self-developmental and informal input opportunities etc. outside the gaze of the public - a gaze that may give rise to social embarrassment to, or political advantage against, a councillor. Whatever the merits of this contention, it is not relevant because the Minister is simply putting a stop to private senior staff/councillor briefing sessions about already published agenda item matters prior to a council meeting. .This does not refer to a workshop held for general educational or brainstorming session and the like and therefore the contention is based an erroneous conflation.

   Currently, pre-meeting briefing sessions are expressly allowed under non-mandatory provisions of the current Model Code (https://gazette.nsw.gov.au/gazette/2021/10/2021-556.pdf) providing that councillors do not use them "*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*".

   While it is the Minister's intention to remove this wholly from the Model, this will not, of itself, stop a council's discretion to do things over and above what is provided in the Model, especially if the Model does not expressly forbid it. Therefore, I fully support any intention the Minister has to expressly forbid it in the actual Regulation and I look forward to that proscription being noted in the new Model.

b) Another contention that I wish to counter in defence of the Minister is the one that insinuates hypocrisy on his part in as much as the contention claims the Minister doesn't want local elected community representatives to be allowed private briefing sessions while government Minister's themselves avail themselves of private briefings from senior bureaucrats as part and parcel of their normal *modus operandi*.

   This contention is ill founded because it does not seem to properly understand the significant differences attending to each class, noting:-

[redacted]

private briefings conveyed to the Minister from senior public servants and the like go towards his consideration of matters at closed and confidential Cabinet meetings whose decisions in turn are ratified at Executive Council meetings with the Governor (https://www.parliament.nsw.gov.au/about/Pages/The-Executive-Council.aspx). Whatever personal opinion individuals may have about it, the operational reality is that the secrecy of Cabinet is a matter of well-established convention we inherited as part and parcel of the Westminster System.

In marked contrast, local councillors are, by force of law (*Local Government Act 1993*) required to make decisions at open, formal meetings of council (or of committee comprising only councillors).

Accordingly, there is no policy utility in likening the lead in to legislated open, public council meetings with the lead in to conventionally secret Cabinet meetings.

2. Recognising formal council meetings as the exclusive decision making forum.

As a corollary to the prohibition of private pre-meeting councillor briefing sessions, I believe the fact that substantive council decisions can only be made at official (formal) meetings of the council and committees comprising only councillors should be strengthened in the Model Code. By "strengthened" I mean spelled out in a way that would counter any faulty interpretation so that council meetings don't end up referring decision matters to workshops and the like with effect that the matters are not ultimately brought back to open council meeting for decisive outcome on public record. If a matter is before a council meeting and is referred for workshopping, the benefit of that workshop and assessment, should be finalised at a council meeting.

As an example - if a public petition asking the council to consider wards for the local government area

- is tabled at a council meeting and the council meeting refers it to staff for "response", and
- the matter is then canvassed by relevant staff at a behind closed doors workshop, and
- the councillors at the workshop consultation are noted as not supporting the petition request

the matter should come back to a formal council meeting for on record decision by the councillors as a governing body. Otherwise the advantages of pursuing openness and transparency principles promoted by the legislation will have been sacrificed.

The subject draft Model Code continues the previous excellent clause about what constitutes a lawful council decision – refer clause 17.1 which still says "*A decision supported by a majority of the votes at a meeting of the council at which a quorum is present is a decision of the council*. Note: Clause 17.1 reflects section 371 of the Act in the case of councils ……." However, in my experience, there is often a weakness at local government level about proper construction consistent with laws and court conventions.

This aspect of the Code could be strengthened by express provisions prohibiting substantive decision making at informal forums, including "preliminary decisions". Yes, I realise that a workshop is not a component of council meeting but the idea is that other activities and forums of council should not subsume the primary and exclusive role of formal meetings for the purposes of decision making.

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3. Requiring the councillors to stand when the mayor enters the meeting room.

I fully recognise that the Minister for Local Government was once a long standing mayor. If I recall properly he was the Mayor of Botany for about thirty one years or so and I can appreciate the spirit behind his suggestion.

I respectfully do not agree with his suggestion in the current situation where the majority of the local council mayors are collegiate mayors – that is to say, they are mayors elected by the councillors and are not popularly elected by the people.

When a mayor is elected by councillors, there is,

- at best, a common and reasonable perception that there is an in built respectful deference and regard for the mayor by the majority of councillors and, in such a context, tokens of deference such as standing up when the mayor enters the chamber would be a mere redundancy, and
- at worst, a common suspicion that there is a *quid pro quo* dynamic operating between the mayor and the councillors who voted for him or her and the protocol for councillors to stand when the mayor enters the chamber ends up emphasising a deep distaste for council by the public rightly or wrongly suffering such a suspicion.

A totally different dynamic obtains, or is perceived by the public to obtain, when the mayor is elected by the people. In such a situation, councillors standing when the mayor enters the chamber can be properly perceived (and experienced) as respecting the collective will of the majority of voters invested in the mayor stewarding the governing body processes of the collective will of the people divided amongst the several councillors.

I would recommend the Minister for Local Government to bring up this proposal once the majority of councils have a popularly elected mayor. In April 2013, the Independent Local Government Review Panel, led by Professor Graham Sansom, released its report *Future Directions for NSW Local Government – Twenty Essential Steps*. One of the "essential steps" is about the status of mayors and the panel concluded "**that mayors of councils with a population greater than 20,000 should all be popularly elected**" (refer page 31 of that report).

As finale, I quote excerpts from that aforementioned report's page 31:

The Panel considers that as in Queensland, Tasmania and New Zealand mayors should generally be popularly elected. Under the current optional arrangements, only about a quarter of NSW mayors are directly elected ….……

There have been cases of popularly elected mayors at loggerheads with a council of a different political persuasion. This is a risk and direct election needs to be matched by a shift in the 'balance of power' in favour of the mayor, who should enjoy a mandate to do certain things. ……

The Panel's conclusion is that mayors of councils with a population greater than 20,000 should all be popularly elected. Smaller councils should continue to have a choice ……

ENDS

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