Re *Councilor Conduct Framework Review*
To the Office of Local Government,
Locked Bag 3015, NOWRA NSW 2541.
E: councillorconduct@olg.nsw.gov.au

Submission on the Councillor Conduct Framework Review

As a concerned member of the Kiama community, I welcome the opportunity to provide feedback on the Councillor Conduct Framework review. It is crucial that our local government operates with transparency, fairness, and accountability, and that councillors are able to perform their roles without undue stress or manipulation. Unfortunately, recent experiences with our local council have highlighted areas where the existing Framework falls short.

Undue Stress and ICAC Referrals

A prime example of these issues is the undue stress placed on Councillors Karen Renkema-Lang, Kathy Rice, and Jodi Keast, who have all served our community with integrity. Despite their longstanding contributions, each of these councillors has been subjected to the stress of being reported to the Independent Commission Against Corruption (ICAC) based on baseless allegations. These cases were ultimately dismissed by the ICAC, which found no grounds to investigate.

Here is a summary of key points:

- **CAC Referral and Dismissal:** Kiama Councillors Jodi Keast, Kathy Rice, and Karen Renkema-Lang were referred to ICAC by Kiama Council in May 2024. The councillors claim they were unaware of any legitimate grounds for this referral. The referral was leaked to the press, and the councillors only discovered the referral through media reports.
- **ICAC Declines to Investigate:** The ICAC informed the council that it would not be investigating the councillors. Cllr Keast stated that the council had only informed them through a brief email and that they have requested full access to the ICAC correspondence. The councillors want to know when the ICAC letter was received, how long the council waited before notifying them, and what the letter contains.
- **Concerns About Transparency:** Cllr Keast expressed frustration that the council still has a media release on its website announcing the ICAC referral, even though the ICAC has declined to investigate. The councillors have called for the council to release the ICAC letter and remove the outdated media release.
- **ICAC Commissioner's Warning:** The councillors referenced a letter from ICAC Commissioner The Hon. John Hatzistergos, tabled at a council meeting, which warned against using ICAC referrals as a political weapon. The commissioner emphasised that such allegations should not be made public without reasonable grounds, as it can cause political damage.
- **Impact on Reputation:** Cllr Kathy Rice stated that the ICAC referral has caused undue public suspicion, particularly as it was leaked to the media before the process

was completed. She called for ICAC referrals to remain confidential until fully substantiated.

- **Censure of Cllr Renkema-Lang:** Cllr Karen Renkema-Lang shared that the ICAC referral was the "final straw" in her experience with the council. She previously had a censure against her declared invalid by the NSW Supreme Court, which had been imposed for expressing her opinion in a radio interview. Anthony Whealy KC criticised the censure as an attempt to silence her. See interview here
- **Call for Governance Review:** All three councillors have requested that the council provide the ICAC correspondence, remove the ICAC referral from its website, and conduct an external review of the governance processes that led to the leak of sensitive information.

Shutting Down Dissenting Voices and the SLAPP Campaign

In addition to the undue stress on these councillors, [redacted]

Concerning Social Media Behaviour

Further concerns have been raised regarding comments made by [redacted] on social media. It is my understanding that [redacted] These comments raise serious questions about adherence to both the [redacted] Council Media Policy and the Model Code of Conduct for Local Councils in NSW. Such language not only demeans those who hold differing views but also undermines the respectful discourse necessary in local government. It is essential that councillors set a standard for behaviour that encourages constructive dialogue rather than resorting to insults.

Why the Revised Framework is Essential

The proposed changes in the Councillor Conduct Framework, which emphasise leadership, freedom of speech, and timely justice, are critical to addressing these ongoing issues. Councillors should not be subjected to unwarranted stress or targeted for their opinions, and the media should be free to report on council matters without intimidation.

I strongly support the inclusion of measures in the revised Framework that ensure:

- **Timely updates on investigations:** When councillors are referred to bodies like ICAC, councils must provide timely updates, particularly when these referrals are dismissed. Delaying or withholding information is harmful to both councillors and the public.
- **Protection against baseless allegations:** Councillors who have consistently demonstrated integrity should not be subjected to the undue burden of defending against baseless allegations. A process must be in place to prevent the misuse of these mechanisms to silence dissenting voices.
- **Freedom of the press and protection against SLAPP tactics:** Local media, such as *The Bugle*, must be free to report on council matters without intimidation or the threat of legal action for critical coverage.

- **Adherence to council codes of conduct:** Comments like those made by [redacted] must be addressed to ensure councillors abide by the Media Policy and the Model Code of Conduct, fostering a respectful environment for all voices to be heard.
- **A focus on transparency and accountability:** Councillors and local councils must be held accountable for how they communicate information to the public, particularly when it involves matters as serious as ICAC referrals.

In conclusion, I urge the review to consider these protections to ensure that our councillors can serve the community without fear of unwarranted attacks or manipulation of the system. By strengthening the Framework, we can build a local government that is truly reflective of the values of transparency, accountability, and fairness.
Thank you for the opportunity to provide input on this important review.

Yours sincerely
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WEDDIN SHIRE COUNCIL

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Office of the Mayor

REF: CB:LW:C2.2.7

11 September 2024

The Hon Ron Hoenig MP
Minister for Local Government
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SYDNEY NSW 2001

olg@olg.nsw.gov.au

Cc: councillorconduct@olg.nsw.gov.au

Dear Minister Hoenig

COUNCILLOR CONDUCT AND MEETING PRACTICES – A NEW FRAMEWORK

Thank you for the opportunity to submit a submission as Mayor of Weddin Shire Council. The following provides responses to the Councillor Conduct and Meeting Practices Discussion Paper.

What are the principles of change?

Are we missing anything in the principles of change?

Council leadership and decision making is paramount

Agreed. However, independence needs to relate to local government financial resourcing, as it stands local government financial resourcing is tied. The ability to have untied funding and reduced red tape and bureaucratic grant processes and project delivery is required for councils to truly have independence in decision making. Councils have entered the market as service providers of last resort for areas such as health care, aged care and childcare services. Local government is given the independence to provide localised solution but with minimal support. We receive no acknowledgement or support from the state and federal governments when we are forced to enter these areas. In other words, it is our issue when we do it and our issue when we don't. However, independence is tied and restricted due to the way the State and Federal Governments administer their grants. A prime example the Weddin Shire Council's ownership of two medical centres. We wrote to both the State and Federal Ministers to ask for assistance in helping to maintain the service and asset, however, were told that this was our problem as we were the asset owner.

Freedom of speech

I agree that councillors should have the constitutional right and democratic responsibility to speak freely however we do not have parliamentary privilege. Therefore, this is a mooted principle of change if the latter does not happen. I also provide additional points in our submission relating to social media further into my submission.

A strong and proportionate local government regulator

The regulator rarely intervenes as it is, therefore the framework is broken. There is a need to address the inherent problems first to solve the actions required to achieve the desired outcome of a strong and proportionate local government regulator. I provide further points of a matrix that is scaled to the severity of an issue and outlining a desired outcome in my submission.

Potential changes to the code of conduct and oath of office

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

I support the concept of a clear and succinct outline of behavioural expectations, however the examples provided for NSW Parliament do not touch on work, health and safety for Councillors amongst peers and for our council workforce. Threats, intimidation, belittling, overbearing, aggression, humiliation and other such examples provided in the current Model Code of Conduct appears to be lost in the NSW Members of Parliament framework provided. Succinctness can also lose the intent for others to work, govern and operate safely and diminish interpretation where it is vague.

The discussion paper does not address the behaviour of the Mayor, in the event that the Mayor was to be the aggressor or offender. While the option is open for Councillors to lodge a complaint to the Privileges Committee, what are the avenues and support for Councillors in dealing with a Mayor for misconduct in a meeting?

The discussion paper focuses too much on the issues within a Council Meeting, when in fact, they pour out into local communities on social media and local papers. I provide further suggestions on how to address this further into my submission.

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

I support this.

Potential changes to the definition and assessment of councillor misbehaviour

Yes, the proposed pecuniary interest framework is appropriate. However, in the instance of “obtaining private benefit” as outlined in the current Model Code, this implies “obtainment” – when some of the inherent issues relate to the approach to obtain and requires further provisions and parameters around intimidating and threatening approaches.

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

Yes. However, what is currently missing from both the Model Code and the Discussion Paper is

the addressing of Councillors who declare a conflict of interest to avoid/abstain from voting. The interpretation of a non-pecuniary interest is open to interpretation and is up to the individual to declare this themselves. [redacted]

As the Discussion Paper alludes to that 'an interested and informed observer should be confident a decision made by a councillor is free from bias or a reasonable apprehension of bias'. An interested and informed observer should also be able to be confident that a councillor is not leaving a room to avoid voting when faced with challenging issues. There should be a process to call them out on what the electors have elected them for, to make difficult and challenging decisions.

Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

I maintain that the issue relating to real estate agents should not be extended to rural and regional areas. This is because candidate opportunities amongst electors are limited when compared to metropolitan Sydney.

Is this the appropriate threshold to face a Privileges Committee?

No. The Privileges Committee should also extend to ex-General Managers to allow for a balanced point of view that is free from bias or reasonable apprehension of bias. While I appreciate the role of ex mayors and councillors provide valuable input, it can relate to councillor bias from personal experience or political party affiliation. A diverse committee minimises this risk. It should also contain independent investigators who have previously undertaken investigations for code of conduct complaints – there is still a role for the credible investigators who have served the code of conduct process for many years who provide legal specialist advice and should continue to do so in conjunction withthe Privileges Committee. In relation to social media/media, the Privileges Committee should extend membership to technical experts and legal specialists in social media. A sub committee should be created to deal with social media/media complaints.

The Privileges Committee should have oversight of a Chairperson who has delegated authority to impose sanctions. See point below relating to "Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?"

How else can complaints be minimised?

Change the *Local Government Act 1993*
By changing who is eligible to run for Council. Section 274 on *"what are the qualifications for civic office"* needs to be amended. Setting the boundaries from the outset could alleviate the behaviours of certain Councillors. Section 275 *"Who is disqualified from holding Civic office?"* needs to change. For example, I question why it takes three (3) suspensions before a person can be considered as disqualified from holding Civic Office for five years? If the NSW Government is to introduce a Privileges Committee, they should therefore have powers to suspend a Councillor

and depending on the severity of the issue and suspension, make a recommendation to the Minister for Local Government to disqualify a person from holding Civic Office. The suspension should not be based on the number of times of suspension, i.e. three (3) but relate to a matrix that can be applied for the severity of the issue to match an outcome/penalty.

Social Media

Social media and the way that Councillors operate social media platforms needs a complete overhaul. Councillors should be banned from social media groups. Councillors should be permitted to outline their views on their own Councillor identified social media page. Where they breach this rule, i.e. posting council related content on group forums, it would automatically result in automatic suspension within the matrix that has been discussed in this submission. This is not about taking away a freedom of speech but keeping freedom of speech fair and respectful. The Council staff who live and work within our communities who are part of these social media pages should not be subjected to the intimidation, overbearing, threatening, frivolous, fabricated, and deceptive posts by their Councillors about their workplaces. The rule would strictly apply to council content only. The use of a Councillor identified social media page allows Councillors to have freedom of speech and limiting the exposure of council staff who we have a work, health and safety obligation to. Only those who seek to absorb that content can go to have a look at it. It is about protecting the wellbeing of our workforce, their families and our local community.

Where Councillors sprout their own views on their Councillor identified social media page that may be offensive or an alleged breach, then it would be up to an individual to lodge a code of conduct for referral to the Privileges Committee and referred to the proposed specialised sub-committee on social media.

Social media laws are changing in Australia. If we think it is serious enough to look at trailing a minimum age limit because of mental and physical health concerns, then a moderation to how Councillors use social media regarding Council business needs to also be applied to protect our council workforce, their families and our communities.

Training and Development Portal

Each Council is responsible for its own induction and capability plan process. This should remain however in addition to these sessions arranged, the OLG Councillor Induction process could benefit from behaviours and expectations sessions as part of its induction that all Councillors are expected to undertake. If Councillors do not complete the OLG Induction process within twelve months of office, then Councillors will be automatically referred to the Privileges Committee.

The Privileges Committee

The concept of a Privileges Committee is a step in the right direction, however requires more thought into the membership make up to allow for a balanced point of view that is free from bias or reasonable apprehension of bias. Removing the General Manager and/or the Mayor from the decision making process on code of conduct complaints removes retaliation complaints that should lessen the number of subsequent complaints over a council term. As per what I have outlined, I believe that the membership requires ex General Managers and technical experts in legal and social media to support the Committee.

The pursuit of confidentiality

Councillors should be automatically suspended for breaching confidentiality of council matters.

The Matrix and the outcome

A guiding matrix which outlines the severity of the issue to match the desired outcome should be enshrined into this process. It should not start at when a complaint is lodged to the Privileges Committee but start within the Council itself. There are certain processes that could sit outside of the Code of Conduct process and captured through social media complaints process captured in the Model Social Media Policy or dealt with at the time with a warning letter and request for an apology.

Complaints

Types of complaints					Outcome
Staff/member of the public against Councillor	Privileges Committee				*Apology *Censure *Warning *Loss of sitting fee *Sanction by delegation
Complaint against Staff	Refer to the General Manager	Dealt with under the Local Government Award	Workplace investigation where necessary		*Apology *Warning *Disciplinary action
Social media complaint (Staff)	Refer to the General Manager	Dealt with under the Local Government Award	Workplace investigation where necessary		*Apology *Warning *Disciplinary action
Social media complaint (Councillor)	Refer to the Mayor	Mayor issues first warning	Refer to Privileges Committee if repeated or severity	Sub Committee on social media determines outcome	*Apology and removal of post *Censure
Complaint against the Mayor	If in a Council Meeting, a Councillor can move a motion to expel the Mayor and seconded. It does not require a vote.				*Apology *Loss of Mayoral Fee
Councillor against Councillor	Privileges Committee				*Apology *Censure *Warning *Loss of sitting fee *Sanction by delegation

The loss of sitting fee should not be related to a Council meeting but where there is a breach determined by the Privileges Committee that is of a serious nature.

What key features should be included in lobbying guidelines and a model policy?

Inappropriate lobbying also needs to address the behaviour of unions and contact with Councillors. Unions cannot lobby, make representation, or contact Councillors around staffing matters.

Dispute resolution and penalty framework

What level of PIN is appropriate?

The PIN to an individual Councillor should be more than a month's Councillor fee.

As the Mayor I object to the removal of external investigators, they should be called upon by the Privileges Committee to make a determination.

Are the penalties proposed appropriate, and are there any further penalties that should be considered?

No. While the concept of the penalties imposed is supported, like traffic fines, there should be a tiered process of the severity of the penalties issued. As alluded to in my submission around the matrix that determines the severity and the outcome to match the level of severity. Censure of a Councillor could be supported with a similar Name and Shame register like the NSW Food Authority.

Are the existing sanctions available under the Local Government Act sufficient?

No. The concept of the Privileges Committee being able to refer to an appropriate tribunal or body is counterintuitive and no different to the existing delays currently being experienced in the existing system. If an employee is found to have seriously misconducted, they would be terminated from their position. It appears by referring to an appropriate tribunal or body is prolonging the situation and stating to employees that Councillors are given additional privileges.

The Local Government Act needs to change to ensure that Councillors do not resign to avoid sanctioning/censuring and a discontinuance of a complaint process. This is not fair to the complainant, the electors and the integrity of the Council that a complaint is discontinued through this loophole. [redacted]

Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

Neither. The Privileges Committee could have oversight of a Chairperson who has delegated authority to impose sanctions. If an employee is found to have seriously misconducted, they would be terminated from their position. It appears by referring to an appropriate tribunal or body is prolonging the situation and stating to employees that Councillors are given additional privileges. You do the crime, you do the time.

Restoring dignity to council meetings

Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

While I appreciate the concept around Councillors standing to speak, it may not be physically possible for certain Councillors. If Councillors stand beside another fellow Councillor in a heated debate, this could be seen as intimidation.

The process for enabling of a pin to members of the public who refuse to leave a meeting after being expelled should be removed. This becomes a police matter. The Mayor should not be enabling this.

Disorderly behaviour that involves the accusation of wrongdoing by staff, overbearing or threatening, intimidating or any form of offensive behaviour needs to be clearly defined and whereby can be immediately addressed in the meeting.

I support that the Mayor can expel a Councillor from a room for acts of disorder, however I am not agreeable to the role of the Mayor removing Councillor's entitlements. I would suggest that this is the decision of the Council to avoid individuals being targeted by a Mayor.

As alluded to earlier, I call into question the lack of provision around the Mayor's misbehaviour and conduct in a meeting and the mechanisms offered to Councillors to minimise this risk. A suggestion could be that a Councillor moves to expel the Mayor and it requires a seconder. It does not require a vote of the Council, given the proposal is to give one individual, being the Mayor the balance of power to expel Councillors from a room.

Are there any other measures needed to improve transparency in councillor deliberations and decision making?

We do not support the banning of briefing sessions. As it stands, we provide a pre-meeting briefing one hour before the council meeting and is an effective way for Councillors to clarify questions they have on the business paper. The one-hour pre briefing does not allow for a debate or caucusing. The pre-brief occurs on time and does not need a quorum to begin, and Councillors participate as they see fit.

Furthermore, before the department or Minister makes this decision, it should be supported with evidence. The pre-briefings do not shorten a meeting time, nor can one assume that there is a bias or deliberation before entering into the chamber. Our meetings duration goes for over two to three hours. Therefore the Minister and the Department should be informed of the evidence and seek to ask the questions of:

- How many councils currently pre-brief?
- When do they occur?
- On average, how long do they go for?
- On average, how does this correlate to the actual meeting time?

If the perception is that Councils meetings are brief without discussion because of the pre-briefing. I encourage you to look at a Weddin Shire Council meeting. You will find that a pre-briefing provides equity, and resources those who need a verbal briefing to make an informed decision. Especially those who are running for office with impairment difficulties. Removal of the

pre-briefing would discourage those with learning difficulties to run.

As a member of Parliament and a Minister, you are afforded the opportunities of support staff to advise you with briefs for matters being considered before Parliament. A Councillor does not typically have this resource around them, and a pre-briefing is a useful equity tool to assist those who may not be able to sight the content of a Business Paper prior to a meeting. Generally, Councillors have full time and part time employment on top of their role as a Councillor.

What is missing?

There are several points missing from this discussion paper and I have put this in as a summary at the end:

- How does the OLG intend to address code of conduct issues with staff. Noting that it would not be appropriate for a Privileges Committee to deal with staff complaints that are made up of Mayors/Councillors. This is not the appropriate assessment committee to review staffing code of conduct complaints.
- The issues do not relate to what occurs within the Chamber but the behaviours of Councillors outside of the Chamber towards each other, towards staff and on social media.
- Unions must also abide by the proposed changes and that their conduct should fall under the proposed changes.
- How will the Privileges Committee be supported? If it is the intent to do away with external investigators, will the OLG resource internal investigators assist with the investigation before a determination is issued.
- Provisions and principles around the wastage of local government resources. Too often in this current term I have seen notices of motions submitted that are trivial and potentially defamatory if publicly tabled that requires significant input by staff to deal with the matter. We need stronger provisions and guidance around the wastage of local government resources through a new Model Public Interest Disclosure Policy with again, parameters through a matrix that is not open to interpretation. It will restore the integrity and look at what is good for council, and what is good for our community.
- Firm consequences for Councils who weaponise a ‘no confidence vote’.
- Ability to censure and sanction Councillors who resign to avoid punishment.
- What are the support mechanisms for Councillors who need support and advice pertaining to the Mayor or other matters? It has been the unfortunate experience in the past that when help has been sought by our Councillors directly to the OLG, we were told that there was no support directly to Councillors, without first it coming from the Mayor.

Thank you for providing the opportunity for me as the Mayor of Weddin Shire Council to respond, and appreciate you considering the information contained within.

Yours faithfully



Craig Bembrick
MAYOR

From:	david winterbottom
To:	OLG Councillor Conduct Mailbox
Subject:	Submission on discussion paper
Date:	Thursday, 10 October 2024 2:57:21 PM

Greetings
This is a submission from Neighbourhood Forum 5 (set up by Wollongong Council to advise on community aspirations, visions, needs & concerns) on the Discussion Paper on Councillor Conduct and Meeting Practices.

At its meeting on 7th October the Forum resolved to congratulate the Office of Local Government for an excellent discussion paper which, amongst other things, aims to provide greater transparency to the conduct of NSW councils.
They also resolved to make this submission to the Office of Local Government supporting the abolition of closed briefings, so as to increase council's transparency and increase the community's trust in council.
Yours faithfully
David Winterbottom
Secretary

From: Cr. Kiri Dicker (she/her)
To: OLG Councillor Conduct Mailbox
Subject: Submission - review of the Councillor Conduct Framework
Date: Wednesday, 16 October 2024 3:47:55 PM
Attachments: seahorse_e4f42d9c-8a7d-4c44-abcd-7c82e9a8a47f.gif
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communityconnectextraoctober2024emailfooter_1808d807-ebd9-4b4c-a379-fc62eae508d4.jpg

Hi,

Please find below my personal submission to the OLG review of the Councillor Conduct Framework.

Section	Proposed Reform	Support/Oppose	Rationale
Conflicts of interest	Proposed framework for pecuniary and non-pecuniary interests	Support	The proposed framework for pecuniary and non-pecuniary interests is appropriate. While memberships of clubs should not ordinarily be considered a non-pecuniary interest, membership of a club should be considered a significant non-pecuniary conflict of interest where the matter involves entering into a lease of Council owned or managed land and the club is the leasee and the councillor should abstain themselves from the decision.
Conflicts of interest	Property developers and real estate agents	Support	In addition, reforms should create a higher standard of conflict of interest for Councillors who own properties that are being used for short-term holiday letting. For example, Councillors should be required to disclose as part of their Annual Disclosure, whether property they own is being used for short-term holiday letting, and this should be considered a significant conflict of interest in debates relating to the treatment of short-term holiday letting (both in terms of policy and planning matters).
Conflicts of interest	Addressing inappropriate lobbying	Support	In my opinion briefings on development applications in which the applicant or their representative attends in any other capacity than an observer should not be permitted. Further, applicants and their representatives should be prevented from giving a deputation on development applications at Council meetings.
Potential changes to the definitions and assessment of councillor misbehaviour	Councillor misbehaviour in public office	Partially Support	I have reservations on whether the third proposed “limb” (i.e. “is assessed as being outside the norms and expectations of a sitting councillor”) is fair, especially given the proposed composition of the Privileges Committee (being limited to Mayors and ex-Mayors). It should be noted that social norms are relevant within reference groups (i.e. the group of people whose opinions matter to someone) – different factors such as age, gender and political beliefs influence what someone does/does not consider to be “outside norms and expectations”. Unless more deliberate steps are taken to ensure the diversity of membership of the Privileges Committee then this “limb” should be removed.
Dispute resolution and penalty framework	Separation between the process for consideration of conflicts of interest and the processes for consideration of misbehaviour	Support	In my experience the current Code of Conduct process is frequently weaponised and ineffective at ensuring a higher standard of behaviour among Councillors. I support abolishing the two-step process, discontinuing of independent Conduct Reviewers and transferring the investigation of serious conflicts of interest into the hands of the OLG and the ability to make complaints about to a Local Government Privileges Committee.
	PINs and referrals to an appropriate tribunal or body	Support	I support the use of a tribunal or other similar body to determine punishments for all serious misconduct matters rather than the Departmental Chief Executive.
	NSW Local Government Privileges Committee	Partially Support	I support the establishment of a Local Government Privileges Committee to examine issues of misbehaviour. The membership of the Privileges Committee is likely to determine the outcome of investigations as issues of behaviour are almost entirely dictated by social norms. Limited membership of the Committee only to current and former Mayors is likely to result in a committee that is predominately male, white, older and politically conservative, as this demographic is overrepresented on Councils, especially in regional areas.

			To ensure great diversity, the parameters of membership should be widened, for example, to any current or former Councillor who has served at least two full terms on Council. Alternatively, members of the Committee who are currently sitting Councillors could be nominated by their peers as with other Committees. Each Committee should be comprised of at least 1/3 women, 1/3 men, with the remaining 1/3 to comprise any gender.
Proposed reforms to the Model Code of Meeting Practice	Expectation to stand when addressing a meeting and when the mayor enters the chamber.	Oppose	This level of protocol is unnecessary and inappropriate, especially in small communities where less formality is expected. Standing to speak creates an environment that is more hostile and combative rather than deliberative. It adopts a style of meeting that is authoritarian and hierarchical rather than collaborative. It is likely to further drive conflict rather than resolve it. It begs the question, to whose tradition should we demonstrate "reverence" and by whose standards is "civility" defined? The practice of standing over others while speaking is uniquely colonial and is at odds with Indigenous approaches to communication which place a greater emphasis on consensus. This reform is also ableist, because it makes it difficult or impossible for wheelchair users or other mobility constraints to participate equally. For example, those who are quickest to their feet will be offered the opportunity to move recommendations first, which may influence the outcome of the debate. It may also be humiliating for those (including Councillors and members of the public) who are not able to stand, including if the Mayor themselves is not able to stand. Should the OLG persist with this reform, which is not advised, it should not be a mandatory inclusion in local Codes of Meeting Practice so that it can be adapted to the local context.
	Additional powers for mayors to require Councillors to apologise, expel councillors for acts of disorder and to remove the councillor's entitlements.	Oppose	Additional powers in this regard are unnecessary because section 15.12 of the Model Code of Conduct already enables the Mayor to require a Councillor to apologise for disorderly conduct, and Section 15.14-15.17 enables the Mayor or the Council by resolution to expel Councillors for disorderly behaviour. Expulsion from a meeting is a serious consequence and to avoid being misused or politicised, should only be made following referral to a Local Government Privileges Committee. Further, the power to remove councillor's entitlements is unnecessary and doesn't reflect the enormous amount of work that Councillors perform outside of Council meetings. It may also result in financial difficulties for those who rely on their Councillor stipend to supplement their income. Should the OLG wish to persist with these reforms, the right for a review is essential and Councillors who are forced to apologise and/or expelled form meetings is a way that is later found to be unfair should be owed an apology.
	Banning private briefing sessions	Support	I see no reason why Councillor briefings should not be made open to the public. It is important that this includes all kinds of briefings, including "working parties" where Councillors review applications for various Council grant programs. It is in these meetings where I have seen Councillors seek to influence decisions prior to the outcome being reported to an ordinary meeting. The inability of members of the public to ask questions or provide input, especially on contentious issues, can be challenging and frustrating for observers and will need to be carefully managed. The discussion paper makes no mention of on-site briefings and how this will be managed under the proposed changes.
	Other		The discussion paper does not fully appreciate the propensity for the meeting procedures to be politicised and weaponised against certain Councillors based on their political beliefs and affiliations. Examples include preventing certain Councillors from moving recommendations or applying the Code of Meeting Practice (especially points of order) in a biased way. This is often the cause of frustration and resentment among Councillors and drives more significant conflict. Consideration should be given to reforming the Local

			Government Act to enable Councils with a popularly elected Mayor to elect a Chair who is not the Mayor by majority vote, with the Mayor retaining the casting vote.

Cr. Kiri Dicker (she/her)
Councillor

Ballina Shire Council acknowledges that we are here on the land of the Bundjalung people. The Bundjalung are the traditional owners of this land and are part of the oldest surviving continuous culture in the world.

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From:	Anthony McGrath
To:	OLG Councillor Conduct Mailbox
Subject:	Councillor Conduct Framework Review
Date:	Wednesday, 16 October 2024 9:51:46 PM
Attachments:	0.png 1.png

I writing on behalf of Parkes Shire Council to provide feedback on the Councillor Conduct Framework Review as distributed in a discussion paper issued to Council.

Council considered the discussion paper at a recent meeting and resolved to support the proposed changes as outlined in the paper.

The only comment I would make is regarding the proposal to ask Councillors to stand, where able, when addressing the meeting. This requirement, may conflict with the requirement for council to record its meetings. In Parkes Shire's case, the microphones used to pick up Councillor's voices are desk mounted and require the Councillor to speak directly into the microphone to be heard clearly. A requirement to stand will likely result in a lower sound quality.

Kind regards,

Anthony McGrath
Director Customer, Corporate Services & Economy | Parkes Shire Council
[redacted]

Anthony McGrath
Director Customer, Corporate Services & Economy
Parkes Shire Council | Wiradjuri Country
2 Cecile Street (PO Box 337), Parkes NSW 2870
[redacted]
www.parkes.nsw.gov.au

REVIEW OF COUNCILLOR CONDUCT FRAMEWORK

SUBMISSION

Thank you for the opportunity to contribute to this review.

I would like to address the issue of the transparency (or current lack of it) by local councils. Here in Eurobodalla Shire, briefings to councillors are closed to the public and councillors are told that the information provided in those briefings is strictly confidential.

This means that the councillors must make decisions on a range of matters having received background information from only one source: the council staff. By comparison, State and Federal ministers have their own advisers, in addition to the public service, to help them understand all aspects of an issue before they come to a conclusion.

I would argue that the review's proposal to allow public access to Council briefing sessions is absolutely necessary for appropriate transparency and good decision making.

From my observation, councillors quickly become trapped within the web of council staff, and an invisible wall is erected to keep the public away from the meaningful discussions which take place in confidential sessions. By the time that issues come before council meetings, the debate which takes place frequently appears tokenistic, with the views of councillors already established well before the meeting, presumably often based on what they have been told by council staff.

The community deserves the opportunity to be aware of what councillors are being told, as members of the public may be able to provide information that challenges or adds to the briefing material provided by council staff. A better-informed councillor is likely to make better decisions.

Banning closed briefing sessions will also help the community understand the reasons for council decisions, which are often opaque.

I applaud this proposed change and hope most fervently that it will proceed.

LOUISE WEBB

23 October 2024

From:	Kylie Smith
To:	OLG Councillor Conduct Mailbox
Cc:	Peter Vlatko; Kelly Fairbank; OLG - Cobar Shire Council
Subject:	Cobar Shire Council Submission
Date:	Friday, 25 October 2024 8:37:16 AM
Attachments:	image001.jpg image002.png image003.png image004.png image005.png

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Council at its meeting of 24 October resolved to submit the following comments for consideration of the review.

1. Councillor Misbehaviour in Public Office

In the spirit of minimising complaints needing further action by the Office of Local Government or a Privileges Committee and increasing public transparency, that the Council (whoever has the accused Councillor) vote on any conduct allegation submitted to Council and whether it be referred on to a Privileges Committee or investigation by the Office of Local Government.

To effect and identify misbehaviour in office we need to define “offence” throughout the document for the purposes for conduct review.

2. Privileges Committee

Council does not support the suggestion that the Privileges Committee process would be paid for by either individual councillors or their councils. If a councillor is found to breach the code they should pay for the process. Rural councils shouldn’t have to have another cost put on them when budgets are so tight.

If the proposed privileges committee is put in place, it should have at least one mayor or ex-Mayor from rural/remote NSW to ensure the unique challenges are adequately represented and conduct is reviewed in light of the local community expectations.

3. Restoring Dignity to Council Meetings

Council does not support the Mayor being able to issue a PIN to a member of the public. The current process of expelling people for disorderly behaviour is effective in dealing with this conduct.

There needs to be greater detail provided on a right of review entitlement for councillors disputing expulsion or loss of fees.

Council is not supportive of the concept of standing on ceremony and formality at meetings limiting participation by Councillors and elevating the Mayor above the current accepted, first among equals position. Council meetings should have formality and the position of Mayor should be treated with the respect it deserves without unrequired excessive formality.

Council meetings need to find a balance to remain current and encourage the next generations to participate and take an interest. Restoring dignity and prestige shouldn’t be burdensome and have unnecessary pomp that detracts from the real reason we are there, to help our communities.

4. Banning Briefing Sessions

Retain and support the practise of workshops and briefing sessions under the current practices as an opportunity to enhance understanding not decision making as is currently the case. As meeting procedure is very formal, councillors have limited opportunity to understand the issues under consideration.

Adding more work for councillors in rural and remote communities by increasing the time a

council meeting will take, or juggling onerous committee meetings in order to have the background they need to make an informed decision on matters is another step backward in encouraging more participation in the future.

It shouldn't be forgotten that councillors are elected, and as such, the community has provided a mandate to make decisions on their behalf.

Throughout the document there is reference to Parliamentarian conduct and there is no time where a private briefing can't happen for an MP, Minister, or even departmental staff. Why does this change because it's a different tier of government.

Should you have any further questions, please do not hesitate to contact me.

Regards

Kylie

Kylie Smith
Director Corporate & Community Services
Cobar Shire Council | 36 Linsley Street (PO Box 223) | Cobar NSW 2835
P: [redacted] **EXT:**
E: [redacted] | **W:** www.cobar.nsw.gov.au

www.visitcobarshire.com.au

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Ku-ring-gai Council Submission to the Review into Councillor Conduct Framework

As noted in the 2024 Councillor handbook, local communities rightly expect the highest standards of conduct of those they elect to hold office. Failure to meet these standards undermines community confidence in individual councils and the local government sector as a whole.

Ku-ring-gai Council is supportive of a review of the Councillor Conduct Framework and welcomes the opportunity to provide feedback.

Council is supportive of the general principles of the proposed reforms (subject to further comments below). Council would support a more streamlined, principles-based Code of Conduct for Councillors. The key elements of the new Code should continue to reflect:

- the role of a councillor in representing the interests of the community
- expected standards of behaviour in line with principles of fairness, equity and respect
- obligations with regard to work health and safety, child protection, anti-discrimination, and adopted council policies
- improper influence of council staff
- appropriate use of council resources
- recordkeeping and use of confidential information
- disclosures of interest, gifts and benefits
- consequences of misuse of the code (e.g. vexatious complaints).

Council notes that the detailed definitions and requirements relating to disclosures of interests constitute about half of the existing Model Code of Practice. Council would recommend that these (and other details) are dealt with under separate guidelines.

Supporting the removal of General Managers from the complaint process

Ku-ring-gai Council is supportive of the proposed changes to remove the role of general managers from the complaint process for serious issues.

This would reduce the potential for conflicts of interest and politicisation of the office of the general manager, increase confidence in the fairness and objectivity of the process and improve efficiency by directing these straight to the OLG or the privileges committee.

Clear delineation of responsibilities

Council would recommend that the review delineate responsibilities and clarify procedures for referring matters from the OLG or Privileges Committee to the NSW Police, Ombudsman or ICAC.

Indemnifying Councillors

Under the model Councillor Expenses and Facilities Policy, Councils may indemnify or reimburse the reasonable legal expenses of Councillors. Under the model policy, legal costs relating to a Code of Conduct complaint may only be made available

where the matter is referred to a conduct reviewer who makes a finding favourable to the councillor. Many Councils have these provisions written into their local policies.

The review may need to reconsider what legal representation or other support councillors should be entitled to in challenging a PIN or other sanction under the new Code and update the model Expenses and Facilities Policy accordingly.

Minimising complaints

The review should consider alternative pathways for resolving disputes to minimise costs and administration.

The new framework should emphasise that Councillors attempt to resolve disputes themselves in the first instance, what role (if any) the Mayor has in conciliating issues, and consider opportunities for mediation services to resolve disputes before matters are escalated to the Privileges Committee.

Powers of mayors

Currently Councillors may only be expelled by resolution of council. The proposed powers of mayors to expel councillors and remove their entitlements may lead to actual or perceived abuse of power.

Transparency and confidential briefings

Ku-ring-gai Council has significant concerns with the proposed ban on private pre-meeting briefing sessions with councillors.

It is not clear that there is a problem to be solved here, and it is not directly relevant to the Code of Conduct or councillor behaviour.

Council would like to emphasise that in-camera briefings are not a forum for debate or decision-making at Ku-ring-gai Council. Decisions are (and will continue to be) made in council meetings that are open and transparent to the public (unless dealing with confidential matters).

Individual councillors have the right to request information and advice from staff. We believe that pre-meeting briefings provide the best opportunity for staff to brief councillors so they all receive the same information and advice.

Publicly discussing pre-meeting briefings would place constraints on the type of information that council staff could provide and the questions that councillors could ask. This could lead to less comprehensive and informed decision-making.

It would significantly hinder the ability of council staff to provide advice to elected representatives, ultimately compromising the quality of decision-making. The ban would limit the ability of staff to provide frank, honest, apolitical and impartial advice to councillors on complex policy, operational, and financial matters and objective information on the risks and benefits of options that council may need to consider.

The proposal would also create a significant administrative burden on councils by requiring that pre-meeting briefings be formalised and/or included as part of the agenda of ordinary meetings of council.

Under the proposal, councils would need to give public notice of briefings, prepare and publish minutes, webcast meetings, and shoulder all of the additional administration required to host, manage and record the proceedings of public meetings. Councils would also need to address privacy, confidentiality, defamation and copyright risks associated with public briefings.

From:	Alec Taylor
To:	OLG Councillor Conduct Mailbox
Subject:	RE: Councillor Conduct Framework Review - Ku-ring-gai Council Submission
Date:	Tuesday, 29 October 2024 4:19:43 PM
Attachments:	image001.png image002.png image003.png image004.png image005.png image006.png image007.png image008.png image009.png

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Thanks [redacted]

For what it's worth I personally don't agree with the staff position on increasing the Mayor's powers – I think increasing them is a good thing, and could still be controlled with motions of dissent.

Regards

Alec

From: [redacted] > **On Behalf Of** OLG Councillor Conduct Mailbox
Sent: Tuesday, October 29, 2024 2:52 PM
To: [redacted]
Cc: Councillors <councillors@kmc.nsw.gov.au>; Directors [redacted]; Jamie Taylor [redacted]
Subject: RE: Councillor Conduct Framework Review - Ku-ring-gai Council Submission

Dear Mr Jones

Thank you for the submission to the review of the *Councillor conduct and meeting practices – A new framework* on behalf of Ku-ring-gai Council.

Council's submission will be taken into account as part of the review.

Kind regards

[redacted]
Office of Local Government
Department of Planning, Housing and Infrastructure
[redacted]
olg.nsw.gov.au
dphi.nsw.gov.au
Locked Bag 3015, Nowra NSW 2541

I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

From: Christopher M Jones [redacted]
Sent: Monday, October 28, 2024 12:05 PM
To: OLG Councillor Conduct Mailbox <councillorconduct@olg.nsw.gov.au>
Cc: Councillors <councillors@kmc.nsw.gov.au>; Directors <[redacted]>; Jamie Taylor <[redacted]>
Subject: Councillor Conduct Framework Review - Ku-ring-gai Council Submission

Good afternoon,
As noted in the 2024 Councillor handbook, local communities rightly expect the highest standards of conduct of those they elect to hold office. Failure to meet these standards undermines community confidence in individual councils and the local government sector as a whole.
Ku-ring-gai Council is supportive of a review of the Councillor Conduct Framework and welcomes the opportunity to provide feedback.
Council is supportive of the general principles of the proposed reforms (subject to further comments in the attached), although Council has concerns with the proposed ban on private pre-meeting briefing sessions.
Please see the attached submission as adopted by Council on 22 October 2024 (ref: GB.10 - link).
Feel free to contact me directly if there are any questions or issues.
Kind regards
Chris

Christopher M Jones • Manager, Governance and Corporate Strategy • Ku-ring-gai Council
(02) 9424 0600 • [redacted] • krg.nsw.gov.au



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Murrumbidgee COUNCIL

SC222/SC62

Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

Portal: https://www.olg.nsw.gov.au/councils/misconduct-and-intervention/councillor-conduct-framework/

Dear Sir/Madam

COUNCILLOR CONDUCT FRAMEWORK REVIEW

Q: Are we Missing Anything in the Principles of Change

Within the Principle - ***Significant Penalties should only be imposed by a judicial or quasi-judicial body***, should be the following:

Where a code of conduct complaint is made, it must be accompanied by a refundable $5,000 application fee, and the application fee is refundable only once the complaint is proven. Should the complaint turn out to be vicarious or frivolous, then all Council costs, along with the defendant's costs, are to be paid by the complainant.

Two additional principles we propose are:

- *Democratic Leadership*
- *Meaningful Community Engagement*

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

The Code of Conduct should be no more or no less that the Code of Conduct for members of the NSW Government.

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

We have no view on this matter.

Q: Is the proposed pecuniary interest frame work appropriate? Is anything missing?

The framework is appropriate, we have nothing to add.

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

Yes we agree.

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

We believe that your approach to create an obligation to divest and not enter into real estate or development business arrangements through contracts is as good as trying to exclude those persons from being able to run as a Councillor, and we are sure it would be tested during the transitional period and rejected by the Courts, so why even attempt.

We see a better approach is that you create the obligation, as mentioned, for all urban and regional Councils only, but only for interests within the LGA where they are a Councillor. That way you are not excluding them from being a Councillor, you are protecting the LGA they represent, so all actual or perceived conflicts of interest, pecuniary or non-pecuniary interests, are also removed.

The issue you wish to solve rarely takes place in rural or remote LGAs, so they need to be separated out of this obligation. It is difficult enough to get people to stand for Council in rural and remote areas, and exclusion of real estate agents and developers only lessens the pool of candidates.

Q: Is this the appropriate threshold to face a Privileges Committee?

Yes, this is an appropriate threshold.

Q: How else can complaints be minimised?

Mandatory training of elected representatives on key aspects.

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

One feature in the policy should be a state wide register of professional lobbyists, who are provided with a registration which they show before lobbying a Council, with the obligation of the Councillor to refer this registration number and details of any conversations to the internal Council register holder of the Register of Lobbying, which is a public document.

The second feature mentioned is an internal Register of Lobbying, which is updated by the Governance Officer or Public Officer of the Council. With the obligation of the elected representative, along with the General Manager and Executive Team to report all lobbying via Declaration of Contact with a Lobbyist form. The register to include such title headings as date and time, professional lobbyist registration number, name of person lobbying, name of person being lobbied, reason behind the lobbying and inappropriate requests/behaviours. Under the inappropriate requests/behaviours heading, such things as the Councillor or staff member construed as an inducement. The register is published on Council website with the exclusion of the last title heading of inappropriate requests/behaviours.

Q: What level of Penalty Infringement Notice (PIN) is appropriate?

50 penalty units.

Q: Are the penalties proposed appropriate, and are there any further penalties that should be considered?

We have no view on this matter.

Q: Are the existing sanctions available under the Local Government Act sufficient?

No

Q: Should decisions on sanctions be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

Independent Tribunal

Q: Are there any other powers that need to be granted to the Mayor or Chair of the relevant meeting to deal with disorderly behaviour?

No

Q: Are there any other measures needed to improve transparency in Councillor deliberations and decision making?

We consider the total banning of briefing sessions to be a mistake, specifically based on your rational of development applications. Reason is that Murrumbidgee Council never has and never will speak about development applications within a briefing session. Murrumbidgee Council's General Manager has worked in another jurisdiction which actually suspended the Council meeting to talk about development application whilst still in the open meeting, and they only spoke about development applications in the formal Council meeting when a decision is to be made.

Murrumbidgee Council's approach is that we do not see or talk about the development applications in the briefing session, we either hold a community forum if the applicant/s and/or objector/s wish to address Council, otherwise the first time Council sees the DA is when they read the agenda, apart from the advertising notices they receive when an application has been made.

We call our briefing sessions workshops, because that is what they are. We workshop the strategic direction of the Council. Council uses it to gauge the opinion of the elected representatives on Council's direction, be it the development of a new policy, gathering the thoughts on master plans, etc. These two examples, ie workshopping a policy or a master plan, the item is then reported to a future Council meeting for authorisation to place the matter on public exhibition before coming back to Council to be ratified.

We believe you are making blanket decision on a matter upon which we totally agree ie. Development Application, and which can be dealt with in an entirely different way.

Yours faithfully

[redacted]

Ruth McRae OAM
MAYOR

GOULBURN MULWAREE COUNCIL

OFFICE OF THE MAYOR
Cr Nina Dillon

Goulburn Mulwaree Council
Locked Bag 22
Goulburn NSW 2580
t (02) 4823 4444
e council@goulburn.nsw.gov.au
www.goulburn.nsw.gov.au

29 October 2024

Office of Local Government NSW
Locked Bag 3015
NOWRA NSW 2541
councillorconduct@olg.nsw.gov.au

Subject: Submission – Councillors Conduct Framework Review

I refer to the Office of Local Government circular issued on 5 September in relation to undertaking a review of its Model Code of Conduct and Model Code of Meeting Practice for NSW Councils. On the whole, I would like to commend the OLG on the proposed changes - except for the proposal to Ban Council Briefing Sessions

Council Briefing Sessions do provide a means for Councillors to both discuss and/or learn more about a specific issue– without having to be concerned that the public may misconstrue Councillors frank and open discussions. A briefing may be by Council staff outlining a proposal's merits and legal status, and/or a proponent putting forward their case in relation to a matter.

Whilst I agree that the final decision and debate on each matter must always be at Council Meetings and open to the public for both transparency and accountability, I do believe the banning of the briefing would be a backyard step.

Briefings provide Councillors both with the background to a specific matter, along with the opportunity to ask questions and clarify issues in relation to any proposed Motion. If Councillors are not able to have a briefing, I believe Councillors may be seriously disadvantaged - and attend Council Meetings with little specific knowledge regarding the serious issues being addressed.

In our Council, the Meeting Agendas are generally only made available on Fridays - for Meetings held the following Tuesday evening. With many businesses and Council staff unavailable over the weekend, this would mean Councillors have only two days to seek answers or clarification from Council staff and/or from proponents.

I think the possibility of rushed decisions, along with the limited time the resources available to assist Councillors to reach an informed decision – is an area which has been overlooked by the OLG in the proposed banning of Councillors Briefings.

Thanking You

[redacted]

Cr Nina Dillon
Mayor Goulburn Mulwaree Council

[redacted]

Mr Brett Whitworth
Deputy Secretary, Local Government
NSW Office of Local Government
5 O'Keeffe Avenue
NOWRA NSW 2541

Via email: councillorconduct@olg.nsw.gov.au

Mr Dick Pearson
[redacted]

31 October 2024

Dear Mr Whitworth,

Subject: **Feedback - Code of Conduct Discussion Paper**

I am writing to you as Secretary of the **Kempsey Shire Residents Association Inc.** (KSRA) to provide feedback on the NSW Office of Local Government Code of Conduct discussion paper.

Background

To provide some context, this feedback is based on some eight years of observing and interacting with Kempsey Shire Council - involving Councillors, the General Manager and the Executive Leadership Team (ELT). This period saw three Council elections with a change in some elected Councillors each time and a period predominately under a General Manager and Executive Leadership Team, commencing in February 2018 following a restructuring of Council's administrative wing. Also relevant is the fact that Kempsey Council was one of the three impacted by the NSW Electoral Commission failed electronic voting system in December 2021 which required a re-run election in mid-2022.

KSRA is part of a network of community groups across Kempsey LGA [redacted] This is lived experience which we hope may be improved with the introduction of an updated Code of Conduct and more importantly, an improved Code of Meeting Practice.

Feedback

The discussion paper is welcomed and appears to be a big step in the right direction. Please see **attached** PDF file version with **highlighted sections** and **'sticky note' comments**. Although all sticky note comments are relevant, the points listed below are the areas of primary interest.

Scope - Code of Councillor Conduct v's Code of Meeting Practice

It is clear that the discussion paper is the first step in marshalling limited Government and OLG resources to dealing with areas of most concern to OLG – serious misbehaviours and Councillor corruption. It is hoped that in this endeavour the OLG does not back away from dealing with lesser matters that often cause most frustration and grief to the community.

It is clear that the discussion paper addresses the shortfalls of both the code of meeting practice and the code of councillor conduct. KSRA believes that there is much to be gained by improving the code of meeting practice and eventually, the code of conduct for staff.

Code of conduct for staff

The discussion paper states that the current code of conduct for staff is 'fit for purpose' and 'largely' effective. KSRA disagrees with this assessment when it comes to the behaviours and modes of operation of some General Managers.

KSRA recommends that the code of conduct covering staff (especially GM's and ELT's) be reviewed once the new Councillor code of conduct has been implemented. KSRA also recommends that the OLG publicly outline who the 'stakeholders' were that influenced the OLG to conclude that the current staff code is fit for purpose.

Limitations of an 'aspirational' code

Even an aspirational code has to have some teeth. Aspirational equates to self-regulation. If self-regulation alone worked, *Moses would have come off the mount with the ten guidelines.*

Complaints handling procedures

The discussion paper details the deficiencies of the current 'two-step process' for handling complaints and proposes the introduction of a Privileges Committee, made up of experienced mayors and ex-mayors to deal with misbehaviour only. This make up is potentially problematic as it risks appointing ex-mayors who in their own right have demonstrated questionable behaviour. [redacted] KSRA recommends that the Privileges Committee include at least one lay person with the capacity to bring a wider community view to the table.

Closed briefings

Most definitely, briefing sessions should be open to the public in the same manner as council meetings. [redacted]

Transparency

One key element in transparent decision making is the need for the public to observe council meetings (and briefing sessions) in progress. Obviously, mechanisms must suit the financial capacity and geographic area of a council. Video as well as audio recording is essential, with a preference for living streaming and later access by YouTube. Critically, video must show councillors as a collective in chamber <u>at full screen size</u> so the public can observe body language and gestured communications between councillors. [redacted]

Limitations on Public Forums

Public forums provide an opportunity for people to publicly address council, but only in relation to agenda items in the Business Papers. There is no mandatory requirement for a council to facilitate a mechanism for the public to raise non-agenda items and to question councillors, the General Manager and the ELT. KSRA recommends that the OLG make this a mandatory aspect of the Code of Meeting Practice, obviously with 'guiderails' to ensure normal civil behaviour and discourse.

I trust this feedback aids your efforts to improve the functioning of Local Government in NSW.

Yours sincerely,

[redacted]

Dick Pearson
Secretary, KSRA Inc.

[redacted]

Encl: Annotated copy of OLG Discussion Paper

Wingecarribee SHIRE COUNCIL

31 OCTOBER 2024

Mr Brett Whitworth
Deputy Secretary
Office of Local Government
Email: olg@olg.nsw.gova

Dear Mr Whitworth,

Submission on the Review of Councillor Conduct and Meeting Practices

Wingecarribee Shire Council appreciates the opportunity to provide the following submission in response to the Office of Local Government's discussion paper titled *"Councillor conduct and meeting practices – A new framework".*

Council welcomes this reform and supports a framework that will strengthen leadership, foster a culture of integrity and accountability.

Council has reviewed the Discussion Paper and at the Meeting held on 30 October 2024, resolved to provide the following submission (MN 2024/310).

> *THAT Council endorse the draft submission in relation to the Office of Local Government's Discussion Paper on Councillor Conduct and Meeting Practices, as included in Attachment 1 to this report.*

Council's feedback on the proposed review will be made by responding to the key headings included in the OLG discussion paper.

Principles of Change

Council is supportive of the principles of change that have been prepared to guide discussion and intention of changes. It is suggested that "*Unity*" be added to the principle of "*Transparency and accountability"*.

As a democracy councils need to hear, consider and debate issues in an open manner, however once Council decisions are made councillors need to act in a unified manner. This is achieved by actively supporting the Council decision made by majority vote and not publicly criticising the decision, or how individual councillors voted on a matter in the public domain.

Council understands the principles of free speech, however being publicly critical of Council decisions in no way promotes unity, trust or respect within the community and within the body politic.

Code of Conduct and Oath of Office

Council supports any changes to the code of conduct (the code) that provides greater clarity regarding the behaviour expectations of councillors. This includes aligning the Oath of Office to ensure that councillors are aware of their responsibilities when taking office. However, alignment with any 'aspirational' code of conduct would provide no weight to the requirements to which councillors swore an oath of office and would be difficult to enforce.

The Local Government Act 1993 clearly defines councillor misconduct as a breach of the Act, the regulations, or the code. The code provides a detailed overview of the specific behaviour that constitutes misconduct. Although the code of conduct could be made simpler and the language more accessible, the current framework enables updates to the code to be made quickly, and some sections to be tailored to the needs of local communities without the delay of legislative amendment.

The proposed amendments to this framework will add complexity by creating a tri-layered system with an aspirational code, legislated definitions of misconduct and additional details included in regulations. This is unlikely to result in a streamlined and easily understood system.

Consistent and regular training is required to support councillors in complying with the Code along with more timely action and consequences when a breach has occurred. The current system does not allow for breaches to be dealt with in a timely manner and in some cases the consequences do not act to deter future breaches.

Definitions and Assessment of Councillor Misbehaviour

Council supports any change to the definition and assessment of Councillor behaviour that will provide greater clarity and understanding of their responsibilities and how certain behaviours will be appropriately managed.

Conflicts of Interest

From experience Councillors (and some staff) find it difficult to understand the differences in relation to the three different forms of conflicts. (ie Pecuniary, non-pecuniary significant and non-pecuniary less than significant). A review of such requirements with a view to merging the pecuniary and non-pecuniary – significant requirements into one is deemed appropriate as the identification, reporting and management requirements are essentially the same.

In addition, Council fully supports any proposal to provide the OLG with additional investigative powers to allow it to seek the necessary information required to appropriately investigate alleged breaches of pecuniary interests.

Property developers and real estate agents.

Council acknowledges the risks relating to property and contractual dealings especially given the occupation of some councillors that deal in such matters. Council welcomes any reforms and controls that may better manage such dealings but not adversely impact on their chosen occupations.

Council notes the matters to be drafted in new legislation to manage such interests however without specific information on how such legislation will be managed in practice it is difficult to provide specific comment.

However, Council supports the move provided the legislation is clear in relation to the new requirements and that it is supported by a framework to address process, responsibility, accountability and remedy and does not become an unnecessary drain on Council resources.

Councillor misbehaviour in public office

Given that there is appropriate legal precedence to identify conduct that is unbecoming of a councillor and which brings council into disrepute the assessment of the "third limb" of misbehaviour seems to be best served via an independent panel.

Council agrees with the concept of a Privileges Committee, however membership, selection criteria relating to skills and diversity needs to be carefully considered to ensure that committee members have the necessary skills and experience to undertake such a role. Appointment to a Privilege Committee may become highly political with it being constituted by mayors and ex-mayors, with the strong possibility of party-political alliances influencing the decision-making processes. As such the selection and appointment process needs to be carefully managed.

In addition, Council suggests that there is a need to develop a framework that will set thresholds and procedures around the process and that clearly identifies rights and responsibilities, rights of review, cost responsibilities and remedies.

Addressing inappropriate lobbying

Council supports a policy to specifically address lobbying. Such a policy should contain sufficient and clear information to assist Councillors to identify a lobbyist, ban any lobbying of individual Councillors on development or contractual matters and include what matters a Councillor maybe lobbied on.

The policy should also include a Councillors responsibility to keep clear and accurate records of any interactions with a lobbyist and to ban a Councillor from meeting with a lobbyist in a public location and without a support person present.
The policy should be supported with appropriate and ongoing training and the need to share such interactions with all Councillors.

Dispute resolution and penalty framework

Council supports the proposal to abolish the two-step investigative process that currently exists in the Procedures for the Administration of the Model Code of Conduct. This is due to the concerns raised in relation to the time taken to conduct this process and the costs associated with a drawn-out investigation by an independent conduct reviewer.

Therefore, Council supports the concept of:

- Complaints about conflict of interest matters being made directly to the OLG, and
- Complaints about misbehaviour being referred directly to the Local Government Privileges Committee via a dedicated webform, provided there are no additional costs to Council of such referrals.

The removal of general managers from this process is supported as it reduces the potential for conflict between the general manager and their employer.
The issuing of penalty infringement notices (PIN's) for minor breaches of conflict of interest declarations is also supported provided it is set at a level that will dissuade Councillors from breaching their conflict of interest responsibilities. Greater penalties should be incurred if the conduct for which they were referred continues. The introduction of any

penalty system should be supported by a framework that clearly identifies thresholds for the level of penalties imposed.

Consideration of a new power enabling the Mayor to issue a Penalty Infringement Notice to members of the public who refuse to leave a meeting after being expelled may be beneficial. However, this requires significant detailed information on how it would be administratively managed.

Referral of significant sanctions to appropriate tribunal or body

Council supports the current process of the Departmental Chief Executive sitting in judgement of an elected official. Council is not aware of any concerns raised in relation to this process and considers the existing process to be a quicker and more cost-effective process than referring to a judicial or quasi-judicial body.

Providing a more formal process involving a judicial or quasi-judicial body may add significant costs to the process and the possible need for legal representation. Given the possible workload this may extend the time to have matters appropriately dealt with.
Should the OLG embark upon the process of referring such matters to an independent tribunal greater detail needs to be provided on the processes relating to the operations of the tribunal, the hearing structure, rights of appeal, and anticipated costs and how costs would be determined and apportioned.

Restoring dignity to Council meetings

Council fully supports any actions taken to restore dignity to Council meetings. The current OLG Model Code of Meeting Practice provides the opportunity for either the Mayor or the Council to expel a Councillor for disorderly behaviour and to apologise for any inappropriate behaviour and Council supports these requirements.

However, it is difficult to determine how requiring standing would create additional dignity. The current ability for councils to determine this for themselves should be maintained. This will allow the council to take into consideration logistical issues such a microphone sensitivity, chambers layout and the impact on camera placement for live streaming.

Banning briefing sessions

Council does not support the banning of briefing sessions. Whilst openness and transparency in local government is critical for maintain trust between a council and its community, briefing sessions should be permitted within a clear framework.

Councillors are elected with varying skills and experience in civic roles. It is important that all councillors feel safe to ask questions and understand alternate views or solutions to an issue. It is also important that Council officers can provide detailed background information to councillors in relation to matters that may come before them. This process of becoming fully informed cannot be achieved within the formality of a council meeting and banning of briefing sessions may ultimately delay timely decision making.

Briefings sessions should be established as an information sharing process and an opportunity for allowing open and frank discussion. Council supports a ban on decision making in briefing sessions and this can be managed via the General Manager chairing the meeting and establishing a clear policy that these sessions can operate within. Controls can be put in place to ensure that briefing sessions do not become decision making forums. Requirements to publish key information relating to briefings could be mandated such as briefing agenda items and meeting proceedings.

The discussion paper acknowledges the need for candid conversations between the Mayor and the General Manager outside of formal meetings. Council is also of the belief that there are times that such conversations should also be extended to Councillors. Only allowing such candid conversations to occur between the Mayor and General Manager could create an unnecessary information imbalance and impact on informed decision making.

It is noted that State and Federal Ministers receive confidential briefing sessions to support informed decisions making. It is only equitable that councillors receive the opportunity to attend briefing sessions that are not open to the public.

Council appreciates the opportunity to contribute to this important discussion and looks forward to further consultation on an amended approach.

If you require any further information please contact Danielle Lidgard, Manager Governance and Corporate Performance on (02) 4868 0888 or via email [redacted]

Kind regards

[redacted]

Jesse Fitzpatrick
Mayor

Response to Councillor Code of Conduct Discussion Paper

Please note : I do not want my name and personal details published.

Introduction

I am a [redacted] I have the benefit of assessing and comparing organisation's governance, leadership, culture, and performance – both individually and at global perspectives.

As requested, I have written a response given the timescales and my schedule. I hope my feedback is both useful and 'heard'. Whilst there a few items from your discussion paper I agree with, it is my professional and personal opinion, **the majority of the proposal needs to be re-examined**. I feel the changes being proposed will only damage and hurt those councils already experiencing the difficulties your paper identifies. Our council is no exception.

With regard to Councillors (or elected representatives), we do not live in an ideal world and therefore cannot assume 'ideal' policies and guidelines. Regulators need to enforce regulatory rules / policies. The key reason for council's continued poor performance, [redacted], is there appears to be **no tangible penalty** or accountability in place to ensure they follow the Local Government Act (the Act). Clearly, a financial penalty is less appealing in a 'cost of living' crisis, therefore personal accountability has to be implemented. Broadly, I believe there is nothing wrong with the Act, it is the key individuals who fall short of the standards ratepayers expect – both Councillor and staff.

The opening paragraph of the discussion paper states, "no other level of government is as close to the issues and people". However, in the [redacted], that statement would not resonate with most ratepayers for all three levels of Government. [redacted] have rewritten the rules of 'engagement' when it comes to 'community consultation' and we're literally paying the price for it through continued financial mismanagement and higher rates, with one of the highest Special Rate Variations (SRV) of [redacted] and consistently late or farcical financial reporting !

A SRV of this magnitude emphasises financial mismanagement or misconduct and [redacted] are continuing to increase the costs to ratepayers in their ten-year forecast unchecked. IPART confirmed neither they nor the Office of Local Government (OLG) are monitoring council's ten-year forecasts, since approval of their SRV's of 2022. I would encourage this is done immediately to identify financial and conduct issues earlier. I also encourage the OLG to review the 'timeseries data' on their website for council comparison, as [redacted] have consistently record inaccurate 'Administration and Governance' costs. I also request that the OLG explain why a 2020 average taxable income was required for the timeseries data in 2023, when I know of no study that would identify this and I do not believe [redacted] figure is accurate. The 2021 Census average individual income should have been used.

What [redacted] requires is an immediate independent and forensic financial audit, spanning back to 2015.

Feedback of the Discussion Paper

I do not agree that Council "is a third tier of Government", nor should it be. "All councils in NSW are **independent, locally elected corporate bodies**. Councils are responsible for making significant decisions that have a far-reaching impact on their community. Local communities are encouraged to have a say in what their council does and how it does it". (NSW OLG website – 'About Councils')

A council's purpose must be directly controlled by ratepayers, as key shareholder and stakeholders. They represent the virtual Board of a council, where Councillors / staff are directly accountable to them. If that simple principle cannot be agreed upon, then it is my view the OLG will never regain the trust, lost through years of failure to address serious issues in our region with regard to Council.

Over recent years, it has been made clear to ratepayers that the State Government seeks financial sustainability (and / or less funding) for councils. The level of funding with this remains unclear, however **the ratepayer will always be the centre of a council**. Therefore, they must be empowered to have greater control to ensure key objectives are achieved.

If the aim of the OLG is to "return local democracy to councils", then you must empower ratepayers to enable proper accountability of Council. Otherwise this exercise is a complete waste of time and taxpayer money. **The framework is less the problem, the people elected, who often offer false promises of change and are rarely known to voters, who subsequently become elected are**. So this framework must include the ability for the public to measure performance and keep their (so-called) representatives 'in check'. Waiting every four years, as councils show declining funds available and increased deficits through obvious mismanagement, is no longer tenable.

A good start would be to abolish any such titles adopted by councils, not included in the Act, such as Chief Executive Officer (CEO). The CEO and General Manager (GM) roles are not interchangeable and are completely different. Your paper refers to this role (correctly) as General Manager and councils have been artificially inflating the role (in their eyes) to supposedly 'attract the best' – along with an inflated salary that is not required. No one in the greater public feels the need for a CEO (nor any 'chief' role) in a council. The salary of that role at [redacted] has increased 240% since the merger, with no tangible improvement. The financial benefits of amalgamation have been completely wasted, including doubling Councillor / Mayor fees and executive management salaries. Now there's the addition of 'chief' roles, making management more costly with no improvement.

I understand the typical General Manager contract is five years, but can be shorter. It is recommended this be **immediately reduced to no more than two years** without grandfathering options. The current contract and advice encourages councils to unnecessarily keep a GM for the full term of the contract, when it's clear they're not suitable, due to fear of litigation to pay-out the remainder of their contract. This influence must be abolished ! If the OLG propose to allow Mayors to exit and withdraw fees from Councillors they deem as "disorderly", then equity must be provided to remove staff who are poor performers.

The [redacted] has consistently witnessed poor outcomes in the recruitment of General Managers and [redacted] have adopted a model, not agreed with ratepayers, to have six 'chief' roles that remains highly inconsistent with council structures elsewhere. It has been our experience that [redacted] (doubled by the Administrator in 2017) and / or power, which is consistently and publicly demonstrated**. The role of Councillor should be voluntary and the OLG should enforce Councillor 'fees' to be reduced to pre-amalgamation levels reflecting the benefits promised**. It would be

interesting to see how many existing Councillors stay in role and will eliminate individuals of certain persuasion to run for council.

As proven in the 2024 local election, there was hardly any introduction to [redacted] candidates, so blaming or passing the responsibility of voting for elected representatives for four years onto ratepayers without permissible intervention is not sustainable. **There has been extensive evidence in [redacted] that** [redacted].

Where the Mayor / Chair acts inappropriately, there must be policy enforced to remove said Mayor / Chair immediately to restore trust and leadership in the community.

Our Councillors are demonstrably not "in control of the Council's finances". [redacted]

The single best thing the NSW Government could do for the [redacted] region is immediately shake up the structure and **place [redacted] under Administration. Several key investigations need to be implemented quickly and the true financial position** of the Council established. Some critical actions since the amalgamation of [redacted] remain outstanding and will forever mar the true financial position of this council.

The current and re-occurring Councillors (post 2024 election) continue to state they will resolve the financial issues, but have never done so. Increasing rates is not 'resolving a financial issue'. After a [redacted] rate increase, they still cannot achieve what is required – there have been many signs of a continuing dictatorship with important information being clouded under a false pretence of 'confidential' already.

[redacted]

Having 'peer' scrutiny of councillor misconduct, I believe (from the direct experience of [redacted]), will not improve the situation (at all). The reason for this is if existing Councillors are not holding their "peers" to account now, having external peers is not going to change that and will continue to be susceptible to reduced benefit and independence.

What I believe will benefit the nation is **community scrutiny**. This is a committee of community ratepayers who have read and understand the Act and Regulation module who will assess independently whether there has been a breach in Councillor responsibility. We accept all Councillors originate as ratepayers. **Ratepayers assess the performance of Council, not Councillors** who may be (unconsciously) sympathetic to the duties / efforts of council life.

This is explained later under the terms of "Councillor misbehaviour in public office", where **in all cases, it is assessed in the "eyes of ordinary members of the public".** Hence, it must be properly adjudicated by ratepayers (the public).

Underlying the Act, as a responsibility of all that represent a council, is 'honesty'. [redacted] **It is recommended to abolish 'groups' from voting in a local council election.**

It is recommended to **provide ratepayers the ability to remove a Councillor** immediately (from Council) without the red-tape of suspending a Councillor. The sanctions (or proposed dismissal) process needs to be simplified, as the role should not be seen as pecuniary. It is not a regular 'job', therefore does not need to follow a convoluted exit process.

During the last term of [redacted] Councillors voted to increase our rates via a Special Variation, which identified a rate, not based on fact or evidence, of [redacted] (which later became [redacted] in a shorter term). It was supported by a consultancy report containing most of the earlier failed initiatives from Council themselves, but because their new rationale was a 'consultancy wrote it', the recommendations were therefore true and credible – they weren't.

[redacted] The consultancy report, referred to as a Financial Sustainability Review (FSR), which I understand was similarly completed prior to amalgamation in 2016, also advised a 43% increase. This was allegedly changed to 43% with Council prior to initial release.

What the Council was supposed to do (as per their own motion) was to conduct an audit. This was also a key promise to the region by an elected major 'group' of Councillors. They then brought in a consultancy, which surprisingly recommended a FSR, which was adopted. [redacted] **A FSR is not an audit** – IPART agrees with that.

Councillor's preferred option with the SRV, was a [redacted] increase in one year. Over their ten-year forecast, this was claimed to produce a level of revenue to address all of the region's issues. However, after passing a motion to [redacted] due to concerns of financial burden, they made the contrary decision on a far more important financial issue and passed an alternative motion for [redacted] for the SRV application (this was later approved by IPART as [redacted], calculated differently).

It seems very odd to agree [redacted] (not requested by the ratepayers of the region and is now an additional problem) for financial concerns, but then downplay the requirement of their preferred option for 'financial sustainability' (under the disguise of community concern) ? As a result, [redacted] are now claiming more service cuts are required. I note little of the community wanted any severe rate increase and [redacted] completely failed to identify the detailed costs of organisation services beforehand – leaving ratepayers with no ability to understand the 'value for money' principle of each service. The alternative rate-rise option was also seen as a non-attractive option, given the lack of transparency of proposed option analysis. [redacted] but had many opportunities to do so.

I note that the intention to increase rates by [redacted] is marred by an unjustified increase in land values from the Valuer General in our locality. For example, the Valuer General claims [redacted] and after challenging this estimate, the Valuer General used an external contractor who didn't even visit the region to discard my supporting evidence – which were all properties in my direct vicinity. The Valuer General's data included properties throughout the greater region. The highest increase in value in my local area was less than 32%, but my rates have not increased by [redacted]. They increased by 24.95% ! I receive less service with this increase, not more or equivalent.

In the UK, any council wishing to increase rates exceeding 5% must hold a local referendum. We must also adopt this policy.

We should not model councils on how members of NSW Parliament are expected to behave – this model is already littered with bureaucracy and questionable integrity, highlighted many times in recent media, that dissuades people from engagement. Some would say "what engagement" ? **The model should be based on how any reasonable ratepayer would like to be respected in the community, if trust is a key ingredient of improving conduct.**

What will definitely "undermine status of local government" is implementing yet another layer of bureaucracy with 'peer Councillor panels', instead of making Councillors directly accountable to the public. I do not accept the sweeping statement that, "the current code of conduct simply enables too many complaints about councillors, all too often for political or vexatious reasons". I would argue the issue is far wider and is exactly the behaviour ratepayers have seen from Council staff and Councillors who are protecting their 'empires'. Many ratepayers in the [redacted] feel they have no voice !

For example, the consistent display of poor conduct in our region has either driven ratepayers from engagement at all with Council or made them furious from inaction and deceitful behaviour. To use the discussion paper's 'English' : Public "complaints are weaponised for political reasons, or to silence dissent from other elected representatives". There is no good outcome to allow such weak governance from continuing.

Current Council feedback through community surveys is extremely low, resulting in less than statistically acceptable baselines. **It is a direct reflection on the lack of trust and engagement with the community and Councillors are not being honest about the true reasons for this or position of** [redacted]

I do agree with the statement: "Communities and councillors report that council decision making is not transparent – with decisions being seen as made behind closed doors, information not being provided or withheld, too much use of closed to the public briefings or councils going into closed sessions for no adequate rationale". By the discussion paper's own words, Council staff must be included in the proposed accountability 'improvement'. The 'empowered' [redacted] Councillors are just as to blame.

[redacted]

[redacted]

Our State elected Member has allegedly made comments on [redacted] from a secondary conversation, which appears to be contrary to what is reported [redacted] and identifies serious legal issues. How does the State Member receive information Councillors do not ? Ratepayers have a right to know whether these legal issues will affect the region and / or increase rates as a consequence. However, the 'leadership' cohort in [redacted] (some Councillors and executives) have elected to remain vague and secretive about all of this. It is completely unacceptable !

I note that [redacted] in [redacted] 2024's Council meeting, defeated a motion [redacted]

[redacted]

[redacted]

[redacted]

[redacted] has seen the large turnover of Chief Financial Officer's (CFO). I believe the number now stands at [redacted] CFO's since the merger. The reasons for this are unknown to the [redacted] community and there are grave concerns over our finances [redacted]

Even though the Act strictly forbids it, key decisions (with debate) are being made in pre-briefing meetings. The public are not permitted to witness this. The question has to be why the OLG permitted this ? I agree with abolishing motion discussion or voting during pre-briefings meetings, i.e. only during public council meetings.

For example, had [redacted] ran a plebiscite or referendum to 'divest' [redacted] from it's operations, ratepayers would have accepted the outcome if this was found to be the majority. However, [redacted] made this decision on their own, discarding debate from ratepayers, and failing to demonstrate the detail underlying their decision, requested multiple times. [redacted] Isn't the right decision what ratepayers decide ? It is typical of how [redacted] operates and not sustainable.

However, at [redacted] "bad councillor behaviour" is only determined by Councillors who have clearly established a 'pact' and target those not signing up to 'their' agenda. **If the OLG wants to reduce timescales and cost of local investigation, then they need to empower ratepayers more, not councils**. The notion that an elected member will duly and honestly represent ratepayers is known to be flawed in the [redacted] and this alone cannot be an adequate response when the duties are not being effectively or efficiently delivered. To this extent, the recommendation is for the OLG to change the Act **to allow ratepayers to remove a Councillor in an immediate fashion, who is not representing their best interests** – a duty that cannot be governed or determined by the Council, but by the ratepayers.

The statement, "the role of a councillor is a noble public service" might be the intention and why I refer to it as "voluntary", but our region's experience has been usually based on false superiority, command & control culture, and empowered decisions, which doesn't represent the majority of ratepayers. It is strongly recommended the OLG focus less on Councillor vs Councillor complaints, given ratepayers are key shareholders (yet we are rarely treated as such), and focus on what reasonable ratepayers expect, which is far less politically minded and this will resolve the lack of clarity regarding financial sustainability.

Two years ago, the OLG sent [redacted] This type of behaviour and complete lack of transparency is what the OLG should focus on. We have never received clarity from the OLG or a satisfactory explanation of what occurred here, but weeks later [redacted]

I note there have been a large number of financially related questions, which remain indigestibly outstanding from [redacted] and it's clear it suits them better to avoid addressing these with no accountability to do so.

The discussion paper "Proposals"

- *Make OLG directly responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest.*
  This proposal requires further definition to personal liability and accountability. It is too vague.

- *Refer behavioural based concerns about councillor conduct to a State-wide panel of experienced councillors to judge their peers.*
  I recommend this is changed to **local based ratepayer assessment groups** to conduct the appropriate investigation and report back to the Council or OLG (where appropriate).

- *Reset the code of conduct to be similar to Parliamentary Codes.*
  I do not believe this will make a material difference to the issues experienced on the [redacted]

- *Banning closed to the public briefing sessions.*
  I agree, but does not go far enough. The OLG needs to define, in detail, what a 'confidential' item is. Too many issues that affect our community, such as an

[redacted] causing millions of dollars in undisclosed damages, are being shrouded by this category and the public have no idea of the total cost of these. This is clearly a debt being deliberately held from ratepayers without penalty to Council whatsoever.

- *"No change proposed for the code of conduct for Local Government staff".*
  Cannot be sufficient, given the proposed changes. In [redacted], it's unclear whether Councillors are directing staff or the other way around. One thing is very certain, **"honesty" is something of a luxury when it comes to transparency of Council's operations and finances**. It is both totally unacceptable and unsustainable !

As the Act clearly states, "every councillor, member of staff of a council and delegate of a council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act". **This needs to be enforced by the OLG.**

The discussion paper proposed "Principles"

- ***Council leadership and decision making is paramount*** *- "As the third tier of government, [Council] is given independence to make decisions in the best interests of the community".*
  Agree with 'Council must make decisions in ratepayer's best interests', but **there remains a very uncomfortable lack of measurement to enforce this**. There must be proof motions passed benefit and represent ratepayers.
  Totally disagree 'councils are third tier of government' and they should not be provided "independence" from ratepayers to make decisions. Making such statements, will only result in worse outcomes, not improved ones.

- ***Freedom of speech*** *- "Councillors have the constitutional right and democratic responsibility to speak freely about issues affecting their local community".*
  I believe they already have this right, but even with the recent election, this has been difficult to sustain, given our region's experience of Councillors who are clearly driving personal agendas.
  If such a statement is going to be made, then **ratepayers must be afforded the same rights, otherwise the public view of a dictatorship will continue**. The Mayor / Chair also cannot abuse this entitlement to prevent Councillors to "speak freely about issues affecting their local community".

- ***Transparency and accountability*** *– "councils need to hear, consider and debate issues in an open manner".*
  There must be a **detailed definition of what can be considered "confidential"** matters. If this is not done, transparency will never be achieved. In addition, there needs to be a directive of disclosing information or data that ratepayers request, providing it does not breach someone's privacy, e.g. personal contact details, address, etc. Currently, our region has extraordinary concerns regarding contracts signed, terms and conditions, consultancy reports never publicly shared, and business cases with significant financial impact held in secret.

- ***Significant penalties should only be imposed by a judicial or quasi-judicial body*** *– "significant penalties should be given by bodies such as the NSW Civil and Administrative Tribunal".*
  I don't understand the relevance of this proposal if it's already in place ?

- ***A strong and proportionate local government regulator*** *– "the role of OLG should be to create the framework for local government".*
  You cannot be a regulator and expect, with experiences of [redacted] to date, Council to self-govern. That is not a sustainable approach and totally defeats the purpose of regulation ! Creating policy based on 'ideals' will not improve the very serious position [redacted] is in with a cohort of 'empowered' Councillors and executive staff. Secondly, I believe Joint Organisations, [redacted] should be abolished and are a waste off time and money. They offer no benefit to our communities

- ***Subsidiarity*** *– "decisions are made at the level closest to those impacted by those decisions".*
  Ratepayers are always going to be the ones greatly affected by any decisions, so they need to be properly involved (instead of just 'considered') with this process. [redacted] **has a track-record of not making decisions "at the level closest to those impacted by those decisions".**

- ***Justice is timely and proportionate*** *– "where allegations are made, they should be heard, tested and dealt with as quickly as possible".*
  Agreed, but it cannot be by an external body who has no connection with the community. This must be done by a community committee completely independent from Council, as previously suggested.

Potential changes to definitions

- *"Councillor misbehaviour in public office (for example, poor conduct in meetings leading to exclusion by the Mayor or Chair of the Committee)".*
  This again will create further tension or difficulty within our Council as there is clearly a 'majority' / cohort (who desire the status quo) outnumbering the minority who are largely seen as wanting to do the right thing, returning to democracy, but have no 'voice'. **All conduct issues must be referred to a Community Conduct Committee.**
  The public does not elect the Mayor or Deputy Mayor. So, once a 'majority' wins the election this is where unfairness and abuse to those lesser will occur. This has already been openly demonstrated in Council meetings.

- *Formation of a 'Local Government Privileges Committee' (Privileges Committee) of senior and experienced mayors and ex-mayors from across NSW".*
  Completely disagree. It has all the hallmarks of a 'mate's club' and will not improve the current Council position !

- *Conflict of interest.*
  This cannot be resolved by focusing purely on pecuniary interests. [redacted]. This ultimately favoured the agenda of empowered Councillors / staff.
  When SRV 'options' were proposed to the public, the option of 'Do Nothing' still contained removing [redacted]. It is the first case in my executive history where a 'Do Nothing' option was 'do nothing, but get rid of a service operated [redacted]'. A total disgrace !

I can't speak for other councils, but **I do not believe the additions listed for conflict of interest will result in an improved Council.**

- *Non-pecuniary interests.*
  As the discussion paper highlights this could include bias in voting for motions to achieve a personal outcome, i.e. not in the best interests of the community. This has been noted many times by many residents on the [redacted] regarding [redacted], i.e. **the public are not "confident a decision made by a councillor is free from bias or a reasonable apprehension of bias"** on many subjects. This element of non-pecuniary interest needs greater definition to prevent the above situations arising.
  Consideration to the requirement for Councillors to divest themselves, should not be limited to real estate or development, e.g. it must include other memberships / friendships / involvement that would have a direct impact to any key decision at a council and the complaint of such poor behaviour should be permitted to be grandfathered, if "justice" is what the OLG seeks.

- *Misbehaviour in public office.*
  Requires further and significant explanation, as ratepayers view some key [redacted] Councillors and executive staff as "community bullies" not "leaders".

  In the case of our 'majority' Councillor cohort, it will not be "appropriate that councillors judge their fellow councillors" as there is a clear display of bias already occurring. It is unclear how the 'proposed' recommendation is any different to existing definition of behaviour. Therefore, it is recommended **any misconduct breaches are referred to the Community Conduct Committee**. The accusing Councillors may put forward their complaint, as to the respondent in rebuttal, for adjudication.

- *"Considered egregious or problematic that are otherwise not captured by the other elements of the definitions".*
  Totally disagree with such a 'sweeping' statement. **All OLG definitions must be clear and concise.**

- *Addressing inappropriate lobbying.*
  If lobbying is permitted then the people involved are experienced in such matters. I do not believe controls of 'trust' or that officials will do the right thing, are good enough.
  For example, look at how new Sydney houses are being built without the need to submit planning through councils, where clearly no consideration to how the architecture of the new building fits with neighbouring houses is established ? This has incrementally become worse for decades, leaving locals bewildered at how such designs are approved. It does not resolve the current 'housing crisis'. It is also clear councils are not following up with such approvals and actual construction, losing revenue through regulation.
  I believe it is adequate to state, **"councillors receiving gifts and inducements as part of lobbying activities to improperly influence council decision-making" will be suspended in local office for the remainder of their term, not receive payment, and not permitted to be re-elected (in any NSW council).** This is the only penalty that will discourage individuals from wrong-doing, if the OLG wishes to be a "strong regulator".

- *Dispute resolution and penalty frameworks.*
  Agree with "removing general managers from being central to the complaint process". I also agree with removing privately hired investigators from any part of conduct assessments.
  There have been many examples with [redacted]
  There apparently will be no investigation into this claim.

- *Abolish the two-step process.*
  It is recommended to keep the 'two step' process, but use the **Community Conduct Committee** to first evaluate the complaint and advise the OLG if additional investigation is necessary. **To save resources, the OLG could empower the Community Conduct Committee to also conduct investigations where necessary and providing there is robust reasoning to do so.**

- *"No investigations of misbehaviour, instead councillors would be required to demonstrate to their peers why their actions, which may have led to the complaint"*
  It is unclear how "councillors would be required to demonstrate to their peers why their actions" will improve matters. In [redacted], there has been extensive history of Councillors and staff making up any excuse, which is readily accepted to the disgust of the community.
  In the case of singling out a Councillor (for political gain), the argument is readily dismissed and the accused forwarded for disciplinary action. This is also why a community run committee is required.

  It is recommended **all complaints goto the Community Conduct Committee**, no other party or Council department, maintaining complete independence. The committee can be a voluntary group of dedicated locals to ensure low-cost / effective use of ratepayer resources is delivered.
  The costs and timescales of the General Manager, Mayor, Complaints Co-ordinator, and External Conduct Reviewer, report, report to Council, and finally a decision can be greatly reduced.

- *"Censuring, warning, loss of sitting fees, referral to an appropriate tribunal or body, suspension, and disqualification".*
  The OLG must define what qualifies censuring, warning, loss of sitting fees, referral to an appropriate tribunal or body, suspension, and disqualification recommendations from the Committee.

- *Giving OLG the power to issue penalty infringement notices.*
  Agreed. There should also be penalties for Councils, Councillors, and staff on other areas like publishing return of interest documents or audited financial statements late or incomplete.

- *NSW Local Government Privileges Committee*.
  As previously stated, from my detailed experience, it is misleading to suggest that councils are capable "to better govern itself". Whilst I admire the aim, it has been proven to be impossible with existing behaviours and individuals involved in our Council.

I am totally **against further cost to councils through the use of a Local Government Privileges Committee** "made up by a group of experienced mayors and ex-mayors" and (again) **"experience" clearly does not measure the <u>maturity</u> required** to deal with such matters.

Reforms proposed

- *Proposed reforms to the Model Code of Meeting Practice.*
  It is recommended not to empower the Mayor / Chair further during meetings. The **new reforms should emphasise the recognition of a meeting 'chair'** only, which does not necessarily need to be the Mayor or Deputy Mayor. In fact**, the OLG should encourage a rotation of all Councillors in the 'chair' position** to ensure they understand the role.
  It is difficult to understand what the OLG is proposing "to support the mayor in exercising their statutory responsibility to preside at meetings and to ensure meetings are conducted in an orderly and dignified manner".
  It is recommended to limit the tenure of a Mayor / Deputy Mayor to a maximum of 12 months, as the election of the roles are a simple internal process.

- *"Will confer the power on mayors to expel councillors for acts of disorder and to remove the councillor's entitlement to receive a fee for the month".*
  The suggestion that the Mayor's decision or opinion is always correct, will only end in turmoil and further disruption to meetings. **All cases must be referred to the Community Conduct Committee.**
  In the case of [redacted], where a litany of elected Mayors and Deputy Mayors have openly demonstrated immature behaviour and unprofessional culture, empowering them further will only result in chaotic and dictatorial outcomes, obviously bringing further disrepute to the chamber and our region.
  I do not believe this is the intent of the OLG, but will clearly be the outcome. Given the character of the individuals witnessed, I can guarantee that.

- *Banning briefing sessions*.
  Agree with "councils will no longer be permitted to hold pre-meeting briefing sessions in the absence of the public". [redacted].
  I can confirm I have seen the majority of the paperwork associated to this matter and it is clear the Council failed to consider other available options, due process, and indeed the actual motion passed versus the outcome. The result considerably eroded community trust and many have not forgotten.

- *Extending the period of recordings held on council's website.*
  Agreed, but they also must be a true and accurate record of the meeting. Hence, **they must not be altered in any way.**

- *"Any material provided to councillors, other than the mayor, that will affect or impact or be taken into account by councillors in their deliberations or decisions made on behalf of the community must be provided to them in either a committee meeting or council meeting. <u>This restriction will not apply to mayors</u>".*
  Totally disagree with the underlined of this proposal. Allowing a Mayor to continue private conversations on topics behind closed doors is how many of [redacted] issues arise. **It will not improve the Council's standing with the community**.

Additionally, empowering the Mayor, when they lead a majority in Council as the case with [redacted] will only conclude in four more years of mismanagement. [redacted]

- *A Mayor to force a Councillor to 'apologise'.*
  What I feel is absolute hypocrisy is the OLG allowing a Mayor to force a Councillor to 'apologise', yet it has been consistently demonstrated that [redacted].

  Ratepayers need to be able to hold Councillors and staff to account. There is currently no <u>real</u> ability to do this. Councillors and staff repeatedly say whatever they want to satisfy personal agendas at the disgust of ratepayers.

Conclusion

The OLG states they wish to improve trust, operational process with meetings, and conduct of Councils / Councillors, based on established legal concepts with existing case law and precedents. Namely, "conduct unbecoming refers to the **conduct that is contrary to the public interests**, or which harms his / her standing of the profession **in the eyes of the public**. Or something into disrepute is to lower the reputation of the profession or organisation **in the eyes of ordinary members of the public** to a significant extent".

Hence, **residents / ratepayers must be the committee to resolve Councillor conduct disputes.**

Whilst it's admirable the OLG is reviewing systems that have been evaluated as inefficient, I am not convinced the proposals are not designed to cost-shift yet another layer of bureaucracy to ratepayers through additional Council charges. **The proposed 'improvements' lack evidence of success and the core intent of the Act.**

The creation of a new NSW Local Government Privileges Committee made up by a group of experienced mayors and ex-mayors will not add value or benefit to conduct assessments. I believe it will only add another layer of bureaucracy, which will ultimately be subject to corruption and abandoned after destroying already fragile council areas in a very short period of time.

The following recommendations for Council Conduct are summarised :

1. Council's ten-year forecasts, since approval of their SRV's, are immediately reviewed for consistency. I would encourage this is done immediately by the OLG to identify financial and conduct issues.

2. OLG must review the 'timeseries data' on their website for council comparison, e.g. [redacted] have consistently failed to report accurately on 'Administration and Governance staff' costs. The OLG explain why a 2020 average taxable income was required for the timeseries data in 2023. The 2021 Census average individual income should have been used.

3. [redacted] has an immediate independent and forensic financial audit spanning back to 2015.

4. The ratepayer must be the centre of a council. Therefore, they must be empowered to have greater control to ensure council key objectives are achieved.

5. Abolish any such titles adopted by councils, not included in the Local Government Act, such as Chief Executive Officer (CEO). Your paper refers to this role as General Manager and no council in NSW requires a CEO.

6. A General Manager contract is five years, but can be shorter. It is recommended this be immediately reduced to no more than two years.

7. Councils can terminate a General Manager prior to the full term of their contract, when it's clear they're not suitable, without the requirement to pay-out the GM's remaining contract.

8. The OLG should enforce 'Councillor fees' to be reduced to pre-amalgamation levels reflecting the benefits promised in 'business cases' presented for mergers in 2015.

9. Where the Mayor / Chair acts inappropriately, there must be policy enforced to remove said Mayor / Chair immediately to restore trust and leadership for the community.
It is recommended to limit the tenure of a Mayor / Deputy Mayor to a maximum of 12 months, as the election of the roles are a simple internal process.

10. Place [redacted] under immediate / independent Administration for poor conduct and performance.

11. [redacted]

12. Reject 'peer' scrutiny of councillor misconduct, instead replace with community scrutiny. In all cases, if it is assessed in the "eyes of ordinary members of the public", then it must be properly adjudicated by ratepayers.

13. Abolish 'groups' from voting in a local council election.

14. Provide ratepayers the ability to remove a poor-performing Councillor immediately (from Council) without the red-tape of suspending a Councillor. This includes Mayors / Deputy Mayors.

15. Any NSW council wishing to increase rates exceeding 5% must hold a local referendum. It cannot be based on IPART's decision alone.

16. Abolish motion discussion or voting during pre-briefings sessions, i.e. discussion and voting only during public meetings.

17. The OLG focus on what reasonable ratepayers expect, which is far less politically minded than Councillor complaints and will resolve the lack of clarity regarding financial sustainability.

18. OLG further defines personal liability and accountability when dealing with pecuniary interest and significant non-pecuniary conflicts of interest. It is currently too vague.

19. A local based ratepayer assessment group to conduct the appropriate investigation and report back to the Council or OLG (where appropriate), e.g. Community Conduct Committee.

20. Not to reset the code of conduct to be similar to Parliamentary Codes. I do not believe this will make a material difference to the issues experienced in the [redacted]

21. Ban closed to the public briefing sessions and financial meetings. In addition, the OLG need to define, in detail, what a 'confidential' item is, e.g. I can only think of one example.

22. The Local Government Act statement, "every councillor, member of staff of a council and delegate of a council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act", needs to be measured and enforced by the OLG.

23. There needs to be measurement of 'Council making decisions in ratepayer's best interests', e.g. prove motion outcomes benefit ratepayers.

24. The principle Councillors (and the public) can "speak freely about issues affecting their local community" must be enforced by the OLG. If such a statement is going to be made, then ratepayers must be afforded the same rights, otherwise the public view of a dictatorship will continue. The Mayor / Chair also cannot abuse this entitlement to prevent Councillors to "speak freely about issues affecting their local community".

25. The joint organisation, the [redacted] be abolished. It is a waste off time and money. Whilst well-intended, Joint Organisations offer no benefit to communities.

26. The OLG cannot be a regulator and expect, with the experiences the [redacted] has to date, Council to "self-govern". It is not going to occur in the context of 'ideal' operation. Creating policy based on 'ideals' will not improve the very serious position [redacted] is in with a cohort of empowered Councillors and executive staff.

27. If the OLG seeks justice that is timely and proportionate, "where allegations are made, they should be heard, tested and dealt with as quickly as possible", then this can only be effectively achieved via a Community Conduct Committee, completely independent from Council.

28. All conduct issues must be referred to a Community Conduct Committee to deal with Councillor misbehaviour in public office and remove agenda of Mayors / Councillors who are prone to single-out minority Councillors intending well.

29. "Councillors receiving gifts and inducements as part of lobbying activities to improperly influence council decision-making" will be suspended in local office for the remainder of their term, forfeit payment, and not permitted to be re-elected in any NSW council.

30. Remove General Managers from the complaint process.

31. Remove privately hired investigators from any part of council processes.
Broadly, I do not believe these external investigators have contributed to improved situations.

32. The OLG immediately investigate the [redacted]. The OLG report back to the public [redacted].

33. Keep the 'two step' process, but use the Community Conduct Committee to first evaluate the complaint and advise the OLG if addition investigation is necessary. To save resources, the OLG could empower the Community Conduct Committee to also conduct investigations, where necessary, and providing there is robust reasoning to do so.

34. Refer investigations of misbehaviour to the Community Conduct Committee for fair adjudication to Councillor matters. This also avoids singling-out Councillors unfairly.

35. OLG to properly define what qualifies censuring, warning, loss of sitting fees, referral to an appropriate tribunal or body, suspension, and disqualification recommendations from the Committee.

36. OLG to maintain the power to issue penalty infringement notices. These should not be just financial.

37. Not to empower the Mayor / Chair further during meetings. The new reforms should emphasise the recognition of a meeting 'chair' only.

38. The OLG should encourage a rotation of all Councillors in the 'chair' position to ensure they understand the role.

39. Will not "confer the power on mayors to expel councillors for acts of disorder and to remove the councillor's entitlement to receive a fee for the month". All cases must be referred to the Community Conduct Committee, not Mayors / Chairs.

40. Extend the period of recordings held on council's website as a true and accurate record of the meeting. Hence, they must not be altered in any way.

41. I completely reject the underlined : "Any material provided to councillors, other than the mayor, that will affect or impact or be taken into account by councillors in their deliberations or decisions made on behalf of the community must be provided to them in either a committee meeting or council meeting. <u>This restriction will not apply to mayors</u>".

42. Not allow a Mayor to force a Councillor to 'apologise', with financial and voting penalty. All cases must be referred to the Community Conduct Committee.

<u>Note :</u>
As a measure of resolve, I would be willing to chair and trial a Community Conduct Committee for [redacted] at no cost to the OLG, with the exception of small administrative office expenses for the public / Councillors / Council staff to contact the Committee. This is providing 'public complaint' is in scope for this exercise.

This test model can be used to refine the process of accountability and identify potential conflicts / issues, prior to wider implementation. I look forward to hearing from you.

Yours faithfully,

[redacted]
[redacted]
[redacted]
2nd November 2024

MARC LANE

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29 October 2024

Discussion Paper: Councillor conduct and meeting practices, A new framework

Dear Sir / Madam,

I am writing to raise my concerns with the draft framework. I am a new independent councillor on Hunters Hill Council (HHC). I have never before been involved in political office, and we had our first ordinary meeting last week. My comments are informed by my legal background, having worked in DPE (now DPHI) and from my first impressions as a councillor.

I support the principles outlined on page 7 and particularly the emphasis on:

- Freedom of speech
- Significant penalties only through a quasi-judicial office.

However as a minority councillor I am concerned that the existing meeting rules and sanctions can silence minority councillors and I see the draft code as exacerbating this. For example the Local Government Act and Regulations allow for councillors to be expelled for 'Acts of Disorder' including 'jurisdiction' (in Clause 182(c) of the Regulations):

> *182(c) moves or attempts to move a motion or an amendment … that deals with a matter that is* ***outside the jurisdiction of*** *the council or committee, or addresses or attempts to address the council or committee on such a motion, amendment or matter*

The intent may be *vexatious* motions, but the test is a technical one and councils' jurisdiction is not defined. This gives the majority, or even a single person (the Mayor) the power of arbiter of a technical legal matter, potentially for political gain. For example:

Is a Nuclear Free Zone Declaration an Act of Disorder?
Many councils, for example, have taken the step of declaring themselves a Nuclear-Free Zone (eg: City of Wollongong). One view may be that any expression of community opinion is within jurisdiction (implied by Part 3 of the Local Government Act). Conversely, decisions on nuclear waste and power sit with other tiers of government. I can readily imagine that in the context of a Federal election where nuclear power stations are mooted, councillors may wish to make or affirm a Nuclear Free Zone. Whether this is "a matter outside the jurisdiction of the council" is unclear, and debate should be on its merits. I fear, however, given party politics, that this disorder power, loosely interpreted, could be used **not only to stymie such debate but censure non-Liberal councillors for even seeking the debate, expelling them from the chambers until they apologise for raising the matter.**

As a minimum, therefore, powers of expulsion should be reviewed to narrow them to 'vexatious' motions, and any expulsion of a councillor should be made appellable to the Privileges Committee. [NB 'Vexatious' has the benefit of being fairly clearly defined by the *Vexatious Proceedings Act 2008*]

In relation to the specific questions asked:

Question	**Response**
What are the key elements of an aspirational Code of Conduct that should be enshrined?	**Fair and proportionate representation,** or **plurality**. Historically councils have not had party politics and most, including ours, therefore had mixed committees reflective of the community as a whole. A party system can undermine this, and make local government 'winner takes all'. By way of example, HHC has now excluded the two non-Liberal councillors from nearly all the committees of council. We collectively received about 42% of the vote, so representation should be roughly 4:6 in favour of the party bloc, instead it is 1:6.
Is the proposed pecuniary interest framework appropriate? Is anything missing?	**Donations** It is unclear whether a donation to a political party would be a pecuniary interest. I can see practical challenges for large parties, but I would suggest that ***where the donation is specific to the local area or candidate*** (eg: a recent campaign donation for the local election), this should be a declared interest.
Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?	**Grants** - 'Development' also occurs by council on its own land, or by others with council funding. Therefore, the handling of grants (both grant applications on behalf of council, and Grant Committees of council) should also have clear rules in relation to non-pecuniary interests, to avoid the apprehension of 'vote buying' through the selective application for, or award of, grants to local organisations in return for political support.
Is this the appropriate threshold to face a Privileges Committee?	'**Outside the norms and expectations** of a sitting councillor' as a new test is opaque particularly to new councillors. [redacted]

	As previously raised, I am also gravely concerned about sanctions to councillors for 'disorderly conduct' being subjective and punitive, and 'outside norms' seems a lower bar. I would therefore propose that either: ● Clear guidance on norms and expectations is required (eg: vexatious questions designed to inflame, defame…) OR ● Words are used that have a more well-established legal meaning, such as "vexatious", "abuse of process" etc
How else can complaints be minimised?	OLG could establish a confidential hotline of similarly composed people (eg. former Mayors and long-serving councillors) for the purpose of discussing the *weight* of a complaint before it is lodged. Like HealthDirect, the idea would be to triage the *seriousness* of the allegation (relative to their experience) - and direct them to other remedies (eg. PINs).
What key features should be included in lobbying guidelines and a model policy?	As with all levels of government, 'professional lobbyist' is too narrow a construct. Consideration should be given for when a business or organisation such as an industry association or services firm engages in the **conduct** of lobbying, and regulate their actions when they fall into the role of lobbyist.
Are the existing sanctions available under the Local Government Act sufficient?	**Expulsion for disorder** (s10 of the Act, 233 of the Regulations) **has potential for abuse** and duplicates proposed sanctions. If the Privileges Committee will have the power of ordering loss of sitting fees, this should be *removed* as a consequence of expulsion as well to reduce the potential for abuse. In relation to potential abuse, see next question:
Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	While dignity is important, it should not override principles of **freedom of speech** and **serious penalties requiring a quasi-judicial office** set out at the start of the Framework. Granting a Mayor the power to expel councillors for bringing a motion that is 'outside jurisdiction' (in their opinion) is a broad power that could stymie anything from Nuclear-Free Zone declarations, to council resolutions against a development that has been referred to a joint panel or the Minister. Far from 'a figurehead', this power and the power to fine the public subverts what might otherwise be decided by majority vote and has a chilling effect on public contribution. Determining whether bringing a motion is 'disorder' within the meaning of c182(c) of the Regulations should be capable of being overturned by majority vote (where, say, a popularly

	elected Mayor is abusing the power), and also **appellable** to the Privileges Committee. Where the Privileges Committee deem the motion was *not* disorder, and the expulsion was not in the public interest, **the chair who expelled the councillor should be censured** for their abuse of process.
[Banning Briefing Sessions] Are there any other measures needed to improve transparency in councillor deliberations and decision making?	The proposed format of council meetings differs from the manner in which boards and committees typically operate. In the private sector, and in fact in senior government agencies like Steering Committees, a briefing from staff after receipt of papers but before deliberation is not only typical but necessary, given the relevant Secretary or Deputy Secretary cannot be across all the detail of every project. Issues of secrecy could be dealt with through live-streaming or minutes. Further, the current ritualised process of motions and questions concurrently works against councillors collaborating, by pitting them in a 'quick witted' debate format against each other. This may suit practiced politicians, but turns-off the community. A process that would achieve the intention of transparency and *also* collegiate decision making might involve turning briefing sessions into a 'Q&A' session of council (like PMQs), so that the substantive council meeting can be better informed, eg:: - Small council meeting (briefing) for councillors to bring **questions (with or without notice)** and **foreshadow motions / amendments** with reasons to their fellow councillors - no decisions, only discussion, then - Notices of Motion, between the two meetings, then - Large council meeting (decision) on **motions** so that councillors equipped with answers and having had time to consider foreshadowed motions can vote, or further clarify, amend and vote.
Restoring Dignity to Council Meetings (other)	There are a range of behaviours in council meetings that are not disorder or misconduct but nevertheless do not reflect dignity. If the focus is on public perception of democracy, then more focus should be placed in the code on council co-operating and showing respect to each other, and less on gravitas and formality per se. Examples of unbecoming conduct include snickering or looking at phones when others are speaking, hectoring community speakers or barring the community from speaking at meetings. Focus should instead be put on acts of 'unkindness' or 'disrespect'.

	Without being too prescriptive, techniques from other forums which would improve meeting conduct would be the chair 'seeking the view of the quietest member', or even a formal consensus-model (like conciliation in courts), where the chair is directed to aim to remove vetos and minimise 'stand-asides' during discussion of a motion) in order to mollify the aggressive debate-style tendency of the chambers at present.

Thank you for your consideration,



Marc Lane

Our Reference: # 98#205

NSW Office of Local Government

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

4 November 2024

Sir/Madam,

COUNCILLOR CONDUCT FRAMEWORK REVIEW

Please find below Wollondilly Shire Council's submission to the Councillor Conduct Framework Review discussion paper.

Yours faithfully,

[redacted]

Ben Taylor
Chief Executive Officer

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Introductory comments

Thank you for the opportunity to comment on the Councillor Conduct Framework Review discussion paper.

Wollondilly Shire Council welcomes the discussion paper and the intent to strengthen local democracy and transparency.

Council is supportive of the need to revisit how Councillor conduct in meetings and more broadly, can be more readily identified/articulated and effectively, efficiently, equitably and comprehensively dealt with.

1. Code of Conduct

The proposed changes to the Code of Conduct and complaint review process are particularly welcomed and supported. Council looks forward to considering and commenting on draft Code and legislation when released for comment.

While the Code of Conduct framework for NSW Members of Parliament appears as an aspirational model for Councillors, we do have a concern with the separation of code of conduct frameworks as they apply to elected officials and staff.

In addition to the standard of conduct set out by any code, the organisation invests heavily in establishing Vision, Mission and Purpose statements which are activated through a set of agreed Values, which in turn shape how our people behave with each other and with other stakeholders.

Further separation of conduct standards and behavioural expectations through tailored frameworks creates dissonance and can lead to tension and lack of unity on those standards and expectations.

In addition, the current Code of Conduct framework as it applies to Council General Managers and staff can also be probe to weaponization unfortunately against Council General Manages and staff and Council considers that there remains a pressing need to reform the Code of Conduct framework as it applies to Council staff.

A critical aspect of the proposed updated Code is ensuring it aligns with and supports Council's WHS obligations particularly the responsibility to provide a psychosocially safe workplace which has the potential to be an issue arising from Councillor, Councillor-staff and Councillor-community interactions.

We also propose the department commit to regularly reviewing the effectiveness of these measures with the Local Government sector to ensure that the Councillor Conduct Framework continues to meet the needs of the Council and the community.

2. Briefings and information provision

Council acknowledges the proposed changes to Council meetings and briefings and welcomes the intent to restore dignity to Councils and strengthen the leadership role of the Mayor.

While Council welcomes the intent to increase transparency, there remain risks that need to be managed when introducing these types of changes.

Caution should be applied not to introduce a change primarily to manage the recalcitrant Councils as this could penalise/negatively impact the functionality and quality of performance of those such as Wollondilly that do not make decisions behind closed doors and work hard to foster open public debate and discussion including publicly demonstrating the reasoning behind Council decisions.

Specifically, in regard to the proposal to ban non-public briefings, consideration should be given to the following:

- A one-size-fits-all approach may not be the most effective mechanism and an alternative that could be considered is to enable Council's to introduce this model in a way that meets their specific needs, and retain the power for non-public briefings to be banned by the Minister and/or OLG should a Council not be meeting community expectations.
- Clarity is required as to what briefing sessions are suitable to be open to the public. It is considered that this may best apply to the pre-meeting business paper briefings currently set out in the Code of Meeting Practice. It will be important to retain the ability for Councils to hold strategic planning workshops as part of the IP&R process, confidential briefings where the matter satisfies the requirements current under the Local Government Act or when meeting with private entities or government departments on confidential matters.
- Having all briefings in the public domain does create a risk that Councillors lose the opportunity to ask clarifying questions that they are not confident to ask in a public forum for fear of embarrassment or humiliation
- Having all briefings in the public domain does create a risk that briefings also become forums for grandstanding, and as described in the paper "personal slanging matches"
- The proposal to ban provision of information to Councillors outside of a briefing or Committee is significant issue.

  It centralises power in the Mayor, which while positive in some aspects, also has the potential to alienate some Councillors if poorly managed, and restricts Councillors ability to seek advice and support from staff on amendments or alternate motions prior to a Council meeting.

  This could lead to poor, unlawful or unworkable decisions as motions are workshopped on the floor of Council, which ultimately have the reverse result of diminishing the dignity of Councils. There is a need for open

communication channels for the provision of information to Councillors to inform their decision-making process, not to make these decisions outside the chamber.

Should these risks be adequately considered and managed, Council looks forward to considering and commenting on draft Code and legislation when released for comment.

Council also looks forward to the NSW Government introducing similar reforms to the cabinet decision-making process in the interests of transparency.

Outlined below is Council's responses to each area in the discussion paper.

1. WHAT ARE THE PRINCIPLES OF CHANGE?

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

We support the principles of change. Key to unifying and amplifying the effort and intent of individuals and groups, irrespective of specific goals and objectives, is a shared sense of purpose and agreed values.

This could be through the establishment of a clear framework for Councillors to agree on ways of working together, including the creation of a team agreement that outlines shared values, expectations, and processes for addressing unacceptable behaviour.

Accordingly, we suggest an additional principle of change:

Shared and agreed Vision, Mission, Purpose and Values between the organisation and the elected body *– to ensure the purposeful alignment of individual and groups, driving up levels of cooperation and respect which in turn increases performance and engagement.*

2. POTENTIAL CHANGES TO THE CODE OF CONDUCT AND OATH OF OFFICE

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

Growth and Personal and Professional Development

The LGNSW provides Local Councils with a Capability Framework. The Framework defines a set of capabilities and, for each, describes in plain language the behaviours for each capability through a graded system, from Foundational to Highly Advanced.

The version for staff and people managers is codified and positively framed in a way which could be re-purposed and overlaid for Councillors.

Further, this approach could also serve as a development and growth tool to ensure the focus isn't only on point in time behavioural management, but as a

long-term approach to building capability and shaping high-performing behaviours that are consistent with the values of the organisation.

Public Recognition for Continued Positive, Inspirational Conduct

Consistent with the concept of positive framing of behaviour, a mechanism whereby consistency of, and outstanding behaviours that model the behavioural principles would create a positive, competitive energy amongst elected bodies. Extended, as an annual recognition through an awards process would encourage positive behaviours.

Given the individual interest in public perceptions, Councillors would rise to this challenge to be positively recognised by the sector for inspiring good conduct.

Reduced Complexity with Principles-Based Behavioural Beacons

We are supportive of an approach which provides simple, clearly articulated, behavioural conceptual beacons which are easy to navigate, given the other complexities associated with being an elected official.

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

We are supportive of a means to meaningfully and purposefully connect the spoken, public commitments made through the Oath of Office to the revamped Code of Conduct.

This approach serves to 'operationalise' and contextualise the Oath of Office to the day to day activities of Councillors, including how they behave towards each other, staff and the community.

We also propose an amendment to the Councillor's oath to include a commitment to collaborative teamwork, with clear guidance on how this commitment will be enacted and supported throughout their term.

3. POTENTIAL CHANGES TO THE DEFINITIONS AND ASSESSMENT OF COUNCILLOR MISBEHAVIOUR

Question: Is the proposed pecuniary interest framework appropriate? Is anything missing?

We support all of the proposed elements of the pecuniary interest framework, in particular the extension of disclosures to the interest of a spouse or de facto partner, relative, or partner or employer, or a company or other body of which the councillor, or their nominee, partner or employer, is a shareholder or member.

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

We agree with these principles, highlighting the challenges associated with objectivity and the 'reasonable person' test as the threshold for a Councillor deciding whether or not to disclose.

While pecuniary interests are typically less subjective, the relative subjectivity of non-pecuniary interests' disclosures can still be a source of trivial or vexatious complaints. A 'reality check/ready reckoner' mechanism could deal with this to a degree, assisting Councillors in making that initial decision to disclose or not.

- **WHS – Psychosocial Hazards**

  There is a strong obligation on Councils to ensure the workplace is free from psychosocial hazards and as such it is important that the code considers this as a discreet code of conduct element given the 'reach' of Councillors and how their behaviours can impact the well-being of staff, and other Councillors.

- **Staff Conduct**

  The current code, as it applies to staff, is in need of review. In its current format, it provides the means for it to be weaponised against staff, particularly senior staff, by vexatious complainants and Councillors. We see the need to review both aspects of the code to ensure consistency and comprehensiveness of any review.

- ## PROPERTY DEVELOPERS AND REAL ESTATE AGENTS

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

We support the proposed features as described and suggest this is an area where specific detail can be articulated in a policy.

For contrast, behaviours, which can be subjective and more difficult to identify and prosecute, are best managed and monitored through a principled approach.

In real estate and development business activities, this is less subjective so the policy can be much more specific and granular.

This should also translate to much more clearly articulated and tangible penalties for misconduct.

- **COUNCILLOR MISBEHAVIOUR IN PUBLIC OFFICE**

  Question: Is this the appropriate threshold to face a Privileges Committee?

  - **Subjectivity**

    Again, a highly subjective area and we would need to understand more of the detail about threshold tests and how the Committee would assess and complaint.

    For example, the third limb; *'behaviour outside the norms and expectations of a sitting councillor'* introduces a degree of subjectivity. What is considered 'normal' behaviour for a Councillor can vary significantly depending on Council's underlying culture, the local political environment, or individual perspectives.

    This could lead to inconsistencies in how misbehaviour is judged, and Councillors may be disproportionately subjected to sanctions based on personal biases or political motivations rather than objective criteria.

    The three limbs could be viewed, as written, as being one and the same, so their descriptors would need to create the relevant separation in order for them to be discreet elements, each clearly identifiable from the other in terms of how a complaint is assessed.

  - **Unjust, Perpetual Stigma of Referral**

    The very act of being referred to the Privileges Committee, even if no misconduct is ultimately found, could unjustly harm a Councillor's reputation.

    Given the public nature of their roles, even the perception of wrongdoing can damage a councillor's standing in the community and their personal/professional standing. To this, we believe the threshold for referral must be carefully managed to ensure that only genuinely serious cases are brought before the committee.

  - **Additional Limbs**

    Acknowledging the impact an elected official can have on their community and more broadly, could be:

    'Brings another individual or group into disrepute.'

    On the basis that the organisation and the elected body have shared, agreed Values:

    'Is inconsistent with the Councils agreed Values'.

    Much work is done by Councils and other organisations to clearly define what constitutes behaviours aligned and misaligned to espoused values as an element of staff performance management with identification of misaligned behaviours is more measurable.

This should be extended to the elected body.

Question: How else can complaints be minimised?

- **Training**

  Like staff (in our Council), Councillors should undergo annual, mandatory Code of Conduct, governance, and appropriate behaviour in public office training. This could also include mandatory development areas such as conflict resolution, communication, and ethics to further promote and embed better conduct.

- **Clarity (Third Limb)**

  Developing clear guidelines and real-life examples for what constitutes unacceptable behaviour under the third limb would help Councillors understand what is expected of them and reduce the risk of unnecessary complaints.

  Complaints for improper purpose/vexatious/trivial

  Introducing consequences for making frivolous or vexatious complaints could help deter from using the complaints process for political or personal gain. These consequences should be consistent with other penalties covered in the paper and that we have provided as suggestions.

- **ADDRESSING INAPPROPRIATE LOBBYING**

  Question: What key features should be included in lobbying guidelines and a model policy?

  We agree in principle with the proposed lobbying guidelines, except:

  'require council officials to report inappropriate or corrupt lobbying behaviours to the councils general manager.'

  Other reporting mechanisms need to be available for officials to report lobbying as this may reduce the likelihood of a person making a report and, without knowing yet what the General Manager's obligations would be on receiving a report, there may be risk that this opens the opportunity for adverse perceptions towards them.

4. DISPUTE RESOLUTION AND PENALTY FRAMEWORK

- **ABOLISHING THE 'TWO STEP PROCESS'**

  We agree broadly with the principles proposed and add for consideration:

  o Treating conflicts of interest separately from other types of misconduct could lead to fragmented governance which goes to how the proposed framework delineates.

- This may also serve to reduce local level accountability by centralising authority to assess and determine how matters may be handled. This could be dealt with by enabling sequenced, a local level triage process.

We also highlight, at face value, the risk of bias associated with peer-led reviews. Peer-led assessments of misbehaviour without independent investigation at some point in the process may reduce fairness and transparency, increasing the risk of politicisation of the complaints process.

- **GIVING OLG THE POWER TO ISSUE PENALTY INFRINGEMENT NOTICES**

Question: What level of PIN is appropriate?

In addition to the challenge of establishing the legislative changes required to enable a PIN system, establishing a *level* of PIN may be more challenging and may not be worth the effort, especially considering that Conflicts of interest are particularly sensitive and intensively scrutinised because they directly affect public trust in their elected representatives.

Introducing PINs for minor breaches may unintentionally downplay the seriousness of conflicts of interest, leading to a perception that councillors are being 'let off' with minor penalties for breaches that could still have significant governance and longer-term community implications, some of which may not be clear at the time the PIN is issued. This may also lead to more complaints.

There is also a risk that introducing PINs could lead to an over-reliance on them for handling minor breaches, potentially leading to a culture of leniency in dealing with councillor conduct. This could result in fewer, more formal investigations being conducted for breaches that warrant more serious attention, ultimately undermining the broader spirit and enforcement aspects of a councillor misconduct framework.

5. NSW LOCAL GOVERNMENT PRIVILEGES COMMITTEE

We agree with the proposed penalties and recommend these:

- Temporary suspension of Councillor privileges such as exclusion from certain committee roles or council functions could be considered as a penalty. This could provide a middle-ground penalty for more serious, but not tribunal-worthy, offences (especially where PIN perception shortcomings may be apparent.
- A reportable requirement for councillors to undertake training or engage in behaviour remediation programs could be introduced as an additional penalty for repeated or significant breaches. This aligns with the goal of improving governance and councillor behaviour through corrective measures rather than only punitive ones and the public reporting element ensures Councillors are held accountable to such undertakings where there is a breach.

** We again highlight the risks associated with perceived bias or factionalism where political peers are involved which then will lead to complaints about impartiality and procedural fairness.*

- **Timeframes/Procedures**

  We also highlight a need to ensure there are clearly stipulated timeframes and procedures for the management of complaints referred to the LGPC to ensure there are no black-box perceptions created.

- **Vexatious Complaints/Complainants**

  We believe there needs to be clearly articulated guidelines for how matters deemed to be vexatious or made for improper purpose are dealt with, specifically in relation to issuing penalties to those who are found to have engaged in the conduct. We feel if clearly articulated, this will serve as a strng deterrent for such complaints.

- **REFERRAL OF SIGNIFICANT SANCTIONS TO APPROPRIATE TRIBUNAL OR BODY**

  Question: Are the existing sanctions available under the Local Government Act sufficient?

  We feel that the existing LG Act sanctions are broadly sufficient to address a wide range of councillor misconduct. However, the critical issue lies in who has the authority to impose the most serious penalties, such as suspension or disqualification, which leads directly to the second question, below.

  While we consider that the range of sanctions is appropriate, clarity around the processes for imposing sanctions, particularly severe ones, is essential to maintain public trust in the fairness of the proposed approach.

  Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

  Our experience is that tribunals often operate with more formal procedures and timelines, which could result in slower decisions. In urgent cases of serious misconduct, where swift action is necessary to protect public trust, the tribunal process might not be as responsive as an administrative decision by the Departmental Chief Executive.

  A formal tribunal structure may also serve to introduce additional costs and complexity to the process. Councils or councillors involved in the tribunal process may face increased legal fees and procedural burdens, which could be a deterrent to using the system efficiently.

  To balance the need for *both* swift action and independent, formal judgment, we propose an alternative model in which the Departmental Chief Executive could retain the power to impose temporary suspensions in cases of urgent misconduct, while awaiting a full tribunal hearing.

This would allow for immediate action in serious cases while preserving the ultimate decision-making power for the tribunal.

More significant sanctions, such as longer suspensions, disqualification, or large fines, could be referred to the tribunal for a full hearing. This would ensure that serious consequences for councillors are imposed by an independent body with appropriate procedural safeguards.

6. RESTORING DIGNITY TO COUNCIL MEETINGS

Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

We agree with the proposed reforms to enhance the Mayor's powers to maintain order, and add these additional measures that we feel could strengthen the Mayor's ability to manage disorderly behaviour effectively and efficiently:

- In addition to expulsion, the mayor could be granted the power to suspend a councillor's right to speak or vote for a specified period during the meeting if they engage in repeated interruptions or refuse to follow the meeting's procedures. This power could be invoked as an intermediate step before full expulsion, allowing for a proportional response to less severe behavioural disruptions.

  This would allow the mayor to address disruptive behaviour without resorting immediately to expulsion, maintaining order without escalating tensions unnecessarily.

- We have previously alluded to limiting Councillor participation in other activities. For meetings, the mayor could be granted the authority to temporarily suspend a councillor's participation in committee roles for disorderly conduct in council meetings. This would act as a penalty for councillors who consistently disrupt meetings and fail to adhere to expected standards of behaviour.

  This would provide a long-term consequence for repeated disorderly conduct, incentivising councillors to behave not just in council meetings, but more broadly as they engage with others and discharge their duties.

- Again, consistent with previous feedback we have provided in relation to penalties, as a remedial rather than punitive measure, the Mayor could be given the power to require councillors to attend training or workshops on governance, communication, or conflict resolution following acts of disorderly conduct.

  This would address the root causes of disruptive behaviour by improving Councillors' skills in managing debates and engaging in respectful discourse. This is consistent with ongoing Councillor development and enables long-term improvement in meeting conduct and again, as it

becomes a public, reportable measure, it will drive accountability for such training to be completed.

- Given the growing/established/accepted digital/hybrid approach to meetings, the Mayor could be empowered with digital meeting controls, such as muting or disabling the video of councillors who engage in disorderly behaviour.
- An additional consideration is the introduction of supporting tools such as guidelines, processes and training for Mayoral Decision-Making. These are intended to assist the Mayor in decision-making, ensuring that checks and balances are in place to promote fairness and accountability. Provide additional support and resources for new Mayors to help them navigate their roles effectively.

- **BANNING BRIEFING SESSIONS**

  Question: Are there any other measures needed to improve transparency in councillor deliberations and decision making?

  We are only partially supportive of this measure and suggest any guidelines/requirements need to be carefully articulated.

  Council acknowledges the proposed changes to Council meetings and briefings and welcomes the intent to restore dignity to Councils. While Council welcomes the intent to increase transparency, there remain risks that need to be managed when introducing these types of changes.

  Caution should be applied not to introduce a change focussed on, and intended to just manage the recalcitrant Councils as this could negatively impact the functionality and quality of performance of those such as Wollondilly that do not make decisions behind closed doors and work hard to foster open public debate and discussion, including publicly demonstrating the reasoning behind Council decisions.

  Such a one-size-fits-all approach may not be the most effective mechanism and an alternative that could be considered is to enable Councils to introduce this model in a way that can be tailored to, and which meets their specific needs and operations, and retain the power for non-public briefings to be banned by the Minister and/or OLG should a Council not be meeting community expectations.

  We flag the following risks:

  - **Diluted Candid and Informal Discourse**

    While the proposal to ban pre-meeting briefing sessions for Councillors, with the exception of the Mayor, is aimed at promoting transparency and reducing the risks of corruption, if all briefings and discussions between Councillors and staff must be conducted in public meetings, it could limit the ability of Councillors to seek informal or candid advice on complex or sensitive issues.

In private briefings, Councillors may feel more comfortable asking basic or politically sensitive questions without concern for public scrutiny or political consequences.

- **Less Collaboration/Cooperation/Efficiencies**

  Also, Councillors and staff may find it more difficult to collaborate effectively on complex issues, as they would have to wait for formal meetings to discuss matters. This could slow down the decision-making process and reduce the efficiency with which issues are fleshed out and addressed in the minds of those seeking clarity.

- **Oversimplification in Public Forums**

  In a public setting, Councillors and staff may feel pressure to simplify complex issues for the public's benefit, leading to less detailed or nuanced discussions.

  Sensitive matters, particularly those involving legal, financial, or technical complexities, may not be thoroughly addressed if Councillors or staff feel constrained by the need to present the information in a way that is accessible to a broad audience.

- **Chilling Effect on Information Sharing**

  Councillors and staff might share less information overall if they feel that every exchange must be made in a public forum. This could create a 'chilling effect' where there is hesitation to ask questions, raise concerns, or share information for fear of public backlash, misinterpretation and professional reputational and political consequences.

- **Overload of Information for the Public/Additional, Perceived Complexity**

  While we agree transparency is a key goal, providing the public with too much information, particularly technical details or raw data could overwhelm and make it harder for community members to follow the decision-making process. This could reduce community engagement rather than increase it, as members of the public may find it difficult to sift through large amounts of information to identify what is most relevant.

- **Additional Impost on Staff Resources**

  Requiring staff to provide detailed briefings and reports in public meetings could create a new, additional and significant administrative burden. With their professionalism on public display through a now forum, they would need to prepare more formal presentations and documentation for public scrutiny.

  This could divert staff resources away from other important tasks, such as project management, service delivery, and day-to-day operations while also impacting staff well-being and engagement/retention.

- **Clarity on what constitutes a 'Briefing', for the purposes of this framework**

  We believe there needs to be clarity on this. Clearly there is a need for confidential briefings and/or workshops which cover sensitive operational, personnel or commercial in confidence topics that are not for public consumption, but which serve to inform effective decision-making.

  It will be important to retain the ability for Councils to hold strategic planning workshops as part of the IP&R process, confidential briefings where the matter satisfies the requirements current under the Local Government Act or when meeting with private entities or government departments on confidential matters.

  This may need to be extended to include for example briefings/workshops with other agencies which may be reluctant to publicly surface information which they are obliged to protect for purposes outside the realms of our obligations.

  We are primarily focussed on ensuring this is a considered, balanced approach.

The Mayor – stronger focus on leading/unintended consequences of power-shifting

We have some concerns that if not precisely calibrated, how any shift in the mayor's powers may erode trust and the democratic process, for example:

- **Concentration of Power**

  Granting the mayor more authority, especially over councillors' behaviour and meeting procedures, could create a perception amongst councillors of a centralisation of power. Councillors may feel that their influence is diminished or that the mayor is controlling the flow of meetings and discussions to suit their own agenda.

- **Potential for Misuse of Expulsion Powers**

  The power to expel councillors and deny them fees might be misused or overused in politically-charged situations. While this potential threat undermines trust in how the cohort work together, particularly on contentious issues, this approach could also silence dissenting voices or discourage open debate if councillors fear expulsion or financial penalties for disagreeing with the mayor.

- **Impact on Councillor Morale**

  We touch on this in the previous comment; increased authority for the mayor could lead to lower morale among councillors, especially if they feel their roles are being overshadowed. Councillors might become disengaged

if they perceive that their input is less valued or if they feel disproportionately/unjustly penalised for minor infractions.

- **Public Perception of Transparency**

  Although the reforms aim to increase transparency by banning closed sessions for councillors, the mayor's exemption could lead to public suspicion that important decisions are being made behind closed doors, undermining the transparency that this framework seeks to foster.

- **Amplified Potential for Political Conflict**

  In councils where political divisions exist, the mayor's expanded powers could exacerbate tensions. Councillors may accuse the mayor of bias or political manipulation, leading to further dysfunction and distrust, further undermining the intent of this reform.

- **Unequal access to information**

  The proposal to ban provision of information to Councillors outside of a briefing or Committee is significant issue.

  It centralises power in the Mayor, which while positive in some aspects, also has the potential to alienate some Councillors if poorly managed, and restricts Councillors ability to seek advice and support from staff on amendments or alternate motions prior to a Council meeting.

  This could lead to poor, unlawful or unworkable decisions as motions are workshopped on the floor of Council, which ultimately have the reverse result of diminishing the dignity of Councils.

  There is a need for open communication channels for the provision of information to Councillors to inform their decision-making process, not to make these decisions outside of the chamber.

Councillor conduct and meeting practice: A new framework - United Services Union Submission

November 2024



By your side

UNITED SERVICES UNION

Who we are?

The United Services Union is the largest local government union in New South Wales, representing more than 30,000 members in NSW and the ACT.

We have advocated for our members interest in local government for more than 120 years, and represent members working in each and every town and community in New South Wales.

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

Proposal suggests under "A strong and proportionate local government regulator" that the regulator intervene "as rarely as needed". We disagree with the underlying premise that intervention is inappropriate – regulators should be given power to intervene when necessary and with effect. "Transparency and accountability" should also include accountability to constituents and other stakeholders which include staff.

Question: What are the key element of an aspirational Code of Conduct that should be enshrined?

Insofar as an "aspirational" code of conduct with respect to councillor-on-councillor complaints is concerned, the Union does not have an objection to this high-level principle.

However, where complaints about the conduct of elected officials relates to (either directly or indirectly) staff, then we are of the view that an "aspirational" code of conduct is not sufficient and that there needs to be enforceable obligations on elected officials that, at a minimum, do the following:

- recognise that elected officials owe duties to staff under the Work Health and Safety Act 2011 (NSW)(WHS Act); and
- that where the conduct of an elected official puts the health and safety of staff at risk that the Council may be organisationally liable and the elected official may be personally liable for breaches of the Work Health and Safety Act 2011 (NSW).

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

The Union expresses no view on this question.

Question: Is the proposed pecuniary interest framework appropriate? Is anything missing?

The Union expresses no view on this question.

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

The Union expresses no view on this question.

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

The Union expresses no view on this question.

Question: Is this the appropriate threshold to face a Privileges Committee?

We are concerned that a Privileges Committee made up of experienced Mayors and ex-Mayors may devolve into determining complaints along partisan lines.

Notwithstanding that concern, where the complaint relates to the conduct of an elected official in relation to staff, having a committee which is made up of *only* Mayors or ex-Mayors is completely unbalanced.

In such circumstances, and assuming the Government is fixed on the notion of a Privileges Committee for dealing with complaint, where such a complaint relates (either directly or indirectly) to an elected officials interactions with staff then we would propose that the priviliges committee be made up of three parties:

- an independent Chair (ideally someone with experience dealing with industrial/employment matters e.g. a retired NSWIRC Commission);
- an experience Mayor or ex-Mayor;
- a representative or appointee from the Industry Unions.

Question: How else can complaints be minimised?

We fundamentally disagree with the proposition that complaints need to be minimised. An appropriate stream of vetting complaints should be enacted to minimise vexatious complaints, but this should not be used as a process whereby legitimate complaints are ignored, not acted on, or discouraged.

Question: What key features should be included in lobbying guidelines and a model policy?

We suggest adoption of recommendation 8 of ICAC Operation Dasha, specifically:

- councils provide meeting facilities to councillors (where practical) so that they may meet in a formal setting with parties who have an interest in a development matter
- councils make available a member of council staff to be present at such a meeting and to prepare an official file note of that meeting to be kept on the council's files (any additional notes made by the member of council staff and/or the councillor should also be kept as part of the council's records)
- all councillors be invited when a council conducts formal onsite meetings for controversial re-zonings and developments, and
- council officers disclose in writing to the general manager any attempts by councillors to influence them over the contents or recommendations contained in any report to council and/or relating to planning and development in the local government area.

Question: What level of PIN is appropriate?

While the discussion paper talks about the OLG issues Penalty Infringement Notices (PINs) for issues that are 'minor or administrative in nature', such a formulation does not provide for the just, quick, and cheap resolution of issues raised by staff and their Union representatives about the conduct and behaviour of elected officials.

We would propose expanding the scope of the OLGs capacity to issue PINs to include circumstances where an elected official, either acting independently or as part of a group, make a decision which is inconsistent with the rules governing the Council, including but not limited to a breach of the relevant industrial instrument. For example, where the Council endorses a restructure which has occurred without consultation, or the entering into a contract which is inconsistent with the the relevant regulatory or legislative standards, then the OLG should be empowered, as an interim measure, to issue a PIN on the elected official or officials.

We also would direct the OLGs attention to Part 5, Division 7 of the WHS Act which provides elected Health and Safety Representatives (HSRs) the power to issue Performance Improvement Notices (Safety PINs) where a person has contravened or is contravening the WHS Act. While it is conceivable that HSRs, being staff elected under the WHS Act, could issue and elected official with a Safety PIN currently, given the obvious power imbalance present in such a situation, we think that it would be prudent for the OLG to also be given the power to issue Safety PINs in circumstances where the conduct of the elected official is, has, or would contravene the WHS Act.

Question: Are the penalties proposed appropriate, and are there any further penalties that should be considered?

The report notes that '[t]he overall intent is to reduce the weaponization of complaints and reduce the numbers of complaints.' The intent of the framework should not be to suppress complaints but a system that vets vexatious complaints.

With respect to the available penalties, it is difficult to determine in isolation whether they are appropriate without detail of what is to be considered misconduct.
Notwithstanding the above, we support the proposed suite of powers including:

- Censure of the councillor
- Warning of the councillor
- A potential loss of sitting fees
- Suspension or disallowance

We submit that these penalties should not only be considered for misconduct at council meetings or between councillors, but that they apply to councillor misconduct when engaging with council employees.

However, we restate the point made throughout this submission that the behaviour of elected officials can, and oftentimes does, impact negatively on the health and wellbeing of staff, and appropriate penalties need to be available to address this risk.

As a general view the Union continues to advocate for more funding and resources to the OLG to allow them to play a more robust role in ensuring compliance with legislative, regulatory, and code of conduct standards.

Question: Are the existing sanctions available under the Local Government Act sufficient?

We refer to our answers above, particularly as it relates to conduct by elected officials which creates a risk to the health and safety of staff.

Staff are routinely required to provide advice to elected officials or perform services which impact residents and ratepayers who are the constituents of elected officials. Obvious and acute examples of this is in the areas of planning and development approvals but can extend to things such as the maintenance of public spaces, waste collection, and community programs. This has the potential to bring staff into conflict with elected officials.

While elected officials are entitled to express views on the services provided by Council, they should not do so in such a way as to belittle, demean, harass, bully, or otherwise threaten the health and safety of staff. The OLG, or such other regulatory agency, should be provided with suite of sanctions that would prevent or stop such situations from occurring. Those sanctions should not require a lengthy deliberative process that is typically characterised by tribunals.

Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

We disagree with the underlying assumption that it is inappropriate for the departmental head lawfully conferred with power to determine and apply sanctions. However, a formal tribunal, depending on how it is constituted, may provide more consistent transparency and impartiality.

We do however note that forming a tribunal may be counterproductive to the stated priority of expediting investigations. A tribunal hearing individual complaints against individual councilors appears disproportionate. A more effective and efficient process may be to maintain the current process of departmental head determinations for individual infractions and referral to the tribunal for more serious matters or complaints that relate to multiple councilors or repeated serious behaviours.

Question: Are there any other powers that need to be granted to the mayor or chain of the relevant meeting to deal with disorderly behaviour?

The proposed power of the mayor or chair to remove a councillor's fee for a month is inappropriate and should be determined by an impartial body. Regardless of whether that decision may be appealed, the power may be used arbitrarily or vexatiously.

The current powers granted to the chair are sufficient.

The Local Government (General) Regulation 2021 provides at s233:

Expulsion for acts of disorder
(1) The chairperson may require a councillor—
(a) to apologise without reservation for an act of disorder referred to in section 182(a), (b) or (e), or
(b) to withdraw a motion or an amendment referred to in section 182(c) and, where appropriate, to apologise without reservation, or
(c) to retract and apologise without reservation for any statement that constitutes an act of disorder referred to in section 182(d) or (e).
(2) A councillor may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of a council for having failed to comply with a requirement under subsection (1). The expulsion of a councillor from the meeting for that reason does not prevent any other action from being taken against the councillor for the act of disorder concerned.

The Local Government Act 1993 at s10 provides:

(2) However, a person (whether a councillor or another person) is not entitled to be present at a meeting of the council or of such a committee if expelled from the meeting—
(a) by a resolution of the meeting, or
(b) by the person presiding at the meeting if the council has, by resolution, authorised the person presiding to exercise the power of expulsion.

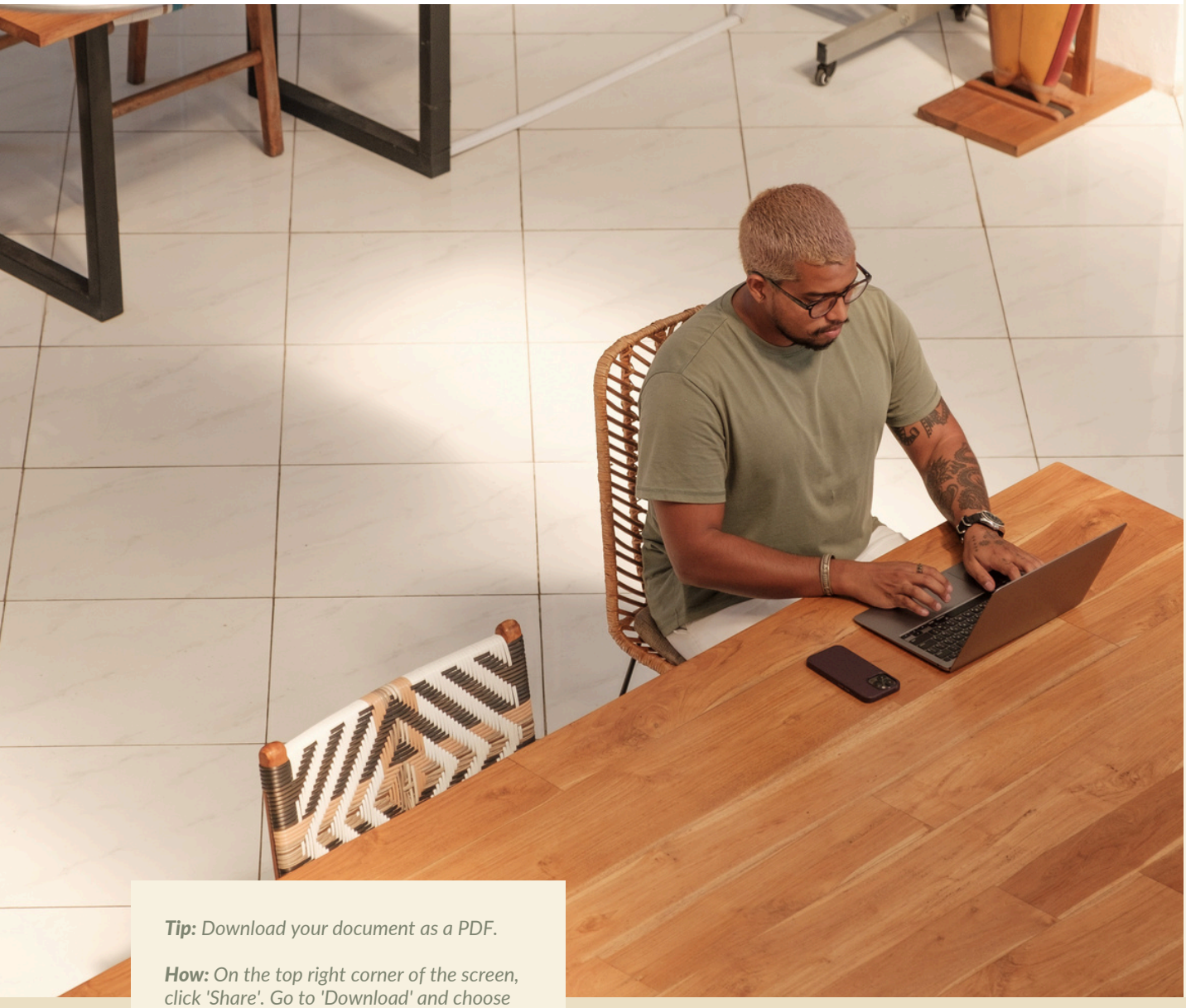
Question: Are there other measures needed to improve transparency in councillor deliberations and decision making?

Councils routinely conduct controversial business in a closed session of Council. Similarly, on various matters elected officials are often provided with briefing materials or attend “workshops” which are designated as confidential. These designations are typically made where issues of controversy or potential controversy are being discussed and debated and are completely antithetical to the principles of open and transparent government.

We would propose that clear rules are established which create a strong default position that discussions and briefing of elected members of Council should be public unless there is an overriding reason for confidentiality.

Contact us for further information:

Daniel Papps Bill O’Kell
[redacted]



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

Wednesday, 6 November 2024

Councillor Conduct Framework Review

Dear Minister,

Thank you for the opportunity to provide feedback in relation to the Councillor Conduct Framework Review. The following submission was endorsed at Council's October Ordinary Council Meeting held on 28 October 2024 under Minute No. 207/2024

Local Context

Narrabri Shire Council (**Council**) is a Group 11 council located in the North West Slopes region of NSW. The primary settlement of Narrabri is located adjacent to the Namoi River and at the confluence of the Newell and Kamilaroi Highways. The local government area (LGA) is strategically positioned halfway between Sydney and Brisbane and is considered to be resource-rich. Key local industries include mining and agriculture. At the last census (2021) the resident population was 12,721 persons.

Narrabri Shire Council's vision is articulated in the Community Strategic Plan as follows:

"Narrabri Shire will be a strong and vibrant regional growth centre providing a quality living environment for the entire Shire community."

Council's local government area is not divided into wards and Council's governing body comprises of 9 elected officials, with a Mayor elected by councillors.

2. Principles of change

2.1. Are we missing anything in the principles of change?

Yes, the "Principles for Change" blatantly disregard the reality of the Australian Constitution. The suggestion of a "constitutional right" to speak freely is a legal fiction. The Australian Constitution does not grant a right to free speech nor are local councillors shielded by parliamentary privilege as Members of Parliament are. Therefore, this comparison between local councillors and Members of Parliament is entirely

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inappropriate. Further, with more instances of poor behaviour being drawn to light at both State and Federal levels, combined with the alleged misuse of parliamentary privilege it is likely to diminish the integrity of councils further by using Members of Parliament as a model.

While the High Court has recognised an implied freedom of political communication as part of the system of representative government, as established in *Nationwide News Pty Ltd v Wills* (1992) and *Australian Capital Television Pty Ltd v the Commonwealth* (1992) and reaffirmed in *Unions NSW v New South Wales* [2013] HCA 58, it does not confer a personal right of free speech. If a type of "parliamentary privilege" were to be extended to the words spoken by councillors in the Chamber, the *Local Government Act 1993* (NSW) would need to provide a robust legal framework around this.

Any changes to the Code of Conduct must carefully balance the need for transparency and ethical behaviour with councillors' freedom to engage in political communication does not confer a fictional right to free speech that will expose councillors to defamation claims—potentially against both the individual and the organisation—and will likely foster a hostile environment between councillors and staff. Ethical standards must not be compromised under the guise of non-existent rights.

Despite this misrepresentation of the Constitution, Council is in full support of empowering local leadership and decision making, increasing transparency and accountability, reducing vexatious complaints which drain public resources, ensuring decisions are made at the lowest possible level and ensuring swift and proportionate justice for those who waste public resources.

3. Potential changes to the code of conduct and oath of office

3.1. What are the key elements of an aspirational Code of Conduct that should be enshrined?

The current Code of Conduct already provides a clear and prescriptive framework for the behaviour any ratepayer, taxpayer and community member would expect of their elected officials. Nevertheless, if it is insisted upon that the current Code of Conduct is to be replaced then the key elements that an aspirational Code of Conduct should include are clear standards for honesty, integrity, and ethical behaviour. It must emphasise fairness, impartiality, and transparency in decision-making, ensuring councillors act in the best interests of the community. Additionally, the code should promote accountability, respectful communication, and the responsible use of public resources. It should also provide a clear framework for investigation and enforcement, especially regarding conduct that is likely to attract an injury under the *Work Health and Safety Act 2011* (NSW). These principles must guide councillors to maintain public trust and uphold the dignity of their office.

Further, Council is of the opinion that the development of a Local Government Ethics Assistance Line similar to the service provided by the NSW Law Society's Ethics Unit operating out if OLG should be investigated and implemented. A dedicated ethics line would offer free, practical, and confidential guidance to councillors, helping them navigate ethical dilemmas such as conflicts of interest, confidentiality concerns, and other integrity-

related issues. By providing expert advice, this service would promote a higher standard of ethical conduct within the council, helping to prevent potential misconduct and reduce the number of complaints received by councils and OLG.

3.2. What are your views about aligning the Oath of Office to the revamped Code of Conduct?

Council supports the proposed elaboration of the current Oath (or Affirmation) of Office to ensure that behavioural standards and expectations are clear to elected officials from the outset. Aligning the Oath to the Code of Conduct ensures that councillors commit to clear, consistent behavioural standards from their commencement, reinforcing accountability and ethical expectations in their role.

While Council acknowledges that the current Code of Conduct may be challenging for new councillors to memorise verbatim, its principles are not. These principles—honesty, integrity, fairness, ethical conduct, and acting without bias in the community's interest—should be reflected at every level of government, for both staff and councillors. If the argument for weakening the Code is that it's too difficult for new councillors to learn, then perhaps NSW should follow Queensland's lead by introducing mandatory courses for local government candidates to ensure they understand the key principles of local government and their obligations as councillors from the moment they decide to run.

4. Potential changes to the definitions and assessment of councillor misbehaviour

Council agrees that misbehaviour should be more clearly defined and enshrined in the *Local Government Act 1993* (NSW). However, if the proposed definition of misconduct necessitates further elaboration across various regulations and statutory instruments, is that not creating a more complicated system that what currently exists?

Currently, the existing Code of Conduct provides a singular, cohesive document that outlines expectations and standards of behaviour for councillors. Fragmenting this information into multiple sources may not only complicate the enforcement process but also obscure accountability measures, making it more challenging for both councillors and the public to navigate the standards of conduct. Moreover, a convoluted system could inadvertently diminish transparency and hinder effective oversight, which are critical components in maintaining public trust in local government. Therefore, it is essential to consider whether the benefits of a more detailed definition outweigh the risks associated with increasing complexity in the governance framework. A streamlined approach that enhances clarity while maintaining a cohesive system (like what is currently in place) may ultimately be more effective in promoting ethical conduct within councils.

4.1. Is the proposed pecuniary interest framework appropriate? Is anything missing?

Council supports any additional standardised information that can be provided to councillors (and the community) to assist in the understanding of what a pecuniary interest entails. Council further supports the proposal to extend standard declarations of interest to cover the interest of a spouse or de facto partner, relative, or partner or employer, or a company or other body of which the councillor, or their nominee, partner

or employer, is a shareholder or member. However, to lessen the framework that exists around defining the nature of an interest, such as what the current Code of Conduct does, is likely to be susceptible to exploitation by individuals willing to leverage financial influence for personal gain.

If the framework is not prescriptive, it risks undermining the core principles of transparency and accountability essential for effective governance. A lack of clear definitions surrounding pecuniary interests can create opportunities for individuals to interpret the rules in ways that serve their interests, rather than for the public good. This ambiguity may foster a culture of evasiveness, where those with financial resources can navigate the system to obscure their true interests and motives, such as through various layers of corporate entities. Consequently, the proposed framework could inadvertently enable corruption and diminish public trust in local government. To protect against such risks, it is imperative to establish a robust and clearly articulated framework that minimises exploitable weaknesses, ensuring that standards are uniformly enforced, and that the integrity of the governance process is upheld.

4.2. Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

In a context where objectivity is paramount, the proposed framework for defining non-pecuniary conflicts of interest appears to be mired in ambiguity. Current Code of Conduct provides a clear framework for defining and managing both significant and non-significant conflicts of interest. To muddy the waters and enable councillors the freedom to choose whether or not they participate in decision making processes where a significant non-pecuniary interest exists is creates an environment whereby their influence can be bought (through the exchange of money or favour) by those close to them. However, if the proposed Code of Conduct is to be "paired back", maintenance of a clear definition of the proximity of the interest equating to the severity of the interest and management of the interest is key.

4.3. Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

In a small community where real estate agents often possess valuable insight into what attracts people to the area, Council is less concerned about the proposed framework relating to them. Real Estate Agent's local knowledge can be beneficial in shaping decisions that align with community interests and aid councils implement policies and programs that improve the liveability of an area Further, real estate agents, while involved in property transactions, do not have the same level of control over large-scale developments and are less likely to directly profit from broader council decisions. This distinction makes it more reasonable to allow real estate agents to participate in local government, provided proper safeguards are in place to manage any potential conflicts of interest.

In contrast, however, council is concerned about the proposed framework regarding property developers. Property developers should be restricted from local government because their direct financial interest in land use, zoning, and development

decisions creates a clear conflict of interest, allowing them to influence policies that could personally benefit their projects. At a bare minimum, a strict framework regarding the declaration and management of their interests would need to also extend to capturing any contracts or arrangements entered before they were elected. Even if they were to divest themselves from "development business activities and contractual obligations" this is likely to be a short-term decision for long term gain as there is no proposed framework to prevent them from revesting in those activities after the conclusion of their term. A short "pause" for four years to ensure long term commercial success for their business is a small price to pain for long term financial gain to the detriment of the community. This can erode public trust in the council's ability to make fair and transparent decisions, ultimately weakening democratic governance.

Further, independent safeguards should remain in place, such as the reinforcement of councillors to remain silent on councils' role undertaking its regulatory duties. Active involvement of both developers and real estate agents in council decision-making could lead to a weakening of planning regulations, as they may push for more lenient rules that favour their projects. This could result in overdevelopment, disregard for environmental protections, and urban sprawl, all of which can have long-lasting negative impacts on the local area. This weakening would only increase the number of major building defects arising across new developments. The Australian Housing and Urban Research Institute has reported that 70 per cent of homes across the Australia have major building issues, with the largest proportion of issues being attributable to "new builds" (2000 onwards). Whilst these issues are largely attributable to shortages of skilled labour, the increased pressure to produce large scale housing developments in shorter periods of time, the core of the issue stems from profitability over performance, which is only likely to be exacerbated if those who's income stems from such profits take on influential positions with the potential to weaken building regulations.

In an economy ruled by the affluent, to continue policies which directly benefit them and further extend the wealth gap, it is questionable decision to not manage the influence property developers have on local government is in the best interest of the community. Left unchecked, their involvement risks prioritising profit over public benefit and further contributing to the negative rhetoric that local government is the most corruptible level of government. Whilst Council acknowledges the importance and significance of the property development industry in providing a public benefit to the state by way of generating employment and housing, it does so because it is profitable not for community enhancement.

4.4. Is this the appropriate threshold to face a Privileges Committee?

The proposed threshold for behavioural standards (or lack thereof) to face the Privileges Committee is sensible to minimise the current workload being presented to OLG to manage regarding councillor misconduct. Such a Committee would ensure that allegations of poor behavioural standards are being dealt with in a time and cost-effective manner whilst enabling more investigative resources to be reserved for actual corrupt conduct. However, the composition of such a Committee needs further review to ensure its impartiality (both real and perceived).

The proposed structure of the Local Government Privileges Committee is fraught with partiality and bias. A Privileges Committee comprised of mayors and ex-mayors may be viewed as lacking impartiality regarding the experiences and interests of councillors, potentially undermining the legitimacy of its decisions. This perception of bias could result in councillors and the community feeling that complaints against councillors are not assessed fairly, fostering increased resentment and defiance, as well as potentially more disruptive behaviour. Furthermore, councillors might assume that their actions will be judged leniently by individuals from similar political backgrounds, which could encourage further misconduct. While experienced mayors and ex-mayors are vital in promoting the governance and integrity of local councils, the Council recommends that independent members with expertise in integrity and behavioural standards be appointed in equal numbers. This will help ensure the impartiality and independence of the proposed Committee, fostering greater community trust.

The proposed framework is also ambiguous with respect to if Councillors appearing before the privileges committee would be able to have legal representation and who may appear on their behalf in person? If so, would a privileges committee need a Chairperson who is either a current or former judicial officer or an Australian lawyer of at least seven years' standing (Equivalent to requirements to be a member of the NSW Civil and Administrative Tribunal) to ensure they can adequately deal with legal arguments? Council looks forward to further clarity being provided around these issues.

Council would also like to see a prequalification scheme for members of the Privileges Committee, similar to the operation of councils' Audit, Risk and Improvement Committees. This scheme would include clear criteria for assessing candidates based on their ethical standards, prior conduct, and understanding of governance frameworks. Mandatory training on ethical standards and conflict resolution would further equip members to handle complex ethical issues. Additionally, thorough conflict of interest assessments and transparency in the selection process would enhance public trust and strengthen ethical oversight in local government.

4.5. How else can complaints be minimised?

Like any sector, without real consequences for actions, poor behaviour exhibited by individuals will continue. Punitive measures extending beyond a mere censure are critical. Consequences for poor behaviour need to also go beyond a fine (for the reasons discussed below in point 5.1); punishment should be proportionate and partitive to the individual's means. Consequences for poor behaviour also needs to be of a standard that would deter any individual from acting in such a manner. Therefore, Council would be supportive of a three-strike rule, that would see councillors not only terminated from office but banned from running at the next election if they were found to have breached poor behavioural standards on three occasions by a more independently appointed Privileges Committee than what is being proposed by the framework.

4.6. What key features should be included in lobbying guidelines and a model policy?

In 2023 Council had drafted and implemented its own Councillor Interactions with Property Developers, Businesses, Contractors and Lobbyists Policy following on from the NSW Independent Commission Against Corruption Report on Operation Dasha in March 2021, where it was recommended that all NSW councils implement measures to enhance transparency around the lobbying of councillors (Recommendation 8). Therefore, Council would be supportive of the proposed guidelines and model policy to be put forward as part of this framework so long as it also encapsulates meetings and interactions with property developers, contractors and businesses, as these groups, as a whole, are also motivated by profit over public benefit.

Transparency is a fundamental principle for government organisations, such as Council. Any Model Policy should not be seen to deter Property Developers or Lobbyists, but to provide a higher level of transparency to their dealings and maintain public confidence in Council's exercise of its functions as a planning and regulatory authority. At a minimum, a Model Policy should enhance Council's transparent and accountable assessment and determination of planning applications and establish a public register of all meetings between elected councillors and property developers and lobbyists.

Key sections of a Model Policy should at a minimum include: a clear definition of those subject to disclosure, lobbying, and lobbyists; clear guidelines for how meetings are to be conducted; a public register of meetings undertaken; and provide a framework that protects well intended councillors and staff from being pressured to influence council's regulatory functions to the detriment of the wider public. Further, to ensure consistency, any Model Policy would need to reflect current legislation and codes of conduct, including the legal definition of a Property Developer, as defined by section 53 of the *Electoral Funding Act 2018* (NSW). It should also reflect the current requirements

5. Dispute resolution and penalty framework

Council is supportive of the intent behind the changes to the Dispute resolution and penalty framework being to reduce the weaponisation of the complaints process and reduce the timeframe for dealing with such complaints. Vexatious complaints reduce the integrity of a system and give rise to conjecture that results in extra barriers to justice for those with legitimate complaints. However, it should be investigated to determine if this is likely a result of the culture rather than the current framework, as further education and may also be required to ensure the new framework resolves the issue.

Council is concerned about how councils would manage their legislated obligations under the *Work Health and Safety Act 2011* (NSW) within the proposed framework. The roles and responsibilities of councils—particularly regarding psychosocial injuries—are addressed only superficially. Councils are essential to employee wellbeing, and simply deferring to SafeWork does not sufficiently tackle the complexities of managing psychosocial risks related to disrespectful councillors. A proactive approach is necessary to implement comprehensive strategies rather than treating these issues as a secondary matter. Council would be supportive of a framework that was effective in

managing psychosocial injuries, ensuring compliance with legislation and protecting councillors and employees' mental health.

5.1. What level of PIN is appropriate?

If the penalty for a crime is a fine, then that law only exists for the lower class. Issuing fines to councillors for misconduct is likely to trivialise their misbehaviour, especially when those fines represent a mere inconvenience for individuals with substantial wealth. For affluent councillors, these penalties may be viewed as a cost of doing business, allowing them to evade meaningful accountability for their actions. This dynamic disproportionately impacts underrepresented groups, who may face harsher consequences for similar infractions due to their financial constraints. As a result, the imposition of fines can reinforce existing inequalities, enabling wealthier individuals to maintain their positions of power and influence within local governance. This further marginalises vulnerable communities and contributes to the gentrification of councils, where the interests of affluent residents overshadow the needs and voices of those less represented, ultimately undermining the democratic process and exacerbating social divisions. Therefore, Council is of the opinion that if PINs were to be introduced into the penalty framework, then they would need to be reserved for misconduct that the Department if comfortable to continue by those who have the means to pay the fine.

A PIN system also implies the offence is one of strict liability, which, is not always the case in a system that requires an objective assessment of all elements before a determination is made. In accordance with the current legislative frameworks and the PIN system, for OLG to issue a PIN they would have to satisfy itself that an offence has occurred, and the offence was minor or administrative in nature. This would require additional resourcing to undertake an investigation and gather sufficient evidence so they can satisfy themselves of such an offence; thus, repeating the current cycle of issues that currently face OLG.

There is also ambiguity within the proposed framework as to who in OLG would be delegated to issue these PINs. It needs to be delegated to an officer with enough understanding of the current landscape without the fear of political repercussions if they were to issue such a PIN. Further. the proposed framework lacks critical understanding of how the PIN system and criminal law operates, with regard to the proposal for councillors to be able to "appeal" PINs. PINS are not capable of being appealed. A person issued a PIN may request a review by Revenue NSW where they believe a mistake of fact has been made or elect to have the matter dealt with by court with the opportunity to defend themselves.

Council would also require further information regarding which Department would conduct reviews of PINs if there is believed to be a mistake of fact or which jurisdiction would a matter be sent to if the subject councillor chooses to elect to have the fine dealt with by court To ensure a thorough understanding of the PIN system, misconduct and behaviour standards as outlined in the legislation, Council would prefer to see these matters dealt with by the Local Court of NSW to serve as the presiding jurisdiction. It is also a strong principle of criminal law that matters should be dealt within the location they occur, in open court, to promote transparency and accountability.

5.2. Are the penalties proposed appropriate, and are there any further penalties that should be considered?

The proposed penalties are so minimal in impact that referring to them as "penalties" undermines the seriousness of the term. An effective penalty should be proportionate to the breach and serve as a deterrent for potential future breaches. It is hard to conceive how a censure or warning would serve to do this without the threat of termination from office following continuous offences. Further, NSW Councillor fees are so minimal, councillors are not reliant on them as a source of income; to threaten a potential loss of their "sitting fees" is unlikely to be effective. Council is, however, eager to understand which tribunal or body is being proposed to handle referrals for more serious sanctions.

5.3. Are the existing sanctions available under the *Local Government Act* sufficient?

The existing sanctions under the *Local Government Act 1993* are clearly inadequate; otherwise, a review of the conduct framework would not be necessary. As discussed above, the current penalties lack the impact necessary to effectively deter poor behaviour. Whilst the majority of councillors act with honour and integrity when undertaking the noble public service of an elected official, Council agrees that the local government behavioural framework should support those who seek to do the right thing and punish those who do not.

5.4. Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

Council agrees that decisions on sanctions for councillors would be best handled in a public setting by a formal Tribunal (such as the NSW Civil and Administrative Tribunal). A tribunal ensures impartiality, transparency, and accountability, offering a structured hearing process where both parties can present their cases. Independent arbitrators with legal and governance expertise can provide more informed decisions, fostering public confidence and ensuring consistency in the application of sanctions. This formal process also reduces the risk of perceived political influence, making it a more credible and fair approach to handling councillor misconduct.

6. Restoring dignity to council meetings

Council wholeheartedly agrees that a council chamber is a chamber of democracy and that council meetings should be conducted with dignity, civility and respect. Council further agrees that no decisions should be made outside of the public forum of a council meeting to ensure transparency and accountability for the benefit of the community who the councillors serve (with the exception of matters deemed confidential by section 10A(2) of the *Local Government Act 1993* (NSW)).

Council has concerns that maintaining archaic protocols for the sake of tradition may lead to the gentrification of councils and their meetings. Councillors, as representatives of their communities, should collectively decide whether to stand or sit during meetings based on their preferences and comfort levels. The expectation to stand,

intended to restore dignity, is not thoughtful or inclusive for councillors who may have difficulty standing, need to read their notes, or are attending via Zoom. This practice can alienate those with mobility issues and hinder participation, highlighting the need for more accommodating approaches that respect the diverse needs of all councillors. By empowering councillors to establish their own norms, councils can foster a more inclusive environment where everyone can participate fully, regardless of physical abilities. Prioritising the needs and voices of all councillors can create a more democratic and accessible atmosphere that reflects the values of the communities they serve.

6.1. Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

The current Model Code of Meeting Practice empowers the Mayor, as chairperson, to expel councillors and members of the public for engaging in disorderly conduct during meetings. While our Mayor has fortunately not needed to exercise this power in recent years, other councils have done so successfully, demonstrating its effectiveness. However, this is likely due to the civility of those asked to leave honouring this request. If a councillor or member of the public refuses to leave, the Mayor is required to call on a member of the NSW Police Force to attend and remove the person. If the Mayor were to be delegated the authority to issue PINs in such circumstances it may alleviate the need to do so; however, it creates the ability for a mayor to misuse this system and issue PINs to anyone who speaks against them.

6.2. Are there any other measures needed to improve transparency in councillor deliberations and decision making?

Council is in firm agreement with the decisions should not be made outside of the chamber and that Councillors should exercise their three minutes to voice their reasons for or against a decision for the public benefit. However, there is a reason why briefings and workshops were created and that was to provide an informal forum where councillors can obtain detailed briefings about a variety of issues, not just those to be presented before them at a council meeting. Briefing sessions should be maintained as they serve as an effective platform for encouraging communication and collaboration among councillors. These sessions provide valuable opportunities for councillors to receive updates on various matters, such as crime and health, directly from relevant representatives, followed by a question-and-answer session that fosters engagement and informed discussion.

Council supports that planning, and regulatory matters should be excluded from these briefings. Council is also not opposed to opening Briefings up to the public to enhance transparency and community involvement, provided that these Briefings can be closed to the public as required without needing to meet the requirements of section 10A(2) to receive information on matters not yet in the public domain. If these updates were to occur solely during formal council meetings, the process would be significantly limited. For instance, representatives would have to present at the public forum, where speakers are restricted. This time constraint would typically be insufficient to effectively brief councillors on important issues, ultimately diminishing the quality of information shared and hindering informed decision-making.

In Summary

Council wholeheartedly agrees that integrity and community should be at the centre of all councils do. As the governing body, councillors should act fairly, ethically and without bias in the interests of the local community, and they should be responsible employers and provide a consultative and supportive working environment for staff.

A robust code of conduct sets the standards for ethical behaviour and in itself acts as a mechanism for corruption prevention. The current Code of Conduct is built on a strong foundation of ICAC rulings, with most clauses introduced in direct response to past misconduct. These safeguards exist because they are necessary. Removing them would invite a resurgence of the very corruption the code was designed to prevent. the current Code of Conduct is straightforward and clear. It provides necessary guidelines without being overly complicated, ensuring councillors know what is expected of them while safeguarding against misconduct. It is a necessary framework to maintain integrity and accountability in local councils.

Many of the challenges within the current framework stem directly from the NSW Government's failure to properly resource the Office of Local Government (OLG). Without sufficient funding, staff, and support, the OLG has been set up to struggle in effectively regulating and overseeing local councils. This lack of resources undermines its ability to address issues swiftly and enforce compliance, leaving gaps in governance and accountability across the sector.

Those drafting the "revamped" Code of Conduct must remember that laws and frameworks exist for a reason. Common sense is not universal, and society advances only as quickly as its least informed members. Not everyone who will be privy to this proposed freedom of speech will use it in the best interests of the community and if a pseudo parliamentary privilege were to be extended to councillors, then blatant vexatious comments will go unpunished.

Yours sincerely,



Eloise Chaplain
Interim General Manager

6 November 2024

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Submission – Councillor Conduct Framework Review

This submission is made in response to the Office of Local Government's (OLG) Councillor Conduct and Meeting Practices Discussion Paper (September 2024).

Council provides the following comments in response to the Discussion Paper:

- ***Principles of change (page 7):***
  Council supports the general principles of change as outlined in the Discussion Paper.

- ***Potential changes to the Code of Conduct and Oath of Office (page 8):***
  While Council supports a change to a Code with simpler language and behaviours, any changes must be supported by a framework that includes definitions and clear behavioural expectations.

- ***Property developers and real estate agents (page 11):***
  Further clarification is needed relating to what is a *development business activity* to determine whether a Councillor would need to divest their share/ownership of a real estate or development company or divest themselves of any individual investment property.

- ***Dispute resolution and penalty framework (page 14):***
  Council supports the establishment of a Privileges Committee that would replace the role of an Independent Conduct Reviewer. For this purpose, it is presumed that each Council would provide the relevant conduct information to the Privileges Committee upon request.

  With respect to any costs incurred by the Privileges Committee, Council would be concerned if investigation costs were passed on to councils, noting that councils would not be able to estimate or control those unbudgeted costs.

  In relation to dispute resolution, the OLG should consider a mechanism to resolve matters by alternate means (e.g. counselling, training, apology, etc). While this is currently an option given to the General Manager under the current framework, there will be value in providing additional powers to resolve matters by alternate means to the OLG Secretariat and to the Privileges Committee.

- ***Restoring Dignity to Council Meetings (page 17):***
  While Council supports the additional powers conferred upon Mayors to manage disorderly conduct in Meetings, there must be appropriate and timely review mechanisms in place to address concerns regarding misuse or perceived abuse of power.

  With respect to PINs, it should be noted that the power to issue a PIN to a member of the public that refuses to leave the Meeting would be difficult in circumstances where the identity of the individual is unknown.

- ***Banning Briefing Sessions (Page 18):***
  Banning of Pre-Meeting Briefings in the absence of the public will be problematic and is not supported.

  Council currently holds a Public Forum at 10am prior to each Ordinary Meeting, which commences at 2pm. The time gap allows Councillors to ask questions of staff relating to the items covered in the Public Forum as well as the Business Papers through a Pre-Meeting Briefing.

  Council introduced Pre-Meeting Briefing sessions following changes to the Model Code. They were introduced to provide Councillors an opportunity to ask questions regarding items on the agenda so they can be better informed when making decisions.

  While Council agrees that the intent of demonstrating to the public that decisions relating to the agenda are not made behind closed doors is a good one, this must be balanced against the ability for councillors to have frank and open conversations with relevant staff in order to be appropriately informed.

  Importantly, under the current framework, Councillors can ask questions of or through the General Manager during the Meeting. Such a practice provides a level of understanding and clarification not only for Councillors, but also for the public.

  The inclusion of public councillor briefing session would create an environment where councillors and staff would not be able to hold open and frank discussions about matters that have not yet been presented for decision at an Ordinary Meeting. Frequently a complex issue needs to be workshopped with Councillors prior to it being presented for public consultation and/or decision. The inability for Councillors and relevant staff to hold open and frank conversations would impede this process and may create an environment whereby not all options are considered as Councillors may be reluctant to express their opinion or ask questions.

Should you wish to discuss this matter further, please contact Council's Manager Governance, Rob Griffiths on [redacted]

Yours sincerely,

[redacted]

Adrian Panuccio
GENERAL MANAGER

The Office of the General Manager

4 November 2024

Strategic Policy Unit
C/ - councillorconduct@olg.nsw.gov.au

Dear Sir / Madam

Willoughby City Council Submission: *"Councillor Conduct and Meeting Practices" - a discussion paper*

Willoughby City Council appreciates the opportunity to provide comment on the ***"Councillor Conduct and Meeting Practice" – a discussion paper*** that has been prepared by the Office of Local Government.

Please find attached Council's submission on this matter.

Given this discussion paper forms part of a wider review of the Councillor Conduct Framework, it is recommended that the OLG undertake significant further consultation with local councils during the review process. Council would participate in any future engagement process.

For further information on this submission, please contact Samantha Connor, Governance, Risk and Compliance Manager [redacted]

Yours sincerely

[redacted]

Hugh Phemister
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Willoughby City Council Submission

OLG "Councillor Conduct and Meeting Practices" - a discussion paper.

October 2024

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 commends the Office of Local Government (OLG) for initiating a reform of the current Councillor Conduct and Meeting Practices Framework. In principle, Council supports a change to the current framework, particularly the shift away from the existing code of conduct, which has proven challenging in fulfilling its purpose.

I encourage you to review the submissions made to the Office of Local Government in 2022 on the Councillor Conduct Accountability Review, some of the issues and comments overlap with this discussion paper.

While Council agrees that narrowing the focus of the code is a positive step, we express caution about adopting parliamentary codes designed for state and federal contexts. These codes may not be appropriate for NSW local government, where Councillors serve part-time and are remunerated minimally compared to state and federal members. Council encourages the exploration of alternative models and consideration of varying levels of detail within such codes.

While the discussion paper presents useful statistics on code of conduct complaints handled by the OLG, it lacks further evidence to substantiate the inefficiencies of the current framework. Additionally, it does not reference other better practice models where this has been successfully implemented, nor does it provide evidence-based research to support the proposed changes. Feedback is cited throughout the paper, but the source of this feedback or any formal engagement processes used to collect it are not identified.

The proposed framework introduces a significant shift in responsibility toward Councils for self-regulation. This may place additional pressure on Mayors and Councillors and could potentially deter future candidates from running for local government positions.

Finally, the timing of this consultation process during the local government election and caretaker period has limited Councillors' ability to review and provide thoughtful feedback on the OLG's 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.

Our feedback on the proposed new framework covers four key areas including managing code of conduct complaints, Councillor briefing sessions, conflict of interest and dealing with disorderly behaviour in council meetings.

Managing code of conduct complaints

Willoughby City Council historically receives a low number of code of conduct complaints, and most are dealt with at a local level, with very few being referred to State Government. In line with the discussion paper, complaints are largely for behavioural matters, rather than for serious misbehaviour and serious conflict of interest matters. To that end, we agree that assessment and investigation of complaints is expensive and places significant administrative burden on councils.

Council supports the re-direction of management of code of conduct complaints to the OLG, which may include use of external tribunal and judiciary panels. It will be important that the OLG and any panels/bodies have the capacity to handle matters efficiently and in a timely manner and without a significant administrative and financial burden being redirected to councils.

From the discussion paper, it is not clear what administrative and financial requirement will be placed on Councillors or councils, except that there is a cost for management of complaints by the Privileges Committee. If costs to councils aren't reduced through the new framework, then maintaining the current system may be preferable. Council encourages the OLG to clearly identify and consult on what administrative and financial burdens are likely to be implemented.

Council supports removing General Managers (GM) and council staff from the complaint process as it places the GM in a difficult position with their employer. This proposal will remove the prospect of a GM being perceived as, or subject to, influence by a Council or individual Councillors and help councils and their administration to maintain positive working relationships.

Streamlining the complaint process by referring matters directly to the OLG or Privileges Committee will reduce administrative burden, ensure consistency of the application of the provisions and may prevent expenditure of time and resources upon frivolous or vexations complaints.

The proposed reforms, including the elimination of the two-step process is positive and may assist in mitigating the negative impacts on Councillors that come about from a more formal investigation process. Council supports ensuring a transparent, robust process for assessing and investigating complaints.

While Council supports the referral of Councillor Conduct complaints to a panel, the make-up of the Privileges Committee with former and current Mayors should maintain political impartiality. Relying solely on peers to judge behaviour could also result in conflicts of interest and partial behaviour. Council suggests that the process for the establishment and make-up of the Privileges Committee requires further scrutiny.

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 braches of the conflicts of interest declarations is an unreasonable step.

Similarly, the discussion paper indicates that the Privileges Committee would be paid for by either individual councillors or their councils. For the same reason mentioned above, we believe that councillors and councils should not be required to pay for the Privileges Committee. We also note that such a requirement could lead to members of the public and councillors misusing the code of conduct and the Privileges Committee process, with the potential for significant financial detriment to councillors the subject of code of conduct complaints for minor behavioural matters.

Councillor briefing sessions

The discussion paper cites 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.

Conflict of Interest

Council generally support the proposed pecuniary interest framework. The items for disclosure are appropriate, although we suggest reconsidering the $500 threshold for gifts. Lowering this limit would reduce the perception that gifts of this value could unduly influence Councillors.

Council agrees with applying an objective test to determine if a non-pecuniary interest is significant enough to declare. However, we seek further clarification on the provision that simply being associated with an individual or group does not automatically require a declaration - this could use clearer guidance.

The paper also suggests that the requirement to declare an interest may depend on whether a Councillor's vote was pivotal. This language seems to suggest that the outcome of the vote influences the need for a declaration, which could lead to confusion and potential breaches of the Local Government Act. We believe this process needs further refinement to avoid unintended consequences.

More clarity on how the proposed changes to deal with property developers and real estate agents would work in practice is required.

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.

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.

Strathfield
INDEPENDENTS

6 November 2024

Melissa Gibbs
Director Policy & Sector Development
Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

Email: councillorconduct@olg.nsw.gov.au

Dear Ms Gibbs,

COUNCILLOR CONDUCT FRAMEWORK REVIEW

Thank you for the opportunity to provide feedback to the Office of Local Government "Councillor conduct and meeting practices - A new framework" discussion paper.

As outlined in our Submission we are opposed to most of the reforms proposed in this framework.

These legislative changes will likely erode scrutiny of the local government equivalents of the very framework proposed.

The proposed new framework will make oversight of the council executive even harder, leading to less accountability of the executive who draft such frameworks, and poorer outcomes for the communities councillor's serve.

Much of the logic suggested in the proposed new framework is flawed. Most of the solutions are unnecessary.

There will always be bad characters in government. They exist in all sectors of the workplace and society in general. Their profession is largely irrelevant. The reforms we suggest will strengthen the existing framework and make it easier for good characters to fulfil their duty to their communities.

Our Submission recommends simple solutions to the issues raised in the discussion paper.

It contains input of two former mayors who also have five years as deputy mayor between them and councillors for 12 years and counting.

We feel it important that our recommendations are put on the public record and so they are included in our submission.

We look forward to reading all submissions to the "Councillor conduct and meeting practices - A new framework" discussion paper and action taken by the OLG in response to the submissions from interested parties.

Yours faithfully

[redacted]

Secretary

C.C. : [redacted]

Attached : "COUNCILLOR CONDUCT FRAMEWORK REVIEW
- Submission From STRATHFIELD INDEPENDENTS"
: COUNCILLOR CONDUCT FRAMEWORK REVIEW - From Strathfield Independents
- Attachment 1 - Strathfield Council Code of Conduct & Procedures for the Administration of the Code of Conduct
: COUNCILLOR CONDUCT FRAMEWORK REVIEW - From Strathfield Independents
- Attachment 2 - Strathfield Council Code of Meeting Practice & Lobbying Policy
: COUNCILLOR CONDUCT FRAMEWORK REVIEW - From Strathfield Independents
- Attachment 3 - Dep Secretary of Dept of Local Govt v Doueihi (No 2) NSWCATOD 3 and Doueihi NSWCATOD 163

Strathfield
INDEPENDENTS

6 November 2024

Submission
on the

PROPOSED CHANGES TO THE OFFICE OF LOCAL GOVERNMENT COUNCILLOR CONDUCT AND MEETING PRACTICES A NEW FRAMEWORK SEPTEMBER 2024

Page 4

The need for change - returning local democracy to councils

Effective local government comes when councillors are visibly in control of their councils.

Our Response

We agree with this aspiration but this is harder to achieve than merely amending the "Councillor conduct and meeting practices".

To be in control the Mayor and the councillors have to be accepted by staff as the "Managing Directorate" of a large company. And the staff have to accept the concept that they are there to provide information and support as required. Staff are to be directed and ultimately have to implement the lawful directions (ie the resolutions) of the Mayor and the councillors (the Managing Director and Board).

A change is required to the NSW Local Government Act 1993 to enshrine in legislation that Council staff are employed to carry out the lawful directions made by Councillors at Council meetings.

Page 4

The need for change - returning local democracy to 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 that councillors have.

Closed council briefing sessions are being used to make decisions away from the public view. Council debates on issues are too often personal slanging matches, rather than forums for robust but respectful discussions on what is best for the community.

Our Response

We disagree that "Closed council briefing sessions are being used to make decisions away from the public view".

The final decision on all issues / items of business when the vote is taken at a Council meeting and the Resolution is recorded in the Minutes.

A ”closed council briefing session” or “council workshop”, before a Council meeting can:

- provide an opportunity for councillors to ask “stupid questions” often needed to discern the truth of a matter.
- provide an opportunity for councillors to ask in-depth questions of the staff about an issue that might not be able to be answered at a Council meeting
- provide an opportunity for councillors to ask in-depth questions of the staff about complex or complicated issue that might not be able to be answered at a Council meeting.
- provides time for the councillors to start considering a complicated issue prior to attending the Council meeting where robust but respectful discussions can take place before voting on the issue in a timely manner.
- provides an opportunity for the staff to properly present their recommendation and answer questions about it, without mistakenly creating the public perception that staff are in conflict with the Council committee.

In other words, the intention of a ”closed council briefing session” or “council workshop” is a forum where councillors are briefed on key reports prior to a Council meeting. Additionally, Councillors are provided with miscellaneous information that does not go before a Council meeting. For example, Strathfield Council’s new web site (up and running), closure of the driving range, results of the Staff Engagement Survey and key events for Councillors.

The Strathfield Council Business Papers / Agenda each month has an agenda item titled “Councillor Workshop ….(with the date of the workshop)”. If there is more than one Councillor Workshop or ”closed council briefing session” then an seperate agenda item for Councillor Workshop or ”closed council briefing session” is listed on the Strathfield Council Business Papers / Agenda.

The Report provides a summary to Council of the items discussed at the Councillor Workshop and follow-up action required. The Report also records the attendees, apologies, declarations of interest, the item reference and title and summary.

Business Papers / Agendas can be anywhere from 200 pages up to 1,500 pages. Some agenda items on the business paper can be 150-plus pages.

The Business Papers / Agendas are only provided three (3) business days before the Council meeting. For example, in the Strathfield LGA the Business Papers / Agendas are provided to councillors and published on the Council website on the Friday before the Council meeting on the following Tuesday.

If the ”closed council briefing session” or “council workshop” were not held monthly Council meetings could go well past the 10.30pm deadline. See below.

The Strathfield Council Code of Meeting Practice - 15 December 2023 states:

18. Time limits on Council Meetings

18.1 Meetings of the Council and committees of the Council are to conclude no later than 10.30pm.

18.2 If the business of the meeting is unfinished at 10:30pm, the

Council or the committee may, by resolution, extend the time of the meeting.

18.3 If the business of the meeting is unfinished at 11:00pm, and the Council does not resolve to extend the meeting, the chairperson must either:

a) defer consideration of the remaining items of business on the agenda to the next ordinary meeting of the Council, or

b) adjourn the meeting to a time, date and place fixed by the chairperson.

18.4 Clause18.3 does not limit the ability of the Council or a committee of the Council to resolve to adjourn a meeting at any time. The resolution adjourning the meeting must fix the time, date and place that the meeting is to be adjourned to.

The electors registered in each Local Government Area (LGA) vote in the Councillors to represent them on the governing body, that is the Council, in each Council area.

The NSW Government has legislated the role of a Councillor in Section 232 of the Local Government Act 1993. Section 232 of the NSW Local Government Act 1993 states:

The role of a councillor
232 THE ROLE OF A COUNCILLOR

(1) The role of a councillor is as follows--

(a) to be an active and contributing member of the governing body,

(b) to make considered and well informed decisions as a member of the governing body,

(c) to participate in the development of the integrated planning and reporting framework,

(d) to represent the collective interests of residents, ratepayers and the local community,

(e) to facilitate communication between the local community and the governing body,

(f) to uphold and represent accurately the policies and decisions of the governing body,

(g) to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.

(2) A councillor is accountable to the local community for the performance of the council.

Elected councillors, as directed by the Local Government Act 1993 are required to be an active and contributing member of the governing body (Council) and to make considered and well informed decisions as a member of the governing body.

A ”closed council briefing session” or “council workshop” assists the elected representative (the Councillor) fulfil their role as a Councillor.

If anything, the removal of a ”closed council briefing session” or “council workshop’ is making the process of being a Councillor harder.

Without closed sessions, everything to be said about a matter will not be brought to light.

Councillor activity in debate will decrease at a Council meeting due to time limitations.

Consideration of matters will not be as deep at the Council meeting.

Decisions at Council meetings will be informed by less information.

Planning decisions, and the financial interests of the community attached to them, will be done with less care, the vocal few (who regularly attend Council) will be further represented over the silent majority, sensitive information (commercial, social, etc.) will be more available for special interests not in line with the community, policies (e.g. privacy, tendering, planning and partnering) will not be able to be as fully adhered to (seeing community short-changed further), skills of a councillor to obtain the best deal for community will be stifled.

As can be seen, the 'Proposed changes to the Office of Local Government councillor conduct and meeting practices – A new framework – September 2024' is opposed to Section 232 of the Local Government Act 1993.

Is stifling of the operation of Section 232 of the Local Government Act 1993 what is intended in this new framework?

> **Page 4**
>
> **The need for change - returning local democracy to councils**
>
> Similarly, we have seen a growth in the number of complaints, often over trivial issues. Data from the Office of Local Government (OLG) has shown there has been 4289 complaints over the last 3 years (2020/21 to 2022/23) through the code of conduct process. Overall:
>
> - 420 were referred for preliminary enquiries and then discontinued
> - 136 were investigates as potential pecuniary interest matters
> - 102 were investigated as potential misconduct (not pecuniary interest)
> - 36 related to public interest disclosures, and
> - 2 related to political donations
>
> But of those thousands of complaints, in the years since 2020/21 OLG has:
>
> - taken action against 14 councillors by way of a suspension or reprimand
> - referred 4 councillors to the NSW Civil and Administrative Tribunal (NCAT) for misconduct, and
> - basis of Independent Commission Against Corruption (ICAC) recommendations
>
> The volume of frivolous complaints is crowding out the ability of the OLG and the sector to adequately deal with councillors who abuse their office or cause serious governance problems. It is critical the framework that governs both the behaviour and meeting practices of councillors ensures the community can observe and comment on the behaviour of councillors, instead of inhibiting the operation and function of local democracy.

Our Response

In NSW there are 128 Local Government Councils. The Complaints Statistics are freely available on the OLG web page https://www.olg.nsw.gov.au/public/council-complaint-statistics/.

In the **2020 - 21** year the OLG received **1,543** complaints, spread over 123 councils, of which:

- 49 were potential pecuniary interest allegations
- 45 were potential misconduct allegations

- 1 in relation to political donation provision

Councillor misconduct and political donation complaints

In 2020-21 OLG received 45 complaints alleging misconduct (other than that relating to pecuniary interest matters) by councillors. One complaint alleging a breach of the political donation provisions was also received in this period.

Four investigations under the misconduct provisions were commenced during this period.

The Deputy Secretary determined five misconduct matters during 2020-21. One councillor was ordered to apologise and suspended from civic office for a period of one month for inappropriate behaviour towards Council staff and fellow councillors.

A further councillor was reprimanded and had their right to be paid their councillor fees or other remuneration to which they would otherwise have been entitled suspended (without being suspended from civic office) for inappropriate behaviour while representing their Council at a conference.

Another councillor was reprimanded for sending an email containing incorrect information, making improper and disrespectful comments and unsubstantiated allegations.

Another two councillors were counselled and reprimanded respectively for failing to properly disclose and manage conflicts of interest.

In the **2021 - 22** year the OLG received **1,396** complaints, spread over 126 councils, of which:

- 35 were potential pecuniary interest allegations
- 26 were potential misconduct allegations

Other councillor misconduct complaints

In 2021-22 OLG received 26 complaints alleging misconduct (other than that relating to pecuniary interest matters) by councils.

Six investigations were commenced under the misconduct provisions during this period.

The Executive Director determined one misconduct matter during 2021-22, where it was determined to counsel the Councillor on failure to declare and properly manage a non-pecuniary conflict of interest.

Political donation complaints

No complaints alleging a breach of the political donation provisions were received in this period.

S430 Investigations

Details of previous S430 Investigations can be found on the OLG website at the following location:

https://www.olg.nsw.gov.au/councils/misconduct-and-intervention/investigations/section-430-investigations/

Public inquiries

One public inquiry into Central Coast Council was finalised in 2021-22. This resulted in the dismissal of the elected councillors and appointment of an administrator until the council elections to be held in 2024.

Details can be found on the OLG website at the following location: https://www.olg.nsw.gov.au/public-inquiries.

In the **2022 - 23** year the OLG received **1,143** complaints, spread over 117 councils, of which:

- 34 were potential pecuniary interest allegations
- 23 were potential misconduct allegations

Other councillor misconduct complaints

In 2022-23 OLG received 23 complaints alleging misconduct (other than that relating to pecuniary interest matters) by councillors.

Five investigations were commenced under the misconduct provisions during the 2022-23 period.

Six misconduct matters were determined by the Deputy Secretary during the 2022-23 period. Of those matters determined:

- Three matters were referred to the NSW Civil and Administrative Tribunal (NCAT):
  - In two matters the Deputy Secretary was satisfied that one councillor had engaged in misconduct by failing to comply with their council's code of conduct at a council meeting by making intimidating and personals remarks.
  - The third matter was referred to the NCAT because the councillor made threatening contact with a Council official and attempted to impede the consideration of a matter by Council.
- Two matters were discontinued following the issuance to Council of a Performance Improvement Order by the Minster and resignation of councillors.
- One matter was discontinued because it was determined that there was insufficient evidence available to establish that the councillor was acting in their official capacity as a councillor.

Political donation complaints

No complaints alleging a breach of the political donation provisions were received in this period.

S430 Investigations

The Section 430 investigation into Murray River Council was completed in November 2022 and the report was tabled in the NSW Parliament that same month.

In other words, over a **3 years** period a total of **4,082 Complaints / Allegations** were received.

Of those 4,082 Complaints / Allegations only:

- **118** were potential pecuniary interest allegations

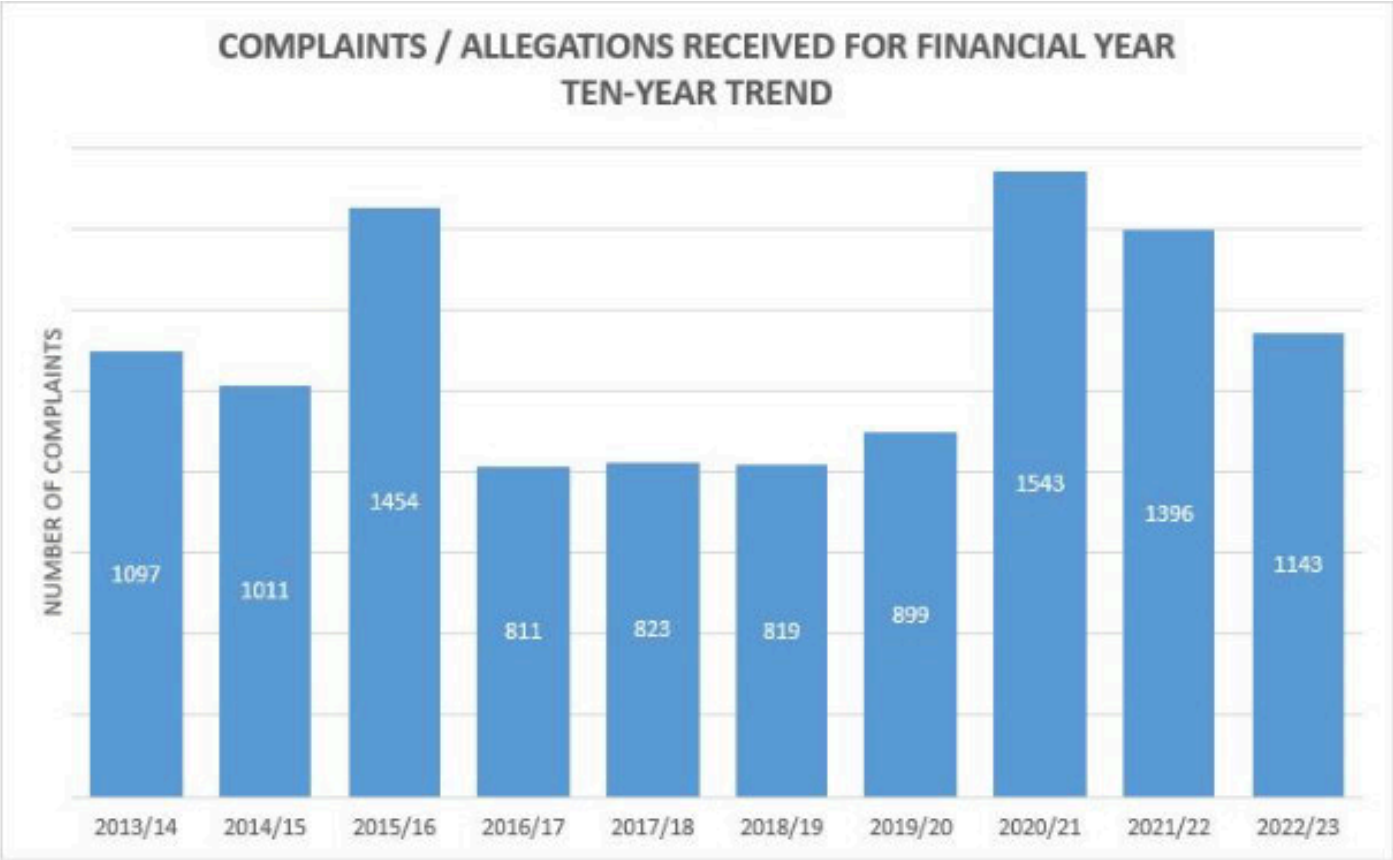
and

- **94** were potential misconduct allegations

The OLG statistics do not identify whether another councillor or a member of the public made the potential pecuniary interest allegation and the potential misconduct allegation.

This information will assist in the assessment of whether or not the the allegations were of a political nature.

From the OLG web page https://www.olg.nsw.gov.au/public/council-complaint-statistics/.



The NSW Government needs to better fund the OLG so they can speedily investigate the Complaints / Allegations received each year.

The 'Proposed changes to the Office of Local Government councillor conduct and meeting practices – A new framework – September 2024' risks "throwing the baby out with the bath water".

The problem is also frivolous reporting.

Frivolous reporting is best curtailed by reviewing the place of real and perceived conflicts of interest, penalising real conflicts more severely than perceived conflicts. This should curb the fostering of perceptions of conflict of a councillor by politically motivated councillors.

Does reputation damage to a council warrant the same penalty as stealing from the community?

Page 7

What are the principles of change?

In preparing the proposed reforms the following principles have guided the discussion and the intent of the changes:

Council leadership and decision making is paramount – it is critical that the sector, as the third tier of government, is given independence to make decisions in the best interests of the community

Freedom of speech - as elected officials, councillors have the constitutional right and democratic responsibility to speak freely about issues affecting their local community and to advocate for the interests of that community

Transparency and accountability – as a democracy councils need to hear, consider and debate issues in an open manner

Significant penalties should only be imposed by a judicial or quasi-judicial body – to ensure procedural fairness and thorough testing of allegations, significant penalties should be given by bodies such as the NSW Civil and Administrative Tribunal

A strong and proportionate local government regulator - the role of OLG should be to create the framework for local government, ensure councils, joint organisations (JOs), and county councils have the capacity to operate within the framework so that the regulator intervenes as rarely as needed

Subsidiarity – decisions are made at the level closest to those impacted by those decisions

Justice is timely and proportionate – where allegations are made, they should be heard, tested and dealt with as quickly as possible.

Question

Are we missing anything in the principles of change?

Our Response

We agree with these principles of change:

- Council leadership and decision making is paramount
- Transparency and accountability
- Significant penalties should only be imposed by a judicial or quasi-judicial body
- Subsidiarity
- Justice is timely and proportionate

We agree that Councillors have the Freedom of Speech, as elected officials, to speak freely about issues affecting their local community and to advocate for the interests of that community up until the time the Council has made a lawful Resolution about that particular issue.

Once a lawful Resolution has been made at a Council meeting by the Councillors then all Councillors should show solidarity by supporting the decision made by the majority of Councillors.

If a Councillor voices dissent to a lawful Resolution, made by the majority of Councillors, then the Council is being brought into disrepute by the Councillor voicing the dissent.

Page 8

Potential changes to the code of conduct and oath of office

The key proposed reform for the councillor behavioural framework is to move to a streamlined, aspirational Code of Conduct. This is equivalent to the Code of Conduct framework for NSW Members of Parliament available here and here.

The aspirational Code of Conduct would clearly and succinctly outline the behavioural expectations of local councillors (approximately 2-3 pages) in easy-to-understand language. It would then be supported by a clearer framework and definitions for misbehaviour of elected officials.

The aspirational Code of Conduct would not set out the definitions of misbehaviour as these would be legislated as explained in later sections of this discussion paper.

Separating the behavioural expectations in a Code of Conduct from definitions of misbehaviour reflects a positive approach to councillor behaviour. The separation also recognises that the majority of councillors want to do the right thing and they should have easy access to the standards expected of them.

The revamped Code of Conduct could also be aligned to the Oath of Office for local councillors ensuring that the behavioural standards and expectations are clear and understood when a councillor takes office. The existing framework can make it difficult to understand the behavioural expectations and standards upon councillors.

Importantly, the revamped Code of Conduct will not seek to restrain the ability of a councillor to speak publicly on matters pertaining to their council, even when that councillor is disagreeing with, or being critical of, the decisions of the majority.

It is proposed to make the new Code of Conduct an aspirational code of expected behaviours instead of enforceable for local councillors.

Question

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

Question

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

Our Response

Section 233A Subsection (2) of the Local Government Act 1993 states:

> (2) The oath or affirmation may be taken or made before the general manager of the council, an Australian legal practitioner or a justice of the peace and is to be in the following form--
>
> > Oath I [name of councillor] swear that I will undertake the duties of the office of councillor in the best interests of the people of [name of council area] and the [name of council] and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment.
> >
> > Affirmation I [name of councillor] solemnly and sincerely declare and affirm that I will undertake the duties of the office of councillor in the best interests of the people of [name of council area] and the [name of council] and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment.

The NSW Government has legislated the role of a Councillor in Section 232 of the Local Government Act 1993. Section 232 of the NSW Local Government Act 1993 appears above.

All the aspirational elements that you are proposing in this “Councillor conduct and meeting practices - A new framework” already exist in the current NSW Local Government Act 1993 and the Strathfield Council Code of Meeting Practice - 15 December 2023.

It is stated above that “It is proposed to make the new Code of Conduct an aspirational code of expected behaviours instead of enforceable for local councillors”. “Instead” of enforceable for local councillors.

We understand this to mean the “aspirational” code is merely aspirational, and not enforceable.

Is the OLG intending to curb complaints by legalising conflict mismanagement?

Is the OLG really proposing to throw the baby out with the bathwater, letting bad councillor behaviours slide?

The OLG needs to implement a mandatory refresher workshop every 9 to 12 months to remind Councillors of their role as a councillor and the rules and regulations in relation to Disclosures and behavioural expectations from Councillors.

Page 9

Potential changes to the definitions and assessment of councillor misbehaviour

The current Local Government Act defines councillor misconduct as a breach of the Local Government Act or other regulatory provisions, which includes the Code of Conduct. This means that it is difficult for the average person to understand the definition of misconduct as they need to reference several other regulatory instruments and policy documents to determine what constitutes.

It is proposed in the revised framework that misbehaviour will be more clearly defined and articulated within the Local Government Act, with the reference to regulations and other statutory instruments only for further enunciation or explanation.

These definitions, which are described in later sections would cover:

- Pecuniary conflicts of interest, (for example decisions that financially benefit the councillor or a close associate),
- Significant non-pecuniary conflicts of interests (for example where a councillor participated in a decision and a direct advantage/ disadvantage is created for a person or company the councillor is friendly with or associated with), and
- Councillor misbehaviour in public office (for example, poor conduct in meetings leading to exclusion by the Mayor or Chair of the Committee).

This will make clearer to all participants in the local government sector what is considered misbehaviour by a local councillor.

The definitions of misbehaviour do not change other legislative requirements. Communities, residents, workers and fellow councillors expect their elected officials to act in an appropriate and ethical way, including observing workplace health and safety, environmental and criminal laws. If there is an offence or complaint under these other laws, people should seek redress from the appropriate regulator including SafeWork, Independent Commission Against Corruption or the NSW Police.

The behavioural standards in the revamped Code of Conduct will reinforce the expectation that councillors are community leaders and therefore exemplars of good behaviour. As community leaders it is also expected councillors will meet legislative obligations. Therefore, misbehaviour only needs to be defined as those issues which go to the nature of councillors as elected officials, being conflicts of interest or misbehaviour in public office.

These are the expectations that are upon councillors because of the public trust that is placed in them as elected officials. In this way it more closely reflects, with appropriate adjustments the framework that applies to other elected officials in other levels of Government.

Our Response

We disagree that it is difficult for an average person to understand the definition of misconduct because they need to reference several other regulatory instruments and policy documents.

A person only needs to reference the Strathfield Council Code of Conduct - 10 October 2023 which states:

General conduct

3.1 You must not conduct yourself in a manner that:

a) is likely to bring the council or other council officials into disrepute

b) is contrary to statutory requirements or the council's administrative requirements or policies

c) is improper or unethical

d) is an abuse of power

e) causes, comprises or involves intimidation or verbal abuse

f) involves the misuse of your position to obtain a private benefit

g) constitutes harassment or bullying behaviour under this code, or is unlawfully discriminatory.

h) Physically or psychologically harms children

Therefore the definition of misconduct:

a) is an act brings the council or other council officials into disrepute

b) is acting contrary to statutory requirements or the council's administrative requirements or policies

c) is acting improperly or unethically

d) is abusing of your power

e) when an action causes, comprises or involves intimidation or verbal abuse

f) an act that involves the misuse of your position to obtain a private benefit

g) when an act carried out constitutes harassment or bullying behaviour and is unlawfully discriminatory.

h) is an act that is physically or psychologically harms children

The existing framework already exists.

At https://www.olg.nsw.gov.au/councils/governance/model-code-of-conduct/model-code-of-conduct-and-procedures-2020/ it states that "All councils (including county councils) and joint organisations must adopt a code of conduct that incorporates the provisions of the Model Code of Conduct".

The action needed is amendment to the Model Code of Conduct if you wish further clarity as to what constitutes misconduct or misbehaviour.

However, the Model Code is not the problem. The problem is its abuse by participants in local government.

One remedy for this is the requirement that legal fees paid by a victim of weaponisation of the code of conduct defending their actions be paid by participants claiming violations of the council code, in the instance their claim is discovered to be unfounded according to the OLG.

This has legal precedent and will deter vexatious claims and abuse of the Model Code.

We recommend that a workshop is held every 9 to 12 months about the standards of behaviour required from Councillors. The workshop could include a component about ethical behaviour.

Page 9

Conflicts of interest

The first proposed limb of the revised misbehaviour definition via a councillor's failure to manage a conflict of interest.

Management of conflicts of interest is important to ensure that councillor act and are seen to act in the public good, not for private benefit or personal gain. Conflicts of interest arise when there is a conflict, perception or potential of a conflict between an official's private interests and public duty.

The test for pecuniary interests is quite clear as it is an objective test; would a councillor or one of their close associates (spouse, family members), receive a financial benefit as a result of a decision. However, testing whether there is a non-pecuniary conflict of interest is more challenging.

Our Response

We agree with the sentiment that:

- it is important that councillors manage their conflicts of interest
- councillors act for the good of the public
- the test for pecuniary interest is clear
- to test for a non-pecuniary conflict of interest is more challenging

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Pecuniary interests

It is proposed to align the definition of pecuniary interests for NSW councillors with those that are utilised and defined for NSW members of parliament, requiring disclosure of the following interests:

- Real property - property in which councillors have an 'interest'
- Sources of income - all income over $500 other than salary of office
- Gifts - all gifts of cumulative value of more than $500
- Contributions to travel - of value of more than $250 (including flight upgrades)
- Interests and positions in corporations - eg stocks and shares, directorships
- Positions in unions and professional or business organisations
- Debts - of cumulative value of more than $500, excluding home loans or debts for goods and services disposed of within a year
- Dispositions of property
- Engagement to provide a service involving use of a councillor's position and
- Discretionary disclosures

It is proposed that the interests for disclosure by the councillor are similarly extended to the interest of a spouse or de facto partner, relative, or partner or employer, or a company or other body of which the councillor, or their nominee, partner or employer, is a shareholder or member. This extends only to the extent the councillor is aware or should be aware of such interests.

It is proposed there remains an absolute prohibition on a councillor being involved in any matter before council where a pecuniary conflict of interest exists, unless otherwise determined via regulation.

It is also proposed to give extended investigation powers to OLG to investigate and request information on corporate structures such as trust or companies to determine underlying beneficial ownership and interests.

OLG, as the agency responsible for investigating alleged breaches of pecuniary interests, needs clear powers to compel the production of information and/or records, To ensure that pecuniary interest returns are provided and made publicly available. If there is non-compliance with an OLG direction, which may include the requirement to make a declaration, remedies such as penalty infringement notices (PIN) should be available to ensure cooperation with investigative processes.

Question

Is the proposed pecuniary interest framework appropriate? Is anything missing?

Our Response

The Strathfield Council Code of Conduct, 10 October 2023 states:

Disclosure of interests in written returns

4.21 A councillor or designated person must make and lodge with the general manager a return in the form set out in schedule 2 to this code, disclosing the councillor's or designated person's interests as specified in schedule 1 to this code within 3 months after:

a) becoming a councillor or designated person, and

b) 30 June of each year, and

c) the councillor or designated person becoming aware of an interest they are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).

And

4.23 A person must not make and lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.

As part of our submission, from the Strathfield Code of Conduct - 10 October 2023 we attach:

SCHEDULE 1: Disclosure of Interests and Other Matters in Written Returns Submitted Under Clause 4.21

SCHEDULE 2: Form of Written Return of Interests Submitted under Clause 4.21

SCHEDULE 3: Form of Special Disclosure of Pecuniary Interest Submitted Under Clause 4.37

Only a minor addition to the Strathfield Council Code of Conduct - 10 October 2023 needs to be made to be in line with the disclosure requirements of NSW members of Parliament. The item missing is "Engagement to provide a service involving use of a councillor's position".

We disagree with the proposal that the interests for disclosure be extended to a spouse or de facto partner, relative, or partner or employer, or a company or other body of which the councillor, or their nominee, partner or employer, is a shareholder or member.

The spouse or de facto partner, relative, or partner or employer, or a company or other body of which the councillor, or their nominee, partner or employer, is a shareholder or member did not sign up to be a councillor and have the right to privacy.

If the spouse or de facto partner, relative, or partner or employer, or a company or other body of which the councillor, or their nominee, partner or employer, is a shareholder or member is aware of this, if this proposal was enacted, they could discourage a person to nominate to become a councillor.

Essentially, the proposal to extend the disclosure requirement to a spouse or de facto partner, relative, or partner or employer, or a company or other body of which the councillor, or their nominee, partner or employer, is a shareholder or member could potentially prevent a person becoming a good councillor or an already good councillor being prevented from renominating.

The OLG has always had the power to request information on corporate structures such as trusts or companies to determine underlying beneficial ownership and interests when investigating alleged breaches on a Pecuniary Interest Declaration.

The power of the OLG to demand information in an investigation has been provided in Section 661 of the Local Government Act 1993 which states:

> **Failure to comply with certain directions**
>
> **661 FAILURE TO COMPLY WITH CERTAIN DIRECTIONS**
>
> A person who fails, without lawful excuse, to comply with a direction given to the person under Part 3 or 5 of Chapter 13 or section 440H by a person authorised to give the direction is guilty of an offence.
>
> **:** Maximum penalty--20 penalty units.

Additionally, we refer you to the NSW Civil and Administrative Tribunal case of Deputy Secretary of the Department of Local Government, Planning and Policy v Doueihi (Antoine).

As part of this Submission attached are the Judgements from:

- Deputy Secretary of the Department of Local Government, Planning and Policy v Doueihi (No 2) [2022] NSWCATOD 3 (12 January 2022)
- Deputy Secretary of the Department of Local Government, Planning and Policy v Doueihi [2021] NSWCATOD 163 (24 September 2021

Antoine Doueihi was elected as a Strathfield Councillor at the 2017 Strathfield Council election.

Antoine Doueihi was reported to the Office of Local Government in December 2018 by two fellow Strathfield Councillors for breaches in his Annual Disclosure.

The OLG investigated the breach and the matter was eventually determined by the NSW Civil and Administrative Tribunal.

The NSW Local Government Act 1993 needs to be amended to give the OLG the powers to issue a Penalty Infringement Notice if Certain Directions under Section 661 of the Local Government Act 1993 are not complied with by the person being investigated.

The proposed “pecuniary interest framework” already is present in the current Strathfield Code of Conduct - 10 October 2023.

As part of our submission, from the Strathfield Code of Conduct - 10 October 2023 we attach:

SCHEDULE 1: Disclosure of Interests and Other Matters in Written Returns Submitted Under Clause 4.21

SCHEDULE 2: Form of Written Return of Interests Submitted under Clause 4.21

SCHEDULE 3: Form of Special Disclosure of Pecuniary Interest Submitted Under Clause 4.37

The existing framework needs to be amended to include the section “Engagement to provide a service involving use of a councillor’s position”.

The existing framework already exists and only a minor change needs to be made to align with the above suggestions.

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Non-pecuniary interests

A conflict of interest does not necessarily have to be financial in nature. It could also arise from familial or personal relationships, affiliations or memberships. It is equally important that such conflicts are managed appropriately to ensure that decision making is seen to be transparent and remains in the public interest.

An interested and informed observer should be confident a decision made by a councillor is free from bias or a reasonable apprehension of bias. This means that any concerns about a potentially significant conflict of interest should be declared and appropriately managed.

The nature and breadth of non-pecuniary interests naturally means that the framework for management of such interests is more nuanced, with the management approach often dependent upon the individual circumstances of the case.

It is also important to recognise that councillors, as representatives of their community, reside within their community, so membership of clubs, congregational memberships etc should not automatically be seen as conflicts of interest.

If a decision of a councillor directly advantages (or disadvantages) a particular individual or organisation the councillor is friendly with or associates with, then that can be a conflict that should be publicly declared, if the councillor considered it of minor consequence, it wasn’t controversial, or the councillor did not hold the casting vote.

Alternatively, if a decision of a councillor directly advantages (or disadvantages) a particular individual or organisation the councillor is friendly with or associates with, then that can be a conflict requiring the councillor to recuse themselves from being involved in the decision-making process if there was a major advantage or disadvantage (or potential), if it was controversial or the vote of the councillor was critical.

The appropriate test for whether a non-pecuniary interest should be declared is based on an objective test, not in the mind of the individual who is subject to the conflict of interest. The test is whether a reasonable and informed person would perceive that the councillor could be influenced by a private interest when carrying out their official functions in relation to a matter.

Whether the councillor abstains themselves from a decision, or decides to participate, the continued and timely disclosure of interests is critical. Disclosure ensures the community is aware of any potential conflicts and how the councillor is managing and responding to the issue.

Councillors should remain as vigilant about disclosure of non-pecuniary interests as they are about pecuniary interests.

Question

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

Our Response

We concur that:

- the conflict of interest does not necessarily have to be financial in nature.
- the conflict of interest could also arise from familial or personal relationships, affiliations or memberships.
- it is equally important that such conflicts are managed appropriately to ensure that decision making is seen to be transparent and remains in the public interest.

The framework through the Strathfield Council Code of Conduct, 10 October 2023 already exists so any concerns about a potentially significant conflict of interest can be declared and appropriately managed.

We agree that the nature and breadth of non-pecuniary interests naturally means that the framework for management of such interests is more complex and therefore the individual councillor has to be relied upon to make the decision of whether or not to exclude themselves from being involved and voting on the matter before Council.

For example if a community organisation lodged an application for a Grant and one of the Councillors was a member of of that community organisation then the question is does the Councillor have a conflict of interest.

The “rule of thumb” would be:

- if the Councillor was a member of the Executive of the community organisation the Councillor should declare the conflict of interest and leave the room while the matter was discussed

or

- if the Councillor was an ordinary member of the community organisation then the conflict of interest should be declared and could either remain in the room and participate in the decision making process or leave the room while the matter was discussed

We agree that:

- the continued and timely disclosure of interests is critical
- what is informally known as “the pub test” is a good way for a councillor to decide whether or not to remain in the council chambers while the agenda item is being discussed and voted on.

It is worth repeating that The proposed “pecuniary interest framework” already is present in the current Strathfield Code of Conduct - 10 October 2023.

As part of our submission, from the Strathfield Code of Conduct - 10 October 2023 we attach:

SCHEDULE 1: Disclosure of Interests and Other Matters in Written Returns Submitted Under Clause 4.21

SCHEDULE 2: Form of Written Return of Interests Submitted under Clause 4.21

SCHEDULE 3: Form of Special Disclosure of Pecuniary Interest Submitted Under Clause 4.37

We concur with the principles that you have outlined of what constitutes a significant or major non-pecuniary interest.

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Property developers and real estate agents

The NSW Government has made a commitment to ensure the conflicts of interest that exist between a councillors' public duties to make decisions on behalf of communities and the private interests that exist in securing a profit as a developer or real estate agent are addressed. A simple change to ban developers or real estate agents from being councillors is not possible as it infringes the right to political free speech implied by the Australian Constitution.

Ordinarily conflicts of interest are managed through declarations and withdrawing from decision making. However, in the case of property development and real estate interests, where so much of what a council does is related to land and the potential for speculation in the changes of land value arising from planning, development and infrastructure decisions, it can be impossible to isolate the precise interests that would drive a councillor's decision.

Without some way of managing these conflicts, the community confidence that planning, development and infrastructure decisions are taken transparently in the public interest will erode. Given the importance of planning, development and infrastructure decisions to resolving the housing crisis, driving the move to net zero through the electrification of the economy and building community resilience to disasters, it is critical to restore confidence.

To address this concern, an alternative means of managing the inherent conflict of councillors undertaking real estate and development business activity is being considered which involves requiring councillors to divest themselves from real estate or development business activities and contractual obligations.

Legislation is being drafted that will:

- identify how developers and real estate agents are identified,
- create the obligation to divest and not enter into real estate or development business arrangements through contracts,
- establish the penalties, including disqualification, where a councillor engages in contractual arrangements with real estate agents or developers,
- ensure there are exemptions so councillors can buy and sell their own property using a real estate agent, and
- create transitional arrangements for the introduction of the new obligations.

Question

Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

Our Response

You state above:

> "A simple change to ban developers or real estate agents from being councillors is not possible as it infringes the right to political free speech implied by the Australian Constitution."

Essentially, what you are proposing is using legislation to make it impossible for a person to operate as a real estate agent.

It appears the NSW government is prepared to use a back door to implementing legislation, circumventing the Australian Constitution.

Section 53 of the Electoral Funding Act 2018 states:

> **53 MEANING OF "PROPERTY DEVELOPER", "TOBACCO INDUSTRY BUSINESS ENTITY" AND "LIQUOR OR GAMBLING INDUSTRY BUSINESS ENTITY"**
>
> (cf section 96GB EFED Act)
>
> (1) Each of the following persons is a**"property developer"** for the purposes of this Division—
>
> (b) an individual or a corporation if--
>
> (iii) the individual or a corporation carries on a business mainly concerned with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit, and
>
> (iv) in the course of that business--
>
> (A) 1 relevant planning application has been made by or on behalf of the individual or corporation and is pending, or
>
> (B) 3 or more relevant planning applications made by or on behalf of the individual or corporation have been determined within the preceding 7 years,
>
> (b) a person who is a close associate of an individual or a corporation referred to in paragraph (a).
>
> **Note--:** If a person makes a political donation within 12 months before becoming a property developer, the person must pay double that amount to the State--see section 58(3).
>
> (2) Any activity engaged in by an individual or corporation for the dominant purpose of providing commercial premises at which the individual or corporation, or a related body corporate of the corporation, will carry on business is to be disregarded for the purpose of determining whether the individual or corporation is a property developer unless that business involves the sale or leasing of a substantial part of the premises.

The Property and Stock Agents (Qualifications) Order 2019 governs the qualifications required for a person to operate as a real estate agent. The Property and Stock Agents (Qualifications) Order 2019 states:

> **8 Definitions**
>
> In this Part—
>
> ***class 1 work experience requirements*** means the completion of experience to the satisfaction of the Secretary of—
>
> (a) all tasks listed in Part 1 of Schedule 1, and
>
> (b) at least 8 tasks listed in Part 2 of Schedule 1.
>
> relevant diploma means -
>
> (a) for the issue of a real estate agent's licence or stock and station agent's licence
>
> (i) Diploma of Property (Agency Management) (CPP51119), or

(ii) Diploma of Property Services (Agency Management) (CPP50307), or

(iii) Diploma of Property (Agency Management) (CPP51122), or

(b) or the issue of a strata managing agent's licence—

(i) Diploma of Property (Agency Management) (CPP51119), or

(ii) Diploma of Property Services (Agency Management) (CPP50307), or

(iii) Diploma of Property (Agency Management—Strata) (CPP51122).

And

Schedule 1 Work experience requirements

Part 1 General Work experience requirements

1 General

(1) Access and interpret property legislation in real estate.

(2) Apply ethical practice in property.

(3) Conduct listing appointment for residential, commercial, industrial or retail property.

(4) Prepare or check advertising for accuracy and compliance with legislative requirements.

(5) Prepare comparable market analysis, provide market opinion or prepare a business appraisal report.

(6) Develop and prepare a prospecting plan for property sale, lease or management.

(7) Identify the policies and procedures required to be followed within an agency.

(8) Review and adhere to the rules of conduct required to be followed by an agent.

(9) Detail the agency's complaints policy and procedure.

(10) Appropriately manage privacy and personal information in accordance with legislative requirements.

(11) Demonstrate effective management of client relationships.

(12) Prepare and manage the preparation of trust account transactions in accordance with legislative requirements.

(13) Manage, supervise and lead agency staff.

(14) Demonstrate effective dispute management and conflict resolution skills.

(15) Demonstrate leadership and modelling of ethical practice in property.

And

Schedule 1 Work experience requirements

Part 2 Sales, leasing and property management work experience requirements

2 Sales

(1) Prepare a marketing plan.

(2) Obtain, interpret and confirm vendor or client instructions, undertake due diligence on ownership and execute listing agreement in accordance with legislative requirements.

(3) Conduct a marketing campaign for sale of a property. Activities must include—

(a) conducting open homes or inspections with prospective buyers, and

(b) undertaking negotiations with buyers and extracting offers, and

(c) submitting offers to vendors, and

(d) executing agreements and documents in accordance with legislative requirements.

(4) Provide information to solicitors about settlement requirements.

(5) Complete final post-settlement activities.

(6) Demonstrate and apply knowledge in rural property market.

(7) Prepare and complete livestock sales in accordance with legislative requirements.

And

Schedule 1 Work experience requirements

Part 2 Sales, leasing and property management work experience requirements

3 Leasing

(1) Conduct marketing campaign for a property. Activities must include—

(a) acceptance and checking of applications, and

(b) provision of advice and recommendations to the landlord, and

(c) advising successful and unsuccessful applicants.

(4) Complete a Residential Tenancy Agreement and ingoing condition report.

(5) Prepare and execute a Residential Tenancy Agreement in accordance with legislative requirements.

(6) Handle the receipt and lodgment of a rental bond.

(7) Conduct property inspections and prepare reports for the landlord.

(8) Respond to requests for repairs or maintenance. Activities must include—

(a) appropriate handling of notification from the landlord or tenant, and

(b) engagement of tradesperson in accordance with landlord authorisations and agency practice, and

(c) ensuring repairs are complete and invoices paid.

(4) Complete a rent review in accordance with legislative requirements.

(5) Manage rental arrears in accordance with legislative requirements.

(6) Manage the termination of a tenancy agreement in accordance with legislative requirements.

(7) Manage the end of a tenancy agreement, including completing an outgoing condition report.

(8) Prepare for appearance at, and appear before, the Tribunal.

The qualifications required in Schedule 1 Work experience requirements, Part 1 General Work experience requirements, of The Property and Stock Agents (Qualifications) Order 2019 to become a real estate agent do not provide a person with a specialised skill set (or motive) to influence how a

decision made by Council will impact on changed land value arising from planning, development and infrastructure decisions.

Nor do the qualifications provide a person with the skill set to understand (or the motive to influence) the intricacies of the building industry and all the considerations a developer makes in deciding when to proceed with a development.

Why do the proposed reforms not include banning the following professions:

- Health & Building Inspectors : [redacted]
- Solicitors / Lawyers : [redacted]
  : At Strathfield Council
  : [redacted]
- Accountants : [redacted]
  : [redacted]
- Teacher : [redacted]
  : [redacted]
  : [redacted]
  : [redacted]
- Town Planners
- Engineers : [redacted]
  : [redacted]
  : [redacted]
- Architects
- Surveyors
- Builders
- Private Certifiers

The above professions also come into contact with property developers and would be well informed about how changes in planning, development and infrastructure made by Council can assist a developer.

The people employed in the professions listed above who became councillors would also be exposed to the same conflicts as real estate agents.

The majority of real estate agents deal with individuals or families selling their properties.

A certain Strathfield Councillor was first elected to Council in 2017.

In 2020 the said Councillor became a real estate agent.

At the 2021 election it was publicised on social media and in electoral material that he was a real estate agent.

In 2024 the said Councillor was elected again to Council. And again he disclosed in his electoral material & on social media he was a real estate agent.

From 2017 to 2024 the said Councillor has been elected twice as Deputy Mayor and once as Mayor by his fellow councillors.

In 2017 the said Councillor was elected with 8.37% of the Formal Votes.

In 2024 the said Councillor was elected with 17.28% of the Formal Votes.

The conclusion is that the voters in the Strathfield Local Government Area see no problem with having a person on Council whose profession is a real estate agent.

Indeed, they may welcome the prudential expertise of someone with a knowledge of financial matters and the value of Council's holdings. Especially careful oversight of the many leases and licences Council has.

The said Councillor has done nothing wrong. So why is his profession being targeted?

It is people who are the bad characters and abuse conflict. Profession does not determine bad character.

Why not remove every Health & Building Inspector, Solicitor, Accountant, Teacher, Town Planner, Engineer, Architect, Surveyor, Builder and Private Certifier from every local planning panel throughout NSW?

There is already a framework which works, for councillors to declare Pecuniary Interests in their Annual Return and make a Declaration at a council meeting in relation to an Agenda item. It is adequate, so the need to essentially deprive real estate agents of income if they are elected is unnecessarily punitive.

Far more often than not, it deprives Council of representatives with a skill set suitable for Council.

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Councillor misbehaviour in public office

The third proposed component of a revised definition of misconduct is misbehaviour in public office.

Misbehaviour in public office would cover behaviour which is inconsistent or outside of the norms of behaviour expected from a councillor, particularly given their role as a community leader. Given the discussion is about behaviour rather than action, there is a much greater degree of interpretation, and it is appropriate that councillors judge their fellow councillors on whether they could be considered to have misbehaved.

There would be three limbs to this proposed misbehaviour definition being conduct that:

- Is unbecoming of a councillor
- Brings council into disrepute; and/or
- Is assessed as being outside the norms and expectations of a sitting councillor.

The first two tests of this framework are established legal concepts with existing case law and precedents.

Unbecoming conduct means behaviour more serious than slight, and of a material and pronounced character. It means conduct morally unfitting and unworthy, rather than merely inappropriate or unsuitable, misbehaviour which is more than opposed to good taste or propriety. Conduct unbecoming refers to the conduct that is contrary to the public interests, or which harms his/ her standing of the profession in the eyes of the public. Examples can be referenced in Oei v The Australian Golf Club [2016] NSWSC 846.

To bring something into disrepute is to lower the reputation of the profession or organisation in the eyes of ordinary members of the public to a significant extent. It is a higher threshold than the test of bringing an individual into disrepute - (Zubkov v FINA (2007) CAS 2007/A/1291).

The third limb of the misbehaviour definition allows consideration of behaviours and actions of a sitting councillor which are considered egregious or problematic that are otherwise not captured by the other elements of the definitions.

As this is a test of appropriate behaviour, the determination of whether the misbehaviour occurred would be undertaken by the peers of the councillor. This would involve the formation of an 'Local Government Privileges Committee' (Privileges Committee) of senior and experienced mayors and ex-mayors from across NSW to meet and assess the complaints made against councillors. The Privileges Committee would be supported by OLG, but decisions would be made by the mayors or ex-mayors on the Privileges Committee who would draw on their expertise as mayors, as well as having served at least two council terms as a councillor.

There would also be an opportunity to apply these principles to poor behaviour in meetings, particularly where a councillor has failed to comply with the directions given by the mayor or Privileges Committee Chair.

Question

Is this the appropriate threshold to face a Privileges Committee?

Question

How else can complaints be minimised?

Our Response

We disagree with the proposal to create a Local Government Privileges Committee to examine all allegations of misbehaviour in public office.

In the 2020-21 the OLG received 50 Misconduct Referrals out of 1,543 Referrals.

In the 2021-22 the OLG received 26 Misconduct Referrals out of 1,396 Referrals.

In the 2022-23 the OLG received 23 Misconduct Referrals out of 1,143 Referrals.

The OLG statistics do not specify if the Misconduct Referrals were all for Misbehaviour.

99 Misconduct Referrals out of 4,082 complaints over 3 years spread over 126 Councils is not many.

The existing framework is adequate in dealing with behavioural complaints against Councillors.

If the OLG is concerned, a workshop for councillors should be held every 9 to 12 months to reinforce the behaviour expected of elected Councillors. It can cover:

- how unacceptable behaviour can bring the Council into disrepute,
- is unbecoming of a councillor and
- are actions that can be seen as outside the norms and expectations for a sitting councillor.

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Addressing inappropriate lobbying

A number of investigations by the Independent Commission Against Corruption (ICAC) has led to recommendations to put in place measures to address concerns about lobbying of councillors. ICAC has been concerned about councillors having relationships with development applicants that pose a conflict of interest, concerns with councillors meeting with development applicants in private settings to discuss

their applications, and concerns about councillors receiving gifts and inducements as part of lobbying activities to improperly influence council decision-making.

Lobbying is an important feature of democratic representative government, and all councillors get lobbied by residents, businesses and community groups. However, inappropriate lobbying that isn't declared presents certain risks and can lead to corrupt behaviour or improper decision-making. On the recommendation of ICAC to address these risks, OLG is developing lobbying guidelines and a model policy on lobbying for councils to adopt that will:

- address how professional lobbyists are identified and the obligations on councils and councillors if they met a professional lobbyist,
- set out inappropriate behaviours when being lobbied,
- identify steps to be taken to ensure transparency,
- require council officials to report inappropriate or corrupt lobbying behaviours to the councils general manager

The development of lobbying guidelines and a model policy on lobbying will ensure councillors and councils understand these risks and have effective controls in place to address them.

Question

What key features should be included in lobbying guidelines and a model policy?

Our Response

At Strathfield Council, development applications are dealt with by the Strathfield Local Planning Panel.

The Local Planning Panel was mandated by the State Government so as to take the development application process out of the hands of the councillors.

The Local Planning Panel deals with development applications made by residents.

A decision in relation to a Planning Proposal is made by the Strathfield Local Planning Panel as to whether or not the Planning Proposal should proceed.

The decision of the Strathfield Local Planning Panel is then referred to a Council Meeting for either endorsement or rejection.

As part of our submission we attach a copy of the Strathfield Council Lobbying Policy, 6 December 2022.

As a start the OLG should refer to the Strathfield Council Lobbying Policy and if necessary expand the policy.

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Dispute resolution and penalty framework

Consistent with the principles outlined earlier, it is proposed that there be a significant change to the dispute resolution and penalties framework for misbehaviour.

While the overall intent is to reduce the weaponisation of the complaints process and reduce the number of complaints, there is also a need for more timely resolution of matters and ensure that the limited investigation and regulator resources are directed to the more significant misbehaviour matters.

There is also an opportunity to bring the dispute resolution framework more into line with that used in other levels of government.

The approach being proposed is to create clear separation between the process for consideration of conflicts of interest and the processes for consideration of misbehaviour. This has the benefit of removing general managers from being central to the complaint process.

Under the reforms, the investigation of serious conflicts of interest would be put entirely into the hands of OLG. The approach also removes the existing 'two step' process of referrals to conduct reviewers and then OLG.

There would be no investigations of misbehaviour, instead councillors would be required to demonstrate to their peers why their actions, which may have led to the complaint, were appropriate to the circumstances.

To implement these new approaches, changes to the systems and structures of investigation and complaints handling are needed.

Our Response

We disagree that the proposed reforms will reduce the weaponisation of the current complaints process and reduce the number of complaints.

We disagree with the statement "This has the benefit of removing general managers from being central to the complaint process."

This is not the procedure at occurring at Strathfield Council.

The Strathfield Council Procedures for the Administration of the Code of Conduct, June 2021, states:

The appointment of complaints coordinators

3.17 The general manager must appoint a member of staff of the council or another person (such as, but not limited to, a member of staff of another council or a member of staff of a joint organisation or other regional body associated with the council), to act as a complaints coordinator. Where the complaints coordinator is a member of staff of the council, the complaints coordinator should be a senior and suitably qualified member of staff.

3.18 The general manager may appoint other members of staff of the council or other persons (such as, but not limited to, members of staff of another council or members of staff of a joint organisation or other regional body associated with the council), to act as alternates to the complaints coordinator.

3.19 The general manager must not undertake the role of complaints coordinator.

3.20 The person appointed as complaints coordinator or alternate complaints coordinator must also be a nominated disclosures coordinator appointed for the purpose of receiving and managing reports of wrongdoing under the Public Interest Disclosures Act 1994.

3.21 The role of the complaints coordinator is to:

a) coordinate the management of complaints made under the council's code of conduct

b) liaise with and provide administrative support to a conduct reviewer

c) liaise with the Office, and

d) arrange the annual reporting of code of conduct complaints statistics.

We disagree with the following statement:

> "There would be no investigations of misbehaviour, instead councillors would be required to demonstrate to their peers why their actions, which may have led to the complaint, were appropriate to the circumstances.".

This proposed method to deal with complaints about misbehaviours of Councillors has the potential to be politicised depending on whether another councillor made the complaint and who controls the voting block amongst the councillors.

Councillors may be peers in council but conflicts of interest are two-fold, one interest on council and another outside.

We ask that you recognise the peerage on the side of interests outside council.

If you want proof of the value of peers outside council, ask any councillor if they consider their fellow councillors as peers.

Ask if they would like to be judged by people they routinely oppose politically.

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Abolishing the 'two step process'

The existing process for complaints is set out in the Procedures for the Administration of the Model Code of Conduct.

In simple terms, the complaint process involves the general manager or the mayor receiving a complaint, determining whether the complaint is valid and referring the matter to a complaints coordinator within the council, who will in turn appoint an external conduct reviewer. Once the conduct reviewer investigates the issue, interviews the complainant and the subject of the complaint, as well as any other relevant people, provides a report to the council and the council makes a decision, many months can pass.

As it currently stands, if OLG, receives a referral following the council consideration of a complaint, they are then expected to rely on the investigation report of the conduct reviewer to make an assessment. However, investigation reports prepared by conduct reviewers may satisfy the evidentiary standard required for a councillor to be censured but may not satisfy the higher evidentiary standard required to support disciplinary action under the misbehaviour provisions under the Local Government Act, such as suspension or disqualification. OLG's experience is that rarely can it rely on these reports and must instead recommence an investigation process if it decides to pursue the matter.

Instead of this existing two-step process:

- Complaints about conflict of interest matters would be made directly to OLG, and
- Complaints about misbehaviour would be made directly to the Local Government Privileges Committee via a dedicated webform.

Under the proposed approach, there would be no role for privately hired investigators to determine whether the Code of Conduct has been breached

Our Response

We only agree with the above proposal of abolishing the “two step process” set out in the Procedures for the Administration of the Model Code of Conduct on the proviso that:

- the Local Government Act 1993 is amended to reflect the proposed two-step process
- a time-frame within which each process has to be dealt with (eg 4 weeks for each step)
- or if more time is needed for the investigation then a progress report is provided every 4 weeks to the complainant

The OLG needs to ensure that the NSW Premier and Treasurer will commit to fully funding the proposal process detailed above so the investigations can be carried out in a timely manner.

We refer you to the case of Strathfield Councillor Antoine Doueihi. The original complaint was made in December 2018 and the Judgement by NCAT was handed down in September 2021.

Page 15

Giving OLG the power to issue penalty infringement notices

In order to ensure information is provided to OLG more effectively, it is proposed to enable OLG the discretion to issue penalty infringement notices (PINs) for minor or insignificant breaches of the conflicts of interest declarations. The PINs would be primarily utilised in circumstances where the breach is considered minor or administrative in nature – for example an inadvertent failure to lodge a return of interests.

This change to PINs is designed to allow a quick process for dealing with minor matters to free up limited regulatory resources while still ensuring that sanction for important matters is provided.

Like all other PIN provisions in other NSW legislations there would be the ability for the PIN to be appealed or special circumstances to be considered. Where the breach was considered more serious in nature then it can be referred to an appropriate tribunal or body for more significant punishment**.**

Question

What level of PIN is appropriate?

Our Response

We disagree with the OLG being given the power to issue penalty infringement notices.

The NSW Civil and Administrative Tribunal already decide cases about pecuniary interest breaches by councillors and other council employees.

By making these changes you are watering down the process and not allowing the correct penalties being imposed by an experienced judicial officer ie a Registrar or judge.

On page 4 above it is stated that the OLG has “seen a growth in the number of complaints, often over trivial issues”.

Data from the Office of Local Government (OLG) has shown there has been 4289 complaints over the last 3 years (2020/21 to 2022/23) through the code of conduct process”.

We note the measures elsewhere in the ‘Proposed changes… ‘ which alleviate the workload of the OLG.

The OLG being given the power to issue penalty infringement notices adds a workload to a department already shown to be overloaded.

Page 15

NSW Local Government Privileges Committee

Along with the PIN framework, it is also proposed to create a Local Government Privileges Committee (Privileges Committee) to examine all allegations of misbehaviour in public office. This would replace the existing code of conduct review framework and instead aim to provide a speedy process for resolution and assessment of behavioural complaints against councillors. It also allows for the sector to better govern itself. The Privileges Committee would only examine issues of misbehaviour, not conflicts of interest.

The Privileges Committee would be made up by a group of experienced mayors and ex-mayors from across NSW to ensure that a variety of perspectives and experiences are considered. The Privileges Committee would be supported by a small Secretariat from OLG who could be delegated the power by the Privileges Committee to dismiss matters that are vexatious, trivial, where the Privileges Committee lacks jurisdiction, or where there is an alternative remedy available.

The Privileges Committee process would be paid for by either individual councillors or their councils, dependent on the outcome.

Penalties that could be imposed by the Privileges Committee are as follows:

- Censure of the councillor
- Warning of the councillor
- Where referred following misbehaviour in a council meeting, a potential loss of sitting fees
- Referral to an appropriate tribunal or body for more serious sanction, including suspension or disallowance.

As noted above if the breach is deemed serious then the Privileges Committee would have the power to refer a matter to the OLG for preparation of a brief for an appropriate tribunal or body.

Question

Are the penalties proposed appropriate, and are there any further penalties that should be considered?

Our Response

We disagree with the proposal to create a Local Government Privileges Committee to examine all allegations of misbehaviour in public office.

In the 2020-21 the OLG received 50 Misconduct Referrals out of 1,543 Referrals.

In the 2021-22 the OLG received 26 Misconduct Referrals out of 1,396 Referrals.

In the 2022-23 the OLG received 23 Misconduct Referrals out of 1,143 Referrals.

The OLG statistics do not specify if the Misconduct Referrals were all for Misbehaviour.

99 Misconduct Referrals out of 4,082 complaints over 3 years spread over 126 Councils is not many.

The existing framework is adequate in dealing with behavioural complaints against Councillors.

“The Privileges Committee would be made up by a group of experienced mayors and ex-mayors from across NSW to ensure that a variety of perspectives and experiences are considered”.

Ex-mayors may be conflicted in doing their duty on the Privileges Committee. Mayors would definitely be conflicted in carrying out this duty because of the political circles they move in.

Community members chosen at random could be unbiased members of this committee.

Alternatively, reimbursing victims of weaponisation of the codes by their fallacious accusers would actually curb the instigation of frivolous claims.

Page 16

Referral of significant sanctions to appropriate tribunal or body

Under the existing processes for consideration of complaints, OLG, in particular the Departmental Chief Executive (or their delegate), can suspend a councillor for between 1-3 months with a consequential loss of sitting fees. This creates the situation where a public servant is sitting in judgement on an elected official. Where a greater suspension is appropriate, the Departmental Chief Executive may refer the matter to an appropriate tribunal or body.

To remedy the concerns about whether it is appropriate for an unelected official to stand in judgment on an elected councillor, it is proposed that any significant sanction, such as suspension, significant fine or disqualification from office, can only be undertaken by an appropriate tribunal or body.

This reduces the existing power of the Departmental Chief Executive to impose penalties. It reflects the principle that significant sanctions, including suspension, should only be imposed by a judicial or quasi-judicial body. It also removes the dual roles of the head of OLG, meaning OLG’s focus is on preparing the brief of evidence for consideration by the appropriate tribunal or body.

The role of the appropriate tribunal or body would therefore be to look at all serious misconduct matters that have either been referred by the Privileges Committee, appeals from PINs or referrals of conflict of interest matters from the OLG.

Question

Are the existing sanctions available under the Local Government Act sufficient?

Question

Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independents arbitrators and a hearing structure?

Our Response

We disagree that the above proposed remedy is necessary, as we think that it is appropriate for the OLG Departmental Chief Executive to suspend a councillor between 1 - 3 months with a consequential loss of sitting fees.

It is our opinion that no one is concerned that a public servant is sitting in judgement of an elected official, particularly given they are delegated, like court judges..

Presumably, the Departmental Chief Executive is presented with a Report that contains legal advice which recommends the suspension of a councillor.

A councillor who is suspended has the option to appeal via the NSW Civil and Administrative Tribunal.

We believe that the existing framework does not need to be changed and the existing sanctions available under the Local Government Act 1993 are more than sufficient.

> **Page 17**
>
> **Restoring dignity to council meetings**
>
> A council chamber is a chamber of democracy, and the mayor as figurehead represents the authority of that council.
>
> Unfortunately, many council meetings are conducted without the appropriate level of dignity or reverence for tradition that suggests the importance of the debate and the need for civility. Councillors are not expected to agree with each other, in fact debate is encouraged, but the debate should be fair and respectful.
>
> A council meeting, and the council chamber itself, should see meetings conducted with dignity. Unfortunately, there are too many examples where the dignity of council meetings has been lost, either because councillors are not appropriately reverential and respectful, or the manner of debate is lowered by inappropriate chamber design or meeting practices

Our Response

We agree with sentiment expressed above.

In the case of Strathfield Council, the Council meetings have been held at 65 Homebush Road since they opened in 1887.

Therefore the Council Chambers, given the historic nature, tend to make councillors reverential and respectful when they are present in the Chamber.

We suggest that OLG conduct a training session every 9 to 12 months to educate and remind councillors how to debate and remain fair and respectful while attending a Council meeting.

> **Page 17**
>
> **Restoring dignity to council meetings**
>
> **Proposed reforms to the Model Code of Meeting Practice**
>
> To restore the prestige and dignity of the council chamber reforms to the meeting code of practice are being developed to support the mayor in exercising their statutory responsibility to preside at meetings and to ensure meetings are conducted in an orderly and dignified manner.
>
> The proposed reforms will confer the power on mayors to expel councillors for acts of disorder and to remove the councillor's entitlement to receive a fee for the month in which they have been expelled from a meeting.
>
> As a further deterrent against disorderly conduct, councillors will also be required to apologise for an act of disorder at the meeting at which it occurs and, if they fail to comply at that meeting, at each subsequent meeting until they comply. Each failure to apologise becomes an act of misbehaviour and will see the councillor lose their entitlement to receive their fee for a further month.
>
> To provide a check against misuse of the power of expulsion and subsequent loss of entitlement of a fee, councillors will be entitled to a right of review.
>
> Councillors will also be expected to stand, where able to do so, when addressing a meeting and when the mayor enters the chamber.

The proposed reforms will also expand the grounds for mayors to expel members of the public from the chamber for acts of disorder and enable the issuing of a PIN where members of the public refuse to leave a meeting after being expelled.

Question

Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

Our Response

We disagree with the proposed reform to confer the power on mayors to expel councillors for acts of disorder and to remove the councillor's entitlement to receive a fee for the month in which they have been expelled from a meeting.

The situation will arise where the Mayor is from one political party and the councillor accused of an act of disorder is from another political party and the Mayor decides to expel the said councillor from the Council meeting.

Expulsion of any councillor by another councillor is undemocratic. Docking of their pay by another councillor is even more undemocratic.

The public voted the Councillors to govern.

What right does one councillor have to sanction another this way? This medicine is worse than the disease.

A councillor who nods to the mayor and executive with all their votes and attends council every three months stands to take home more pay than one who studies their papers and questions the mayor and executive.

Can you not see these powers proposed to be conferred upon the Mayor be abused?

If you want councillors to display the etiquette of 1993, why not wind back the Local Government Act to 1993 instead of introducing obstacles to governance like this?

Page 18

Banning briefing sessions

A practice has recently developed in local government where councillors receive briefings from staff that are closed to the public.

As an example, development applications should be considered in the public domain. However, councillors receive private briefings from the council planners before they are dealt with in the public forum of a council or committee meeting. Consequently, members of the public impacted by the council's decision have no idea what the councillors have been told or what has been discussed.

To promote transparency and address the corruption risks identified by the Independent Commission Against Corruption (ICAC) that can arise from a lack of transparency, it is proposed that councils will no longer be permitted to hold pre-meeting briefing sessions in the absence of the public.

Any material provided to councillors, other than the mayor, that will affect or impact or be taken into account by councillors in their deliberations or decisions made on behalf of the community must be provided to them in either a committee meeting or council meeting. This restriction will not apply to mayors. As the leader of the organisation, the mayor needs to have candid conversations with the general manager outside of formal meetings.

To further promote transparency, the proposed reforms will also extend the period that recordings of council and committee meetings must be maintained on a council's website.

Question

Are there any other measures needed to improve transparency in councillor deliberations and decision making?

Our Response

At Strathfield Council, development applications are dealt with by the Strathfield Local Planning Panel.

The Local Planning Panel was mandated by the State Government so as to take the development application process out of the hands of the councillors.

Your example is flawed and antiquated.

A decision in relation to a Planning Proposal is made by the Strathfield Local Planning Panel as to whether or not the Planning Proposal should proceed.

The decision of the Strathfield Local Planning Panel is then referred to a Council Meeting for either endorsement or rejection.

So the above example provided is false and irrelevant.

Councillors attending Council Meetings and Councillor Briefing Sessions / Workshops are already required to make a Declaration of Interest.

The Strathfield Council Code of Meeting Practice - 15 December 2023 states:

Disclosure of pecuniary interests at meetings

4.28 A councillor or a council committee member who has a pecuniary interest in any matter with which the council is concerned, and who is present at a meeting of the council or committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.

4.29 The councillor or council committee member must not be present at, or in sight of, the meeting of the council or committee:

a) at any time during which the matter is being considered or discussed by the council or committee, or

b) at any time during which the council or committee is voting on any question in relation to the matter.

It bears repeating that a "closed council briefing session" or "council workshop", held before a Council meeting can:

- provide an opportunity for councillors to ask the "stupid questions" often needed to discern the truth of a matter.
- provide an opportunity for councillors to ask in depth questions of the staff about a complex or complicated issue that might not be able to be answered at a Council meeting
- provide an opportunity for councillors to ask several in depth questions of the staff about multiple issues but if asked at a Council meeting could

result in the Council or Committee meeting not being concluded by 10.30pm. (See below).

- provides time for the councillors to start considering a complicated issue prior to attending the Council meeting where robust but respectful discussions can take place before voting on the issue in a timely manner.
- provides an opportunity for the staff to properly present their recommendation and answer questions about it, without mistakenly creating the public perception that staff are in conflict with the Council committee of the whole.

The Strathfield Council Code of Meeting Practice - 15 December 2023 states:

18. Time limits on Council Meetings

18.1 Meetings of the Council and committees of the Council are to conclude no later than 10.30pm.

18.2 If the business of the meeting is unfinished at 10:30pm, the

Council or the committee may, by resolution, extend the time of the meeting.

18.3 If the business of the meeting is unfinished at 11:00pm, and the Council does not resolve to extend the meeting, the chairperson must either:

a) defer consideration of the remaining items of business on the agenda to the next ordinary meeting of the Council, or

b) adjourn the meeting to a time, date and place fixed by the chairperson.

18.4 Clause18.3 does not limit the ability of the Council or a committee of the Council to resolve to adjourn a meeting at any time. The resolution adjourning the meeting must fix the time, date and place that the meeting is to be adjourned to.

Business Papers / Agendas can be anywhere from 200 pages up to 1,500 pages.

Some agenda items on the business paper can be 150-plus pages.

The Business Papers / Agendas are only provided three (3) business days before the Council meeting.

For example, in the Strathfield LGA the Business Papers / Agendas are provided to councillors and published on the Council website on the Friday before the Council meeting on the following Tuesday.

The Strathfield Council Business Papers / Agenda each month has an agenda item titled “Councillor Workshop ….(with the date of the workshop)”. If there is more than one Councillor Workshop or ”closed council briefing session” then an seperate agenda item for Councillor Workshop or ”closed council briefing session” is listed on the Strathfield Council Business Papers / Agenda.

The Report provides a summary to Council of the items discussed at the Councillor Workshop and follow up action required. The Report also records the attendees, apologies, declarations of interest, the item reference and title and summary.

The electors registered in each Local Government Area (LGA) vote in the Councillors to represent them on the governing body, that is the Council, in each Council area.

The NSW Government has legislated the role of a Councillor in Section 232 of the Local Government Act 1993. Section 232 of the NSW Local Government Act 1993 states:

> **The role of a councillor**
> **232 THE ROLE OF A COUNCILLOR**
>
> (1) The role of a councillor is as follows--
>
> (a) **to be an active and contributing member of the governing body**,
>
> (b) **to make considered and well informed decisions as a member of the governing body**,
>
> (c) to participate in the development of the integrated planning and reporting framework,
>
> (d) to represent the collective interests of residents, ratepayers and the local community,
>
> (e) to facilitate communication between the local community and the governing body,
>
> (f) to uphold and represent accurately the policies and decisions of the governing body,
>
> (g) to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.
>
> (2) A councillor is accountable to the local community for the performance of the council.

Elected councillors, as dictated by the Local Government Act 1993 are required to be an active and contributing member of the governing body (Council) and to make considered and well informed decisions as a member of the governing body.

FEDERATION COUNCIL

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Submission to the Office of Local Government – Councillor Conduct Framework Review – November 2024

Author: Adrian Butler, General Manager

Introduction

Principles to form submission

Council agrees that the existing Code of Conduct framework needs significant changes, and –

a) Supports the proposal to make the Office of Local Government (OLG) directly responsible for dealing with Pecuniary Interest (PI's) breaches/complaints/allegations, and significant non-pecuniary interest breaches/complaints/allegations (acknowledging the current practice should still remain, where the OLG refer them to the Independent Commission against Corruption - ICAC) who should still have the first right to determine if it will investigate these or refer back to the OLG).

b) *Supports the proposal to refer 'behavioural based concerns about Councillor conduct to a State-wide panel of experienced Councillors to judge their peers,*

c) Supports re-setting the code of conduct to be similar to Parliamentary codes making it clear, the expected patterns of Councillor behaviour.

Noting this does not always mean Parliamentarians adhere to this, when witnessing some behaviours in the State and Federal chambers, and noting this should rely on, addition to an expectation of Councillors behaving/self regulating their behaviour and emotions, a strong 'on the ball' Chair with support from the General Manager, to call out the bad behaviour's as they are occurring, seek retractions, apologies etc. on the spot if possible, from Councillors or staff, where for example Councillor or staff emotions lead to unacceptable behaviour/language/commentary/finger pointing for example.

It's important to understand that whilst this is aimed at 'Councillor' behaviour, all staff, contractors to some extent, and volunteers, are also bound by the Code of Conduct, and as such their behaviour can also be managed under the Code of Conduct framework. The OLG therefore need to clearly define, when for example setting up the new framework, including legislation (Act and Regulation and Code amendments), how Councillor complaints will be managed, for example by the new State-wide peer panel versus the current or any new process to manage staff complaints.

d) *Supports banning 'Briefing Sessions' being closed to the public, and in fact, Council supports banning briefing sessions altogether,* ***with the qualification being this Council has used briefing sessions, as they are intended, in the current OLG Code of Meeting Practice optional clauses in the template, of which Council has in its adopted Code of Meeting Practice - being –***

3.33 Prior to each ordinary meeting of the council, the general manager may arrange a pre-meeting briefing session to brief councillors on business to be considered at the meeting. Pre-meeting briefing sessions may also be held for extraordinary meetings of the council and meetings of committees of the council.
3.34 Pre-meeting briefing sessions are to be held in the absence of the public.
3.35 Pre-meeting briefing sessions may be held by audio-visual link.
3.36 The general manager or a member of staff nominated by the general manager is to preside at pre-meeting briefing sessions.

3.37 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.

3.38 Councillors (including the mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of a briefing at a pre-meeting briefing session, in the same way that they are required to do so at a council or committee meeting. The council is to maintain a written record of all conflict of interest declarations made at pre-meeting briefing sessions and how the conflict of interest was managed by the Councillor who made the declaration.

It is understood the optional introduction of the Pre Meeting Briefing Sessions, in the 2021 changes, was a NSW Government driven initiative, in the interest of Councils making better decisions. It needs to be clear that when adopting the optional clause, Council was then required, to not allow these to be public.

Nevertheless it is considered that they are not necessary and only add to perceptions of meetings being held and matters then not being given full and thorough debate and questioning by Council, in open Council meetings. Therefore in terms of Pre Meeting Briefing Sessions, this Council supports their removal.

Council however does not support the blanket banning of what this Council calls 'Workshops', and considers Council should be able to have the chance to in a closed session Workshop, receive information from staff, around matters such as future budgets, strategies, training, presentations from external organisations.

Workshops or Training Sessions should be given separate guidelines as to what can and cannot be considered in Closed Workshops.

It is agreed that anything in relation to lodged or to be lodged, Development Applications should be in the public view, eg via -

- a Council or Committee meeting,
- on-site inspections managed by staff, pre a Development Application coming to the Council meeting, community forums where the Councillors can attend a staff managed forum and hear from supporters (including developers or applicants/consultants) and objectors, prior to any public forum and Council meeting determination.

It is however not considered in the best interests of the community, in terms of Councils making good decisions, to require any information and discussions between staff and Councillors (other then the Mayor and General Manager) to be all managed entirely through open Committee and Council meetings. There needs to be sessions where staff can present information to Council, prior to it being in the public realm, providing no debate or decision making occurs.

Response to Questions in the Paper

Are we missing anything in the Principles of Change?

Answer - No the principles appear to capture the intent of and need for change and broadly, the issues with the current framework.

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

Answer - The proposal to align it to the NSW Parliament model, including shortening it, is supported and the key elements should be simple to understand, quick to manage, defined behaviours and penalties and clear separation of the General Manager and Mayor from having to have as much involvement.

What are your views about aligning the Oath of Office to the revamped Code of Conduct?
Answer - This is supported, to ensure the Oath becomes more front of mind in ongoing behaviour and expectations, and not just a once off statement at the start of each Council term.

Is the proposed pecuniary interest framework appropriate? Is there anything missing?
Answer - Yes the framework proposed in appropriate and there does not appear to be anything missing, again aligning it to the NSW Parliament framework makes sense.

Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?
Answer - Yes, the principles appear to capture the issue. This is, acknowledging Councillors by their nature, and staff if they live within their Council area, are often going to face decisions on this issue, given they will be members of clubs and other associations. A rule of thumb can be that if a person is a non-paid member of the Executive/Board of a club or association for example, they should declare this as significant non-pecuniary interest in any matters involving that club or association before Council, but if they are only a member, eg a social or playing member of a sporting club, they need not declare a significant, but could declare it as a non-significant non-pecuniary interest for full disclosure.

Are there any other specific features that should be included to address concerns about Councillors undertaking real estate and development business activities?
Answer - No changes are supported to this specific area. The current legislation especially if improved such as Pecuniary Interest management and penalties, will be sufficient. The existing requirements for property and other interest disclosures to be made, and made public is also in place.

This is a complex area, noting there are no bans on State or Federal politicians from being real estate agents or developers, and State and Federal Government have large roles to play in rezonings, infrastructure provision, such as on Planning Panels, State Minister Approvals processes, (State Significant Developments), and even some Federal approvals required for example, in larger mining and environmental matters. Therefore it is not supported to develop legislation to 'require Councillors to divest themselves from real estate or development business activities and contractual obligations'.

It is stated in this paper that ***'so much of what a Council does is related to land and the potential for speculation in the changes of land values arising from planning, development and infrastructure decisions, it can be impossible to isolate the precise interest that would drive a councillors decision',*** and this is not supported. Councils do so many other things, especially regionally and rurally, that do not involve the above. It is also a fact that most of the issues of corruption from Councillors and Development are in the urban metro Councils, so if any changes are required/made, it should not be a one size fits all, and rural and regional Councils require exemptions. Councillors face just as many perceived conflicts when setting rate levels for examples across categories, when they naturally own properties in the Council area so the existing rules, when strengthened around pecuniary interests, will suffice.

Is this the appropriate threshold to face a Privileges Committee?
Answer - It is unclear from the discussion paper, what the 'threshold' is to face the committee. The intent to have a peers based panel is supported, however it is not understood what the threshold is for matters to be sent to this panel. Examples would be required to guide the referral or otherwise of a Councillor to this panel. In essence, it would only be considered necessary if for example, as stated, the Councillor is a repeat offender, for example has failed to adhere to any previous reasonable requests by the Mayor or Chair to cease such behaviour.

How else can complaints be minimised?
Answer - Councillors having to sign the Code of Conduct, in addition to the Oath, and ensuring continued good relationships are built between Councillors, fostered by the Mayor and GM where appropriate. Also in areas where issues start to arise, Councils could consider adopting an agreed set of shared values and respectable behaviours and hold each other accountable in that manner.

What key features should be included in lobbying guidelines and a model policy?
Answer - Ensuring where for instance on development matters, staff are present with Councillors, and all Councillors are invited and get the same chance to view for example a site of a proposed development, prior to it coming to Council and the inspection is ran by staff. Ensuring lobbying occurs in a public setting, eg via addressing Council via a public forum prior to a Council meeting, ensuring it is filmed and livestreamed or uploaded later. Council looks forward to the model policy and guidelines to comment further.

What level of PIN is appropriate?
Answer - $500.

Are the penalties proposed appropriate, and are there any further penalties that should be considered?
Answer - They appear okay, but in addition the Minister should be given the power to disqualify a Councillor or Councillors, from public office, and not the entire Council, where it's clear the entire Council is not dysfunctional, but one or several are. It is acknowledged there are still times when the entire Council should be dismissed, such as bankruptcy, entire loss of community confidence etc. but there are examples where Councils have been dismissed mainly due to the actions of one or a few Councillors.

Are the existing sanctions available under the Local Government Act sufficient?
Answer - No, refer to the above. Council will comment further when proposed sanctions are in draft legislation form.

Should decisions on sanctions be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?
Answer - Formal tribunal.

Are there any other powers that need to be granted to the Mayor or Chair of the relevant meeting to deal with disorderly behaviour?
Answer - The proposed strengthened powers for the Mayor are supported.

Are there any other measures needed to improve transparency in Councillor deliberations and decision making?
Answer - Council considers the changes proposed will improve the process.

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8 November 2024

Deputy Secretary
Office of Local Government
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By email: councillorconduct@olg.nsw.gov.au

Dear Mr Whitworth

Councillor Conduct Framework Review

Reference is made to Circular 24-17 dated 5 September 2024 inviting submissions on the review of the Councillor Conduct Framework. Mosman Council at its meeting on 5 November 2024 considered a report on the review and resolved to lodge the following submission.

Introduction

1. There is significant empirical evidence that many NSW councils are overwhelmed by code of conduct complaints concerning councillors. At the same time, industry and media opinion suggests that the existing councillor conduct framework is weak and ineffective in dealing with inappropriate behaviour by councillors.

2. Mosman Council is broadly supportive of the principles of change and the potential changes to the councillor conduct framework and meeting practices set out in the discussion paper. The principles of change are a holistic and comprehensive response to an agreed need to improve a deficient councillor conduct framework.

3. The removal of responsibility for dealing with code of conduct complaints involving councillors from general managers to an independent privileges committee is welcome. It removes a difficult role for general managers in a political environment to a space where such matters can be dealt with transparently and at arm's length by a body completely independent of the elected council body and the administration. Likewise, the determination of penalties by bodies such as the NSW NCAT as opposed to the determination of sanctions by the elected body itself is a positive change. It could be expected that these changes will result in less complaints and limit those complaints to those of a grievous nature.

4. However, whilst the majority of proposals generally appear reasonable and appropriate, there are aspects of the potential changes that appear counter-intuitive or at least require clarification.

5. Council's concerns with specific aspects of the proposed changes are set as follows:

Councillor misbehaviour, dispute resolution and penalty framework

6. There are proposals for the Office of Local Government (OLG) to be responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest, and to establish a State-wide panel to refer behavioural based concerns about councillor conduct, set out in the overview of changes 1 and 2 above. There is inadequate detail concerning the operation the proposed Local Government Privileges Committee, and the responsibility for costs in conflicts of interest matters.

7. At present, an individual council can deal with a complaint about a councillor under the Code of Conduct relatively efficiently and in a timely manner. There is no reference in the discussion paper to timelines or metrics under which the Privileges Committee would operate. It is suggested that a standard should be in place requiring the Privileges Committee to decide a matter – say within 90 days from referral. Any inefficiencies brought to the process by the bureaucratic structure of the Privileges Committee would be a retrograde step.

8. The discussion paper indicates that the cost of a Privileges Committee process would be paid for by either the individual councillors or their councils, dependent on the outcome. More clarity is required on payment of costs scenarios, the quantum of or contributions to these costs, and the right to contest unreasonable costs.

9. Assuming that it would be the individual councils paying the costs in most matters referred to the Privileges Committee, an inefficient council bureaucracy that attracts a higher number of allegations of misbehaviour than an efficient council, whether it is a result of either ineffective councillor ethics training or sub-standard governance structures or processes, is effectively underwriting its own inefficiencies to the detriment of the ratepayer. Additionally, the Privileges Committee mechanism may attract more vexatious or trivial allegations from elements in the community which have no grounds to warrant investigation, yet there will be a cost in the Privileges Committee Secretariat considering these and dismissing where appropriate. It would be unreasonable for individual councillors or councils to meet the cost of this process. For these reasons, the cost of the State-imposed Privileges Committee initiative should be State-funded.

10. In view of the proposal for the OLG to be responsible for investigating pecuniary interest and significant non-pecuniary conflicts of interest, and noting that the Privileges Committee would only consider allegations of misbehaviour and not conflicts of interest issues, the discussion paper is unclear on who pays costs for dealing with conflicts of interest allegations. Again, the cost of the proposed conflicts of interest process should be State-funded.

Banning briefing sessions

11. It is difficult to understand the rationale behind the proposed ban on pre-meeting briefing sessions in the absence of the public, as is the proposal for the restriction to not apply to the Mayor. It is an extremely unhelpful notion that Council is unable to consider information of relevance to an issue that may be going before Council for a decision, and to conduct proper discussion and dialog in an informal setting.

12. Mosman Council infrequently conducts strategic workshops and briefings to better understand issues and tease out detail in matters such as management plans, budgets and development control plans. These are in preparation for considering a final staff report on a matter where it is deliberated, and a decision is made at a public Council meeting. This is

the same way that State Cabinet and State agencies function when they are determining matters such as planning proposals and conducting service level discussions.

13. To suggest that all proceedings of a workshop can occur during a Council meeting is illogical and inconsistent with the objectives to make Council meetings accessible, streamlined and efficient.

14. Where Mosman Council does hold a workshop on a matter prior to it being determined at a Council meeting, the staff report to Council would generally refer to the fact that a workshop was held and indicate its purpose. Council would be comfortable if the proposed changes to the framework continued to allow workshops to be held but mandated a requirement to disclose in reports to Council deciding the matter that a workshop was held and its purpose.

15. Further, the discussion paper focuses on the consideration of development applications and councillors being privately briefed by staff. Council questions the relevance of this scenario to most councils, particularly metropolitan councils that operate local planning panels to determine development applications independent of the elected body. Council appreciates the need for transparency, however if the intent of the briefing ban is to promote transparency in the determination of development applications, then Council suggests this is of no relevance to most councils as they do not decide development applications.

16. Further, Council also receives briefings from stakeholders in the community that are not related to matters for determination before Council. For instance, Council has briefing sessions from time to time with organisations and agencies such as Taronga Zoo and Transport for NSW on activities within the Mosman local government area that do not necessarily require a determination by Council. Such briefings are a valuable resource for councillors and should not be banned.

17. If the intent of the proposed ban is solely the prohibition of caucusing, Mosman Council is supportive of such a measure, as this is a practice not conducted by Council. However, without a definition of a “closed to the public briefing session” or “pre-meeting briefing”, there is a risk that valuable briefings and workshops involving councillors, staff and experts would also be prohibited. The proposed changes need to explicitly state what is trying to be achieved. As it stands, the discussion paper proffers more questions than answers in this matter.

18. The proposition that the Mayor is exempt from the ban of pre-meeting briefings by staff is accepted, however, there is nothing in the discussion paper that suggests whether the Mayor must keep that information confidential or may share it with councillors either individually or collectively or outside of or at a Council meeting. Should such a ban progress, more guidance would be needed for the Mayor.

19. In conclusion, Council supports the banning of caucusing however would want to have certainty that it can continue to conduct briefings and workshops to explore and investigate matters as opposed to making a decision away from the public forum. It is important to note there is no outcome from workshops and briefing sessions at Council. They are a forum for the dissemination and consideration of information and discussion that allow councillors to better understand an issue, and to not make a decision. Debate on the decision occurs at the Council meeting as it should.

Conclusion

20. Council appreciates the opportunity to provide feedback on the discussion paper and urges the OLG to carefully consider whether actions taken to improve a particular aspect of the

councillor conduct framework and meeting practices will be counter-productive in other areas. However, having made a considered and constructive response to the proposals set out under the review, it is Council's observation that the timing of the review stems from the Minister's lack of respect to the industry and demonstrates a failure to commit to a meaningful partnership with local government.

21. The timing of the review is inappropriate and should have been done outside of the local government electoral cycle and in a manner that should have allowed consideration by the 2024 Local Government NSW annual conference. It appears that every effort has been made to stymie elected members proper consideration of the proposals and it would be fair enough to say that the review is being presented as not genuinely encouraging local government feedback. The Minister is encouraged to address these shortcomings and implement proper and meaningful consultation on reasonable and appropriate proposals.

Yours sincerely



Dominic Johnson
GENERAL MANAGER

Proposed Response to OLG Discussion Paper

Page	Headings/Sub-headings	Council's Response
7	**Principles of change** • Council leadership and decision making is paramount • Freedom of speech • Transparency and accountability • Significant penalties should only be imposed by a judicial or quasi-judicial body • A strong and proportionate local government regulator • Subsidiarity • Justice is timely and proportionate	The principles set out opposite appear quite reasonable and no objection is raised.
8	**Potential changes to the code of conduct and oath of office** The key proposed reform for the councillor behavioural framework is to move to a streamlined, aspirational Code of Conduct. This is equivalent to the Code of Conduct framework for NSW Members of Parliament. The aspirational Code of Conduct would clearly and succinctly outline the behavioural expectations of local councillors (approximately 2-3 pages) in easy-to-understand language. It would then be supported by a clearer framework and definitions for misbehaviour of elected officials.	Disagree with the concept of a Code of Conduct for Council along similar lines to the codes of conduct for NSW Members of Parliament, as this approach would seem to weaken the Council's Code of Conduct. The Codes of Conduct for members of the Legislative Assembly and Legislative Council comprise 3 and 4½ pages respectively. Neither provide the strong ethical foundation found in Council's current Code of Conduct. Whereas the Council Code of Conduct goes into great detail about Conflicts of Interest (both pecuniary and non-pecuniary), Gifts & Benefits and Access to Information & Council Resources, the parliamentary Codes of Conduct deal with those matters, at best, superficially.

9 **Potential changes to the definitions and assessment of councillor behaviour**

The current Local Government Act defines councillor misconduct as a breach of the Local Government Act or other regulatory provisions, which includes the Code of Conduct. This means that it is difficult for the average person to understand the definition of misconduct as they need to reference several other regulatory instruments and policy documents to determine what it constitutes.

It is proposed in the revised framework that misbehaviour will be more clearly defined and articulated within the Local Government Act, with the reference to regulations and other statutory instruments only for further enunciation or explanation.

No objections are raised to these changes.

9 **Conflicts of interest:**

The first proposed limb of the revised misbehaviour definition is a councillor's failure to manage a conflict of interest.

Management of conflicts of interest is important to ensure that councillors act and are seen to act in the public good, not for private benefit or personal gain. Conflicts of interest arise when there is a conflict, perception or potential of a conflict between an official's private interests and public duty.

The comments in the discussion paper related to conflicts of interest appear reasonable.

10 **Pecuniary interests:**

It is proposed to align the definition of pecuniary interests for NSW councillors with those that are utilised and defined for NSW members of parliament, requiring disclosure of the following interests:

- Real property – property in which councillors have an 'interest'
- Sources of income – all income over $500 other than salary of office
- Gifts – all gifts of cumulative value of more than $500

It is considered that the proposed pecuniary interest framework appears appropriate.

- Contributions to travel – of value of more than $250 (including flight upgrades)
- Interests and positions in corporations – eg stocks and shares, directorships
- Positions in unions and professional or business organisations
- Debts – of cumulative value of more than $500, excluding home loans or debts for goods and services disposed of within a year
- Dispositions of property
- Engagement to provide a service involving use of a councillor's position
- Discretionary disclosures

10 **Non-pecuniary interests**

A conflict of interest does not necessarily have to be financial in nature. It could also arise from familial or personal relationships, affiliations or memberships. It is equally important that such conflicts are managed appropriately to ensure that decision making is seen to be transparent and remains in the public interest.

Agree with the principles of what constitutes a significant or major non-pecuniary interest.

11 **Property developers and real estate agents**

The NSW Government has made a commitment to ensure the conflicts of interest that exist between a councillors' public duties to make decisions on behalf of communities and the private interests that exist in securing a profit as a developer or real estate agent are addressed.

Ordinarily conflicts of interest are managed through declarations and withdrawing from decision making.

No objections are raised to the proposals in the discussion paper regarding councillors who undertake real estate and development business activities.

To address this concern, an alternative means of managing the inherent conflict of councillors undertaking real estate and development business activity is being considered which involves requiring councillors to divest themselves from real estate or development business activities and contractual obligations.

12 **Councillor misbehaviour in public office**

Misbehaviour definition being conduct that:

- is unbecoming of a councillor
- brings council into disrepute; and/or
- is assessed as being outside the norms and expectations of a sitting councillor.

The proposals outlined in the discussion paper about councillor misbehaviour in public office appear reasonable.

13 **Addressing inappropriate lobbying**

There have been recommendations from ICAC to put in place measures to address concerns about lobbying of councillors in relation to development applications. OLG is developing lobbying guidelines and a model policy on lobbying for councils to adopt that will:

- Address how professional lobbyists are identified and the obligations on councils and councillors if they met a professional lobbyist
- Set out inappropriate behaviours when being lobbied
- Identify steps to be taken to ensure transparency
- Require council officials to report inappropriate or corrupt lobbying behaviours to the councils general manager.

The approach outlined in the discussion paper about how inappropriate lobbying should be addressed is supported.

Dispute resolution and penalty framework

14	**Abolishing the 'two step process'** Instead of the existing two-step process: • Complaints about conflict of interest matters would be made directly to OLG, and • Complaints about misbehaviour would be made directly to the Local Government Privileges Committee via a dedicated webform Under the proposed approach there would be no role for privately hired investigators to determine whether the Code of Conduct has been breached.	No concerns with the current set-up but also can see the benefits of the proposed approach, provided that approach is appropriately supported and resourced. Council has had a number of code of conduct matters referred to the OLG and is disappointed at the way these were handled and the time taken. The perception is that this may have been due to a lack of resources. Whatever the process adopted, it must be resourced appropriately and matters must be dealt with in a more timely fashion.
15	**Giving the OLG the power to issue penalty infringement notices (PINs)** Proposed to enable OLG the discretion to issue a PIN for minor in insignificant breaches of the conflicts of interest declarations. This change to PINs is designed to allow a quick process for dealing with minor matters to free up limited regulatory resources while still ensuring that sanction for important matters is provided.	No objections are raised with the proposal for the OLG to be given the power to issue PINs. As to the level of the PIN, this should be proportional to the Councillor fee.
15	**NSW Local Government Privileges Committee** Along with the PIN framework, it is also proposed to create a Local Government Privileges Committee (Privileges Committee). This would replace the existing code of conduct review framework and instead aim to provide a speedy process for resolution and assessment. The Privileges Committee would only examine issues of misbehaviour, not conflicts of interest.	No objections to the establishment of a NSW Local Government Privileges Committee, provided this Committee is adequately supported and resourced to facilitate matters being heard and determined in a timely manner.

Penalties that could be imposed by the Privileges Committee are as follows:

- Censure of the councillor
- Warning of the councillor
- Where referred following misbehaviour in a council meeting, a potential loss of sitting fees
- Referral to an appropriate tribunal or body for more serious sanction, including suspension or disallowance.

Where the breach is deemed serious, the Privileges Committee would have the power to refer a matter to the OLG for preparation of a brief for an appropriate tribunal or body.

However, it is considered that the Departmental Chief Executive, on the basis that this position is adequately resourced and remunerated, is still in the best position to take on this responsibility.

16 **Referral of significant sanctions to appropriate tribunal or body**

Under the existing processes for consideration of complaints, OLG, in particular the Departmental Chief Executive (or their delegate), can suspend a councillor for between 1-3 months with a consequential loss of sitting fees. This creates the situation where a public servant is sitting in judgement of an elected official. Where a greater suspension is appropriate, the Departmental Chief Executive may refer the matter to an appropriate tribunal or body.

To remedy the concerns about whether it is appropriate for an unelected official (ie the Departmental Chief Executive) to stand in judgement on an elected councillor, it is proposed that any significant sanction, such as suspension, significant fine or disqualification from office, can only be undertaken by an appropriate tribunal or body.

No objections to this proposal, provided this tribunal or body is adequately supported and resourced to facilitate matters being heard and determined in a timely manner.

However, as indicated above, it is considered that decisions on sanctions for councillors should be made by the Departmental Chief Executive who is still considered to be in the best position to take on this responsibility, can act quickly and has overview of what is happening across all of NSW local government.

Restoring dignity to council meetings

17 **Proposed reforms to Model Code of Meeting Practice**

To restore the prestige and dignity of the council chamber reforms to the meeting code of practice are being developed to support the mayor in exercising their statutory responsibility to preside at meetings to ensure meetings are conducted in an orderly and dignified manner.

No objection to the proposed reforms of the Model Code of Meeting Practice.

In relation to any powers that need to be granted to the Mayor to deal with disorderly behaviour, perhaps loss of Councillor fee for 1 month for disruptive behaviour might be considered.

18 **Banning Briefing Sessions:**

A practice has recently developed in local government where councillors receive briefings from staff that are closed to the public.

To promote transparency and address the corruption risks identified by the ICAC that can arise from a lack of transparency, it is proposed that councils will no longer be permitted to hold pre-meeting briefing sessions in the absence of the public.

The proposal to ban briefing sessions is not supported as this is considered to represent a backward step.

The concept of briefing sessions provides a forum in which Councillors and staff can share ideas and pose questions in a free and open environment without the involvement of the public. In the experience of staff and Councillors, briefing sessions provide Councillors with the opportunity to ask questions of staff that they may not be prepared to do in an open meeting because of the fear that they may appear foolish in the eyes of the public. Indeed, the concept of briefing sessions without the public present had been previously strongly supported by the OLG.

In relation to the example provided in the discussion paper that development applications should be considered in the public domain, at UHSC in briefing sessions, Councillors are only told what is in the planning report. Nevertheless, happy to not do briefing sessions on planning matters.

It would appear that this suggestion may have come about because some Councils are or have been misusing Briefing Sessions. The Council's Code of Meeting Practice is quite clear that no decisions may be made in Briefing Sessions so that problem has not arisen at Upper Hunter Shire Council. It is considered that by far the majority

	of Councils are doing the right thing so these Councils should not be penalised by the actions of the minority.
To further promote transparency, the proposed reforms will also extend the period that recordings of council and committee meetings must be maintained on a council's website.	Council has no issues with extending this timeframe.

INDEPENDENT COMMISSION AGAINST CORRUPTION



COUNCILLOR CONDUCT FRAMEWORK REVIEW

SUBMISSION TO THE OFFICE OF LOCAL GOVERNMENT

November 2024

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The Commission's jurisdiction over local councillors

The Office of Local Government (OLG) discussion paper states "*It is proposed to make the new Code of Conduct an aspirational code of expected behaviours instead of enforceable for local councillors*". The Commission's primary submission is that introducing an aspirational code will diminish its capacity to expose serious corrupt conduct in local government. To avoid this, local councillors should remain subject to a range of enforceable obligations in relation to their conduct in public office.

For conduct to be corrupt under the *Independent Commission Against Corruption Act 1988* (ICAC Act) it must fall within s 8 but not be excluded by s 9. Subsections 9(1) and 9(6) state:

> ***9 Limitation on nature of corrupt conduct***
>
> *(1) Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve—*
>
> *(a) a criminal offence, or*
>
> *(b) a disciplinary offence, or*
>
> *(c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or*
>
> *(d) in the case of conduct of a Minister of the Crown or Parliamentary Secretary or a member of a House of Parliament—a substantial breach of an applicable code of conduct.*
>
> . . .
>
> *(6) A reference to a disciplinary offence in this section and sections 74A and 74B includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440 (5) of the Local Government Act 1993, but does not include a reference to any other breach of such a requirement.*

If the *Model Code of Conduct for Local Councils in NSW* (the Model Code) becomes an aspirational or unenforceable document, there would be no "*requirement of a code of conduct required to be complied with*" and the Commission would no longer be able to base corrupt conduct findings on a substantial breach of that Code by a councillor. Consequently, the Commission's jurisdiction over local councillors could be confined to matters that could constitute a criminal offence. The Commission contends that this would be an unacceptable outcome because it would make local councillors subject to lower standards of conduct than other classes of NSW public official, including parliamentarians and local council staff.

Furthermore, it may be the OLG's intention to move some existing conduct requirements from the Model Code to other policy documents. While this might appear to be simple change in administrative approach, it would effectively extinguish the Commission's ability to make corrupt conduct findings pursuant to s 9(6) above.

While the Commission agrees that the Model Code could be simplified, it should still articulate conduct that is "required to be complied with". That is, the proposal for a purely

aspirational code, should not proceed. While not an exhaustive list, the Commission suggests the following topics should be addressed by mandatory requirements:

- disclosing and managing interests and conflicts of interest
- accepting gifts, benefits or hospitality
- misuse of funds and resources
- improper favouritism or partiality
- dishonesty
- misuse of confidential information
- exerting improper influence on council staff and other councillors
- use of binding caucus votes.

In addition, the discussion paper states "*Under the reforms, the investigation of serious conflicts of interest would be put* ***entirely*** *into the hands of OLG*" and "*Where the breach was considered more serious in nature then it can be referred to an appropriate tribunal or body for more significant punishment*" (emphasis added).

Taken on their face, these proposals suggest that the Commission's jurisdiction to investigate serious conflicts of interest is to be removed and/or that the OLG may no longer routinely refer such matters to the Commission.

The Commission understands that it may not be the OLG's intention to limit its jurisdiction in this way but for the removal of any doubt, there should be no change to the Commission's existing jurisdiction over local councillors.

Privileges Committee

Misbehaviour is described in the discussion paper as having three limbs comprising conduct that:

- is unbecoming of a councillor
- brings the council into disrepute, and/or
- is assessed as being outside the norms and expectations of a sitting councillor.

It is proposed that "**all** allegations of misbehaviour" (emphasis added) would be examined by the proposed Privileges Committee.

While it appears the Privileges Committee will be tasked with overseeing less serious forms of misconduct, it is still possible that its operations will intersect with the jurisdiction of the Commission. In particular, behaviour that brings a council into disrepute could overlap with conduct that dishonest, partial or a breach of public trust, all of which are elements of corrupt conduct in s 8 of the ICAC Act.

Again, for the removal of any doubt, the operations of the Privileges Committee should not limit the Commission's jurisdiction.

In addition, the proposed Privileges Committee will be able to impose some penalties but those involving "more serious sanction", such as suspension or disallowance, are to be referred to an appropriate body or tribunal. The Commission expects that existing

information sharing arrangements would be revised to ensure that any matters over which both it and the Privileges Committee have an interest, can be discussed.

Section 11 of the ICAC Act

Related to the observations set out above, the Commission wishes to ensure that s 11 of the ICAC Act, which imposes an obligation on agency heads to report reasonably suspected corrupt conduct to the Commission, is not diluted.

Section 11 should continue to apply to individual councils and the OLG. In addition, if the Privileges Committee forms a reasonable suspicion of corrupt conduct, administrative arrangements should be in place for such matters to be referred to the Commission, via the OLG.

Addressing conflicts of interest

In the Commission's experience, the disclosure and management of conflicts of interest is an area that councillors find challenging. The framework proposes to maintain the current distinction between pecuniary and non-pecuniary conflicts of interest. It should also be noted that a non-pecuniary conflict of interest could be based on a relationship of enmity just as much as friendship.

Furthermore, simply being acquainted with a person may not amount to a private interest. Provision 5.9(b) of the Model Code defines closeness in terms of relationships giving rise to *significant* conflicts of interest by "the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship". The Commission has adopted the approach outlined in *Settlement Agents Supervisory Board v Property Settlement Services Pty Ltd* [2009] WASCA 143 at 71:

> *A conflict of interest and duty can arise where the personal interest of the fiduciary is pecuniary or non-pecuniary, direct or indirect. A non-pecuniary interest includes an interest by way of association, whether by way of kinship or business connection [or otherwise]. Whether the interest is within the conflict rule will depend on (inter alia) the nature, intensity and duration of the association.*

The discussion paper correctly points out that the management of non-pecuniary interests in local government requires a degree of nuance, mainly because councillor reside in the communities they represent. However, the paper suggests that factors that bear on the decision to disclose such interests include ". . . *if the councillor considered it of minor consequence, it wasn't controversial, or the councillor did not hold the casting vote*" (p.11). The Commission's submits that none of these factors should shape the decision to disclose a non-pecuniary conflict of interest. Rather, these are factors that might be weighed during the course of an investigation or disciplinary process.

The discussion paper (p. 10) seeks to "*align the definition of pecuniary interests for NSW councillors with those that are utilised and defined for NSW members of parliament*". The Commission does not object to this course of action but notes:

- Concurrent with the OLG discussion, the Houses of Parliament and the Government are considering amendments to the Constitution (Disclosures by Members) Regulation 1983. The OLG may wish to monitor these amendments.
- Among the pecuniary interests listed in the discussion paper is "*Engagement to provide a service involving use of a councillor's position*". The Commission's position is that councillors should never be in a position to receive payment (other than their legitimate councillor fees) to provide a service associated with their official position. Such a payment is at a high risk of being a bribe and should therefore be prohibited rather than be listed as a class of interest that can be accepted if disclosed.

Membership of the Privileges Committee

The discussion paper states that the proposed Privileges Committee will be compromised of a group of experienced mayors and ex-mayors, so that councillors will be judged by their peers. The Commission does not oppose the model but notes the potential for criticism if the Privileges Committee members are perceived as being influenced by any affiliation to a political party. The findings of the Legislative Council's 2002 Privileges Committee inquiry into Edward Obeid Sr's pecuniary interest returns demonstrate the inherent shortcomings associated with relying on parliamentary peers to investigate the behaviour of members.

The Commission suggests that the OLG:

- considers appointing some Privileges Committee members who do not have a background as elected officials
- ensures that all Privileges Committee members are well-grounded in the principles of administrative decision making
- carefully screens all proposed Privileges Committee members to identify any potential sources of conflict of interest
- trains all Privileges Committee in the requirements of their new role, including the need to disclose conflicts of interest (the Commission would be willing to assist if requested)
- appoints enough Privileges Committee members to enable substitution in the event of a conflict of interest.

Councillor conduct outside of council meetings

The discussion paper proposes banning briefing sessions that are closed to the public. The Commission does not oppose this initiative. Importantly, the Commission is concerned that some councillors participate in informal briefing sessions, knowing that they have a conflict of interest, which is not disclosed until a subsequent formal meeting is held.[1] The proposed reform will therefore act as a useful integrity mechanism if it brings conflicts of interest to light at an earlier point.

The paper notes that the ban will not apply to mayors because "*As the leader of the organisation, the mayor needs to have candid conversations with the general manager outside*

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[1] The Commission's position is that local councillors should be obliged to disclose any manage conflicts of interest that arise from *any* of their public duties, which can include attending informal briefings, making representations on behalf of constituents, communicating with each other and senior staff and representing the council in public. To a limited extent, these concerns are addressed at clause 3.38 of the OLG's *Model Code of Meeting Practice* but the Commission notes that this clause is not mandatory.

of formal meetings". This is certainly the case but the Commission anticipates that other councillors may also see the need for candid conversations with senior staff and the mayor.

In any case, council general managers and staff should still be in a position to respond to any reasonable request for information or advice made by a councillor (possibly on behalf of a constituent) without breaching the prohibition on briefing sessions.

In addition, while there is an expectation that councillors should attend ordinary council meetings unless a leave of absence has been granted, attendance at informal briefing sessions tends to be voluntary.

If existing, closed briefing sessions are converted into formal council or committee meetings, the OLG should consider whether:

- councillors will have difficulties attending additional meetings (i.e. meetings that were previously voluntary in nature), which may impact quorum requirements and possibly even their eligibility for office under s 234(d) of the *Local Government Act 1993*
- formal meetings of council will become excessively lengthy, which may adversely impact the quality of decision-making
- certain meetings, while still formal in nature and open to the public, should be designated as being for the purpose of a briefing, with no motions moved or decisions taken.[2]

Finally, the Commission understands that from time-to-time, councillors are invited to onsite briefings that take place on council-owned or operated land, or the site of a development application or planning proposal. The OLG may wish to consider how these site visits can occur without breaching the prohibition.

Addressing inappropriate lobbying

The discussion paper identifies the Commission's concern regarding the lobbying of councillors. Specifically, the Commission made recommendations in its 2021 report, *Investigation into the conduct of councillors at the former Canterbury City Council and others* (Operation Dasha) and its 2022 report, *Investigation into the conduct of the local member for Drummoyne* (Operation Witney) to promote effective governance with respect to lobbying activities involving councillors.

The major corruption risk identified by the Commission in relation to lobbying involves elected officials advocating for, or supporting matters, where they have a hidden conflict of interest. The most recent example is the Commission's findings of serious corrupt conduct against a now former mayor of a Sydney metropolitan council in its 2023 report, *Investigation into the conduct of the City of Canada Bay Council mayor and others* (Operation Tolosa). In this investigation, the mayor's conduct involved voting in favour of planning matters knowing that someone with whom he had a close personal relationship was the contracted agent for

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[2] Clause 3.37 of the *Model Code of Meeting Practice* (which is not mandatory) states that briefing sessions should not be used "to debate or make preliminary decisions". Despite their intent, the Commission submits that there is still risk of premature decision-making under the proposed. That is, a council could determine a matter without being properly briefed.

the developer. The Commission was satisfied that the mayor knew that his "good friend" was acting for the developer.

The mayor also had close personal relationships with several people who were representatives of the developer. For example, the mayor enjoyed the hospitality provided by the developer on six occasions when overseas and in Sydney. Moreover, the contemporaneous records of the conversations between an intermediary of the developer and the mayor reveal that the relationships were ongoing and close, rather than occasional in nature.

In addition to matters involving conflict of interest, Commission routinely advises councillors to avoid:

- accepting hospitality whilst being lobbied
- acting as an agent for proponents, including moving motions that have been drafted by a person associated with a developer or other third parties
- accepting information from a proponent of a technical nature and not passing it on to council officers for assessment and capture in council's record keeping system
- conducting meetings with proponents in informal settings, particularly for significant and controversial matters
- gate crashing meetings between council officers and proponents
- fettering their discretion by making commitments to parties regarding how they will vote on matters prior to reviewing all information.

The Commission also advises councillors that, in addition to promoting transparency, it is in their interests to make a record of significant interactions with proponents and other individuals attempting to influence a council decision.

The use of third-party lobbyists in local government is also an issue that is becoming more prevalent. In Operation Dasha the Commission observed:

> *The risk profile of the local government sector in relation to lobbying has been altered. Since October 2012, the power to make local environmental plans (LEPs) has been handed to local councils in many cases, reducing the oversight role of the NSW Government. This change has the potential to increase lobbying activities in local government, and creates greater incentives for corrupt conduct to occur in that sphere.*

In Operation Dasha, the Commission recommended that the provisions in the *Lobbying of Government Officials Act 2011* be extended to local government. This was also reiterated as a key finding in the Commission's 2021 *Investigation into the regulation of lobbying, access and influence in NSW* (Operation Eclipse).

This remains the Commission's position but whether or not that recommendation is adopted, the Commission would be happy to assist the OLG in developing the proposed lobbying guidelines.

Freedom of speech

Page 7 of the discussion paper states "*... councillors have the constitutional right and democratic responsibility to speak freely about issues affecting their local community and to advocate for the interests of that community*".

That may be generally the case but the Commission suggests the existing requirement to refrain from making public allegations of misconduct or corruption, ought to remain in place.

Furthermore, a councillor's right to advocate for community interests is constrained in situations where they have a conflict of interest. A relevant example arose in Operation Witney, where the member for Drummoyne made "representations about the purported interests" of his constituents, but the Commission found that this advocacy was calculated to advance the member's personal interests.

Property developers and real estate agents

The Commission agrees that councillors who have close professional or commercial ties to the property industry, such as property developers and real estate agents, are more likely to be adversely affected by conflicts of interest. The proposed requirement for such councillors to "divest themselves from real estate or development business activities and contractual obligations" is worth considering and has the Commission's in-principle support.

However, the Commission notes the following:

- Some relevant property interests may be held indirectly and are therefore difficult to identify and divest. For example, a councillor might hold shares or units in a company/trust that in turn has interests in a number of properties across NSW.
- As has been identified in a number of Commission investigations including operations Dasha, Galley and Tolosa, a councillor may not be a property developer or real estate agent but can have a personal association with one. At present, such associations may not be captured by the definition of a "close associate" in s 53 of the *Electoral Funding Act 2018* (although they should be captured by existing conflict of interest requirements).
- The Commission acknowledges the challenges in drafting clear, workable definitions but some councillors affected by the proposal may choose to arrange their business affairs so that they fall just outside the chosen definitions of "property developer" and "real estate agent" This could generate concerns that the intent of the policy is not achieving its intended outcomes.
- Councillors can be employed in numerous property-related occupations other than as property developers and real estate agents. Examples include building and trades, valuation, town planning, architecture, building certification and finance. Some Commission investigations have highlighted the practice of paying finder's fees or introduction fees to individuals who are not necessarily acting as licenced real estate agents. The Commission's accepts that it would be impractical to eliminate every connection between councillors and the property industry. Consequently, as noted below, it is important for the OLG to play a strong role in monitoring the sector.

Comparing state and local government

It is accepted that local government delivers many essential public services and that both the OLG and the Commission should take a proportionate approach.

However, state government, including unelected officials, can and should intervene in the operation of local councils when required.

The Commission's position is that OLG should operate as a strong oversight body and the notion that local government is an "independent" tier of government does not justify a minimalistic approach to compliance. It is important that OLG and the Department of Planning, Housing and Infrastructure use existing powers to oversee the local government sector. This includes:

- requiring the production of documents and information
- issuing improvement orders
- investigating and, where necessary, placing dysfunctional councils into administration
- intervening in a council's use of planning powers.

There is another important difference between state and local government. Parliamentarians who are not ministers or parliamentary secretaries, do not exercise executive power. Councillors, on the other hand, make a range of executive decisions that confer benefits and disadvantages on individuals and organisations. The Commission's investigations show that this exposes councillors to significant corruption risks, especially in relation to planning decisions.

From: Jeremy Lasek
To: OLG Councillor Conduct Mailbox
Subject: OLG Councillor Conduct Framework Review
Date: Sunday, 10 November 2024 1:07:43 PM

Dear OLG representatives
Firstly, can I thank you for encouraging a discussion on this important topic. I agree with your observations about the weaknesses of the current framework which allows for closed Council meetings.
I am writing my submission as a frustrated local resident (ratepayer) living in the Wollongong LGA, as a journalist, and as an executive committee member of Neighbourhood Forum 5, which has been established by Wollongong City Council (WCC) to provide better links with the local community at a grass roots level.

1. As a local resident
In March 2022, the three ground floor homes in our small unit apartment block flooded, resulting in nearly $500,000 damage and our annual insurance bill has skyrocketed from $7,000 a year to $80,000 a year.

We believe our Council is partly to blame for our flooding issues. Over the decades, Council has approved significant new development on the streets above our property, creating a significant increase in stormwater run-off. Unfortunately, the Council has taken no corresponding action to upgrade its stormwater infrastructure which we believe dated back perhaps 80 years. As a result, at times of torrential rain we run the likelihood of flooding, and our small community takes to the streets to place sandbags in position to try to prevent the water from again entering our homes.

We have made many representations to Council, in writing and in person. We have asked for Council to include flood remediation in their four-year infrastructure program but to no avail.

I was given the opportunity to address the open meeting of WCC for five minutes on 26 June 2023 prior to the Council signing off on its next Infrastructure Plan. In my address, I suggested Council might enter into negotiations with us in an attempt to find a satisfactory solution. When I finished speaking, I said I would welcome any questions the councillors might have. I was shocked when there was no discussion at all, and Council duly voted as a block to sign off on its Infrastructure Plan which I understood had been discussed in an earlier closed meeting of Council. There was nothing in the Plan to assist us.

I don't necessarily expect Council to be able to assist every ratepayer who has a problem like us. I do, however, expect to be able to hear any discussions and debate about our problems in a public forum, and not behind closed doors.

As things stand, I have no idea if the councillors who represent us have gone into bat for us. Did they ask any questions, or make any representations on or behalf at all?

Two months ago, Wollongong went to the polls. The outgoing Lord Mayor, Gordon Bradbery - who didn't seek re-election - said one of his proudest achievements was "the level of transparency and accountability in Council's decision making" by "promoting a culture of openness within the organisation" and "provide the community with equitable access to information."

The Lord Mayor is correct when he says there's been improved digital access, with every Council meeting being webcast and able to be watched online. But there is certainly room for improvement if our Council wants to lay claim to being a best practice organisation for openness and transparency.

Most people living in Wollongong LGA won't be aware that our Council holds regular behind closed doors meetings. The Council calls them 'briefings', I call them secret meetings. It is in those meetings, closed to the public and the media where important discussions and debates are held and deliberations are made ahead of the full Council meetings where the earlier decisions are formalised and ratified; often with no discussion for the public to witness.

What this means is when the 'open' council meeting occurs a large number of agenda items are effectively 'ticked and flicked' by the councillors. They are determined with no discussion, debate or an opportunity for the public to fully understand the basis and arguments for and against the decisions. Such was the case with the decisions taken on our flooding issue.

It hasn't always been this way in Wollongong. In the past, sub committees existed where matters were discussed in open, public forums with no media lockout, giving everyone an opportunity to hear the briefings and debate and better understand the issues taken into account during the decision making process.

In September 2024, Wollongong elected a new Council. [redacted] It feels more to me that the Council simply isn't willing to be as open and transparent with our community as it should be.

To demonstrate how our Council currently operates, at the 12 August 2024 'open' meeting, there were 22 items on the agenda. A total of 14 items, more than 50 per cent

were resolved with no discussion and voted in one block adoption as being unanimously supported. Issues included in the agenda which were voted on with no discussion included: Council's Privacy Management Plan, a Planning Proposal in Dapto, a Wollongong City Wide Development Contributions Plan, Bushfire Management and Bushfire Prone Land, Affordable Housing Policy and Procedure, Statement of Investment 2024, Community and Sporting Group Rentals Policy and the Annual Report on the Activities of the Audit, Risk and Improvement Policy.

I agree 100 per cent with your Discussion Paper which says "communities and councillors report that council decision making is not transparent - with decisions being made behind closed doors, information not being provided or withheld, too much use of closed to the public briefings..."

I also fully support your 'Options for a better approach' by "ensuring the community can observe local democratic processes by banning closed to the public briefing sessions, while at the same time restoring the dignity and prestige of the council chambers.'

I hope the OLG and the NSW Government understands the frustrations of communities who feel largely in the dark about what's happening within our local Council about matters that affect us directly.

I support the suggestion in your Discussion Paper which says "to promote transparency...it is proposed that councils will no longer be permitted to hold pre-meeting briefing sessions in the absence of the public."

The *Illawarra Mercury* reported on 16 September 2024 that Labor appeared likely to get a clear majority on the newly elected Council. The story said for some that may bring back memories of Labor-dominated council where decisions on items were essentially made in caucus ahead of council meetings.'

'Cr Brown (the new Lord Mayor) has previously taken issue with that image, pointing out that it was decades ago and that Labor councilors did not caucus anymore,' the Mercury story said.

"We have split on votes - on the flood motion recently we were divided," Cr Brown said. I am not aware of any meeting where the Labor councillors were 'split' on a flooding issue. I can only assume it's from one of Council's 'closed' meetings.

2. As a journalist

I believe it is a sad reflection on Wollongong City Council that we appear to have gone backwards in terms of transparency and openness.

As a reporter in the 1980s and 1990s I had regular access to information and was able to attend Council committee meetings which were open to the public and the media. I cannot understand why Council today feel the need to meet secretly, effectively making their decisions without any visibility and reducing access to the community they represent. I believe this makes for a worse Council, which has much less scrutiny than it did in the past, in which we had a much greater understanding for why decisions were being made.

I find it hugely surprising that Council doesn't release an agenda, minutes or any record of these so-called councillor briefing sessions. As such I believe they lack the procedural fairness, transparency, accountability and good governance that we should expect from our Council.

3. As a committee member of Neighbourhood Forum 5
At our monthly meeting of Neighbourhood Forum 5 on 7 October 2024, we resolved to:

A. Congratulate the Office of Local Government for an excellent discussion paper, which, amongst other things, aims to provide greater transparency to the conduct of NSW councils
B. Make a submission to the OLG supporting the abolition of closed briefings, to increase council' and increase the community's trust in Council
C. Seek the support of Council and Ward councilors to stop holding closed briefings, or at the very least allow a trial period where the public would be allowed access to attend.

I would be happy to expand on these comments if required

Jeremy Lasek
[redacted]
[redacted]

[redacted]

Tanya Cullen
[redacted]

10 November 2024

Councillor Conduct Framework Review
councillorconduct@olg.nsw.gov.au

Thank you for the opportunity to comment on the proposed framework for Councillor Conduct and Meeting Reforms. I offer the following comments as someone who has been a long-term employee of local government, as an active participant in local government politics and processes, including through council committees and standing as a candidate for my local rural council.

1. Scope of proposed reform

While noting that related legislative changes are proposed, I see this reform as outlined in the discussion paper as 'tinkering at the edges' of the real issues confronting local government and council decision making processes. The 'need for change' discussion seems to be based on removing an annoying task of assessing complaints from the responsibilities of the OLG.

The failure of the current code of conduct is not the reason for an overall 'lack of respect' for local government, as the discussion paper seems to posit.

The lack of respect for councils arises from the ongoing and worsening financial instability of councils that ensures services are not provided to the community's desired standards, or are not offered at all. That ongoing failure creates public mistrust, suspicion and discontent with councils and councillors; address the failure of services and you are likely to address what may well be frivolous and vexatious complaints about behaviour.

There is a need for wholesale reform of local government, from its democratic/electoral processes to its current reliance on grant funding to deliver basic services. The scale and focus of the proposed reforms is disappointing; they do nothing to address *why* complaints happen and will do little to help councils to deliver for their communities, or to restore respect in local government.

2. Principles-based approach

Where those principles are supported by legislated or otherwise mandated standards, I generally support most of the underpinning principles as proposed. If not supported by clearer standards, the principles are far too-broad and open to interpretation to build confidence. Two of the proposed principles in particular, are of concern:

- *A strong and proportionate local government regulator*

This approach appears to remove any regulatory review or oversight of the complaints system by the OLG (and therefore the State Government), except for 'significant' conflicts of interest. There is no

mechanism proposed for review of the system, for Councils or other bodies to report on complaints and complaints-handling processes, for complainants to have an independent regulator/arbiter to review. All of these elements are required for a system to be trustworthy and reliable.

- *Subsidiarity*

The focus on resolving more issues at a local level and relying on mayoral intervention and impartiality, is seriously flawed. It not only politicises complaints (particularly where the mayor may be popularly elected), it also ignores the reality that it can be the mayor that is the cause of discontent and poor behaviour, either directly or indirectly. The framework appears to offer no solution to that likely possibility of mayoral influence; where a mayor is given more power or control over their colleagues' actions, it is equally reasonable for councillors to have a checks-and-balances mechanism (such as an ability to change mayor before their 2 year term expires).

3. Conflicts of interest

A clear focus on those who profit from land decisions is welcome, however could be extended to those who own and operate media organisations. In my LGA, the local newspaper has, for the last four election cycles at least, been owned and/or edited by a sitting councillor and a candidate for councillor. Not only has this resulted in preferential treatment of candidates at elections, but very selective and subjective reporting of council policies, decisions and activities.

Regulation of land and media interests should also be reflected in local government electoral law. [redacted] all of which created a distinct level of community concern. The NSW Electoral Commission was unable to take action on these matters, however, advising that it was beyond the scope of the relevant legislation.

4. Councillor misbehaviour in public office

Any code of conduct that supports this framework must include communications protocols and a real ability for action to be taken where offense and slander/libel occur. [redacted] In these instances, complaints to the mayor, as proposed in the discussion paper, would have been entirely ineffective, [redacted]

Social media protocols, in particular, must be mandated, ensuring Councillors cannot simply 'block' residents unless the online behaviour is offensive or egregious. [redacted] There is no mechanism for the public to ensure their questions are suitably answered on public communication forums and no accountability for the actions of Councillors in using social media.

The active networking that occurs amongst councillors, while largely beneficial, may work against the independence and reliability of the proposed Local Government Privileges Committee. That committee's unknown and unidentified secretariat being given the power to 'triage' complaints does not aid transparency or understanding of the proposed new system, may actively work against its public acceptance and result in appeals and complaints to other bodies such as the Ombudsman.

Penalties for councillors such as a 'censure' or 'warning' or "potential" loss of sitting fees are entirely meaningless, without a consequence attached to them and would do little to promote (or restore) public faith in the system. Where misbehaviour or a breach of any code or standard is found, there must be real consequences – and transparency. Public reporting by all levels of the system on Councillor misbehaviour should be mandated and Councillors should be made to publicly apologise for their acknowledged misdeeds, as a minimum. Financial penalties *should* apply for more serious misbehaviour and removal from office must be an option for serious and repeat misbehaviours.

The discussion paper raises no underlying legal or other rationale for the removal of the current powers of the Departmental Chief Executive to impose sanctions or refer a matter on for further consideration. The single line about the appropriateness of an unelected official making decisions over an elected official is pure rhetoric and the paper presents no evidence that there have been issues with the current approach. On a broader scale, there have been instances where judges (as unelected persons and employees of the State) have made judgements on ministerial actions and decisions (as elected persons). It is not clear why these powers are proposed to be changed – and arguably, a public servant's own code of conduct obligations under relevant legislation act to ensure a transparent and independent process. Again, it appears to be a mechanism for relieving OLG of a means to hold councillors accountable.

5. Restoring dignity

This section of the discussion paper is anachronistic and without any underlying logic. The community respects a council when it does its job properly, and fully engages with the community to deliver the services they want. There is no community clamour for outdated standards and processes like mandating standing to speak and standing when the mayor enters the room. Nor does this do anything to improve councillor behaviour; it has to be obvious that a person can break behavioural standards from either a sitting or standing position.

Again, by giving distinct powers to the mayor to expel councillors and people from the chamber, this proposal assumes that a mayor will be reasonable, act always in the public interest and not be, themselves, the cause of discord or misbehaviour. The politics of a council body – the regular 5:4 voting pattern in my local council, for example - will influence such mayoral decisions, particularly on publicly contentious issues. No mayoral accountability appears to be proposed in the discussion paper and the additional powers proposed for mayors should have accountability mechanisms for those powers operating in tandem. Again, it may be more appropriate for a public servant – such as a general manager who has no decision-making powers on any matter under discussion – to address, and implement sanctions for, misbehaviour.

6. Open briefing sessions

I fully support this proposal as outlined in the paper. There cannot be any faith in any council discussion or decision that is not seen, heard or reported on. This action would be better supported

by clarifying and encoding the 'public interest' in the existing two-part test for closed discussions; it cannot be reasonable to simply state, as my local council does, that something is not in the public interest for it to be so.

7. Other matters

Reporting
For full transparency and to help restore faith in the system, reporting on misbehaviour, complaints and actions taken must be mandated and that reporting should happen at all levels of the proposed system (consistent with privacy provisions). Transparency and reporting will bring greater respect and confidence from the public than any show of ceremonial 'dignity'. The discussion paper makes no mention of this issue.

Respect and professionalism
As already noted, making people stand when a Mayor enters a room or as part of a discussion, is a ridiculous and pompous response to the community's loss of respect for councils. I would contend that less formality enables real debate and discussions; stifling discussions in procedural protocols that the community does not understand (moving, seconding, foreshadowed motions, proposed motions, 'through you Mr Mayor' etc) does little to engage the public's interest in policy debates and local issues'; in fact, it actively works against the general public's understanding of discussions.

Better-behaved councillors who can better reflect their community's expectations would come from a mandated program of training to help them understand their role, responsibilities and powers (my local council reported that no training was provided to councillors in its last term, despite there being four new councillors elected). 'Professionalising' the councillor role would likely achieve better behavioural outcomes than imposing penalties for failing unclear behavioural standards, or forcing people stand up to speak, ever will.

In summary, these proposed reforms simply wrap a new system around an issue that is peripheral to the real problems local government faces – and without even bothering to understand why the issue exists. Local Government needs comprehensive reform that will provide it with a secure financial footing; only then can councils deliver "effective local government" and the services residents want and need. The viability of rural councils in particular, is at stake, and it is beyond time for the State Government to make broader changes that would truly support effective local government.

Yours faithfully



Tanya Cullen

FROM THE MAYOR'S OFFICE

STRATHFIELD COUNCIL

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5 November 2024

Office of Local Government
Locked Bag 3015,
NOWRA NSW 2541.
Email: councillorconduct@olg.nsw.gov.au

Dear Office of Local Government,

Councillor Conduct Framework Review

Strathfield welcomes the opportunity to give feedback on the Office of Local Government's '*Councillor conduct and meeting practices – A new framework*' discussion paper of September 2024. We would like it noted that the ability of Councils to give considered feedback during the consultation for this paper has been greatly impacted by the timing coinciding with the September Local Government Elections and preparations for the induction of new Councillors that has taken precedence.

While supportive of the ideals of open and transparent government and accountability, there are several proposed changes that raise concerns for Council.

Code of Conduct and Oath of Office

In relation to the changes proposed for the Code of Conduct and Oath of Office Council notes the following:

a. In relation to streamlining the Code, Council supports this improvement

b. In relation to separating the Code of Conduct into two (2) distinct Codes (Councillors and Staff), Council supports this improvement and welcomes the greater clarity it would give to Councillors, staff and the public.

c. In relation to Councillors speaking publicly on matters pertaining to their Council, these changes to the allow for Councillors to speak publicly on matters pertaining to their Council. This would be even when they are being critical of or disagreeing with the decisions of the majority and is a departure from the current position where the Mayor is the spokesperson for the Council.

Councillors are free to voice their concerns and disagreements with decisions when matters are before Council but should be encouraged to support the decisions made by the majority.

If Councillors are able to voice their dissent on social media and other platforms, how can they be prevented from bringing the Council into disrepute or undermine the confidence of the public in their decisions. There would be a need for some guidance for Councillors on how to deal with social media and representing themselves in the public realm.

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Changes to the definitions and assessment of Councillor misbehaviour

In relation to the changes proposed for changes to the definitions and assessment of Councillor misbehaviour, Council supports this improvement and welcomes the greater clarity it would give to Councillors, staff and the public.

Privileges Committee and the dispute resolution and penalty framework

It is the proposed establishment of the Privileges Committee raises concerns for Council. It is noted that the Committee will be highly political with it being constituted by Mayors and ex-Mayors, with the strong possibility of party-political alliances influencing the decision-making processes. This would be particularly difficult to manage from a fairness and equity perspective if penalties are to be attached to misbehaviour, such as warnings, suspensions or loss of fees.

The introduction of new Penalty Infringement Notices powers for the Office of Local Government for minor or administrative breaches of the conflicts of interest declarations generally appears to have potential to address more significant issues, however the management of these Notices and reviews needs further clarification.

Moreover, the proposed Privileges Committee raises several questions about the funding model. Will it be a User-pays system or more like costs awards in court proceedings. Is this an incentive to manage issues locally? Would legal representatives be allowed at the Committee and Council's preference is no. There is concern on how the process would, if introduced work in the detail.

Lobbying

In relation to the changes proposed for lobbying, Council supports this improvement and welcomes the greater clarity it would give to Councillors, staff and the public.

Restrictions on Property Developers and Real Estate Agents as Councillors

In relation to Property Developers and Real Estate Agents, will the requirement for divestment be for ALL activities or only those conducted within the Local Government Area in which they are elected Councillors?

If for all activities, how is this not then requiring these Councillors to give up their businesses and sources of income and be a de facto ban on those professions being able to afford to be Councillors given that their allowance form Council is not a wage. Also, of concern is how and who would manage oversight of this requirement.

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Council would urge there be a more nuanced approach to the divestment restriction if ALL activity is what is proposed. Some existing Councillors in these professions have managed potential conflicts of interest by undertaking not to practice in the Local Government Area in which they serve as Councillors so that planning decisions etc. will not raise conflicts of interest when matters are before Council for decision.

Restoring Dignity to council meetings

While Council supports the general purpose of this change, that being to ensure meetings are conducted in an orderly and dignified manner, the proposed approach presents several questions and concerns.

While enabling the Mayor to expel Councillors and setting the expectation for Councillors to apologise at the subsequent meeting may be beneficial, this requires significant detailed information on what would be considered an Act of Disorder and could present challenges in relation to interpretation of the Act of Disorder.

The removal of entitlements regarding Councillor fees presents several concerns in relation to interpretation (as noted above) and the management of fee reductions, and reviews should a review be requested.

Councillors being required to stand when addressing the meeting and when the Mayor enters the chamber is supported by Council.

In relation to a new power enabling the Mayor to issue a Penalty Infringement Notice to members of the public who refuse to leave a meeting after being expelled may be beneficial, this requires significant detailed information on how it would be managed. It is common for Council Rangers to experience less than desirable responses to providing Penalty Infringement Notices so it would be anticipated that similar occurs in the Chamber. Further consideration on this item should look to the risk to safety to those in the Chamber at the time (Mayor, Councillors, Staff, Community Members), and the potential for increased costs to engage security for Council meetings. Currently Strathfield does not typically have a need for security at our Council meetings so this may place a further cost on our meetings if implemented.

The banning of closed Briefing Sessions

This is a concern as these are a valuable opportunity to interact with Councillors in a less formal session. There is real value in allowing Councillors the freedom to ask all manner of questions and to gain insight into matters without having to be concerned about how that may make them appear before the public.

It is noted the State and Federal Ministers receive confidential briefing sessions for similar reasons and it is only equitable that Local Councillors receive the same.

FROM THE MAYOR'S OFFICE

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The proposed changes do not have sufficient clarity around the definition of a briefing session. Would Councils be allowed to have confidential briefing sessions from other agencies? Strathfield, along with other affected Councils, has lately been involved in the Transport Oriented Development Scheme and received vital briefings from the State Government during the process.

The practical impact for Council would that banning briefing sessions would force Council to form Committees, and this would involve considerable cost to allow for proper recording, publishing and minuting of proceedings and lose the ability of Councillors to ask questions in a more relaxed atmosphere.

Yours sincerely,

Cr John-Paul Baladi
Mayor of Strathfield



URALLA SHIRE COUNCIL

Office of the General Manager

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Responsible Officer: EA
In reply, please quote: UO/24/3988

13 November 2024

Mr Brett Whitworth
Deputy Secretary
Office of Local Government NSW

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

Dear Mr Whitworth

REVIEW OF THE COUNCILLOR CONDUCT FRAMEWORK

I refer to the Minister's review of the Councillor Conduct Framework. I wish to comment on the proposal to prohibit Councils from conducting briefing sessions for Councillors in the absence of the public. This proposal is strongly opposed. Such a restriction would have a significant detrimental impact on robust and informed democratic decision making by local governments.

Councillor information sessions are regularly conducted at Uralla Council to ensure Councillors are properly informed before being required to make decisions on a wide range of matters. These sessions are exactly how they are described – information sessions only. They are not decision-making forums.

At the first Council meeting of the new Council term on 24th September 2024, Uralla Shire Council formally resolved to endorse a schedule of monthly Councillor information sessions based on these parameters as follows:

1. *Adopts the Ordinary Meeting cycle for 2024-2025 as follows:*
   Tuesday 22 October 2024
   Tuesday 26 November 2024
   Tuesday 17 December 2024
   Tuesday 25 February 2025
   Tuesday 25 March 2025
   Tuesday 22 April 2025
   Tuesday 27 May 2025
   Tuesday 24 June 2025
   Tuesday 22 July 2025
   Tuesday 26 August 2025
   Tuesday 23 September 2025
2. *Endorses the schedule for monthly Councillor information sessions as detailed in this report, noting these are not decision-making forums.*
3. *Notes that informal weekly meetings are held between the Mayor and the GM, to which all Councillors are invited if available.*
4. *Notes that separate community engagement sessions/workshops will be scheduled from time to time to share public information and to gain community feedback.*

It is important that Councillor information sessions are conducted without members of the public being present for many reasons as summarised below:

1. **Confidentiality of Sensitive Information**: Many discussions involve sensitive topics, including financial matters, legal issues, or strategic planning that require confidentiality. Keeping these sessions for Councillors only ensures that sensitive information is protected and that Councillors can speak freely without the pressure of public scrutiny.
2. **Encouraging Open Dialogue**: Closed briefing sessions foster an environment where Councillors can engage in candid discussions. This openness can lead to more productive conversations, allowing for a deeper consideration of issues without the constraints of public opinion or media coverage.
3. **Focus on Complex Issues**: Certain topics may require detailed analysis and discussion that could be misinterpreted if taken out of context. By holding these sessions privately, Councillors can focus on the complexities of the issues at hand, leading to more informed decision-making.
4. **Building Trust Among Councillors**: Private sessions can help build trust and camaraderie among Councillors, as they can share their thoughts and concerns in a safe space. This trust is crucial for effective teamwork and collaboration on community issues. Councillors are able to ask questions or make comments freely and without public scrutiny, including those they may not be comfortable asking in a formal Council meeting.
5. **Enhancing Decision-Making**: When Councillors can discuss matters without external pressures, they can take a more analytical and mature approach to Council meetings and make more informed decisions. The review of complex and lengthy business papers alone is often a daunting process in the absence of earlier discussion with relevant technical officers. Again this is not to guide a particular outcome but rather to ensure Councillors can make informed decisions based on sound understanding.
6. **Commercial in confidence early briefings**: Uralla is in the heart of the New England Renewable Energy Zone REZ. Proposed REZ developers are encouraged to brief Council early in their concept phase so that Councillors and staff can provide guidance based on local knowledge and Council's expectations regarding minimising impacts, maximising community benefits and comprehensive community engagement. These sessions could not be conducted publicly until projects are at a more mature stage.

As noted above, Uralla Shire Council identifies formal and informal meeting program requirements for Councillors and notes that separate community engagement sessions/workshops can be scheduled from time to time to share public information and to gain community feedback.

This is in addition to formal public exhibition of policies and other documents such as development applications as appropriate when a range of communication channels are used including social media, Council's website, and other relevant identified platforms.

Information sessions for Uralla Shire Council are managed by the General Manager in consultation with the Mayor. There are no formal minutes, recommendations, or actions as these are not decision-making forums. Record keeping for information sessions is limited to attendance, declarations of interest and key issues discussed.

The information sessions are an opportunity to ensure Councillors are fully informed on complex matters that are not yet ready for public presentation; for example, commercial-in-confidence development proposals which are still in the negotiation stage, or legal matters. External presenters may provide information to Councillors at these sessions from time to time.

I appreciate your consideration of this proposal and would welcome the opportunity to discuss it further.

Sincerely,

Toni Averay

General Manager

Office of Local Government, Councillor Conduct and Meeting Practices. A New Framework, September 2024 ('Framework')

Submission of Centium Pty Limited[1]

An 'aspirational' code of conduct or an appropriately balanced code

1. The Framework identifies a proposal to develop and implement a new and aspirational code of conduct of expected not enforceable behaviours. The proposed document would not set out 'definitions of misbehaviour.' This approach is not without problems if it were to be adopted in the literal manner expressed in the Framework.

2. Elected councillors have obligations under law to behave in certain ways in the same way as employees. An aspirational code of conduct that failed to identify statutory obligations in relation to corrupt conduct, public interest disclosures, work health and safety (inclusive of bullying and psychosocial hazards), sexual harassment, and discrimination, would be a retrograde step.

3. We would argue that a new code of conduct should strike a balance between being aspirational and prescriptive.

Penalties imposed by the Privileges Committee and procedural fairness

4. The Framework identifies that 'penalties' against councillors 'could be imposed by [our emphasis] the Privileges Committee.' Censure, a warning, loss of sitting fees, or referral to 'an appropriate tribunal or body' for a 'more serious sanction' are the penalties that a Privileges Committee might 'impose.'

5. Since the decision in *Cornish v Secretary, Department of Planning, Industry and Environment* [2019] NSWSC 1134, the only disciplinary outcome open to a council to impose on a councillor has been a censure. A censure is the only disciplinary action the Procedures for the Administration of the Model Code of Conduct makes open to a conduct reviewer to recommend that a council take in respect of a councillor following the completion of an investigation.

6. Any recommendation that a councillor be subject to a censure can only be made following:

    a. the two-step process comprising a preliminary assessment and investigation process provided for in the Procedures
    b. a respondent councillor being given:
        (i) particularised detail of allegations of a possible breach of the Code of Conduct
        (ii) the opportunity to make written or oral submissions to the conduct reviewer
        (iii) the ability to review and make submissions about the draft report of the investigation.

[1] Centium is an experienced provider of investigation, internal audit, probity and governance services to NSW Councils, the NSW Government, the corporate sector, and community-managed organisations. We have conducted a large number of preliminary reviews and investigations for Sydney, Greater Sydney, and rural councils.

7. The Procedures have baked into the system protocols that exceed what is required procedurally to complete investigations of comparable conduct issues involving, for example, NSW Government employees or council officials other than a councillor or a general manager. Procedural fairness and the requirement for evidence to be sought and tested are themes that run throughout the Procedures and its requirements.

8. The Framework is proposing that the Privileges Committee will have the power to impose a broader range of penalties than a recommendation that a councillor be subject to censure, with that decision ultimately being by the elected council.

9. The document is silent on if or how the Privileges Committee would attempt to afford procedural fairness to an affected councillor.

10. A right to 'procedural fairness' arises in relation to a person whose rights or interests may be adversely *affected* by a decision-maker, a court, or an administrator. In *Kioa v West* (1985) 159 CLR 550, Mason J, in a well-known passage, outlined the principles of 'natural justice' (or procedural fairness) [at 585]:

> It is a fundamental rule of the common law doctrine of natural justice … that, generally speaking, when an order is to be made which will deprive a person of some right or interest or the legitimate expectation of a benefit, he is entitled to know the case sought to be made against him and to be given the opportunity of replying to it. … The reference to 'right or interest' in this formulation must be understood as relating to personal liberty, status, preservation of livelihood and reputation, as well as to proprietary rights and interests.

11. Procedural fairness has been said to be 'concerned with ensuring the investigation process ultimately relied on by the decision-maker is both fair and proper',[2] and comprises both the hearing rule and the rule against bias.

12. The proposed penalties the Privileges Committee could impose touch (at least) a reputational interest. If a Privileges Committee does not obtain and test evidence (the operation of the hearing rule) its decisions would be vulnerable to judicial review.

13. The Framework is silent on what process of appeal might be available to an affected councillor following the imposition of a Privileges Committee penalty, or how such an appeal would be managed.

14. The Framework proposes that a committee is invested with a power to make adverse inferences and conclusions about a councillor and impose penalties (exceeding what is provided for in the Procedures) based on a process that does not afford procedural fairness to an effected councillor (a reduction in the approach taken in the Procedures).

15. It is difficult to see how the proposed approach would be perceived as—or operate as—fairer than the current system.

[2] Rachel Cornes, 'Procedural fairness in workplace investigations' in Paul Hoctor and Kerryn Tredwell (eds), *Workplace Investigations: Principles and Practice* (LexisNexis, Second Ed, 2023) 104.

'Councillor misbehaviour in public office', 'no investigations of misbehaviour', and no external investigators

16. The Framework proposes reformulating or redefining councillor 'misconduct' into 'misbehaviour in public office' and proposes three categories of behaviour that would be caught under the definition. The Framework notes that 'there would be no investigations of misbehaviour', assuming that all conduct by councillors would be appropriately managed by the proposed Privileges Committee and ancillary process.

17. There are types of conduct by councillors that arguably would not fall within the 'misbehaviour' definition. Bullying behaviour by a councillor directed at an employee of a council is an example. Sexual harassment and discrimination of one kind or another are other examples.

18. While councillors are not an 'officer' under the *Work Health and Safety Act 2011* (NSW)[3] they hold obligations as 'other persons at the workplace' to take 'reasonable care not to adversely affect the health and safety of other persons.'[4]

19. It is difficult to see how, given the definition and subcategories of 'councillor misbehaviour' and the 'no investigation' approach of the Privileges Committee that bullying, sexual harassment, others forms of harassment, or discrimination, could be appropriately addressed. These are types of behaviour that require careful and sensitive consideration and investigation.

20. The Framework states that 'there would be no role for privately hired investigators to determine whether the Code of Conduct has been breached.' The document does not identify if the Office of Local Government would be responsible for investigating the types of conduct we have discussed above.

21. While we are conscious we would be seen as having a vested interest in this topic, we are genuinely concerned about a process that adopts the blanket view that external investigation support from experienced or subject matter expert investigators is never appropriate or required.

[3] *Work Health and Safety Act 2011* (NSW) s 4 (WHS Act).
[4] WHS Act (n 2) ss 8 and 29; NSW Government, Office of Local Government, *Councillor Handbook 2021* (December 2021) 92; Bruce Hodkinson SC, Memorandum of Advice Re Obligations of Elected Councillors under the Work Health & Safety Act 2011 <https://www.lgnsw.org.au/common/Uploaded%20files /PDF/whs-act-councillors-obligations-2015.pdf>.

Recommendations

22. Centium offers the following recommendations based on our accumulated experience of having undertaken a very large number of preliminary assessments and investigations for NSW councils.

Recommendations

We **recommend** that the Office of Local Government:

1. ensures that a new code of conduct includes specific reference to conduct by councillors required under legislation that should be enforceable
2. considers whether the three-limbed definition and sub-categorisation of 'councillor misbehaviour' adequately and appropriately covers the field in terms of the types and range of conduct that could be raised about a councillor
3. considers if the proposed Privileges Committee approach to 'councillor misbehaviour':

   will or can afford procedural fairness to affected councillors
   will be fit-for-purpose for all of the kinds of conduct matters that might be relevant to a councillor
4. considers leaving open the option that in the certain circumstances external investigation support might be appropriate and necessary.

CABONNE COUNCIL

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12 November 2024

Councillor Conduct Framework Review
councillorconduct@olg.nsw.gov.au

To whom it may concern

Councillor Conduct Framework Review – Cabonne Council

Thank you for the opportunity to provide feedback on the Councillor Conduct Framework Review (the Review)

Cabonne Council (Council) recognises that you will receive a large volume of submissions on the Review, including from both Local Government NSW and the Central NSW Joint Organisation of Councils (Central NSW JO), the latter of which I am serving as the current Chair.

Rather than addressing each individual question, Council's feedback aligns with the broad headings of the discussion paper

Cabonne Council wholeheartedly agrees with the principle outlined in the discussion paper that Councils should be accountable to their communities, providing strong and effective representation, leadership, planning and decision-making. This principle is one that is expected of all Cabonne Councillors.

The need for change – returning local democracy to councils

Firstly, the paper highlights a number of concerns directly related to the Office of Local Government's (OLG) resourcing, role as a regulator, and challenges faced in conducting reviews.

It is disappointing that the paper does not outline any clear ways to better resource the OLG to work more effectively and collaboratively with Councils. In fact, despite the proposed introduction of a NSW Local Government Privileges Committee, the OLG still retains responsibility for preparations of briefs of evidence for consideration by appropriate tribunals/bodies.

Yet, the paper also stresses significant delays faced by the OLG completing investigations. It would be good for the sector to have a clear understanding of what changes have been proposed to address deficiencies and improve functionality of the OLG.

What are the principles of change?

Cabonne Council's position on this section is in line with the Central NSW JO submission.

However, better enabling OLG to support not just regulate the local government sector would be a welcome inclusion.

Potential changes to the code of conduct and oath of office

Council is not objectively opposed to the concept of a Code of Conduct assuming that the Code of Conduct would prescribe a set of rules or minimum standards for the behaviour of Councillors.

Given the breadth of issues identified by OLG in the discussion paper, it is not clear why an aspirational Code of Conduct over a mandatory Code of Conduct is being sought.

Furthermore, the assumption has to be made that the terminology of "aspirational" refers to a voluntary code arrangement, however the definition of "aspirational" has not be made clear within the paper.

In the example Codes provided, the Legislative Council Code is prescribed within legislation. This Code also covers the treatment of staff and others. It is not clear within the discussion paper if this provision would be included in the proposed aspirational Code of Conduct.

Council also notes that Industry Codes of Conduct often cover the relationships between industry participants and customers. Clarity is required as to whether the Code would apply to the role of the NSW Government in relation to Local Government, and Councillors interaction with community members.

A draft of the proposed aspirational Code of Conduct should be provided to Councils for further comment.

Potential changes to the definitions and assessment of councillor misbehaviour

Council is not opposed to the establishment of a Local Government Privileges Committee. This Committee however must be resourced appropriately and include expertise from across NSW – including regional and rural areas.

Further details regarding the proposed process for complaints being escalated to the Privileges Committee needs to be provided, as this is not clear within the discussion paper – particularly in relation to determining the test of appropriate behaviour.

In relation to addressing inappropriate lobbying, both the Federal Lobbying Code of Conduct and the NSW Lobbying Code of Conduct provides a well-tested and useful framework for ensuring that contact between lobbyists and Government representatives is in line with public expectations of transparency, integrity and honesty.

Council believes that this framework could be extended to Local Government.

Dispute resolution and penalty framework

Cabonne Counci'ls position on this section is in line with the Central NSW JO submission.

Again, given the issues identified in the briefing paper in relation to the OLG, clarification relating to the resourcing of OLG is required.

Although referenced, extending the powers of the Privileges Committee to include financial penalties such as loss of sitting fees, would ensure that this Committee was not a toothless step in the process of referral to a tribunal or body.

Restore dignity to Council meetings

Council is completely opposed to the banning of briefing sessions.

The banning of briefing sessions, and/or requirement for Council briefings to be made public, is a higher standard than the requirements currently placed on Government Ministers.

This proposed ban is the equivalent of having party-room meetings open and broadcast to the general public. As in the Parliament, many key pieces of information, engagement with stakeholders, answering of questions, does not happen in the chambers/houses of Parliament. Briefing sessions, meetings, discussions all happen behind closed doors.

The intent of this paper is to create opportunities for Councillors to work better, work more effectively, and work more collegiately to deliver outcomes for their communities.

Taking away opportunities for Council staff to provide briefings to Councillors through workshops takes away the intent of the proposed framework. Furthermore, as the paper alludes to the Mayor being precluded from this restriction, it places greater risk that a Mayor could be corrupted, or influence decisions as information that was once transparently provided to all Councillors would only provided directly to the Mayor.

Furthermore, there is a failure within the discussion paper to take into account that councillors receive much less administrative and financial support than their State and Federal counterparts. For many Councillors the work is often voluntary and part-time, with many councillors in full time employment in addition to being elected representatives. This impacts the ability of councillors to attend meetings that are in addition to the ordinary and committee meetings of council. It is vital that all meetings, workshops, briefings maximise Councillors limited time, and are facilitated in a way that results in best outcomes for decision making.

Council notes that under various ministerial codes of conduct, in NSW, Victoria, and the Australian Capital Territory, Ministers are required to disclose their diaries on a quarterly basis. These disclosures are expected to provide sufficient detail with respect to the date, location, and attendance at the meeting. However, these meetings are not made public.

Perhaps, to improve transparency, a similar disclosure requirement in relation to briefings could be extended to Councils, that would outline topics discussed at briefing sessions.

Cabonne strongly objects to removing the opportunity to participate in closed briefing sessions. If the purpose of the removal of workshops is thought to be necessary to address corruption risks identified by ICAC, it may be more appropriate to ban briefings on planning matters.

Thank you again for the opportunity to provide feedback on the discussion paper. Our Council looks forward to your consideration of the matters and concerns raised, and further detail regarding some of the proposed elements.

Yours faithfully

[redacted]

Clr Kevin Beatty
MAYOR

23 October 2024

Office of Local Government
Strategic Policy Unit
By email: councillorconduct@olg.nsw.gov.au

Dear Sir/Madam

Subject: Councillor Conduct Framework Review

Lake Macquarie City Council staff appreciate the opportunity to contribute to the Office of Local Government's Councillor Conduct Framework Review.

Strong, effective and transparent local councils are at the heart of thriving communities across Australia. No level of government works closer to the issues and the people it represents, and this responsibility cannot be understated.

Council staff support the vision of the Office of Local Government in improving the Councillor Conduct Framework and by extension the reputation and status of local government both in community standing and as an important tier of government.

Council staff's submission attached addresses the proposed changes as outlined within the draft framework and provide general commentary on their application.

Should you require further information or wish to follow up on any matters within this submission, please contact Loren Cousins, Governance and Privacy Lead on (02) [redacted] or by email [redacted]

Thank you in advance for your consideration of this submission.

Yours faithfully

[redacted]

Morven Cameron
Chief Executive Officer

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Lake Macquarie City Council staff submission – Councillor Conduct Framework Review

Heading	Questions	Council staff response
Principles of change	• Are we missing anything in the principles of change?	• Council staff recommend a principle of change to the councillor conduct framework should be to encourage positive collaborative practice for councillors in undertaking their roles as members of the council governing body. - Section 223 of the *Local Government Act 1993* (the Act) contains the role of a council governing body including to develop key plans and policies and make decisions as a collective group. - Section 232 of the Act provides for the role of a councillor in acting as a member of the governing body. - The councillor conduct framework should promote positive and respectful collaboration practices among the members of the governing body in exercising their respective functions, in a transparent and accountable way. • Council receives community feedback during and after each Local Government election, that the electors find it difficult to find information on the individuals they are voting for. - Like members of NSW Parliament, councillors are ultimately accountable to the community for their actions. - Ensuring pre-election information about potential councillors is available should be a key priority in promoting accountability for councillor conduct and behaviour. - Election process requirements are a vehicle to promote strong disclosure of relevant information, such as values and behaviours.

Heading	Questions	Council staff response
Potential changes to the code of conduct and oath of office	• What are the key elements of an aspirational Code of Conduct that should be enshrined? • What are your views about aligning the Oath of Office to the revamped Code of Conduct?	• We support an aspirational code of conduct that includes positive obligations on councillors toward: - Fairness and equity - Safety – both physical and psychosocial of councillors, members of the public and staff - Legality and permissibility of decision-making process - Conflicts of interest and requirements for disclosure - Gifts - Use of council resources - Upholding the code • Detailed information to support appropriate interactions with council staff, recognising the legislated role of the Chief Executive Officer (CEO), should be included in council-specific policies, together with access to information and facilities. • As the oath of office occurs only once per council term, it is important to provide more regular reminders of positive obligations to councillors for their conduct. The councillor professional development program is an important vehicle for such reminders, as training can be delivered in a manner that is tailored and flexible to the needs of the council.
1. Potential changes to the definitions and assessment of councillor misbehaviour	*Conflicts of interest* • Is the proposed pecuniary interest framework appropriate? • Do you agree with the principles of significant or major non-pecuniary interests?	• We appreciate the importance of pecuniary interest disclosures as a key transparency tool for local government decision-making. In publishing disclosures of pecuniary interests, we seek assurance that the current ability of councils to redact information about residential addresses under section 739 of the *Local Government Act* will be retained to protect safety for those involved in councils. • We recognise that, as members of their community, councillor conflicts of interest are inevitable, and the key is to disclose and manage these appropriately. We agree this will be dependent on the individual

Heading	Questions	Council staff response
		circumstances. • In principle, we support an objective test for whether a non-pecuniary interest is declared. • However, it is also important to provide support for councillors to develop appropriate declarations and management strategies. In our experience, matters are typically minor and can be best addressed early through behavioural initiatives at the local level. It would be undesirable for councillors to not make disclosures in the first place or 'over-declare' minor relationships and recuse themselves from significant decisions, purely for fear of not getting it right.
	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?	• We support the introduction of transitional arrangements including to ensure there is sufficient time for proposals in this regard to be communicated to impacted parties and promoted to candidates for election. • Enforcement of these requirements should be a matter for external regulators.
	Councillor misbehaviour in public office • Is this the appropriate threshold to face a Privileges Committee? • How else can complaints be minimised?	• We agree an external body like a Privileges Committee should only deal with matters that are more serious in nature. Given the general nature of the misbehaviour definitions, guidance will be needed about example of specific behaviours that do and do not meet the thresholds in practice. • It is however unclear how the proposed Privileges Committee would take into consideration local community conditions and expectations, given the different council operating models. It is not specified how the Privileges Committee will be appointed, what transparency it will have in operation, and its funding model. It is paramount such a committee addresses issues in a

Heading	Questions	Council staff response
		timely manner. • One way of minimising complaints would be to advise the CEO of complaints/concerns raised so they can consider options for education or professional development of councillors to reduce multiple instances of minor complaints. Education may be a tool to address a broader council system issue or prevent a pattern of poor behaviour giving rise to complaints in the first place. It is not clear how this would work with a Privileges Committee model.
	Addressing inappropriate lobbying • What key features should be included in lobbying guidelines and a model policy?	• For any lobbying guidelines or policy, it will be important to ensure measures are targeted to key corruption and other risks, having regard to the administrative and resourcing burden on councils and council staff. Definitions of lobbying, interested parties and development matters will be important, as many matters can lead to robust community representation. The OLG could consider whether the guidelines should include benchmarks based on the size or cost of developments that trigger lobbying provisions. • We agree principles for councillor personal interactions with developers or planning proponents should be addressed in lobbying guidelines. Council currently offers an option of site inspection committees which operate as a formal and transparent mechanism for all interested parties to provide information to councillors in development matters.
Dispute resolution and penalty framework	*Giving OLG the power to issue penalty infringement notices (PINs)* • What level of PIN is appropriate? *NSW Local Government Privileges Committee* • Are the penalties proposed appropriate, and are there	• It is unclear how an OLG discretion to issue PINs for minor or insignificant breaches of the conflicts of interest declarations will ensure information is provided to OLG more effectively. Depending on the consequences of a PIN, this may detract from the likelihood that political actors may report matters proactively and address. • We support provision of formal lower-level warning tools prior to issuing a PIN to promote positive behaviour for truly minor or administrative issues. • Where a PIN included a financial consequence, we would be concerned if there was an expectation for a council to withhold part of a councillor's fee in order to pay.

Heading	Questions	Council staff response
	any further penalties that should be considered? *Referral of significant sanctions to appropriate tribunal or body* • Are the existing sanctions available under the Local Government Act sufficient? • Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?	• We support formal tribunal decisions for significant sanctions (such as suspension or withholding fees) with OLG playing quasi prosecutor role for very serious matters referred.
Restoring dignity to council meetings	*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? *Banning briefing sessions*	• In respect to the proposal to remove the councillor fee entitlement as a result of expulsion from a meeting, the OLG should consider the administrative burden for staff to apply this. • Consideration should be given to a clearer definition of briefing sessions, keeping in mind the below: - Briefings can provide a forum for councillors to receive detailed, technical information and ask questions in a setting that encourages candid discussion without the pressure of public scrutiny. This can lead to more informed decision-making. Importantly, councillors do not make or form decisions during briefings; they gather information to make well-informed decisions in public meetings.

Heading	Questions	Council staff response
	• Are there any other measures needed to improve transparency in councillor deliberations and decision making?	- Briefings also support matters being discussed in the closed forum to protect commercial advantage, legal privilege etc. that could require a meeting to be closed to the public if specific questions were raised. Alternatively, a briefing session held prior to the meeting can be used to address these specific confidential components and then the debate for the item can be open to the public with transparent discussion, not raising specific confidential components. - Section 8C of the Act contains the integrated planning and reporting principles that apply to councils, including identification, development and review of community needs and aspirations, strategic goals and activities to achieve these, and that they should collaborate with others to maximise achievement of strategic goals. It is unclear how this could be achieved without sessions involving only councillors. - Councillors are a key stakeholder group in terms of community engagement and should participate in the development of strategies and plans for a council. Again, in the absence of briefing sessions, it is unclear how this could be achieved. • A record of a briefing session, including topics discussed, attendees and any declarations of interests can be made available to the public if requested.

Subject: Submission on NSW Office of Local Government **- *Councillor Conduct Framework Review***

To: NSW Office of Local Government

Via email: councillorconduct@olg.nsw.gov.au

To whom it may Concern,

I was a Councillor on Kiama Municipal Council between the 4 December 2021 and 14 September 2024. This was my first and only term as an elected official. I did not re-stand for re-election in the 2024 elections, in the main due my experience on Kiama Council, my observations of councillor and staff conduct on other NSW Councils, and the systemic failure of the NSW Local Government to respond adequately in many of these cases.

Please accept my submission in response to the subject report and the recommendations within.

Introduction

I very much welcome the introduction of reforms to the Councillor Conduct framework. It is much needed. Across NSW, allegations of Councillor misconduct and corruption in local government often makes the news headlines.

Throughout my 40-year career working in Information Technology and Communications in the public and private sector I have developed and contributed to Federal Government new policy proposals across the Defence, Intelligence, Finance, Immigration and Environmental portfolios. I have also been a member of international working groups and Federal Government departmental boards, and during the past 11 years have participated in Federal Government multi-portfolio assurance reviews.

During my career, while there have been challenging moments, I have never observed or been subject to the challenges related to misconduct as I have in my dealings in the NSW Local Government sector. This has had devasting outcomes for many NSW Councils including Kiama. And no-one is held accountable and the ratepayers pay the consequences.

My observations and experiences underpin the matters I raise in this submission, which I hope you will consider seriously.

I support the proposed principles as detailed on page 7 of discussion paper. In particularly I'm very pleased with the principle in favour of councillors speaking freely and publicly on matters pertaining to their council, even when that councillor is disagreeing with or being critical of the decisions of the majority. This is a positive step.

Below I detail the parts of the proposed reforms that I'm supportive of as well as areas of significant concern.

Increased powers to mayors and ex mayors

I am most concern about the implied message in the reforms that if someone is or has been a mayor they are, ipso facto, people with the highest standards of conduct and integrity. However, this is not always the case. The most serious offences are often carried out by people in the mayoral role as evidenced in some of the cases referenced in the appendix.

While I appreciate the need for adequate powers and mechanisms to effectively chair meetings in a democratic way – "*fairly, ethically and without bias in the interests of the local community*" - giving

mayors more power will increase the risk of a corrupt mayor abusing their powers to avoid scrutiny of their own improper behaviour.

The mayor has significant powers under the existing framework. Giving them greater power to expel councillors from meetings and to apply a financial penalty in the month of their indiscretion opens up a largely uncontested avenue for a mayor to silence dissenting voices or to 'punish' another councillor for "*political or vexatious reasons*". It increases the potential for escalating disharmony and disfunction between Councillors.

Avenues to address circumstances where this power is abused by a mayor are very weak within the existing code of conduct framework, and have not been explicitly addressed in the proposed reforms. More detail is required about the right of appeal for a Councillor who has been charged with an act of disorder as per statements on page 17. The new framework should articulate strengthened methods for reporting abuse of power by the CEO or the mayor.

I am very supportive of the proposed reforms to remove private investigators from the councillor conduct process and to establish an external committee to examine all allegations of misbehaviour in public office. However, I am very concerned by the proposal to restrict membership to ex councillors with mayoral experience. While such candidates may have been elected mayors at some point in time, they will still be *unelected* State Government officials determining penalties and guilt.

In addition to the assumption that mayors and ex-mayors are beyond reproach, the '*Privileges Committee*' as described could be open to cronyism during the appointment of members to the committee as well as during the complaint management process. The term '*Privileges*' also sends the wrong message. Are members to receive special privileges or are they thought to be '*privileged*' in some way?

Recommendation 1: The name of the Privileges Committee be changed to better reflect the Governance role of committee members in upholding the highest standard of integrity and behaviour.

Recommendation 2: Selection of members to the committee be broadened and based on related skills and experience rather than restricting membership to mayors and ex-mayors only.

Recommendation 3: Introduce mechanisms whereby complaints against the CEO or mayor can be lodged directly with an external and independent body in circumstances where either the mayor, the CEO, or both are implicated in the complaint.

Conduct of other council officials

I am concerned that the scope of the review is limited to Councillor conduct.

It's not just Councillors who behave badly. An internet search brings up many examples of senior Council staff acting inappropriately or engaging in corrupt conduct and even fraud. The most damage occurs when any council official, particularly those in a position of power act inappropriately, fraudulently, or in a corrupt manner as evident in the cases listed in the appendix.

The conduct and complaint management of all council officials needs to be looked at holistically. Managing the potential for, or perceptions of, improper conduct by council staff and advisory committee members also has to be considered in the context of councillor behaviour.

Advisory committees have direct contact with council staff and have significant influence in staff recommendations put to a council that can also greatly influence prioritisation of budgetary spend when council staff adopt significant and often 'informal' recommendations from committees without seeking council endorsement.

The relationships between the CEO senior executives and councillors, and the relationship between the CEO and the mayor are key in making sure such conduct is brought to light and managed effectively and adequately.

Recommendation 4: Review and update the complaints management process for all council **officials** so that misbehaviour, corruption and fraud are managed consistently and holistically.

Proposed changes to the code of conduct and oath of office

I am in favour of aligning the Oath of Office for local councillors with the code of conduct. I think this is a positive step to make clear the behavioural standards expected of a councillor when they take office.

However, I am very concerned about making the code of conduct '*aspirational*' and modelled on the NSW Parliamentary code of conduct as detailed on page 8 of the proposed reforms. In my view making a code of conduct aspirational will only weaken the ability to bring councillors who do behave badly to account. Further, the behaviour by some NSW members is often undesirable and hardly something to aspire to. If this SBS report is anything to go by using this model could result in a further deterioration of councillor conduct.

Recommendation 5: Re-think modelling the councillor code of conduct on the NSW Parliamentary Code. The model code of conduct should be grounded in existing state and federal legislation such as Safework NSW and the NSW Fraud and Corruption prevention policy.

In reality councillors have different motives for being on a council, including hubris and status, as a political career stepping stone, to advantage or favour particular business sectors, colleagues or friends. They also have different values and ideas about what is and isn't acceptable behaviour, and what is in the best interest of the community. And it is not uncommon for councillors to form factions and or resort to bullying or mobbing like behaviour to protect their turf, cover up past mistakes, or for other reasons.

Further consideration is required where councils are experiencing substantial financial pressures (a common and growing problem in NSW local government). Bad behaviour (of councillors and council staff) is often triggered when councils are experiencing financial difficulties. At these times services are being cut and the contest for how scarcely available funds are spent is greater. This is also a time when councils are at risk of being placed in administration.

In my experience the cost of making a 'code of conduct' complaint, and/or the risk of being seen as dis-functional and placed in Administration has been used as a 'stick' to deter Councillors from submitting a 'code of conduct' complaint. The underlying message is to tolerate bad behaviour and misconduct rather than calling it out and submitting a code of conduct. This needs to be considered with regard to detecting and managing misconduct.

Recommendation 6: Definitions of misbehaviour should clearly articulate what constitutes bully and mobbing behaviour.

Recommendation 7: Review and revise code of conduct frameworks so that inappropriate lobbying of all council **officials** is consistently and holistically dealt with.

Banning private councillor briefing sessions

The proposal to ban private councillor briefing sessions, except in very limited circumstances is a positive step, and I'm very supportive of the proposal to strengthen lobbying guidelines for local government.

However, councillors frequently need to be briefed on complex financial, legislative and planning matters, and to have the opportunity to ask questions and seek clarification on the details of council reports. Banning councillor briefing sessions outright would have detrimental effects to informed decision making**.**

The matter of private briefing session between council staff, state and regional bodies, the private sector and/or property developers has not been addressed. While I appreciate the need to protect intellectual property in the private sector, more consideration of transparency of meetings involving any council official is also required. Again, as detailed in the appendix, council staff have also been engaged in corrupt and fraudulent conduct related to property development with significant detrimental impacts to the respective councils and their communities.

Recommendation 8: The reforms should explicitly encourage councillor briefing sessions to continue **and** to be accessible to the public.

Closing remarks

In closing I would like to draw your attention to this report produced by Transparency International – Australia. It emphases the need to strengthen mechanisms for detecting, responding to and preventing (or at least minimising) fraud and corruption in Australia.

It shows that Australia's score in the Corruption Perceptions Index (CPI) has been sliding down for a decade while other OECD countries in our region have been trending upwards including New Zealand and Papua New Guinea. In 2022 the result was the ***worst Australia had ever received*** *since Transparency International's new methodology began* ***in 2012.***

As detailed in the Transparency International report, "*corruption disproportionately impacts marginalised communities, undermines human rights, and can damage the natural environment, such as when dodgy planning deals are done. In short, corruption threatens the health of our democracy*."

Thank you for the opportunity to respond to the Office of Local Government Councillor Conduct Review. It is a significant and important part of responding to the above concerns. In summary the recommendations I offer are:

Recommendation 1: The name of the Privileges Committee be changed to better reflect the Governance role of committee members in upholding the highest standard of integrity and behaviour.

Recommendation 2: Selection of members to the committee be broadened and based on related skills and experience rather than restricting membership to mayors and ex-mayors only.

Recommendation 3: Introduce mechanisms whereby complaints against the CEO or mayor can be lodged directly with an external and independent body in circumstances where either the mayor, the CEO, or both are implicated in the complaint.

Recommendation 4: Review and update the complaints management process for all council **officials** so that misbehaviour, corruption and fraud are managed consistently and holistically.

Recommendation 5: Re-think modelling the councillor code of conduct on the NSW Parliamentary Code. The model code of conduct should be grounded in existing state and federal legislation such as Safework NSW and the NSW Fraud and Corruption prevention policy.

Recommendation 6: Definitions of misbehaviour should clearly articulate what constitutes bully and mobbing behaviour.

Recommendation 7: Review and revise code of conduct frameworks so that inappropriate lobbying of all council **officials** is consistently and holistically dealt with.

Recommendation 8: The reforms should explicitly encourage councillor briefing sessions to continue **and** to be accessible to the public.

I am happy to be contacted to clarify any of the matters raised above via phone or email – details below.

Yours Sincerely



Karen Renkema-Lang

[redacted]

Appendix - Examples of bad behaviour by Council Staff and Mayors

Following are several examples of corruption cases involving local government officials in New South Wales. These cases highlight significant breaches in ethical standards by senior council officials and emphasise the importance of transparency and accountability in local government.

1) In April 2024 Tony Nguyen, a senior project engineer at Inner West Council, was found by ICAC to have engaged in corrupt conduct. Nguyen manipulated contracts worth over $1 million to benefit companies with which he had undisclosed associations. This involved collusion between contractors and resulted in significant financial mismanagement.
2) In 2023 Angelo Tsirekas, former Mayor of Canada Bay, was found guilty of serious corrupt conduct by the NSW Independent Commission Against Corruption (ICAC). He was found to have taken bribes from a developer in exchange for favourable decisions on planning matters. Tsirekas accepted overseas flights and accommodation as part of these bribes and was ultimately dismissed from office in 2023.
3) In 2023 **ICAC finds three former councillors corrupt over Hurstville developments** https://www.abc.net.au/news/2023-08-30/nsw-icac-finds-former-councillors-corrupt/102795082
4) Auburn Deputy Mayor – convicted of election fraud and later domestic violence. https://www.theguardian.com/australia-news/2023/jul/03/salim-mehajer-found-guilty-fraud-offences-former-deputy-mayor-auburn-council-sydney
5) In 2014 - The General Manager of Burwood council whose "insane jealousy" over suspicions that his wife was having an affair was jailed after he billed the Council for $44,000 for the services of private detectives he engaged to catch his wife cheating. https://www.smh.com.au/national/nsw/former-burwood-council-general-manager-pat-romano-jailed-20141107-11irmy.html
6) In 2012 a broader investigation, known as Operation Jarek, uncovered corruption across 14 local councils in NSW. This investigation found that several employees and contractors engaged in corrupt activities such as creating false invoices and accepting gifts to manipulate procurement processes - https://www.governmentnews.com.au/new-corruption-scandal-hits-14-nsw-councils/
7) This article shows how pervasive and serious corruption in local Government has been going back even further - https://www.crikey.com.au/2008/03/04/australias-dodgiest-local-councils-a-crikey-list/
8) The most shocking of all is the account of Wollongong Council in the 1990s and the involvement of the Mayor and other officials at the time in a paedophile ring which culminated in very gruesome murders https://www.bmartin.cc/pubs/19gong/19980629mercury.pdf

BROKEN HILL
CITY COUNCIL

Quote No L24/2134 - 11/21
TK:LJB

Telephone / Personal Enquiries
Ask for Mayor Kennedy

Please address all communications to:
The General Manager
240 Blende Street
PO Box 448
Broken Hill NSW 2880
Phone 08 8080 3300
Fax 08 8080 3424
council@brokenhill.nsw.gov.au
www.brokenhill.nsw.gov.au

ABN 84 873 116 132

7 November 2024

Office of Local Government
Council Governance Team
5 O'Keefe Avenue
NOWRA NSW 2541
Email: olg@olg.nsw.gov.au

Dear Sir/Madam

Submission - Councillor conduct and meeting practices – a new framework discussion paper

A Councillor Workshop was held on 23 October 2024 to discuss the Office of Local Government's (OLG) Circular to Councils No. 24-17 and the Discussion Paper – Councillor conduct and meeting practices, a new framework.

All Councillors present at the briefing were unanimous in their support of all matters raised in the Discussion Paper and the proposed amendments to the Model Code of Conduct and Model Code of Meeting Practice to ensure effective Local Government.

Councillors welcome the proposed principles of change:

- Council leadership and decision making is paramount.
- Freedom of speech.
- Transparency and accountability.
- Significant penalties should only be imposed by a judicial or quasi-judicial body.
- A strong and proportionate local government regulator.
- Subsidiarity.
- Justice is timely and proportionate.

In particular, Councillors voiced their strong support of the following proposed amendments:

- Strengthening of the Model Code of Conduct to provide clear delineation between trivials, vexacious and complaints of a political nature as opposed to the more serious misconduct of a pecuniary and personal gain nature or a significant non-pecuniary nature. Council also welcomes the introduction of the Privileges Committee as a more streamlined mechanism for the handling and processing of Code of Conduct complaints. This should result in a reduction in time to finalise complaints, removes the General Manager from the process, as well as providing a saving in costs to Council.

  Councillors also support the process for more serious Code of Conduct complaints to be referred to a tribunal or body for the more serious sanctions or the suspension of Councillors.

Continued...

AUSTRALIA'S FIRST HERITAGE LISTED CITY

- Improving the transparency of Council decision making by removing the option for Councils to hold pre-Council Meeting briefings (usually closed to the public) which will ensure that discussions regarding items of business are held during Standing Committee Meetings and Council Meetings, which are open to the public.

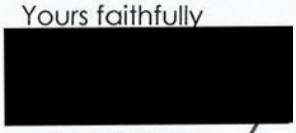
- Allowing Councillors to speak publicly on the decisions of Council and to be able to respectfully voice their views in opposition of a Council decision.

- Reviewing an alternative means of managing the inherent conflict that Councillors undertaking real estate and development business activity may have in development matters that come before Council in a Council Meeting, rather than excluding this sector of the community from nominating as a candidate for Local Government.

- Restoring the prestige and dignity of Council Meetings to support the Mayor to preside over meetings and ensure meetings are held in an orderly and dignified manner.

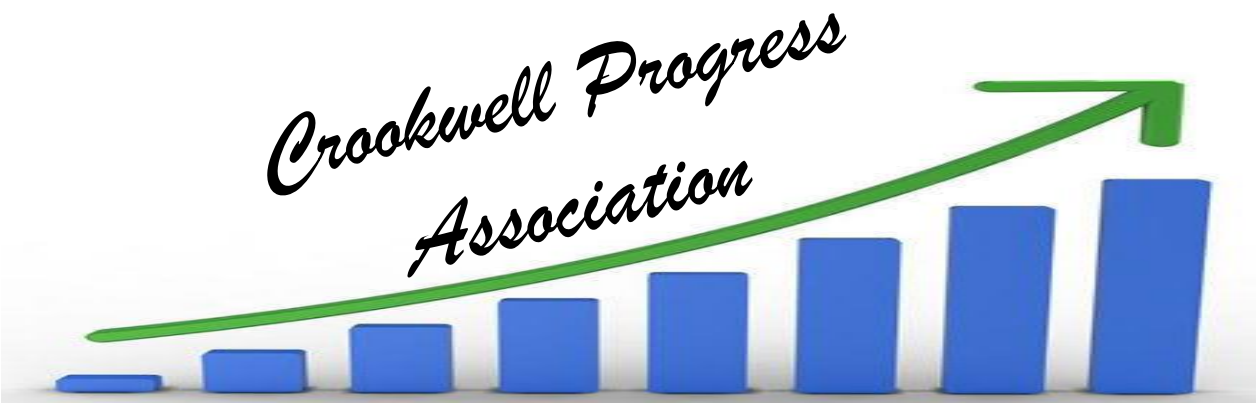
Council looks forward to hearing the outcome of the Office of Local Government's review of the Model Code of Conduct and the Model Code of Meeting Practice for NSW Councils.

Yours faithfully



TOM KENNEDY
MAYOR

Note: the above submission was endorsed by Council at its Ordinary Meeting held 30 October 2024, Minute No. 47668.



[redacted]

November 11th, 2024

NSW Office of Local Government

Re: Councillor Conduct Framework Review
Councillor Conduct and Meeting Practices Discussion Paper
Banning briefing sessions, page 18

We wish to strongly support the NSW Office of Local Government proposal that councils will no longer be permitted to hold pre-meeting briefing sessions in the absence of the public.

We agree with the statement in the discussion paper that *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 that councillors have. Closed council briefing sessions are being used to make decisions away from the public view.*

We believe that discussion at these sessions should be transparent and should give an idea of why decisions are made by councillors at the monthly meetings.

Section 2.1 of Council's Code of Meeting Practice states that "Council and committee meetings should be *transparent* – decisions are made in a way that is open and accountable".

Despite section 3.37 (councillors are instructed not to use pre-briefing sessions to make preliminary decisions about items of Council business), opinions are still being formed and decisions are being made at the pre-meeting briefing sessions.

When the decision to instigate these closed sessions was made after a "Working Together to Deliver" workshop was held in February 2018, five Upper Lachlan Shire councillors voted in favour of the sessions and four councillors voted against. The sessions were introduced under the pretext of being "workshops" and were closed to the public to allow senior staff and councillors to be more open in their comments and discussions while not being embarrassed in front of the public by their lack of knowledge or their ignorance of the matters being discussed.

However, this also meant that there was no public perusal of the advice that was being given by senior staff nor the comments made by councillors.

It was obvious that decisions were being made at these "workshops" when the time taken to conduct an ordinary meeting of the local council was drastically reduced after these sessions were introduced midway through 2018, often with little or no debate taking place at the council meetings.
We strongly support the principle of change: *Transparency and accountability – as a democracy councils need to hear, consider and debate issues in an open manner*

We believe that residents viewing the monthly council meetings are not hearing all the information provided at the closed pre-meeting briefing sessions as debate on these matters is non-existent.

In the Local Government NSW Candidate Briefing handbook 2024 it states that councillors are accountable to the local community for the performance of the council.

For council to demonstrate transparency and accountability in decision making, these briefing sessions should be open to members of the community, not held behind closed doors. Sensitive matters would still be catered for in the Confidential Session prior to the conclusion of each council meeting.

Prior to the 2021 local government election, prospective councillors put forward a number of issues that they would stand for if elected. These included: meaningful communication and transparency and cooperation with the community; too many behind closed doors meetings – meetings should be open to the public unless the matters are confidential; improve communication channels across the shire.

When elected the councillors then voted unanimously to hold closed pre-meeting briefing sessions (workshops).

Prior to the 2024 local government election prospective candidates again promised to: keep residents informed and not keep them in the dark regarding progress; provide proper communication as level of professional communication is poor; fix broken communication – "unblock the blockage"; provide accountability for decisions made; to have an open door policy; address the issue of communication and how it is dealt with; disagree with meetings being held behind closed doors. We hope they keep their promises.

We strongly support the Office of Local Government proposal that councils will no longer be permitted to hold pre-meeting sessions (workshops) in the absence of the public.

Yours faithfully,

David Johnson (President)
Crookwell Progress Association

From: OLG BS Office of Local Government Mailbox
To: [redacted]
Subject: FW: Submission Councillor Conduct And Meeting Practices A new framework
Date: Tuesday, 12 November 2024 5:10:21 PM

From: John Inshaw [redacted]
Sent: Monday, 11 November 2024 3:02 PM
To: OLG BS Office of Local Government Mailbox <olg@olg.nsw.gov.au>
Subject: Submission Councillor Conduct And Meeting Practices A new framework

The Office of Local Government,

Councillor Code Of Conduct And Meeting Practice– A new Framework Discussion Paper. Submission

Thank you for the opportunity to comment on the Councillor Code Of Conduct And Meeting Practice– A new Framework Discussion Paper (the Paper). There is much in this document to commend.

I agree that the existing council system lacks transparency in its decision making. There are a number of actions which might improve the transparency of council decision making.

1. I believe the public must be guaranteed the right to speak to agenda items at council meetings. Some councils do not grant this right to the community and some limit public participation to one or two speakers. Clearly a reasonable number of public speakers should be allowed to speak to agenda items. Often the community can identify aspects relating to the decision making that have not been identified by council.

2. All councillor briefing sessions **must** be open to the public so that the community can benefit from the learned advice that the professional team give to councillors. This would be a cost neutral process. The briefing sessions could be timetabled at a particular time each month, the public would be observers not active participants and minutes need not be presented for public access before the briefing sessions. This would ensure that the briefings might be less liable to contain bias towards a view favoured by the professional team.

3. The public must be aware of all the briefing advice presented to councillors before the scheduled council meeting.

I agree with the weaknesses identified in the Paper on page 5. I am familiar with a proposal that was recently approved at my council which did not comply with any of the strategy criteria prepared by council for such a development. The council had been briefed before the meeting to justify the Council's recommendation for approval. The community affected were not happy and the decision process was not transparent.

I will respond by answering the set questions you pose in the discussion paper.

1.Are we missing anything in the principles of change?

The principles listed in the paper are supported.

2.What are the key elements of an aspirational Code of Conduct that should be enshrined?

I have noticed that the key headings in the Parliamentary Code of Conduct are closely aligned with those in the paper's Code of Conduct for councillors. It seems to me that councillors are responsible for decisions that can have outcomes that provide financial advancement opportunities to community members. This is a huge responsibility so perhaps the code of conduct for councillors should be more closely aligned to the Code of Conduct for Parliamentary Ministers.

3.What are your views about aligning the Oath of Office to the revamped Code of Conduct?

I support the notion that councilors who dissent to a proposition adopted by council should have the right to speak against the proposition in other forums.

4.Is the proposed pecuniary interest framework appropriate? Is anything missing?

I believe the current pecuniary interest declations used by councils should be retained. I can understand that councillor private place of residence addresses should not be published on council websites for the safety of councillors. These should be subject to GIPA applications if necessary.

5.Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

Yes. Its based on the test that any reasonable and informed third party person would consider the declaration appropriate rather than the councillors' own opinion.

I believe the non-pecuniary interest should be declared not only during the decision making process in open council meetings but at all times during a decision making process eg pre-council briefings.

I also have concerns regarding conflict of interests of professional officers. I am aware that there are a number of councils who have active membership of developer associations. Some senior council executives have served on important developer association committees along side consultant companies with whom they contract council business. Eg the Urban Development Institute of Australia (UDIA) lists a number of councils as members. One of the main objectives of the UDIA is to lobby government on behalf of developers. I believe this represents a major conflict of interest which is never declared. I think it is inappropriate for rate payer funds to be used to pay for council membership to these developer organizations. I think it is highly probable that membership to these organizations could influence council policy decisions, councillor briefings and uncontested DA approvals. I believe Councils should be banned from membership to developer organizations such as the UDIA.

6.Are there any specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

I support the legislation which requires councillors to divest their real estate and property development business whilst serving on council. This should apply to all real estate and property development business statewide, not just within the council area concerned.

7.Is this the appropriate threshold to face a Privileges Committee?

The Privileges Committee's strict criteria for misbehavior is supported.

I do not support the forming of the Privileges Committee from mayor, ex-mayors or Ex council staff or ex OLG staff. I would like to see persons independent from the political process being appointed eg senior ex-judicial staff, ex judges. I certainly would not like the task to be delegated to probity consultants who in my opinion have performed ineffectively under the current system. I certainly do not want the current code of conduct system to be maintained.

8.How else can complaints be minimized?

I don't think it is helpful to try and minimize complaints. I think very few complaints are vexatious. If behavior calls for a complaint it must be taken seriously and fully investigated and the complaint and outcome kept on file.

9. What key features should be included in lobbying guidelines and a model policy?

All lobbyists whether land owner or professional lobbyist seeking to uplift LEP zoning should be treated in the same way and be subject to the same guidelines. All lobbying activities should be conducted on Council Administration premises and councillors should be invited to attend such meetings. Important for transparency.

13. Should decisions on sanctions for councillors be made by the Departmental Chief Executive of a formal tribunal with independent arbitrators and a hearing structure?

The Paper makes a compelling case and its recommendation is supported.

14. Are there other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behavior?

No new powers are required. My observations lead me to believe that the Mayor has sufficient powers to maintain order at the council.

15. Are there other measures needed to improve transparency in councillor deliberations and decision making?

I reiterate that ALL councillor briefings should be open to the public. It is appreciated that these sessions are not open to debate and I have a “feeling” that councilors discuss issues to help them make decisions during these briefings by professional staff. I am aware that council has formed a position on a matter prior to a council meeting because a councillor had complained at a council meeting that an amendment presented at the time was not consistent with a pre council meeting decision.

I believe that public observation of councillor briefings is necessary for transparency and for the public to assess the standard of advice given to councillors.

Allowing public observation of briefing sessions would be cost negative for council. No minutes and no briefing notes need be given to public observers. Public does not participate in discussion. No reporting of the briefing unless this is a requirement already.

I have noted that councillor briefing sessions take place on a strict schedule eg the Tuesday of the week before the council meeting at a regular time. No notices of briefing meetings need to be recorded except perhaps on the council website.

Yours faithfully, John Inshaw. [redacted]

NORTH SYDNEY COUNCIL

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11 November 2024

Submission to Office of Local Government
Re: discussion paper – "Councillor Conduct framework review"

Introduction

North Sydney Council welcomes the opportunity to give feedback on the discussion paper and agrees with the Office of Local Government (OLG) that reform is required in this area.

Council supports the majority of the changes proposed, including the general principles, aligning the code to that of State and Federal Parliamentarians and embedding this into the Oath of Office. We are also supportive of the distinction between pecuniary and non-pecuniary matters being investigated by OLG and behavioural matters referred to a new Privileges Committee consisting of former Mayors and Councillors.

Council has feedback on other aspects of the discussion paper that we offer below.

Managing code of conduct complaints

Council agrees that assessment and investigation of code of conduct complaints is expensive and places administrative burden on Councils. Council supports the re-direction of management of code of conduct complaints to the OLG, which may include use of external tribunal and judiciary panels.

It will be important that the OLG and any panels/bodies have the capacity to handle matters efficiently and in a timely manner and without a significant administrative and financial burden being redirected to Councils.

From the discussion paper, it is not clear what administrative and financial requirements will be placed on Councillors or Councils, except that there is a cost for management of complaints by the Privileges Committee.

Council encourages the OLG to clearly identify and consult on what administrative and financial burdens are likely to be implemented.

Council supports removing Chief Executive Officers and Council staff from the complaint process as it places the CEO in a difficult position. This proposal will remove the prospect of a CEO being perceived as, or subject to, influence by a Council or individual Councillors and help Councils and their administration to maintain positive working relationships.

Streamlining the complaint process by referring matters directly to the OLG or Privileges Committee will reduce administrative burden and ensure consistency of the application of the provisions.

The proposed reforms, including the elimination of the two-step process is positive and may assist in mitigating the negative impacts on Councillors that come about from a more formal investigation process.

Council supports ensuring a transparent, robust process for assessing and investigating complaints. While Council supports the referral of Councillor conduct complaints to a panel, the make-up of the Privileges Committee with former and current Mayors should maintain political impartiality.

Relying solely on peers to judge behaviour could also result in conflicts of interest. Council suggests that the process for the establishment and make-up of the Privileges Committee requires further scrutiny.

Council recommends the use of withheld Councillor fees or Councillor suspension as opposed to the issuing of Penalty Infringement Notices (PIN). The additional administrative effort to support the issuing of a PIN, including the avenues of appeal available to parties up to and including court appearances could introduce additional cost, complexity and debate over potential legal or professional representation costs.

Pecuniary and Non-Pecuniary Interest Frameworks

Council generally supports the suggested changes to the Pecuniary Interest framework; however, we offer the following feedback.

While extending interests to those of a spouse, de facto partner, relative, employer or related company is appropriate, care should be taken in any open publication of such declarations to ensure that privacy is maintained for those individuals who are not directly giving their consent for any personal information to be used in this context.

In addition, the noted cumulative value of gifts stated as being more than $500 should be reconsidered. North Sydney Council's *Gifts and Benefits Policy* sets a cumulative total of $100 to better mitigate the perception of undue influence on Councillors.

The proposed principles that constitute a significant or major non-pecuniary interest are supported by North Sydney Council.

Council would welcome the opportunity to review the legislation being proposed as part of this discussion paper to provide our specific feedback.

Proposed extended Mayoral powers in meetings, including proposed financial penalties

Currently, a Councillor may be expelled from a meeting through a resolution of Council. The noted reforms suggested to the *Model Code of Meeting Practice* to extend the powers of a Mayor to expel Councillors for acts of disorder, as well as the associated potential impacts on a Councillor's fees could be seen as an over extension of the Mayor's powers beyond being a "first among peers." These should be considered carefully by the OLG.

This is especially the case given the proposed penalty powers include financial penalties imposed on Councillors by a Mayoral decision. Any penalty that impacts on a Councillor's fees should be the outcome of a review by the bodies noted in the suggested penalty framework. For the Mayor to exercise these powers risks the perception of bias or politically motivated decisions being made in the moment, rather than after careful investigation and consideration by an independent body set up for that purpose. North Sydney Council does not support the suggested extended Mayoral powers for these reasons, and especially cannot support a Mayor's ability to individually make a decision that imposes a financial penalty on another Councillor.

Banning briefing sessions

Council agrees that the debate and deliberation of reports, recommendations, notices of motion and Mayoral Minutes and indeed of any current issue that leads to a decision or resolution of Council should be in the public domain to support transparency and accountability in decision making.

However, Council also believes that a distinction needs to be made regarding the circumstances where Councillors should receive information, learning and support, as well as the opportunity to participate in strategic planning initiatives.

With this in mind, North Sydney Council would propose that the following forums remain as closed sessions;

- Confidential matters, including those with legal privilege,
- Councillor induction, support and training sessions,
- Workshops to develop strategies (which will be exhibited before implementation).

Thank you again for the opportunity to provide a submission to the review.

Yours sincerely,
Luke Harvey
Director Corporate Services
North Sydney Council

Office of Local Government
Email: councillorconduct@olg.nsw.gov.au

Re: **Submission on the Councillor Conduct Framework Review**

Inner West Council (Council) welcomes the opportunity to provide feedback on the Office of Local Government Discussion Paper: *Councillor conduct and meeting practices* released in September 2024 (Discussion Paper).

This submission will focus on Council's concerns with the proposed reforms to meeting practices. The focus of Council's submission should not be interpreted as unqualified support for the other reforms in the Discussion Paper. Given the timing of the local government elections and councillor induction, Councillors have not had the opportunity to consider in full all aspects of the proposed reforms ahead of submissions closing on 15 November 2024.

Proposed reforms to the Model Code of Meeting Practice

Councillor briefings/workshops

Council supports the Model Code of Meeting Practice as the mechanism for enabling effective decision-making, and for ensuring meetings are conducted with dignity. Council is, however, concerned with the proposal to ban pre-meeting briefing sessions/workshops in the absence of the public, as these are an important tool for councillors and council officers to enable informed decision-making.

Council agrees that decisions of Council can only occur in a formal council meeting, and acknowledges concerns about briefings/workshops that are not managed well becoming quasi-decision making forums. However, Council considers that pre-meeting briefing sessions/workshops that are closed to the public are a critical tool to assist Councillors discharge their role, as prescribed under section 232(1)(b) of the *Local Government Act 1993*, to make considered and well informed decisions. The OLG Councillor Handbook 2024 notes that 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. Indeed, an earlier version of this document, the OLG Councillor Handbook 2021, "recognises the value of workshops or briefing sessions in developing councillor knowledge and expertise, and assisting them to discharge their role as public officials." The same document notes that briefing sessions/workshops which enable both councillors and staff to contribute freely are important for ensuring open debate. Council considers that opening briefing sessions/workshops to the public will have the effect of impeding the development of councillor knowledge and expertise and reducing the robustness of debate, as councillors may be more reluctant to ask questions about council matters with members of the

public in attendance. Our general comments and suggestions for addressing transparency concerns are listed below.

Pre-meeting briefing sessions/workshops are a practice widely adopted by all levels of Government in Australia, to ensure that those representing the community in the decision-making process are informed on matters before them. These sessions across the various levels of Government provide an opportunity for elected representatives to test the information presented to them by officers and members of the public and to seek additional information to assist with their decision-making.

Briefing sessions/workshops are a critical tool for supporting councillors to make informed decisions at council meetings. These sessions ensure that councillors are well informed and in the best possible position to debate issues effectively once those issues are at a council meeting. Briefings/workshops assist councillors to determine whether they have enough information and advice to help them form an informed opinion about the matters in question. It is appropriate for these to occur without members of the public in attendance, so that councillors feel comfortable to question council officers about the information they have been given and seek further information. Prohibiting councils from holding pre-meeting briefing sessions/workshops in the absence of the public may prevent councillors from seeking information about decisions they are expected to make. Alternatively, it may lead to more information being provided to councillors via briefing notes, which will add to the already significant workload of councillors, and potentially disadvantage councillors who do not speak English as a first language and/ or who may have learning disorders. Given the "steep learning curve" for new councillors identified by the OLG in "Stand for your community: Candidate Guide", Council opposes the imposition of any measures that may prevent councillors from asking for further information about decisions they are expected to make. Council also opposes the imposition of any measures that may have the consequence of disadvantaging certain sections of the community or preventing members from those communities standing for Council, given the importance of diverse representation on councils, as identified by the OLG in "Stand for your community: Candidate Guide". In addition, councillor briefing sessions/workshops often include information being provided about matters of a sensitive or confidential nature. Opening briefings/workshops to members of the public may limit the ability to provide this information, and may increase the council meeting deliberations held in camera to fully discuss these matters or matters on the council agenda being deferred to allow councillors to receive more information or guidance prior to resolving the matter in the Chamber.

The proposal to ban pre-meeting briefing sessions/workshops in the absence of the public may also increase resourcing costs. In line with current council meeting practices, the community may reasonably expect that these briefings/workshops will be accessible both in-person and online. This will create additional staffing and administrative demands on councils, and also impose costs associated with streaming and website capacity. Given the budget constraints across the local government sector, Inner West Council is opposed to the banning of pre-meeting briefing

sessions/workshops held in the absence of the public, and believes that other options for increased transparency should be considered.

In the Victorian Local Government sector, the transparency of councillor briefing sessions/workshops is achieved by reporting attendance, agenda items, and conflicts of interest at briefings attended by councillors. This information is reported on a regular basis in council meeting papers, generally presented each month or more frequently depending on the council meeting cycle. In addition to briefings, these transparency measures apply to planning meetings, pre-meeting briefings, councillor workshops, and advisory committee meetings. This provides the community with general information about the matters being discussed in the various forums attended by councillors between council meetings.

In Queensland, the *Local Government Act* 2009 (Qld) contains a principle of transparent and effective processes and decision-making in the public interest. This is addressed by Queensland councils through the adoption of either a policy or terms of reference for councillor briefing sessions and workshops. The policy or terms of reference generally articulates the purpose of these forums as assisting councillors to make informed decisions and consider current and future interests of the community, and to provide a forum for councillors to ask questions and seek advice from staff. These documents also outline that briefings/workshops will not be used to remove the need for debate and decisions at council meetings, direct employee recommendations to council, or influence employee actions without formal decisions of council. Some councils commit to publishing records from the briefing sessions and workshops that capture attendees, matters discussed, and conflicts of interest raised during the meeting.

Council suggests that preparing a report tabled at the next council meeting on matters discussed at council organised forums between council meetings, including councillor briefing sessions/workshops, should be considered as an alternative to banning councillor briefing sessions/workshops in the absence of the public.

Council supports retaining recordings of council and committee meetings on council websites, however, the volume of recordings accessible may be limited by the available space on website platforms. Given, that recordings retired from the website were once publicly available, it should be relatively easy to provide access on request for older material.

However, if the proposal to ban pre-meeting briefing sessions/workshops in the absence of the public is realised, this may increase the volume of recordings that need to be available on a council's website at any given time. This may limit the length of time recordings can be retained on a Council's website.

Emergency powers to proactively address behaviour

Council supports reforms to manage public disorder in the chamber as the safety of the community, councillors and council officers is paramount to enable effective and efficient decision making.

The current Model Code of Conduct contains provisions permitting a meeting to be adjourned due to disorder in the chamber. However, they are limited in scope and require decision making processes that may not necessarily be practical if events occur at a meeting that pose an immediate health and safety risk to members of the public, councillors, or council officers. Council suggests that the proposed reforms should be extended to enable the General Manager to decide to close a council meeting to the public, or to hold a council meeting online to manage community and workplace safety, where there is a workplace health and safety risk that necessitates the closure.

In Victoria, the *Local Government Act 2020* provides that meetings are to be open to the public unless specific circumstances apply (s66). These circumstances include security reasons or to enable the meeting to proceed in an orderly manner. The council meeting can proceed provided there are arrangements for the community to view it by other means such as livestreaming or on a screen outside the council chamber. In many instances, councils in Victoria provide for both options if a meeting is closed to the public.

In recent years, councils across Australia have been experiencing unprecedented levels of targeted disruption with increased aggression toward the level of government closest to the community. Many jurisdictions have seen a rise in groups that are organised and mobilised quickly in response to issues and often driven by disinformation and misinformation.

Neither the Model Code of Conduct nor the *Local Government Act* 1993 empowers the General Manager to proactively close a Council meeting to public attendance or hold a meeting online to ensure public and workplace safety. In light of the growing disruption of meetings across the local government sector, Inner West Council suggests that consideration be given to providing the General Manager with the ability to manage public and workplace safety by proactively closing Council meetings and not allowing public attendance in the gallery or holding a council meeting online when there are concerns for public and workplace safety. The need to make council meetings more accessible and transparent could be met by providing alternative accessibility to the meeting (for example, livestreaming online or viewing on screen outside the council chambers).

As an additional accountability and transparency safeguard in respect of this suggestion, a requirement could be imposed on the General Manager of each council who uses these powers to provide a report to the next council meeting outlining the health and safety grounds for closing the meeting to public attendance.

NSW Local Government Privileges Committee

The Discussion Paper proposes the establishment of NSW Local Government Privileges Committee (Committee) that would be empowered to examine all allegations of misbehaviour in public office.

The Committee would be composed of experienced mayors and ex-mayors from across NSW, and supported by a secretariat within OLG, which would have the power to consider and dismiss certain categories of matters.

Council acknowledges the importance of reforms to improve the Code of Conduct review framework and sector-led regulation of councillor behaviour as a design concept. In addition, Council supports the establishment of an entity that can consider Code of Conduct complaints about Councillors, to remove General Managers from the complaints process.

However, Council is concerned with the proposal for the Committee to be composed of current and former mayors, the composition of the Committee could, without appropriate checks and balances, lend itself to structural conflicts and biases if the Committee is not representative of the full spectrum of registered political parties. The Discussion Paper does not outline how the Committee's members would be appointed, and what possible checks and balances could be established to regulate the Committee. In addition, it does not clarify how procedural fairness for councillors appearing before the Committee can be ensured, particularly in the absence of eligibility requirements for Committee members. Council acknowledges that the proposed powers of the Committee are limited and that only an appropriate Tribunal or body would have the power to determine any serious sanctions. However, Council considers the proposal to establish the Committee, its proposed composition, and the lack of appropriate guardrails around the Committee's operations and management of conflicts, create a risk of weaponisation of the Committee's processes. Accordingly, Council considers that further details about the proposed Committee are needed before expressing its support, or otherwise, for the establishment of the proposed Committee.

In 2022, South Australia established the Behavioural Standards Panel for dealing with specific complaints about Councillor behaviour. As indicated in the 2022-23 Annual Report of the Panel, the panel members were nominated by both the Minister and Local Government Association, including a joint appointment. This process could minimise the ability to weaponise the Committee's process.

Additionally, reforms have been proposed in local government in Western Australia to overhaul the membership of the Local Government Standards Panel, which currently includes staff of the local government department, a council member and a person with relevant knowledge. The proposal is to replace the membership with a new Conduct Panel of suitably qualified and experienced professionals and will exclude sitting councillors. The 2024 Local Government Amendment Bill 2024 outlines that the adjudicators to the Standards Panel will be legal practitioners with at least 5 years' experience who are not Council members and will be appointed by the Minister.

If the establishment of the Committee proceeds, Council encourages the examination of the South Australian Behavioural Standards Panel and the Western Australian Standards Panel approaches to the appointment of members to Committee.

Conclusion

Council supports measures to ensure transparency and accountability in decision-making, however, reforms need to be balanced with the need to enable councillors to be effectively informed when making decisions, including through briefing sessions/workshops in the absence of the public. Councillors need a safe environment to gather information required for decision-making. Council encourages the consideration of alternative measures for providing transparency and accountability following councillor briefing sessions/workshops in the absence of the public.

Council supports improved management of public disorder in the chamber to ensure the safety of all in attendance. Council suggests that the revised Model Code of Meeting Practice includes provisions to enable the General Manager to proactively address public and workplace safety by providing alternative means to viewing council meetings other than attendance in the chamber. Council suggests the measures provided in the Victorian legislation that enable councils to hold meetings while providing public access via alternative arrangements are considered for councils in NSW, as a proactive approach to managing safety and public disorder.

While Council supports the establishment of an entity to consider Councillor complaints, Council is concerned with the lack of details regarding the establishment of Committee. In particular, further details are needed about the appointment of Committee members, and Council has concerns about the potential implications for procedural fairness for councillors.

Finally, Council notes that the Discussion Paper was released on 5 September 2024, being nine days before the NSW local government elections held on 14 September 2024, with comments due on 15 November 2024. Many councils, including Inner West Council, did not receive declarations of results of incoming Councillors until the start of October 2024. Following the declaration of results, most councils, including Inner West Council, implemented induction programs in line with the OLG's Councillor Induction and Professional Development Guidelines, which recognise that proper induction into their roles are vital if mayors and councillors are to be effective from the start of their terms. At a time when councillors are being inducted, and briefed on, inter alia, the Code of Conduct and Code of Meeting Practice, it does not seem reasonable to expect them to rapidly develop the comprehensive understanding of these documents necessary for them to provide informed comments on the proposals outlined in the Discussion Paper. If Council were to follow such a consultation process in respect of one of its policies, strategies, or plans, it would be the subject of legitimate criticism from its community in respect of the consultation not being meaningful. Council considers that further, and more meaningful, consultation needs to occur with the NSW local government sector in respect of the proposals in the Discussion Paper before these are implemented.

For further information on this submission please contact Beau-Jane De Costa, Acting Director Corporate on 02 9392 5589 or beau-jane.de.costa@innerwest.nsw.gov.au.

Council approved this submission on 12 November 2024.

Council Reference: OLG Submission
Your Reference: Councillor Conduct Framework Review

TWEED SHIRE COUNCIL

13 November 2024

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Dear Office of Local Government,

Councillor Conduct Framework Review

Thank you for the opportunity to provide submissions in relation to the discussion paper titled "The Councillor conduct and meeting practices – A new framework" dated September 2024 (Discussion Paper). Council resolved to support the following submission at its meeting of 7 November 2024.

In the discussion paper you have included several questions which Council has addressed below.

What are the principles of change?
Q1. Are we missing anything in the principles of change?

Please see general comment on the discussion paper as to concerns related to proposed amendments. The principle of timely justice should not be at the expense of a fair and thorough investigation. Incorrect findings will erode both the publics and councillors trust in the sector.

Freedom of speech is important but should not allow for false or defaming statements, particularly in relation to those people who may not have an equal ability or platform to respond. This is particularly important in an age of social media where people expressing differing points of view can dimply be blocked or their comments removed. One sided views through social media platforms is exacerbated through the demise of free press/ investigative journalism. The Code should perhaps give consideration to this changing landscape.

Potential changes to the code of conduct and oath of office
Q2. What are the key elements of an aspirational Code of Conduct that should be enshrined?

An aspirational Code of Conduct for councillors should encompass the following key elements:

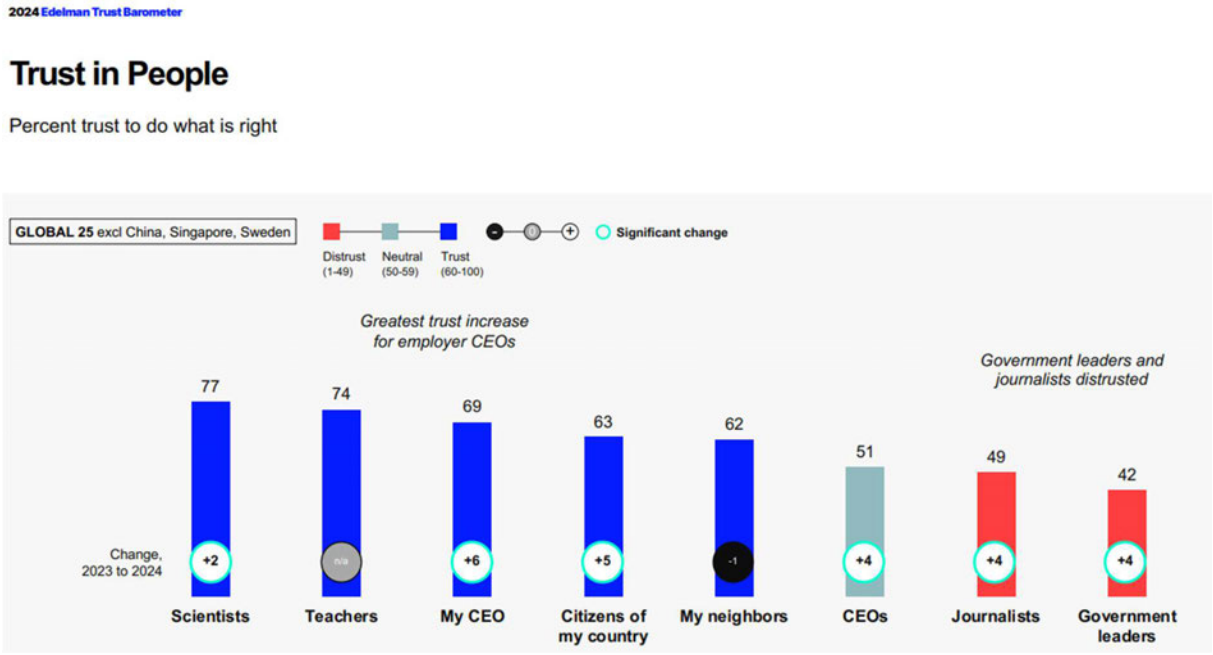
1. Role Model: The Code should establish a standard that councillors aspire to uphold both within the council chambers and in their external interactions. This means exhibiting professionalism, respect, and fairness in all situations, serving as a model for the behaviour they expect from others. In essence, Councillors should strive to be 'Elder Statesman' that the community look up to and respect. The Code should support this aspiration.
2. Community Expectations: Councillors must demonstrate behaviour that reflects the values and standards the community expects from their leaders. This includes integrity, accountability, and transparency in all actions and decisions.
3. Respectful Interactions: The Code should require councillors to engage in respectful interactions with fellow councillors, the General Manager, staff, and the public. This includes refraining from baseless or exaggerated criticism in public forums, which can negatively affect organisational culture, undermine individuals being criticised, and increase psychosocial risks. Such behaviour can also polarise the community, heighten hostility, and

lead to unwarranted attacks on the institution, ultimately weakening public confidence in the council.

Robust debate between councillors and good questioning of officers on the reports that have been presented to Council should be performed in a respectful way that engenders open conversation and debate so that the best decisions are made. Robust debate is critical to the democratic process, but the debate should focus on the topic, matter or Policy not on the person expressing their view point, nor on public officials carrying out their statutory responsibilities. Those participants that are aggressive and display poor behaviour should not be allowed to intimidate other participants into an outcome or stymie debate.

Incorporating these elements will help create a Code of Conduct that not only guides councillors' actions but also strengthens the bond between elected representatives and the community they serve.

Below is a snapshot from the 2024 Edelman Trust Barometer. Sadly, it shows that public trust in Government Leaders and Journalists falls within the 'Distrust' scale. This is a worrying trend for western democracies and action is required to restore public confidence in 'truth in journalism' and in our Civic Leaders. The Code should therefore seek to engender behaviours that unite and create confidence and stability as opposed to divide and polarise.
https://www.edelman.com/trust/2024/trust-barometer



Lastly, the Code should be amended to include the ability for the OLG / Minister to issue a Performance Improvement Notice on one or more councillors as opposed to the whole council where warranted.

Q3. What are your views about aligning the Oath of Office to the revamped Code of Conduct?

We agree that Code of Conduct should be aligned to the Oath of Office, while also suggesting that the Oath itself be strengthened.

Potential changes to the definitions and assessment of councillor misbehaviour
Q4. Is the proposed pecuniary interest framework appropriate? Is anything missing?

The proposed categories of interests requiring disclosure reflect the current Return of Interest reporting categories. Broadening the definition to include the interest of a spouse or de facto partner, close relative (perhaps residing in the same household), or partner or employer, or a company or other body of which the councillor, or their nominee, partner or employer, is a shareholder or member is supported as this will ensure greater transparency. The categories should be expanded to also include investments within 'self managed super funds' (SMSF).

Council also supports broadening the investigative powers of the OLG to ensure information is accurately declared.

Council recommends that accompanying guidance material be provided, and this material be clear and comprehensive to cover all requirements to reduce the risk of accidental misreporting or under reporting.

Council also asks that consideration be given to mitigating the risk of identify theft through only publishing information which is relevant for accountability and transparency purposes. For example, the councillor's complete residential address does not need to be published, instead the street name and locality should provide sufficient information for the public to be assured that a conflict does or does not exist. Further, in relation to investments, properties located outside of the local government area should just require to state the local government area in which the property is held. The exact address details can be disclosed and retained for OLG purposes, but some thought needs to be given the real and rising threat of identity theft and measures need to be put in place to protect councillors assets and identity from fraud.

Q5. Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

Agree, but it is unclear who will provide advice to councillors regarding the reasonable and informed person test. Will the OLG, as the regulator, offer guidance to councillors if needed, considering that the proposed wording is less prescriptive than the current Code?

Q6. Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

Council recognises the high risk associated with property developers becoming councillors due to potential conflicts of interest in the council's planning functions.

Q7. Is this the appropriate threshold to face a Privileges Committee?

The General Manager is Council's Person Conducting a Business or Undertaking (PCBU), under work health and safety legislation, and has a primary duty to ensure the health and safety of workers while they are at work in the business or undertaking and others who may be affected by the carrying out of work, such as visitors. Implementing one rule for elected members and one rule for staff could make it difficult for the PCBU to ensure a safe workplace. While poor behaviour under this category may fit under the third limb, from the information provided in the discussion paper, this is unclear. Overall, the proposed approach is less prescriptive and less clear than the current Code.

Council suggests that the criteria for appointment to the Privileges Committee should be expanded and the composition of the committee be mixed with a representative from a former General Manager (who have served at least two 5-year contracts within NSW) and a representative from a

Legal background (workplace/ industrial relations) to ensure appropriate perspectives are considered. Competent councillors who have not held a mayoral role should also be considered eligible. Additionally, the conduct record of applicants, along with their understanding of due process, investigation, and governance principles, should be considered as well as the appropriate management of political risk. The Privileges Committee should be made up of past mayors, rather current ones.

Further Council supports the removal of the General Manager from the Code complaints process. The existing Code places the General Manager in a position of discharging their duties that can result in hostility and retribution from elected members. This is not sustainable for maintaining positive working relationships. Speaking more generally across the sector, whilst most councillors understand and respect the role of the General Manager in the current framework, others have taken adverse action against the General Manager of the day. To this end the proposed changes in this regard are strongly supported.

Q8. How else can complaints be minimised?

Vexatious complaints could be reported back to Council so that this behaviour is put into the public realm.

Q9. What key features should be included in lobbying guidelines and a model policy?

In addition to the items listed in the discussion paper, consideration should be given to restricting former councillors, general managers and senior executives from carrying out lobbying activities for a period after they cease employment.

We also recommend that the OLG considers that lobbying can be undertaken from a wide range of organisations, including small community organisations who may engage in some restricted activities due to a lack of awareness.

Dispute resolution and penalty framework
Q10. What level of PIN is appropriate?

A balance must be struck so that the PIN discourages inappropriate behaviour without hindering a councillor's ability to perform their duties effectively. Additionally, consideration should be given to the total annual fee provided to councillors compared to other occupations.

Q11. Are the penalties proposed appropriate, and are there any further penalties that should be considered?

Consideration should be given to adding mandatory formal training/education/mentoring as a penalty where the breach has occurred due to lack of knowledge or understanding. This could be at the councillor’s expense where previous training has been provided by the council.

Q12. Are the existing sanctions available under the Local Government Act sufficient?

Council supports an approach where the OLG Departmental Chief Executive (or their delegate) does not hold dual roles.

Q13. Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

Decisions on sanctions for councillors should be made by a formal tribunal with independent arbitrators and a hearing structure.

Restoring dignity to council meetings

Q14. Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

If a mayor is provided more power, then there is the potential that a mayor, particularly one with a past history of conduct and/or integrity issues, may abuse that power. To ensure this does not occur, safeguards will need to be put in place to ensure this risk is mitigated.

Council does not support the proposed reform in the discussion paper for Councillors to be expected to stand, where able to do so, when addressing a meeting and when the mayor enters the chamber.

Q15. Are there any other measures needed to improve transparency in councillor deliberations and decision making?

Briefing sessions (i.e. workshops) are distinct from Council Meetings and are not for the purposes of making decisions. The purpose of briefing sessions is to provide additional detail that is not appropriate for a public forum. Often these sessions require input from external experts and facilitate a better understanding of complex matters. Different councillors have varying learning styles—some may prefer reading, while others benefit from auditory explanations. Briefings provide an opportunity for interaction and immediate clarification of questions from subject matter experts, which is crucial for informed decision-making. It also creates efficiency for the organisation in imparting knowledge and responding to questions.

The informal nature of briefings fosters a better atmosphere for conduct, allowing councillors to engage openly without the pressure of being in a formal setting. This encourages questions and discussion, without fear of media scrutiny or public judgment.

If councillors rely solely on briefings from the mayor, it can lead to incomplete information being shared with the rest of the council, resulting in reliance on second-hand information that may be subject to interpretation. Ensuring that all councillors have access to comprehensive information is essential for effective decision-making. To this end Council does not support the proposed changes to the Code which restrict workshops.

General Comment on Discussion Paper

In addition to addressing the questions listed in the discussion paper, Council would like to provide general comment on the discussion paper.

Council's main concern with the proposed changes is the potential weakening of the Code by moving to an aspirational Code of Conduct instead of an enforceable set of behaviours under the current Code. It is unclear how an aspirational Code will prevent misbehaviour, noting that the examples of the framework for NSW Members of Parliament has separate processes depending on the severity of the breach. For example, the Members of Parliament Code of Conduct states that "*A minor breach of this Code may be the subject of an investigation by the Independent Complaints Officer. A substantial breach of the Code may constitute corrupt conduct for the purposes of the Independent Commission Against Corruption Act 1988*". The discussion paper notes that minor breaches may be subject to Penalty Infringement Notices but does not detail how these matters will be investigated and how procedural fairness will be offered to the Councillor subject to the complaint. The discussion paper also does not detail the investigation process for matters referred to the proposed Privileges Committee.

While there is an opportunity for the Code of Conduct to be weaponised, the current Code also contains provisions to mitigate this risk. Specifically, I refer to the authority under the Code of Conduct Administration Procedure to decline complaints at the outset when they meet certain criteria, including trivial, frivolous, vexatious and complaints made, not in good faith.

Council agrees that the process of investigating a complaint, particularly if it progresses past the preliminary investigation stage, can be relatively expensive and can take extended periods of time. However, ensuring that procedural fairness is maintained, including that the complaint is subject to an appropriate and impartial investigation is paramount and should not be sacrificed to lower these costs.

Council also notes that Code of Conduct training is currently optional. To ensure that all relevant individuals understand and adhere to the code's requirements, we recommend making periodic training mandatory. This training should be the same for all councillors across NSW so that there is a consistent standard and message being provided to the councillors.

Council also suggests a requirement for elected Councillors to undergo Councillor inductions and mandatory training in each term and if that training is not undertaken and passed within 12 months then the Councillor is suspended until it is completed. The role of Councillor needs to have a certain level of training to ensure each Councillor is operating to the best of their ability and has a basic understanding of the role and legislative requirements.

Publication of Submission
Council does not object to the publishing of our submission. If you have any questions in relation to this letter, please contact Mathew Greenwood Acting Manager Corporate Governance on 02 6670 2400.

Regards

[redacted]

Date: 13/11/2024

Troy Green PSM
General Manager

Blacktown City Council

Connect • Create • Celebrate

File number: F23/509

13 November 2024

NSW Department of Planning, Housing and Infrastructure
Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

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

Dear Sir or Madam

Councillor Conduct Framework Review

Blacktown City Council welcomes the opportunity to make a submission on the "Review of the Councillor Conduct Framework". Please find attached Blacktown City Council's submission endorsed by Council at its Ordinary meeting of 30 October 2024.

We welcome the changes that strengthen the current framework and recognise local government's status as an independent third tier of government. However, we make the following further comments, which are elaborated on at attachment 1 to this letter:

- we strongly oppose any prohibition of Councillor briefing sessions. Councils consider a vast variety of highly complex, technical and sensitive issues. Briefing sessions provide councillors an opportunity to better understand intricate policy issues, legal considerations, financial implications and strategic implications and consequences before making their informed decisions at a Council meeting
- any new Code of Conduct should not place a greater burden on an elected local government councillor than the current Members' Codes placed on NSW Parliamentarians
- sanctions against councillors should only be made by a proper tribunal or established Privileges Committee. The Office of Local Government should not be given powers to issue penalty infringement notices
- we support the revised definitions of misconduct, provided clear examples are provided of the types of behaviour that will be captured by the definitions
- the proposal to require an obligation for existing or potential councillors to divest themselves from real estate or development business activities and contractual obligations is problematic and cannot be supported in the absence of draft legislation that details how this would apply
- increasing the power of Mayors to manage disorderly conduct is supported, noting that any such powers must be balanced with checks to avoid misuse
- any new misbehaviour regime, the method by which complaints are made and the workings of the Privileges Committee should be trialled for a full term of Council, then reassessed.

If you would like to discuss any of our responses, please contact our Chief Executive Officer on [redacted]

Yours faithfully

[redacted]

Wayne Rogers
Director Corporate Services

Submission on the Review of the Councillor conduct and meeting practices – A new framework

Questions for consideration		Our response/position
Principles of change		
1	Are we missing anything in the below principles of change?	
	a. Council leadership and decision making is paramount – it is critical that the sector, as the third tier of government, is given independence to make decisions in the best interests of the community	Supported. As a legitimate third tier of government, inherent in this principle is that any new Code should not place a greater burden on an elected local government councillor than the current Members' Codes placed on NSW Parliamentarians.
	b. Freedom of speech – as elected officials, councillors have the constitutional right and democratic responsibility to speak freely about issues affecting their local community and to advocate for the interests of that community	Supported.
	c. Transparency and accountability – as a democracy councils need to hear, consider and debate issues in an open manner	Supported, however, as we also note further in this submission, we reject the view that Briefing sessions are a forum for making decisions away from the public view. Briefing sessions provide councillors an opportunity to better understand intricate policy issues, legal considerations, financial implications and strategic decisions before making their informed decisions at a Council meeting. This less formal environment allows for opportunities not available in the chamber, including having Council subject matter experts available, considering hypotheticals, managing confidentiality. Councils deal with a vast variety of highly complex, technical and sensitive issues and we note that Cabinet in confidence provisions are a common feature of all Westminster governments, including both State and Federal Governments in Australia. Banning briefing sessions is retrograde and the concept fails to appreciate the complex nature of matters that come before councils on a regular basis. For example, planning decisions can have a profound effect on property markets and values (land or otherwise). Early discussions on potential rezonings must not be held in public; Councillors must be provided with an avenue to work through concepts, issues and concerns in a confidential manner.

Questions for consideration		Our response/position
	d. Significant penalties should only be imposed by a judicial or quasi-judicial body – to ensure procedural fairness and thorough testing of allegations, the power to apply significant penalties should be given by bodies such as the NSW Civil and Administrative Tribunal	Supported but note that democratic principles require that avenues for appeal are also well defined and work effectively. It is the practice in our model of government that the courts have the final say in such matters.
	e. A strong and proportionate local government regulator – the role of OLG should be to create the framework for local government, ensure councils, joint organisations (JOs), and county councils have the capacity to operate within the framework so that the regulator intervenes as rarely as needed	Supported noting it is critical to ensure that any framework within which local government is required to operate must be clearly defined. The regulator should only intervene if there is a clear and unambiguous failure on the part of a council or councillor.
	f. Subsidiarity – decisions are made at the level closest to those impacted by those decisions	Supported noting that the prevailing reality is that the role of Council, in particular within the planning area, has been watered down by successive NSW governments.
	g. Justice is timely and proportionate – where allegations are made, they should be heard, tested and dealt with as quickly as possible.	Supported noting that the need for procedural fairness must prevail over expediency.
Potential changes to the code of conduct and oath of office		
2	What are the key elements of an aspirational Code of Conduct that should be enshrined?	We support the inclusion of clear standards of behaviour in the Code of Conduct as well as the connection between the Oath of Office and adherence to the Code of Conduct.
3	What are your views about aligning the Oath of Office to the revamped Code of Conduct?	We agree that the new framework should be broadly equivalent to the Codes of Conduct for members of the NSW Parliament, and that the Code should be aspirational. **Equivalent to Codes of Conduct for members of the NSW Parliament** The current Model Code of Conduct is more onerous on Councillors than the equivalent Codes of Conduct are for members of the NSW Parliament. For example, Members (of Parliament) *must take reasonable steps to disclose all gifts and benefits received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests*. The Model Code of Conduct however prohibits gifts, when aggregated, which exceeds the value of $100, including tickets to sporting events.

Questions for consideration	Our response/position
	This means, that under the current Code, a Blacktown Councillor, cannot accept tickets offered by our State Member of Parliament to a sporting event within the Blacktown area, held at a venue which is owned by Council. This situation is not equivalence. **Code should be aspirational** We note, however, that whilst the Members' Codes cover aspects such as avoiding improper influence, the use of public resources and confidential information, disclosures of interest, conflicts of interest and gifts; they are not themselves overly aspirational. They do not for example cover aspects such as: • Ethical leadership: encouraging councillors/members to model ethical behaviour and uphold the highest standards of conduct in all interactions and respect for fellow councillors and staff and members of the public. • Integrity and honesty: promoting transparency, fairness and honesty in decision-making, communication and professional relationships. • Accountability: emphasising personal and collective responsibility for actions, ensuring that everyone is answerable for their conduct and the outcomes of their decisions. • Respect and inclusion: fostering an environment of mutual respect, non-discrimination and inclusivity, where diverse views and contributions are valued. • Commitment to excellence: encouraging continuous improvement, innovation and dedication to delivering high-quality services. • Compliance with laws and policies: reinforcing the importance of adhering to legal obligations, organisational policies and regulatory frameworks. • Confidentiality and privacy: ensuring the safeguarding of sensitive information and respecting the privacy of individuals and stakeholders. • Social responsibility: promoting the organisation's commitment to ethical practices that contribute positively to the community, environment and broader society. In this regard we note that the current Model Code of Conduct is more aspirational in terms of expectations of overarching behaviour. We further note that the Members' Code of Conduct, adopted by the Legislative Council on March 2020, revised 20 February 2023, says in part: > It is recognised that some members are non-aligned, and others belong to political parties. Organised political parties are a fundamental part of the democratic process. Participation in the activities of organised political parties is within the legitimate activities of Members of Parliament.

Questions for consideration		Our response/position
		We would support similar wording in the new framework. It should be equally recognised that local government also encompasses a mix of aligned and non-aligned representatives, which is fundamental to the democratic process. The new framework should also therefore be silent on binding caucus votes.
Potential changes to the definitions and assessment of councillor misbehaviour - pecuniary interests		
4	Is the proposed pecuniary interest framework appropriate?	We support the removal of ambiguity regarding pecuniary interests. As an adjunct to the Framework, clear examples should be provided to avoid confusion and misunderstanding.
5	Is anything missing?	We generally support disclosure of interests being aligned with the Constitution (Disclosures by Members) Regulation 1983: [https://legislation.nsw.gov.au/view/html/inforce/current/sl-1983-0155], but note the following: • **Stocks and shares** A practical common-sense approach to holding stocks and shares needs to apply. The OLG Model Code of Conduct at point 17 states: An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company. We include this same clause within our Code of Conduct and procedures for Councillors publication. This clause makes practical sense because it recognises that: o there is a difference between ASX listed stocks, where small shareholders have limited voting powers and negligible control vs unlisted vehicles where an individual may have significantly more influence o an individual may hold a significant number of stock, held non-custodially (for example through superannuation and/or derivative and synthetic products) that offer neither control nor voting rights. • **Debts** We note that the Constitution (Disclosures by Members) Regulation 1983 [https://legislation.nsw.gov.au/view/html/inforce/current/sl-1983-0155#sec.14], excludes disclosure of debts where the Member was liable to pay the debt to a relative 14(3)(b), and at 14(3)(c), if the Member was liable to pay the debt to a bank, building society, credit union or other person whose ordinary business includes the lending of money and the loan was made in the ordinary course of business of the lender. We think these are practical elements which should be incorporated into the new Framework.

Questions for consideration		Our response/position
		• **Property development** We hold the view that it should be mandatory that all Councillors enter details in a register of meetings between Councillors and developers, regardless of where such a meeting might have been held. Such a requirement would assist the ICAC in any investigation undertaken.
Potential changes to the definitions and assessment of councillor misbehaviour - non-pecuniary interests		
6	Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?	We agree with the principles but, as with pecuniary interests, an adjunct to the Framework should provide clear examples to avoid confusion and misunderstanding.
Property developers and real estate agents		
7	Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?	We note that the Independent Commission Against Corruption, as part of its published reports of the findings of its investigations provides recommendations for corruption prevention and to improve governance across the sector. We support these recommendations. We do not support any aspects of a Framework or related legislation that would obligate existing or potential councillors to divest themselves from real estate or development business activities and contractual obligations. Such requirements: • would deter otherwise qualified and experienced individuals from running for Council • would potentially result in existing Councillors incurring losses under a forced sale if transitional arrangements are inadequate • fail to acknowledge that a Councillor may choose to serve only a limited term of office; it is unreasonable that they would be forced to divest and as a result to forgo their future livelihood • fail to recognise that a Councillor could perform their civic duties without any conflicts while managing development opportunities outside of a Council area or interstate. Significant questions remain in the absence of any draft legislation: • Does the addition of a granny flat constitute development? • Can a Councillor build a house to live in or only purchase an existing property? • Can a Councillor build a duplex with the intention of living in one side and selling the other? These conflicts should be managed within the Framework in a sensible and practical way.

Questions for consideration		Our response/position
		There should be a requirement for Councillors who are remotely or closely involved in development business activities to articulate clearly the degree of their involvement, beyond the disclosures made in their Disclosure of Interest Annual return. Council has neither considered nor taken a position on the activities of real estate agents within the sector, if this is what this section is anticipating.
Councillor misbehaviour in public office		
8	Is this the appropriate threshold to face a Privileges Committee? Question: How else can complaints be minimised?	We support the concept of a Privileges Committee. We cautiously support the revised definitions of misconduct, but as with other aspects of the proposed Framework, examples of those behaviours that would be unbecoming; would bring Council into disrepute or would be outside the norms and expectations of a sitting Councillor, would need to be clear and unambiguous to stop the new definitions from becoming weaponised. For example, where do the following behaviours sit within the suggested definitions: • a Councillor driving home from a Council meeting gets a speeding ticket • a Councillor driving home from a Council Christmas function gets charged with driving under the influence • a Councillor and a resident have an argument in a public place (about Council's business, or, otherwise) We submit that any new misbehaviour regime, the method by which complaints are made and the workings of the Privileges Committee should be trialled for a full term of Council, then reassessed. We note that it is suggested that complaints regarding behaviour would be made directly to the Local Government Privileges Committee via a dedicated webform. We submit that complaints should not be made anonymously. This will assist in minimising frivolous claims.
Addressing inappropriate lobbying		
9	What key features should be included in lobbying guidelines and a model policy?	The Framework acknowledges that lobbying is a normal and healthy part of the democratic process. The focus is on addressing 'inappropriate lobbying'; lobbying that is not declared and which could lead to corruption risks. We outline our position within our Code of Conduct and Procedures for Councillors publication:

Questions for consideration		Our response/position
		Councillors and staff may be lobbied by a wide range of people, including individuals, organisations, companies and developers. As a general rule it is an essential element of the democratic system that any individual should be able to lobby the Council or a Councillor. However, particular considerations apply when councillors and council staff are dealing with statutory powers such as planning. Councillors and staff must consider evidence and arguments put by a wide range of organisations and individuals in order to perform their duties effectively. Giving undertakings to an interested party prior to consideration of all the information relevant to a decision would be inappropriate. However, Councillors should encourage lobbyists and applicants to put their views in writing to the Chief Executive Officer for evaluation by council staff and reporting to council. While we believe our position is appropriate, we are not averse to considering additional guidelines to support Councillors.
Giving OLG the power to issue penalty infringement notices		
10	What level of PIN is appropriate?	The OLG should not be given the power to issue penalty infringement notices (PINs). We support the issuing of PINs for minor or insignificant breaches of the conflicts of interest declarations, however, our position is that unelected officials should not stand in judgment of elected officials. The issuing of PINs should be undertaken under the auspice of the proposed NSW Local Government Privileges Committee. In the absence of a fully formed structure, it is difficult to determine an appropriate level of PIN. There is no suggestion that a PIN would require the payment of a financial penalty. As a written sanction a PIN would provide limited value in terms of changing Councillor behaviour unless it forms part of an overall penalty structure as discussed in the next section below. Further we question how council or Mayoral issued PINS for behaviour in the chamber could be enforced, especially as meetings are public and there is no requirement for public attendees to register to attend or otherwise identify themselves.
NSW Local Government Privileges Committee		
11	Are the penalties proposed appropriate, and are there further penalties that should be considered?	In our previous submission regarding the Framework (February 2023), we advised that we support the rigorous application of penalties for serious conduct breaches but seek further clarification on the specifics of suspensions or monetary penalties. Our position stands. The Framework suggests that penalties may include censure, warnings, loss of sitting fees or referral to other tribunals or bodies depending on the seriousness of the matter. However, there is no structure within the framework. For example: • what misbehaviour would result in a warning or a censure

Questions for consideration		Our response/position
		• do multiple warnings automatically result in a censure • do multiple censures result in a loss of sitting fees • are loss of sitting fee fines fixed or variable, or do they relate to the seriousness of the misbehaviour; will they be calculated on, for example, penalty units. The structure of the penalty/misbehaviour regime is critical to the success of the Framework.
Referral of significant sanctions to appropriate tribunal or body		
12	Are the existing sanctions available under the Local Government Act sufficient?	As outlined above, the Framework requires the development of a full structure in terms of what constitutes misbehaviour, what sanctions should equate to findings of misbehaviour and the consequential penalties.
13	Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?	Suspension is another component part of that structure. We support sanctions for Councillors being made only by proper tribunal or established Privileges Committee; unelected officials should not stand in judgment of elected officials.
Restoring dignity to Council meetings		
14	Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	We support increasing the powers of mayors and meeting chairs to manage disorderly conduct in meetings but stress that such powers must be balanced with checks to avoid misuse. The Framework suggests that the Mayor may be given the power to expel councillors for acts of disorder and to remove the Councillor's entitlement to receive a fee for the month in which they have been expelled from a meeting, and further that if they fail to apologise the Councillor will lose their entitlement to receive their fee for a further month. The Framework suggests that Councillors will be entitled to a right of review. We submit that the Privileges Committee should be the review forum in this instance. We would anticipate that the misuse of these powers by a Mayor will, itself, potentially result in future complaints about behaviour unbecoming and provides a powerful tool for the Mayor to use his or her political advantage. Some limits would need to be put in place, beyond which the powers would need to be capped, with ministerial or departmental approval to exceed the cap.
Banning briefing sessions		
15	Are there any other measures needed to improve transparency in councillor deliberations and decision making?	We reject the view that Briefing sessions are a forum for making decisions away from the public view. Briefing sessions provide councillors an opportunity to better understand intricate policy issues, legal considerations, financial implications and strategic decisions before making their informed decisions at a

Questions for consideration	Our response/position
	Council meeting. This less formal environment allows for opportunities not available in the chamber, including having Council subject matter experts available, considering hypotheticals, managing confidentiality. Councils deal with a vast variety of highly complex, technical and sensitive issues and we note that Cabinet exists at both State and Federal levels. Banning briefing sessions is retrograde and the concept fails to appreciate the complex nature of the matters that come before Councils on a regular basis. For example, planning decisions can have a profound effect on property values (land or otherwise). Early discussions on potential rezonings must not be held in public, as such Councillors must be provided with an avenue to work through concepts, issues and concerns in a confidential manner. Chief Executive Officers or General Managers should not be bought into the political process to protect both the appearance and reality of independence.

Submission Re: Council Circular 24-17 - Councillor Conduct and Meeting Practices – A Discussion Paper

The current Codes of Conduct and meeting practices are both ineffective and costly. In Ballina Shire Council and Rous County Council, we have witnessed numerous cases where procedural issues or interpersonal conflicts, rather than substantial community concerns, dominate council proceedings. According to data provided by the Office of Local Government (OLG), many cases are trivial, driven by power struggles rather than the genuine benefit of the community.

1. Addressing Serial Offenders and Accusers

There is a need to address not only serial offenders but also serial accusers. The consequences for these individuals should be proportionate to the seriousness of their actions. Continually addressing trivial disputes and power plays is disruptive, wasteful of time, and costly for the council and its constituents.

2. The Need for Transparency

Total transparency is essential for meaningful improvement in council conduct. The current rules that mandate confidentiality at every stage of the process are problematic. Public exposure of misconduct can be a powerful deterrent for politicians. For constituents, transparency is a vital tool for rebuilding confidence in local government and ensuring accountability.

However, the challenge in developing a better approach is that constituents are often unaware of what is happening behind the scenes, as the only data available to them is the broad, aggregated information released by the OLG.

3. Evaluation of OLG Suggestions

Most of the OLG's suggestions for improving the assessment of Code of Conduct processes are worth exploring. These suggestions should be trialled for two years and then rigorously evaluated to assess their effectiveness.

However, there are concerns that OLG's emphasis on individual corruption lacks sufficient attention to systemic, long-term abuses within local government institutions. Furthermore, there is a need for caution in strengthening Mayoral powers, as mayors can also be part of the problem. In particular, abuses of the Code of Meeting Practice are often linked to poor leadership or direction from mayors or chairpersons, and there are no clear solutions for addressing these abuses within the current framework.

4. Guiding Principles for Reform

To effectively address these issues, the following guiding principles should be embedded in the reforms:

A. Independent and Appealable Disciplinary Measures

Disciplinary measures must be independently applied, with the ability to appeal decisions. This ensures fairness and accountability throughout the process.

B. Overcoming Communication Abuses

To improve transparency and communication, the following steps should be implemented:

- Open access to all council meetings, regardless of type or location.

- The rapid, accurate, and permanent release of all meeting minutes and unedited transcripts and recordings, agendas, studies, consultant reports, and other relevant documents.

- Public forums to facilitate extensive community engagement on significant issues.

- Continuous and wide-ranging consultation with stakeholders.

C. Electoral Process Reforms

To address electoral process abuses, the following principles should apply:

One Vote, One Value: There can be no tolerance for mayors having multiple deliberative votes. This practice does not occur in any other Australian political institutions. A majority vote should be required for resolutions to pass, and a mandatory mayoral vote should be reserved for maintaining the status quo.

Electoral Boundaries: Electoral boundaries must be determined by the NSW Electoral Commission, not politically influenced by council members. The timing of any redistributions should also fall under the commission's purview.

Popularly Elected Mayors: There should be no tolerance for a mayor, elected separately from the council, then receiving all preference transfers as if re-elected. A full quota should be deducted from the ordinary council election before any preference transfers occur, consistent with how preferences are handled when a person is eligible for re-election.

Sarah King

Sue Heins
Mayor

13 November 2024

Strategic Policy Unit
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Dear Strategic Policy Unit

Feedback regarding Councillor Conduct Framework Review

Thank you for the opportunity to comment on the Office of Local Government's (OLG) discussion paper entitled *Councillor conduct and meeting practices – A new framework* dated September 2024 (discussion paper).

This letter constitutes the submission of Northern Beaches Council.

Northern Beaches 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 this submission, there are various suggested initiatives which are considered to be unclear, misconceived or unhelpful.

Council understands Local Government NSW (LGNSW) is submitting a sector-wide response that takes into account the views of elected representatives. Council is aware of the direction of the LGNSW submission and is supportive of this.

Council notes the concepts in the discussion paper are high-level and further detail will no doubt be available in due course which may address some of the matters raised and help councils to provide more feedback in relation to the specific questions posed in the consultation paper. This submission includes some general comments and issues of particular interest to the Council (being the proposed changes to briefings, the code of conduct and the role of the mayor).

General comments

The premise in the discussion paper, that how councillors 'behave, how they should deliberate and the responsibilities they hold should be modelled on how members of Parliament are expected to behave and act', does not take into consideration some key differences between the two tiers of government. Some pertinent points include:

- Local government operates and is regulated under the settings established by the State.

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- State members of Parliament benefit from parliamentary privilege which provides certain powers and immunities to individual members of Parliament. These powers and immunities do not ordinarily apply to councillors. For example, the privilege of freedom of speech in Parliament does not extend to councillors during Council meetings. Whilst 'freedom of speech' is listed as a 'principle' of the proposed changes, there is no corresponding legislative protections proposed for councillors in this forum. This may leave councillors exposed to civil action and is why more comprehensive guidance, rather than 'aspirational' guidance may be more beneficial for local political representatives.

- The role of a member of Parliament is quite different to the role of a councillor. The role of Ministers, as members of cabinet within the government, who are appointed to portfolios that oversee government agencies is also different. Local councillors, as a collective of up to 15 individuals, with varying political persuasions, oversee the strategic direction of their council, which is a body politic. This, coupled with local government being the level of government closest to the community, makes for very different political contexts.

As such, any attempts to model the operations of councils on State government must tread cautiously.

Briefings

The change proposed in the discussion paper in relation to briefings is not supported by Northern Beaches Council. The driver of this proposed change is not clear and not directly relevant to matters subject of the code of conduct. At Northern Beaches Council decisions are appropriately made at Council meetings and we do not have widespread 'reports or concerns that council decision making is not transparent'.

The briefing practices in local government, are said on page 18 of the discussion paper to have 'recently developed'. 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 council staff can provide elected officials with 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 also 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 sportsfields, 254 playgrounds, 2 aquatic centres, 5 art galleries, 9 day care 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.

In any event, 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.

It is noted that 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. As such, the proposed changes with respect to briefings are not line with the premise that how councillors 'behave, how they should deliberate and the responsibilities they hold should be modelled on how members of Parliament are expected to behave and act'. Indeed, local government is already more transparent than State government.

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.

The proposal to allow briefings of mayors is incongruous with the proposal to otherwise prohibit the briefing of councillors and is dealt with in more detail below (see 'Role and powers of mayor').

Code of conduct

Council has some reservations with respect to the proposed changes to the code of conduct.

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.

An aspirational code of conduct would result in uncertainties as to the standard of conduct expected of councillors. A more prescriptive code, as is in place now, provides clarity as to the behaviours expected including for new councillors. The current code of conduct provisions have developed as a result of real issues experienced in the industry. To abolish those learnings would leave an undesirable vacuum.

The aspirational proposal 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.

Limiting concepts of councillor misconduct to misbehaviour related to conflicts of interest and misbehaviour in public office, does not take into account the potential impact of councillor behaviour on staff and may reduce opportunities for staff to raise legitimate concerns. The following comments are made in this regard:

- At Northern Beaches Council we consider ensuring safe workplaces, free of psychosocial hazards, as an important consideration. Whilst it is noted SafeWork regulates this space and has taken action at some councils, needless to say, ensuring there are avenues for early action is critical.

- With the bar effectively set lower for complaints, this may over time lead to an increase in behaviours that do not meet the threshold, however which are still undesirable and could lead to psychosocial hazards.

- Currently, the Model Code of Conduct and Model Councillor and Staff Interaction Policy cover the provisions of information to councillors. Some additional detail is required for us to consider how this would be addressed in a new ‘aspirational code’ context. At a minimum an abbreviated aspirational code should be supported with clear examples, definitions and case studies of behavioural expectations to ensure there is clear guidance regarding the benchmark for matters to be taken to either OLG or the Privileges Committee.

- Council foresees some challenges with the concept of administering two codes of conduct, one for councillors and one for staff. Staff, councillors and the community all interact in Council meetings. Having two rules may be challenging. It may also be challenging to communicate the two settings, if the concepts are markedly different.

Council notes OLG would require significantly increased resources to transition to become directly responsible for dealing with pecuniary sanctions and supporting an appropriate tribunal or body. Council would not support the costs associated with the implementation of this new approach to be borne by the local government sector. It is unclear how the funding and support of both the expanded OLG functions and the investigative, reporting and administrative requirements of a Privileges Committee would be met.

Council supports measures which would reduce the costs associated with managing complaints. However, it is not apparent with the information available at present, that the proposed changes will miminise complaints.

With regards to establishing the Privileges Committee, it is not clear this would prevent matters being used for political gain, resolve matters more swiftly or maintain

confidentiality. It is unclear how the Committee, consisting of mayors and ex-mayors would be supported, however it is recommended a person with experience in procedural fairness and complaints would be appropriate to manage and support the process.

There are also concerns that the proposal that mayors and ex-mayors would sit on the Privileges Committee would not provide the necessary level of independence and expertise for the role to be appropriately discharged.

Consideration should also be given to what support or legal representation councillors subject to investigation or hearing by either the OLG or the Privileges Committee should be available under the Model Councillor Expenses and Facilities Policy. Further details of what is proposed are required.

Role and powers of mayor

The proposal to increase the powers of the mayor to preside over council meetings may assist in the smooth running of a council meeting. However, this may also lead to potential for mayors to use, or be perceived to use, this power for political advantage. Further clarity in relation to the processes for an evicted councillor's right of review, including the expediency of that process, would be beneficial to include in the next round of information released. Should a review not uphold the decision of a mayor, the potential sanctions associated with that should also be known, as well as whether any decisions made while the councillor was expelled need to be recommitted to a vote in circumstances where that vote may be determinative.

Previously in this submission the shortcomings with the proposal to abolish briefings were addressed. It is incongruous that the mayor should be entitled to briefings and not all councillors. Decisions by resolution can only be made by the governing body as a whole and accordingly all councillors should be entitled to receive briefings. 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 the mayor may share any briefing information with other councillors at their discretion is necessary.

Thank you again for the opportunity to share 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 my office on 8495 6459.

Yours faithfully



Sue Heins
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Carrathool Shire Council

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14 November 2024

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COUNCILLOR CONDUCT FRAMEWORK REVIEW

Council considered the information provided regarding the Conduct Review at the October 2024 Council meeting. The Council agrees that any proposal to streamline the current requirements is a step in the right direction.

Council is of the opinion that if a Councillor breaks the code of conduct the Office of Local Government (OLG) should take prompt action and if found to be a breach there should be consequences relative to the breach. Similarly, should vexatious complaints be made the perpetrator should be suspended from office for a substantial period.

It is acknowledged there are different issues relative to conduct between larger regional or city councils and smaller rural councils. An ability to deal with meeting infractions as they occur is considered conducive to better conduct.

The timing of the review was raised by Council. The review was conducted during the period of the Council general election. The submission close date of 15 November does not give newly elected Councillors sufficient time to consider all aspects of the Councillor Conduct review – they will have no background knowledge and are expected to give insights into there concerns. It is Councils submission that the review should be conducted after having allowed sufficient time for new Councillors to come to grips with all issues regarding Councillor behaviour.

Yours faithfully

[redacted]

RICK WARREN
GENERAL MANAGER

AlburyCity

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14 November 2024

Dear Sir/Madam,

AlburyCity's submission on OLG's recent discussion paper - *Councillor conduct and meeting practices: A new framework*

AlburyCity is pleased to provide feedback to the Office of Local Government (OLG) in response to the recently released discussion paper, *Councillor conduct and meeting practices: A new framework*.

Overall, AlburyCity welcomes OLG's recognition of challenges faced by local government under the existing councillor conduct framework and for taking a holistic view in response to the issues raised in the Kellar Report. OLG's proposals in the discussion paper appear to be simple, yet effective, and remaining so will be critical to its success.

AlburyCity would like to highlight the below propositions in the discussion paper as especially beneficial to councils:

- The principles of change as outlined;
- Creating a new, separate councillor Code of Conduct which is succinct and clearly outlines the behavioural expectations of councillors, supported by a clearer framework and definitions of misbehaviour;
- Aligning the Code of Conduct to the Oath of Office;
- The proposed pecuniary and significant non-pecuniary interest framework;
- The thresholds for behavioural matters requiring consideration by the proposed Privileges Committee and ensuring clear guidance for Councillors on what is above and below the line in terms of behaviour to minimise unreasonable and vexatious complaints;

- Addressing inappropriate lobbying, noting the detail of any proposed lobbying guidelines would require further consultation;

- Abolishing the two step complaints process and any complaints about conflict of interest being managed centrally by OLG, including taking direct responsibility for investigating pecuniary and significant non-pecuniary conflicts of interest, and complaints about behaviours being made to and addressed by the state-wide Privileges Committee. Removing council involvement from councillor Code of Conduct complaints will also effectively eliminate the existing perceived conflict of interest. Importantly, the OLG must be adequately resourced to consider matters in a timely manner, for either determination or referral to the Privileges Committee;

- The power for the OLG to issue penalty infringement notices (PINs) for minor or insignificant breaches of conflicts of interest declarations, with the level of PIN to be commensurate with the seriousness of the breach. The cost of infringements should also be considered, and not exceed, the Annual fees paid to the Councillor;

- The penalties that could be imposed by the Privileges Committee i.e. Censure, warning, loss of sitting fees (Annual Fees) or referral to an appropriate tribunal or body for more serious sanction (rather than the Departmental Chief Executive). We do however suggest consideration be given to the OLG Department Chief Executive retaining the power to suspend councillors for between 1-3 months for serious allegations until a matter can be considered by Tribunal. If sitting fees (Annual Fees) are withheld as a result of the suspension, the tribunal should be able to compensate the councillor if allegations are unsubstantiated. This option allows for an independent, timely decision to be made in response to alleged serious misconduct, as opposed to waiting for a tribunal outcome before any action can be taken; and

- Stronger penalties to address councillor misconduct, including increased Mayoral powers to ensure meetings are conducted in an orderly and dignified matter, noting the OLG must provide training and education to NSW Mayors to support them in undertaking this added responsibility. There must also be a clear and timely process for review of such decisions to protect against misuse of power.

However, AlburyCity would also like share ideas on potential improvements to OLG's proposed model. These include:

Code of Conduct

Where the discussion paper suggests enabling Councillors to be 'critical' of the decisions of the majority, consideration should be given to the potential risks, including how this might undermine community confidence in the Council as a whole. Recognising that Councillors have a right to speak publicly on matters pertaining to their Council – the debate in the Chamber and decision making process already provides that opportunity. Councillors should be empowered to

justify and explain their reasons for voting, however, should remain respectful of Council's final decision.

Pecuniary interest disclosures

In principle, extending councillor pecuniary interest disclosures to ensure pecuniary interests of close associates are disclosed is important for transparency. However, care should be taken when developing these requirements to ensure disclosure is only required where relevant. This would limit both privacy and commercial implications.

Property Developers and real estate agents

AlburyCity supports a ban on property developers and real estate agents from being councillors, and the proposed measures to be introduced into legislation as outlined in the discussion paper.

Privileges Committee

Composition

OLG's proposal for current NSW Mayors and ex-Mayors to make up the OLG-managed Privileges Committee that addresses behavioural complaints may not be appropriate. Firstly, the political motivations or relationships of Mayors and ex-Mayors have the potential to influence decisions on councillor behaviour, which automatically strips the panel of its impartiality. Secondly, Mayors and ex-Mayors may not be suitably qualified or trained to pass judgement on their peers. The idea to have a single centrally managed panel (Privileges Committee) to focus on behavioural complaints is a good idea, especially from a cost perspective, however the Kellar report's suggestion that panels be comprised of independent, suitably qualified individuals is preferred. Regardless of its membership, the OLG should have an open and transparent process for the selection and appointment of committee members and ensure there is a regular cycle of membership renewal.

Costs

It is noted the Privileges Committee would be paid for by either the individual councillors or their councils – dependent on the outcome. It's important to ensure that fees passed on to councillors or councils are commensurate with Committee costs and are affordable, given the financial challenges faced by Councils, Annual Fees paid to the councillor involved, and possibility of continued vexatious or frivolous complaints.

Code of Meeting Practice Reforms

Expecting Councillors to stand, where able to, when addressing a meeting and when the Mayor enters the Chamber does not reflect or give due consideration to the equal position that all Councillors hold as elected representatives of the community. The concept is considered to be draconian and not in keeping with modern practices of equity and mutual respect. On this basis, and that Councils have invested in technology to manage and livestream meetings which is set up for speaking when seated, we do not support either of these proposals.

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Banning all closed sessions

AlburyCity places great emphasis on ensuring decisions are made transparently and are one of the few councils who amended OLG's model Code of Conduct in 2022 to keep Pre-meeting Briefing Sessions open to the public. Closed strategic sessions have a purpose in all levels of government. Councillor only workshops are an important opportunity for Councillors to provide early strategic input into the formative stages of initiatives and strategies, giving consideration to community aspirations as outlined in their respective Community's Strategic Plan. These workshops are also an important mechanism to support and enable elected representatives to work together with officers to ensure direction is aligned with community expectations, well in advance of any decision making that may be associated with strategic matters. They assist Councillors to build in-depth knowledge and understanding and maintain a big picture perspective.

These are not decision-making forums and are not an opportunity for debate, rather are aimed to provide an opportunity for Councillors to provide strategic input and fact-find to ensure all relevant information is provided in the future once the matter requires a decision. If all material is to be considered in council meeting, it is anticipated meetings will extend considerably in time, which may not be practical or deliver the best outcome due to fatigue. Further, that matters have to be regularly deferred to enable further information to be provided to Councillors, which could negatively impact business operations and the community.

AlburyCity would welcome an opportunity to review an early draft of the new councillor code of conduct and complaints management framework when available. The concepts in the discussion paper help set the foundation for reform, however fine tuning is envisaged to ensure the practical elements of the framework align with its intent.

We thank you for the opportunity to provide feedback. Should you wish to discuss any aspect of our submission, or provide feedback on our submission, please contact Mayor Mack on 0427 282 124 or kevin.mack@alburycity.nsw.gov.au or Mr Zaknich on [redacted]

Regards,[redacted]

[redacted]

Cr Kevin Mack
Mayor

[redacted]

Cr Jessica Kellahan
Deputy Mayor

Locked Bag 3015
NOWRA NSW 2541

Re: Councillor Conduct Framework Review

Firstly, I believe this Review has been needed for a very long time. As a former councillor for 18 years and still with a strong interest in this community I love, I have witnessed many behaviours by councillors, both in person and in livestreamed meetings, that had a significant impact on our community, on councillors, staff and community members. In my opinion many were unacceptable and clearly transgressed notions of transparency and respect.

Where individuals lodged Code of Conduct complaints, the failure by a Council to deal with it as recommended either by the appropriate Council staff or investigators or by OLG has led to a situation where most residents believe it isn't worth lodging a complaint, and this has led to a lack of trust in those making decisions on behalf of the community. So, I am delighted to see this Framework Review, and congratulate OLG for developing it. I sincerely hope it leads to the many changes I believe are essential for Local Government in NSW to operate in the interests of its many diverse communities.

Having read the document on the potential changes to the Code of Conduct and Oath of Office for Local Government in NSW, the following are my responses to the Questions in each section as follows:

1. In my opinion the key elements of an **aspirational Code of Conduct** should be transparency in decision-making, commitment to the local community, Declaration of conflicts of interest - both financial and non-financial as the latter is from my experience glossed over by the councillors - and respectful behaviour to other councillors, staff and members of the community. I have witnessed too many examples of councillors 'grilling' speakers or insulting them when they speak in public access at meetings. This aspirational code should be available to **potential** councillors so they are aware of behaviour expected of them.
2. I support the **Code of Conduct being aligned to the Oath of Office** so councillors and the community are aware of how important this Code of Conduct is, and those making it can be held to account by the community.
3. The proposed **pecuniary interest framework** is appropriate, and I support it strongly. Councillors

have substantial power over significant issues in their local community, particularly - and troublingly - in regard to land development. Those related to councillors can have a strong interest in those developments and a significant influence on the decisions councillors make. I also support very strongly giving **extended investigation powers and remedies** where there is non-compliance with OLGA's directions.

4. I agree with the principles of what constitutes a significant or major non-pecuniary interest, particularly with elaboration that the **test that it is not in the mind of the individual who is subject to the conflict of interest.** It is whether **a reasonable and informed person would perceive that the councillor could be influenced** by a private interest when carrying out official functions. Having observed direct conflicts of non-pecuniary interests by a majority of Councillors and them declaring them as non-financial and non-significant, with even the Council's governance officer saying it is up to the Councillor to determine this, there is much to be done in educating existing and future councillors and staff on this issue.
5. I support strongly the **proposed legislation in regard to property developers and real estate agents**. As is pointed out, the power of these people if they are councillors is one of the most contentious and, in my opinion, most damaging to local communities. It also causes distrust, not only of those councillors but also of the system they operate within. However, I am concerned about how long the transition period might be and how much influence these councillors have on other councillors. Whilst I would prefer to see them being excluded from **any** decisions, including regarding strategic planning, that involve land development I am aware that their influence on other councillors would still exist. To me this is corruption and the bar for proving this is simply too high.
6. Unbecoming behaviour and that which brings the Council into disrepute seem to me to be the two types of **Councillor misconduct in public office** that are the source of most Code of Conduct complaints I have observed. As pointed out before, generally these have been left to the Council to decide on those complaints. I strongly support the inclusion of a **third limb of misbehaviour which allows consideration of behaviour considered egregious or problematic** not covered by the other two. Establishing a Local Government Privileges Committee is, in my opinion, a step in the right direction, but given the difficulties that councillors face handling Code of Conduct complaints against their own councillors, perhaps this body should also make decisions on the former two behaviours. As to how complaints could be minimised, **all** councillors should have to receive training in what is expected of them by the community and government, what their responsibilities are and are not. This training should incorporate activities that demonstrate a

councillor's knowledge and understanding of what has been covered. For example, holding meetings not open to the public and interfering to overturn a planner's recommendation is not a strategic issue and certainly brings a council into disrepute.

7. I am pleased to see that OLG is developing l**obbying guidelines and a model policy**. However, my observation is that this lobbying is often condoned or carried out by corrupt council staff, sometimes together with a councillor. Unless this type of situation can be addressed, I'm not hopeful of this type of behaviour being identified. A complaint to ICAC is unlikely to be considered as ICAC's resources are limited, only major issues or major complaints are pursued and the time involved in complaints that are pursued is useless as a deterrent. Perhaps publishing cases where such lobbying is identified might provide a greater incentive to behave ethically but I doubt that this would be acceptable.
8. I am in favour of **abolishing the 'two step' of dispute resolution**. The cost to Councils, particularly where there are many Code of Conduct complaints, is significant due largely to the need to hire investigators, As they rarely provide sufficient evidence to support disciplinary action, having complaints in regard to conflicts of interest going directly to the OLG and those about misbehaviour going to the Privileges Committee are likely to be a stronger deterrent than the present process.
9. I support OLG having the power to **issue penalty infringement notices** for minor conflicts of interest such as those where they are basically administrative in nature. The provision of a right of appeal and for consideration of special circumstances is appropriate. However, if this were to continue or be repeated then the penalty should be stronger. Indeed, in that situation I think it should be referred to a higher body, preferably a tribunal.
10. I support the proposal that the **process of the NSW Local Government Privileges Committee** in dealing with misbehaviour should be paid by individual councillors unless the costs are beyond their financial capacity. I also support the **proposed penalties.** However, in my view, the penalty should be made public. so that the community is aware that action has been taken. Otherwise, as is currently the situation, the process and outcome are not transparent. My own opinion – and I know it reflects the opinion of many in my community – is that continuing misbehaviour should result in removal from the Council. This type of behaviour is deliberate and is costly for a Council in extended or adjourned meetings, particularly for Council staff who have to attend these meetings.
11. The **existing sanctions under the Local Government Act** arguably do not work and are not held in high regard by the community. I believe the current situation where an unelected Departmental

public servant makes a judgement on a councillor is not appropriate and cannot be seen to be transparent. These sanctions should be made, as suggested, by a formal tribunal with independent arbitrators with relevant experience. However, it should not be the case as currently occurs in NSW that a government department or a local Council should not have costs awarded against them.

12. I generally support the **additional powers proposed for mayors** or chairs of meetings, particularly those to expel a councillor for acts of disorder, to demand an apology and to remove a councillor's entitlement to a sitting fee. However, currently mayors and chairs of meetings already have the power to demand an apology and expel a councillor from a meeting. Unfortunately, in my experience, the demand for an apology can be politically partisan. They can and do expel members of the public, again often on a politically partisan basis. I'm unsure that this issue of political partisanship can be addressed by giving these additional powers unless it is acknowledged throughout this Framework Review that the behaviour of mayors and chairs of meetings can themselves commit misbehaviour that can result in complaints against them.
13. I fully support **the proposal to ban briefing meetings** although in the case of my Council, briefing meetings are open to the community whereas Workshops are closed to the public, so it should be made clear that any Council meeting closed to the public, apart from issues to be discussed in confidence, is banned. I, and many residents, are fully aware of the type of behaviour that can, and does, apply in those meetings. Until councillors know that they must behave ethically, transparently and in the community's interest the cost to a Council in legal fees but also in community trust is very high. Apart from this proposal, councillors are required to be respectful to other councillors, staff and the community, yet this is often politically biased in councils I have observed. So perhaps councillors should be required to undertake training on what this means.

Again, I thank OLG for providing me with the opportunity to make a submission and congratulate you on developing this Framework Review. I look forward to feedback as to its outcomes. There is no doubt in my mind about the enormity of the task in transforming Local Governments in NSW to ethical, transparent and accountable bodies.

Finally, one concern I have that hasn't been acknowledged in regard to misbehaviour by councillors is that it appears to be restricted to behaviour in Councils. My own view is that it should also be acknowledged somewhere in this Review that councillors are representatives of their community and have an obligation to behave respectfully to members of the community. This is particularly

necessary given that councillors have their own social media sites and can basically slander their fellow councillors and members of the public safe in the knowledge that charging someone with slander is onerous and expensive.

There is far too much of this occurring and I think the Review would be flawed if it doesn't address this issue.

Yours respectfully,



Dr. Roslyn Irwin

[redacted]

[redacted]

14 November 2024

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Ballina Environment Society

Councillor Codes of conduct and meeting practice

Sept 2024 Office of Local Government Discussion Paper

Ballina Environment Society (BES) response

OLG analysis of the existing problems with the Codes of meeting practice and councillor conduct presents sound analysis and suggested changes. OLG's options for change are heading in the right direction with a major emphasis on transparency and how to regulate unacceptable behaviour. Some points need to be further adapted, there a few significant omissions and BES propose some special recommendations for Rous County Council, (these may apply to other CCs but we have only the experience of RCC).

CODE OF Conduct

Below are the concerns raised and recommendations made by BES.

Transparency

The most important cause (but not the only one), and the most significant solution relate to transparency, the lack of as the cause, and full transparency as a solution**.**

Context

The context of Local Government can vary, for example Ballina Council has no independent news sources for situations that would benefit from direct public interactions/ challenges or even debates between Councillors. As a result, residents and councillors can get unchallenged exposure to one sided view.

Some Councils are resistant to options such as public forums despite Councillor handbook recommendations, and we believe it likely that very few councillors know what is in their official OLG Handbook.

Examples

[redacted]

3. LGAs have no official opposition or opposition policy - major policy changes were made in [redacted] on the casting vote of the Mayor.

There will always be the risk that individuals within organisations fail to meet standards and processes. These must be robust enough to ensure transgressions are identified and flexible to allow for adaptation as we learn. Two fundamental principles of democracy are that transparency everywhere is a necessity and a majority vote is needed for policy change. If

transparency is rigorously pursued and majority status maintained many of the problems identified in the OLG discussion paper will be minimised.

Communication

Good communication is essential for transparency. Therefore, information must be quickly, accurately, and fully presented to the public and permanently recorded (with copyright only limited to accurate usage). This will encourage Councillors to be more considered in their thoughts and deeds.

We recommend:

1. **Hansard of Ordinary meetings:** An accurate record of the meeting debates to inform how decisions were made, if Councillors change their vote, and how they act. This should be done in addition to recordings, which are useful to capture the tone, which can be significant in debates). A written account using voice-to-text recognition already available in video call software can be very efficient and inexpensive. The voice recordings can be edited to align with the agenda item to facilitate understanding but shouldn't change the original meaning and intent.
2. **There needs to be a penalty for faulty equipment or inaudible recordings if these continue to be relied on.**
3. **Recordings:** While recordings of council meetings enhance transparency and are quickly available, they also pose major challenges. They are often a single, hard-to-navigate audio block, requiring extensive replaying to find specific items, follow cross-dialogue, or clarify critical details. Recordings typically lack clear speaker or agenda identification, and poor audio quality can make them difficult, if not impossible, to interpret accurately. Also, recordings have copyrights, causing confusion on their allowed use by the public.
    a) *Example A:* If followed exactly, RCC copyright will only allow one to hear it – not to use it.
    b) *Example B*: [redacted] How can the public respect decisions if the reasons are not known? Each Councillor's contribution is important to electors.
4. **Minutes and Agendas:** Quickly releasing draft minutes is essential. A maximum of four business days after a meeting should be mandated. Ballina Council issues draft minutes well within that time frame, as do other councils.
    a) *Example:* RCC unacceptably usually only releases draft Minutes to the public in the business papers for the next Ordinary or Extraordinary meeting. That

can delay the release for as long as seven weeks. BES has suggested a quicker release in vain.

5. **The agenda must have the necessary background information**, comments, and recommendations from appropriate staff. RCC has not followed this recommendation, choosing to deliver information orally, making it difficult for councillors and the public to give full consideration before deciding. The code should require that GM's participation during formal meetings be limited to properly addressing questions directed to them or to give advice on procedures or possible conflicts with other resolutions or relevant Government regulations. Councillors must also accept responsibility for being adequately informed.

[redacted]

6. **OPEN Access to all types of Council Meetings:** The OLG recommends that pre-briefings and briefings be open to the public. BES strongly supports this. However, we would like to include workshops. BES sees no reason why discussion amongst Councillors in a less formal forum should not be witnessed.

   All council meeting schedules—including dates, times, locations, and topics—should be made publicly available within a reasonable timeframe to allow community members to attend and prepare, as is currently done for ordinary meetings. This should include briefings, workshops, and committee meetings, with information published on the website. Public awareness of these sessions, even when attendance isn't allowed, can enable timely community advocacy. Additionally, the term "confidential" in meetings should be clearly defined and used appropriately**.**

   We have found that Councils have a loose definition of workshop complexity. It can encompass new data, specialist perspectives, and the formulation of decisions to be made formally later or, in the case of RCC, to be implemented without formal resolution.

7. **BES advocates for mandatory public forums for controversial/ divisive issues**, including interactive Q&A and debate with both the public and Councillors, at least annually, with attendance requirements similar to an ordinary meeting. Without such forums, poor processes may develop. BES also recommended a public forum for the significant Councillor selection process in Ballina's new Council (see Attachment A). If

complaints and/or submissions number 25 objectors or more (proportionate to the shire population), indicating public concern, then a public forum should be offered.

[redacted]

This approach can support contesting (opposing) views and consequently produce better decisions. Residents can provide additional valuable information, but it is often overlooked.

Breaches of Code and public awareness

As highlighted in the OLG discussion paper, the current Code is both costly and ineffective. For instance, Ballina Council spent $38,943 in the last term on codes of conduct issues. However, of the cases reviewed, only 13 advanced beyond the preliminary assessment stage, and none proceeded to a full investigation.

In addition to reforming the resolution process, broad agreement is found with the OLG paper's analysis of the issues and its recommendations for improvement. However, one critical principle appears to be overlooked in the OLG's proposal: transparency. At present, the public is not informed about essential details of Code of Conduct (CoC) complaints, such as who lodged the complaint, against whom, the nature of the complaint, and the outcome. While concerns may exist that publicizing accusations could cause political harm, the lack of transparency is damaging to democratic integrity and should be addressed.

To improve public trust and respect for the process, it is recommended that some level of public disclosure be implemented regarding the nature and outcome of conduct cases, as well as information about the complainant. Without this transparency, trivial or repeated complaints are allowed to disrupt or intimidate council members with minimal oversight. For instance, it was once declared by a Lismore City Councillor that they intended to hold the highest number of CoC complaints against them. In this context, "serial offenders" are not only those accused of misconduct but also those who submit repeated, potentially frivolous, complaints. Increasing mayoral powers is not seen as a solution, as mayors are not necessarily immune to lodging trivial complaints or engaging in power plays (see Attachment B).

It is supported that a revised Code of Conduct should protect councillors' rights to speak publicly on council matters, including in instances of disagreement or critique of majority decisions. However, it is suggested that the Code should be enforceable, rather than merely "aspirational," particularly in sections addressing conflicts of interest. Furthermore, serious breaches of individual interests are not seen as issues that can be entirely managed by external bodies, such as the police or ICAC.

The rationale for this view includes the following:

1. Respect for the CoC process is likely to improve only if councils assume responsibility for the initial process and make relevant information public at suitable stages.
2. Systematic minor acts of misconduct over time can be equally or more significant than isolated, high-profile incidents of misconduct.

Code of Meeting Practice

In the area of the Code of Meeting Practice, more significant reforms are required than those currently proposed by the OLG. Notably absent from the OLG's account is an acknowledgment of how systematic minor misconduct—such as the repeated use of misleading information, withholding, or omitting expert views that differ from Council preferences, insufficient stakeholder involvement, and the selection of consultants known to align with desired Council outcomes. Such actions—alongside strategic planning decisions made in caretaker mode and the concealment of full terms of reference—erode effective Council planning and delay necessary action.

In the RCC area concerning bulk water supply, for example, a documented push for a dam in contradiction to Integrated Water Cycle Management (IWCM) goals and against independent expert advice (except that funded by the Council) has been recorded by BES, with a copy provided to the Minister. Such systemic issues, as seen with Rous Council's behaviour, are apparent to those willing to consider the facts objectively. However, documenting and exposing these patterns of behaviour is highly time-consuming, requiring more resources than most councillors or community members have available.

Recommendations:

1. Even minor breaches of meeting practice could be publicly identified, permanently recorded, and clearly listed.
2. Regular intervals should be established to monitor these breaches, present them publicly in Ordinary meetings, undergo independent assessment, and prompt serious action if warranted.
3. It is crucial that these records are maintained across Councils to prevent data loss.

Mayors

While BES is not opposed to strengthening certain powers for Mayors, it is essential that they be strictly held accountable for any breaches.

Instances of bullying, favouritism, or misconduct are acknowledged as potential issues, and Mayors are not considered exempt from these risks (see Attachment B). However, actions such as withholding payments or excluding individuals from meetings should only be permitted if a motion supporting the Mayor's decision is passed by a clear majority, without the Mayor's vote.

It is further suggested that Councillors should be able to challenge the Mayor's rulings through motions (again, without the Mayor's vote), and if such a motion succeeds, an apology from the Mayor should be required. If these motions become frequent (more than once every two months), the recommendation is that the Mayor be suspended pending an independent inquiry, perhaps conducted by a panel of retired peers with reputable records. Additionally, any individual penalized by a Mayor should retain the right to appeal.

Concerns are also raised about:

1. The electoral process for a popularly elected Mayor, which may create an unfair advantage by effectively granting the Mayor three votes. As Mayors elected this way are ineligible to stand as Councillors, candidates often stand for Councillor as well to secure their role in Council if not elected Mayor. When such dual candidates become Mayor, their preferences are redistributed, often increasing the chances of a candidate aligned with the Mayor's agenda being elected to Council, and potentially leaving the beneficiary feeling indebted. One proposed solution is to withdraw all preferences in the Councillor category for such candidates, or to deduct a full quota from the redistributed preferences to reduce bias while respecting the preferential voting system.
2. The issue of the casting vote, which currently allows a Mayor to cast a second deliberative vote, effectively giving them triple voting power on contentious issues. BES holds that the casting vote should be mandated in favour of the status quo, supporting the democratic principle that a majority of individual Councillors should be required to effect change.

Conclusion

The Ballina Environment Society (BES) supports many of the OLG's recommendations on Councillor Codes of Conduct and Meeting Practices, particularly the emphasis on transparency, accountability, and stronger regulatory measures. However, we believe further refinement is needed, based on our experience with Rous County Council (RCC), which may apply to other councils as well.

Key to effective reform is increased transparency in council processes, especially regarding Code of Conduct complaints and meeting practices. Timely release of information and detailed meeting records will improve accountability and allow for greater public engagement in decision-making. We also recommend penalties for recurring issues, with violations publicly documented to deter misconduct.

BES also calls for stronger measures to address both individual and systemic breaches, ensuring that misconduct is swiftly identified and corrected. We caution against expanding

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Ballina Environment Society

Mayoral powers without appropriate checks, as Mayors must be held accountable for any misuse of authority.

Finally, we urge reforms to the electoral process, specifically addressing the risk of gerrymandering and Mayoral casting vote and the redistribution of preferences, to ensure fairness and prevent undue influence. The OLG should consider these recommendations to enhance democratic integrity and better serve local communities.

Sincerely,

Dr Lyn Walker
Ballina Environment Society

Attachments
Attachment A: BES Letter to GM BSC re Rous election 131024
Attachment B: OLG and Mayoral powers copy

bes2478@gmail.com

General Manager
Mr Paul Hickey
The General Manager
Ballina Shire Council
PO Box 450
BALLINA
NSW 2478

13 October 2024

Dear Paul,

Re Election of two Ballina Shire Councillors to Rous County Council
Improving transparency and breadth of information

With the formation of a new council Ballina Environment Society (BES) would like to suggest that the process of electing Ballina members to Rous County Council be changed because there is more information, and informed points of view, than currently available on Rous's web site, and we have concerns about lack of transparency and bias about the IWCM.

As you know, the election of members to committees typically occurs at the first meeting of a new council. At this early stage, Councillors may not be well-acquainted with one another and may not yet have fully grasped the relevant briefs. However, this process is generally manageable when dealing with Committees of Council because these committees are directly accountable to the Council. Specifically:

- Recommendations made by the committee must be formally adopted by the Council to have any effects.
- Any Councillor, regardless of committee membership, can argue for or propose changes to any recommendation.
- All Councillors have the opportunity to contribute to discussions within committees, though only elected committee members can vote.
- The Council has the authority to remove a Councillor from a committee or reconstitute the committee if needed.

However Rous County Council (Rous) is not accountable to Ballina Council (Ballina) and is different from local Council committees. For example:

- Rous is independent council with independent decision-making authority over its proclaimed functions including future strategic planning.
- Rous' functions are strategically significant for the future of Ballina Shire.
- Once Ballina Shire Council elects its two councillors as members of Rous it cannot direct or replace these Councillors; Ballina has effectively surrendered its sovereignty over decisions made by Rous.
- Rous has four contributing Local Government Councils who also elect two Councillors, therefore our councillors need to be well informed and able to advocate for Ballina's interests.

In light of this Ballina Council needs more time and a stepped process for appointing its two Councillors to Rous. After nomination, the selection process should include thorough consideration of each candidate's approach to Rous decision making which is the most crucial qualification in determining strategic decisions about our future water security and resilience, currently through its Future Water Plan 2060 (FWP60). Therefore, it is essential that candidates for election to Rous possess what scientist call "the beginners approach" that is open minded curiosity to explore and question all possibilities.

To achieve this BES proposes the following changes to the Ballina Council selection process so that Rous County Council can make informed, strategic decisions that align with the long-term water management needs of the region and the three critical multiple variable requirements scientific, economic, and social.

1. **Nomination Timing:** Candidates for election to Rous could be nominated during the first meeting of the new Council.
2. **Delayed Selection:** The selection of Rous Councillors could occur at a later Council meeting to allow ample time for information sharing, discussion, and careful consideration of the candidates.
3. **A Public Forum:** Prior to the election of Rous candidates, the Council should hold a public meeting of sufficient length to include a comprehensive input from interested stakeholders on Rous and its Future Water Project 2060 (FWP60). This can ensure sufficient time for Councillors and constituents to ask questions, engage in meaningful dialogue, and reflect on the information provided.

Public education and communication are noted as essential in both the Office of Local Government Handbook for Councillors and the IWCM Strategy. In addition the OLG's recent Discussion Paper on Codes of Conduct and Meeting suggests Public Forums to overcome transparency issues.

The aim is to build public and Council confidence that the two elected Ballina Councillors ar prepared to make strategic, scientifically informed decisions and always insist on transparency from Rous to Council and the Public.

We welcome the opportunity to answer any questions or clarifications.

Regards,

Lyn

Dr Lyn Walker
[redacted]
For Ballina Environment Society

Byron Echo Oct 30th 2024

David Lowe

The NSW Government is looking at a number of changes to the way local Councils operate.

The Office of Local Government has released a discussion paper seeking community feedback on a new framework concerning local councillor conduct and meeting practices.

The paper says, '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 that councillors have.'

The OLG has noted the growth in the number of complaints, 'often over trivial issues', and is particularly concerned at the lack of respect for mayors. It proposed giving them the ability to dock pay from councillors, and force apologies.

Across NSW, from 2020 to 2023 there were 4,289 complaints made via the local government code of conduct process, resulting in 14 suspensions or reprimands of councillors, with four of those referred to NCAT, and one councillor being dismissed as a result of ICAC investigations.

Describing most of these complaints as 'frivolous', the OLG is now considering delegating additional powers to deal with them.

Key proposals

This discussion paper which is now online includes the following proposals:

- Make OLG directly responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest, with sanctions (suspensions and loss of pay) being determined by an appropriate tribunal or body,
- Refer behavioural based concerns about councillor conduct to a State-wide panel of experienced councillors to judge their peers,
- Reset the code of conduct to be similar to Parliamentary Codes, making it clear the expected patterns of councillor behaviour,
- Ensure the community can observe local democratic processes by banning closed to the public briefing sessions, while at the same time restoring the dignity and prestige of the council chamber.

The OLG says these changes are only proposed for councillors, with no new processes proposed for local government staff's code of conduct.

The Office of Local Government says it is now seeking the views of the community, key stakeholders and the local government sector about the proposed changes, with submissions being accepted until COB Friday 15 November 2024.

Fine print

Page 17 of the discussion paper asks the question, 'Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?'

The document suggests that 'dignity and reverence for tradition' could be served by reforming the powers of mayors to expel councillors for acts of disorder 'and to remove the councillor's entitlement to receive a fee for the month in which they have been expelled from a meeting.'

Councillors will also be forced to apologise for infractions, instead of simply avoiding the request, as Cr Rod Bruem did in the last term of Ballina Council. Councillors will also be expected to stand when the mayor enters or leaves the chamber (like magistrates).

The proposed reforms will also expand the grounds for mayors to expel members of the public from the chamber.

The OLG says it is now seeking the views of the community, key stakeholders and the local government sector about the proposed changes, with submissions will be accepted to COB Friday 15 November 2024.

Photo removed

Ballina example

While many of the proposed reforms will likely be welcomed by both councillors and the general public, they will also open the door for grandstanding and power plays from mayors.

Consider the somewhat surreal case of Ballina Shire Council's last meeting.

When Cr Kiri Dicker was making a speech about development in Lennox Head, and infrastructure not keeping up with rapid population growth, she said 'this council, previous councils and the planning department were green lighting thousands and thousands of new homes, all of this greenfield development…'

Mayor Sharon Cadwallader cut her off at this point, taking exception to the phrase 'green lighting' development, although as Cr Dicker pointed out, the term simply means approving development, which is exactly what has been happening, in Lennox Head even more than most places in NSW.

The mayor demanded that Cr Dicker withdraw her comment on the grounds that she 'was making personal reflections on staff and councilors, and that is a clear breach of the Code of Conduct'.

Cr Dicker said it wasn't, and she wouldn't. Ballina GM Paul Hickey was then brought in to explain the rules relating to the direction of the chair, which resulting in more time wasting before the council meeting was adjourned for fifteen minutes.

After that, Cr Dicker once again refused to apologise for using the term 'green lighting', and the meeting resumed.

All in all, a strange little interlude, which could have ended quite differently if the rules relating to mayoral power proposed by the OLG are adopted in full.

5 comments

1. **Alan mosley** October 30, 2024 At 4:14 pm

Can we get ai to replace all councilors and mayor's that would solve the problem and you don't have to pay ai

Reply

   - **Lizardbreath** October 30, 2024 At 7:44 pm

What ridiculous suggestions – and who will oversee the general behaviour and civility of the mayor? What penalties for transgressions will apply and be enforced by whom?

Reply

      - **Roger** October 31, 2024 At 1:48 pm

THAT is THE problem with this suggestion.
"The OLG … proposed giving them [Mayors] the ability to dock pay from councillors, and force apologies."
OK – provided Mayors have proved that they are aware of – and will agree to follow ethical, community values.
I.e. all mayoral candidates should have to pass a test to prove they are 'what they say they are'.
Can YOU see this ever happening?

Reply

2. **Lyn+Walker** November 2, 2024 At 10:06 am

The issue that Ballina Mayor raised is indeed surreal. I would go so far as to say trivial at best and a blatant misuse of power. Good on Cr Kiri Dicker for refusing to apologise. I think that our Mayor played Trivia frequently against those she disagreed with in the last term. We should look closely at her team of novices to see if they are independent as they each claimed. Perhaps they dont know that they could move against a decision of the Mayor?
What of the other Councillors? Surely someone could propose a motion against the Mayor's ruling. How each person would have voted on that motion would say a lot. I will be putting to the OLG that objections to Mayors rulings should also go to an independent body.

I am in favour of a popularly elected Mayor provided that we have truth in advertising and some change in the legislature about the double voting possibilities of Mayoral candidates to cause their pick in their Ward to win without a show of public support for that person.
I urge everyone to respond to the OLG discussion paper.

From:	Cr Dominique Hodgkinson
To:	OLG Councillor Conduct Mailbox
Subject:	Feedback on the discussion paper titled “Councillor conduct and meeting practices – A new framework” (September 2024)
Date:	Thursday, 14 November 2024 8:01:27 PM

Dear Sir / Madam,

I write in relation to the discussion paper titled ***Councillor conduct and meeting practices – A new framework (September 2024)***.

I would like to start by thanking the Office of Local Government for providing Councils and Councillors the opportunity to provide feedback on the discussion paper to assist LGNSW in preparing a sector wide response.

I have recently been elected as a Councillor for the Moree Plains Shire and it is my absolute honour to serve as a Councillor for my community. I have been serving my community as a Real Estate Agent for the most part of the past 20 years, and in that time I have helped countless clients and customers. Some people I have helped during that time include but are not limited to woman escaping domestic violence; people at risk of homelessness; professionals such as health care workers, police and teachers when relocating to our community; young mums under the age of 18 whose existing accommodation arrangements were overcrowded or unsuitable to raise a newborn/child. I am a Real Estate Agent who prides myself in helping others. Running in this year's local government election and subsequently being elected as a Councillor for the Moree Plains Shire is another way of helping my community, serving my community.

As a Class 1 Licensed Real Estate Agent, I am writing to provide you with my input, feedback and perspective regarding the ***Property Developers and Real Estate Agents*** section of the discussion paper (page 11).

As a Real Estate Agent, I understand in concept the consideration for legislative changes pertaining to Real Estate Agents and Property Developers serving as Councillors, given a Real Estate Agent's every day dealings pertaining to "land". In saying that though, Local Government and serving as an elected Councillor, is so much more than just dealing with "land".

It is my opinion that an elected Councillor should:
- Bring value to the table by way of knowledge, diversity, passion and commitment to the community (just to name of few ways of bringing value to the table);
- Be committed to their position as an elected Councillor, and carry out their duties morally, ethically and professionally;
- Be respectful of others, including but not limited to other Councillors, Council staff and the community as a whole;
- Have the ability to engage in respectful debate
- Have the ability to provide input, feedback and information for consideration;
- Have the ability to listen to others and consider different viewpoints, not just their own;
- Have the ability to make unbiased decisions based on what is in the best interest of the

community;
- Understand the need to disclose both pecuniary and non-pecuniary interests, and have the ability to disclose those interests and leave the room when necessary;

These are just some of the attributes I believe an elected Councillor should bring to their position.

When it comes to pecuniary and non-pecuniary interests, it is my opinion that at some point throughout a Councillors term, the need will arise to declare both pecuniary and non-pecuniary interests for most, if not all Councillors, and the need will arise for Councillors to leave the room for this reason - this does not apply only to Real Estate Agents and Property Developers, but applies to **all** Councillors.

An example of a pecuniary interest that may affect a Councillor but not affect a Real Estate Agent may be a report pertaining to a contractor that conducts work for the Council (but does not / has not carried out works for the Real Estate Agent). The Contractor may be the husband of a Councillor (a Councillor that **is not** the Real Estate Agent). In this instance, the Councillor who is the Real Estate Agent would have neither a pecuinary interest nor a non-pecuniary interest, however if the Councillor who is also a Real Estate Agent's area of specialty is Property Management, the Real Estate Agent in this instance may be able to provide valuable knowledge based on their experience with contractors/tradespeople in their every day job.

To quote Leanne Pilkington from the Real Estate Institute of NSW (REINSW), *"Anyone can have a conflict of interest depending on what is before the Council. To suggest only real estate and every agent has a conflict of interest is outrageous. Agents, by virtue of their job, are very well connected and can be fantastic members of Council."*

Being an elected Councillor **should not** be about the job you hold in your everyday life, but rather your ability to serve and represent the community that has elected you, and bringing the right attributes to the position.

I have taken the time to look further into the background of the consideration for legislative changes pertaining to Real Estate Agents and Property Developers. I make reference to the Bill submitted to Parliament in 2016 by The Hon. Peter Primrose. In the aforementioned Bill, The Hon. Peter Primrose outlines corruption in Local Government and draws the inference that corruption in Local Government occurs because of Real Estate Agents. To insinuate that corruption occurs within Local Government because of Real Estate Agents is simply absurd. I understand that there are unfortunately Real Estate Agents that do the wrong thing, hence legislative changes to the Property & Stock Agents Act and Regulations as well as the Residential Tenancies Act and Regulations, including but not limited to the Underquoting Laws, Rent Bidding (Rental Fairness Bill) along with more prudent training and continued professional development for Real Estate Agents. In saying that, not all Real Estate Agents do the wrong thing. Many, such as myself, pride themselves in their legislative compliance and providing a high-quality professional service.

Corruption within Local Government unfortunately happens because of people, such as some Councillors, but also some Council staff, doing the wrong thing. Their profession is not the reason they done the wrong thing. Quite simply, it could be because their standard of morals and ethics are not the standard they should be in order to be an elected Councillor or a Council staff member.

I make reference to the following ICAC investigations:

Cr Constantine Hindi (Georges River Council), Cr Vincenzo Badalati (Georges River Council) & Cr Philip Sansom (Hurtsville City Council)
Investigation carried out by ICAC pertaining to the above mentioned Councillors seeking and/or accepting benefits as an inducement or reward for partially and dishonestly exercising their official functions to favour the interests of Ching Wah Uy, Wensheng Liu and Yuqing Liu, in relation to planning matters affecting 1-5 Treacy Street and 1 Hill Road, Hurtsville, along with other properties.
Information sourced from icac.nsw.gov.au/investigations/past-investigations

I note this matter is property related.

I note upon carrying out Real Estate Licence Checks via the Service NSW Licence Check system, Cr Constantine Hindi, Cr Vincenzo Badalati and Cr Philip Sansom have never held a Real Estate Certificate or Licence.

Cr Michael Hewitt, Cr Pierre Azzi, Jim Montague (General Manager at the time) & Spiro Stavis (Director of City Planning at the time) - Canterbury City Council
Investigation carried out by ICAC pertaining to the above mentioned dishonestly and/or partially excerising their official functions in relation to planning proposals and/or applications under the Environmental Planning and Assessment Act 1979 concerning properties in the Canterbury City Council area.
Information sourced from icac.nsw.gov.au/investigations/past-investigations

I note this matter is property related.

I note upon carrying out Real Estate Licence Checks via the Service NSW Licence Check system, Cr Michael Hewitt, Cr Pierre Azzi, Jim Montague and Spiro Stavis have never held a Real Estate Certificate or Licence.

Both of the above mentioned cases pertained to property related matters, being what the Hon. Peter Primrose was referring to in his 2016 Bill, however the people that were involved in these corruption matters including 5 Councillors, a General Manager and a Director of City Planning, none appear to have ever held a Real Estate Certificate or Licence.

To conclude, once again I point out that it is not the profession of the person that makes a suitable or unsuitable Councillor, but rather their ability to serve and represent the community that has elected them, and bringing the right attributes to the position they hold.

I thank you for your time and for providing me, as well as other Councillors, the opportunity to provide our feedback on the discussion paper.

Kind Regards,

Cr. Dominique Hodgkinson
m. 0436 861 666
e. cr.hodgkinson@mpsc.nsw.gov.au

From:	Daniel Peterson
To:	OLG Councillor Conduct Mailbox
Subject:	“Councillor Conduct Framework Review”
Date:	Friday, 15 November 2024 6:10:18 AM

Duration of Meetings

[redacted]

An outcome of this review process I'd like to see is the ability of Mayors and/or Councilors to place limits on the quantity of contributions made by any one Councilor.

I'm also gravely concerned by the ambiguous nature of Councilor conduct in our local water authority - *Rous County Council*. I hope this OLG review can include reform of county Councilor conduct. At very least, this review could suggest a more transparent, and democratic, process for *Lismore City Council* to elect their representative delegates on *Rous County Council*.

Regards,
Daniel Peterson JP
[redacted]

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PORT MACQUARIE HASTINGS COUNCIL

15 November 2024

Mr Brett Whitworth
Deputy Secretary, Local Government
Office of Local Government

Via Email: councillorconduct@olg.nsw.gov.au

SUBMISSION TO COUNCILLOR CONDUCT AND MEETING PRACTICES DISCUSSION PAPER

Dear Mr Whitworth,

I refer to the Office of Local Government Councillor Conduct and Meeting Practices Discussion Paper and enclose Council's submission to this discussion paper.

Council appreciates the opportunity to comment on this discussion paper and we hope that the contents of our submission are given due consideration.

Should you require further information please do not hesitate to contact me on (02) 65818111.

Yours sincerely

[redacted]

Michael Ferguson
Group Manager Governance

Submission to the Councillor Conduct and Meeting Practices Discussion Paper

Port Macquarie Hastings Council provides feedback on the Councillor Conduct and Meeting Practices Discussion Paper as included below. Port Macquarie Hastings Council appreciates the opportunity to contribute to this important dialogue. Below are comments and suggestions regarding the Councillor Conduct and Meeting Practices Discussion Paper.

Principles of Change

1. Application of Principles

The proposed principles appear sound; however, there is a need for clearer connections between these principles and the proposed changes. It is essential to articulate the strategic role of Councillors and the operational role of Council staff within the framework guidance. This distinction will enhance clarity and ensure effective governance.

2. Subsidiarity

While Council supports the principle of subsidiarity, it is crucial to ensure that this does not result in the cost-shifting burden to local governments, particularly in instances where the sector is underfunded to fulfill these functions.

3. Penalties and Accountability

Significant penalties should be imposed only by a judicial or quasi-judicial body. There should be a clear definition of what constitutes a “significant” penalty. Additionally, I note that the suggestion for the Office of Local Government (OLG) to issue Pecuniary Interest Notices (PINs) appears to contradict the principle that penalties should be judicially imposed.

4. Encouraging Ethical Decision-Making

I recommend that the encouragement of ethical decision-making and conduct be explicitly included in the principles of change, reflecting the importance of integrity in local government.

Code of Conduct and Oath of Office

1. Key Elements of an Aspirational Code of Conduct

The aspirational Code of Conduct should enshrine behaviors that align with core values, transparency, ethics, and legal requirements. It is important that the Code encompasses not only behavioral expectations but also critical issues such as access to information and conflicts of interest.

2. Respectful Treatment

Treating others with respect is a fundamental expectation that should remain a core component of the Code of Conduct.

3. Alignment of the Oath of Office

Improved alignment of the Oath of Office with the revamped Code of Conduct is strongly supported, as this will enhance its significance and reinforce the commitments of Councillors.

4. Public Communication and Reputational Risks

Council have concerns regarding the guidelines for Councillors speaking publicly on Council decisions where they disagree. Appropriate controls must be established to manage reputational risks and prevent the politicisation of local matters. Furthermore, the role of the Mayor as the formal spokesperson of the Council is vital; any misalignment between the Mayor's public statements and the Council's adopted position should be addressed to uphold the Council's integrity.

Definitions and Assessment of Councillor Behaviour

1. Framework for Pecuniary Interests

The proposed framework is generally appropriate. However, Councils should have the authority to reject incomplete disclosure forms. Additionally, the power for OLG to compel the production of information or records is supported, but PINs may not be an adequate deterrent. Stronger penalties, such as suspension from office or withholding of Councillor fees, may be more effective where information is not forthcoming to compel the production of information in investigations. This could prevent further misconduct by removing the decision-making capacity of the Councillor while under investigation and being unco-operative.

2. Objectivity of Non-Pecuniary Interest Tests

While an objective test is desirable, the current test of whether "a reasonable and informed person would perceive" a conflict remains subjective. Clearer definitions of both pecuniary and non-pecuniary interests would help Councillors make informed decisions.

3. Subjectivity of Current Definitions

The term "appreciable financial gain" in the current Code is subjective and should be more precisely defined to provide clearer guidance for Councillors and staff.

Property Developers and Real Estate Agents

a. Challenges of Divestment

The intent to require divestment from real estate or development business activities is understandable but could be challenging to define and enforce, particularly where family members or close associates of Councillors are property developers or have real estate interests. Are they to be disqualified from office?

b. Penalties for Contractual Arrangements

There are concerns about how penalties for engaging in contractual arrangements with real estate agents or developers would apply when a Councillor's partner (husband/wife, etc) is involved in such activities. Further clarity is needed on how these provisions would be implemented.

4. Other Comments

Assessment of Councillor conduct should be taken out of the hands of the GM/CEO but a panel made up of peers lacks transparency and independence and should be made up of people that will hold the whole sector to good conduct.

Dispute Resolution and Penalty Framework

1. PIN Levels

Further information is needed to determine an appropriate level for PINs. Consistency across Councils will be important to ensure fair and uniform application of penalties. Additionally, it is unclear whether financial penalties for minor breaches are appropriate or whether they would place undue pressure on staff.

2. Enforcement Consistency

Councils may vary in their reporting of minor breaches to OLG, leading to inconsistency in how PINs are applied across NSW. A standardised reporting and penalty system should be considered to ensure fairness.

3. Staff Concerns Regarding PINs

Staff may fear reprisals from Councillors penalised with PINs, particularly for minor administrative breaches. Clarity around the reporting process and appeal provisions is needed.

NSW Local Government Privileges Committee

1. Application of Penalties

The penalties proposed appear to lack meaningful consequences. It is suggested that the Privileges Committee be empowered to apply penalties directly, avoiding the need for Council involvement in decisions about sanctions, which could be influenced by personal relationships.

2. Alternative Penalties

Previous versions of the Code of Conduct recommended non-financial penalties, such as apologies or mandatory training. These types of penalties have greater rehabilitative value than warnings or censure and should be considered.

3. Other Comments

The principle of speeding up complaints resolution and making penalties meaningful is supported. Appropriate investigation and a robust process remains necessary to inform a panel in its decision making with respect to a complaint. Referral of investigation of serious conflicts of interest to OLG to remove the existing two step process is supported in the interests of timely resolution. Given the historical number of code of conduct complaints received, this may not be manageable via the Privileges Committee and the supporting framework of this Committee provided by OLG. Clarity on the processes to be followed by the small Secretariat from OLG to determine that a complaint is vexatious or trivial is needed to provide further comment on the intentions.

The Procedures should be reviewed to take into account where Councillors agree to an alternate resolution strategy during a preliminary investigation that allows resolution by alternate means however then refuse to participate following the finalization of the matter under the preliminary assessment. Under the existing procedures, a Councillor who is the subject of a complaint may give an undertaking that they will participate in alternate means which allows an external investigator to resolve the complaint by alternate means. As this finalises the matter, if the Councillors refuses to participate in the alternate means the matter is finalised with no avenue of reopening the matter to be dealt with appropriately.

Restoring Dignity to Council Meetings

1. Current Powers of the Chair

The current powers granted to the Mayor or Chair under the Code of Meeting Practice are considered sufficient. The Chairperson's authority to expel a Councillor or member of the public for disorderly conduct should not require a resolution from the Council.

2. Preservation of Briefing Sessions

Briefing sessions are an essential part of informed decision-making and should not be banned. These sessions provide Councillors with opportunities to ask questions and gain clarity before making decisions, ensuring the quality of decision-making on behalf of the community. This has been a long held practice providing great value for Councillors. Such briefings allow Councillors to ask questions to become fully informed supporting the decision making process, whilst also streamlining the formal Council meeting flow and ensuring the formal meeting focus is on debate rather than the extensive asking of questions. This includes development related activities where Councillors and/or staff can be placed in a compromised position in a public forum when asking or answering questions. If there are specific topics of concern (if any) with regard to briefing Councillors then these may be explicitly listed rather than banning such sessions in their entirety.

3. Transparency in Reporting Briefings

For transparency, briefings should be referenced in the reports tabled at Council meetings, and Councillors should be required to disclose reasons for not supporting staff recommendations, particularly when based on expert advice.

General Feedback on Proposed Changes

1. Closed Sessions and Transparency

Councils should only go into closed sessions as provided for under the Act. Briefings, if conducted properly, support informed decision-making but should not be used as forums for debate or decision-making outside of public view.

Link Between Briefings and Dignity of Council Chambers

The argument that banning briefing sessions will restore dignity to Council chambers is tenuous. Instead, ensuring that briefings are transparent and appropriately referenced in formal Council meetings will better support transparency and public trust.

2. Weakness of Existing Framework

The Office indicates that the Chair needs to control the meeting and when they do, the consequences are minimal. Councils are not dealing with fully formed adults and there needs to be standard that states certain behaviours and if you do not meet them then you are not fit for office. Just because a Councillor is elected, does not mean they are fit to be in office.

Code of conduct complaints are the only mechanism that a Council has and there should be an ability for stronger consequences. The Office does not take matters seriously enough. The data reflects the fact that these complaints have not resolved in changing behaviour because the Office has become desensitised and is not raising the standard.

The controls needed will need to be stronger, not weaker, and debate may need to be more controlled, as more extreme opinions are being introduced by Councillors.

The existing framework also provides little protection for GMs/CEOs. Councillors are weaponizing Code of Conduct complaints and GM's/CEOs are put in difficult circumstances with little protection from the Office or the Code of Conduct. Any new code should consider protections for GMs/CEOs and remove them from the Code of Conduct process for Councillors as much as possible. This should also be extended to removing Councillors from performance review of GMs/CEOs and the removal of no cause contract terminations of GMs/CEOs contracts. Councillors have the ability to introduce bias in performance reviews and contract negotiations as a result of an unfavorable Code of Conduct result.

Finally, the existing procedures contain many gaps in procedure that do not assist councils when managing complaints. Council is advised by the Office that the gaps should be managed under the requirements of procedural fairness. I note that the current procedures make very little mention of the requirements of procedural fairness and the instances that its does, it does not relate it to managing complaints against Councillors. If procedural fairness is to take such a large role, it should be highlighted in the procedures to give direction to staff and Councillors.

Thank you for considering Port Macquarie Hastings Council's input on these critical issues. I believe that clear guidelines and robust principles are essential for promoting effective governance and ethical conduct in local government. We look forward to seeing how these principles evolve in the final recommendations.

enquiries refer
Paul Hickey
in reply please quote
#255-06

15 November 2024

Office of Local Government
Email: councillorconduct@olg.nsw.gov.au

Dear Sir/Madam

Re: Submission - Councillor Conduct Framework Review

Thank you for the opportunity to provide a submission on the review of the Councillor Conduct Framework including the Code of Conduct and Code of Meeting Practice.

The following feedback is provided from an operational perspective and based on feedback from some of our councillors.

1. Banning briefing sessions

There are numerous concerns regarding the proposal to ban councillor briefing sessions that are closed to the public. At briefing sessions, councillors can hear the questions of other councillors and ask questions they may not be comfortable asking in the presence of the public.

Staff can provide frank and impartial advice to councillors to help them be fully informed about complex matters.

For example, if a councillor believes that a particular course of action may result in a risk to council or have legal implications for council, a councillor may refrain from asking a question about that in an open forum with members of the public present.

There are times where briefing sessions are conducted on-site, particularly if a matter to be considered by council relates to a parcel of land. This allows councillors to view the property and better understand the practical considerations of a proposal.

We consider that the better-informed councillors are about a matter, and the better understanding councillors have of the practical, legal and financial implications of a proposed course of action, leads to better decision making. Briefing sessions assist in this.

A preferred solution may be to ensure that decisions are not made in these sessions. Any decisions should be made in an open Council meeting.

2. Councillors to stand when addressing a meeting

We do not support the proposal that councillors must stand when addressing a meeting and this should be optional rather than mandatory.

We want to support all councillors to have a voice in council meetings and are concerned that requiring all councillors to stand while speaking may result in some councillors opting to participate less in meetings.

Some councillors may have health issues that limit their ability to stand for longer periods, and it may not be appropriate for those councillors to have to disclose those health issues to obtain an exemption from the requirement to stand.

Also, the audio-visual technology in many council chambers is based on the speaker sitting and a mandatory change may result in significant expenditure.

3. **Councillors to stand when the mayor enters chambers**

   Our Mayor has confirmed that this type of procedure would create a sense of inequity and there is no need for this change.

4. **Mayor's ability to remove a Councillor's entitlement to receive a fee for the month**

   There are concerns about the equity of this process, especially when a councillor may be politically opposed to the mayor.

5. **Abolishing two step process for complaints about councillor conflicts of interest or misbehaviour**

   We support the proposal to abolish the existing two step process for managing complaints about councillor conflicts of interest or misbehaviour. The existing process for these types of complaints involves:

   - the general manager or mayor determining if a complaint is valid;
   - referral to a complaints' coordinator; and
   - appointment of an external conduct reviewer to review the complaint.

   These processes are costly and time consuming.

   We support the new proposal to have:

   - complaints about conflict-of-interest matters made directly to the OLG; and
   - complaints about misbehaviour made directly to the Local Government Privileges Committee.

   We consider that the centralised consideration of these types of complaints will lead to:

   - time and cost savings for councils;
   - more consistent outcomes for similar complaints across different local government areas; and
   - improved community perception about the confidentiality and transparency of the complaints process.

In summary, Council supports the proposed changes that will lead to improved outcomes for council and the community. Should you wish to have any of these matters clarified, please call me on 1300 864 444.

Yours faithfully

[redacted]

Paul Hickey
General Manager

Legal & Governance
Reference: 8543508
Phone: 02 4974 2026

Office of Local Government
By Email: councillorconduct@olg.nsw.gov.au

To Whom It May Concern

COUNCILLOR CONDUCT AND MEETING PRACTICE FRAMEWORK REVIEW

Please find attached City of Newcastle's (CN) feedback on the questions raised in the Office of Local Government's (OLG) Councillor Conduct and Meeting Practices Framework discussion paper.

If you require any further information, please contact Emily Kolatchew, Executive Manager Legal and Governance, via email [redacted]

Yours faithfully

[redacted]

Jeremy Bath
CHIEF EXECUTIVE OFFICER

Date: 15/11/2024

OLG Section/heading	OLG Question	CN response
What are the principles of change?		
	Are we missing anything in the principles of change?	CN supports the principles of change provided in the Discussion Paper.
Potential changes to the code of conduct and oath of office		
	What are the key elements of an aspirational Code of Conduct that should be enshrined?	CN notes the OLG's proposal for the framework for local council's to be consistent with the NSW Members of Parliament Code of Conduct Framework which includes the following key elements: - Purpose - Behavioural expectations - Use of public resources - Use of confidential information - Disclosures of interest - Conflicts of interest - Gifts - Upholding the code CN does not consider any additional elements are required.
	What are your views about aligning the Oath of Office to the revamped Code of Conduct?	Supported.
Potential changes to the definitions and assessment of councillor misbehaviour		
Conflicts of interest	Pecuniary interests Is the proposed pecuniary interest framework appropriate? Is anything missing?	Supported.
	Non-pecuniary interests Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?	Supported.

OLG Section/heading	OLG Question	CN response
	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?	Supported
Councillor misbehaviour in public office	Is this the appropriate threshold to face a Privileges Committee?	Supported. CN supports the introduction of a Privileges Committee on the assumption any allegations of a breach of the code of conduct be referred directly from the complainant to the Privileges Committee. It is not appropriate for General Mangers or CEOs to be responsible for councillor misconduct when in turn the mayor and councillors are responsible for oversight of the CEO's performance. Additionally, the current system is both time consuming, can be inconsistent and costly for councils to receive and manage code of conduct complaints with limited sanctions available. The current system lends itself to reputational risk to councils and to the system itself. CN submits that the introduction of a Privileges Committee would create consistency across the state, strengthen procedural fairness aspect and reduce reputational risks. CN's feedback is that a Privileges Committee would need to be appropriately funded and resourced and misconduct matters dealt with in a timely manner.
	How else can complaints be minimised?	CN submits the introduction of prescribed types of misconduct and enforcement options should be clearly defined and applied. CN also submits that suspension from office or withholding of councillor fees should be the penalty applied in place of a second censure. That is, a Councillor should only be permitted to be censured once and on a second finding of breach, suspension or withholding of councillor fees would be more appropriate and on a third occasion, suspension from office should be mandated for a period exceeding a council term. This would act as a significant deterrent for Councillors who breach the Code of Conduct on more than one occasion.

OLG Section/heading	OLG Question	CN response
Addressing inappropriate lobbying	What key features should be included in lobbying guidelines and a model policy?	CN submits that a lobbying policy could be mirrored off other levels of government.
Dispute resolution and penalty framework		
Giving OLG the power to issue penalty infringement notices	What level of PIN is appropriate?	CN submits that as is with all penalty notice regimes, the level of penalty is always disproportioned based on an individuals means. CN supports a specific and tiered approach to sanctions as a deterrent such as: - First minor breach - formal warning, education session and request the Councillor formally declare the conflict via a Statutory Declaration. - Second minor breach - issue of penalty notice. - Third minor breach in a pattern of behaviour – censure.
NSW Local Government Privileges Committee	Are the penalties proposed appropriate, and are there any further penalties that should be considered?	Supported. CN submits including suspension from office as a further penalty, and the inclusion of 'by alternate means' (education sessions, counselling or mediation) depending on the seriousness of the breach.
Referral of significant sanctions to appropriate tribunal or body	Are the existing sanctions available under the Local Government Act sufficient?	Not supported. CN submits that disorderly conduct of a serious nature should be investigated and sanctioned in a timely manner. CN's past experience with referrals is that matters have been dealt with in a protracted manner, which resulted in unacceptable conduct continuing whilst matters were being dealt with. Meanwhile, the high investigation costs are inferred on councils.
	Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?	CN submits that sanctions should be determined in a timely manner, whether made by the Departmental Chief Executive or a formal tribunal.

OLG Section/heading	OLG Question	CN response
Restoring dignity to council meetings		
Proposed reforms to the Model Code of Meeting Practice	Are there any powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	Meeting Chairs are responsible for the orderly conduct of meetings. However, a council resolution is required to expel a Councillor in circumstances whereby disorderly meeting conduct is otherwise unable to resolved. Meeting chairs should have the power to expel a Councillor from a meeting without the need for a resolution particularly in cases of serious disorder such as a breach of the act, threat or abuse or harassing or disparaging comments, provided other enforcement options such as warnings and directions have been attempted.
Banning briefing sessions	Are there any other measures needed to improve transparency in councillor deliberations and decision making?	Not supported. CN has effective processes in place which provide transparency to the public and provide access to meetings, business papers and the proceedings of the council (via the livestream or webcast recordings). At CN, our Public Voice and Public Briefings Policy enables members of the public to participate in a 30 minute session at least one week prior to a Council meeting and the sessions include the opportunity for members of the public to engage in a two-way conversation with Councillors during an allocated question time. Holding the sessions in advance of the meeting allows Councillors time to consider the information presented, and to ask any follow-up questions. Further the process allows for discussion on strategic matters well in advance of the items being listed on the agenda. For example, our current provisions allow for consideration of significant matters. Additionally, CN holds Councillor Workshops which assist CN in meeting their obligations under the Local Government Act in relation to professional development of councillors in addition to providing an opportunity for councillors to familiarise themselves with complex matters in an efficient way. No decision making or deliberations are scheduled as part of these sessions. These workshops are closed to the public, as the Model Code of Conduct provides for these types of sessions to be closed to the public.

From:	Chas K
To:	OLG Councillor Conduct Mailbox; Chas K
Subject:	Councillor Conduct Framework Review
Date:	Friday, 15 November 2024 11:02:14 AM
Attachments:	Council letter 5 Feb 2018.pdf Right of Reply.pdf

[redacted]

[redacted]

15 November 2024

Office of Local Government

Email: councillorconduct@olg.nsw.gov.au

Dear Minister/ Sir / Madam / Committee

RE: COUNCILLOR CONDUCT FRAMEWORK REVIEW.

In response to the Councillor Conduct Framework Review I reply using my past and present experience with what I consider a Council, that has no morals, ethics and uses the system where decisions are for the benefit of Councillors and or their associates without any penalty or oversight from the OLG, ICAC or the Ombudsman.

[redacted]

In response to the question are we missing anything, how about enforcing the

requirements for Councillors, General Manager/ CEO and staff to abide by legislation, if not scrap the Local Government Act, the Crimes Act and other relevant legislation all together.

Oath of Office

The Councils in my view are not a third tier of Government and to try to give them the same standing similar to parliament is nothing short of laughable.

Please see the webcast of the SMRC meeting on 10 October 2024 where the oath of office was not administered according to the provisions within the L G Act, yet decisions made are supposedly made according to the Act. Double standards seem to apply to this SMRC with no oversight.

Dispute resolution and penalty framework.

The Local Government Privileges Committee is to be made up of Mayors and Ex Mayors, [redacted]

Restoring dignity to council meetings

Disorderly conduct by a Mayor has not been addressed in this discussion paper, but empowers them to god like status. This presumes that all Mayors are reliable, honest, ethical and work in the public interests. This is simply not true [redacted]

I provide three examples supporting this statement as follows;

[redacted]

2. [redacted]

[redacted]

[redacted]

To empower Mayors with royalty status is beyond belief, and is in my view, weaponizing the Mayoral position to prevent free speech, and cover up the corrupt conduct that continually occurs without penalty within councils.

Banning the briefing sessions

Sorry, Snowy Monaro Regional Councillors did not accept transparency in briefing sessions. In the SMRC business papers 15 August 2024 agenda item 11.3 Improving Transparency here the public would be able to attend these sessions improving transparency. This motion was voted down by ten (10) Councillors, six of which have been re-elected back to Council [redacted]

At the meeting on 14 November 2024, the acting ceo cancelled the briefing session. This council also voted down the motion to have all business papers given to Councillors and the public on the Friday before the meeting to allow more time to review the documents.

The acting ceo stated Councillors would now have to send into him any questions they have regarding the business papers, even though they received them, as late as one or two days before the meeting date.

14 November 2024 SMRC business papers on councils website totals some 1287 pages of which 530 pages were posted on Friday last and the rest on Monday afternoon. Two days to digest and consider the content of these pages. Clearly there is a hidden agenda proposed by the OLG in the discussion paper with ulterior motives. Which ordinary person or an elected official to parliament has the mental and physical capacity to review, digest and make informed decisions in such circumstances?

The recommendations made in the discussion paper in my view fail the pub test

for transparency, accountability and bestows god like status and power onto mayors, unelected by the community in the snowy monaro region.

Yours sincerely

Charles Kolano.

Please feel free to publish.

14 November 2024

OLG Strategic Policy Unit
Locked Bag 3015
NOWRA NSW 2541

Dear Sir/Madam

Councillor Conduct and Meeting Practices – A New Framework

Thank you for providing Hornsby Council the opportunity to make comments on the proposed new framework for councillor misconduct and meeting practices. This submission was formally endorsed by the Council at its meeting on 13 November 2024.

At the outset it is important to acknowledge that Hornsby Council has not had an adverse history of serious councillor misconduct or dysfunction at Council meetings which would be the impetus for this current review by the OLG. Notwithstanding, we have dealt with some misconduct matters which have warranted proper consideration, albeit not to the same extent as have been experienced by some other councils.

Set out below are each of the questions you have posed in your Discussion Paper, and Council's response:

1. Are we missing anything in the principles of change?

No. We are satisfied the principles stated in the Discussion Paper broadly address the intent of the proposed changes. Some clearer definition may be warranted as to the reason why the proposal is required, but the general principles as outlined are broadly supported. This broad support is qualified, as further detail is sought on some aspects of the proposal and this is outlined in responses to the questions below.

2. What are the key elements of an aspirational Code of Conduct that should be enshrined?

We have reviewed the NSW Members of Parliament Code of Conduct which was referenced in the Discussion Paper and note the key headings are Improper influence; Use of public resources; Use of confidential information; Limitation on breach of Code; Disclosure of Interests; Conflicts of Interest; Gifts; Upholding the Code; and Treatment of staff and others. These headings already have close alignment with the provisions of the existing OLG Model Code of Conduct for local councils and we are satisfied that no further elements would be required if an aspirational Code was developed for local councils. Given the direct alignment between decisions of the Council and implementation/action on the ground, including direct relationship with regard to some planning matters and delivery of facilities and services, it is considered that the Code may be better aligned to the Code for Ministers of the Crown rather than the requirements for members of the House of Representatives and Legislative Council.

3. What are your views about aligning the Oath of Office to the revamped Code of Conduct?

This initiative is supported as it will strengthen the importance of the Code, although the difference it makes may be inconsequential.

With respect to the comments in the Discussion Paper about seeking to no longer restrain the ability of a councillor to speak publicly on matters pertaining to their council, even when in disagreement with or in criticism of the majority, this is noted with some concern by our Council. Widely divergent views of councillors being expressed following a Council decision is hardly likely to engender confidence in the institution and may well be confusing for both community and staff. Additionally, we believe it is important to address how dissenting councillors would talk to motions of their council's at forums such as the Local Government Conference. It is not inconceivable that the councillor delegates attending such a forum could hold an alternate view of the elected-council and thus seek to withdraw a valid motion submitted by their council.

4. Is the proposed pecuniary interest framework appropriate? Is anything missing?

The list of pecuniary interests defined for NSW Members of Parliament, as set out in the Discussion Paper, already closely align with the current list in the OLG Model Code of Conduct. The only exception is that councillors are currently required to disclose if they are a property developer or close associate of a property developer and it is unclear if this remains in the new pecuniary framework.

It is our view that this current disclosure requirement should be retained unless there are other effective mechanisms adopted to address concerns about councillors undertaking property development activities. Further, we support the alignment of disclosure obligations for members of parliament with this requirement.

While not a consideration in the Discussion Paper we also believe the new legislative framework should provide that the place of residence of a councillor (and also of senior officers) is not subject to publication on a council's website. The broadcasting of this information does raise serious personal safety concerns. Information about actual place of residence should only be available by way of a GIPA application to the council. Retention of the information by the council (albeit not automatically public) is otherwise supported.

5. Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

Yes. The proposed principles still retain the "objective test" where such interests must be considered from the perspective of a reasonable and informed third party, and not in the mind of the councillor who has the conflict.

An opportunity for strengthening the Code with respect to non-pecuniary interests would be the inclusion of new clauses to emphasise that conflicts of interests should be disclosed at all points of engagement with council staff and the community, and not just when the councillors are in their decision-making capacity at a council meeting. Clause 5.2 of the OLG Model Code of Conduct refers to the obligation to disclose a conflict of interest when carrying out "official" functions. This language suggests the disclosure obligation only arises upon a councillor when in their decision-making role at a council meeting. However, significant engagement by councillors occurs outside the council meeting process, in areas such as constituent referrals and advocacy. It would be a positive enhancement to the Code to clarify that the proactive disclosure of non-pecuniary conflicts should be made in all circumstances.

6. Are there any specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

We acknowledge the motivation for the proposed legislation to manage the inherent conflicts of councillors undertaking real estate and property development activity. In the absence of any draft legislation at this point we are limited in our ability to provide a detailed response. A question which does arise from the Discussion Paper, however, is whether the obligation to divest and not enter into real estate or development business arrangements will only apply to the Local Government Area the councillor is representing, or would this apply universally?

7. Is this the appropriate threshold to face a Privileges Committee?

Yes. The Discussion Paper proposes that the misbehaviour definitions be limited to: is unbecoming of a councillor, brings council into disrepute, and is assessed as being outside the norms and expectations of a sitting councillor. We support a Privileges Committee having these strict criteria for review of misbehaviour.

It is foreshadowed that the Privileges Committee would comprise of mayors and ex-mayors supported by OLG staff. We see the involvement of mayors and ex-mayors as being problematic as either an adverse or favourable adjudication of the Committee will be open to allegations of political bias. The perception will be that politicians are appraising the actions of other politicians. We believe that the Committee would be better served by person/s independent of the political process such as retired judges, retired senior public servants or probity experts (such as current conduct reviewers).

It is also not clear from the Discussion Paper what administrative and financial requirement will be placed on councillors or councils, except that there will be a cost for management of complaints by the Privileges Committee. If costs are not reduced through the new framework, then the current system may be preferable.

8. How else can complaints be minimised?

We do not believe the new framework should openly seek to dissuade complaints. This would be contrary to the position promoted by other agencies such as ICAC and the Ombudsman where an open stance is expected on the receipt of any complaint. Rather than seeking to minimise complaints there needs to be a very efficient triage process whereby the lower order complaints are still acknowledged and recorded, if not otherwise progressed to investigation. The Queensland model is often mentioned as having a very effective triage process. A one-off minor complaint may still have value if other complaints are received about the same councillor in future years. For this reason, we would suggest that when lower order complaints are not progressed to investigation, complainants are still thanked for their notification and assured that their information remains on file for future reference if required.

9. What key features should be included in lobbying guidelines and a model policy?

Our view is that any guidelines or model policy on lobbying should clearly separate “landowner lobbyist” activities from other lobbying activities. With respect to landowner lobbyists the guidance should then not be limited to professional lobbyists but to the following:

- a person (or representative of a person) who has a land-ownership interest within a precinct nominated, or proposed to be nominated, for review by Council which may lead to possible amendment of the LEP;

- a person (or representative of a person) who has a land-ownership in an adjoining or nearby parcel of land to a precinct already under review, or proposed to be under review, by Council and who may be seeking to include such parcel of land into the precinct;
- a person (or representative of a person) who has a land-ownership interest in land which they would like to be re-zoned and therefore would require an amendment to the LEP;
- a person (or representative of a person) who has a vision or concept plan for development of a parcel of land anywhere in the LGA and which would require an amendment to the LEP for the development vision or concept plan to be achieved.

We propose this wider interpretation of landowner lobbyist because any individual landowner, or group of adjoining landowners, can still make windfall gains from an uplift in land zoning without engaging a professional lobbyist. This is also the area of lobbying which causes most concern to the community. This is not to suggest that upzoning is inappropriate, just that the guidelines should be clear for all parties concerned.

Other lobbying activities are generally lower risk so should be considered separately within future guidelines.

10. What level of PIN is appropriate?

If a Penalty Infringement Notice (PIN) was to be utilised in circumstances where a breach is considered minor or administrative in nature we would recommend the value be set at a percentage of a councillors/mayoral fee, rather than a fixed amount. This would account for the differential fee structure between councils in NSW.

A system similar to that which operates in respects of driver's licence demerits could also be investigated.

11. Are the penalties proposed appropriate, and are there any further penalties that should be considered?

Yes. We are satisfied that the proposed misbehaviour penalties of censure of the councillor; warning of the councillor; loss of sitting fees; or referral to the appropriate tribunal or body for more serious sanction such as suspension or disallowance, are appropriate.

12. Are the existing sanctions available under the Local Government Act sufficient?

We have taken this question as a reference to the provisions of sections 440B to 440k of the Act. Overall, we consider the existing sanctions are sufficient, but acknowledge we have not had misconduct matters of such a serious nature to enable us to have an informed view about all the sanctions currently available.

13. Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

The case for decisions on sanctions being made by a formal tribunal, with independent arbitrators and hearing structure, is well made in the Discussion Paper and is supported.

14. Are there other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

We are concerned that the proposed framework forces a large amount of responsibility and power onto mayors. This in turn could reduce their capacity to maintain positive working relationships with 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 also the inherent risk that mayors may take a different perspective on expulsions and suspensions depending on whether they are popularly elected or elected by the governing body.

We also believe that issuing of PINs to members of the public who refuse to leave Council Chambers should be a last resort. Perhaps NSW Police may be best placed to issue PINs after review from the mayor.

Overall, these proposed reforms could create an environment whereby there is an abuse of power by some mayors, hence safeguards to protect against this should be fully considered. In the absence of such, it is difficult for us to indicate how it could work successfully hence our support is not forthcoming for this specific proposal.

15. Are there any other measures needed to improve transparency in councillor deliberations and decision making?

The Discussion Paper infers that the practice of holding pre-meeting briefing sessions is an unsanctioned practice which has recently emerged in the sector. This is not a fair representation because this practice is formally identified in the OLG Model Code of Meeting Practice. Nevertheless, it is our view that there should be no change to the current arrangements. If such briefing sessions are banned, however, we would expect the ban would only extend to briefings on finalised reports which are being tabled at upcoming Council meetings, and not draft reports where matters are still being formulated.

It is important to recognise that these out-of-public briefings with councillors are not a forum where debate or decision-making occurs. Rather these sessions provide the best opportunity for staff to provide the substantial background needed (often several hours of content over an extended period) for councillors to make the most informed decision at the Council Meeting. Public attendance at these forums would place constraints on the type of information that staff could provide and the questions that councillors could ask. Public attendance also has the potential to trigger community activism well before objective information on the risks and benefits of options have been considered.

There is also a considerable administrative burden which needs to be considered if these sessions were open to the public. Under the proposal, councils would need to give public notice of briefings, prepare and publish minutes, webcast meetings, and carry all of the additional administration required to host, manage and record the proceedings of public meetings. Councils would also need to address relevant legal obligations such as privacy and confidentiality.

The proposal that the mayor be given preferential rights of access through informal discussion with the General Manager is also inconsistent with best practice decision-making. All councillors should be provided the same information on equal terms. A likely downside of such a proposal is that senior management may be requested to provide individual briefings to individual councillors and this will be a substantial time burden.

Nevertheless, the objective of ensuring transparency and participation in the decision-making process is supported. This submission suggests that the current arrangements be allowed to continue with additional safeguards in place. Notes of such meetings could be provided on councils websites post the meeting and any subsequent report to council should outline whether informal discussion between councillors and staff has occurred, and the context of those discussions.

Further amendments could include some specific allowance of items that can be discussed in such settings but prohibiting certain other items. Perhaps a requirement could be to formally require matters of significant public interest to be “called’ by the mayor, a majority of councillors or the council’s General Manager to be presented in a public forum and invite public comment before decisions are made. In summary, the Minister’s stated aims are supported.

In order to get this right for the benefit of communities, councillors and staff it is suggested that a working party of experienced practitioners, including mayors and general managers, work with the Office of local Government to identify workable and efficient proposals that address the Minister’s stated aims.

We trust the above responses provide sufficient detail to assist in your further policy development. We thank you for the opportunity to comment and please do not hesitate to contact me if you have any further questions about our submission.

Yours sincerely



Steven Head
General Manager

TRIM Reference: F2005/00156

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13 November 2024

The Office of Local Government
Locked Bag 3015
NOWRA NSW 2541
councillorconduct@olg.nsw.gov.au

Councillor Conduct Framework Review

Introduction
Local Government Professionals Australia, NSW represents the staff in NSW local government and welcomes the opportunity to provide feedback on the Councillor Conduct and Meeting Practices Discussion Paper.

We appreciate the efforts of the Office of Local Government (OLG) in addressing the critical issues surrounding councillor conduct and our response aims to highlight key concerns and provide constructive suggestions to enhance the proposed framework. The following comments and suggestions follow the key questions and matters posed in the Discussion Paper.

What are the principles of change?
The Association agrees with the principles as outlined in the discussion paper and would like to see the inclusion of additional principles being:

Safe working environment that supports the respectful interaction between elected representatives and council staff and the Work, Health & Safety obligations of Councillors.

Acceptable standards of behaviour by elected officials and council staff that reflects the expectations of the community.

Whist the Association supports the right of free speech, we caution that at times elected officials do not have the experience or history to speak publicly from a position of authority on some topics and could potentially do more harm than good if they are not sharing accurate information in the public domain.

Two overarching considerations should be:

1. How does this Code improve the conduct of councillors prone to misbehaviour? If changing the Code does not directly impact a positive change in the conduct of those councillors who are prone to misbehaviour and disruption, then we need to rework the Code towards this goal. The fact that the Code will only be aspirational and not enforceable may mean that the desire for the new Code to improve behaviours, may not in fact, meet this outcome.
2. Is this document adequate enough to guide newly elected councillors and will it outline expectations of behaviour to the level of detail required?

Potential Changes to the Code of Conduct and Oath of Office
The Association does not support the proposal to have an aspirational Code of Conduct for local government. There appears to be little merit in moving from an enforceable Code of Conduct to a purely aspirational Code.

Currently State Government Ministers have a comprehensive, prescriptive Code of Conduct (some 15 pages in length), that they are expected to follow, so we are unclear why the State Government would not expect the same rigour in conduct for Councillors.

We must also consider the obligations of the General Manager and Councillors in being Prescribed Persons under the Work Health and Safety Act 2011 (WHS Act), where they are required to provide a safe workplace. Misbehaviour directed at staff is in no way acceptable and will in fact be a breach by the Councillor and Council, of the WHS Act.

We cannot have two sets of rules where unacceptable behaviour could lead to the dismissal of a staff member under the staff Code, yet the same behaviour/s may have no consequences for a Councillor.

It is our view that aligning the Oath of Office with the Code of Conduct is unlikely to have much impact. Councillors and staff are currently trained on the Code of Conduct and sign that they understand and will work within the parameters of the Code. This does not currently deter breaches of the Code and therefore we do not expect aligning the Code with the Oath will provide any greater assurance of compliance, however, we believe immediate and significant sanctions might.

We agree with the merit of having separate codes for staff and councillors, provided both are robust and enforceable.

Potential Changes to the Definitions and Assessments of Councillor Misbehaviour
There is a lack of confidence, and it could be perceived that there is a lack of independence, in Mayors and Ex-Mayors presiding on the Privileges Committee. Many Mayors know each other and concerns exist that they may be required to sit in judgement of their colleagues.

A key concern is whether the Privileges Committee will be politicised with Mayors and ex-Mayors being members. What makes Mayors and ex-Mayors the most appropriate people for this Committee? If the OLG perceives bad behaviour is occurring in the Chamber, it is possible that on occasion, this behaviour may emanate from people who may sit on the Privileges Committee. A level of independence is needed to make perceived or actual unbiased decisions, and we believe that there needs to be some level of qualifications (i.e. judicial) to sit on the Committee.

Has consideration been given to how conflicts of interest on the Privileges Committee be managed? Will Councillors be entitled to legal counsel at the Privileges Committee and would individual Councils and therefore ratepayers be expected to fund this?

There is little detail included in the Discussion Paper on who is expected to fund the Privileges Committee, so it is difficult to make too many constructive comments on this aspect at this time.

What is the process for referral of matters to the Privileges Committee? Will there still be a Complaints Coordinator or can anyone refer a complaint to the Committee? Does there really need to be yet another layer of governance sitting in judgement on Councillors? There is already the OLG and the ICAC.

Councillor Misbehaviour and External Bodies
Referring Councillor misbehaviour to external bodies like Safework can result in fines for the Council rather than the individual Councillor. This approach does not hold Councillors accountable for their actions. We propose that fines and penalties be directed at the individual Councillor responsible for the misbehaviour.

The Code should require Councillors to interact respectfully with others, including fellow Councillors, the General Manager, staff, and the public. This means avoiding baseless criticism in public forums, which can damage organisational culture and increase psychosocial risks. Such behaviour may also polarise the community and weaken public confidence in the Council.

Robust and respectful debate is essential for good decision-making. Councillors should focus on issues, not individuals, and treat officers' reports professionally. Aggressive behaviour that intimidates others or hinders debate should not be tolerated.

Privileges Committee and Complaints Process
The OLG is not the appropriate body to deal with pecuniary interests. Many Councils have referred clear pecuniary interest breaches to the OLG previously, and the OLG have referred the complaints back to Council because they were considered too minor, or the OLG didn't want to / wasn't able to investigate. If the OLG continues to refer complaints back to Council under this new structure, does it then go to the Privileges Committee, as a Council no longer has the power to refer to conduct reviewers?

There is agreement that the General Manager needs to be removed from the process, and this is supported. General Managers should not be put in a position of judgement on the Councillors, who are effectively in control of their employment. However, General Managers need to be aware and informed of what complaints have been lodged with the Privileges Committee or the OLG. Clarity is also sought on who determines if misconduct is to be reported to the Privileges Committee.

There is agreement that the OLG should be able to issue PIN's, however, can this be garnished from the Councillor meeting allowances and can it be used to subsidise the Privileges Committee? If the Privileges Committee finds a Councillor guilty and the resulting punishment is the loss of meeting fees, can that loss of payment be used to fund the Privileges Committee?

Will the OLG be able to issue performance improvement orders to individual councillors?

Consideration will need to be given to how performance improvement orders and sanctions are reported. Will Council be required to report these in their Annual Report to the community who may wish to know this information before voting in an election year, or is this reporting something that the OLG will take undertake?

Misbehaviour needs to be clearly defined and more clearly than the three limbs of misbehaviour listed in the discussion paper i.e. what does unbecoming of a Councillor mean and what does bringing Council into disrepute mean?

A schedule of sanctions would also assist in educating Councillors on the ramifications of any misconduct.

Is should be noted that whilst there is reference to conduct in Council meetings throughout this document, we are reviewing it in the absence of any revised Code of Meeting Practice, which may clarify some points, or bring up new points once developed.

Property developers and real estate agents
Will Councillors who are developers be forced to sell property or not enter into contracts, therefore potentially limiting their income or impacting their livelihood? What happens if they don't sell property or they do enter into a contract, who is responsible for investigating and imposing punishment?

Council Meetings
There is concern over the Mayor having absolute power in the Chamber. The Mayor is one of a body of people elected to represent the community and should not therefore have all the power.
It is not understood how the Mayor has the legal right to issue PINs to members of the public. This needs to be more clearly defined and explained.

Transparency and Briefing Sessions
It is universally agreed that under no circumstances should decisions be made at briefing sessions, however, it is considered vital to informed decision making that staff can provide background information, some of which is commercial in confidence or confidential, to Councillors in a closed to the public, briefing session. Often, Councillors may need time to digest all the information provided to them, in order to make a considered decision.

The OLG Discussion Paper states "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 that councillors have. Closed council briefing sessions are being used to make decisions away from the public view". How does the OLG know what is going on in individual Councils? How does the OLG justify the statement that decisions are being made in closed session? Decisions cannot be formalised without a resolution of Council and a majority of councillors must vote for any proposal. The example provided in the Discussion Paper of decisions on DA's being made behind closed doors is but one example, noting that a good number of Councils across NSW do not consider DA's any longer.

The banning of pre-meeting briefing sessions will not prevent Councillors meeting in other locations and determining how they will vote.

It is recommended that the definition of what is a briefing session needs to be clearly articulated.

The current Model Code of Conduct requires that a member of staff of a Council who provides any information to a particular Councillor in the performance of their official functions, must also make it available to any other Councillor who requests it and in accordance with Council procedures. In light of this, we see the requirement in the proposed new Code to provide information to the Mayor only, to be in conflict with this requirement. This requirement ensures no Councillor is disadvantaged by information being withheld. We see this as problematic, and it may divide the Council. There is also a substantial risk that some Mayors may limit the information provided to other Councillors in order to ensure a particular decision is made.

This provision is not considered practical, as Councillors are only allowed speak for a matter of minutes, and only once per topic in a Council meeting, thereby reducing the Councillors ability to ask more questions. Banning briefing sessions may lead to decisions on more issues needing to be deferred, if questions posed by Councillors cannot be answered at the Council Meeting.

Conclusion
While we support the initiative to strengthen the Code of Conduct, we believe that certain areas in the proposed framework require further consideration and refinement. There is too little detail

provided in the Discussion Paper on key aspects of how all of this might work, for us to be able to provide further constructive commentary.

We urge the OLG to ensure that the new framework provides clear guidelines and robust mechanisms for addressing Councillor misbehaviour, while also fostering a respectful, safe and collaborative environment between elected representatives and Council staff. By doing so, we can build a stronger, more effective local government sector that better serves our communities.

Previously the Association had provided extensive work to the State Government around the Code of Conduct, and we attach to this document for your reference, including a draft Bill that dealt with sanctions, which is a key aspect considered critical for the effective operation of any new Code.

We would be pleased to meet with you to discuss any of the above in more detail.

Yours sincerely



David Tuxford
President

Inc
Local Government Act 1993. Councillor Misconduct Sanctions_Suggested Amendments.pdf
Model Code of Conduct _Suggested Amendments.pdf
Procedures for Model Code_Suggested Amendments.pdf

From: Patricia Hellier
To: OLG Councillor Conduct Mailbox
Subject: SUBMISSION
Date: Friday, 15 November 2024 12:53:41 PM

Dear Reader,

We offer the following comments in relation to the review on the Code of Conduct.

As a regular to Council Meeting at the Eurobodalla Shire we provide the following -

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We do not believe that the Mayor should have the power to "expel councillors for acts of disorder and to remove the councillor's entitlement to receive a fee for the month in which they have been expelled from a meeting".

We do not believe that the Mayor should have the power to make "councillors will also be required to apologies for an act of disorder at the meeting at which it occurs and if they fail to comply at the meeting, at each subsequent meeting they comply. Each failure to apologise becomes an act of misbehavior and will see the councillor lose their entitlement to receive their for for a further month".

We do not believe "that Councillors will also be expected to stand, where able to do so, when addressing meeting" **WE DO NOT EXPECT COUNCILLORS TO STAND** - "when the mayor enters the chambers".

We do not believe that the Mayor should have the power "the proposed reforms will also expand the grounds for mayors to expel member of the public for the chamber for acts of disorder and enable of a PIN where members of the public refuse to leave a meeting after being expelled.

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Clarification is needed in relation "it is proposed that councils will no longer be permitted to hold pre meeting briefings sessions in the absence of the public" **- Our Council hold Council Briefings one week before the Council Meeting - IS THIS THE PRE MEETING BRIEFING BEING REFERRED TO** - or is it the **- our Council have a pre briefing on the day of the Council meeting - THEREFORE CLARIFICATION IS REQUIRED ON THIS MATTER.**

We do not believe that the "mayor needs to have a candid conversation with the general manager outside of formal meetings" **we believe the Mayor interpretation of what the General Manager states could be misinterpreted therefore we believe that the Mayor should have the Deputy Mayor and one other Councillor - if the Deputy Mayor is not available then an additional Councillor should be present ie the Mayor and 2 Councillors.**

Regards,

Robert and Patricia Hellier

[redacted]

[redacted]

INTERNAL OMBUDSMAN SHARED SERVICE

CITY OF PARRAMATTA

CUMBERLAND CITY COUNCIL

INNER WEST

Councillor conduct and meeting practices Discussion Paper – IOSS submission

The following submission is the view of the Internal Ombudsman Shared Service and may differ from the views of our member Councils.

Principles of change

From the 2022-23 OLG time series data, it is noted that the vast majority of complaints are resolved at the Council level, with more than 90% of all complaints received by Councils not resulting in a breach of the Code of Conduct. While it is noted that this data does not include matters that are referred to the OLG at the outset, the vast majority of complaints relate to behavioural concerns rather than matters involving allegations of corrupt conduct or similar. These behavioural concerns, such as bullying, harassing and intimidating behaviour, need to be addressed quickly, to effect change, with a significant enough deterrent to cease any potential future conduct.

The principles of change should recognise the need to create a safe workplace. A local council represents a community and is a workplace, a workplace for many within that community. A local council should be a safe workplace for all Council officials, including Councillors and staff. There should be no different acceptable levels of conduct in terms of bullying, harassment, intimidation and abuse for Councillors than there is for other Council officials. Council debate can be engaged and robust, however there is no place for behaviour that risks the health and safety of other Council officials.

The paper suggests that matters should be referred to the appropriate regulator, including SafeWork, ICAC and the NSW Police. There should be consideration if this referral is undertaken by the Privileges Committee given there may be concerns with the same conduct being considered concurrently under a number of jurisdictions.

Potential changes to the code of conduct and oath of office

Key elements to a revamped Code of Conduct

The key elements to a succinct Code of Conduct should address disclosures/conflicts of interest, gifts and benefits, use of Council resources, use of confidential information, avoiding misleading information, staff interaction and WHS obligations.

Aligning the Oath of Office to a revamped Code

Any changes to the oath or affirmation should be aligned to Councillors' roles as set out in the Local Government Act. The current oath and affirmation refers to functions, powers, authorities and discretion. While noting the oath/affirmation is more detailed than other levels of Government there may be scope to add a behavioural expectation statement. This may only be a symbolic or superficial change, given difficulties in enforcing the oath or affirmation.

Potential changes to the definitions and assessment of councillor misbehaviour

Principles of a conflict of interest

The current Code outlines interests that do not need to be disclosed. This useful advice should be available in any future documents.

Specific features of councillors undertaking real estate and development business activities?

The legislation should cover a clear definition of developer and address how investment properties are to be considered and managed.

These changes are welcomed, but it is acknowledged this is significant and would be difficult to oversee if there was an element of oversight expected by each Council.

Appropriate threshold to face a Privileges Committee

The established threshold is not clear. While the proposed misbehaviour definitions may be established legal concepts with existing case law, the general complainant will see these categories as subjective concepts. The most common complaint about the Code of Conduct process, apart from the length of time taken to finalise matters, is the misalignment of the complainant's expectations of the outcome and the final decision, particularly in matters involving alleged bullying, harassment, intimidation and other types of directed abuse. This misalignment may arise from a lack of clear definition or understanding of the categories of misbehaviour and standardised understandings of levels of conduct.

The OLG will be delegated the power to dismiss matters that are considered vexatious or trivial. Without a mechanism to manage matters informally, the remaining complaints will vary greatly from minor to serious without an apparent 'threshold' to face the Privileges Committee.

The Privileges Committee (and the OLG in initially declining matters) need to consider previous complaints to address patterns of behaviour.

Methods to minimise complaints

In the IOSS experience, complainants are divided between the desired complaint outcome as seeking a) cessation of the conduct or b) the respondent being 'punished' for the conduct. The punishment is rarely considered satisfactory by the complainant and is often an ineffective deterrent to cease conduct. More effective publication of the potential outcomes of a complaints may result in a more realistic understanding of the process and may minimise complaints.

In order to minimise complaints, the complaint process could:

- require the complainant to clearly outline how the alleged conduct of a Councillor falls within their role as a Councillor through an explanation of the function being undertaken by the Councillor;

- require the complainant to outline how they have sought to address the matter informally before lodging a formal complaint or considered other alternative means of redress;
- communicate outcomes verbally ahead of formal notice of outcomes to ensure complainants and respondents understand the reasoning for the outcome; and
- Mandate that any censures and warnings are prominently displayed on Council websites as a further deterrent.

While more efficient methods for managing low-level complaints may improve some behaviour and therefore address concerns before repeated complaints are received, there should be caution in the assumption that any proposed strategies will see a minimisation in complaints, particularly if this is to be a measure of success. The ICAC repeatedly notes in their Annual Reports that there is an "*over-representation*" of local government in complaint statistics, however that levels are due to "*the high level of people's interaction with local government and the personal interest many take in the decisions of their local council*." It is expected that this is similar with complaints relating to Councillor conduct.

It is also noted that the intention of the new model is to reduce the weaponisation of complaints. Therefore, is there scope for the Privileges Committee to determine when complaints have been made for an improper purpose. It is unclear how this new model will reduce weaponisation, however there may be scope to consider whether those assessed as making complaints for an improper purpose are charged 'costs' or a penalty.

Addressing inappropriate lobbying

Any guidelines issued need to clearly define the act of lobbying, the definition of a lobbyist and what is appropriate lobbying and what is inappropriate lobbying and the reporting obligations of Councillors. There could be scope to release a lobbying register for transparency.

Connected to the concept of lobbying, the role of a Councillor is outlined in the *Local Government Act 1993 (NSW)* at s232. This section has been subject to substantial change since 2006, most significantly in 2016 to reduce the role of Councillors in operational matters, requiring Councillors to represent the *collective* interests of the community and to facilitate communication between the local community and the *governing body*, as opposed to the previous reference to Council.

Any guidelines issued need greater clarity on the definition of lobbying in both operational and strategic matters, the role of a lobbyists and the obligation on Councillors as part of this process, with consideration to make provisions to prohibit lobbying in operational matters.

It is noted that given the volume and frequency of approaches made to Councillors regarding operational matters, which could be considered as lobbying, this can present risks given the prevalence and potential to influence Council official decision making.

Dispute resolution and penalty framework

The IOSS is very supportive of the move away from the General Manager or Mayor role as the initial decision maker to determine how matters are to be handled. By any measure, utilising an employee

(GM) or a direct colleague/peer (Mayor) to initially determine how complaints are to be handled is a poor Governance arrangement.

The use of external parties to Councils to consider matters will also reduce reliance on contractors in this process to prevent investigations proceeding for full investigation without solid justification.

It is noted that the intent of this new framework is to abolish the 'two step process'. However for serious matters (as with the current process), a lengthy 'two step process' remains with serious conflict of interest matters referred on from the OLG to a tribunal or other decision making body; and serious misbehaviour matters referred from a Privileges Committee to the OLG to a tribunal or other body.

The IOSS is supportive of the approach of the OLG reviewing and assessing allegations of conflict of interest breaches. While the Office currently manages pecuniary conflict of interest allegations, there would be further consistency in decision making with singular oversight of both pecuniary and non-pecuniary conflicts of interest.

It is recommended that jurisdiction for conflict of interest matters deemed serious by the OLG is firmly established at the commencement of the revised scheme to avoid referral across agencies from the OLG to the ICAC or the NCAT.

A structured, robust, appropriately resourced triage process is recommended to decline any trivial matters at the outset, quickly action any minor matters and refer any serious matters to the appropriate body or tribunal for action. At present, minor pecuniary conflict of interest matters have remained on hand with the OLG for extended periods of time. The proposed method for managing matters assessed as serious, with referral to a tribunal or body, needs to acknowledge that this will be a lengthy process and does not deter conduct in the short term.

It also needs to be recognised that significant delays in finalising matters can impact the mental and physical health of a respondent and can place a disproportionate burden on a respondent due to excessive administrative delays. The IOSS is aware of a conflict of interest matter relating to conduct occurring in 2012 and 2013 where open source reporting states the respondent was interviewed in 2017 and again in 2019, with a decision made by the NCAT in 2022, a delay of at least five years after the respondent was interviewed in relation to the matter. This matter was referred between a number of agencies throughout the nine years of the complaint.

What level of PIN is appropriate

Any penalty needs to be appropriately set to be a deterrent against conduct whilst not excessive to ensure that this is not a barrier or a detraction to increase participation from a broader democratic participation.

Penalties – are those proposed appropriate and can further penalties be considered

There are disparate views of the role of the NSW Local Government Privileges Committee reviewing alleged breaches of behavioural expectations. While it is acknowledged the intention is to utilise experienced current and former elected officials, there would be the perception of a lack of impartial

decision making and potential non-pecuniary conflict of interest for these decision makers given political allegiances. Given behavioural complaints generally have an impact on the health and wellbeing of an affected party, this is not an inconsequential concern that decision making may be affected by perceived partiality.

Consistency in decision making is a frequent criticism of the current process given the volume of conduct reviewers undertaking assessments and the lack of defined thresholds. This aspect needs to be addressed under the proposed Privileges Committee model that may have multiple members.

The proposed course of action to refer breaches deemed serious to the OLG for preparation of a brief for referral to a tribunal or body returns to the 'two step process' this paper seeks to abolish. The paper states that there are to be no investigations of misbehaviour, rather the respondent Councillor is required to demonstrate before the Privileges Committee that the relevant conduct was appropriate. This may be appropriate for alleged conduct in recorded Council meetings or in matters involving published evidence of alleged conduct where it may be a relatively straight-forward process to establish conduct occurred, such as reviewing footage or published statements. This process is suitable to determine how to address conduct, rather than identifying if conduct occurred.

It is acknowledged that the current process is lengthy and too slow to effect necessary change, however it is unclear how this proposed process will establish that the conduct occurred, provides procedural fairness or would establish sufficient information for the OLG to prepare a brief for referral to another agency without further investigation.

The penalties imposed by the Privileges Committee refer to censure and warning of a Councillor. There could be the requirement for any such censure and warning to be published on the relevant Council's website as a further deterrent. There may be the possibility of compelling a respondent to issue an apology to an affected party.

The process to recoup payment of the Privileges Committee expenses may also be considered as a 'penalty'. Noting the current *NSW Government Boards and Committees Remuneration* ranges from $220 to $2000 per day for members, charging these costs back to Councillors may be considered an additional 'penalty' as costs charged may exceed monthly Councillor fees. It is not clear from the paper who is expected to pay costs.

The outcomes of the Privileges Committee process could also allow for corrective action, including training and revision of policies or procedures.

While not covered in the paper, any procedural changes need to address the requirement to maintain confidentiality of matters, at all stages, including when a matter is concluded. If no finding has been made against a respondent, there is limited public interest in a respondent being able to disclose an unproven allegation against them. This would also reduce the possibility of civil claims.

Sanctions

The Principles of change includes that justice is timely and proportionate. The current system facilitates neither of these Principles given the lengthy delays with matters initially referred to the

OLG and further referred to the NCAT. Extended delays in hearing matters can be significantly disproportionate to the alleged conduct, given the impact of health and well-being.

It is unclear how decision-making by a senior public servant would not ensure procedural fairness and thorough testing of allegations.

The IOSS recommends decisions on sanctions being made by a Departmental Chief Executive given the ability for a more timely process.

Restoring dignity to council meetings

The ability of the Mayor to expel without a resolution of Council will assist in managing conduct of a more serious nature, however should not be used for less serious conduct. Importantly, the Mayor's role requires impartiality in the exercise of this functions. Therefore, inaction on disorderly conduct by Mayors needs to be addressed, with further accountability measures in place for Mayors.

A difficulty lies in conduct that may be perceived as an ongoing pattern of behaviour – behaviour that in isolation, with an individual act in one meeting, may not warrant action, however as a pattern of behaviour over a number of meetings requires consideration. This form of ongoing, minor conduct (forming a pattern) does not appear to be addressed through this strategy.

Confidentiality

I acknowledge this submission may be made public.

Elizabeth Renneberg
Internal Ombudsman
Internal Ombudsmam Shared Service
[redacted]

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15 November 2024

Our Ref: 2024/613044
File No: X087882.001

Mr Brett Whitworth
Deputy Secretary
Office of Local Government

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

Dear Mr Whitworth

Submission – Councillor conduct and meeting practices discussion paper

Thank you for the release of the Discussion Paper and for the opportunity to make a submission.

The City of Sydney supports the need for strong and effective local government. We appreciate that, as the level of government closest to the issues and people, how Councillors act, and how appropriately and transparently decisions are made, is critical to demonstrating accountability and transparency.

Principles of change

The City of Sydney generally supports the principles although there are many aspects of the specific details of the proposal which are unclear, or which should be the subject of further detailed consultation with the sector prior to implementation.

Noting there are many honest, ethical and hardworking councillors across the sector, the strength and effectiveness of our sector is reliant on addressing poor behaviours from those who are not so motivated.

However, we are concerned about the practical impacts of many of the suggestions raised in the Discussion Paper and the lack of detail put forward in relation to them. The City is concerned that the Office of Local Government (OLG) is proposing significant reforms to the way councils operate without adequate consideration of the impacts of those changes and without appropriate consultation across the sector, external regulatory bodies such as the Independent Commission Against Corruption (ICAC) and the community. Any amendments to the legislation, regulation or model codes of conduct and meeting practice must be the subject of full public consultation.

We make the following specific comments in relation to the Discussion Paper.

Potential changes to the code of conduct and oath of office

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

Aligning the Code of Conduct to the Oath of Office is supported, however it is requested that the Oath remain concise.

Potential changes to the definitions and assessment of councillor misbehaviour

One of the areas that must remain clear in any revised framework concerns councillor and staff interactions. We understand that you are not proposing to change the code of conduct in this respect for council staff, however the boundaries relating to interactions with staff need to be clear and enforceable for councillors.

It is unclear where councillor/staff interactions would be captured in the new framework. This is an important area of the code of conduct that supports the separation of roles and responsibilities for elected councillors and the council administration and as such should not be diminished.

Pecuniary and non-pecuniary interests

The Discussion Paper suggests that the definition of pecuniary interests for councillors will be amended to align with those used for NSW members of parliament. It is submitted that further consideration and consultation is required in relation to this proposal noting that:

- Any requirement to disclose income should maintain the current position that only the source of income is required to be disclosed, not the amount of income. For many councillors, their "other income" will be their primary source of income and a requirement to publicly disclose those amounts raises privacy concerns. It is also considered likely to discourage a broader range of potential councillors, including younger people working full time, from running as candidates.
- The position in relation to gifts would be a significant shift from the current position where councillors are prohibited from receiving gifts over a certain amount, to a requirement where they are only required to declare gifts over $500. While consistency of approach is supported, this should be a matter for further consultation and consideration, including with ICAC.
- Treatment of political donations as pecuniary interests requires further consideration and, in particular, there should be an alignment between the thresholds of reportable donations in the Electoral Funding Act 2018 and the requirement in OLG guidelines to publicly disclose the names of political donors.

The characterisation of non-pecuniary interests into categories of "significant" and "non-significant" is a matter on which further guidance and clarity would be useful. It is considered that the approach suggested in the briefing paper, including that tests of relevance for declaring a conflict include whether or not the matter is controversial or if the councillor has a casting vote, is not supportable. It is submitted that the OLG should instead work closely with the sector to develop clear guidelines and examples as to the appropriate treatment of non-pecuniary interests.

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

More detailed information is required to properly understand the changes being proposed in the discussion paper and it is recommended that this proposal be the subject of detailed consultation with external agencies such as ICAC as well as councils and the community.

One of the key issues that needs to be considered is how to avoid councillors simply divesting to family members, related entities, trusts and other arrangements, that create the perception of divestment but that do not actually remove the conflicts and risks. It is important that any requirement to divest is simple, clear and easy to monitor.

While it is unclear on the face of the proposal, it would be appropriate for the OLG to be the regulatory agency responsible for monitoring compliance with any obligations to divest. This would ensure consistency while ensuring appropriate levels of oversight are applied.

Q. Is this the appropriate threshold to face a Privileges Committee?

More detailed information would be helpful to properly understand the changes being proposed in relation to a Privileges Committee, including how this would work practically. Fundamentally, this City is concerned with the proposal for the establishment of such a body.

Some of the aspects that remain unclear and give rise to these concerns include:

- Who appoints the members of the Committee and how will OLG monitor and ensure the Privileges Committee reflects modern community standards and expectations for Councillor behaviour?
- Why is a new Committee required rather than referral to an existing body such as the NCAT which has experience in reviewing decisions relating to the application of particular professional standards?
- How will the potential for politicisation of the Committee be addressed?
- Who can refer a matter to the Committee via the webform (public, staff, councillors?)
- What is the threshold for a complaint?
- What will be the right of appeal from decisions of the Committee?
- Will legal representatives be permitted to represent and appear for clients before the Committee?
- Who will pay for the operations of the Committee and, if it is anticipated that councils will contribute, will the cost apportionment for the administration and operation of the Privileges Committee be based on a council's usage or a formula?

Overall, there are a number of concerns that arise from both the fundamental concept and the absence of detail in relation to the Privileges Committee. The details of this proposal require extensive consultation should it be proposed to proceed.

Q. What key features should be included in lobbying guidelines and a model policy?

It is essential to have clear definitions of lobbying and lobbyists, and what is and isn't acceptable lobbying.

The City of Sydney has a Councillor Meetings with Registered Lobbyists and Property Developers Policy which aims to ensure community expectations are met in relation to ethical and transparent lobbying of councillors. This policy requires councillors to record all meetings with registered lobbyists and property developers and the purpose of the meeting on a standard form. The information is published quarterly on the council's website and remains there for 12 months. This policy (copy attached) has its basis in the NSW model for state parliamentarians.

The administration of lobbying of councillors should not be onerous for councils to maintain and administer. The City of Sydney does not support a regime for lobbying that requires councils to maintain a register of lobbyists and/or requires lobbyists who propose to meet with councillors to complete a form, that needs to then be collected, stored, managed and disclosed by an additional council process. We understand this is one of the ways that some councils have chosen to respond to this issue to date, however we do not believe it is the simplest or most effective way to deal with this issue.

Dispute resolution and penalty framework

Q. OLG power to issue Penalty Infringement Notices - what level of PIN is appropriate?

It would be helpful if this aspect of the discussion paper could be more fully fleshed out. It is unclear what the purpose of the PINs are and when they will apply. In general, PINs are a way of dealing with criminal matters without the need for a criminal prosecution to take place. Therefore, it is assumed that what is proposed is to make certain behaviour of councillors a criminal offence that will be subject to a fine through the PIN process. Fundamentally, this appears to be problematic in that it criminalises the workplace behaviour of elected officials, although it may be appropriate in relation to some breaches by councillors.
It is difficult to provide comment in the absence of more information and it would be helpful to understand the proposed the administrative framework for the issue of PINs. Would PINs be issued directly to councillors (i.e. without the need for involvement by the council)? Any process which requires staff to potentially issue or administer PINs issued to councillors should not be adopted as it would not be appropriate for staff to be enforcing fines on councillors. Similarly, as PINs can be court elected and the matter proceed to a criminal hearing in the Local Court, it must be clear that the OLG is the prosecuting authority in these matters and council staff are not required to attend court and prosecute their councillors.

Restoring dignity to council meetings – proposed reforms to the Model Code of Meeting Practice

More detail is required to understand how these proposed changes might work and to identify any unintended consequences.

Our preliminary observations include:

- Will there be guidelines to assist mayors in using the proposed expulsion provisions to ensure consistent application?
- How will the right of review work? How is a request for review lodged and with whom? Who considers the right of review? What are the timelines for a review, noting the likely need for urgent consideration of these matters to ensure the right of councillors to participate in meetings is not withheld for an extended period while a review is underway?

- Is the loss of fee automatic on expulsion, or is this something a mayor will have discretion to decide?

On the basis of the information provided in the discussion paper, there are concerns about the proposal given the inherent risks involved in enabling a mayor to financially penalise other Councillors. There would need to be adequate safeguards to protect against the misuse of this power for political reasons, including to prevent councillors from attending meetings for months in a row. If such powers are introduced there must be stringent guidelines in place to ensure they are not misused, including making such misuse a breach of the Code of Conduct and the subject of sanctions.

Concerns are also raised about the potential impacts of financial penalties on Councillors, noting that there could be a disproportionate impact given the limited remuneration paid for the role.

With regard to members of the public, it is suggested that the Code of Meeting Practice could be amended to make it clear that the chair is empowered to ask for members of the public to be removed from the council chamber where circumstances so require. The physical expulsion of members of the public from the chamber for acts of disorder or refusal to leave should ultimately remain a NSW Police matter. Councils, whether staff or councillors, should not be empowered or expected to issue PINs to members of the public for these matters.

Members of the public enter council meetings freely. There is not necessarily a record of every person in attendance at a meeting, nor any way of knowing if those in attendance provide correct information if there is a sign-in process. There will be regular instances where the identity of a person causing an act of disorder is not known. The powers of the NSW Police to request and compel provision of identity information should appropriately remain with that entity.

Banning briefing sessions

The proposal in the discussion paper to impose a blanket ban on the briefing of councillors is not adequately explained or supported, impractical to implement and will ultimately lead to a more inefficient and combative environment for councillors and staff. Many of the indicators of good working relationships between councillors and staff espoused in the OLG Councillor Handbook, require a level of dialogue that is less formal and more collaborative than can be achieved via formal committee and council meetings.

It is important to remember that one of the key roles of councillors as established under the Local Government Act 1993 s 223(2) is to consult with the CEO in directing and controlling the affairs of the council. Genuine consultation requires open and honest two way discussions requires the opportunity for briefings and other open discussions between Councillors and senior staff (through the CEO). A similar mandating of consultation is seen in s 335(3) of the Act which requires the CEO to consult with councillors in the preparation of important strategic documents.

One of the ways councillors can be better supported in their role is through collaborative discussions in workshops and briefings where they can freely ask questions and receive information that enables them to have confidence that the intent of their resolutions and policy decisions are being effectively implemented. Briefings are one of the most effective forums for councillors to ask for advice and discuss their position on key decisions, allowing them to receive advice from staff who are experts in the area, leading to more informed motions and decisions in meetings.

Furthermore, briefings are the best forum to develop “relationships which are characterised by respect, good humour and good faith”, as is the aspiration of the OLG Councillor’s Handbook.

Council staff need to be able to have briefings with councillors that are closed to the public. The undertaking of these briefing sessions enables a number of positive activities to occur. These include:

- The provision of required and additional induction and professional development training and familiarisation discussions, particularly for new councillors
- The effective provision of consistent information to all councillors on matters of interest, including from staff with subject matter expertise
- Open discussion on matters of policy, which are ultimately a matter for council, to assist staff as they are developing key strategic and policy documents
- Ability for staff and councillors to work on issues in a collaborative way, including issues which may not be the subject of a future report to or decision of council
- The provision of information by third parties such as State government agencies on upcoming projects or matters of particular interest to councillors ahead of public release

There is no clear reasoning established in the discussion paper as to why a blanket ban on the briefing of councillors by staff would restore the dignity of council meetings or lead to the more efficient or effective conduct of council business. Further, it is challenging to see how such legislation mandating such a ban could be drafted for practical implementation given the need for appropriate delivery of confidential transactional information, training information, confidential NSW government information and other matters that will still require sessions to take place. In addition, there are a number of committees, panels and other bodies on which councillors sit together with NSW government and other representatives to make decisions or recommendations. These include local traffic committees and the Central Sydney Planning Committee. Briefings are regularly and appropriately given to those bodies by subject matter experts and, as is the case with Councils, this does not inhibit or prevent appropriate discussion of matters in public meetings.

This is not to undermine the fundamental principle that council decisions and debates are appropriately conducted in public meetings. Whilst the City of Sydney fully supports the need for open decision making and meetings, council staff still require the capacity to have conversations with councillors in forums outside of full, formal council meetings.

The example used in the discussion paper in relation to development applications is not applicable to the majority of councils in the metropolitan area, where councillors are not dealing with development applications due to the establishment of local planning panels. If the concern relates to development applications, we suggest that imposing a blanket ban on briefing sessions is not the appropriate mechanism for resolution. This would be far more detrimental to the operations of well-functioning, ethical councils than it would be for those in the minority who are using briefings for purposes that are not considered to be appropriate.

We look forward to receiving more detail on the aspects of the Discussion Paper which are proposed to proceed and reiterate our request for more detailed consultation on the specific parameters of some of these initiatives before they are finalised and enacted.

Should you wish to discuss any aspects of this submission, please contact Kirsten Morrin, Executive Director Legal and Governance on [redacted] or kmorrin@cityofsydney.nsw.gov.au.

Your sincerely

[redacted]

Monica Barone PSM
Chief Executive Officer

Email to: councillorconduct@olg.nsw.gov.au

Our Ref.: 24/49157
15 November 2024

Submission from Burwood Council General Manager: Councillor Conduct and Meeting Practices Framework

Please find below comments in relation to specific sections of the discussion paper *Councillor conduct and meeting practices—A new framework*.

Councillor Briefing Sessions

The proposal to completely ban councillor briefing sessions is not endorsed and we feel it conflicts with section 232(1)(b) of the Local Government Act 1993, which requires councillors to make well-informed and thoughtful decisions. The ban appears to extend beyond standard briefing sessions, as the discussion paper states:

> *"Any material provided to councillors, other than the mayor, that will affect or impact or be taken into account by councillors in their deliberations or decisions made on behalf of the community must be provided to them in either a committee meeting or council meeting."*

While it is agreed that decisions should not be made during closed briefing sessions and must occur in a public forum, these sessions play a critical role in the decision-making process. They provide councillors with detailed information from subject matter experts, ensuring they are well-informed. Briefing sessions are also a more efficient and equitable way to distribute information, ensuring all councillors receive the same insights to base their decisions on.

The main purpose of these briefings is to give councillors a chance to ask experts questions and clarify their understanding of issues in a private setting before open debates occur. This ensures they can engage without worrying about public embarrassment. Councillors come from diverse backgrounds with various skills and knowledge, but they are not experts in every field. To fully grasp complex issues, they need the freedom to ask questions openly, even if it means admitting what they don't know. Limiting this opportunity to public council meetings could discourage councillors from asking important questions, leading to decisions being made without a complete understanding of the issues.

Relying solely on public council meetings for councillors to inform themselves about issues is impractical, as councillors are limited to speaking only once for five minutes on each topic. While questions can still be asked during meetings, these strict time limits will significantly restrict the amount of information councillors can consider during debates. Additionally, council officers may not always be able to provide detailed answers to unexpected questions during the meeting. As a result, it is likely that more items will need to be deferred, delaying decision-making.

The discussion paper suggests that only the Mayor should have "candid conversations with the general manager outside of formal meetings" and receive full briefings on matters before Council. This approach risks undermining the cooperation and unity of the elected body. Political and time pressures may prevent Mayors from being able to brief all councillors equally—or even at all—on important issues.

Additionally, banning councillor briefing sessions is unlikely to stop those inclined to meet privately to discuss their voting intentions. Instead, such discussions would become less transparent. In contrast, Council briefing sessions are documented, including records of topics discussed, attendees, and presenters. Councillors are also required to declare conflicts of interest during these sessions, which are then appropriately managed and recorded. Without these structured avenues for information, councillors may turn to private, undocumented conversations that lack these safeguards.

Changes to the Code of Conduct

The current Model Code of Conduct is overly lengthy, complex, and prescriptive, making it difficult for laypeople to understand. Simplifying the Code to clarify its core behavioural principles and aligning it with the oath of office would be valuable. However, describing the Code as "aspirational" suggests that councillors would only need to aim to meet its behavioural standards without being required to do so. This weakens the Code's purpose and could undermine its effectiveness. Moreover, councillors' attitudes towards their Code of Conduct set an important example for other council officers.

The proposal also includes introducing separate Codes of Conduct for councillors and staff. Burwood Council already uses distinct Codes based on the Model, including a third Code for contractors, volunteers, advisory committees, delegates, and others who perform council work. Having separate Codes for different groups has merit, as it allows each audience to focus on the provisions relevant to them. However, it is essential that all Codes are easy to understand and enforceable.

The proposal does not make it clear whether Codes for staff and other officials will remain mandatory and enforceable or if they will be simplified. Clarity on this point is crucial to ensure consistency and accountability across council operations.

Conflicts of Interest and Councillor Misbehaviour

Removing the general manager from the complaints process is supported, as they should not be in a position to judge councillors, who are their employers. However, general managers still need to be informed about complaints lodged with the Privileges Committee or the Office of Local Government (OLG). The process for sharing this information remains unclear.

The abolition of the two-step complaints process and removal of private Code of Conduct Reviewers is welcomed, provided it streamlines the process and reduces delays in handling complaints.

OLG Handling of Conflict of Interest Matters

It is not clear how well the OLG will be resourced to deal with all pecuniary interests matters that are referred to it. In the past, conflict of interest complaints to OLG have often been referred back to councils because the OLG considers them to be minor and has not had the resources to investigate and deal with them. Is the intention that those “returns” will not happen at all under this new process and OLG will be resourced to address those less serious matters, potentially through the use of PINs?

While some complaints may appear to be minor in nature, they still need to be addressed, given the risk of a pattern of behaviour developing and escalating into major complaints. Dealing with those minor matters quickly is important both for the councillor being complained about and for the person lodging the complaint to deter patterns of poor behaviour or vexatious complaints.

Council Meetings

Although behaviour in council meeting rooms has not been an issue at Burwood Council, it is acknowledged that improvements are needed in some councils. The proposed changes are generally positive, but some practical concerns arise.

Requiring all councillors to stand when addressing a meeting could create challenges for webcasting and audio recordings, as frequent standing and sitting may disrupt the viewing and listening experience for the public. Additionally, considerations must be made for councillors with disabilities or mobility issues.

The proposal also grants significant power to mayors, including the ability to issue PINs to members of the public who refuse to leave a meeting. Clarification is needed on how this power would be implemented in practice. Would the Mayor issue the PIN directly, or would it be a Council-administered process? Clear guidance on the administration of this power is essential.

The proposal includes a "right of review" for councillors penalised by the Mayor with a one-month loss of their annual fee. Further details are needed on who will conduct this review and the process involved. Additionally, it is unclear how ongoing misuse of such powers by a mayor would be addressed. Could these matters be referred to the Privileges Committee, or would another mechanism be used?

Conclusion

This submission highlights the importance of striking a balance between enhancing accountability, transparency, and efficiency in local government operations while ensuring that councillors are empowered to make well-informed decisions in the best interests of their communities. The proposed changes to the Code of Conduct, councillor briefing sessions, the Privileges Committee, and meeting room behaviour provide opportunities for improvement but also raise significant questions that require further clarification.

Ultimately, reforms to local government must foster a culture of transparency, fairness, and accountability, while respecting the diversity of councillor experiences and the unique needs of each council. By addressing the concerns outlined in this submission, the proposed changes have the potential to strengthen the governance framework and improve the effectiveness of local government for the benefit of the communities it serves.

Yours sincerely



Tommaso Briscese
GENERAL MANAGER



From:	Greco, Anna
To:	OLG Councillor Conduct Mailbox
Subject:	Councillor Conduct Framework Review
Date:	Friday, 15 November 2024 9:54:58 PM
Attachments:	wccsig_mywilloughbyexternal_61d4a9dc-73f7-4fbe-a2e6-6f19209cbd02.jpg

Dear Framework reviewers,

Having had the experience of councillor censure, I support the reforms with the following notes:

Councillor Misbehaviour

The current Code of Conduct is susceptible to exploitation, allowing political motives and self-interest to take precedence over the public good. While the Code is intended to uphold councillor integrity, it has increasingly been used to pursue personal agendas, with council resources directed toward proving technical breaches without considering intent.

This system disproportionately empowers accusers, who are not required to demonstrate intent, while defendants face significant personal costs to challenge these claims. Councillors, with confidential privilege act as both judge and jury, presiding over their peers without ensuring procedural fairness or impartiality, erodes the democratic process.

The proposed reforms, including the elimination of the "two-step process," are essential for ensuring fairness. These changes would give accused councillors a fair chance to defend themselves, while the establishment of the Privileges Committee would remove political bias, ensuring that accusations are judged on their merits and not used for personal or political gain.

Mayoral Powers

Effective leadership in public meetings requires skill, and the mayor currently benefits from established leadership principles to guide their role. However, the codification of additional powers risks their misuse, especially when personal bias could influence decision-making.

Banning Briefing Sessions

Councillors are tasked with making informed decisions on complex issues, many of which fall outside their personal areas of expertise. Briefing sessions provide a necessary platform for councillors to gain a deeper understanding of these issues in a confidential environment.

To ensure transparency, it is important that briefing session materials, such as notes and presentations, be made publicly accessible after the sessions. This will maintain public accountability while allowing councillors to gather the information they need to make sound decisions. Additionally, special briefings for the mayor should not occur at the expense of the wider council, as the governing body is collectively responsible for decision-making.

Thank you for the opportunity to submit

Best regards

Anna Greco

Willoughby City Councillor

Anna Greco - *Councillor*
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Council acknowledges the Gamaragal People as the Traditional Owners of these lands. We pay our respects to their Elders past and present.

WCCSIG_MyWilloughbyexternal.jpg

KIAMA MUNICIPAL COUNCIL
your council, your community

Phone enquiries:
(02) 4232 0444

Reference:
SS:CB – SC1393 | SC1537

15 November 2024

NSW Department of Planning, Housing and Infrastructure
Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

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

Dear Sir or Madam

Councillor Conduct Framework Review - submission

Kiama Municipal Council welcomes the opportunity to put forward the attached submission in relation to the Discussion Paper on the Councillor Conduct Framework.

If you would like to discuss any of our responses, please contact Council's Chief Executive Officer.

Yours sincerely

[redacted]

Jane Stroud
Chief Executive Officer

SUBMISSION – COUNCILLOR CONDUCT FRAMEWORK REVIEW

1. Your details	
I would like my name and personal details to be treated as confidential (Required)	☑ I consent to my details being shared
Name	Jane Stroud
Name of organization	Kiama Municipal Council
Role/Position	Chief Executive Officer
Postal address	PO Box 75 KIAMA 2533
Telephone	[redacted]
Email	[redacted]
Which of the following best describes you?(Required)	☑ Council Regional

QUESTIONS FOR CONSIDERATION		OUR RESPONSE/POSITION
2. Principles of change		
2.1	**Are we missing anything in the below principles of change ?**	
	a) **Council leadership and decision making is paramount** – it is critical that the sector, as the third tier of government, is given independence to make decisions in the best interests of the community	Supported - as the third tier of government, integral in this principle is that any new Code should not place a greater burden on an elected councillor than the current Members' Code placed on NSW members of Parliament.
	b) **Freedom of speech -** as elected officials, councillors have the constitutional right and democratic responsibility to speak freely about issues affecting their local community and to advocate for the interests of that community	Supported – councillors should be able to speak freely, but respectfully. Dissenting views should also be acknowledged. Existing policies and Model Codes are in place, particularly in relation to media/social media, that ouline expectations.
	c) **Transparency and accountability -** as a democracy councils need to hear, consider and debate issues in an open manner	Supported, however, as noted elsewhere in this submission, we reject the view that Briefing sessions are a forum for making decisions away from the public view. Briefing sessions provide councillors an opportunity to better understand intricate policy issues, legal considerations, financial implications and strategic decisions before making their informed decisions at a Council meeting. This less formal environment allows for opportunities not available in the chamber, including having Council subject matter experts available, considering hypotheticals, managing confidentiality and allowing for free-flowing debate and discussion. The concept of banning Briefing sessions demonstrates a lack of understanding of the complex nature of matters that come before councils on a regular basis. Councillors must be provided with an avenue to work through concepts, issues and concerns in a confidential manner.
	d) **Significant penalties should only be imposed by a judicial or quasi-judicial body** - to ensure procedural fairness and thorough testing of allegations, the power to apply significant penalties should be given by bodies such as the NSW Civil and Administrative Tribunal	Supported – avenues for appeal need to be clearly defined.

QUESTIONS FOR CONSIDERATION		OUR RESPONSE/POSITION
	e) **A strong and proportionate local government regulator** - the role of OLG should be to create the framework for local government, ensure councils, joint organisations (JOs), and county councils have the capacity to operate within the framework so that the regulator intervenes as rarely as needed	Supported – it is critical that any operating framework is clearly defined.
	f) **Subsidiarity** – decisions are made at the level closest to those impacted by the decisions	Supported.
	g) **Justice is timely and proportionate** – where allegations are made, they should be heard, tested and dealt with as quickly as possible	Supported.
3. Potential changes to Code of Conduct and Oath of Office		
3.1	**What are the key elements of an aspirational Code of Conduct that should be enshrined ?**	• The Code of Conduct should outline behavioural expectations and be the minimum standard • Appropriate/inappropriate behaviour should be clearly defined • Councillor induction training should be mandatory • A reference to councillors being able to speak freely but respectfully should be included • A focus on positive behaviours ○ Ethical leadership - encouraging councillors to model ethical behaviour and uphold the highest standards of conduct in all interactions; respect for fellow councillors, staff and members of the public ○ Integrity and honesty - promoting transparency, fairness and honesty in decision-making, communication and professional relationships ○ Accountability - emphasising personal and collective responsibility for actions, ensuring that everyone is answerable for their conduct and the outcomes of their decisions. ○ Respect and inclusion - fostering an environment of mutual respect, non-discrimination and inclusivity, where diverse views and contributions are valued. ○ Commitment to excellence: encouraging continuous improvement, innovation and dedication to delivering high-quality services. ○ Compliance with laws and policies: reinforcing the importance of adhering to legal obligations, organisational policies and regulatory frameworks.

QUESTIONS FOR CONSIDERATION		OUR RESPONSE/POSITION
		○ Confidentiality and privacy: ensuring the safeguarding of sensitive information and respecting the privacy of individuals and stakeholders.
3.2	**What are your views about aligning the Oath of Office to the revamped Code of Conduct ?**	Supported - clear standards of behaviour should be defined in the Code of Conduct and have a connection to the Oath of Office.
4. Potential changes to the definitions and assessment of councillor misbehaviour		
4.1	**Is the proposed pecuniary interest framework appropriate ?** **Is anything missing ?**	Yes – supported.
4.2	**Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes – supported in principle. Clear guidelines around what is considered "significant" or "major" would be helpful. It needs to be objective rather than subjective.
4.3	**Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities ?**	Any changes to the legislation or Framework that obligate existing or potential councillors to divest themselves from development or business activities is not supported as this would deter qualified and experienced people from running for Council and potentially result in losses for existing councillors. If Planning matters were referred to a "panel" for determination, any potential conflict would be removed. What about councillors who own or have an interest in other "business activities" or services eg: owners of a soil providing company or catering business.
4.4	**Is this the appropriate threshold to face a Privileges Committee ?**	Whilst the concept of a "Privileges Committee"/Tribunal is supported, there is a concern around how the privileges committee will be formed and what potential there is to have a government put in place a committee of all similar politics that may be biased in their review ability. It would need to be balanced or random. Assurance is needed that the appointment to the panel is undertaken in a transparent and non-political manner to support an equitable process.
4.5	**How else can complaints be minimised ?**	A specific component around Social Media posts/comments should be considered. Clear definitions required around what is considered frivolous/petty/vexatious complaints. Will there be a triage process or will every complaint go to the Privileges Committee/Tribunal – the amount of work may be hard to manage unless strict guidelines are implemented. Councillors should attempt to resolve disputes internally or mediation could also be an option.
4.6	**What key features should be included in lobbying guidelines and a model policy ?**	Lobbying that is not declared is the main issue. Guidelines should consider donations to council the "entity" as opposed to a person.

	QUESTIONS FOR CONSIDERATION	OUR RESPONSE/POSITION
5. Dispute resolution and penalty framework		
5.1	**What level of PIN is appropriate ?**	In the absence of a fully formed structure, it is difficult to determine an appropriate level of PIN however, the OLG should not have the power to issue PINs, it should fall within the remit of the proposed "Privileges Committee"/Tribunal or the like. What happens if a Court Election Notice is lodged for a PIN ?
5.2	**Are the penalties proposed appropriate, and are there any further penalties that should be considered ?**	There is not enough information around proposed penalties to indicate support or not however, the Code should be about improving behaviour not about issuing penalties. The Framework suggests that penalties may include censure, warnings, loss of sitting fees or referral to other tribunals or bodies depending on the seriousness of the matter. However, there are no thresholds or levels of "seriousness" defined.
5.3	**Are the existing sanctions available under the LG Act sufficient ?**	The Framework requires the development of a full structure in terms of what constitutes misbehaviour, what sanctions should equate to findings of misbehaviour and the consequential penalties.
5.4	**Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure ?**	We support sanctions for Councillors being made only by proper tribunal or established "Privileges Committee"/Tribunal - unelected officials should not stand in judgment of elected officials.
6. Restoring dignity to council meetings		
6.1	**Are there any other powers that need to be granted to the Mayor or Chair of the meeting to deal with disorderly behaviour ?**	Increasing the powers of mayors and meeting chairs to manage disorderly conduct in meetings is generally supported but it is imperative that such powers be balanced to avoid misuse/abuse of power. The Framework suggests that the Mayor may be given the power to expel councillors for acts of disorder and to remove the councillor's entitlement to receive a fee for the month in which they've been expelled from a meeting, and further that if they fail to apologise, the Councillor will lose their entitlement to receive their fee for a further month. It also includes the ability for the Mayor to enable the issuing of a PIN where members of the public refuse to leave a meeting after being expelled. We submit that the "Privileges Committee" should be the mechanism for review in relation to the removal of councillor entitlements. This could prove difficult to enforce as there is no requirement for public attendees to register to attend or otherwise identify themselves. The misuse of these powers by a Mayor will potentially result in future complaints about behaviour unbecoming and provides a powerful tool for the Mayor to use his or her political advantage.

QUESTIONS FOR CONSIDERATION		OUR RESPONSE/POSITION
6.2	**Are there any other measures needed to improve transparency in councillor deliberations and decision making ?**	As detailed above in 2.1(c) we reject the view that Briefing sessions are a forum for making decisions away from the public view. Briefing sessions provide councillors an opportunity to better understand intricate policy issues, legal considerations, financial implications and strategic decisions before making their informed decisions at a Council meeting. This less formal environment allows for opportunities not available in the chamber, including having Council subject matter experts available, considering hypotheticals, managing confidentiality and allowing for free-flowing debate and discussion. The concept of banning Briefing sessions demonstrates a lack of understanding of the complex nature of matters that come before councils on a regular basis. Councillors must be provided with an avenue to work through concepts, issues and concerns in a confidential manner. The following points also require consideration – • What is the difference between a briefing and a workshop (if any) ? What about confidential matters ? • Potential for council meeting times to be negatively impacted • Briefings are NOT a forum for debate or a decision-making forum • State Parliament briefings are not public – the same provisions should apply to local government • Councillors have the opportunity to take any issues discussed at a briefing into the public realm at a council meeting • A less formal environment allows for opportunities not available in the chamber • Planning decisions can have a profound effect on property values (land or otherwise). Early discussions on potential rezonings must not be held in public, as such, councillors must be provided with an avenue to work through concepts, issues and concerns in a confidential manner. Public discussion would place constraints on the type of information that staff could provide and the questions that councillors could ask. We have trialed open briefing sessions previously here at Kiama, wrote a policy on it and reported on the trial. It went poorly. Councillors did not attend, members of the public did not attend and it did not allow for staff or councillors to speak freely. As a result, the trial on open briefings was discontinued. Again, as mentioned above in 4.3 - if Planning matters were referred to a “panel” for determination, any concerns around information provided to councillors would be eliminated. The question also arises around recommendations of Advisory Committees eg: Finance Advisory Committee, Audit Risk Improvement Committee, Tourism and Economic Advisory Committee etc – would those meetings also be required to be open to the public ?

Enquiries to: Daniel Baldwin, Manager Legal and Governance
Direct Line: [redacted]
Email:
Reference: FILE 12/2751

Moree Plains
SHIRE COUNCIL

15 November 2024

Strategic Policy Unit
Office of Local Government
Locked Bag 3015
Nowra NSW 2541

Via email: councillorconduct@olg.nsw.gov.au

Dear Sir / Madam

Re: Councillor Conduct Framework Review

I refer to the Councillor Conduct Framework Review presently being undertaken by the Office of Local Government (**OLG**) and the attendant discussion paper titled "*Councillor conduct and meeting practices – A new framework*" (September 2024) (**Discussion Paper**).

I would like to thank the OLG for publishing the Discussion Paper and affording councils an opportunity to comment on the proposed revisions to the councillor conduct framework.

On behalf of Moree Plains Shire Council (**Council**), I respectfully submit the comments set out at **Schedule 1** to this letter in response to the Discussion Paper. For ease of review, Council's response is divided into sections that correspond to the sections set out in the Discussion Paper.

I hope that Council's response assists with the OLG's review. If you have any questions or would like to discuss Council's response, please don't hesitate to contact Mr Daniel Baldwin, Manager Legal and Governance [redacted]

Yours faithfully

[redacted]

Kelvin Tytherleigh
General Manager

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Schedule 1 – Responses to Discussion Paper

What are the principles of change?

Are we missing anything in the principles of change?
Council agrees with the principles of change proposed by OLG.

With respect to the second principle of change, "*Freedom of Speech*", we submit that social media is an important consideration. As drafted, the scope of the proposed principle is not clear; that is, does OLG intend to apply the principle only in connection with formal council meetings or to other forums (such as social media and traditional media involvement)?

We respectfully submit that the final principle, "*Justice is timely and proportionate*", should be amended to include the following underlined text:

> *Justice is timely, cost effective and proportionate – where allegations are made, they should be heard, tested and dealt with as quickly as possible and in a manner that seeks to minimise the cost to Council and ratepayers*.

There is community benefit in having a rigorous assessment and investigation framework for responding to complaints about councillor conduct. A rigorous approach promotes community trust in Council and Councillors by providing assurance that complaints will be handled seriously. However, implementing a rigorous framework can come at substantial cost to Council, both in terms of money and staff time.

The fundamental purpose of local government is to deliver for the community. This means, among other things, efficiently and effectively deploying the resources of the Council (which are undeniably community resources) for the benefit of the community. A balance must be struck between ensuring a rigorous and procedurally fair framework and keeping the cost to the community as low as reasonably practicable. Thus, we submit that an explicit reference to cost effectiveness ought to be included within the principles of change.

Potential changes to the code of conduct and oath of office

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

- acting in the public interest;
- using public resources in an efficient, effective manner in the best interests of the community;
- acting professionally, honestly and in a manner that upholds the dignity of civic office;
- treating others (particularly staff) with respect;
- maintaining the confidentiality of confidential information; and
- disclosing and otherwise managing conflicts of interest.

What are your views about aligning the Oath of Office to the revamped Code of Conduct?
The proposal makes the content of the Oath of Office a derivative of the content of the Code of Conduct, so much turns on the final content of that latter document. However, in principle, Council agrees with this proposal.

For completeness, we submit that any updates to the Oath of Office should be reflected in a revamped Affirmation of Office.

Potential changes to the definitions and assessment of councillor misbehaviour

Is the proposed pecuniary interest framework appropriate? Is anything missing?
Council submits that the proposed pecuniary interest framework is appropriate but offers the following comments for OLG's consideration.

The Discussion Paper contemplates disclosure of "*Interests and positions in corporations*". This is entirely appropriate, but we suggest that the final drafting be expanded to capture other business structures, such as partnerships, incorporated associations and the like.

We agree with the proposal to give extended investigation powers to OLG to investigate and request information on corporate structures to determine underlying beneficial ownership and interests. We suggest that these powers should be particularly robust with respect to trust structures because beneficial ownership information is, most often, not public. In that respect, trust structures may be contrasted with corporate structures where shareholdings (if not ultimate beneficial ownership, admittedly) are made available via public registers maintained by the Australian Securities and Investments Commission.

We consider that the power to request information should be accompanied by a power to compel production of the requested material. We therefore agree with the proposal to give OLG clear power to compel production of information and/or records. Appropriate safeguards (particularly with respect to confidentiality of information disclosed but not ultimately considered relevant) ought to accompany any power to compel production of information / records.

Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?
Perhaps the most complex – the most "grey", so to speak – area of the current Code of Conduct relates to non-pecuniary interests and whether an interest is or is not significant. As the Discussion Paper correctly observes, the framework for managing non-pecuniary interests is necessarily nuanced in view of the breadth of non-pecuniary interests that councillors may have.

Council agrees with the principles of what constitutes a significant or major non-pecuniary interest. However, we would encourage OLG to supplement the proposed non-pecuniary interest regime with comprehensive guidance material to assist councillors and staff (particularly Governance staff) to understand the obligations and OLG's expectations.

An inherent difficulty with the disclosure of non-pecuniary interests and judgements as to their significance is that councillors know their own circumstances and relationships better than anyone else. Staff who advise on whether a non-pecuniary interest is significant are, in many ways, dependent on the information disclosed by the relevant councillor. Similarly, the theoretical "reasonable and informed person" can only develop an informed perception of the matter if they have been appraised fully and fairly of the relevant facts. We therefore suggest that the proposed regime should include a strong obligation to fully and fairly disclose potential non-pecuniary interests.

Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?
We do not think it appropriate to ban individuals who have real estate and development business interests from being councillors because of a fear of pecuniary conflict. Rather, conflicts of interest that such individuals might have should be managed through the usual pecuniary and non-pecuniary conflict regime. To simply (in effect) ban such individuals from serving seems an unacceptably blunt tool.

The draft legislation described by the Discussion Paper would seem to achieve, at a practical level, a ban on real estate agents and developers being councillors. Although we are not qualified to opine on matters of constitutional law, at a practical level we wonder: can a person fairly be described as a real estate agent or developer if they have complied with an obligation to "*divest and not enter into real estate or development business arrangements through contracts*"?

There is certainly need to manage conflicts of interest that exist between a councillor's public duties and their private interests. This need exists in respect of all councillors. The proposed legislative change would seem to "single out" individuals with real estate and development business interests and is apparently premised on an assumption that in all matters that go before the council such individuals are irretrievably conflicted. We do not think this is correct.

While many decisions made by councils concern land, there is a great deal more in the business of councils, and the proper role of a councillor, than making decisions on land-related matters. There is value in having a breadth of experience, knowledge and skills around the council table and individuals ought not be disqualified from serving their community by reason of their lawful employment outside the council chamber.

Some of the attributes that might be desired of a councillor are:

- bringing to the table knowledge, diversity, passion and commitment to the community;
- bringing a commitment to moral, ethical, professional and rational decision making;
- having a strong focus on the best interests of the community;
- being respectful of others in all matters, and particularly during debate in the council chamber;
- a willingness to offer feedback, information and commentary for consideration;
- a willingness to listen, be open-minded and unbiased;
- acting as a positive role model; and
- being willing to promote best practice governance – which includes honestly assessing and disclosing actual and potential pecuniary and non-pecuniary interests.

We do not think that there is any reason to proceed on the basis that individuals with real estate and development business interests cannot bring these and many other desirable qualities to local government. We do not support the proposed ban.

However, notwithstanding the above, if legislation to the effect of that proposed is to be implemented, it should include the features described below.

We submit that the transitional period should be such as to not require compliance until at least the date of the next Local Government Election, scheduled for September 2028. Individuals considering standing for election should have ample opportunity to consider their obligations before deciding whether to stand. Similarly, current councillors should not be required to decide between remaining as a councillor during the 2024-2028 term and divesting their interests in any real estate or development business they may be involved in. We note that if current councillors were required to make such a choice, it may result in numerous by-elections across New South Wales which would come at a substantial cost to community.

We further submit that candidates should not be required to divest themselves of real estate or development interests prior to the date on which they are declared elected. Instead, divestiture should be required within some reasonable period following election and failure to so divest would result in a casual vacancy being declared. An amendment to section 291A of the *Local Government Act 1993* (NSW) might then be considered to automatically apply the countback provisions where a

casual vacancy arises due to a failure to divest and this would go some way to managing the cost to the community if a councillor does not comply with their divestiture obligations.

Is this the appropriate threshold to face a Privileges Committee?
Council agrees with the Privileges Committee concept and agrees that the proposed threshold for facing said Committee is appropriate.

The Discussion Paper is necessarily a summary document that canvases views on a proposal that is still in the development phase. As the proposal develops, we hope to see the following questions answered:

- At a practical level, how will matters be referred to the Privileges Committee?
- If a matter is referred to the Privileges Committee, what is the nature and degree of involvement expected of council staff?
- Will there be a statutory timeframe around the receipt and determination of matters by the Privileges Committee?
- Will parties be entitled to legal representation and, if so, who bears the associated costs?
- How will the members of the Privileges Committee be selected? What will be their term of appointment?

How else can complaints be minimised?
We submit that the following two measures might serve to reduce number of Code of Conduct complaints made:

- training; and
- requiring councillors to bear some (or all) of the costs of the proceedings where the complaint is substantiated by the Privileges Committee.

At the present time, training of councillors is largely managed by staff at each council. The OLG has provided some useful guidance material and the councillor webinars published following the 2024 Local Government Election are helpful. However, we think that there is no substitute for face-to-face training delivered directly by the OLG as this often carries more weight than training delivered by staff. Proper training can help to guide councillors' behaviour and reduce the likelihood that behaviour offending the Code of Conduct will occur.

A further measure that could be considered is requiring councillors to bear some (or all) of the costs of the proceedings where a Code of Conduct complaint is substantiated by the Privileges Committee. We note that this is contemplated later in the Discussion Paper under the heading "*NSW Local Government Privileges Committee*", and we support the proposal. We suggest that the intent should be to discourage councillors from behaving in a manner that is likely to produce a legitimate Code of Conduct complaint.

What key features should be included in lobbying guidelines and a model policy?
Council supports the development of lobbying guidelines and a model policy that covers the matters noted in the Discussion Paper. We submit that the guidelines and policy need to be irresistibly clear as to councillors' obligations and what behaviours are inappropriate when being lobbied.

A key issue is the failure to declare inappropriate lobbying. The proposed guidelines and model policy should assist in bringing these matters to front of mind for councillors. However, we submit that OLG should consider whether there is need for legislative reform to provide material penalties for failing to declare inappropriate lobbying.

Dispute resolution and penalty framework

As an overall comment, we respectfully request that the OLG keep efficiency and cost-effectiveness front of mind when considering revisions to the present dispute resolution framework. Managing complaints about councillor conduct can come at a significant financial cost to council (and, thus, the community) and can consume considerable staff resources. While there is a legitimate need to devise a process that promotes procedural fairness, consideration of cost and time efficiency should not be excluded.

What level of PIN is appropriate?

The Discussion Paper contemplates the OLG issuing PINs where the relevant breach is considered minor or administrative in nature. That being the case, we submit that the level of PIN should be in the order of three penalty units (ie $330). We suggest that this is sufficient to encourage councillors to take reasonable steps to prevent breaches without being disproportionate in circumstances where the breach was minor or administrative in nature.

Are the penalties proposed appropriate, and are there any further penalties that should be considered?

Council supports the proposed penalties and submits that the Privileges Committee could also be empowered to require councillors to make a public apology where a complaint against them has been substantiated. The appropriate forum for making this apology could be during an open session of the next meeting of the council. It would be appropriate for the apology to be reviewed and approved by the Privileges Committee prior to it being offered, but we suggest that the Committee would be expected to take a relatively light touch – their role being confined to ensuring that the apology does not misrepresent the Committee's findings and is, in fact, an apology.

The OLG could also consider amendments to section 217 of the *Local Government (General) Regulation 2021* (NSW) to require summary information about the number of matters referred to the Privileges Committee and their outcome to be included in the council's annual report.

Are the exiting sanctions available under the Local Government Act sufficient?

We believe that the existing sanctions available under the *Local Government Act 1993* (NSW) are sufficient.

Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

Where a matter is serious and substantial penalties are contemplated (such as disqualification or suspension of a Councillor), it is important to ensure that the requirements of procedural fairness are scrupulously applied. We submit that a formal tribunal with independent arbitrators and a hearing structure is, respectfully, a more appropriate decision-making body than the Departmental Chief Executive.

Notwithstanding the above, resolving matters (even serious matters) at the lowest reasonably practicable cost should be an important goal. Thus, care should be taken to ensure that the procedures of the relevant tribunal always promote procedural fairness but are not excessively formal or legally technical.

Restoring dignity to council meetings

Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

We submit that the current powers of the mayor / chair, as detailed in the Model Code of Meeting Practice, are sufficient to manage disorderly behaviour.

Are there any other measures needed to improve transparency in councillor deliberations and decision making?

The Discussion Paper says, at page 18:

> *A practice has recently developed in local government where councillors receive briefings from staff that are closed to the public.*

The Discussion Paper then proposes a ban on closed pre-meeting briefing sessions. We presume this would mean amending clause 3.34 of the current *Model Code of Meeting Practice for Local Councils in NSW* (**Model Code**) to the effect of:

> *Pre-meeting briefing sessions are not to be held in the absence of the public.*

We note that clause 3.33 of the Model Code is directed towards briefings on business to be considered at the forthcoming meeting, while the paragraph from the Discussion Paper quoted above seems to contemplate briefings on a much wider range of matters.

Although we have encountered a range of views on the matter, on balance:

- if OLG proposes to ban closed pre-meeting briefing sessions of the kind contemplated by clause 3.33 of the Model Code, Council would not support the decision; and
- if OLG proposes to ban closed briefings generally (as implied by the quoted paragraph from the Discussion Paper), Council would strongly oppose the decision.

The Model Code provides at clause 3.37:

> *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.*

We fully support the position described by clause 3.37 of the Model Code. To that end, while the pre-meeting briefing sessions hosted by our General Manager (referred to as the "General Manager's Update") usually involve an element of "Q&A" from Councillors, they do not feature debate and certainly not feature decision making.

The agenda for our General Manager's Update is very rarely confined to matters appearing on the next council meeting agenda. Rather, they are wide ranging discussions that provide updates on key risks and opportunities, major projects and provide an opportunity for Councillors to ask questions of the General Manager and attending staff on the matters raised. These sessions have proved valuable for councillors as a forum for keeping them informed about the activities of the organisation. They also offer an element of professional development for staff who are given the opportunity to present to Councillors outside of the necessarily formal environment of a Council or Committee meeting.

While we cannot speak for the conduct of other councils, we do not consider that that the General Manager's Update, in the form we have implemented it, threatens transparency or presents a corruption risk. We submit that clauses 3.33 to 3.38 of the current Model Code are appropriate and should not be amended.

PORT STEPHENS
COUNCIL

Councillor Conduct & Meeting Practices
Office of Local Government
Council Governance Team
Locked Bag 3015
NOWRA NSW 2541

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

Attention: OLG Council Governance Team

Re: Submission – Councillor Conduct and Meeting Practices

This submission is made on behalf of Port Stephens Council in response to the Office of Local Government's (OLG) Councillor Conduct and Meeting Practices Discussion Paper (September 2024).

Port Stephens Council is supportive of a review of the Councillor Conduct Framework and welcomes the opportunity to provide feedback. We welcome the changes that strengthen the current framework and recognise Local Government's status as an independent third tier of government. However, we make the following further comments:

Supporting the removal of General Managers from the complaint process

Port Stephens Council is supportive of the proposed changes to remove the role of General Managers from the complaint process for serious issues.

This would reduce the potential for conflicts of interest and politicisation of the office of the General Manager, increase confidence in the fairness and objectivity of the process and improve efficiency by directing these straight to the OLG or the proposed Privileges Committee.

Potential changes to the Code of Conduct and Oath of Office

We support the inclusion of clear standards of behaviour in the Code of Conduct as well as the connection between the Oath of Office and adherence to the Code of Conduct.

While Council supports a change to a Code with easier language that outlines expected behaviours, it must be supported by a detailed framework that includes definitions and behavioural expectations.

Dispute resolution and penalty framework

Council supports the establishment of a Privileges Committee. OLG should consider a mechanism to resolve matters by alternate means (e.g. counselling, training, apology, etc). Whilst this is currently an option given to the General Manager, OLG may consider providing additional powers to resolve matters by alternate means being given to the Secretariat of OLG.

PORT STEPHENS
COUNCIL

Transparency and confidential briefings

Port Stephens Council has significant concerns with the proposed ban on private pre-meeting briefing sessions with councillors.

It is not clear that there is a problem to be solved here, and it is not directly relevant to the Code of Conduct or councillor behaviour.

We reject the view that briefing sessions are a forum for making decisions away from the public view. Council would like to emphasise that briefings are not a forum for debate or decision-making at Port Stephens Council. Decisions are (and will continue to be) made in council meetings that are open and transparent to the public (unless dealing with confidential matters).

Individual councillors have the right to request information and advice from staff. We believe that pre-meeting briefings provide the best opportunity for staff to brief councillors so they all receive the same information and advice.

Publicly discussing pre-meeting briefings would place constraints on the type of information that council staff could provide and the questions that councillors could ask. The ban would limit the ability of staff to provide frank, honest, apolitical and impartial advice to councillors on complex policy, operational and financial matters, and objective information on the risks and benefits of options that council may need to consider. This could lead to less comprehensive and informed decision-making.

If you have any questions regarding this submission, please contact me on [redacted] or email [redacted]

Yours sincerely

[redacted]

Tim Crosdale
GENERAL MANAGER

15 November 2024

Telephone enquiries [redacted]
Please quote file no: PSC2020-01942

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15 November 2024
File number: 35/47/3/1
Document number: 3109073

Brett Whitworth
Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

councillorconduct@olg.nsw.gov.au

Dear Mr Whitworth,

Re: Councillor Conduct Framework Review

Maitland City Council appreciates the opportunity to provide feedback on the councillor conduct and meeting practices framework. The proposed framework contains a number of elements that will result in changes to current standard practices should the changes be implemented following the analysis of the feedback received during this consultation period.

We acknowledge that the key principles of the changes to the framework have been developed to reflect community expectations, including the importance of local government being effective to support strong and thriving communities, ensuring councillors act fairly, ethically and without bias in the interests of their constituents.

The review of the existing frameworks is welcomed however, we are unable to support the proposal of banning briefing sessions. The suggestion that councillors receiving briefings from staff is a recent practice is inaccurate. Councils have been providing councillors with the opportunity to develop their knowledge and understanding of matters prior to making decisions during council meetings for many years. Briefing sessions are aligned with the NSW Government's expectation of increasing commitment to Councillor professional development. Councillor attendance at briefing sessions reflects an increasing desire from Councillors to be more fully engaged, knowledgeable and professional in their decision making. An inability to provide councillors with briefings would be detrimental to good decision-making process.

The purpose of briefing sessions is not for debate or for decisions to be predetermined, but for Council staff to provide Councillors with the necessary advice, and information to support them in making confident and informed decisions relevant to their communities.

It is Council's understanding that Local Government NSW (LGNSW) is submitting a sector-wide response to the consultation paper that is aligned with the position expressed above.

If you would like to discuss this submission, please contact the Team Leader, Officer of the General Manager on [redacted]

Yours sincerely,

[redacted]

Kelsie Wilson
Team Leader OGM

Councillor Conduct and Meeting Practices

Thank you for providing the opportunity to comment on a new framework about Councillor conduct and meeting practices.

Although I am a newly elected Councillor, I have been a very active member in the community and have watched many a Council meeting over a number of years and have provided deputations to Council a number of times.

Prior to being elected, as a resident I was appalled at the disrespectful, disgraceful behaviour of some Councillors during Council meetings over the past ten years.

It is paramount that elected Councillors act appropriately at all times, demonstrating to the community that their elected representatives understand the consequences of their decisions, and then make the best possible decisions they can, in the best interest of the community.

Principles of change

The principles listed on page 7 of the document are vital when considering the proposed reforms.

Code of Conduct

Any amendments to the Code of Conduct must not restrain the ability of a councillor to speak publicly on matters pertaining to their council, even when that councillor is disagreeing with, or being critical of, the decisions of the majority. Active debate should be welcomed and accepted as a Councillors democratic right. Any abusive comments should not be accepted.

It is necessary that the Code of Conduct is not weaponised and used to silence Councillors.

I understand that Councillors cannot call the OLG to seek advice on matters, however, General Managers and Mayors can. Councillors are not supported and need to be provided a contact person in the OLG to seek advice.

I strongly believe an aspirational Code of Conduct should clearly and succinctly outline the behavioural expectations of local Councillors in easy-to-understand language (about 2-3 pages).

I believe the Oath of Office needs to be aligned with the amended Code of Conduct.

Definitions and assessment of Councillor misbehaviour

Clearly defining and articulating Councillor misbehaviour in the Local Government Act is essential.

Clearer guidelines need to be provided in the Code with regard to **significant non-pecuniary conflicts**. Councillors and staff will be able to make better, well-informed decisions as to whether they have a conflict in relation to a particular matter.

Councillors are poorly paid and do not have the privilege of paid staff to obtain advice on conflicts. Detailed guidelines would assist.

In relation to pecuniary interests, I believe the amount of $500 is too high for gifts and a $100 amount is suggested.

I suggest property anywhere in the world needs to be declared, not just property in Australia.

Currently, if the misbehaviour is considered as a Code of Conduct the matter is forwarded to a supposed independent investigator. Concern is that the investigator is paid by Council and therefore could be reluctant to rule against a matter involving Council staff, whereby the Councillor in the matter may be disadvantaged.

A **Privileges Committee** should not comprise currently elected Councillors. An opportunity of training ex-mayors in the principles of evidence-based investigations should be considered. I believe the Committee should not have the power to issue penalties to Councillors.

Real estate agents and property developers:
I believe all elected Councillors (including a spouse or de facto partner, relative, or partner or employer, or a company or other body of which the councillor, or their nominee, partner or employer, is a shareholder or member) connected with the property industry need to declare a conflict of interest in relation to development applications before Council. This is necessary in the eyes of the community, in providing complete and absolute transparency and accountability.

I fully agree **lobbying** is an important feature of democratic representative government, and councillors are lobbied by residents, businesses and community groups. However, inappropriate lobbying that isn't declared presents certain risks and can lead to corrupt behaviour or improper decision-making. I support the OLG in developing lobbying guidelines and a model policy on lobbying for councils to adopt that to:

- address how professional lobbyists are identified and the obligations on councils and councillors if they met a professional lobbyist.
- set out inappropriate behaviours when being lobbied.
- identify steps to be taken to ensure transparency.
- require council officials to report inappropriate or corrupt lobbying behaviours to the councils general manager.

In relation to lobbying, of concern is when a general manager and/or senior staff inappropriately react to residents and community groups lobbying and providing relevant information and documents to Councillors. Hence, I suggest the community should also be able to report to the Mayor about inappropriate actions and/or behaviour from a general manager and/or senior staff. The Mayor to then have the matter appropriately addressed.

Dispute resolution and penalty framework: I strongly disagree and am seriously concerned with the proposal that all complaints about conflict-of-interest matters would be made directly to the OLG. As has previously occurred and in my opinion, the OLG's ability to thoroughly investigate important matters of Council governance has not been transparent and accountable, in its decision making.

In my opinion the community have been treated very poorly by the OLG in relation to appearing to be biased towards and supporting Council staff. Thus, not providing community members procedural fairness and evidence-based decision making.

I have no confidence in the proposal that all complaints about a conflict of interest are provided to the OLG.

Penalty infringement notices: I do not support providing power to the OLG to issue infringement notices. Insufficient information is provided in the document, particularly concerning the criteria used and the opportunity of defending and/or appealing the decision made by the OLG.

I suggest that significant penalties should be determined by NCAT to ensure greater transparency.

Restoring dignity to council meetings

More often than not the lack of respect in Council meetings is the failure by a Mayor to conduct the meeting in accordance with the Code of Meeting Practice.

Mayors have the power to stop a councillor misbehaving or being deliberately disobedient, particularly when refusing to cease speaking. The mayor can to call for an adjournment.

I suggest that elected Mayor are provided comprehensive training on chairing a meeting. I believe this would improve efficiency and effectiveness of Local Government.

I do not support Councillors being required to stand for the Mayor. I believe this will not increase respect. Respect for the Mayor will eventuate when the Mayor is seen as properly adjudicating on matters, chairing efficient and effective meetings and setting an example as a civic leader by acting in a courteous and respectful manner.

Banning briefing sessions: I support confidential briefing sessions. However, briefing sessions that are not confidential I believe need to be open to the public, recorded and published on Councils website.

The community, as a whole, require and deserve to be provided all information (other than confidential information) that is available to Councillors.

From:	Clr Kellie Darley
To:	OLG Councillor Conduct Mailbox
Subject:	Councillor Conduct Framework Review
Date:	Friday, 15 November 2024 5:04:26 PM
Attachments:	image001.png image002.png image003.png image004.png image005.png 25 March 2024 - Parra Council Agenda_Lobbying NoM.pdf

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Thank you for the opportunity to provide feedback on the reforms proposed to improve transparency and credibility in local government, of which there's ample room for improvement.

I will start by declaring that I have personally experienced the weaponisation of the current code of conduct and am currently appealing a censure decision in the Supreme Court – for resharing supposed 'confidential' information, already in the public domain (which I was not the source of), and challenging the majority decision to sponsor the Parramatta Eels for over $1.1m over 3 years. The results of which will strengthen the Minister's call to remove 'independent conduct reviewers' and I will provide a copy of the relevant document to show the misuse of this role when it's able to be shared.

I am also currenting appealing a GIPA decision to not release key information pertaining to the Eels sponsorship at NCAT. [redacted]

Unlike many other Councillors it would seem (after attending the LGNSW forum on the reforms), I agree with the Ministers position on banning private briefings except in specific circumstances, of which I include complex matters that are still evolving as well as other items that meet the requirements for going into closed session. I keep hearing from Councillors that they are worried about asking a 'dumb/ silly' question in a public meeting, but I absolutely don't think this is justification for keeping information from the public, instead greater training should be made available to Councillors.

A possible other way to achieve a similar result, but still retain a 'safe space' for Councillors to ask questions, would be to greatly improve the quality of reports presented at Council meetings to ensure the information contained within fully reflects the information provided to Councillors in a briefing session. To this end, I request that a standardised report format be developed with guidelines and a list of implications that need to be considered is included, such as governance, social, environmental, financial and resourcing, legal. I also think a very specific, detailed list of briefings that can and can't be held in private needs to be provided. I provide some more examples below.

Principles of Changes

- Council leadership and decision making is only as good as the level of transparency, accountability and freedom of speech – they don't operate in

isolation.

- The level of secrecy with code of conduct matters at the moment silences and penalises the person being complained of, particularly for complaints which ultimately may be proven to be vexatious or frivolous.
- Two principles that are missing are, greater clarity of what is and isn't appropriate behaviour (across conduct, conflicts, freedom of speech and transparency) as well as greater openness of government

Councillor Misbehaviour in Public Office

- I don't agree with 'brings Council into disrepute' and am aware from listening to the Ministers budget estimates in September that he also has concerns about the use of this. It is extremely subjective, and in my experience misused by the majority to try and silence a dissenting minority, thus limiting freedom of speech.
- If following the NSW Parliament model for code of conduct, then consideration should also be given to replicating the supporting framework, such as Ethics Adviser.
- While I support the value of misbehaviour being handled locally, I have significant concerns with the impartiality of the proposed 'Local Government Privileges Committee' made up of experienced mayors and ex-mayors and that membership would very likely be under representative of a number of Councillors – i.e. female and independent.
- Whatever system used, it must not be cost prohibitive. [redacted] Of course, when successful I should have my costs awarded, but it's an extremely costly exercise in the meantime as a 'volunteers' likely to turn many off even running to hold office.

Lobbying

- I strongly support the implementation of ICAC recommendations on this and in March this year brought a notice of motion to City of Parramatta Council to try and implement their recommendations locally (see attached).

Abolishing the two step process

- I absolutely think there's a conflict with the LM, when elected by the majority of Councillors, and the GM/ CEO, when employed by the majority of Councillors, being involved in complaints handling [redacted]
- As mentioned previously, I have evidence, received as part of my censure, which supports the issues with hiring private investigators which I will share with you when I can.

PINs

- PINs make sense for addressing bad behaviour early and quickly, however it's crucial this process isn't misused to financially disadvantage Councillors – who

only receive an allowance to do the role. Make their behaviour public, so the court of public opinion can cast judgement, may be far more effective and fair.

Referral of significant sanctions to appropriate tribunal or body

- Absolutely agree that it shouldn't be a public servant sitting in judgement and makes sense to make sure of NCAT or other body

Restoring dignity to Council Meetings

- Agree that the Mayor needs more powers to effectively maintain order. But not at the expense of robust debate of differing views, where a polite dissenting minority view could be penalised with removal of the Councillors allowance.
- Appropriate training must be provided to Mayors on effectively chairing meetings and managing disorderly behaviour and Councillors should also be provided with training on how to debate so discussion isn't petty and personal but rather focused on the matter.

Banning Private Briefings

- I have regularly witnessed private briefings being used as decision making meetings and at other times, they are used to greatly direct what is submitted in the Council staff reports, rather than the professional and impartial advice we should receive from Council staff – which is the making of preliminary decisions. I have also regularly had to remind my fellow Councillors and the Lord Mayor of clause 3.36 of the Code of Meeting Practice

  "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."

- I can point to numerous examples of this (in public records of Council meetings). Plus, as our Councillor briefings and workshops are recorded, there is also objective evidence of this available.

Improving Transparency

- Another way to improve transparency in Councillor deliberations and decision making has been recommended previously by ICAC – where a planning resolution of Council differs from the staff recommendation, the reasons for the difference must be outlined in the resolution.
- I think this should also be expanded to include other decisions, as the Council report outlines the reasons that staff have provided for their recommendation and if the resolution is different, a justification (even a simple one) should need to be included in the resolution so it is a matter of public record.
- See above for suggestion on improvement to the reports to Council, including summarising what was discussed at a briefing. Currently City of Parramatta records the outcomes of briefings in a document but this document is confidential – making it available as part of the staff report to Council would go a

long way to improving transparency if briefings were to continue.

In the interest of time (to get this submission in by the deadline), I'll leave it there for my feedback on the substance of the reforms.

I do however want to provide feedback on the poor timing of the discussion paper, which was released in the lead up to pre-poll and is closing one month after most Councillors have been sworn in – and therefore not conducive to considered feedback from new Councillors or collectively as a Council, in our case unfortunately.

Kind regards,

Kellie

Clr Kellie Darley
Councillor | Dundas Ward | Independent
0422 141 418

City of Parramatta
9 Wentworth St, Parramatta NSW 2150
PO Box 32, Parramatta, NSW 2124
cityofparramatta.nsw.gov.au

Outlook-signature-copc_.png

I acknowledge the Traditional Owners of the land I work on, the Darug Peoples, and pay my respects to their Elders past and present.

Disclaimer

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NOTICE OF MOTION

ITEM NUMBER	14.1
SUBJECT	Lobbying of Government Officials - Proposed New Policy, Disclosure Requirements and Register for Councillors and CEO
REFERENCE	F2024/00282 - D09344113
FROM	Councillor Kellie Darley

MOTION

(a) That Council note the Independent Commission Against Corruption (ICAC) has recommended on multiple occasions that the Lobbying of Government Officials Act (2011) be extended to include Local Government Officials, including the recent investigation into conduct of the City of Canada Bay Council Mayor and others (Operation Tolosa), the investigation into the conduct of councillors at the former Canterbury City Council and others (Operation Dasha), the 2022 report into the conduct of the local member for Drummoyne (Operation Witney) and it was also a key finding in the ICAC's 2021 Investigation into the regulation of lobbying, access and influence in NSW (Operation Eclipse).

(b) That Council note the crucial role Councillors play in the decision-making that shapes our City and the importance of leading the way in holding our own integrity to the high standard we, and our community, expects.

(c) That Council also note that City of Parramatta has a Lobbying Policy (2019) which states in the purpose: "Appropriate lobbying of Councillors is part of the democratic process and is an acceptable feature of the relationship between citizens and their elected representatives. It is however in the public interest that lobbying is done fairly and does not undermine public confidence in Council decision making. This policy, based on the Independent Commission Against Corruption's (ICAC) guide on lobbying local government councillors, outlines important factors that differentiate appropriate lobbying from inappropriate lobbying."

(d) That City of Parramatta Councillors and the CEO publicly disclose their meetings with registered lobbyist and property developers in the same way as state and federal government officials are required to do, once relevant training is provided and necessary procedures established.

(e) That Council update its Lobbying Policy to incorporate the quarterly reporting of meetings with registered lobbyists and property developers and conduct a review of the Policy by 30th June, given the recent ICAC recommendations and that the policy was last updated in May 2019.

(f) Further, that the Lord Mayor write to the Minister for Local Government, the Hon. Ron Hoenig MP, outlining City of Parramatta's support for increasing integrity in local government by urgently adopting ICAC's recommendations in relation to enhancing transparency around the lobbying of Local Government officials.

Lobbying a Government official means communicating with the official for the purpose of representing the interests of others in relation to any of the following (as defined in the Lobbying Government Officials Act):

- legislation or proposed legislation or a government decision or policy or proposed government decision or policy,
- a planning application,
- the exercise by the official of his or her official functions.

2. Lobbying extends to:
   - any such communication whether or not in the course of carrying on the business of lobbying Government officials, and
   - any such communication by a person who works for an organisation for the purpose of representing the interests of the organisation or its members, and
   - any such communication for the purpose of representing community interests, and
   - any communication included in this definition by the regulations.

3. However the Lobbying of Government Officials Act (2011) currently excludes Local Government officials, defining a Government official as any of the following:
   - "a Minister or Parliamentary Secretary,
   - a staff member of a Minister or Parliamentary Secretary (including a staff member in an electorate office),
   - the head of a Public Service agency,
   - a person employed in the Public Service of New South Wales, the Transport Service of New South Wales or any other service of the Crown,
   - an individual who is engaged under a contract to provide services to or on behalf of the Public Service of New South Wales, the Transport Service of New South Wales or any other service of the Crown,
   - a member (however expressed) of, or of the governing body of, a statutory body,
   - ***but does not include*** (except in Parts 5 and 6) ***a local government official***."

4. The rules governing lobbying activities must though be consistent across all levels of government.

5. ICAC noted in its Operation Dasha report (2021) that "the risk profile of the local government sector in relation to lobbying has been altered. Since October 2012, the power to make local environmental plans (LEPs) has been handed to local councils in many cases, reducing the oversight role of the NSW Government. This change has the potential to increase lobbying activities in local government, and creates greater incentives for corrupt conduct to occur in that sphere."

6. ICAC states in its Operation Tolosa report (2023) that previous ICAC reports, and those in other Australian jurisdictions, "emphasise the high-risk nature of environmental planning and property development in terms of corruption. In particular, recent investigations suggest that there are too many elected officials with close connections to development applicants, which may represent a systemic problem.""

7. In response to ICAC's recommendations from Operation Dasha and Operation Eclipse investigations, the Office of Local Government NSW advised it would release guidelines and a model policy in June 2023 to enhance transparency around the lobbying of councillors. Unfortunately however these are still to materialise.

8. Council's Lobbying Policy states that inappropriate or unlawful lobbying generally involves an attempt to obtain preferential consideration or treatment based on factors other than the merits of the matter. Examples of inappropriate or unlawful conduct by Councillors that could occur during the lobbying process include:
    - Accepting undisclosed payments or benefits whilst making a decision that affects the gift giver's interests;
    - Accepting a political donation in return for the favourable exercise of discretion during decision making;
    - Granting access to a particular individual or group while unreasonably denying a similar request by another party;
    - Giving undertakings to an interested party prior to considering all the information relevant to a decision;
    - Exceeding the role of a councillor – for example, directing council staff (in contravention of section 352 of the Local Government Act) over the content of any advice or recommendation on a council matter as a result of being lobbied by a third party;
    - Disclosing confidential information; and
    - Being unduly influenced by factors that are irrelevant to the merits of the matter under consideration.
9. City of Sydney in February 2024 resolved to publicly disclosure Councillor meetings with registered lobbyists and property developers.
10. Given the ongoing significant level of development and growth in City of Parramatta, transparency in decision making is paramount. Transparency helps address suspicions that a decision has been made with reference to improper considerations, including from corrupt approaches.
11. This notice of motions ensures City of Parramatta Council takes a leadership role in disclosing lobbying of Local Government officials and puts us on par with state and federal government officials and City of Sydney Council.

STAFF RESPONSE

1. In response to ICAC's recommendations, OLG is developing guidelines to enhance transparency around the lobbying of councillors. The guidelines will be issued under section 23A of the Local Government Act 1993.

2. OLG is also developing a model policy on lobbying to support councils to implement the guidelines. If adopted by councils, the policy will operate to supplement the provisions of their adopted codes of conduct.

3. OLG has undertaken consultation with councils to seek their views on what should be included in the proposed guidelines and to identify existing best practice in the local government sector in managing corruption risks associated with the lobbying of councillors. OLG has also sought the views of councils on whether the Lobby Of Government Officials (LOGO) Act should apply to local government.

4. At this time, OLG has not provided any formal indication as to the likely date of the release of the model policy and updated guidelines.

5. Council's Lobbying Policy (Policy 383) was adopted on 13 May 2019 and is overdue for review. However, the Policy Review Committee has previously indicated that the Policy is not a priority for review until such time as the OLG releases its model policy and updated guidelines on LOGO.

FINANCIAL AND RESOURCE IMPLICATIONS

6. Should Council adopt this motion, Council will be required to introduce additional training for councillors in the disclosure of meetings with developers and lobbyists. This cost would be taken from the annual Councillors' Expenses and Facilities budget allocation.

7. The introduction of new procedures, updating the Lobbying Policy and the creation of a public register and quarterly reporting would be undertaken by existing governance staff utilising current operational resources.

Kellie Darley
Councillor

Gail Connolly
Chief Executive Officer

ATTACHMENTS:
There are no attachments for this report.

From:	Geoff Markwell
To:	OLG Councillor Conduct Mailbox
Subject:	Councillor Conduct Framework Review
Date:	Monday, 18 November 2024 11:19:21 AM

I have been involved, as a resident, in Strathfield Council affairs for the last 10 years. We successfully avoided amalgamation with neighbouring councils, Canada Bay, Burwood or Auburn.
At times we wonder why we bothered given the behaviour of some councillors since then.
I was a founding member of the Strathfield Local Planning Panel for 7 years after the creation of the panel.

I have voiced some of my concerns with Strathfield Council to the OLG and have reason to believe that ICAC agreed with some of my concerns.
Petty council matters shouldn't be wasting ICAC resources.

The OLG has been hindered by the lack of "teeth" in its dealings with errant councillors and Strathfield has provided some examples.

I have read the proposal but have not had time to submit a detailed response. Suffice to say I strongly agree with your identification of weaknesses in current system and your proposals to give OLG greater powers to rapidly address problems.
This may even act as a deterrent to those who lack honesty and any concept of ethical behaviour. It may even lead to a better quality of councillor!!

I look forward to the implementation of these proposals.

Regards

Geoff Markwell
[redacted]

[redacted]

Subject:	**Submission on NSW Office of Local Government - Councillor Conduct Framework Review**
To:	NSW Office of Local Government
Via email:	councillorconduct@olg.nsw.gov.au

TO WHOM IT MAY CONCERN

I was a Councillor on Shoalhaven City Council between the **4 December 2021 and 14 September 2024**. This was my first and only term as an elected official and was not re-elected due to a brutal smear campaign by a political party in the 2024 elections. This submission is in response to the subject report and the recommendations put forth.

Throughout my 40-odd year career working in Education and Health Promotion, I have contributed to the Australial Government's educational policy proposals across the Health, Physical and Outdoor Education and Environmental portfolios. In my career, I have worked in challenging gender asymmetrical work environments, however, I've never been subjected to the workplace challenges associated with misconduct as witnessed in my dealings in the NSW Local Government sector.

Allegations of Councillor misconduct and corruption abound in the NSW local government, and as a result, often make the headlines. Notwithstanding this, I welcome the introduction of reforms to the Councillor Conduct framework. Organisational transparency and accountability at all levels of Government needs to be of a highest calibre. Sadly some of the elected councillors were unscrupulous and in my opinion, driven my ego and self-serving interests and ultimately, the ratepayers pay the consequences. My observations and experiences underpin the matters I raise within this submission, which I hope the OLG will consider seriously.

I agree with the proposed principles as outlined on page 7 of discussion paper. In particular, I am pleased with the principle which supports councillor free speech on matters pertaining to their council, even when a councillor is being critical of the decisions of the majority. Indeed, this is a positive step for democracy.

Increased powers to mayors and/or ex mayors

Our mayor (2021-2024) conducted herself to the highest standards with humility, grace and integrity. However, this is not always the case with councillors who are not politically aligned. The Shoalhaven Mayor from 2021-2024, effectively chaired meetings in a democratic manner – "*fairly, ethically and without bias in the interests of the local community*", however, not all Mayors in other areas exhibit the same standard. Giving mayors more power, will undoubtedly increase the risk of a corrupt mayor abusing their powers to avoid public scrutiny of their behaviour.

[redacted]

Avenues to address the abuse of power by a mayor are extremely weak within the existing code of conduct framework and have not been explicitly addressed in the proposed reforms. The new framework should articulate the methods for reporting abuse of power by the CEO or the mayor. More detail is required about the right of appeal for a Councillor who has been charged with an act of disorder (as per the statements on page 17).

I am supportive of the proposed reforms to **remove private investigators** from the councillor conduct process and to establish an external committee to examine all allegations of misbehaviour in public office. However, I am concerned by the proposal to restrict membership to "ex councillors with mayoral experience". While such candidates may have been elected mayors, they will still be ***unelected*** State Government officials determining penalties.

In addition to the assumption that mayors and ex-mayors are/were beyond reproach, the '*Privileges Committee*' could be open to cronyism during the appointment of members to the committee as well as during the complaint management process. The term '*Privileges*' also sends the wrong message. *Are members to receive special privileges or are they thought to be 'privileged' in some way*?

Recommendation 1: Definitions of misbehaviour should clearly articulate what constitutes bullying and brutal 'mob-justice' behaviour.

Recommendation 2: The name of the **Privileges Committee** be changed to better reflect the Governance role of committee members in upholding the highest standard of integrity and behaviour.

Recommendation 3: Introduce safeguards or mechanisms whereby complaints against the CEO or mayor can be lodged directly with an external and independent body. This is vitally needed where either the mayor, the CEO, or both are implicated in the complaint.

Recommendation 4: Selection of committee members to be broadened and based on related skills and experience rather than restricting memberships.

Recommendation 5: Review and update the complaints management process for all council **officials** so that misbehaviour, corruption and fraud are managed consistently, systematically and holistically.

Conduct of other council officials

Councillors are not the only group who behave badly. There are extant examples of senior executives acting inappropriately or engaging in corrupt conduct and fraud. The most

damage occurs when a council official—particularly those in a position of power—act inappropriately, fraudulently, or in a corrupt manner.

The conduct and complaint management of all council officials needs to be overhauled. Managing the potential for improper conduct by council staff and advisory committee members also must be considered in the context of councillor behaviour.

Advisory committee members have direct contact with council staff and significant influence in staff recommendations put to a council. Albeit these can also influence prioritisation of budgetary spending when council staff adopt recommendations without seeking council endorsement. The relationships between the CEO, senior executives and councillors, and the relationship between the CEO and the mayor are key to ensuring such conduct is managed effectively and adequately.

Proposed changes to the code of conduct and oath of office

I am in favour of aligning the Oath of Office for local councillors with the code of conduct. I firmly believe this is a positive step to make clear the behavioural standards and expectations of a councillor when they take office. I am happy to be contacted via phone or email to discuss further any matters raised in this submission.

Yours sincerely



Dr. Tonia Gray
[redacted]

[redacted]

17th November, 2024.

SUBMISSION OF SHOALHAVEN CITY COUNCIL –

"Councillor Conduct and Meeting Practices – A new Framework"

Shoalhaven City Council is supportive of a review of the Council Conduct Framework as it applies to elected Councillors and Meeting Practices and welcomes changes that strengthen the current framework.

With respect to the publication of the Office of Local Government discussion paper dated September 2026, the Council makes the following comments for consideration:

Principles of Change

The proposed principles of change are considered relevant and sound.

Potential Changes to the code of conduct and oath of office

Council agrees that councillor obligations should be closely aligned with the obligations and the expectations of Councillors so there is greater clarity and meaning with respect to the oath and affirmation of office.

Potential Changes to the definitions and assessment of councillor misbehaviour

The current Annual Disclosure of Pecuniary Interest Declarations outlined in Schedule 1 of the Model Code of Conduct are not closely aligned with the obligations to manage and disclose pecuniary interests outlined in Part 4 of the Code of Conduct. Greater alignment in these aspects would be an improvement in the framework.

It is agreed that the body who is tasked in the framework to investigate breaches of pecuniary interest need clear powers to obtain the relevant records to undertake those investigations.

It is considered that the framework would benefit from clear guidance and direction with respect to what constitutes a significant or major non- pecuniary interest.

The implementation of an obligation for existing or potential councillors to rid themselves from real estate or development business activities and contractual obligations would be challenging and the framework would benefit from draft legislation that details how this would apply.

Similarly, further detailed provisions with respect to the three limbs of misbehaviour outlined in the discussion paper will need to be articulated.

Dispute resolution and penalty framework

Although Shoalhaven City Council is supportive of the proposed changes to remove the role of General Managers from the complaint process, clarity on the procedures for referring matters from the OLG or Privileges Committee to the NSW Police, Ombudsman or ICAC is required. Also, further direction would be required on the processes to be followed with respect to Public Interest Disclosures received with respect to allegations against Councillors of corruption and conduct captured by the Public Interest Disclosure Act with respect to conduct such as contravention of public information provisions in the Government Information Public Access Act (GIPA)

The move away from the General Manager receiving and management of complaints of complaints against Councillors would decrease the potential for conflict and politicisation of the office of the General Manager and increase the confidence in the impartiality and independence of the process and improve effectiveness by directing these straight to the OLG

or the Privileges Committee. Council's which have regularly received code of conduct complaints would benefit from reduced costs and resource allocation (General Manager's time) required to deal with such complaints, in addition to costs where conduct reviewers have been engaged.

Currently under the Model Councillor Expenses and Facilities Policy previously recommended to the Council to adopt, Council's may pay or reimburse the reasonable legal expenses of Councillors. Under the Model Policy legal costs relating to a Code of Conduct compliant may only be available where the matter is referred to a conduct reviewer who makes a favourable finding to the Councillor. The review may need to re-evaluate what the appropriate level of legal representation or support Councillors be entitled to, to challenge a PIN or other penalty and update the model Expenses and Facilities Policy.

Restoring dignity to council meetings

Although increasing the power of the Mayor to manage disorderly conduct is supported, such powers must be weighed with limits and provisions for appeal to avoid misuse. Currently Councillors may only be expelled by resolution of Council. The proposed powers of Mayors to expel Councillors and remove their entitlements have potential to lead to actual or perceived abuse of power. Further, the framework should provide for alternative arrangements or process should a Mayor (or Committee Chairperson) not apply these powers when conduct is disorderly and/or allegations of conduct do not arise until after the meeting.

Council will reserve comment on the proposal for the Council to issue PINs to Councillors and others in attendance at meetings until further detail is provided for consideration, as there are concerns about when and how such measures would be enacted and administered.

Banning Briefing sessions

We strongly oppose any prevention of Councillor briefing sessions.

Councils consider a vast variety of highly complex, technical and sensitive issues. Briefing sessions provide councillors an opportunity to better understand intricate policy issues, legal considerations, financial implications and strategic implications and consequences before making their informed decisions at a Council meeting. Further, briefings are not a forum for debate or decision making at Shoalhaven City Council.

It is noted that at NSW Parliament level that Members of Parliament are briefed on draft legislation before it is tabled in parliament and Ministers receive briefings from their staff and well as departmental officers, as part of the process of preparing draft bills and motions for consideration before parliamentary debate. The consideration of banning briefings appears to be at odds with other proposals within this discussion paper to align local government elected representatives with state government elected representatives.

Although individual Councillors often seek (and have the right to request) information from staff prior to making a decision of Council at an Ordinary Meeting; the pre-meeting briefing sessions provide equal opportunity to provide the information to all Councillors and allows Councillors to as a group ask follow-up questions to ensure clarity around key concepts including risks and opportunities for the community and organisation. Council is of the view that a ban on private briefings would have significantly adverse impacts on councillors' opportunity to be fully informed prior to decision making during council meetings.

Should current arrangements be removed and Council only be permitted to hold public briefings, guidance and / or direction will be required with respect to required public notice of briefings, preparation and publication of minutes, recording and/or webcast requirements and how the Council will need to deal aspects of privacy, confidentiality, defamatory statement, public attendance, and associated copyright risks, whilst still provide Councillors with the information they require to make decisions.

Other changes

The proposed framework does not discuss provisions with respect to T the application of a similar independent review process for complaints that may be received by the Council with respect to the General Manager or an Administrator where appointed, and there may be opportunity include those types of complaint

Consideration should be given to trialling the proposed misbehaviour regime, including the method by which complaints are made and the workings of the Privileges Committee for an extended period or with a selected group of Councils prior to implementation.

Feedback Submission to the Councillor Conduct and Meeting Practices Discussion Paper

Are we missing anything from the principles of change?

Please find my suggestions below:

Historical Tracking and Continuity:
Councils must maintain a robust system to log, track, and reference past complaints and feedback. This ensures that recurring issues are acknowledged and addressed progressively, preventing repetitive discussions and fostering accountability. If a concern has been brought to the council five years ago and if it gets repeated every year and is looked at as if it's the first time then definitely there is an issue.

Equitable Public Participation:
Councils should commit to providing all community members with fair opportunities to participate in discussions without intimidation or bias. This includes ensuring that public input is respected, especially on agenda items, and that barriers to participation, such as language or perceived censorship, are addressed.

Transparency in Decision-Making Processes:
Councils should proactively share updates on the status of ongoing or unresolved issues. This includes making historical meeting records, feedback, and decisions easily accessible to the public to enhance trust and engagement.

Community-Centric Accountability:
The framework should prioritize mechanisms that empower residents to track how their feedback influences council decisions. This could include the establishment of regular public reports on progress related to community-submitted issues.

Support for Council Staff:
Council staff should receive training to handle public feedback and inquiries in a manner that aligns with the principles of respect, fairness, and inclusivity, ensuring interactions are constructive and aligned with democratic values.

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

The aspirational Code of Conduct should include the following key elements:

1. Integrity and Accountability: Councillors must act with honesty, uphold public trust, and remain accountable for their actions and decisions.

2. Respect and Civility:
3. Inclusivity and Representation: Councillors must actively seek and consider the diverse perspectives of their communities, ensuring marginalized voices are heard. Commit to fostering inclusive environments, free of discrimination or bias.
4. Public Interest First: Councillors should prioritize the community's interest over personal or political gain.
5. Professional Conduct in Public Meetings: Should exemplify professionalism and dignity

How else can complaints be minimised?

For Councillors:

Provide regular training on the Code of Conduct, conflict of interest management, and ethical decision-making to reduce unintentional violations

For the Public:

Offer community workshops or guides explaining the scope and limits of councillors' roles, complaint procedures, and appropriate use of the complaints process.

Enhanced Communication and Transparency

Proactive Communication:

- Publish detailed explanations for council decisions, ensuring residents understand the rationale and evidence behind them.
- Provide accessible records of past complaints and resolutions to avoid repetitive submissions on the same issue.

Real-Time Updates:

Develop a publicly accessible dashboard to track the status of complaints and their outcomes.

Clear and Accessible Complaints Procedures

Streamlined Processes:

- Simplify the complaints process with clear steps and guidelines on what constitutes a valid complaint.

- Create an online portal where individuals can easily submit, track, and view the status of their complaints.

Triaging System:

Implement a system to categorize and address complaints based on severity (e.g., minor, moderate, significant).

Minor complaints could be addressed through quick resolutions or informal discussions.

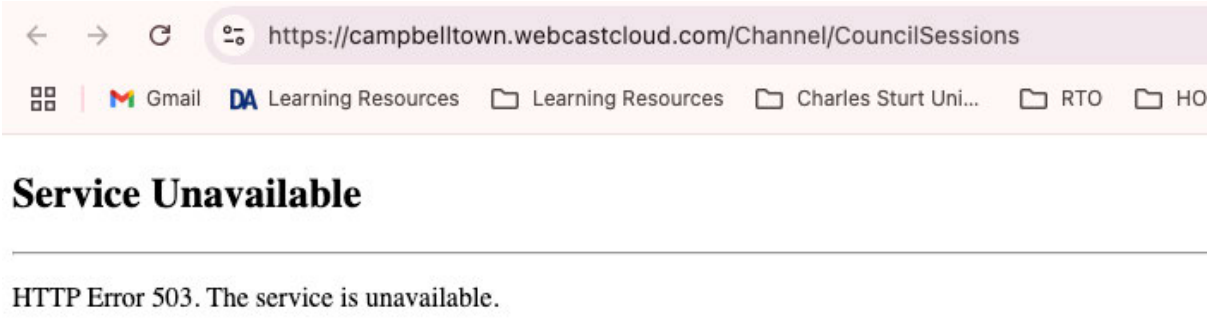
Encouraging Feedback Outside the Complaints System

Develop forums or mechanisms for residents to provide constructive feedback or raise concerns without needing to file formal complaints.

Examples:

- Online surveys.
- Regular community Q&A sessions with councillors.

Council Recordings to be available for Public



Concern: Reluctant to allow Public Participation at Council Meetings

Observation:
During a recent council meeting, I experienced what felt like reluctance when I expressed an interest in addressing the council. A council staff member called me on the day and questioned my intention, implied that my input might be unwelcome as it's about a letter that just needs to be sighted and there is no for / Against as such, and discouraged me from speaking, even though the agenda item was open for public comment. This contrasted with the freedom others appeared to have when discussing unrelated topics.

Relevant Sections of the Discussion Paper:

- **Restoring Dignity to Council Meetings**: The importance of fair and respectful debate in council chambers.
- **Transparency and Accountability**: Ensuring community participation in local government.

Concern:
This experience suggests that the process for public participation in council meetings is not consistently applied and may discourage community members from engaging in local democracy. This undermines principles of transparency and freedom of speech.

Suggestions for Improvement:

1. **Clear and Welcoming Guidelines**: Establish transparent and accessible guidelines for public participation, ensuring the public understands their rights to speak on agenda items.
2. **Training for Council Staff**: Train staff to engage respectfully with the public, avoiding any discouragement or bias, especially on sensitive or contentious topics.
3. **Oversight and Accountability**: Introduce a mechanism to handle complaints or concerns about how public participation is managed, ensuring transparency and equity.
4. **Equitable Speaking Opportunities**: Guarantee that all members of the public have equal opportunities to address agenda items without intimidation or fear of censorship.

Outcome Desired:
These measures will help foster trust and ensure council meetings remain a space for open and respectful public discourse, aligning with democratic values and community expectations.

Lack of Historical Tracking and Continuity in Addressing Public Concerns

Observation:
The agenda item I intended to address at the council meeting has been raised multiple times over the past five years. However, each time it is brought up, it is treated as if it is being raised for the first time. This indicates a lack of historical tracking of complaints and community feedback, making it difficult to monitor progress or hold the council accountable for follow-ups.

Relevant Sections of the Discussion Paper:

- **Transparency and Accountability**: The need for councils to demonstrate responsiveness and openness in their decision-making processes.
- **Public Participation**: Ensuring meaningful engagement with the community.

Concern:
The absence of a reliable system to track and reference past complaints, requests, or discussions undermines trust in the council's ability to address issues effectively. It also frustrates residents who feel their concerns are being ignored or forgotten.

Suggestions for Improvement:

1. **Feedback Tracking System**: Implement an electronic system to log and track public complaints and requests, enabling councillors and staff to reference historical records.
2. **Public Progress Updates**: Regularly update the community on the status of recurring issues, ensuring transparency and accountability.
3. **Meeting Records Accessibility**: Provide an accessible archive of meeting discussions and decisions to allow the public to verify if their concerns have been addressed.

Outcome Desired:
Introducing a feedback tracking system will improve continuity and accountability, ensuring issues are not repeatedly dismissed or overlooked. It will also allow both the council and the community to monitor progress and identify persistent concerns, fostering trust and constructive dialogue.

ROUS COUNTY COUNCIL

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Our Ref: F24/1766
Your Ref: Councillor Conduct Framework Review

22 November 2024

Attn: Office of Local Government
NSW Department of Planning, Housing and Infrastructure
Locked Bag 3015
NOWRA, NSW 2541

BY EMAIL: councillorconduct@olg.nsw.gov.au

Dear Colleagues

COUNCILLOR CONDUCT FRAMEWORK REVIEW

1 We refer to the review of the councillor conduct framework, and the associated discussion paper dated September 2024 published by the Office of Local Government (OLG).

2 We are supportive of reforms that would reduce the administrative costs of managing the conduct of, enhance procedural fairness for, and promote informed decision making of elected officials.

3 We are not supportive of proposals that have the potential to create further layers of bureaucracy where the governance structures already exist, in our legislature and court/tribunal system, to achieve transparent and objective decisions. For example:

3.1 The introduction of two (2) separate processes for managing alleged breaches of the Code of Conduct (the Code), and the introduction of a new privileges committee, to an already resource constrained OLG and Local Government sector where a system already exists for these matters to be managed independently and objectively via arbitration or the NSW Civil and Administrative Tribunal (NCAT) if the pathways for referral by the sector were updated, and

3.2 Banning closed councillor briefing sessions where the right to access council information by members of the public is already preserved and regulated under the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act), and

3.3 The introduction of courtroom etiquette, such as standing when speaking and formal/reverent manners of address, into the council chambers where its elected officials are not required to have any formalised or specialist training to hold or discharge the duties of their office, and which will only serve as a barrier to diversity and inclusion.

4 As a county council, we urge the OLG to consider the practicalities of implementing these proposals wholesale across a sector which is constituted of more than just general-purpose, metropolitan councils. The administrative costs required to navigate an already complex regulatory landscape is disproportionate to the costs of delivering infrastructure and services for smaller, less complex, Local Government entities.

5 For ease of reference, we have provided detailed feedback below adopting the naming and numbering conventions in the discussion paper.

Principles of Change (pp 7)

6 We are generally supportive of the seven (7) principles of change proposed in the discussion paper. We would also like to see reflected in these principles an intent to:

6.1 Reduce the cost of administering the councillor conduct and meeting practices framework, and

6.2 Promote diversity and inclusion among elected officials to achieve a representative governing body for the community and/or stakeholders.

Definitions and assessment of councillor misbehaviour (pp 9-13)

7 We are supportive of removing the General Manager, and the Mayor/Chairperson, from the process of receiving and managing Code of Conduct complaints relating to elected officials.

8 We note there is an inherent tension created by conferring this role on the General Manager, whose employment is in the hands of the elected official/s as part of the governing body.

9 As outlined above, we are concerned that the introduction of two separate pathways for managing Code of Conduct complaints – conflicts of interests by the OLG and misbehaviour by the new privileges committee – creates additional layers of administration and interpretation that are confusing, may overlap and/or be susceptible to misinterpretation, and doubles administration costs which are ultimately publicly funded.

10 We note that in circumstances where the proposal is to introduce a three-limb, quasi-legal test for determining misbehaviour, it may be more appropriate to rely on an independent legal, or quasi-legal, process such as arbitration or the NCAT to determine these matters rather than a group of serving or previously serving elected officials. It is recommended that a blended skills-based membership would be more appropriate.

11 We note the discussion paper is primarily concerned with misbehaviour in public office, however, to ensure the outcome/s of this review and the principles of change are reflected consistently throughout the *Local Government Act 1993* (NSW) (LG Act), the provisions that regulate the matters that would disqualify an elected official from holding public office should be reviewed. This would also be an opportunity to ensure these provisions align with contemporary societal expectations.

12 In the Northern Rivers region, the composition of our governing body and that of the Northern Rivers Joint Organisation (NRJO) is such that there are at least four (4) Mayors that must complete three (3) identical written returns of interests annually – for Rous County Council, the NRJO, and their own council - and several more Mayors that are also required to duplicate effort in this respect. As part of this review, we urge the OLG to consider how a more efficient process can be achieved.

Dispute resolution and penalty framework (pp 14-16)

13 As outlined above, we support the removal of the General Manager from the process of receiving and managing Code of Conduct matters.

14 We are supportive of a process that alleviates the time and cost burden of administering the Code of Conduct on individual councils, particularly smaller, resource constrained

organisations, but note the existing resource constraints on the OLG and the conflicting position created by being the source of both support and reprimand to the sector.

15 We do not support the proposition made on page 14 of the discussion paper that there will be no investigations of misbehaviour and reliance will only be placed on the accounting of events conveyed by the elected official who is the subject of the alleged misbehaviour. This proposition is at odds with the fundamentals of complaints handling and procedural fairness. It also exposes the process and the decision-making function of the privileges committee to subjectivity and, therefore, challenge.

16 As outlined above, we are not philosophically opposed to a privileges committee, but we challenge the need for the additional layer of bureaucracy and cost associated with this proposal where NSW has an established tribunal system that is a low/no cost jurisdiction designed to be accessible without legal representation.

17 A more effective, sector-wide solution may be for the OLG to refer, and appear on, matters to/in the NCAT similar to the process taken by the NSW Law Society/Legal Services Commissioner to allegations of breaches of ethical, behavioural, and professional standards within the legal sector.

Council meetings (pp 17-18)

18 We note details have not been provided on the avenues of appeal in circumstances where the Mayor/Chairperson expels from a council meeting, and suspends the sitting fees of, an elected official. The discussion paper is also silent on whether expulsion by the Mayor/Chairperson of an elected official at three consecutive meetings will cause that elected official's position to be considered vacant.

19 The practical implications of a Mayor/Chairperson having the authority to issue Penalty Infringement Notices (PINs), such as training requirements, appeal processes, and debt recovery action, are unclear and require further consideration by the OLG.

20 As a county council, we would generally require the support of our constituent councils (who are not obliged to assist us) if circumstances necessitating the issuing of a PIN arise. Given our functions are limited to the provision of bulk water, rural flood mitigation, and weed biosecurity services, PINs are not regularly required to be issued and enforced and, therefore, we do not regularly undertake that type of staff training.

21 We strongly oppose the proposal to introduce the practice of standing when addressing the council chambers or when the mayor enters the room. This proposal is in direct conflict with our objectives under our Disability Inclusion Action Plan and general principles of inclusion and equality. It would also result in an absurd outcome in Joint Organisation meetings where each Board Member is a mayor and at Rous' meetings where four out of eight Board Members are mayors. This proposed change is outdated and offers no value in a contemporary local government environment.

22 We note community participation and representation is a key underpinning principle of Local Government. The introduction of etiquette analogous to that expected within a courtroom will only serve to make the sector less accessible to and inclusive of all sections of the community it serves, which is often geographically and socio-economically diverse.

23 We are strongly opposed to the proposal to ban closed briefing and workshop sessions for elected officials.

24 In the county council context these are important forums to share information and educate elected officials who are often required to consider complex matters outside their area of professional expertise and/or personal experience. A key operational point of difference

between county councils and general-purpose councils is that they are not decision makers in relation to development applications and similar matters. Resolutions or binding decisions are only made in Council meetings. Restricting or banning these forums as proposed is more likely to result in less evidence-based decision making and longer ordinary council meetings at the cost of the community/stakeholders.

25 Access to council information by members of the public is already preserved and regulated by the GIPA Act. Under the GIPA Act, it is a valid consideration against releasing information of a type that would prejudice, for example, the:

i. Deliberative process of council,
ii. Supply of confidential information to council required for it to exercise its functions,
iii. Conduct or integrity of any research, and
iv. Council's competitive advantage (undermines competitive neutrality), and/or
v. Commercial in-confidence information of council or another person/organisation.

26 If the intention of this proposal is transparency in information sharing and decision-making, an alternative is to develop record keeping requirements for these forums, which would then be subject to the public interest test under the GIPA Act on a case-by-case basis should a member of the public wish to access the information.

27 The proposal as it currently stands conflicts with the provisions of the GIPA Act.

28 Finally, we appreciate the time taken to consider our submission and the intention and principles driving the review of the councillor conduct and meeting practice framework.

29 Nevertheless, please note that overall, we strenuously oppose any changes that will operate to introduce more low value administrative overhead that is not tailored to the purpose and function of the county council model. The associated costs, which outweigh the benefits, are inevitably passed through to general-purpose councils and borne by rate payers.

30 The point of difference of and immense value that the county council model offers is being fettered and underutilised by a lack of distinction with general-purpose councils. More often than not, county councils are required to adhere to the majority of compliance obligations imposed on general-purpose councils – requirements that do not appropriately reflect the unique operating environment of a county council. The operation and level of expected knowledge and experience is better aligned to a board and to that end consideration should be given to reform which enables county council board membership to be skills-based.

31 Should you wish to discuss any of the matter raised in our submissions further, please do not hesitate to contact me directly on [redacted]

Yours faithfully

[redacted]

Phillip Rudd
GENERAL MANAGER



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CANTERBURY BANKSTOWN

22 November 2024

The Office of Local Government

Submission to the Office of Local Government: Response to the Discussion Paper on the Code of Conduct

I apologise for the late submission and hope it will still be considered as an opportunity to contribute to the discussion on reforming the Model Code of Conduct for local government. Having served as a Councillor for 20 years, including 12 years as Mayor, I have firsthand experience with the challenges posed by the current system, particularly its inability to effectively manage Councillor misbehaviour. The following observations and recommendations are based on my experiences and a desire to strengthen governance, transparency, and fairness in local government.

General Observations

1. Ineffectiveness of the Current System

- The current framework for managing Councillor misbehaviour has not delivered on expectations. Censures provide no tangible consequences and are often politicised, with some Councillors using them to claim victimisation or bolster their political image.

2. Limited Purpose of Referrals

- Over my tenure, I have referred several matters to the Office of Local Government (OLG), only to find that the outcomes often lacked practical impact. This has undermined trust in the process and its effectiveness.

Recommendations for Reform

1. De-Politicising the Process

- Agree with the need to remove the General Manager (GM) or CEO from the complaints process. Their involvement can lead to perceptions of bias or influence over the process, which Councillors may weaponise for political gain.

- Establishing independent mechanisms to manage complaints would reduce perceptions of interference and ensure impartiality.

2. Conduct Reviewers

- The reliance on external conduct reviewers is costly, inconsistent, and problematic.

- Many refuse to take on matters due to fears of personal attacks or legal threats from Councillors, which is unacceptable.



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- The limited pool of reviewers and their inconsistent understanding of Councillors' roles further exacerbates the issue.

- Support the removal of external conduct reviewers in favour of a structured, uniform approach.

3. Privileges Committee

- The establishment of a Privileges Committee is a constructive proposal, with several considerations to ensure its effectiveness:

- Structure and Membership:

- Replicate the Local Planning Panel (LPP) model used for Development Applications (DAs).

- Establish a pool of pre-approved, experienced Mayors, peers, and independent experts to address high volumes and mitigate conflicts.

- Committee members should be fairly remunerated to attract qualified participants.

- Scope and Definition:

- Clearly define "misbehaviour" to include psychosocial hazards, such as bullying, harassment, and other harmful conduct, alongside traditional misconduct.

- Clarify the role of the CEO/GM in referring complaints from staff or the community about Councillors.

- Sanctions:

- Introduce meaningful sanctions such as suspension, fines, and disqualification, determined through a formal tribunal with independent arbitrators to emphasise the gravity of misconduct.

<u>Restoring Dignity to Council Meetings</u>

1. Power to Expel Councillors

- Providing Mayors with the authority to expel Councillors and remove entitlements could lead to misuse and politicisation of the process.

- However, there is a real issue with Councillors refusing to leave when expelled, causing significant disruption. The current reliance on Police is inefficient and inappropriate.

2. Review Mechanism

- A clear review process for expulsions is essential.

- Recommend notifying the Privileges Committee of any expulsions, with the Committee responsible for conducting reviews. This would enhance accountability and fairness.



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CANTERBURY BANKSTOWN

I fully support the Minister's observations on the shortcomings of the current system and the need for comprehensive reform. Implementing these recommendations will help depoliticise and strengthen the Code of Conduct, restore dignity to council operations, and ensure that local government continues to serve communities effectively and with integrity.

Thank you for considering my submission. I look forward to seeing meaningful changes that will improve governance in local councils across the state.

Yours faithfully,

Councillor Khal Asfour
Canterbury Bankstown Council

Code of Conduct and Meeting Practices Submission – Clarence Valley Council

The following submission is made by Clarence Valley Council as resolved at its Ordinary Meeting, held 21 November 2024.

COUNCIL RESOLUTION - 2024.421
Cr Smith

That Council endorse the draft submission attached to the report be submitted to the Office of Local Government's Councillor conduct and meeting practices framework discussion paper consultation. Voting recorded as follows

For: Cr Whaites, Cr Yager, Cr Novak, Cr Toms, Cr Johnstone, Cr Smith, Cr Causley
Against: Cr Clancy, Cr Cairns

CARRIED

Are we missing anything in the principles of change?

It is noted that one of the drivers of change relates to lack of respect in action and in debate. This is supported by the large number of Code of Conduct complaints received, regardless of frivolity as cited in the Discussion Paper under 'The need for change'.

The principles of change however, do not address an intent to improve the standard of behaviour to that expected by the community. The key missing principle is Respect.

Its is recommended this be addressed by adding a principle of change being:

1. *Respectful behaviours and interactions*

The Code should require councillors to display respectful behaviours and interactions with other councillors, the General Manager, staff and the public. This includes refraining from unsubstantiated claims and criticisms in communications, social media, public forums and debate. Respectful behaviours and interaction should inform decisions and outcomes, not target individuals.

Doing otherwise, unnecessarily and negatively impacts perception and confidence in the local government, undermines positive workplace culture and creates an environment of psychosocial risk.

Comment is also made on the following Principles:

2. *Council leadership and decision making is paramount – it is critical that the sector, as the third tier of government, is given independence to make decisions in the best interest of the community.*

Independence to make decisions can only be achieved where there is sufficient freedom to do so.

Currently:

- the restrictions on local government's ability set fees and charges and ordinary rates influences decision making and reduces independence;
- red tape, State led initiatives and cost shifted activities to local government that bind local government resources;
- untied funding available to local government is finite;
- State determined priorities for grant funding and the requirement to part fund priorities that the community sees as the highest priority undermines councils independence in decision making.

Does inclusion of *Council leadership and decision making is paramount – it is critical that the sector, as the third tier of government, is given independence to make decisions in the best interest of the community*, now mean matters such as the above will be addressed to enable local government to act independently?

3. *Transparency and accountability – as a democracy councils need to hear, consider and debate issues in an open manner.*

This is strongly agreed, councils should hear, consider and debate issues in an open manner. However they should also be able to learn and gain understanding in private, to better hear, consider and debate issues in an open manner.

Removal of briefings out of the eye of the public, removes the safe environment in which councillors can ask questions about complex issues without fear of public scorn and media spectacle. Deep understanding of complex issues, makes for better decisions in the best interest of communities.

4. *A strong and proportionate local government regulator*

The regulator rarely intervenes as it is, and when it does it is slow to respond indicating the system is broken or the regulator is severely under resourced.

There is a need to provide timely advice and guidance to local government on the intended consequence of legislative change.

All too often, legislative change is enacted and instruction by way of guidelines for compliance and/or best practice, are delivered after or not at all. Local government is still reliant on 2009 Tendering Guidelines despite legislative changes over the past eight years.

Does inclusion of *A strong and proportionate local government regulator*, now mean the Office of Local Government will be better resourced?

5. *Subsidiarity*

The constraints around local government decision making are summarised above in the context of *Council leadership and decision making is paramount*. In addition, many of the decisions that directly impact local communities, are made for local government by State legislation. A situation that is contentious in our community is the length of time between the issuing of a Notice of an Order to complainants seeing a satisfactory outcome. In some cases the legal fees to progress such matters through court is cost prohibitive, which results in a dissatisfied community.

Given the decision making power of local government is well articulated in various Acts, and the discussion paper does not address changes to any legislation to improve/amend or change the decision making powers of local government it would seem 'Subsidiarity' is not a principle of the proposed change.

What are the key elements of an aspirational Code of Conduct that should be enshrined? What are your views about aligning the Oath of Office to the revamped Code of Conduct?

The concept of a clear and succinct outline of behavioural expectations is necessary and aligning these with the oath or affirmation, should make it clear to most of the expectations. The clarity of the behavioural expectations to remove any ambiguity or misinterpretation however, is the key point rather than where it is detailed.

It is critical also that those unacceptable behaviours currently detailed in the Code of Conduct including threats, intimidation, belittling, overbearing, aggression and humiliation should not be lost in the new definition as these are the behaviours that tend to be displayed not during meetings, while on camera but rather in email and on social media and in the public arena.

Will the full breath of unacceptable behaviours we see now in the sector make it to legislation? Or should they still be contained in the Code of Conduct as, for example, an addendum.

The discussion paper is focussed predominantly on the behavior of councillors toward each other or the Mayor, predominantly in meetings and is silent on the misconduct of the Mayor, where the Mayor is the aggressor or the offender in a meeting environment.

Will consideration be given to the means of redress in regards to misbehaviour by the Mayor in the meeting?

It is recommended that definitions of misbehaviour relating to misrepresentation and damaging and negative portrayal of council staff and council operations in communications, on social media, in public forums and in debate, be established.

Is the proposed pecuniary interest framework appropriate? Is anything missing?

It is agreed a more descriptive and definitive pecuniary interest framework is required so that the rules are clear.

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

There appears to be some inconsistency in how various elements will be addressed with the discussion paper identifying a framework for pecuniary interest management, and principles for significant or major non-pecuniary interest.

However, it is clear from the frequency that guidance is sought by elected members that the non-pecuniary interest is the least clear and the one that councillors struggle with most. While others use it to advantage when avoiding participation in difficult decisions.

Responses vary from those councillors who declare all and participate in debate and voting and those who declare and excuse themselves from decision making. There appears to be little consistency in behaviours, it is therefore critical that there is clear guidance to councillors in managing significant or major non-pecuniary interest.

Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

There needs to be a distinction between property developers and real estate agents as it applies to local government in regional and rural local government areas.

There are significantly more independent real estate agents in regional and rural areas, who provide both landlord services and single dwelling domestic property sales, than there are real estates involved in development business activities.

Local government draws on all sectors for elected member candidates in regional and rural areas. It is arguable that we will be facing another source of conflict in the future as more representatives of lobby groups make their way to local government.

Is this the appropriate threshold to face a Privileges Committee?

The idea of a Privileges Committee to consider misbehaviour in public office is commended. However, as established elsewhere misbehaviour occurs more frequently outside the meeting than in, which is the domain of experience by Mayors and Deputy Mayors.

Diversity and a broad range of experience, in the committee should be an underlying principle. Restricting membership to former mayors and deputy who have served at least two terms predisposes the committee membership to unlikely achieve gender and age balance for example.

Many Code of Conduct complaints relate to elected member behaviour toward staff, and former Mayors and Deputy Mayors will not necessarily understand the impact and consequences of this when assessing in context.

To broaden the diversity and attain a more balanced view, it seems reasonable to also include membership by former General Managers from a range of backgrounds.

In keeping with the following principle of change – Justice is timely and proportionate, the Privileges Committee should have clear timeframes for assessing and determining complaints and should have authority to impose justice if required.

Proposals to more clearly define misbehaviour are agreed.

How else can complaints be minimised?

It would appear that the key to minimising complaints, is to improve the standard of behaviour to that expected by the community.

Strengthen the provisions of the Local Government Act in relation to eligibility to stand for Council.

Mandate a minimum requirement for attendance at OLG and local (if available) candidate session prior to standing.

Provide clear direction on content for candidate sessions to ensure local providers are delivering consistent messages across the sector.

Currently, councillor professional development participation is reported in the Annual Report. Mandate a minimum attendance and regulate through OLG.

Define councillor misbehaviour on social media and include restrictions on councillors participation on community group pages. In regional areas, staff live in the LGA in which they work, they are community participants and should not have to endure disrespectful communication and misinformation by councillors who are either naïve about the consequence or intentional in their actions to do damage.

What key features should be included in lobbying guidelines and a model policy?

A clear definition of lobbyists and lobby groups is required. Lobby groups do not only incentivise through gifts and inducements, but also through:

- dissemination of misinformation to improperly influence council decision-making
- and bullying, threatening and offensive behaviours to improperly influence council decision-making.

The model policy should put the onus on decision makers to consider the impact of lobbyists on their decision making and promote if not enforce proper decision making.

What level of pin is appropriate?

Of a sufficient level that prevents continued or repeat behaviour. However, more important is the transparency around issuing of pins. Are they to be reported in Annual Reports for example?

Are the penalties proposed appropriate, and are there any further penalties that should be considered?

Mandated attendance at specified training, at the councillors cost if the organisation has already provided within the term.

Matters should never be referred back to the Mayor, General Manager or organisation to deal with.

Setting expectations of consequence by matching misbehaviour definitions to a likely consequence/penalty or range of possible consequences/penalty if found, would assist in broad understanding across the sector and could also act to deter future behaviours.

Again, where is the consequence to be reported? IN the Annual Report?

Are the existing sanctions available under the Local Government Act sufficient?

Possibly, however the significant delay in finalising matters means that councillors have often left their role by the time a sanction is imposed so the impact is negated.

The Privileges Committee needs to have broader experience that just former Mayors and Deputy Mayors (discussed previously), either with the power for the Chair to impose a sanction, or to recommend imposition of a specific sanction by the order of the OLG Departmental Chief Executive.

To refer to tribunals or other bodies, is counterintuitive to the principle of change – Justice is timely and proportionate.

Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

While the concept of councillors standing to debate is appreciated, it may not be physically possible for all, particularly as we become a more diverse and inclusive sector.

Depending on the tone of the debate, standing to debate could be perceived as intimidating.

It is rare, if at all the case at Clarence Valley Council when the Mayor is not already in the room at the start of the Council meeting so standing when entering adds complexity and inefficiency to meeting practice – when will the Mayor enter? How do we communicate it is time to enter as everyone is in place and standing?

Disorderly behaviour that involves the accusation of wrongdoing by staff, overbearing or threatening, intimidating or any form of offensive behaviour needs to be clearly defined and whereby can be immediately addressed in the meeting.

The value of the Mayor removing a Councillor's entitlements without resolution is also questionable and goes to the point made earlier about misbehaviour by the Mayor in a meeting, which is not considered in the discussion paper.

Providing the Mayor with such powers may put the Mayor at odds with councillors and does not engender team building. This is not supported by Clarence Valley Council.

As mentioned earlier, a means by which councillors can have misbehaviour by the Mayor addressed during a meeting is required.

Are there any other measures needed to improve transparency in councillor deliberations and decision making?

The banning of briefing sessions is not supported. At Clarence Valley Council, councillors participate in a General Manager, or delegate, chaired pre-meeting briefing two days prior to the council meeting and this is a very effective way for councillors to clarify their understanding of items on the business paper, without facing public scorn or making front page news in local papers. It also provides senior staff the opportunity to provide frank and fearless response without fear of reprisal, ridicule and dissent from members of the public where matters are contentious and allows opportunity to debunk the myths and misinformation that councillors are subjected to by lobby groups and lobbyists.

The pre briefing does not allow for debate, caucusing or decision making. No alternative motions or amendments are heard.

Should the pre meeting briefings be ceased, it can be assumed meeting times will increase, as clarifications not previously sought are responded to, staff may feel restrained to respond, and councillors are more likely to make uninformed and possibly poor decisions.

Councillor Conduct Framework

Ben Raue
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Thank you for the opportunity to contribute to this review of the Councillor Conduct Framework.

I am an independent election analyst with a particular interest and focus on local government electoral systems and party systems, particularly in New South Wales. I write about elections for my website *The Tally Room*. For the recent New South Wales local government elections, I wrote extensive profiles of the 27 most populous local councils, and also published various other analysis pieces on various features of the electoral system.

Local government in New South Wales has a crisis of accountability when it comes to decision-making and in terms of how the governance of local government interacts with democratic processes such as elections. In short, voters don't know who to credit or blame for decisions, and often responsibility for decisions is diffused amongst an entire elected council, even though council decisions are rarely unanimous.

Modern democracy in Australia and in other western countries relies on independent democratic institutions (such as electoral commissions and anti-corruption bodies) that can be trusted by all participants. These bodies are now sometimes referred to as a "fourth branch of government" as distinct from the executive, legislative and judicial functions of government.

It also relies on the ability of elected representatives to speak freely and to have sufficient support to be able to criticise decisions of the government. In parliamentary systems this often comes in the form of an opposition that is able to criticise governmental decisions and has its own resources such as staff to support its work. Members of parliament are not under an obligation to support or refrain from criticising decisions or activities of government.

These democratic principles are much less clear at a local government level, and code of conduct procedures often work against these principles by allowing those with power in a local government (be they the mayor, a majority of the council, the general manager or other senior staff) to suppress minority voices on council or to punish commentary that embarrasses or exposes decisions of the council.

Local councils are often compared to corporate boards, but they differ in some crucial ways. Primarily, the nature of their election and their obligations to those who elect them.

Politics is a process to allow disparate groups of people with different interests to come to decisions about the allocation of limited resources and how a community makes decisions. This necessitates councillors representing different interests, different agendas and

different parts of their community. This remains the case even once a council has come to a decision and is proceeding with a project.

Indeed New South Wales councils are elected using a proportional representation system that is designed to ensure that members of different groups are elected from the same ballot paper. It is indeed quite difficult for, say, a three-member ward to elect three members of the same group. The use of wards in some councils also creates an incentive for councillors to have different groups that they represent. These differences should be respected and not be a matter for code of conduct complaints.

In comparison to parliamentary democracy as practiced at a state and federal level, it is often difficult as a local government voter to understand who is responsible for decisions and how to express support or opposition to those decisions at the ballot box. Binding councillors to a shared position or limiting public speech in opposition to decisions increases that lack of accountability.

There is a place for holding councillors accountable for wrong behaviour – corrupt and criminal conduct, as well as inappropriate behaviour towards staff and colleagues or disrupting the functioning of a council. But seeking to use the media to expose contentious decisions should be a key part of a councillor's job, and should not be cause to file a code of conduct complaint.

There is also a problem with these processes being handled directly by staff at a council, or by outside contractors hired by council staff. It is crucial that complaints are handled by those without a direct interest in the outcome of the democratic contest in a council, and senior staff are not impartial on those matters. If you are the general manager of the council implementing a particular policy, you cannot be considered impartial to those within the council who draw negative attention to that policy.

With all of this in mind, I recommend two changes that will limit the scope of code of conduct complaints to ensure that deal with genuine wrong-doing, and not as a mechanism for suppressing democratic practice.

1. The definition of councillor misbehaviour should be clarified to make it clear that public criticism of a council decision is an appropriate part of the role of a councillor and is not grounds for a complaint.
2. Decisions about whether complaints are proceeded with, and decisions about who is employed to assess a complaint, should not be in the hands of council general managers but rather should be removed from the responsibility of council senior staff.

BLAND SHIRE COUNCIL
west wyalong

RECEIVED
27 NOV 2024
LOCAL GOVERNMENT

20 November 2024

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

Email: councillorconduct@olg.nsw.gov.au

Attn: Mr Brett Whitworth

Dear Brett

RE: Councillor Conduct Framework Review

Council notes the NSW Office of Local Government issued a Discussion Paper regarding "Councillor conduct and meeting practices – A new framework", dated 5 September, with submissions to be made by 15 November 2024.

The following submission has been prepared to align with the headings and questions provided within the discussion paper and was endorsed at the ordinary meeting of Bland Shire Council on 19 November 2024.

Council thanks you for the extension of time provided for this submission.

A. Weakness of existing frameworks

The discussion paper identified weakness within the current framework as:-

1. *The councillor conduct framework distracts from, rather than enhances, robust democratic debate. Complaints are weaponised for political reasons, or to silence dissent from other elected representatives.*

   Council Response: Council would agree that the framework has the potential to distract from the democratic debate, however is unable to agree or disagree on weaponisation, as it has not been the experience of Bland Shire.

2. *Councillors and community members report dissatisfaction with the process for resolving code of conduct complaints – being expensive, overly legal, prone to political*

sparring and not timely, with average timeframes exceeding 12 months and more than 24 months if they are then referred to OLG for further investigation.

Council Response: Agreed

3. *Issues are not being addressed and resolved at the local level – instead complaints are escalated unnecessarily to the State Government to resolve because of the view that public censure from the local council is not a 'strong enough' punishment.*

   Council Response: Agreed

4. *Communities and councillors report that council decision making is not transparent – with decisions being seen as made behind closed doors, information not being provided or withheld, too much use of closed to the public briefings or councils going into closed sessions for no adequate rationale.*

   Council Response: Reference is made at point 1 above to processes being weaponised. Council is unable to agree or disagree with this, as it does not have any evidence to rely upon.

   Based upon experience well run briefings/workshops for Councillors enables an environment where information can be shared and explained in a less formal environment, that suits Councillors and provides opportunity to ask questions and "listen to understand" rather than "listen to respond" that may not be possible in a public forum.

   Briefings/workshops are also considered a valuable opportunity for staff development, through attendance and allowing them to build confidence through providing presentations.

   If some councils are "pushing the boundaries" resulting in what may be considered as a decision-making forum, then they should be provided with training or subject to performance improvement orders. This would then target the "non-conformance" directly rather than applying a system/framework broad brush approach that may be detrimental to the sector in general and potentially result in poor decision-making outcomes.

   Section 10A(2) of the Local Government Act 1993 is very clear on what matters are to be considered in a closed session and those Councils that abuse this section should be suitably sanctioned rather than, again, penalising other Councils who use the provisions wisely and sparingly.

5. *Bad councillor behaviour is not considered to have been addressed quickly enough and when sanctions are imposed it is too late or of little consequence.*

   Council Response: Agreed. However, investigation into why there is a delay would be more beneficial to the sector to provide for a suitable solution to the issue. Increasing the authority of the Mayor to manage issues that arise is a positive start providing all Mayors are suitably equipped to enable this to occur.

6. *There is a lack of clarity around OLG's role as the sector regulator – taking too long to resolve matters and not focussing on the important financial and government concerns in the sector, instead spending time focussed on individual councillor behaviour.*

   Council Response: Agreed. With improved resourcing would the OLG be better placed to oversee the administration of significant breaches of councillor conduct?

7. *OLG reports challenges in relying on the reports of council conduct reviewers – investigations into councillors need to be done afresh, the process is cumbersome with multiple feedback loops and serious sanctions can only come from suspensions handed down by NCAT.*

   Council Response: Agree. The current framework makes Council responsible for engaging a panel of conduct reviewers. Each reviewer then having their own approach lends itself to a lack of consistency. The OLG must then address this when matters are escalated for its consideration/resolution.

B. Options for a better approach

The discussion paper provides an overview of the proposed new approach as:-

1. *Make OLG directly responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest, with sanctions (suspensions and loss of pay) being determined by an appropriate tribunal or body.*

   Council Response: Agree with the intent, as General Managers are conflicted in dealing with such matters. However would there not be some level of potential conflict, that then requires those on the panel to properly manage? Would an alternate solution be similar to the judicial system, where all Councillors can be randomly called upon to hear complaints rather than appointing a panel? Additionally should a mechanism be enabled allowing the "defending" councillor the opportunity to present a case demonstrating how a panel member may have a conflict?

2. *Refer behavioural based concerns about councillor conduct to a State-wide panel of experienced councillors to judge their peers.*

Council Response: Agreed

3. *Reset the code of conduct to be similar to Parliamentary Codes, making it clear the expected patterns of councillor behaviour.*

   Council Response: Agreed, however the timely resolution of breaches is a key issue and must be addressed.

4. *Ensure the community can observe local democratic processes by banning closed to the public briefing sessions, while at the same time restoring the dignity and prestige of the council chamber.*

   Council Response: Agree that "decision making" must be made in open Council meetings, subject to the provisions of section 10 (A) (2). The exchange of information for awareness and better understanding, generally makes for more informed and considered decision making when the matter is later considered at a Council meeting.

   Banning of workshops would have the negative effect of stifling robust and engaged discussion because less confident councillors may not raise enquiring questions, as is provided for in a "safe" workshop environment. This ultimately will result in poor decision making, as councillors will not be adequately informed.

   Also agree that the dignity and prestige of the council chamber should be respected and protected and of high priority to all councillors.

C. Principles of Change

The Discussion Paper provided the following principles that had guided discussion:-

- *Council leadership and decision making is paramount.*
- *Freedom of speech*
- *Transparency and accountability*
- *Significant penalties should only be imposed by a judicial or quasi-judicial body.*
- *A strong and proportionate local government regulator*
- *Subsidiarity*
- *Justice is timely and proportionate.*

Question: *Are we missing anything in the principles of change?*

Council Response: The principles are generally supported, however council references Sections A (4) and B (4) in its response, as it seeks to enable informed decision making by facilitating quality information exchange.

D. Potential changes to the Code

Council supports the general intent to reform the behavioral framework and encourage appropriate behavior of councillors through an "aspirational" Code of Conduct".

It is submitted that perhaps the revised Code elevate the higher level positive behavioral standards expected that will encourage aspirational behaviors that align with those expected of Members of the NSW Parliament.

Should the aspirational behaviours be established, guidance documentation should also be developed similar to those listed in the Parliamentary Code. Eg:-

- The Legislative Assembly Members' Guide;
- The Legislative Council Members' Guide;
- The Department of Parliamentary Services Members' Entitlements Handbook; and
- The Parliamentary Remuneration Tribunal's Annual Report and Determination of Additional Entitlements for Members of the Parliament of New South Wales.

The Discussion Paper (p8 para 6) states *"...not restraining the ability of a councillor to speak publicly..."*. As discussed above, will the modelling of an aspirational Local Government code extend to allow for the concept of "parliamentary privilege" similar to that provided to a Member of the NSW Parliament?

Some councillors speak out against Council decisions which may conflict with a Councils media spokesperson policy (where it exists). Once a decision of council has been determined (subject to a recision) it is final and all should get behind it or remain silent.

Whilst in general the majority of councillors seek to represent their communities in a positive manner and behave as society expects, there appears to be a small cohort that exhibit poor and undesirable behaviors, that would suggest they will continue to exploit and/or weaponise the code, irrespective of the positive changes being explored.

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

Council Response: The following points are considered important by Council:-

- The code should be succinct and aspirational.
- Positive behaviours should be identified within the code.
- Misbehaviour should be defined in a separate document.
- Reference to the NSW Members of Parliament should be made, in order to highlight the higher order "aspirational" aspects being sought.

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

Council Response: Support the alignment of the Oath within a revised Code of Conduct. Unfortunately the Oath is only in focus at the first meeting of a new term of Council, and little attention is paid to it for the remainder of the term. By aligning the two may help reinforce the expectations of councillors and remind them of expectations of their behaviour.

The current wording of the Oath and Affirmation makes no reference to respect and commitment to service nor does it provide an acknowledgement of acceptance of dissenting views or decisions. Inclusion of such wording would be a useful lever for those charged with managing complaints, particularly in the eventuality that Councillors were openly critical of decisions taken in the Chamber. Section 232(f) of the Local Government Act 1993 covers the role a Councillor has to "*uphold and represent accurately the policies and decisions of the government body*". This requirement could well be interpreted as an expectation that Council's decisions, whether agree to or not, are publicly supported by all Councillors.

E. Potential changes to the definitions and assessment of councillor misbehaviour

Question: *Is the proposed pecuniary interest framework appropriate? Is anything missing?*

Council Response: Alignment of the definition of a pecuniary interest with that utilised and defined for NSW Members of Parliament would appear appropriate, as it will reflect and support the link being sought between the aspirational codes to apply to NSW Parliament and Local Government.

The proposed framework must ensure that the scope of the existing code is maintained. The sector has benefited from consistency of minimum standards in dealing with gifts (part 6) access to information, relationships between officials (part 7) and access to information/resources (part 8).

Question: *Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?*

Council Response: Support the principles of what constitutes a significant or major non-pecuniary interest and agree that the test is whether a reasonable and informed person would perceive that the Councillor could be influenced by a private interest when carrying out their official duties.
It is therefore submitted that the test should be incorporated into the aspirational code of conduct.

Question: *Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?*

Council Response: This issue (be it perceived or actual) has been and remains a long-term concern for jurisdictions across Australia. It is acknowledged that there have been historical cases that have shown that individuals (councillor or staff) may have had influence that has benefitted themselves, or the interest(s) of others.

Legislation may seek to address the concerns surrounding councillors and their real estate/development activities however it will not address perceptions which may exist, particularly within smaller communities. This is simply human nature.

If the NSW Government intends to address the community concerns regarding personal benefit and transparency, then the amendments to disclosure obligations by Councillors and designated persons should require additional detail on property transactions (acquisition and disposal) within the LGA by family members and close associates. Additionally, acquisition or disposal by Councillors of property interests should appropriately require additional information to be disclosed, such as price and the name of vendor/purchaser and be accompanied by a declaration that they have not unduly utilised information or other privileges from their role as a Councillor in the transaction. Consideration should be given to clarify the scope of the disclosure requirements to include whenever a person has an interest in a property, including when it is purchased through a trust, superannuation or other means.

For several years, the annual returns for Councillors under the current Model Code has been operated with varying levels of transparency amongst the State. This review presents an opportunity to clarify what Councils must publish as open access material and what information must be disclosed to Council but not published. It is noted that residential and other property addresses is a key point of interest in the returns with minimal guidance provided by the OLG or IPC on exactly what must be published open access.

Question: *Is this the appropriate threshold to face a Privileges Committee?*

Council Response: The intention of establishing a Privileges Committee is a positive step. By removing General Managers or other staff from the process and having a statewide panel to consider alleged misbehaviour complaints, will provide for a more consistent approach. However, the process for the committee needs to be completely transparent and without bias to maintain the integrity of its role. It is therefore suggested that rather than limit its make-up to a select few members that

the adoption of selection processes similar to that of a jury panel would remove any perceived bias and make for a truly independent and non-partisan panel.

The consideration of inclusion of any councillor to the committee must ensure that the candidate holds a "clean" record with no matters such as censures or misconduct findings against them.

Question: *How else can complaints be minimised?*

Council Response: Local Government has seen improvements as a result of the inclusion of Code of Conduct principles into the Local Government Act 1993 and the Model Code of Conduct in 2004.

The aspirational code of conduct framework being linked to the principles applying to NSW Members of Parliament is considered a positive step and time will then tell once the changes commence. This process would be supported with appropriate guidance documentation similar to that made available to those covered by the Parliamentary Code.

Question: *What key features should be included in lobbying guidelines and a model policy?*

Council Response: The introduction of lobbying guidelines and model policy will be a positive step providing guidance on councillor behaviours, however the reporting mechanism must be maintained through OLG, including a standardised approach across NSW, and should not be through the General Manager or other staff. The results of such will only become apparent once changes commence.

F. Dispute resolution and penalty framework

Question: *What level of PIN is appropriate?*

Council Response:The appropriateness of a PIN is a subjective assessment irrespective of the regulatory authority. The determination of a value is also difficult to assess.

Question: *Are the penalties proposed appropriate, and are there any further penalties that should be considered?*

Council Response: The potential penalties:-

- Censure of the councillor
- Warning of the councillor

- Where referred following misbehaviour in a council meeting, a potential loss of sitting fees. Consideration should also be given to how a loss of sitting fess would be addressed with a misbehaving councillor who is also a delegate to a County Council and benefits from those additional fees also.
- Referral to an appropriate tribunal or body for more serious sanction, including suspension or disallowance that could be imposed by the Privileges Committee would appear appropriate.

Question: *Are the existing sanctions available under the Local Government Act sufficient?*

Council Response: The existing sanctions are considered sufficient.

Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

Council Response: The "separation of powers" of the investigation, and the determination by an appropriate tribunal with appropriate arbitrators is supported.

G. Restoring dignity to council meetings

Question: *Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?*

Council Response: The powers of the Mayor to deal with disorderly behaviour in council meetings are considered appropriate. The difficulty can lie in enforcing the consequences that arise from disorderly behaviour.

The outlined reforms would appear to take the Mayor's powers to an appropriate level, providing them with the power to act on the consequences that arise from disorderly behaviour.

Whilst the proposed reforms to expand the grounds for mayors to expel members of the public from the chamber for acts of disorder are commendable including issuing of a PIN in certain circumstances, is this achievable?

It is also suggested that these provisions will require significant education/awareness within communities to avoid unnecessary conflict.

Question: *Are there any other measures needed to improve transparency in councillor deliberations and decision making?*

Council Response: Further reference is made to the commentary on the banning of briefing/workshops and Councils submission (Section A (4) and B (4)).

The importance of these sessions should not be underestimated, and from experience they are common practice, chaired by the General Manager, in a manner that has helped facilitate the clear exchange of information, and have not acted as a decision-making forum. This has then enabled informed debate in the council meeting and resulted in good decisions making and appropriate community outcomes.

Council cannot emphasise the importance of such briefings/workshops enough. Perhaps a mechanism by which such sessions are recorded and subject to public scrutiny through the application of the Government Information (Public Access) Act 2009 (GIPA Act) would be an appropriate means of retaining the briefings/workshops.

Given the processing timeframes of the GIPA Act, this would mitigate the number of requests under this piece of legislation as decisions taken would have proceeded within the public domain before such time as an application had been determined.

Please don't hesitate to contact me if you have any questions or require any further information, on (02) 6972 2266.

Yours faithfully



Grant Baker

General Manager

BELLINGEN
SHIRE COUNCIL

25 November 2024

Office of Local Government

Locked Bag 3015

NOWRA NSW 2541

RE: Councillor Conduct and Meeting Practices Discussion Paper Submission

Thank you for the opportunity to prov ide input on the discussion paper regarding Councillor conduct and meeting practices – a new framework.

1. Principles of Change

Council Leadership and Decision-Making is Paramount

We agree with this principle but emphasise that independence in decision-making is often constrained by tied financial resourcing and bureaucratic grant processes. To truly empower councils, funding mechanisms must be reviewed to reduce red tape, allowing councils greater autonomy.

Freedom of Speech

Councillors should indeed have the constitutional right to speak freely; however, without parliamentary privilege, this principle may not be practical in ensuring robust debate without legal or reputational risk.

Transparency and Accountability

We support transparency but caution against measures that could inhibit informed decision-making, such as banning closed briefing sessions, which play a critical role in preparing councillors for complex issues.

2. Code of Conduct and Oath of Office

There needs to be some caution to having an aspirational Code of Conduct. It is understood that currently NSW State Government Ministers have a comprehensive and prescriptive code of conduct some 15 pages in length that they are expected to follow and it is believed that Councillors should also have the same rigour expected of them.

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Notwithstanding this, should an aspirational Code be mandated, the following should be considered:

Key Elements of an Aspirational Code of Conduct

- Ethical use of public resources.
- Respectful and non-discriminatory conduct within council and towards staff.
- Clear guidance on managing conflicts of interest.
- Protection of workplace health and safety, including psycho-social risks.
- Strong standards for confidentiality and integrity.

Alignment of the Oath of Office

We support aligning the Oath of Office with a revamped Code of Conduct, ensuring clarity and consistency in behavioural expectations.

3. Pecuniary and Non-Pecuniary Interests

Pecuniary Interest Framework

The proposed framework is appropriate, but we recommend expanding provisions to address intimidation or coercion in securing financial benefits.

Non-Pecuniary Interests

We agree with the principles outlined but recommend a process to ensure councillors do not use non-pecuniary interests as a way to abstain from difficult decisions unnecessarily. Mechanisms for accountability should be implemented to address this.

4. Managing Real Estate and Development Conflicts

Should Real Estate Agents and Developers be excluded from holding office, rural and regional councils may face candidate shortages, and the rules should consider such disparities.

It is considered this is about managing the real or perceived conflict of interests of Real Estate Agents and Developers in decisions before Council which involve property and planning dealings. Currently it is the responsibility of each Councillor to determine conflicts of interest and declare them accordingly and others within the chamber are not able to raise, in public, if they believe someone in the chamber has a Conflict of Interest. It is considered that if a Councillor believes that another Councillor has a conflict in one of these situations, it maybe appropriate for that Councillor to be able to raise it during the meeting where the Councillors in attendance could determine if a conflict of interest does exist and if

so if it is pecuniary or non pecuniary which would then allow the affected Councillor to act accordingly.

5. Complaints Framework

Abolishing the two step framework

The General Manager should be removed from the process as they should not be put in a position of judgement on Councillors, who, in effect, employ the General Manager. It is important however that the Geenral Manager is made aware of what complaints have been lodged with regards to the Council.

Minimising Complaints

- Introduce early mediation mechanisms to resolve disputes.
- Establish strict criteria for what constitutes a valid complaint.
- Implement a tiered matrix to match the severity of complaints with appropriate outcomes, minimising frivolous or politically motivated complaints.

Role of the Privileges Committee

We support the formation of a Privileges Committee but suggest inclusion of ex-General Managers and technical experts to ensure balanced and unbiased decisions.

6. Penalty Framework and PIN Levels

Penalty Infringement Notices (PINs)

The PIN levels should be proportional to the severity of the breach, with minor administrative infractions carrying lesser penalties.

Proposed Penalties

We support the proposed penalties but recommend a tiered structure based on a matrix of severity.

Sanctions

Sanctions should be robust enough to disqualify councillors who repeatedly or egregiously breach the Code of Conduct. Provisions should ensure councillors cannot evade sanctions by resigning.

7. Mayor's Powers and Meeting Practices

Powers to Address Disorderly Conduct

We support the Mayor's authority to expel councillors for disorderly conduct but suggest that the decision to withhold sitting fees should rest with the council to prevent potential misuse of power.

Reforms to Meeting Practices

We do not support banning closed briefings, as they are essential for informed decision-making. Evidence suggests pre-meeting briefings improve council effectiveness without diminishing transparency.

Councillors should not be required to stand during meetings, as this could be exclusionary or intimidating.

8. Transparency in Decision-Making

We strongly advocate for retaining Councillor only briefings to ensure councillors are adequately informed.

9. Additional Considerations

Addressing councillor behaviour outside the chamber, especially on social media, is critical. Guidelines should regulate how councillors use these platforms to discuss council matters to protect staff and community members.

Training and induction programs should emphasise behavioural expectations. Non-compliance with training may result in automatic referral to the Privileges Committee.

Conclusion

Bellingen Shire Council appreciates the opportunity to provide feedback on this critical discussion. The proposed reforms are a step in the right direction, but care must be taken to ensure they balance transparency with the practical needs of councillors and councils.

Should you require any further information please do not hesitate to contact me.

Yours faithfully,



Mark Griffioen
General Manager

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25 November 2024

Office of Local Government
Via Email
councillorconduct@olg.nsw.gov.au

Dear Sir/Madam

RE: Blayney Shire Council Submission to the Councillor Conduct and Meeting Practices Discussion Paper

Blayney Shire / General
Blayney Shire is located in the Central West of New South Wales, comprising the township of Blayney and several outlying villages. The population of the Blayney Shire is currently 7,588 people who are represented by 7 Councillors, elected from across the shire (no wards).

Council has traditionally held a monthly meeting (3rd Tuesday of the month) throughout the year, with a workshop (not open to the public) in the 1 to 2 weeks prior to the council meeting.

Workshops are used to; inform Councillors on various matters and critically to facilitate discussion between Councillors and staff. The current setting has enabled Councillors to hear a wide range of views, expanding their knowledge and informing themselves, which critically enables an informed decision to be made at a future Council meeting.

Council has also used workshops to meet with both applicants and objectors for a Development Application prior to a Council meeting which enables Councillors to hear both sides of a matter, again before having to make a decision at a future Council meeting.

Councils should have a choice whether to record, stream and invite the public to workshops and briefing sessions, such provisions should not be mandated on all NSW Councils.

Council is of the strong view that Council retaining the ability to have a closed workshop or briefing is critical to ensuring and providing best practice decision making opportunities for elected Councillors across the wider local government sector of NSW.

Role of a Councillor
To start this discussion we need to examine the appropriate section of the Local Government Act for the role of the Councillor:

232. The role of a councillor
(1) The role of a councillor is as follows—
(a) to be an active and contributing member of the governing body,
(b) to make considered and well informed decisions as a member of the governing body,
(c) to participate in the development of the integrated planning and reporting framework,
(d) to represent the collective interests of residents, ratepayers and the local community,
(e) to facilitate communication between the local community and the governing body,
(f) to uphold and represent accurately the policies and decisions of the governing body,
(g) to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.
(2) A councillor is accountable to the local community for the performance of the council.

The paper makes an invalid assumption that the current system is broken. While any system can be enhanced and improved, the current system is generally considered fit for purpose.

There appears to be a focus on tightening the rules and lifting standards, while at the same time not acknowledging and compensating elected councillors for their increase compliance roles and responsibilities. If you want to do one, you need to do the other.

This paper also has a focus on punishment and enhanced rules and no focus to acknowledge positive behaviour. There should be a far greater focus on reward and not punishment, noting the significant majority of Councillors across NSW do the right thing, it is a very small minority that don't.

While it is stated in the Act (section 232) to represent the collective interests of residents, ratepayers and the local community, what is being proposed may diminish the role as a Councillor.

In creating far stricter rules for a Councillor, the focus of Council and Councillors will shift from representing the community (to correct perceived broken processes) to potentially not prioritising the interests of the community. In ensuring every "i" is dotted and "t" is crossed, there is a real risk we will start to not prioritise our community out of fear of retribution.

This is not to say that there could be room for improvement. One area which has been noted by Councillors are the many grey areas within the Code of Conduct and meeting practice.

Clarification is needed to make either Code more workable and understandable for Councillors who come with varying skillsets and comprehension levels. There needs to be clear examples of what is required when it comes to pecuniary and non-pecuniary interests with particular clarity on significant and less than significant.

It should be up to the individual Council whether they stand or are seated when they have the floor. Either way respect must be given to the person who is speaking and their discussion can only be suspended by the chair or a point of order.

Requiring a Councillor to stand is not considered inclusive and against strategies and principles of all NSW Council Disability Inclusion Plans. In 2016, Council amended its Code of Meeting Practice to remove the requirement to "stand" when speaking / having the floor. This was done to provide unanimous support to a newly elected Councillor who had a physical disability, who struggled to stand (permanently used crutches) and Council sought to be 100% inclusive, not simply inclusive if you can and are able, so the requirement to stand was removed.

Below are Blayney Shire Councils responses to the questions provided by the Office of Local Government.

Question: Are we missing anything in the principles of change?
The review very much focuses on a stick approach and not on a carrot approach.

There should be rewards for good behaviour and well as some penalties for bad behaviour. There should be a focus on suspension before financial penalties. No matter what is done, it must be clearly delineated, so Councillors fully understand the ramifications of their actions.

The principles of change should include an additional principle:

- Standard of behaviour – Elected officials are to act and behave to the standard expected by their community.

Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?
The question here is whether the Local Government Code of Conduct should align with State Parliament, which is covered by State legislation.

The challenge is Council's work under different rules to state parliament. If you considered that they should align with state parliament, then Councillors need to be afforded the same protections as State Parliamentarians.

The other challenge is if you set the high jump bar too high, then no one you want to run for local government, particularly noting the very low remuneration.

There has also been some discussion about setting a skillset for Councillors, particularly in the area of financial skills. The challenge as opposed to boards is Councillors are elected to the position and not appointed. The very low level of remuneration for most Councils would discourage anyone with a skillset in Financial or Legal areas to run for Council, because of the inadequate remuneration. Additionally, it is noted state politicians don't have to have a required skillset and there should not be any difference.

There is a very different skillset in representing the community as opposed to representing the interest of shareholders. If the rules are at too high a level, most people won't run and Councils will become less representative of our community.

Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?
It should firstly be noted it is an oath or affirmation (not just an oath) as some Councillors take one or the other. Councillors need to be held to account for either pledge when they take up office.

The Code of conduct should therefore align with either pledge as it is the Councillors commitment to their community for the duration of the term. The question then comes down to whether the oath or affirmation fully covers the areas required for the Code of Conduct.

Question: Is the proposed pecuniary interest framework appropriate? Is anything missing?
Setting the declarations at a NSW government level could be considered. It appears a number of Councillors do not have a full understanding of what is a pecuniary interest.

This is in particular relationship to committees/organisations that they may sit on.

There needs to be also clarification with the words **all** Associations, Companies and organisations so there are no grey areas where a declaration must be made where an annual payment of more than $250 is made to that member.

Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?
The proposed test is whether a reasonable and informed person would perceive that the councillor could be influenced by a private interest when carrying out their official functions in relation to a matter. There is no definition of who a reasonable and informed person is. This is very subjective and could well come down to a court's interpretation in the end.

There still needs to be clear examples/definitions of what constitutes a significant non-pecuniary interest. There is a risk people will play it safe and declare a significant non-pecuniary interest on many matters, which may see meetings become non quorate.

You also run the risk of losing diversity of opinion and for unpopular decisions of the Council, Councillors leaving the chamber for populist reasons rather than making the tough decisions and laying blame on other councillors for their decision.

Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?
There are a number of real estate agents who are elected to local government in Rural and Regional NSW, including the Blayney Shire Council. They make up an important part of the community and it becomes subjective on excluding one member of the community over other members of the community who may also make commercial gains from Council decisions. The issue of having Real Estate agents on Council is perception and not one of fact.

No matter which way a planning matter is voted on by the real estate Councillor, community may perceive they are favouring their mates. The problem is that other Councillors could also be seen to favour a friend and/or associate at any occasion.

There is therefore no difference between real estate agents and other Councillors. This Council believes Real Estate Agents should be permitted to continue to be elected and sit on Council. There should however be clear guidelines on required declarations for real estate agent Councillors.

Question: Is this the appropriate threshold to face a Privileges Committee?
A privileges committee structure is a position which may be considered. Members of the committee should consist of Councillors from outside the LGA where the Councillor is being assessed. The question of impartiality needs to be addressed and a focus on consistency when it comes to decision for a committee. There needs to be a set of guidelines on levels of any penalty if found to have breached the Code of Conduct.

Question: How else can complaints be minimised?
Having clear guidelines and criteria may help reduce large scale complaints. There are currently too many grey areas. Also try to determine early if complaints are vexatious. There are many examples where an individual files dozens of Code of Conduct complaints.

A fee structure could be constructed for every complaint lodgement. If the complaint is proven, then the deposit fee is refunded to the complainant. If the complaint is dismissed, then the deposit is lost. This should greatly reduce vexatious claims with no substance.

Additionally, any person making or involved in a complaint needs to respect the process and any finding / outcome, previous breaches should be left in the past and not continually mentioned and/or brought up.

Question: What key features should be included in lobbying guidelines and a model policy?
Councillors need to be able to connect with the community to hear issues. The lobbying by developers is a major challenge for Councillors. There needs to be clear rules around when and how a developer can contact a Councillor.

Currently some developers provide extreme harassment to Councillors and there appears nothing Council can do. If they are breached, then Council should be able to suspend that Development Application for a period of time. Clear guidelines need to be developed on how communication on developments is handled.

There is also a large amount of lobbying on community projects and other issues from the community. Many people are passionate about their projects. Some community members may step over the line on their projects. A clear line needs to be delineated, and a pathway developed if an individual steps over that line.

Question: What level of PIN is appropriate?
There would be a need for an outline of the PIN structure and appropriate penalties. A definition of what is insignificant and what is significant and even possibly a weighted matrix system based on the level of offence. There is very limited information in the background paper on how it may work.

There needs to be a greater focus on how any PIN system may work. Is it going to be sitting fees, from a week to a month, (Calculated on the degree of infringement, or a straight fine. If it was introduced the sitting fees should be a be introduced as the fine method, otherwise Councillors in smaller rural Councils would be at a distinct financial disadvantage to metropolitan Councillors.

Question: Are the penalties proposed appropriate, and are there any further penalties that should be considered?
There is always a risk of over penalising Councillors for minor misdemeanours. There is way too much focus on punishment in this report. There should also be a focus on reward for good behaviour by Councillors.

A system similar to a NSW drivers licence where a reduced fee structure / demit point system could be considered may be more appropriate as the demerits can then also then reflect the severity of the breach

Question: Are the existing sanctions available under the Local Government Act sufficient?
They are not set out clearly enough for councillors to understand. These are currently very broad and open to decisions by the Office of Local Government and other government bodies. For serious offences, removal from Council for three or more months should be considered. If there are repeat offences, then up to five year suspension could be considered. There however must be a right of appeal to another body.

Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?
There should be an independent arbitrator who could be able to award sanctions on a scale basis. They must be at arm’s length from the Council and must have clear guidelines as to the level of sanction for an offence. This could be similar to the court system with sentencing guidelines. There must be an appeal mechanism available for any sanctions imposed.

Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?
A clear process needs to be outlined so both Councillors and the Mayor understand the ramifications of disorderly conduct. A warning process needs to be developed so the Mayor can provide structured warnings before actions are taken to remove the Councillor from the chamber. There are no guidelines on what to do in the meeting. The code is extremely vague on this issue.

There is also the situation that if the Council refuses to expel a Councillor for disorderly conduct. The only provision is for the Mayor to suspend the meeting for 15 minutes and then decide to continue after 15 minutes if order has been restored. If order can't be restored, then the Mayor would have to cancel the rest of the meeting. If a disruptive councillor has the support of enough Councillors there is no further recourse under the current code. This needs to be examined and potentially changed.

Question: Are there any other measures needed to improve transparency in councillor deliberations and decision making?
Council is vehemently against the proposed changes as outlined on page 18 of the *'A new framework'* document.

Briefing sessions are considered critically important to enable staff interaction with all Councillors (not just the Mayor) which facilitates discussion and questions which enable the Councillors to inform and upskill themselves on any matter, it facilitates and enables informed decision making at a future Council meeting.

Workshops and briefings not being open to the public or having to be recorded enables participation from Councillors in a safe space, where any question can be asked without the fear of *'a silly question'* being recorded and/or used against them in the future (including by political opponents).

The current process enables every Councillor to inform and upskill themself so they have the information they need to ensure the best decision can be made by every Councillor in the chamber at a future meeting of Council Meeting.

Removing the ability for all of the Council to come together in an informal setting to discuss topical matters and key issues will erode democracy and informed decision making in NSW Local Government.

The majority of Councils in NSW have for a long time run briefing sessions and workshops for the betterment of the community, this should not be changed because of the behaviour of very small minority who do not act appropriately.

Any change would create an environment where there would be less understanding of business items and poorer debate. Background briefing, particularly on planning matter are an essential part of Councillors considerations.

Thank you for providing the opportunity for the Councillors of Blayney Shire to respond and appreciate you considering the information contained within.

Should you require further information regarding this matter please contact myself on 0428 613 181.

Yours sincerely



Bruce Reynolds
Mayor

Submission Councillor Conduct Framework Review

November 2024



Bathurst
Blayney
Cabonne
Cowra
Forbes
Lachlan
Lithgow
Oberon
Orange
Parkes
Weddin

CENTRAL NSW
JOINT ORGANISATION

Central NSW
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25 November 2024

To Whom it May Concern

Via email: councillorconduct@olg.nsw.gov.au

Re: "*Councillor Conduct Framework Review*"

Central NSW Joint Organisation speaks with a unified voice for its collective priorities. This region has a proud history of working collaboratively, representing over 180,000 people covering an area of more than 53,000sq kms comprising the local government areas of its membership - Bathurst, Blayney, Cabonne, Cowra, Forbes, Lachlan, Lithgow, Oberon, Orange, Parkes, Weddin.

Tasked with intergovernmental cooperation, leadership and prioritisation, CNSWJO has consulted with its stakeholders to identify key strategic regional priorities. The CNSWJO Strategic Plan can be found here - www.centraljo.nsw.gov.au.

Thankyou for the opportunity to provide feedback to the "Councillor Conduct Framework Review."

CNSWJO understands that the intention of this discussion paper is to seek feedback on options for change to legislation and regulation regarding Councillor conduct. The proposals are to:

• Make OLG directly responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest, with sanctions (suspensions and loss of pay) being determined by an appropriate tribunal or body,
• Refer behavioural based concerns about councillor conduct to a State-wide panel of experienced councillors to judge their peers,
• Reset the code of conduct to be similar to Parliamentary Codes, making it clear the expected patterns of councillor behaviour,
• Ensure the community can observe local democratic processes by banning closed to the public briefing sessions, while at the same time restoring the dignity and prestige of the council chamber.

In the first instance, the locus of the problem needs to be recognised. There are comparatively few councillors in NSW that tarnish the reputation of the industry where the regulatory framework is not fit for purpose and social media is exacerbating the situation. Given question time at NSW Parliament House is a daily opportunity to witness poor behaviour, the extent to which State Parliamentarians set the standard is questionable. Indeed, some leadership here would be welcomed where rogue councillors have been known to say that they are only modelling state representatives.

Further, council meetings are not the heart of the problem for local government conduct. As has been demonstrated in the recent election, it is the use of social media by councillors and others that is having a greater impact than behaviour at council meetings. Again, this is only a few councillors.

It is noteworthy that the "geography" of a council meeting room is very different to that of the NSW Parliament. Councillors are in close proximity to each other and may be seated beside a rogue councillor where this could be problematic. This is especially the case when the speaking councillor is standing and could potentially be threatening. Further, councillors are typically older with associated muscular skeletal and other health problems where remaining seated may be preferable.

Work undertaken in this region suggests that special effort needs to be given to social media. While this region is collaborating in building capacity and welcomes the OLG's efforts with Model-Social-Media-Policy.docx (live.com), it is of a view that given the extent to which reputations can be damaged, elections can be affected and morale on council staff can be impacted, special effort should be taken regarding the misuse of social media.

Then, greater investment needs to be made building capacity in both incoming councillors and the community in the role of council and councillors.

In summary, CNSWJO agrees that the current process is not working. Open to interpretation, it readily creates conflict and confusion while compromising General Managers and wasting resource. For change to be effected, it will need to be designed well and sufficiently resourced.

Regarding the questions asked in the discussion paper; CNSWJO makes the following commentary:

Question	CNSWJO response
Are we missing anything in the principles of change?	**Build confidence in Local Government** Greater effort needs to be undertaken in building confidence in local government. An antidote needs to be found for the reputation bashing councils are enduring. **Supporting democracy** This region has welcomed the commentary by the Minister empowering councils in determining their own destiny. Given the challenges for democracy internationally and the roll out of red tape and unfunded mandates in the context of rate capping, supporting democracy should be included. **Re *Council leadership and decision making is paramount*** Decision making by Councils is in a very constrained environment. While there have been some recent improvements, as an industry: rate capping, Special Rate Variations, cost shifting, red tape and a challenging funding framework have led to deteriorating financial sustainability in local government. Income stream opportunities are limited. Councils may not incorporate without Ministerial permissions and this is rare. Various legislation councils must administer, plus in this region, the added necessity being service providers for water, airports, health, childcare and aged services, the visitor economy, housing etc leaves little room for decisions of significance that do not prejudice a council's financial position. General Managers across the region have expressed the view that despite the aspirations of incoming councils, in reality, there is little more they can do besides maintenance and a significant part of their role in induction is explaining the financial situation to them. In the multi-million-dollar budgets of councils there is very little discretion where in this region rates often make up a small percentage of total income and is significantly consumed by

	the costs of elections, resourcing audit requirements, administering ARICs, Emergency Services Levies and the like. Good asset management as contemplated by IP&R, informed by community priority, provides direction on the priority for what is in fact maintenance budgets for councils in regional NSW. **Re Transparency and Accountability** – this should include commentary about keeping the community informed which will have implications on how breaches are reported. **Re Freedom of speech** – it is noted that Councillors do not enjoy the same privilege as state representatives and this should be clear in any change.
What are the key elements of an aspirational Code of Conduct that should be enshrined?	Alignment with leading practice and functionality.
What are your views about aligning the Oath of Office to the revamped Code of Conduct?	Neutral
Is the proposed pecuniary interest framework appropriate? Is anything missing?	The extent to which election support should be included. It is a reasonable perception of the community that a significant political donor constitutes a conflict of interest in decision making.
Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?	Yes
Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?	Neutral
Is this the appropriate threshold to face a Privileges Committee?	That the examples provided are from the sporting sector are intriguing – the extent to which someone moving a golf ball is comparable breaches of councillor behaviour is questionable and seems somewhat trivialising. Further, this is case law which opens the door to litigation where those with lots of money will be more able to drag councils through the courts. Having said that, the use of a Privileges Committee as described in the guidelines where breaches would be assessed by peers is very sound.

How else can complaints be minimised?	Effective and timely management of complaints with an escalation of impacts for those in breach should be the first step.
What key features should be included in lobbying guidelines and a model policy?	Councillors should make informed decisions based on merit.

Regarding the suggested options CNSWJO makes the following commentary.

Make OLG directly responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest, with sanctions (suspensions and loss of pay) being determined by an appropriate tribunal or body.

CNSWJO welcomes making the OLG directly responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest, with sanctions (suspensions and loss of pay) being determined by an appropriate tribunal or body.

Refer behavioural based concerns about councillor conduct to a State-wide panel of experienced councillors to judge their peers

CNSWJO welcomes the use of a State-wide panel of experienced councillors to judge their peers. The design of this panel should include considerations of cost effectiveness and efficiency. Members have raised concerns on potential unfettered cost implications and seeks further consultation in this regard.

Reset the code of conduct to be similar to Parliamentary Codes, making it clear the expected patterns of councillor behaviour

While CNSWJO supports this approach, it is imperative that any Code provide sufficient clarity for sanctions to occur.

Ensure the community can observe local democratic processes by banning closed to the public briefing sessions, while at the same time restoring the dignity and prestige of the council chamber.

The CNSWJO is particularly concerned about this potential inclusion.

Councillors across NSW are currently being briefed on their role, which takes many hours – all of which spares the public. The extent to which any changes will limit the use of workshops and other closed-to the-public gatherings that include councillors is also concerning. Questions have been asked such as "would this be live streamed too?" Feedback from members includes concerns raised for the discomfort some councillors may have for this constant public exposure.

There is a difference between a briefing session and a meeting to make informed decisions. The briefing session provides an opportunity for elected representatives to ask questions particularly for complex matters. For example, the transition of strategy for water utility management from Integrated Water

Cycle Management to Integrated Planning and reporting or the purchase of renewable energy using Large Generation Certificates through a power purchase agreement.

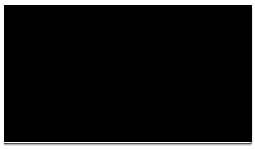
This enables good decision making on the floor of Council. A good briefing session is NOT decision making behind closed doors and ought to be retained. **The NSW government could provide guidance of the difference between a briefing session and decision making.**

It is noted that Ministers and other State representatives are regularly briefed by their bureaucracy.

Conclusion

Thank you for the opportunity to provide feedback to this discussion paper. If you require further information or clarification on comments in this submission, please do not hesitate to contact Ms Jenny Bennett on 0428 690 935.

Yours sincerely,



Jenny Bennett
Executive Officer
Central NSW Joint Organisation (CNSWJO)

File Ref: 2022/452117

26 November 2024

Strategic Policy Unit
Office of Local Government (OLG)

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

Dear OLG Strategic Policy Unit

Submission | Councillor Conduct Framework Review

I refer to the OLG Circular 24-17 *Councillor conduct and meeting practices – a discussion paper* issued on 5 September 2024 and to your invitation in that Circular to make a submission on the recommendations of the *Councillor conduct and meeting practices – A new framework discussion paper* and potential changes to the NSW Councillor conduct framework.

As requested, our submission responds to the questions posed in the discussion paper, with a summary of Council's key positions on the overall proposals of the framework as follows:

- In principle agreement with removal of councils from the complaints management process and having independent oversight of councillor code of conduct complaints, however there are concerns with the constitution of the proposed Privileges Committee.
- In principle agreement that the councillor code of conduct needs to clearly prescribe expected behaviours and acceptable conduct however it must ensure that key provisions under the current code remain available and enforceable.
- Opposition to the banning of closed councillor briefings, as they are a crucial platform for council officers and councillors to converse in a free, frank and confidential environment.

Section: What are the principles of change?

1. Are we missing anything in the principles of change?

The principles of 'freedom of speech' and 'transparency and accountability' do not lend themselves to a purely literal interpretation and need to be further and carefully described in a balanced way.

As such, when read together, consistent with these principles:

1. We agree councillors have the right and need to advocate for their community; that their decisions should be made transparently; and they should be accountable for them.

2. Councillors should also:
   - be able to have the opportunity to discuss matters in forums such as closed councillor briefing sessions where they can speak and question freely to be better informed, and
   - accept and abide by the policies and decisions of the whole council.

The High Court of Australia in *Comcare v. Banerji* [2019] HCA 23 provides clear guidance on how the freedom of speech principle needs to be interpreted. In essence, the Constitutional right to freedom of speech can and should be restricted by a requirement to follow a rule:

- where it is necessary for the administration and decision-making process of government, and
- it does not otherwise result in a substantial unjustified impact on the administration and decision-making process of government.

Following the principle of transparency where councillors should make their decisions transparently and be accountable for them, there is a justified reason to ensure councillors accept and abide by the policies and decisions of the council as a whole.

We agree with this established legal position and the current 2024 OLG Councillor handbook[1] which states '[t]*he requirement to uphold the policies and decisions of the council should be read in the context of the implied freedom of political communication under the Australian Constitution. In practical terms, councillors remain free to speak about the policies and decisions of the council but they must accept and abide by them and must not misrepresent them.*'

In summary, we do not support any revision of the councillors' code of conduct to:

- remove the requirement for councillors to accept and abide by the policies and decisions of the whole council as it is not consistent with the implied Constitutional principle of freedom of speech. Equally, there must continue to be repercussions should a Councillor openly speak against the decisions and policies of Council under the guise of freedom of speech, and
- ban closed pre-meeting councillor briefings as it does not enable councillors to be fully informed to make transparent decisions for the whole council for which they are accountable.

Section: Potential changes to the code of conduct and oath of office

2. What are the key elements of an aspirational Code of Conduct that should be enshrined?

A streamlined, aspirational Code of Conduct must clearly describe the types of conduct that are unacceptable and this must be directly underpinned by the relevant enabling legislation, thereby creating clearer understanding in plain language. The classification and description of councillor conduct standards listed in Attachment D of the *Kellar Report*[2] (attached to this submission) provides a useful summary of types of misconduct which should be enshrined in the aspirational code.

To further enshrine key behavioural expectations and standards, Part 2, Divisions 1 to 3 of the *Local Government Act 1993* (LGA) should be reviewed and amended to ensure closer alignment with the duties and powers of directors of corporations in Part 2D.1 of the *Corporations Act 2001 (Cth)*[3] - including the consequences for a breach of these duties. Whilst there is some alignment now (for example see clause 439(1) of the LGA) – it is far from adequate. The duties and obligations of (and breach consequences for) company directors are directly analogous to those of councillors and are well settled and tested within the legal system so enabling strong leverage, guidance and support to councillors and conduct investigators. As has been found with the *Corporations Act*, it is better to legislate directly and clearly the principal duties and obligations of (and breach consequences for) councillors in the enabling legislation (i.e. the LGA) than in a subordinate Model Code of Conduct even though that is made under section 440 of the LGA.

[1] https://www.olg.nsw.gov.au/wp-content/uploads/2024/09/Councillor-Handbook-2024.pdf
[2] October 2022 report by Mr Gary Kellar for the former NSW Minister for Local Government, Focus on Civic Responsibility: Councillor Conduct Accountability in New South Wales
[3] Federal Register of Legislation - Corporations Act 2001

3. What are your views about aligning the Oath of Office to the revamped Code of Conduct?

We support the notion that behavioural standards and expectations need to be clear and understood when a councillor takes office.

Section 233A(5) of the LGA should be repealed as it contradicts the intent of the recommendation to strengthen the Oath or Affirmation of Office. A councillor simply should not be permitted to take office without having taken an oath or affirmation of office if that action is to have any material consequence at all. On this point, section 233A should be further amended to expressly state the consequence of a councillor breaching their oath or affirmation of office – for example, that such a breach is deemed to be a breach of the Councillor Code of Conduct.

We also suggest that reference to the Model Code of Meeting Practice should also be added to the Oath or Affirmation of Office to strengthen the statement and ensure further alignment.

Section: Potential changes to the definitions and assessment of councillor misbehaviour

4. Is the proposed pecuniary interest framework appropriate? Is anything missing?

Yes, we support the proposed pecuniary interest framework.

We suggest that the framework also be extended to ensure the current conditions on special disclosures of pecuniary interests in relation to planning instruments continue to be permissible[4]. For Council to continue to function efficiently regarding high level planning requirements, it is important that these provisions remain to allow councillors to participate in the decision-making process of these planning instruments as appropriate.

5. Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

Yes, however greater clarification and guidance from the OLG should be given as to the definition of a 'close' associate, relationship or friendship to assist councillors in identifying the significance of their non-pecuniary conflicts.

There are several legislative provisions that prescribe definitions of closeness and the Local Government Act or Model Code of Conduct should include similar provisions.

Examples include:

Part 1.2(9) of the *Corporations Act 2001*(Cth)[5]: the definition of a 'closely related party':

> *'(a) spouse or child of the member; or*
>
> *(b) a child of the member's spouse; or*
>
> *(c) a dependant of the member or of the member's spouse; or*
>
> *(d) anyone else who is one of the member's family and may be expected to influence the member, or be influenced by the member, in the member's dealings with the entity; or*
>
> *(e) a company the member controls; or*

[4] See clauses 4.36 to 4.39 of the Model Code of Conduct for Local Councils in NSW (2020)
[5] Federal Register of Legislation - Corporations Act 2001

(f) a person prescribed by the regulations for the purposes of this paragraph.'

The *Home Building Act 1989 (NSW)*: Schedule 1, Section 5 provides a lengthy definition of 'close associate':

'(1) ... a person is a close associate of another person if the person—
(a) is a business partner of the other person, or

(b) is an employee or agent of the other person, or

c) is a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the other person or a person referred to in paragraph (a), (b) or (d) has a beneficial interest, or

(d) bears a relationship to the other person that is a prescribed relationship under subclause (2), or

(e) is a corporation that is a subsidiary (within the meaning of the Corporations Act 2001 of the Commonwealth) of the other person, or

(f) holds or is entitled to exercise, in respect of the other person or the business of the other person, any other relevant financial interest, relevant position or relevant power.

(2) For the purposes of subclause (1)(d), a person bears a prescribed relationship to another person if the relationship is that of—

(a) a spouse or former spouse, or

(b) an existing or former de facto partner, or

(c) a child, grandchild, sibling, parent or grandparent, whether derived through paragraph (a) or (b) or otherwise, or

(d) a kind prescribed by the regulations for the purposes of this clause. Note — De facto partner is defined in section 21C of the Interpretation Act 1987.

(3) For the purposes of subclause (1)(f) — relevant financial interest means—

(a) any share in the capital of the business, or

(b) any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise relevant position means the position of director, manager, and other executive positions and secretary, however those positions are designated relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

(a) to participate in any directorial, managerial or executive decision, or

(b) to elect or appoint any person to any relevant position.'

6. Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

There are already limitations in place that dictate what powers councillors have in the context of planning decisions. If a new model Code of Conduct is released, the existing rules and restrictions in place in relation to councillors' lack of involvement in the development assessment decision-making process should be enshrined.

With regard to the proposal that councillors be required to divest themselves of all real estate and development business activity, we consider this to be too unreasonable and onerous. There are a number of requirements under legislation in place that contribute to the management of the concerns that this proposal seeks to mitigate and these include:

- the current provisions of the Code of Conduct require councillors to disclose publicly their sources of income, including whether they are a property developer or a close relation to a property developer and any real property holdings, and
- a prohibition on property developers and their close associates being able to make political donations as per the *Electoral Funding Act 2018*.

Further, the justification in the discussion paper for not banning real estate agents and developers from being councillors is that it would infringe the right to political free speech that is implied by the Australian Constitution.

However, as per the legal position discussed above, a law that seeks to impede the freedom of speech principle is permissible where it does not have a materially substantial and unjustified impact on the administration and decision-making process of government.

As also referenced in the discussion paper, much of what councils do relates to land and land-use. Banning real estate agents or property developers would not have such a substantial impact on the decision-making process of Council as a whole, as currently any councillor with a pecuniary interest in a matter is already required to exclude themselves from the decision-making process. Therefore, we consider the banning of real estate agents and property developers is justified and reasonable, as it is not a rule that would have a substantial impact on the decision-making process of Council as a whole.

7. Is this the appropriate threshold to face a Privileges Committee?

We agree in principle with the proposed thresholds of behaviour that would determine a councillor's requirement to face the proposed Privileges Committee.

However, whilst we support the independent oversight of councillor behavioural code of conduct complaints, we have concern with the constitution of the proposed Privileges Committee. There is an inherent risk of bias and lack of impartiality (perceived and/or actual) by having the proposed Privileges Committee composed solely of current and ex-mayors. As such, should the Privileges Committee be established, prior to doing so, the OLG should provide more information on its operating framework, including how the risk of bias (whether actual or perceived) will be managed to provide assurance as to the independence of the Committee.

We maintain this role should sit within the OLG, (perhaps with the introduction of a specialist office within the agency) as this entity provides the requisite level of expert independence and impartiality.

8. How else can complaints be minimised?

We do consider that an appropriate independent body that has oversight of councillor code of conduct complaint will assist in minimising complaints as it will provide consistent application across different conduct matters.

However, there must also be appropriate pathways available to ensure consequences for those who weaponise the complaints process and / or repeatedly make complaints that are vexatious. Whilst we note that it is proposed that the Privileges Committee have the delegated power to dismiss matters like these, this is after the referral, and therefore delays efficient disposal of such matters.

The proposed framework contemplates that all behavioural based complaints are to be lodged directly to the Privileges Committee via an online webform, thereby removing the opportunity

for the matter to be disposed of quickly and efficiently at the council level should it be determined to be minor or not a complaint.

Abolishing the two-step process and requiring the direct referral of all complaints to either the OLG or Privileges Committee, will eliminate possibilities for councils to dismiss frivolous and vexatious complaints at the outset or address these by alternate resolution at the outset resulting in complaints taking longer to resolve than they should. Even though it is proposed that the Privileges Committee could delegate to a small Secretariat from the OLG the power to dismiss matters that are vexatious or trivial, where the Privileges Committee lacks jurisdiction, or where there is an alternative remedy available, this still requires time and it is unclear as to whether councils may still be required to deal with those matters in some capacity. Allowing councils to decline or resolve matters at the outset enables matters to be dealt with in an efficient and cost-effective manner.

The impact of the proposed approach is also magnified in that the council or individual councillor has to pay for the costs associated with the Privileges Committee dealing with matters. The implication from the discussion paper is that the councils where these complaints have emanated from will have to pay for the costs associated even if they are dismissed or resolved alternatively. Without having further information on the proposed cost-recovery model of the Privileges Committee, it is unable to be determined whether this model will lead to an increase or decrease on costs to councils.

9. What key features should be included in lobbying guidelines and a model policy?

Council welcomes the introduction of lobbying guidelines and a model lobbying policy. The model policy and guidelines should cover both the obligations of councillors and staff, and note that by virtue of their role, councillors are often approached by interested parties and inadvertently or otherwise can find themselves in a potentially compromising situation as a result of that interaction.

We offer the following inclusions for consideration:

- A requirement for councillors to disclose all meetings with lobbyists and developers, including the date, time, location, parties present and purpose of meeting.
- Inclusion of specific lobbying questions in the Annual and Update Written Returns of Interest process.
- Supporting guidelines that are clear and practical.
- Management of behaviour risk, in particular the risk of increased closeness due to frequent interactions with the same parties over time which may lead to a relationship which could give rise to a compromised position. Knowing when a line has been crossed can be difficult in these circumstances. "Keeping distance" from the outset with notes and witnessed meetings involving staff is a proactive mitigation of this risk.

Section: Dispute resolution and penalty framework

10. What level of PIN is appropriate?

PINs should be aligned with the fees earned by councillors, as set by the Local Government Remuneration Tribunal[6]. PINs should be an appropriate percentage of the monthly councillor fee that reflects the level of significance of the breach and sufficient to act as a deterrent.

It is difficult to be more specific about the level of PIN that is appropriate without a more detailed description of the circumstances that would warrant a PIN.

[6] Current LGRT Determinations | NSW Remuneration Tribunals

11. Are the penalties proposed appropriate, and are there any further penalties that should be considered?

Penalties including censure and warning need to be more prescriptive. A warning or a censure does not involve any actual consequence to the councillor where a finding of misconduct has been made. We suggest that penalties should also incorporate requirements for appropriate actions to be taken to remedy the situation, including but not limited to, formal apologies / public retractions, counselling, training and mediation.

Imposing appropriate penalties will generate the requisite misconduct enforcement consistency; ensure such matters are resolved quickly and fairly; and better deter poor behaviour and improve councillor conduct and are therefore reasonable.

Codification (by Regulation) of a Schedule of Councillor Conduct and Jurisdictional Enforcement Options as recommended in Attachment D of the *Kellar Report* (attached to this submission) will generate the requisite misconduct enforcement consistency; ensure such matters are resolved quickly and fairly; and better deter poor behaviour and improve councillor conduct and are therefore appropriate.

12. Are the existing sanctions available under the Local Government Act sufficient?

Suspension and loss of sitting fees is appropriate where warranted. Sanctions should be scaled in line with the severity of misconduct.

13. Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

We do not support the use of an adversarial system for decisions on sanctions because of the length of time it takes to dispense of a matter, which is unfair to all parties. For this reason, we maintain that decisions on sanctions should be made by the Departmental Chief Executive. The fact that a suitably skilled, experienced, delegated and independent public servant is sitting in judgement on an elected councillor is not relevant in the application of a decision to impose a sanction. In any event, the presiding officer of a tribunal or body is also a public servant.

Section: Restoring dignity to council meetings

14. Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

Further to our point in response to question 2 above, there is merit in clearly defining the duties and obligations of the higher role of Mayor within the LGA to reflect the established position of a company Chair in applying director duties obligations and consequences in the *Corporations Act*[7].

The current Model Code of Meeting Practice already includes powers for chairpersons of meetings to expel any person, including councillors, from a meeting.[8] We support the need for the mayor as chairperson to maintain full control of a meeting and have appropriate authority to address serious acts of disorder, including the power to expel which currently exists as an appropriate mechanism in that context. The addition of the power to deduct the sitting fee for the month in which the councillor is expelled from a meeting is because it directly stems from serious misconduct in that meeting context and is therefore also appropriate.

[7] See for example *Australian Securities and Investments Commission v Mitchell (No 2)* [2020] FCA 1098 at 1398 to 1426 and this summary of the Chair's role as analysed in *Mitchell*.
[8] See clauses 15.15 to 15.20 of the Model Code of Meeting Practice for Local Councils in NSW (2021).

We note that other than these powers, the power to otherwise penalise a councillor is reserved for the OLG and / or Privileges Committee which remains appropriate (noting the above comments on the proposed Privileges Committee).

Should the proposed reforms be introduced, it is paramount that there is also sufficient consequences should the Mayor misuse or abuse this power.

In addition, consideration could also be given to amending the Model Code of Meeting Practice to require that if an act of disorder has occurred at a meeting and the Mayor/Chairperson has had to issue a direction to a particular councillor(s) to maintain order, this direction should be recorded in an acts of disorder register, to be published to the council website, and include the direction outcome, councillors involved and reason for the direction.

15. Are there any other measures needed to improve transparency in councillor deliberations and decision making?

There is a compelling need to maintain and enshrine closed councillor pre-meeting briefing sessions.

Closed briefing sessions are a crucial platform for council officers and councillors to discuss in detail in a free, frank and confidential environment the matters about which councillors are required to make informed decisions on behalf of our community within a public Committee or Council Meeting environment. Public audio-visual broadcast of these briefing sessions will constrain much needed discussion on these matters and therefore limited councillor capacity to make fully informed decisions when called to do so in a council meeting. Further, closed briefing sessions ensure a safe and supportive environment for staff to be able to provide frank information and advice, as the nature of formal, open council meetings is not conducive to the same environment where information and advice can be disseminated freely and frankly. Having briefing sessions provides a forum that stimulates a healthy exchange of information and allows for the development of trusting relationships between elected members and council officers.

Additionally, consistent with the philosophy to transform the local government conduct framework to align with the current parliamentary framework, it follows that councillors should be able to engage with confidential briefings in the same manner that Ministers of the Crown receive departmental briefings which are not open to the public and are a necessary mechanism which assists ministers to make informed decisions in the public interest.

The proposed banning of closed briefing sessions also directly contradicts the century old Chatham House Rule that is widely invoked by many public and private organisations and political bodies throughout the western world.[9] This well recognised Rule aims to foster open dialogue on public policy and current affairs. It enables individuals to express and debate controversial opinions without risking their professional standing and establishes a clear distinction between personal views and those of their organisation. It allows people to speak as individuals, and to express views that may not be those of their organisations, and therefore it encourages free discussion. It is particularly useful in discussions where the subject matter is politically sensitive or when projects are still in the development stage and are yet to be revealed to the public, which is why the rule is invoked by many local government organisations. It is our submission that banning closed briefing sessions and requiring all briefings to be open to the public will stimy free discussion that will lead to less informed decisions.

[9] Institute of Directors <What does the 'Chatham House rule' actually mean? | Blogs | IoD> , 29 October 2024

Further, the Discussion Paper uses a development application example as a justification for banning closed briefings noting:

- development applications should be considered in the public domain, and
- councillors receive private briefings from council planners before they are dealt with in the public forum of a council or committee meeting thus creating a corruption risk as identified by the Independent Commission Against Corruption (ICAC) that can arise from this lack of transparency.

We note that, at least for all councils where local planning panels are constituted (of which our Council is one), section 4.8(2) of the *Environmental Planning and Assessment Act 1979* specifically states that functions of a council as a development consent authority are not exercisable by councillors. As such, there is no reason for planners to discuss individual development applications with councillors in closed pre-meeting briefings as development applications are not considered in the public forum of a council or committee meeting.

However, for transparency as to what is in fact discussed at a closed councillor pre-meeting briefing session, we do support a requirement to publish the briefing agenda and all conflict of interest declarations made in the briefing session to council's website after the briefing has occurred – something our Council currently does.

Thank you for the opportunity to make this submission. Please contact me or Anton Usher, Senior Manager Corporate Governance [redacted] should you wish to discuss any aspect of it.

Yours sincerely,

[redacted]

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Attachment 'D' – Enforcement options for councillor conduct standards

SCHEDULE OF COUNCILLOR CONDUCT AND JURISDICTIONAL ENFORCEMENT OPTIONS - NSW				
Class	**Description**	**Jurisdiction**	**Enforcement options**	**Recourse**
Type 1 - Disorderly Meeting Conduct	(a) contravenes the Act, the Regulation or any provision of the code of meeting practice adopted by the council under section 360(3) of the Act, including any provisions incorporated in the adopted code that are prescribed by the Regulation as mandatory provisions of the model code of meeting practice, or (b) assaults or threatens to assault another councillor or person present at the meeting, or (c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the council or committee, or addresses or attempts to address the council or committee on such a motion, amendment or matter, or (d) insults, makes unfavourable personal remarks about, or imputes improper motives to, any other councillor or a member of staff or delegate of a council, or (e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the council or committee into contempt.	Mayor	(a) Warning (b) Direction to retract statement and apologise without reservation. (c) Direction to cease the act of disorder and desist from repeating that act for the duration of the meeting. (d) Direction to refrain from participating in discussion or debate on business before the meeting for a specified item or specified time or for the remainder of the meeting. [This is consistent with the current power of the Chair to 'mute' a councillor's audio link at an audio-visual meeting.] (e) Direction to withdraw from the meeting for a specified time or for the remainder of the meeting	These directions shall be at the absolute discretion of the meeting Chair and not subject to a dissent motion. In giving the direction the Chair shall explain the reasons for the direction and the provision under the Model Code of Meeting Practice that has been breached. The direction and reasons will be recorded in the Minutes of the meeting. Improper use of these powers will subject the Chair to a complaint for misconduct under the relevant Part of the Code of Conduct.
Type 2 – General Conduct	**Type 2 (a) - General Misconduct** General Conduct Fairness & Equity Harassment & Discrimination Bullying WH&S Land use planning & Regulation Caucusing Serious or Repeated Disorderly Meeting conduct Generally, as provided for under Part 3 of the Model Code of Conduct when occurring other than in a council meeting environment. **Type 2 (b) – Serious Misconduct** Non-pecuniary Conflicts of Interest (Except Political Donations) Significant Non-pecuniary Conflicts of Interest Personal Benefit Improper/Undue Influence	Chair of the ICCRP subject to a report from an Independent Conduct Reviewer	(a) Dismiss as not a Code of Conduct complaint, vexatious, frivolous, insufficient to identify an offence. (b) Resolve informally or by alternative means. (c) Refer to external agency. (d) Refer to ICAC (e) Subject to investigation: • Dismiss the complaint as unsubstantiated. • Where the complaint is found to be substantiated – - Formal censure of the Councillor. - Suspension or removal of the Councillor from a position representing the local government other than the office of councillor.	In respect of Option (e) an aggrieved party may seek review of the matter by OLG but only on grounds of denial of natural justice.

SCHEDULE OF COUNCILLOR CONDUCT AND JURISDICTIONAL ENFORCEMENT OPTIONS - NSW				
Class	**Description**	**Jurisdiction**	**Enforcement options**	**Recourse**
	Relationships with officials Access to Information /Council resources Repeated acts of General Misconduct Misuse of Disorderly Meeting Conduct powers by Mayor or Meeting Chair. Generally as provide for under Parts 5,6,7 & 8 of the Model Code of Conduct.		- Direct the Councillor to make public admission and apologise unreservedly. - Direct the Councillor to attend training or counselling to address conduct. - Direct the Councillor to refrain from repeating the same or similar conduct. - Direct that the Councillor be suspended from attendance at Council meetings for a nominated period of time or number of meetings, in accordance with ICCRP guidelines. (f) Subject to an investigation report refer to OLG for direction • Matters re Part 4 of the Code of Conduct • Matters re Part 9 of the Code of Conduct • Serious or repeated Type 2 breaches. • Failure of the Councillor or the Council to implement the recommendation or direction of the ICCRP Chair. (g) In addition to or in place of any of the above refer the matter to the Commissioner for consideration or direction as to further action. E.g. in the case of repeat or serious offences. (h) Where a councillor is found to have breached the Code of Conduct for a third time during the Council term, direct the councillor to reimburse the council all or some of the cost of the investigation according to the Commissioner's guidelines	

SCHEDULE OF COUNCILLOR CONDUCT AND JURISDICTIONAL ENFORCEMENT OPTIONS - NSW				
Class	**Description**	**Jurisdiction**	**Enforcement options**	**Recourse**
Type 3 – Integrity Issues	Pecuniary Interest Significant Non-pecuniary Interest Political Donations Integrity of the Code Generally as provided for under Part 4, Parts 5.10 and 5.15 and Part 9 of the Model Code. Other matters submitted for direction from Independent Councillor Conduct Review Panels	Councillor Conduct Commissioner	All powers previously available to OLG under relevant legislation (with some amendments). Namely: • counsel the councillor • reprimand the councillor • direct the councillor to cease engaging in the misconduct • direct the councillor to apologise for the misconduct in a specified manner • direct the councillor to undertake training • direct the councillor to participate in mediation • suspend or remove the Councillor from a position representing the local government other than the office of councillor • suspend the councillor from civic office for a period not exceeding 3 months (with or without remuneration) • suspend the councillor from attendance at or participating in Council or Committee meetings for a period not exceeding 4 months (with or without remuneration) • require the councillor to reimburse all or some of the cost of the investigation according to the Commission's guidelines • in addition to, or in place of, any of the above, refer the matter to NCAT for its consideration or direction as to further action.	Appeal to NCAT as available under relevant legislation.
Type 4 – Corrupt Conduct	As defined in Part 3 of the ICAC Act 1988	ICAC	All powers available to ICAC under relevant legislation.	Appeal as available under relevant legislation.

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26 November 2024

DUBBO REGIONAL COUNCIL

To whom it may concern

SUBMISSION – COUNCILLOR CONDUCT FRAMEWORK REVIEW

Dubbo Regional Council (DRC) supports the majority of the proposed reforms outlined in the discussion paper. A recent report provided to the October 2024 Ordinary meeting of Council showed the comparative costs to its community for DRC in regard to Code of Conduct complaints (assessments and investigations costs) over recent years, as follows:

Reporting Period	Number of Code of Conduct Complaints Received	Total Expenditure
2020/2021	55	$236,000.00
2021/2022	9	$61,392.60
2022/2023	4	$16,170.00
2023/2024	4	$13,868.25

The costs incurred in the 2020/2021 financial year represent excessive complaints as a result of dysfunction within council, compared to more normal periods which followed. When councillors or community weaponise the Code of Conduct through public calls for lodging of Code of Conduct complaints, this leads to a significant lodging of complaints and the process takes so long that it is ineffective at changing behaviour. Of the 55 complaints received in 2020/2021, there were very few meaningful outcomes for the community, despite the costs incurred by investigation of those complaints.

The proposed reforms aim to increase the effectiveness of the Code of Conduct process, including timely and meaningful outcomes. Following the lived experience at DRC, this is highly supported and was echoed by the current elected body during the Corporate Services Committee meeting held on 12 November 2024.

<u>Privileges Committee</u>

The proposed Local Government Privileges Committee is well supported by staff and the current elected body as a more efficient mechanism than currently exists.

Council also requests that public calls for inappropriate use of Code of Conduct complaints to create political pressure should also be considered by a Privileges Committee as against expected behaviours.

All communications to: **CHIEF EXECUTIVE OFFICER**
ABN 53 539 070 928
PO Box 81 Dubbo NSW 2830
T (02) 6801 4000 **F** (02) 6801 4259 **E** council@dubbo.nsw.gov.au
Civic Administration Building Church St Dubbo NSW 2830
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Whilst there would be no role of privately hired investigators, used to avoid a conflict of interest currently, it is assumed that the cost of the Privileges Committee would be worn by the Council concerned. It would be a positive outcome for councils to have indicative costings available to understand the cost of the new framework.

Misbehaviour

The proposed reforms also concentrate on a clearer definition of misbehaviour, being a three-limb approach to defining misbehaviour, which has merit and seems appropriate conceptually to address matters not captured by existing legal definitions or case law.

The proposed 'Dispute resolution and penalty framework' is also supported, as the two-step process requiring initial consideration by the General Manager/CEO or Mayor creates an opportunity for conflicts of interest to be realised and as described in the OLG consultation document, is currently overly slow.

Issuing of PINs

The proposed reforms include OLG having the discretion to issue a PIN for minor breaches of conflict of interests; ideally to streamline the management of these complaints. The issuing of PINs would also offer a direct "consequence" for failing to declare conflicts (hopefully improving community confidence in the process) and potentially serve as a deterrent or learning opportunity for individual Councillors.

The discussion paper seeks feedback on "What level of PIN is appropriate?" for a breach that is minor or administrative in nature. DRC suggest a category of breaches/penalties similar to driving offences illustrated below could be an effective way to manage these complaints with definite and timely outcomes (with an escalation point depending on multiple PINs etc):

Offence	Penalty notice fines	Points	Double demerits?	Law
Vehicle lights	$136	1	No	Road Rules 2014
Drive during period of darkness without prescribed lights				Rule 215-1 (1)

Restoring dignity to council meetings

Whilst there is much subjective commentary in this chapter on the rationale for proposed reforms to the Model Code of Meeting Practice it is a more appropriate statement to add "and maintain" to the statement "to restore the prestige and dignity of the council chamber." As with many policy settings, these are created for the non-compliant cohort but apply to all. A larger

percentage of councils would need to maintain the formalities of the chamber, with a smaller cohort have reached a stage of dysfunction or disrespectful debate thereby needing to "restore".

Dubbo Regional Council's Code of Meeting Practice (follows the Model Code) already requires Councillors, where physically able, to address the meeting standing.

DRC does not require Councillors to stand when the Mayor enters the room. This practice was implemented previously and also abandoned depending on the Mayor of the day. The current Mayor also supports abandoning this practice and made comments to that effect on the floor of the last Committee meeting when considering this matter.

Banning of workshops and briefing sessions

In regard to banning briefing sessions, it is acknowledged that there has been misuse by a limited number of councils as per the findings of ICAC. However, in DRC's case, the pre-meeting briefings are booked for one hour immediately prior to the meeting and are procedural in nature and chaired by the CEO as opposed to the Mayor/Councillors. The briefings allow for clarification or requests for more information so staff can prepare further information ready for the Council meeting. There is strictly no debate on matters and no decision making.

The current briefings are a valuable resource to the elected body where procedural questions and clarity on the Code of Meeting Practice can be provided, as well as providing individual assistance to Councillors on potential alternative motions and report authors answering questions so Councillors can participate in extensive debate during the Council meetings.

A further concern is workshops and if they would be caught in the legislative definition of pre-meeting briefings. Councillors come from a wide variety of backgrounds and experience, noting that candidates for local government elections are not required to have any pre-set or formal qualifications. In the regional context, the services provided by Council include more than the typical roads, parks, childcare, libraries, pools etc. Dubbo Regional Council is a water and sewer utility, provides an RPT airport that is home to an emergency service hub, one of the major livestock markets in Australia and a natural karst (caves) system of national significance. It is a very diverse and complex service business to community. To expect councillors, and particularly new councillors, to understand the details of a technical matter and only gain information from council meetings would not be amenable to good decision making in the chamber.

These comments were emphasised by Councillors during the last Committee meeting and it was outlined how valuable the education and information provided during these workshop settings is, for context and then for decision making capabilities.

Take the example of the procurement of utilities such as electricity. It is a much more complex procurement than twenty years ago, being a specialist market created by government policy that requires councillors to be given the opportunity to understand its detailed nuance prior to a

council meeting determining the outcome of a tender that also addresses policy settings such as Net Zero targets for both council and the state. Previously, a council would just have one option to purchase power from and there was no consideration of moving to Net Zero targets. The legislative and regulatory frameworks are much more complex than even a decade ago.

The purposeful or unintended banning of workshops that are intended to create understanding on complex issues that will be brought to a future decision of council would harm the local government sector in terms of informed decision making. It is arguable that the government body would be at risk of automatic deferral to specialist advice of staff without due consideration.

Briefings and workshops have value for decision makers of the elected body. The subjects to be discussed in briefings or workshops should be viewed through a risk management lens ensuring no decisions are made and there is a significant reduction in corruption opportunity as has been realised in some metropolitan based councils. In this regard, it is accepted that matters such as planning approval matters could be prohibited in briefings.

Equal distribution of information

The community should have confidence in the decision-making body of council. These briefings and workshops educate the group of elected members and broaden their understanding of the range of infrastructure that council maintains, which they would not otherwise have knowledge of, nor are they expected to.

Workshops ensure the equal distribution of information, think classroom style with all councillors receiving the same information and participating in the same open discussion; compared to individual councillors or groups of councillors receiving different/more/less information.

It is acknowledged that the mayor, by nature of the role, must have access to more information at a point in time than fellow councillors. However, arising from dysfunction during the 2017/2021 term, Dubbo Regional Council has a policy that requires staff to share information equally with all councillors. This addressed the risk that a Mayor and/or General Manager/CEO could manipulate access to information to achieve an outcome in the chamber at the expense of good governance and decision making. In legislating to manage the risk of pre-meeting briefing sessions, there should be consideration given to legislating/regulating the requirement to share information equally unless evidence exists of breach of confidentiality and legal privilege by a councillor or councillors.

Public Forum

Whilst the DRC community have been respectful when speaking at public forum, including when being corrected by the Chair as to the appropriate behaviour required by the Code of Meeting Practice, the proposed reforms allow for expulsion for public disorder and an issuing of a PIN would provide the foundation to ensure good behaviour could be enforced.

Summary

Dubbo Regional Council supports many of the proposed reforms as described in the above submission, however, asks that OLG maintain the ability to hold briefings and workshops (in some form) to ensure the open and equal distribution of information to all councillors and allow the provision of information from staff to the elected body so councillors have the confidence and information required to make well informed decisions in the chamber.

Yours faithfully



Murray Wood
Chief Executive Officer

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26 November 2024

Office of Local Government
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NOWRA NSW 2541

To whom it may concern

Response to discussion paper - Councillor conduct and meeting practices – A new framework

Wagga Wagga City Council (WWCC) appreciates the opportunity to provide the following submission in response to the Office of Local Government's discussion paper titled "Councillor conduct and meeting practices – A new framework".

Overall, we welcome the recognition of challenges faced by local government under the existing councillor conduct framework. While there is general agreement regarding some of the intent outlined in the discussion paper, we have a number of concerns we would like to provide feedback on.

Council's feedback on the discussion paper has been made by responding to the key headings/subjects, rather than specifically answering the questions posed.

We thank you again for the opportunity to provide feedback.

Regards



Clr Dallas Tout
Mayor



Peter Thompson
General Manager

Principles of change

Council is generally supportive of the principles of change that have been prepared to guide discussion and the intention of changes.

Code of conduct and oath of office

The intent of this change appears to be ensuring that a code of conduct for Councillors will not be a document with any enforceable standards of conduct. Even if the approach is to dilute and disintegrate any notion of enforceable conduct standards from elected members, this same code of conduct is currently used to guide and enforce standards of behaviour from Council staff. It works very effectively in this regard.

The Local Government Act 1993 clearly defines councillor misconduct as a breach of the Act, the regulations, or the code. The code provides a detailed overview of the specific behaviour that constitutes misconduct. The proposed amendments to this framework will add complexity and is unlikely to result in a more streamlined and easily understood system.

It would be regressive to dilute standards of behaviour demanded of Councillors. The key issue for this question is not aligning the code to the oath – it is diluting the code to something that has no standard to which people can be held accountable and the follow on effect of that change in relation to staff standards of behaviour and accountability.

Where the discussion paper suggests enabling Councillors to be 'critical' of the decisions of the majority, consideration should be given to the potential risks, including how this might undermine community confidence in the Council as a whole. Recognising that Councillors have a right to speak publicly on matters pertaining to their Council – the debate in the Chamber and decision making process already provides that opportunity. Councillors should be empowered to justify and explain their reasons for voting, however, should remain respectful of Council's final decision.

Conflicts of Interest

It is concerning that we see an intent to dilute the standards which apply to pecuniary conflict of interests. It would seem that it will be acceptable for Councillors to accept gifts of a cumulative value of $499. This is not the standard that should apply to Councillors or staff. Again we have potential have a weakening of standards of conduct, gifts and benefits unfolding in NSW Local Government.

In relation to non significant interests, there would seem to be no particular benefit from the discussion paper commentary. Yes it is a grey area, but there has been a reasonable definition around the concept previously.

Real estate agents and developers

Requiring a particular cohort in our community, defined by their source of income and work, to be deprived of that income and work in order to serve the community which elected them to office should be rejected.

The concept has no merit in a democratic society. The answer to the conflict issue, which certainly exists, is that any councillor who has a pecuniary interest in the development industry (including through family members) must be excluded from every item of business that relates to development and building.

Councillor misbehaviour

Behaviour which is unacceptable in a professional workplace should not be considered appropriate for elected members. If poor behaviour is supported it starts us down a path where there is little or no respect for elected members in any tier of Government. Councillors should be held to the same behavioural standards expected of staff.

Privileges Committee

The proposal for current NSW Mayors and ex-Mayors to make up the Privileges Committee that addresses behavioural complaints may not be appropriate. Firstly, the political motivations or relationships of Mayors and ex-Mayors have the potential to influence decisions on councillor behaviour, which automatically strips the panel of its impartiality. Secondly, Mayors and ex-Mayors may not be suitably qualified or trained to pass judgement on their peers. The idea to have a single centrally managed panel (Privileges Committee) to focus on behavioural complaints is a good idea, especially from a cost perspective, however panels should be comprised of independent, suitably qualified individuals.

Regardless of its membership, the OLG should have an open and transparent process for the selection and appointment of committee members and ensure there is a regular cycle of membership renewal.

Addressing inappropriate lobbying

Wagga Wagga City Council already has a lobbying of Councillors policy in place to guide the conflict of roles that may arise when Councillors receive representations from special interest groups, individuals with a direct interest in a council decision or by advocates acting on behalf of others seeking the Councillor to represent their interests in a matter before the council.

Appropriate lobbying of Councillors is normal and is part of the democratic process. However, It is in the public interest that lobbying is fair and transparent and does not undermine public confidence in impartial decision-making. Councillors should take care that their duty to consider issues fairly and properly is not compromised by participating in lobbying practices that are outside the bounds of appropriate or lawful behaviour.

Abolishing the ‘two step process’

The two areas of review and sanction have some merit noting the comments above in relation to the constitution of the Local Government Privileges Committee.

The distinction between conflicts of interest and misbehaviour is sensible. There is a third area where elected members have a workplace health and safety impact which should be addressed but it is not.

Again, this just reflects the lower standard of behaviour which is expected and supported from elected members. Hopefully in the future we can lift this bar and so lift the respect for elected members in the community.

Penalty infringement notices (PINs)

The suggestion of PINs is not supported. Government leadership should not be viewed like a personal area of endeavour like driving, business compliance or maintaining the peace.

A mistake should be treated as just that. Behaviour which engages conflicting interests or poor conduct in elected officials should result in suspension or removal from that office. It is that simple.

Referral of significant sanctions to appropriate tribunal or body

This point is supported provided that the Tribunal and the OLG is resourced to deal with the issue in a prompt manner and that the Councillor pays all the costs of the Tribunal if the requested sanction is opposed by the Councillor and they are unsuccessful.

Restoring dignity in Council meetings

Expulsion power by the Mayor is supported, however forfeiting the monthly fee is not supported. The requirement for apology and consequences is also supported.

Expelling members of the public is supported. Issuing a PIN to members of the public is not supported and this should be dealt with by police charges for an act of disorder.

The requirement to stand when addressing the meeting and /or when the mayor enters should be a matter to be determined by the Council – not required by mandate. It is difficult to contemplate how this would assist in restoring dignity.

Banning Briefing Sessions

This suggestion is not supported in the strongest possible terms.

Transparency in local government is critical to maintain trust within the community, however briefing sessions outside of the public meeting process should be permitted within a clear framework. It is important that Councillors feel safe to ask questions and understand alternate views or solutions to an issue. It is also important that Council officers can provide detailed background information to Councillors in relation to matters that may come before them. This process of becoming fully informed cannot be achieved within the formality of a Council Meeting and banning briefing sessions may ultimately delay timely decision making.

This single proposal will undermine and weaken government across NSW to the detriment of the people of NSW. It will deliver poor decisions and compromise good government. The express authorisation of the Mayor being briefed in direct contrast to other elected members simply punctuates the absurdity of the proposal.

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26 November 2024

Mr Brett Whitworth
Deputy Secretary Local Government
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Via email: councillorconduct@olg.nsw.gov.au

Dear Mr Whitworth

Councillor Conduct Framework Review

Richmond Valley Council welcomes the opportunity to provide feedback on the *Councillor conduct and meeting practice – a new framework' discussion paper*. Like many councils in NSW, we share the view that the current Councillor conduct framework would benefit from simplification and that there is room for some improvement in the Code of Meeting Practice. However, we do not believe that the piecemeal, disjointed and, at times contradictory approach outlined in the discussion paper will bring any tangible benefit to local councils and the communities they serve. These reforms are more likely to make things worse, as many of the proposals are ill-conceived or unworkable, adding additional layers of complexity and potentially driving further division amongst elected representatives.

Neither does Council accept the discussion paper's assertions that local councils need to 'have local democracy and dignity returned to their operations'. We don't believe they ever left, and there is no evidence presented in the paper to suggest otherwise. Rather, the issues highlighted in the discussion paper would suggest that state government has a limited grasp of how to regulate the local government sector effectively and consistently fails to understand that respect, dignity and responsible decision making cannot be contrived by endlessly rewriting the book of rules. Meaningful change comes when councils themselves are willing to change – to set personal interest and politics aside and put their community first. We believe that many councils, including Richmond Valley Council, already work effectively in this way - which is evidenced by the fact that a significant proportion of the sector consistently records no Councillor Code of Conduct complaints each year. These councils should not be penalised and impeded by the complexities of now proposing two separate codes of conduct and the vagaries of the pick-and-mix review of meeting practice presented in the paper. There is a risk of focusing excessively on the poor behaviour in a minority of councils to the detriment of those who are simply getting on with the job of serving their community.

Is the system really broken?

The proposed reforms in the Office of Local Government discussion paper are based on the assumption that the current system is broken. In opening comments entitled 'Returning local democracy to councils' the discussion paper makes the following assertions: *"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 that councillors have. Closed council briefing sessions are being used to make decisions away from the public view. Council debates on issues are too often personal slanging matches, rather than forums for robust but respectful discussions on what is best for the community".*

We question these assertions, as they are not the lived experience of Richmond Valley Council and many others in regional NSW. Many regional/rural councillors have earned the respect of their communities through long periods of service to local government, involvement in community organisations and strong advocacy for local needs and priorities. This commentary denigrates the contribution they have made to their communities by suggesting that local government is beset by secretive and dysfunctional leadership. This is simply not the case in most councils. Our council does not make 'secret decisions'. It operates respectfully and efficiently, within the requirements of the *Local Government Act 1993* and the current model codes.

Although the paper is quick to point out that there have been some 4,289 Code of Conduct complaints across the sector over the past three years, it fails to substantiate this figure, or to mention that there are a significant number of councils, including Richmond Valley Council, who record no Code of Conduct complaints against Councillors annually - in fact, Richmond Valley Council has had no Councillor Code of Conduct complaints for the past eight years.

Council is at odds to understand the origin of the complaints figure quoted in the discussion paper, as it does not tally with the figures published on the Your Council website, nor with the annual Time Series Data published by the Office of Local Government. There are significant disparities in this data. Based on publicly available data, only a handful of councils recorded high numbers of annual complaints. These are aberrations that do not reflect what is going on in the local government sector. A small number of councils get the headlines for all the wrong reasons - the rest of the sector gets on with the job.

Rather than totally rewriting the Code of Conduct and reconfiguring the framework, the Office of Local Government should use its early intervention powers more consistently and strategically to deal with rogue councils who are bringing the sector into disrepute. There is clearly something going wrong with the governance of these councils and the rest of the sector should not pay the price of a 'one size fits all' response.

Changes to the Code of Conduct

While Council agrees that the current Code of Conduct, the procedures for implementing the Code and the framework that supports it would all benefit from simplification, it is concerned by the proposal to introduce a second aspirational code for elected officials, while continuing to apply the existing code to council staff. As many Code of Conduct complaints involve interactions between elected representatives and staff, how does the Office of Local Government envisage this will work? Under these provisions, two separate standards under two separate instruments would potentially be applied to the same occurrence within the same organisation. If the NSW Government is seeking to simplify the rules of conduct, then it should do so consistently across the entire sector, in consultation with councillors, council staff and the community.

The key reform for the conduct framework, proposed in the discussion paper, is to move to a streamlined, aspirational Code of Conduct for local councillors that is equivalent to that applied to members of the NSW Parliament. This fails to recognise the fundamental differences between state and local government in NSW. Firstly, local councils do not enjoy the protection of Parliamentary Privilege, and this directly impacts the manner in which debate must be conducted. Statements made by members of the NSW Parliament in the House cannot be made the subject of an action for defamation. Statements made by local Councillors are not protected in the same manner. Higher levels of government also acknowledge that serving as an elected representative is a full-time occupation and local members and Ministers are paid a professional wage and afforded the support, they require to carry out their duties. Local Councillors are not afforded a living wage and are obliged to balance their public duties with

their existing employment or business activities. This introduces greater complexity to the manner in which they carry out their role. The two levels of government also operate at vastly different scales, and the impacts of behaviour are therefore not the same. There is a significant difference between the impacts of a local State Member expressing his or her criticism of a decision made by the majority to an audience of 8 million NSW residents, and the impacts of one of seven local councillors openly criticising the decisions of colleagues in a small country town where there are long-standing family connections and co-dependencies.

Council is particularly concerned by the discussion paper's assertion that "*the revamped Code of Conduct would not seek to restrain the ability of a Councillor to speak publicly on matters pertaining to their council, even when that Councillor is disagreeing with, or being critical of, the decisions of the majority"*. This only drives division in small communities and encourages 'trial by social media' rather than rational and respectful discussion. The basic premise of democracy is that the majority decision is respected, and this should be reflected in the behaviour of elected representatives, regardless of their personal views.

Council is also concerned by the proposal to remove the definition of misbehaviour in public office from the proposed new Code and attempt to embed it in legislation. While we accept it is possible to define issues such as what constitutes conflicts of interests, attempting to legislate what constitutes 'the pub test' is fraught with peril. Moral and ethical standards are subjective and culturally sensitive. What one person believes is 'outside the norms and expectations of a sitting councillor may be different to the views of another. Adding the further complexity of referring misbehavioural matters to a Privileges Committee, comprised of local government leaders (who may themselves have exhibited these behaviours in the past) may render this process unworkable. The discussion paper contains limited detail as to how the committee would operate, how members would be appointed and held accountable and who would cover the cost of its operations. There are concerns that if the current level of conduct complaints continues, the committee would be overwhelmed with the workload. Council believes that the role of the Privileges Committee should be carried out by an independent body, rather than those who have established relationships within the local government sector.

Council is supportive of improving the definition of pecuniary interest and separating review of conflicts of interest from review of allegations of misbehaviour, with the former being investigated by the Office of Local Government. Investigating these matters currently places a significant administrative burden on local government and Council believes these investigations are best managed by the sector's regulator. However, given the paper's observation that some Office of Local Government reviews are currently taking up to two years to complete, there are concerns that issues may not be resolved expediently.

There are also concerns about the proposed approach for management of potential conflicts of interest for property developers and real estate agents. The paper takes the view that excluding developers and agents from standing for office would be undemocratic, as it infringes their right to political free speech, however it appears to have no concerns with infringing on their right to earn a living by insisting they divest themselves from real estate or development business activities and contractual obligations. How does the Office of Local Government envisage this will be monitored and enforced? In a repeat of the same flawed policy approach that introduced breed-specific regulation to the Companion Animals Act and condemned councils to endless and expensive arguments over what can or can't be classified as a Pitbull terrier, the Office of Local Government now wants to open endless arguments over what can or can't be classified as a property developer. These proposals simply won't work. All elected officials who undertake business activities outside of their council duties have the potential to encounter pecuniary conflicts of interest and all should have the same provisions for effectively managing them.

Restoring dignity to council meetings

Council has a number of concerns with the proposals in this section of the discussion paper. Firstly, with the assumption that dignity has left the council chamber and secondly with the misguided belief that it can somehow be returned by requiring people to stand up and sit down in a council meeting. Local government is the most directly representative level of government, embracing a range of different cultures, abilities and beliefs across many communities. In this regard, we need to be cautious of imposing protocols that may potentially further exclude people with mobility challenges or be incompatible with the cultural practices of indigenous communities or people from diverse backgrounds. What is perceived as a sign of respect in one culture, may be perceived as something entirely different in another. We believe Councils are in the best position to make the judgement on appropriate meeting protocols that are reflective of each community's unique identity and cultural norms.

Council's main concern with this section of the paper is the piecemeal nature of the proposed council meeting reforms, without the rigor and broader context of a thorough review of the Code of Meeting Practice. The proposals to give mayors extra powers to expel other councillors and withhold their fees are ill-conceived, divisive and potentially open to political misuse. For councils to work effectively, they need to work as a team - and handing out financial penalties and sanctions to your colleagues may not be the best way to achieve this. The discussion paper raises concerns with the Code of Conduct being weaponised, yet then proceeds to do the same to the Code of Meeting Practice. This is out of step with the underpinning principles of the reforms. Financial penalties are best imposed by an appropriate independent body, rather than handed out by individuals in the heat of the moment.

Proposals to ban confidential briefing sessions

Richmond Valley Council has significant concerns with the proposal for a wholesale ban on confidential briefing sessions, based on the assumption that 'decisions are being made in secret'. Councils throughout NSW strongly refuted this assumption at a recent local government forum, pointing out that the majority of councils currently use confidential information sessions to ensure Councillors are well prepared and supported to make informed decisions about matters that will come before the open council meeting. They are not decision making forums.

Richmond Valley Council provides confidential information sessions once a month where Councillors can engage in open discussion on sensitive matters, receive legal advice, or obtain technical information from Council officers on matters that are then on the open council agenda. Rather than condemn these sessions as 'secretive', Office of Local Government should be commending Councillors for taking their responsibilities seriously and giving up their time to ensure they are well prepared to make objective decisions. This is a better approach to local leadership than staging public open-mike sessions prior to meetings, with last-minute emotive pleas on issues, or having to constantly reschedule meetings because the business before Council cannot be completed within the available time. Responsible use of information sessions results in efficient council meetings, with well-informed debate.

Traditionally, all levels of government have recognised the need to create a 'safe space' where elected representatives, particularly those who are new to government, can ask questions, seek information and discuss strategic direction, before bringing these matters into the public forum. This format allows open discussion without the need to constantly close the meeting if confidential matters arise. The NSW Government achieves its 'safe space' via the Cabinet process where elected leaders, including the Minister for Local Government, regularly meet behind closed doors to discuss policy matters and develop strategy.

The agenda for these meetings, the briefing notes that Ministers receive, and the minutes of the proceedings are not released to the public.
Councils believe they deserve the same safe spaces to support effective governance. Local government is the most accessible form of government to the community and there are many opportunities for residents to speak directly with their elected representatives, participate in council meetings and receive direct consultation on matters that affect them. Council briefing/information sessions have a role to play within the broader context of local government operations and shouldn't be singled out for targeted reforms to the Code of Meeting Practice. This form of knee-jerk and piecemeal approach to reform is an underlying theme of the discussion paper that deeply concerns our Council.

Councils throughout NSW support responsible governance and acknowledge the need to adequately address councillor misbehaviour and poor meeting practices. However, we believe the best way to achieve this is by thorough, systematic review of the instruments currently at hand – i.e. the Code of Conduct and the Code of Meeting practice, rather than offering up a patchwork of disjointed reforms in a light-weight discussion paper in the midst of a local government election. These matters are too important to our communities to be rushed through without due consideration and consultation.

In closing, Richmond Valley Council would urge the Minister and the Office of Local Government to rethink its current approach before attempting to implement the one-size-fits-all solutions proposed in the discussion paper. We believe the majority of councils in NSW would welcome a respectful conversation on these matters.

I would be happy to discuss these views in further detail should the Office of Local Government and Minister decide to review its approach to implementing these reforms.

Thank you for taking the time to review our feedback on this Discussion Paper.

Yours sincerely



Vaughan Macdonald
General Manager

Woollahra Municipal Council

Council Ref: *24/217306*
Your Ref:

26 November 2024

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Via email: councillorconduct@olg.nsw.gov.au

Councillor Conduct Framework Review

The NSW Minister for Local Government, The Hon. Ron Hoenig MP and the NSW Office of Local Government (OLG) are to be applauded for looking to address the Councillor conduct framework in NSW. We sincerely appreciate the opportunity to be able to make a submission on the proposals put forward in the discussion paper titled *Councillor conduct and meeting practices – a new framework*.

At the Council meeting held on Monday 25 November 2024, Council resolved the following:

THAT Council:

A. *Endorse the submission to the Councillor conduct and meeting practices – a new framework discussion paper as included in this report, subject to any amendments made to the submission at this Council meeting.*

B. *Authorise the General Manager to lodge the submission referred to in Part A above, on behalf of Council by 29 November 2024.*

In light of the above Council resolution, please find following the Woollahra Council submission. This submission makes a range of general comments throughout and also responds to the specific questions asked within the discussion paper. Please note that the questions have been numbered simply for ease of reference.

General Comments:

Whilst we applaud the review of the conduct framework being undertaken, the timing of the review has not been at all appropriate. The discussion paper was released during the local government election caretaker period and some 9 days before the actual election. This has left very little time post the election for newly elected Councils to fully consider the discussion paper. We have appreciated the OLG approving a two week extension of time in which to lodge our submission, but into the future, we would request due consideration be given to the timing of release of such critical documents that require feedback.

It is generally agreed that the current Code of Conduct (the Code) and the way it is structured and enforced, enables too many potentially frivolous complaints to be made about Councillors. However, we have little confidence that moving to an aspirational Code that will not be enforced, will in fact see any reduction in the number of frivolous complaints being made.

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We acknowledge the Gadigal and Birrabirragal people who are the custodians of this land and we pay our respect to Elders past, present and emerging.

When it comes to misbehaviour, the discussion paper seems to focus much of its attention on misbehaviour that occurs in the Council Chamber. Whilst there is no doubt that there are a range of behaviours demonstrated in Council Chambers across NSW, many of the instances of what could be considered misbehaviour, happen outside of the Council Chamber i.e. through interactions via social media and the like. It is not clear from the discussion paper how instances of misbehaviour outside of the Council Chamber will be managed, noting that the revised Code is to be aspirational only and not enforceable.

The discussion paper states that there are too many decisions being made behind closed doors, however there is little evidence provided in the discussion paper that supports this. There is one reference in the discussion paper to DA's being decided behind closed doors, however at a large number of Councils in NSW, Councillors no longer play any role in determining DA's. The question must then be asked on what basis are the assumptions being made that too many decisions are being made behind closed doors?

Councillor briefings and or workshops are one of the most valuable tools currently available to Councils for discussion on a range of matters. To blanket ban briefings would be a backward step that may in fact prevent more open discussions taking place in any public forum. The banning of briefings is considered to be a particularly odd recommendation when the State government has Cabinet briefings on a regular basis and these are confidential. Why should local government be held to a different and higher standard than State government?

The discussion paper mentions at the bottom of Page 5 that there is bad behaviour amongst a limited number of Councillors, so this begs the question as to why the entire framework requires revision in the manner being contemplated. Perhaps it would be more opportune to look to reinforce certain parts of the existing Code and ensure that sanctions that can be applied are adequate and enforceable, or improved if required.

Whilst Council appreciates the efforts of the OLG and the Minister for Local Government in undertaking this review, it is feared that moving to an aspirational Code only, with minimal enforceability, will see little reduction in the number of Code of Conduct complaints lodged. One of the key criticisms of the existing Code is that it lacks any real teeth, so moving away from the current version of the Code that could in fact be improved upon (by incorporating greater and more enforceable sanctions), to an aspirational Code, does not necessarily automatically signal that behaviours will improve.

Further to the above, an aspirational Code for Councillors, unless enforceable, risks being meaningless. Unless a Code is addressing things like complying with the law, with WHS requirements, with how to interact with Council staff and the public, then it will have little meaning. Leaving so many things undefined in a new Code may lead it to becoming an ineffective tool for managing Councillor behaviours.

There are some parts of the discussion paper that appear to intertwine Code of Conduct issues with the Code of Meeting Practice. Clearly there are links between the two documents, but they are not the same document and they serve very different purposes. Therefore it is hoped that when further information is provided in relation to any new draft Code of Conduct and Code of Meeting Practice, that they are well defined, with appropriate linkages formed as required, whilst keeping the intent of both documents very clear and separate.

Following are responses to the specific questions asked throughout the discussion paper, noting that we have chosen to number the questions, simply for ease of reference throughout this document:

What are the principles of change?

Question 1)

Are we missing anything in the principles of change?

Response:

It is considered that there should be a principle around the responsibility Councillors have to create and promote a safe working environment that supports the respectful interaction between Councillors and Council staff i.e. in line with the Work, Health & Safety (WHS) legislative obligations of Councillors.

The Code should require all Councillors to engage in respectful interactions with fellow Councillors, the General Manager, Council staff and the public. This should include refraining from baseless or exaggerated criticism in public forums, which can negatively affect organisational culture, undermine the individuals being criticised and increase psychosocial risks. Such behaviour can also polarise the community, heighten hostility, and lead to unwarranted attacks on the institution of local government, ultimately weakening public confidence in the Council.

Robust debate between Councillors and good questioning of Council Officers on the reports that have been presented to Council should be performed in a respectful way that engenders open conversation and debate, so that the best decisions are made. The debate should focus on the topic, matter or Policy, not on the person expressing their view point, nor on public officials carrying out their statutory responsibilities. Any participants that are aggressive and display poor behaviour should not be allowed to intimidate other participants into an outcome or to be able to stymie debate

Under Freedom of Speech, it is agreed that Councillors should be free to speak about issues affecting their local community. However, Councillors must still be bound by the Code i.e. where the Mayor is the spokesperson for the Council and where they are still bound by the decisions of Council.

Potential changes to the code of conduct and oath of office:

Question 2)

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

Response:

a. It is understood that the Code referred to in the discussion paper that is in place for NSW Members of Parliament, is supported by the ICAC Amendment (Ministerial Code of Conduct) Regulation 2014, which effectively gives the Code its teeth. In light of this, there should be a similar regulation in place to support this aspirational Code for Councillors.

b. There need to be definitions of misbehaviour included in the new Code. It should be noted that the Councillor Handbook provided by the OLG lists some appropriate and inappropriate behaviours (Page 35) that could be incorporated into the new Code. Plus, the current Code includes a detailed range of statements relating to what behaviours are and are not acceptable, meaning that these definitions and statements could be easily transferable into any new Code.

c. There is definitely merit in having two Codes of Conduct, one for staff and one for Councillors, but as per some of the earlier points, the Code for Councillors needs to be enforceable. The discussion paper offers no explanation as to why local government should move from an enforceable Code, to a non-enforceable Code.

d. Further to an earlier point, any guidance provided to Councillors around the freedom to speak publicly on matters (even if they are disagreeing with the position of Council), will need to be well worded and closely monitored, as this could take away from the authority that the Mayor has as the spokesperson for Council.

Question 3)

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

Response:

General agreement that the Oath of Office should be aligned to the revised Code and that Councillors should be reminded of the requirement to uphold the Oath of Office during their term.

Potential changes to the definitions and assessment of councillor misbehaviour:

General Comments:

a. There is general agreement around including the definitions of misbehaviour in the LG Act. Having said that, there are three 'limbs' to the proposed definition of misbehaviour included in the discussion paper (see Page 12), being:

   i. Is unbecoming of a Councillor
   ii. Brings Council into disrepute and / or
   iii. Is assessed as being outside the norms and expectations of a sitting Councillor

   However, these 'limbs' are in need of further explanation and definition, prior to them being embedded in any new Code. As detailed above, the current Code includes a detailed range of statements relating to what behaviours are and are not acceptable that could be easily transferable into any new Code or the Local Government Act.

b. There is support for the OLG to be given more powers and corresponding resources (financial and people), to investigate corporate structures etc. along with the ability to issue Performance Improvement Notices (PIN's).

c. With regard to Councillors needing to divest themselves of real estate or development business activities; it would be good to understand the timing in relation to what stage of the process of a Councillor being elected, would they need to divest themselves of such real estate / developments i.e. only upon formal election, or at the candidate stage? Further to this, how long would a Councillor be given to divest themselves of such real estate?

Pecuniary Interests:

Question 4)

Is the proposed pecuniary interest framework appropriate? Is anything missing?
Response:

The OLG is not necessarily the appropriate body to deal with pecuniary interests. Many Councils have previously referred pecuniary interest breaches to the OLG, only to have the OLG refer the complaints back to Council because they were considered to be minor breaches. If the OLG continues to refer complaints back to Council's under this new structure, what will the process then be for such complaints i.e. will they then go to the Privileges Committee since Council / the General Manager will no longer have the power to refer to complaints to Conduct Reviewers?

Non-Pecuniary Interests:

Question 5)

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

Response:

With regard to non-pecuniary interests such as being members of clubs and congregations, this should only be seen as a potential conflict of interest if a Councillor holds an official role with the club or group i.e. is an office bearer, rather than simply being an ordinary member.

Property developers and real estate agents:

Question 6)

Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

Response:

a. Will Councillors who are Developers be forced to sell property or not enter into contracts therefore potentially limiting their income or impacting their livelihood? What if this is a Councillors primary source of income?

b. What happens if a Councillor does not sell property or they do in fact enter into a contract? Who will be responsible for investigating and enforcing whatever sanctions are in place and would this be a matter that would be referred to the Committee, or some other body?

Councillor misbehaviour in public office:

General Comments:

a. There is reserved support for the establishment of the Privileges Committee (the Committee), however of critical importance is understanding how the Committee members will be selected to ensure gender balance, rural / regional / metro balance. Also, what mechanisms will be in place to ensure that the Committee does not become a Committee of 'mates' i.e. Committee members who know the Councillors that may be referred to them? It will be critically important to ensure there is no perceived (or real) lack of independence in the people appointed to the Committee.

b. The Committee risks being politicised with Mayors and ex-Mayors being sitting members. If the OLG perceives bad behaviour is occurring in the Council Chamber, it is possible that some similar behaviours may have been undertaken by the people now presiding on the Committee. How will a high-level of independence be guaranteed when it comes to decision-making of the Committee?

c. It is unclear how the Committee will cope with the likely volume of complaints, if in fact the number of complaints does not slow down, as is the intention with the introduction of this new Code. If we take the volume of Code of Conduct complaints as detailed in the discussion paper (Page 4) and assume that the new Code will optimistically see a reduction in the number of complaints by say half in the first year, this still means that there could be just over 700 complaints to be managed. How will the Privileges Committee be resourced to manage a large percentage of these 700 complaints?

d. Will Councillors be entitled to legal counsel for matters before the Committee and would individual Councils & therefore ratepayers, be expected to fund this? If so, is this an appropriate use of ratepayer funds, which could result in a reduction in a Council's ability to provide services to the community?

e. It is unclear what the process for referral of matters to the Committee will be. Will there still be a Complaints Coordinator in each Council who will triage complaints, or can anyone refer a complaint directly to the Committee?

Question 7)

Is this the appropriate threshold to face a Privileges Committee?

Response:

It is difficult to respond to this question because the discussion paper provides little detail around this in relation to what the threshold actually will be for referring matters to the Committee.

Question 8)

How else can complaints be minimised?

Response:

Complaints could be minimised over time by having an enforceable Code with real sanctions for breaches of it, which may in turn act as a deterrent to others to not act in an inappropriate way.

Addressing inappropriate lobbying:

General Comment:

In August 2022, the OLG sought submissions from Councils on the development of guidelines and a model policy on the lobbying of Councillors. It would appear that this work has not yet been completed, therefore the OLG is encouraged to complete this work around the model policy and related guidelines in order to address inappropriate lobbying.

Question 9)

What key features should be included in lobbying guidelines and a model policy?

Response:

As noted in the comment directly above, the OLG Circular from August 2022 (Circular 22-22) was seeking submissions on the development of a policy and guidelines in relation to lobbying of Councillors. The Circular included a range of recommendations from various ICAC inquiries and it would be considered appropriate for the OLG to refer back to that information and the submissions received at that time, to inform the development of a suitable policy and guidelines.

Dispute resolution and penalty framework:

General Comment:

a. The removal of General Manager's from the conduct complaint process is fully supported.

b. The discussion paper talks to the fact that there will be no investigations around complaints of misbehaviour. If this is the case, how will matters be referred to the Privileges Committee and how will procedural fairness be ensured for those who are accused of misbehaviour?

c. General support for the separation of how conflicts of interest and complaints about misbehaviour will be handled.

Giving OLG the power to issue penalty infringement notices:

Question 10)

What level of PIN is appropriate?

Response:

a. It is very difficult to know how to respond to the question when there is little information available on what level of breaches a PIN may be issued for. Will PIN's be issued for all breaches and if so, will there be some breaches / sanctions matrix developed that clearly articulates what penalty will apply for what sort of breach?

b. The OLG should be able to issue PIN's, however, the key question is will a PIN with a monetary value be able to be garnished from the Councillor's allowance?

c. Could the funds raised by PIN's be used to subsidise the operation of the Committee?

NSW Local Government Privileges Committee:

Question 11)

Are the penalties proposed appropriate, and are there any further penalties that should be considered?

Response:

a. If a Councillor continues to fail to apologise for some behaviour (noting that Page 17 of the discussion paper talks about each failure to apologise becoming an act of misbehaviour), would this be subject to referral to the Committee?

b. It is appropriate that Councillors have a right of review of decisions of the Committee, however there is no information included in the discussion paper on how or who will conduct this review. This information should be known at the outset.

c. It is very unclear how the Committee will be funded. It is hard to understand the cost implications of this without knowing how many people are sitting on the Committee and how often they may need to meet in relation to a matter and what staff resources will be required to support the Committee.

d. Will a Councillor and or the Council be able to get a fee estimate up front, prior to referring a matter to the Committee?

e. Some clarity is required around what happens if a complaint/s are found by the Committee to be frivolous or vexatious; would the complainant be required to pay the costs of the process? Does it then follow that if the complaint is upheld, the Council would be required to pay?

f. Page 15 of the discussion paper talks about there being alternative remedies available. What alternative remedies is this referring to and will these be included in the new Code?

g. Clarity is required around whether there is only a reduction or loss of Councillor sitting fees for complaints about misbehaviour, or will such reductions of losses of Councillor sitting fees be in place for other breaches?

h. What is the threshold for determining if the Committee will deal with a matter referred to it i.e. are all misbehaviour complaints referred to them automatically or just some specific types of complaints?

Referral of significant sanctions to appropriate tribunal or body:

Question 12)

Are the existing sanctions available under the Local Government Act sufficient?

Response:

It is recommended that in addition to some financial penalties, there needs to be the ability for the OLG to issue Personal Improvement Notices to individual Councillors.

Question 13)

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:

There is general support for the removal of the dual roles of the OLG i.e. with any significant sanctions being the decision of an appropriate tribunal or body, rather than that decision being made by the OLG.

Restoring dignity to Council meetings:

Proposed reforms to the Model Code of Meeting Practice:

Question 14)

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:

a. It is hard to understand from the discussion paper how giving the Mayor more power in the Chamber will in fact return prestige and dignity to the Chamber, as per the Minister's wishes. Perhaps some further information can be provided on this.

b. Providing the Mayor with the power to remove a Councillor from the Chamber without a resolution of Council, could very clearly become a political tool. As such, we are keen to understand how the interests of Councillors who fall foul of a particular Mayor and or the dominant political party (within the Chamber) will be protected if the Mayor has power to remove them from the Chamber.

c. Is there any limit to the number of times a Mayor can expel a Councillor from the Chamber, prior to the matter being referred elsewhere?

d. What is the trigger for the expulsion of a Councillor/s from the Chamber being reported to the Committee and who does the reporting?

e. We do not support the Mayor being able to issue a PIN to a member of the public. If this was to be allowed, under what legislation would the Mayor be empowered to do so and what recourse does the member of the public have? There is also the fact that a Mayor (or Council), may not know who the member of the public actually is.

Banning briefing sessions:

Question 15)

Are there any other measures needed to improve transparency in councillor deliberations and decision making?

Response:

a. Local government is already the most transparent level of government, so whilst continued measures to improve the transparency of local government are welcomed (if practical), they should be replicated at the State government level.

b. It is agreed that under no circumstances should decisions be made at briefing sessions. However, it is considered vital to informed decision making that Council staff are able to provide background information (some of which may be commercial in confidence), to Councillors in a briefing session. The same goes for the sharing and exploration of ideas with Councillors. Often Councillors may need time to digest all the information provided to them in order to make a considered decision and it is not considered fair or feasible that at all times the only way a Councillor can question or discuss this information is in the public domain, noting that time is limited in Council meetings.

c. Briefing sessions and workshops are also an opportunity for Council staff development i.e. staff get to discuss matters with Councillors in the safety of a non-public forum. Banning briefing sessions will take away this staff development opportunity.

d. Briefing sessions and workshops are also opportunities for Councillors to build relationships with one another and with senior Council management outside of the glare of the public eye and to be able to learn to collaborate and be more collegiate. Banning briefing sessions will take away this development opportunity.

e. The definition of what is a briefing session, a pre-meeting briefing session and a workshop needs to be clearly articulated. A set of guidelines / parameters should be developed so that everyone understands at the outset, what a briefing is and how they are to be run (or not as the case may be), with this to be reflected in a revised Code of Meeting Practice.

f. There seems to be an assumption made in the discussion paper that all Councils have formal Committee structures in place, where matters can be discussed and debated in a public forum, prior to recommendations being made to full Council. This is not the case across all Councils in NSW. Therefore, does banning briefing sessions mean that all Councils may need to consider establishing formal standing Committees (if not already in place), in order to address the approach being taken in the discussion paper?

g. It is unclear how providing the Mayor with more information than the other Councillors will improve transparency in Councillor deliberations and decision making. There is a substantial risk that some Mayors may limit the information provided to other Councillors in order to ensure a particular outcome, if indeed it is left to the Mayor's discretion as to what information is shared with Councillors.

h. The current model Code (that in theory will remain in place for Council staff), requires that a member of staff of a Council who provides any information to a particular Councillor in the performance of their official functions, must also make it available to any other Councillor who requests it and in accordance with Council procedures. In light of this, we see the requirement in the proposed new Code to provide information to the Mayor only, to be in conflict with this requirement. This requirement ensures no Councillor is disadvantaged by information being withheld. This could be problematic and it may divide the Council. There is also a substantial risk that some Mayors may limit the information provided to other Councillors in order to ensure a particular decision is made.

i. With the greatest respect to Mayors as the head of the Council, they are still only one vote in the Council Chamber. Therefore, the intent of what is detailed in the discussion paper in relation to the Mayor having access to information that other Councillors do not have access to, is not clearly understood in relation to how this will improve transparency and decisions making.

j. On the issue of transparency, it should not be forgotten that all Councils seek submissions from the public on many major decisions, policies, budgets (including fees & charges) and strategies, unlike the State or Federal government. Therefore, decision making at the local government level is very well informed and transparent, with a broad range of views presented to Councillors on the matters before them. It is this level of engagement with the local community that already contributes to a high level of transparency and trust in decision making across local government.

k. Further to the information provided above, another concern in relation to the banning of briefings is that this may hinder the ability of the General Manager to develop good working relationships with Councillors. Page 23 of the OLG Councillor Handbook (the Handbook) states the following:

Indicators of good working relationships between councillors and general managers

- *Councillors who publicly express faith in general managers and staff*
- *General managers who support councillors in their role and who consider ways to improve their levels of support*
- *Councillors have confidence their resolutions and policy decisions are being effectively implemented*
- *A clear understanding about how councillors ask questions and receive information from staff, and a formal communication protocol which matches everyday practice*
- *An environment in which councillors can ask for advice and discuss their position on key decisions*
- *Opportunities for staff who are experts in their area to put forward their experiences and opinions to councillors to inform key decisions*
- *Council decisions which are seen as being based on merit rather than 'the numbers game'*
- *Relationships which are characterised by respect, good humour and good faith*

Referring to the above points from the Handbook, banning briefings will likely take away from a General Manager a number of key avenues whereby some of the above points could be achieved i.e. banning briefings and workshops may mean that:

- One avenue to improve a level of support to Councillors is no longer available.
- A Councillors ability to be able to ask questions and receive information from staff would be limited to public-facing interactions only, outside of key staff undertaking one-on-one meetings with Councillors about matters before them.
- The ability for Councillors to be able to ask for advice and discuss their position on key decisions in a 'safe' environment such as a briefing session will no longer be an option.

- Opportunities for staff who are experts in their area to put forward their experiences and opinions to Councillors to inform key decisions, will be limited to public-facing interactions only, short of key staff undertaking one-on-one meetings with Councillors about matters before them.

If banning briefings results in the above, then this would seem to work against developing better and more professional relationships between Councillors and key Council staff that ultimately benefits the community that is being served.

Yours sincerely

[redacted]

Craig Swift-McNair
General Manager

NSROC
Northern Sydney
Regional Organisation
of Councils

26 November 2024

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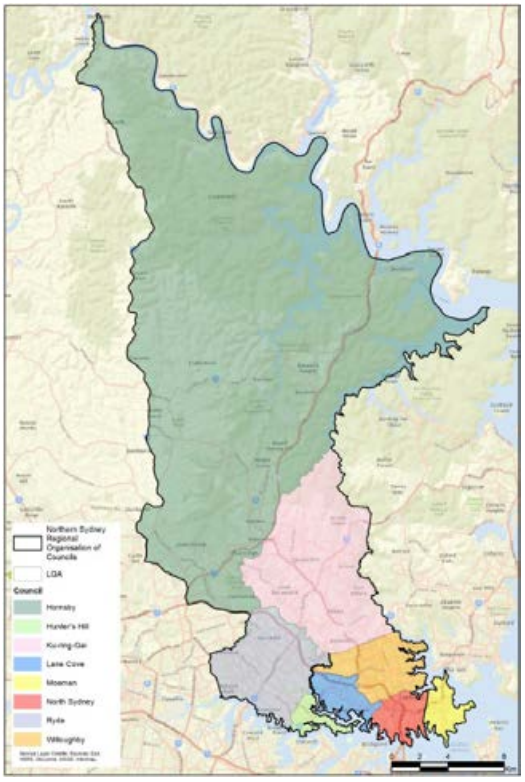
Lodged via email: councillorconduct@olg.nsw.gov.au

Re: Councillor Conduct and Meeting Practices – New Framework

The Northern Sydney Regional Organisation of Councils (NSROC) is pleased to respond to the Office of Local Government's discussion paper, *Councillor conduct and meeting practices – A new framework*. This submission has been prepared with the input and support of our member councils but should be considered draft until it is formally endorsed by the NSROC Board.

NSROC is a voluntary association of eight local government authorities in Sydney. NSROC assists member councils collaborate on key issues and activities, develops regional solutions and generates social, environmental and economic benefits – for local communities and the region overall.

NSROC member councils service an area of 639km^2 with a population of 651,000 extending from the Hawkesbury River in the north to Sydney Harbour in the south, west to Meadowbank on the Parramatta River, as shown in Map 1.



Map 1: Northern Sydney Regional Organisation of Councils area

The eight NSROC member councils are:

- Hornsby Shire Council (HSC)
- Hunter's Hill Council (HHC)
- Ku-ring-gai Council (KMC)
- Lane Cove Council (LCC)
- North Sydney Council (NSC)
- Mosman Municipal Council (MMC)
- City of Ryde (CoR)
- Willoughby City Council (WCC)

Our member councils employ approximately 2,700 people, delivering a wide range of services across the region. NSROC hosts over 82,000 business and delivers over 11% of NSW Gross State Product.

NSROC agrees there is a need to strengthen the existing councillor conduct framework and the discussion paper provides a comprehensive first step towards codesigning improvements. That said, there are several elements that would benefit from further clarity, consultation, and refinement.

Banning briefing sessions

NSROC member councils are committed to ensuring transparency and accountability in decision making. The debate and deliberation of notices of motion, Mayoral Minutes, recommendations and other matters that lead to a decision or resolution of council should be in the public domain.

This notwithstanding, the opportunity for Councillors to receive information, learning and support, as well as participate in strategic planning initiatives in closed session remains important. Workshops and briefing sessions are a forum for the dissemination and consideration of information that allows councillors to better understand an issue. Closed session briefings and workshops foster informed decision making and enhance the quality of debate that subsequently occurs at the public Council meeting.

Further, to suggest that all proceedings of a workshop can occur during a Council meeting is inconsistent with the objectives to make Council meetings accessible, streamlined and efficient.

NSROC suggests the framework allow workshops to be held and includes a mandated requirement to disclose in reports to Council when deciding a matter, that a workshop was held and its purpose.

Managing code of conduct complaints

NSROC supports streamlining the complaint process by referring matters directly to the OLG or Privileges Committee. It is understood that this will reduce administrative burden, ensure consistency of the application of the provisions and may prevent expenditure of time and resources on frivolous or vexatious complaints.

However, the process for the establishment and make-up of the Privileges Committee requires further scrutiny. Empanelling former and current Mayors to judge behaviour could result in conflicts of interest and partial behaviour. **The Committee would be better served by person/s independent of the political process such as retired judges, retired senior public servants or probity experts (such as current conduct reviewers).**

Financial and administrative burden

It will be important that the OLG and any panels/bodies have the capacity to handle matters efficiently, in a timely manner, and without a significant administrative and financial burden being redirected to councils.

There is inadequate detail in the discussion paper concerning the operation of the proposed Privileges Committee, and the responsibility for costs in conflicts of interest matters. It is not clear what administrative and financial requirements will be placed on Councillors or Councils. Greater clarity is required on payment of costs scenarios, the quantum of or contributions to these costs, and the right to contest unreasonable costs.

Further, there is no reference in the discussion paper to timelines or metrics under which the Privileges Committee would operate. It is suggested that a standard should be in place requiring the Privileges Committee to decide a matter – say within 90 days from referral. Any inefficiencies brought to the process by the bureaucratic structure of the Privileges Committee would be a retrograde step.

NSROC encourages the OLG to clearly identify and consult on what administrative and financial requirements are likely to be implemented under the new framework.

Powers of the Mayor or Chair of meeting

The proposed framework instils a large amount of responsibility and power to mayors. This may reduce their capacity to maintain positive working relationships with the elected council. It also introduces a potential inconsistency/risk that mayors may take a different perspective on expulsions and suspensions depending on whether they are popularly elected or elected by the governing body.

The unintended consequence of the proposed reforms is the creation of an environment that enables the perceived or actual abuse of power by some mayors. Safeguards to protect against this should be fully considered and implemented or this element of the reforms should not proceed.

NSROC would welcome the establishment of a working group to codesign the new framework for councillor conduct and meeting practices. Made up of experienced practitioners, including mayors, general managers, and the Office of local Government, the group would identify workable and efficient proposals that address the Minister's stated aims.

If you require further information, please don't hesitate to contact me by phone on 0401 640 823 or at mmontgomery@lanecove.nsw.gov.au.

Yours sincerely



Dr Meg Montgomery
Executive Director
Northern Sydney Regional Organisation of Councils

ITEM	**SUBMISSION TO THE OFFICE OF LOCAL GOVERNMENT – COUNCILLOR CONDUCT AND MEETING PRACTICES - A NEW FRAMEWORK**
THEME:	Proactive Leadership
MEETING DATE:	**26 NOVEMBER 2024** COUNCIL MEETING
GROUP:	**FINANCE AND CORPORATE STRATEGY**
AUTHOR:	**MANAGER GOVERNANCE AND PUBLIC OFFICER** MICHAEL SPENCE
RESPONSIBLE OFFICER:	**GENERAL MANAGER** MICHAEL EDGAR

PURPOSE
The purpose of this report is to consider the discussion paper released by the Office of Local Government titled "Councillor conduct and meeting practices - A new framework". The report has been authored based upon custom and experience of The Hills Shire Council over many years. The Government has invited submissions from Councils on the proposals.

RECOMMENDATION
Council provides a submission to the Office of Local Government based on the content in this report and the following recommendations.

Recommendation 1

The Hills Shire Council holds effective, efficient Council meetings chaired by the Mayor who maintains respect, order and consistency with the adopted Code of Conduct and Code of Meeting Practice. The Council meets approximately 21 times a year and considers approximately 300 items of business with the vast majority being decided within open session of the meeting. The Council does not have a history of code of conduct complaints and does not receive complaints about the Chair or conduct of its meetings.

Recommendation 2

Different pathways and penalties should be established however in councils experience the current code of conduct itself is not a problem however the procedures for its administration are. There is an opportunity for complaints to be submitted in a prescribed format to identify vexatious and frivolous complaints early. There could also be improvement to definitions of what is considered vexatious and frivolous. Council supports any change to improve the resources for fast, fair independent complaint assessment.

Recommendation 3

The Hills Shire Council supports a review of the current processing framework for code of conduct complaints. Council supports better resourcing, an independent complaints assessment process that is fair to all parties resulting in timely and appropriate finalisation of complaints.

Recommendation 4

The Hills Shire Council wishes to make the OLG aware *that the notion that the allowance provided to Councillors and Mayors as being "pay" or sitting fees is incorrect. The Hills Shire Council supports the proposal for the Council not to be the complaints handler for serious matters relating to gifts and benefits, pecuniary interests, donations, significant nonpecuniary interests and misuse of resources. Council also supports the penalties for these matters be determined by an appropriately resourced, skilled and independent structure.*

Recommendation 5

The Hills Shire Council does not support the establishment of a Local Government Privileges committee as envisaged in the discussion paper. Instead, a panel of suitably qualified and independent persons should be formed to deal with Councillor mis behaviour that has not been addressed at the local level or where the behaviour is persistent.

Recommendation 6

The Hills Shire Council has no concerns about the existing Code of Conduct rather its concerns are primarily around the administrative procedures. Any new Code of Conduct for Councillors should not be so brief as to be open to broad interpretations and should be clear to all readers of the behaviour and conduct expected, clear about the pathways for a complaint and its resolution and instil accountability whilst being fair to all stakeholders. Out of the two codes of conduct relating to the NSW parliament, the Code of conduct for ministers seems a more appropriate model for Councillors

Recommendation 7

The Hills Shire Council supports confidential briefing sessions and the current controls in the current model code of meeting practice in relation to confidential briefings is effective. It is clear that such briefing are not to be used for decision making or be a substitute for behind closed doors decision making. An improvement opportunity exists to make it a requirement that any resolution inconsistent to that in the printed business paper be supported with reasons and a division where the record of individual councillor votes is recorded.

Recommendation 8

The Hills Shire Council supports in principle the amendment to the Oath of Office to align with the code of conduct.

Recommendation 9

The Code of Conduct should set minimum standards of behaviour and conduct and should not be aspirational.

Recommendation 10

The key elements of a Code of Conduct are

a. *A clear link to the principles for local government as laid out is Chapter 3 of the Local Government Act 1993.*
b. *A clear expectation of the minimum standards of always acting ethically and honesty in the persons official capacity.*
c. *What are the minimum standards of behaviour.*
d. *Making a breach of the Oath of Office misconduct.*
e. *Misconduct being defined.*
f. *Setting a clear expectation that a Councils majority decision will be the one implemented with any public disapproval being clear that the majority decision is different.*
g. *Setting a clear expectation around the proactive identification and management of conflicts of interest, especially around pecuniary and significant nonpecuniary interests.*
h. *Clear expectations around gifts and benefits.*
i. *Clear consequences for not complying with Code of Conduct*
j. *Clear expectation around supporting any investigation into a code of conduct matter.*
k. *Recognising there are probably three streams of seriousness, behavioural breach, mis conduct and corrupt conduct and setting the expectation that only the most serious matters will be considered for maximum penalties.*
l. *Making clear the Work, Health and safety obligations of Councillors*
m. *Making clear the responsibilities of the governing body as distinct from day-to-day management of the Councils operations.*
n. *Make it clear that the Mayor and Councillors do not to give direction to staff.*

Recommendation 11

Better definition and annotation is required to give better clarity and understanding of pecuniary and non-pecuniary interests that are significant. Words such as "appreciable", "perception" and "significant" are open to broad interpretation and should be better defined so as to reduce unnecessary complaints and to give clear indication to members of the public that conflicts of interest are inevitable and what is important is there is disclosure by the elected official and removal from the conflict where it is necessary.

Recommendation 12

The Hills Shire Council have no position on the banning of developers and real estate agents and that the question be a matter for the NSW Government to determine.

Recommendation 13

The Hills Shire Council supports managing behaviour in the first instance at the local level and that serious or repeat misbehaviour be assessed and determined by a panel that is qualified, experienced and independent and that can recommend remedy, sanction or penalty.

Recommendation 14

It would be important that any such lobbying policy is realistic, provides sufficient clear definitions and a clear process of how to identify, declaring record and release to the public any discussions that are captured by the policy. It needs to be clear as to what lobbying activity is captured and what isn't.

Recommendation 15

The Hills Shire Council supports different pathways of dealing with misconduct based on seriousness is sensible and that removal of the two-step process is supported. The handling of serious complaints by the OLG is supported providing it also deals with complaints that are serious but do not amount to conflicts of interest. Council supports an opportunity to manage poor behaviour at the local level in the first instance.

Recommendation 16

The Hills Shire Council supports the concept of a PIN for minor breaches as outlined in the discussion paper and makes no contribution as to the penalty amount other than it needs to be sufficient to act as a genuine deterrent and be such that the community accepts as reasonable penalty for the offence.

Recommendation 17

Powers of Mayors/Chairs to expel Councillors and members of the public for acts of disorder should be enshrined in the Local Government Act. Mayors issuing PIN's is considered problematic and that authority/responsibility should be given to a suitably qualified person/body. It is also necessary for Mayors/Chairs to be trained in the responsibilities to manage and control the meeting and Mayors/Chairs fairly to do so should also be on an Act of Misconduct.

Recommendation 18

The Hills Shire Council does not support the proposal to ban confidential briefing sessions and considers the existing Code of Meeting Practise adequately deals with this issue.

IMPACTS
Financial
This matter has no direct financial impact upon Council's adopted budget or forward estimates.

Strategic Plan - Hills Future
This report demonstrates transparency in Local Government and ensures Council is accountable to the community and meets legislative requirements.

LINK TO HILLS SHIRE PLAN
Strategy:
3.3 Ensure Council is accountable to the community and meets legislative requirements and support Council's elected representatives for their role in the community.

Outcomes:
3 Sound governance that values and engages our customers and is based on transparency and accountability.

REPORT

INTRODUCTION

The NSW Office of Local Government (OLG) issued a discussion paper on Councillor conduct and meeting practices. Submissions are being sought and will be accepted up until Friday 29th November 2024 (previously Friday 15 November 2024).

The Discussion Paper is a reflection of changes that the Minister for Local Government the Hon. Ron Hoenig has foreshadowed publicly over the last 12 months. He has expressed his concerns about the current legislative and code of conduct framework and the discussion paper is a response to his concerns. The discussion paper cites concerns about the misuse of code of conduct complaints, the management of code of conduct complaints, a lack of democracy and less than transparent decision making by Councils. It seems the case for change outlined in the discussion paper is based on the worst examples and many of the weaknesses identified do not a feature in the conduct of The Hills Shire Council.

There is no doubt that Councillors fulfil a very important role in their communities, providing leadership, delivering significant services and being accountable for significant budgets. There is evidence that the community expects all public officials to behave honestly, with integrity and display highly ethical conduct. The community expects their public officials to be held accountable. There is a need for a clear, well-defined code of conduct and a fair and independent complaint system. A goal of any such system should be procedural fairness, timeliness and matter dealt with locally and quickly where practical. The legislative framework must have provisions to detect, deter and appropriately discipline.

A timely review of the Code of Conduct framework and the Codes of Meeting practice is due and the previous NSW Government had embarked upon a comprehensive review citing similar concerns with the current framework. Changes in society, attitudes and technology is having an impact on how Councils operate. The OLG is seeking the views of the community, key stakeholders and the local government sector about the proposed changes regarding the Councillor conduct framework. To give effect, the OLG foreshadows a need for legislative changes.

Current arrangements.

The Councillor conduct and decision-making processes are implemented through legislative provision of The Local Government Act 1993, (the Act) it's Regulation and thorough guidelines and documents produced by the OLG. There are legislative penalties for the most serious of office and there are other pieces of legislation, investigative bodies, tribunals and acts to punish for offences.

The Local Government Act 1993 and the Local Government (General) Regulation (the Reg), contains laws and regulations relating to the way Councils must act, make decisions and how the public can influence what a Council does. All public officials of Councils including Mayors and Councillors must act honestly and exercise a reasonable degree of diligence in carrying our his or her functions. The Act, under s440 allows for the regulations to prescribe a model code of conduct and the OLG has done so. The Hills Shire Council has adopted the Model Code of Conduct for Local Councils in NSW along with the Procedures for the Administration of the Model Code of Conduct for Local Council in NSW, unaltered.

The Hills Shire Council does not experience and has no history, of a proliferation of code of conduct complaints against any of its public officials. A Council who attracts many such complaints is usually a good indicator of a Council in trouble. Like all Councils, The Hills Shire does receive complaints about its services and its decisions however those complaints are more about the merit rather than the behaviour or conduct of its officials. Council has an established complaints management system to manage such complaints.

Council Ordinary and Extraordinary Meetings are the decision-making forums for the governing body to make its decisions. The Act permits any person may attend and view the Council making its decisions. Other than delegated and day to day decisions, the governing body cannot make decisions outside the Council meeting process. The Act and its Regulations contain provisions to regulate Council decision making and how to conduct meetings. A model code of meeting practice has been developed by the OLG and all councils must adopt a code of meeting practice that is not inconsistent with that model code. Council has adopted its Code of Meeting practice and has resulted in respectful, effective and appropriate decision making. Council holds approximately 21 Ordinary Meetings each year considering approximately 300 agenda items.

Council has adopted a Code of meeting practice as required by the Act. The code has been an effective control for the conduct of all Council meetings and has assisted in proper decision making.

The discussion paper and its case for change as it relates to The Hills Shire Council.

The discussion paper is primarily aimed at changes to the current legislative and operational framework for meetings and conduct. The discussion paper indicates that under current arrangements, “Councillors are not visibly in control of their councils” and that Councils are not acting transparently. The paper is concerned that Councils are using closed briefing sessions to make decisions away from the view of the public. The paper also asserts that the growth in the number of complaints about councils and councillors is an indicator the current framework is not effective.

The discussion paper outlines and seeks input on the principals for change, a simplification of the code of conduct and an amendment to the oath of office to directly link to the standards expected changes to the definition of councillor misbehaviour, dispute resolution, penalties and restoring dignity in council meetings. There are concerns that the case for change seems based on a very limited number of poor examples throughout the State and the proposals for change understate the complexity of modern local council services and its operations. The Act provides clear distinction between the roles of Councillor, Mayor and General Manager that if followed, support functionality.

It is acknowledged that Councillors are elected from the community and possess different backgrounds, perspectives and ideas. Councils need to establish operational frameworks for effective skills and knowledge transfer, so the governing body is able to set its strategic objectives and policies in a way that is sensible, efficient and effective for the organisation to implement.

The integrated planning and reporting framework requires the development of plans, long term budgets, annual budgets and reporting mechanism. Their complexity makes it in-practical to develop during an ordinary meeting of Council. It relies on collaboration between councillors and key Council staff to generate ideas, objectives and plans to fulfill those objectives in a financially sustainable way and this takes many hours. The concerns that budgets are hardly debated reflects the work and collaboration that has occurred to develop the plan for public exhibition. Making what seems to be a small change on the run can have major implications in the financial models and assumptions over the long term. Just like the State Government has its behind closed doors briefings which do include decision making forums like State Cabinet, Councils need to as well for its proper functioning.

The Hills Shire has always held the Council Chamber as being the peak decision-making forum and our Council chamber is prestigious, and many visitors have expressed this in feedback. There have been many councils who are making changes to their own chambers take the time to visit and talk to staff about our chamber. It is an impressive setting and one that visibly puts the Mayor (Chair) and the councillors in control.

In Councils chamber, the seating arrangements for the Mayor and Councillors set the tone for the chamber with the Mayor clearly and visibly in control of the meeting with all Councillors facing each other and in full view of the Mayor during the meeting, debate and decision making. The public gallery allows anybody to attend and view the Council making its decision and very few matters are dealt with in closed session. Rightfully, there will always be matters that need to be considered confidentially and the Act makes appropriate rules and provides appropriate mechanisms for appeal for confidential items. Councils custom and practice is to prepare reports in a manner that allows the matter to be dealt with in open session with confidential material provided separately and this process leaves very few matters in confidential session.

The presence of a public gallery at ordinary meetings has diminished over the years primarily for two reasons. One is the removal of the governing body's role in determining Development Applications and the other through the webcasting of meetings. The Hills Shire experience is like other metropolitan councils with a general observation of a noticeable drop in the number of people attending the Councils ordinary meeting.

Notwithstanding, there are still items where a member of the public who might have an interest in the matter, and people physically attend the meeting and on occasions, make application to speak for and against and item in accordance with Councils Code of Meeting Practice. The Hills Shire does not hold separate public forums and instead has modified its code to allow a limited opportunity for members of the public to speak for or against an item in front of the Mayor, Councillors and attendees. This seems to work well as it allows community input and scrutiny right up to the decision. There is no evidence the process has been abused and there are no occasions where it has resulted in disorderly conduct. On controversial matters it has allowed the Councillors to hear first-hand the opposing points of view to assist in their final decision making.

It is important that any changes to the Act, Regulations and Codes of Meeting Practice maintain the current controls to maintain the integrity and prestige of the Council Chamber, the Mayor and the Councillors as a whole. The Council chamber should be dignified, allow respectful debate and be safe to encourage the participation of all Councillors in that debate and the decision to be made. The Council Chamber is a workplace, and all present have varying work health and safety obligations under the Work Health and Safety Act. There are now examples where SafeWork NSW having acted in relation to behaviour in Council Chambers. With the immediacy of social media and technology in general, it is possible for Council Chambers to be attended by large numbers of the pubic that may have been encouraged to attend with the aim to disrupt, intimidate or otherwise seek to influence the role and decision of Councillors. This creates an unsafe and inappropriate environment and does nothing to endear the role of councillor to a wide section of the community. Any legislative changes proposed by the Minister should act to deter such behaviour and provide the Chair appropriate powers to deal with such circumstances. Any new framework needs to support a safe working environment for all and the better understood, the fewer problems.

The experience of The Hills Shire reveals very few instances where members of the public have raised concern with the decision-making process of Council. The occasions where it can happen is where the decision has happened quickly after a debate and in an instance where the original motion is lost, and the foreshadowed amendment is decided upon quickly. It is also possible for a decision against recommendation to also cause confusion in the eye of the public and a suggestion that would address this issue is for decisions that are not in accordance with the recommendations of agenda items be accompanied with reasons for the decision that are recorded in the minutes.

Recommendation 1

The Hills Shire Council holds effective, efficient Council meetings chaired by the Mayor who maintains respect, order and consistency with the adopted Code of Conduct and Code of Meeting Practice. The Council meets approximately 21 times a year and considers approximately 300 items of business with the vast majority being decided within open session of the meeting. The Council does not have a history of code of conduct complaints and does not receive complaints about the Chair or conduct of its meetings.

The current Code of Conduct has many features that have served Council well. Council offers regular training on the Code of Conduct for all public officials. The Hills Shire Council receives very few actual Code of Conduct complaints against staff or its Councillors. Complaints are triaged quickly, and a decision is made on the matter expeditiously.

There are concerns that the potential exists for complaints that are motivated by informed individuals who are using the process as a way to promote vexatious complaints. While these are not considered code of conduct complaints, the definition of vexatious and frivolous is open to interpretation and perhaps this can be improved by having complaints submitted in a prescribed form requiring the author to provide complete information, evidence and to also declare relationships and or affiliation with elected officials. It is also overcome by having a clear screening process by a reasonably informed person to triage and rule upon the complaint quickly allowing the more serious complaints to be investigated and actioned.

The time taken is also an issue and there needs to be clear timeframes for matters to be concluded and the process has to balance the confidentiality with the processes of natural justice. There is a clear need to appropriately resource whatever complaint handling process is determined to be the most effective.

In the experience of The Hills Shire Council, the problem with the current code of conduct framework is not the code, rather it's the procedures for the administration of the code. It encourages minor complaints to be sent to external code of conduct reviewers who need to act diligently meaning the process is time consuming and expensive. There is a need for Councils to have an ability for the general manager and complaints coordinator to be able to deal with some matters quickly and locally.

Recommendation 2

Different pathways and penalties should be established however in councils experience the current code of conduct itself is not a problem however the procedures for its administration are. There is an opportunity for complaints to be submitted in a prescribed format to identify vexatious and frivolous complaints early. There could also be improvement to definitions of what is considered vexatious and frivolous. Council supports any change to improve the resources for fast, fair independent complaint assessment.

The discussion paper observes that the number of code of conduct complaints has steadily grown. This is also evident in previous reviews by the former NSW Government in 2022 and in a review conducted by the Queensland Government earlier this year. This factor is not necessarily a reason for the change and a proper analysis of the complaints should be undertaken to ascertain the root cause of the problem other than that they are mostly vexatious. It could instead reflect changing attitudes of the community and could also reflect that the lack of resources and the process to date has been incapably of dealing with the complaints quickly to enable appropriate sanctions to be applied. Another factor is that there is an expectation by complainants that the maximum penalty applies.

It is agreed that any frivolous and vexations complaints should be dismissed immediately and ideally at the local level. That could mean that early local decision can be appealed by the complaint to an independent review. In many ways the current code of conduct is a good document that could be improved with better clarity in definitions, annotation with case studies in the same way the ICAC has for the ministerial code of conduct. Again, it would appear that it is the administrative procedures that need improvement as the evidence could be indicating complaints that should be knocked out early have not been, conduct reviewers are being too deliberate and cautious in investigating the matter and the resources of the OLG have been inadequate to deal with serious matters.

The primary objective of any code of conduct is best described by the ICAC. A code of conduct should tell people inside and outside of the organisation the standards of conduct that are expected of Councillors, staff and their volunteers, contractors and committee members. The Model Code of conduct currently prescribed by the Loal Government General Regulation covers topics such as general conduct obligations, personal benefits, conflicts of interest and use of Council resources. To be effective, Councils need to model the conduct expected from the top and there needs to be continuing training and review to make sure the code is habitual throughout the organisation. To be effective, there also needs to be fair, firm consequences for breaches of the code of conduct.

Recommendation 3

The Hills Shire Council supports a review of the current processing framework for code of conduct complaints. Council supports better resourcing, an independent complaints assessment process that is fair to all parties resulting in timely and appropriate finalisation of complaints.

The discussion paper has outlined that the revised Framework will be based on the following principles of change:

- Council leadership and decision-making is paramount
- Freedom of speech is fundamental
- Transparency and accountability are maintained
- Issues are dealt with at the most immediate or local level
- A strong and proportionate local government regulator
- Justice is timely and proportionate
- Significant penalties should only be imposed by a judicial or quasi-judicial body

These principles when read in the context of the intention to reforms for codes of meeting practice, code of conduct, dealing with complaints and legislative change, raises some concerns. It is hard to understand from the discussion paper the context behind “Council leadership and decision-making is paramount”. That means its above all else. In terms of how meetings are conducted and how complaints are managed, the confidence in the decisions made and the reasons for them are seemingly more important if you are looking to restore public confidence.

There are many decisions by the NSW Government that have impacted on the effectiveness and reputation of Councils. For example, decisions around financing, decision to remove planning functions so that local communities feel they have no say in what happens in their neighbourhoods are all examples where the effectiveness and reputation of local councils is tarnished. It is a constant source of frustration that the community has an expectation that they through their Councillors, have a real say in planning decisions. The simple fact is most of the development that occurs in our Shires that meets with resident concern are usually State Government instruments that override local controls. Further, Local Environmental Plans all are made only at the behest of the NSW Government, in the Sydney metro area, all Development Applications are determined by either planning panels, staff under delegation or the Land and Environment Court, the vast majority of Complying Development Certificates (CDC's) are issued by private certifiers through a system of no neighbour consultation. On the latter, approximately 70% of CDC's issued should not have been upon investigation by Council leading to opportunities for not only corrupt conduct, but a loss in public confidence in the NSW Planning System.

A lot of deliberations of planning panels occurs outside of public view. So too negotiated Land and Environment Court processes where only the applicant, owner and council experts are involved. The participation of the public in planning panels and Land and Environment Court proceedings is diminished, lacks transparency and is of concern.

Freedom of speech is an important principal and exists now. There will always be matters that attract a contest of ideas and other matters where seemingly all Councillors are of the same mind in deciding. Not every matter requires a debate and there are many matters that are bought to Council for a decision that are only there due to delegations. For example, where Council owns a commercial property, changes in tenancy and assigning new leases cannot be delegated so require a Council report and decision. These are rarely controversial matters or contested matters.

Appropriate public debate that is passionate and respectful should be encouraged. However, decisions are made in the majority and that at times can be on the basis of the casting vote of the Chair, usually the Mayor. The majority decision unless unlawful, is then to be implemented. Council staff should be able to expect that the Council can move onto implement/support for the decision made. Debate and the opinions of Councillors should be heard in the Council Chamber and captured in the recording meaning that a continuation of that debate post the decision should be unnecessary. That is democratic and supports the proper functioning of our system of government.

The discussion paper expresses the view that 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 that councillors have. Also expressed in the discussion paper is that closed council briefing sessions are being used to make decisions away from the public view. Council debates on issues are too often personal slanging matches, rather than forums for robust but respectful discussions on what is best for the community. The Hills Shire Council experience is inconsistent with those views.

The discussion paper outlines that the volume of frivolous complaints is crowding out the ability of the OLG and the sector to adequately deal with councillors who abuse their office or cause serious governance problems. It is critical the framework that governs both the behaviour and meeting practices of councillors ensures the community can observe and comment on the behaviour of councillors, instead of inhibiting the operation and function of local democracy.

A criticism made about the current framework for councillor conduct or meeting practices is that they do not reflect local government's status as an independent third tier of government: it allows an unelected State Government official to determine penalties and guilt thus undermining the status of local government.

While most local councils and local councillors do the right thing with the best intent, there are some councillors who are not so motivated. In these cases, the current Councillor behavioural framework, as implemented in NSW, does not facilitate the best outcomes or resolve issues.

A new Code of conduct framework

It is intended that the Code of Conduct for Councillors be a different one than that for staff. There are no changes proposed for the code of conduct for staff as it seems fit for purpose. The proposed new approach for a new code of conduct include;

- **The OLG will be responsible for dealing with pecuniary interest and significant non -pecuniary conflicts of interest, with sanctions (suspensions and loss of pay) being determined by an appropriate tribunal or body.**

Comment

Firstly, the reference to "pay" is incorrect as it would suggest Councillors are employees which they are not. Councillors are paid a relatively modest allowance based on the size of the Council and the recommendations of the remuneration tribunal. To suggest this modest allowance is akin to "pay" is misleading and should be better worded to reflect the "allowance" or "fees" not pay.

There is an inherent perception of a conflict of interest in having General Managers involved in the assessment and processing of Code of Conduct complaints. This conflict arises through the performance management and oversight of General Managers is through the Mayor and the elected Councillors. While this perception is understood, it is more relevant with the more serious matters and the referral of more serious matters to the OLG is supported. However, complaints that relate to general standards of conduct could be dealt with by the General Manager in conjunction with Councils Complaints coordinator given the role that position has in relation to staff and operations in general. This has been an efficient and effective means of managing the very few complaints Council has received.

Under the current system, the OLG is already responsible for dealing with complaints against councillors concerning breaches of pecuniary interest provisions, about failure to comply with disclosure and management of political donations, breaches relating to maintaining integrity of the code and those under special management arrangements with the OLG. The proposed change adds complaints about significant non-pecuniary conflicts of interest which makes sense but is silent on complaints about the requirements to disclose and manage political donations and who deals with complaints that a councillor who contravenes the requirements about maintaining the integrity of the code. This might be an oversight and should be addressed.

The proposal to add to the current list complaints about significant non-pecuniary conflicts of interest is supported however it must be clear that other breaches as is currently the case, are also managed by the OLG.

Recommendation 4

The Hills Shire Council wishes to make the OLG aware *that the notion that the allowance provided to Councillors and Mayors as being "pay" or sitting fees is incorrect. The Hills Shire Council supports the proposal for the OLG to be the complaints handler for serious matters relating to gifts and benefits, pecuniary interests, donations, significant nonpecuniary interests and misuse of resources. Council also suggests that complaints in relation to maintaining integrity of the Code of Conduct should also be the function of the OLG. There remains a need for opportunities to be managed locally and quickly. Council also supports the penalties for these matters be determined by an appropriately resourced, skilled and independent structure.*

- **Refer behavioural based concerns about councillor conduct to a Statewide panel of experienced Councillors to judge their peers.**

Comment

Different pathways for different kinds of conduct complaints are an efficient way to manage the range of complaints made. There are concerns about the independence and effectiveness of a statewide panel of experienced Councillors that operates as a "privileges committee". It is expected that Council funds this committee and as such, to instil confidence for all stakeholders, it is considered the proposed "committee should be made up of skilled, trained and independent persons. There are inherent political and other conflicts of interest in this suggestion as presented in the discussion paper.

It is recommended that Councils submission suggest the panel be comprised of independent, trained and qualified code of conduct reviewers supported with a representative form LGNSW as part of the composition of that panel would be more appropriate. A better model might also be that of the Queensland system where there is an Office of the Independent Assessor (OIA) established to investigate all complaints and information about Councillor conduct before deciding how to deal with the complaint.

As covered earlier for minor behavioural matters, there is a need to deal with these matters quickly and locally. It is important that Council's develop maturing decision making that enables them to address inappropriate conduct complaints as part of its everyday business. For these matters, it is considered appropriate for Councils to play some role in dealing with less serious behavioural complaints with only persistent and serious matters about Mayors and Councillors proceeding to the independent assessor.

Any legislative change needs to better define misconduct and make it clear that a Councillor will only be dismissed in the most serious of circumstances with other penalties being considered first such as fines and surcharge.

Recommendation 5

The Hills Shire Council does not support the establishment of a Local Government Privileges committee as envisaged in the discussion paper. Instead, a panel of suitably qualified and independent persons should be formed to deal with Councillor mis behaviour that has not been addressed at the local level or where the behaviour is persistent.

- **Reset the code of conduct to be similar to Parliamentary Codes, making it clear the expected patterns of councillor behaviour,**

There are two codes of conduct for NSW Parliamentarians, one for Members of Parliament and another for Ministers. Both are attached to this report. It is difficult to determine how effective these codes have been as there are many examples of Members of Parliament being the subject of corrupt conduct findings and the role of Members of Parliament is a feature of many publicly reported investigations. It is also difficult to determine the effectiveness of the codes and framework for matters that did not reach the threshold of an ICAC investigation.

The NSW parliamentary Code for members of parliament appears too brief and permits broad interpretations. The code is also ambiguous as to how complaints can be made and what can be expected. It is unclear the bureaucracy put in place to manager behaviour complaints about of MP's and the cost and effectiveness of that process is largely unreported.

One of the areas Councillors have the most difficulty with is identifying and managing conflicts of interest. This can be improved by better definitions, remove ambiguity around the definitions that exist, greater use of case studies and better training.

Out of the two NSW Parliament Codes of conduct, the better model is the Code of Conduct for Ministers as it has greater detail, coverage and definitions albeit the role of the Premier in complaint management is flawed. The ICAC has released an "annotated Ministerial code of conduct" which is a useful improvement and one that should be developed for Councillors.

Any Code of Conduct for Councillors should not be so brief as to be open to broad interpretations and should be clear to all readers of the behaviour and conduct expected, clear about the pathways for complaint and its resolution and instil accountability whilst being fair to all stakeholders.

Recommendation 6

The Hills Shire Council has no concerns about the existing Code of Conduct rather its concerns are primarily around the administrative procedures. Any new Code of Conduct for Councillors should not be so brief as to be open to broad interpretations and should be clear to all readers of the behaviour and conduct expected, clear about the pathways for a complaint and its resolution and instil accountability whilst being fair to all stakeholders. Out of the two codes of conduct relating to the NSW parliament, the Code of conduct for ministers seems a more appropriate model for Councillors.

- **Ensure the community can observe local democratic processes by banning closed to the public briefing sessions, while at the same time restoring the dignity and prestige of the council chamber.**

Comment

This has been dealt with earlier in this report. While it is agreed that confidential briefing sessions cannot be decision-making forums, this suggestion is considered an overreach and it is unclear how the government could regulate as to how Councillors interacts together. The existing code of meeting practice adequately deals with his matter.

It is considered that confidential briefings are essential to the role of Councillor. Confidential briefings are safe environment for Councillors to gather information collectively together on important matters relating to the Council. All Councillors are held accountable for their decisions not just the Mayor. All Councillors should be provided with an efficient safe environment to be briefed on matters and to enable them to ask questions. All Councillors should be afforded the same opportunity for access to staff and information to help them in their decision making at the right time. It is considered that confidential briefing sessions are fundamental to good governance.

An improvement option that ought be considered is how Council records the reasons and the vote for resolutions that are passed which materially different to that in the printed agenda. Materiality being defined as opposite or so different that the amended resolution is not simply addressing grammatical amendments. In the past, decisions that are made that are different to the recommendation in the business paper can cause confusion. It causes confusion as it is often not clear from the debate as to the reasons for a change. This can also be reinforced that for such matters, a division to record the voting of individual councillors in the business paper could be a provision of the code of meeting practice.

Recommendation 7

The Hills Shire Council supports confidential briefing sessions and the current controls in the current model code of meeting practice in relation to confidential briefings is effective. It is clear that such briefing are not to be used for decision making or be a substitute for behind closed doors decision making. An improvement opportunity exists to make it a requirement that any resolution inconsistent to that in the printed business paper be supported with reasons and a division where the record of individual councillor votes is recorded.

Potential changes to the code of conduct and oath of office

The discussion paper outlines a key proposal for the councillor behavioural framework move to a streamlined "aspirational" Code of Conduct. The goal is for a clear and succinct 2-3 page document that leaves key definitions of misbehaviour to legislation and be also aligned to the oath of office. The paper asks two questions.

1. What are the key elements of an aspirational Code of Conduct that should be enshrined?

2. What are your views about aligning the Oath of Office to the revamped code of conduct?

Comment

It is not clear what is meant by a more "aspirational" Code of Conduct. The equivalent being these relating to NSW Members of Parliament. As previously commented upon, the shorter more condensed version is open to interpretation, absent accountability and a clear pathway for complaints to be made.

The condensed Code of Conduct should be clear and set the minimum standard of conduct expected. The Code of Conduct for Ministers of the NSW Parliament is a preferable example especially the version recently annotated by the ICAC. A Code of Conduct for Councillors with a better explanation of who is responsible for receiving complaints, assessing complaints and handing our penalties should be clear.

The key elements are:

- A clear link to the principles for local government as laid out is Chapter 3 of the Local Government Act 1993.
- A clear expectation of the minimum standards of always acting ethically and honesty in the persons official capacity.
- What are the minimum standards of behaviour.
- Making a breach of the Oath of Office misconduct.
- Misconduct being defined.
- Setting a clear expectation that a Councils majority decision will be the one implemented with any public disapproval being clear that the majority decision is different.
- Setting a clear expectation around the proactive identification and management of conflicts of interest, especially around pecuniary and significant nonpecuniary interests.
- Clear expectations around gifts and benefits.
- Clear consequences for not complying with Code of Conduct
- Clear expectation around supporting any investigation into a code of conduct matter.
- Recognising there are probably three streams of seriousness, behavioural breach, mis conduct and corrupt conduct and setting the expectation that only the most serious matters will be considered for maximum penalties.
- Making clear the Work, Health and safety obligations of Councillors
- Making clear the responsibilities of the governing body as distinct from day-to-day management of the Councils operations.
- Make it clear that the Mayor and Councillors do not give direction to staff

Recommendation 8

The Hills Shire Council supports in principle the amendment to the Oath of Office to align with the code of conduct.

Recommendation 9

The Code of Conduct should set minimum standards of behaviour and conduct and should not be aspirational.

*R*ecommendation 10

The key elements of a Code of Conduct are:

a. *A clear link to the principles for local government as laid out is Chapter 3 of the Local Government Act 1993.*
b. *A clear expectation of the minimum standards of always acting ethically and honesty in the persons official capacity.*
c. *What are the minimum standards of behaviour.*
d. *Making a breach of the Oath of Office misconduct.*
e. *Misconduct being defined.*
f. *Setting a clear expectation that a Councils majority decision will be the one implemented with any public disapproval being clear that the majority decision is different.*
g. *Setting a clear expectation around the proactive identification and management of conflicts of interest, especially around pecuniary and significant nonpecuniary interests.*
h. *Clear expectations around gifts and benefits.*
i. *Clear consequences for not complying with Code of Conduct*
j. *Clear expectation around supporting any investigation into a code of conduct matter.*
k. *Recognising there are probably three streams of seriousness, behavioural breach, mis conduct and corrupt conduct and setting the expectation that only the most serious matters will be considered for maximum penalties.*
l. *Making clear the Work, Health and safety obligations of Councillors*
m. *Making clear the responsibilities of the governing body as distinct from day-to-day management of the Councils operations.*
n. *Make it clear that the Mayor and Councillors do not to give direction to staff.*

Potential changes to the definitions and assessment of Councillor misbehaviour.

It is recognised that misbehaviour has varying degrees and minor matters might be different to misconduct. There are a number of questions posed.

Pecuniary interests

Is the proposed pecuniary interest framework appropriate? Is anything missing?
Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

Comment

This is an area of the current code of conduct that is the most difficult to master. While pecuniary interests are mostly clear, there is ambiguity in the current wording around “appreciable” financial gain or loss. What is appreciable is wide to interpretation and would vary between individuals of different financial positions. It is also difficult when the definition considers what others might perceive. Again, open to a broad interpretation and sets different expectations of complainants. There are many instances such as the dealing with a Local Environmental Plan where loss of quorum will result and whole there is a pathway to gain an exemption, these should be defined where they can and where they can’t, a faster approval of the OLG is needed In relation to significant non-pecuniary interests, these two are hard to identify and determine.

The suggested list in the discussion paper and proposed framework is supported. Added to that list should be pecuniary interests that do not have to be declared, those that can be declared but still participate in the decision (refer 4.6 of current code of conduct) and those that must be declared and no participation is allowed. It should also be clear the reporting requirements, record keeping and that the continued management of that conflict of interest always remains in relation to all official acts, not just at meetings of Council.

The discussion paper is silent on political donations, and this is a source of confusion under the current Code of Conduct and framework. The Minister should take this opportunity for the framework to make it abundantly clear what the requirements around political donations are and when they need to be declared and when they need to be managed as if they are pecuniary or significant nonpecuniary interests.

Recommendation 11

Better definition and annotation is required to give better clarity and understanding of pecuniary and non-pecuniary interests that are significant. Words such as “appreciable”, “perception” and “significant” are open to broad interpretation and should be better defined so as to reduce unnecessary complaints and to give clear indication to members of the public that conflicts of interest are inevitable and what is important is there is disclosure by the elected official and removal from the conflict where it is necessary.

Property developers and real estate agents

Are there any specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

Legislation is being drafted to clearly define who a real estate agent and developer is, require an obligation to divest and not enter into real estate or development business arrangements through contracts (exemptions will be made to buy and sell their own property using a real estate agent), establish penalties and create transitional arrangements. The NSW Government has clearly determined there is inherent conflicts of interest and therefore it should be addressed.

Comment

This is a vexed question as it is important that participation in our system of Government should be a right available to almost everyone. Those ineligible for office is already adequately defined in section 275 of the Act. Banning real estate agents and developers is adding considerably to the list and has human rights and other implications.

Councillors in metropolitan areas have very little planning powers left. Councillors are not involved in the assessment nor determination of Development Applications. Councillors are involved in decisions about planning proposals and those too, are ultimately decided by the NSW Government. Further, so many of the NSW Government Policies override any Council decision in any case. The question really is what power an individual Councillor has on these matters? It could be observed that there are worse inherent conflicts of interest in the private certification system that the Government should be addressing.

It is arguable that if the interest is known and declared, the conflict appropriately managed and there are real consequences if the elected official fails to declare and fails to manage appropriately, there system should regulate itself without the need to ban developers and real estate agents form election to Council.

Recommendation 12

The Hills Shire Council have no position on the banning of developers and real estate agents and that the question be a matter for the NSW Government to determine.

Councillor misbehaviour in public office

The third component of a revised definition of misconduct is misbehaviour. This is behaviour outside or inconsistent with the norms of expected from a councillor. The discussion paper puts forward that the best persons to judge this kind of behaviour is councillor peers. There are three limbs to misbehaviour being conduct that is:

- Is unbecoming of a councillor.
- Brings council into disrepute and/or
- Is assessed as being outside the norms of a sitting councillor.

There are two questions posed. Is this the appropriate threshold to face a privileges committee? How else can complaints be minimised?

Comment

The concept of having different streams depending on the seriousness of the complaint has merit. In practical application, it is ideal that behaviour of this kind is firstly dealt with at the local level, and it be only escalated if the behaviour is so serious it is leading to a breakdown in relationship between the Mayor and the General Manager or is a repeatable occurrence.

The status and composition of the panel should be based on qualification, experience and independence. Without those elements the panel lacks credibility, and its usefulness may be questioned by complainants and those being complained about. The panel should have the power to recommend an appropriate remediation, sanction of penalty.

Recommendation 13

The Hills Shire Council supports managing behaviour in the first instance at the local level and that serious or repeat misbehaviour be assessed and determined by a panel that is qualified, experienced and independent and that can recommend remedy, sanction or penalty.

Addressing inappropriate lobbying

On the recommendation of the ICAC, the OLG is developing lobbying guidelines and a model policy for Councils to adopt. At a minimum, the guidelines and policy will

- Address how professional lobbyists are identified and obligations on councils and councillors if they met a professional lobbyist.
- Set out inappropriate behaviours when being lobbied
- Identify steps to be taken to ensure transparency
- Require council officials to report inappropriate or corrupt lobbying behaviours to the council's general manager.

The question out in the discussion paper is what key features should be included in lobbying guidelines and a model policy?

Comment.

This area is complex as it is acknowledged that Councillors are expected to be lobbied. Why in particular professional lobbyists are seen as a greater risk than other community members such as developers, applicants, objectors, builders, business owners and associates is unclear. A professional lobbyist may well have less impact than other community members.

It would be important that any such policy is realistic, provides sufficient clear definitions and a clear process of how to identify, declaring record and release to the public any discussions that are captured by the policy. It needs to be clear as to what lobbying activity is captured and what isn't.

Recommendation 14

It would be important that any such policy is realistic, provides sufficient clear definitions and a clear process of how to identify, declaring record and release to the public any discussions that are captured by the policy. It needs to be clear as to what lobbying activity is captured and what isn't.

Dispute resolution and penalty framework.

The discussion paper seeks to create a system that separates the process of dealing with complaints about conflicts of interest and that of misbehaviour. It is suggested that general managers no longer be central to the complaints process. Serious conflicts of interest would be entirely dealt with by the OLG. It is proposed there will be no investigation of misbehaviour an instead it be referred to their peers through the proposed local government privileges committee.

Comment

Better streamlined complaint pathways is sensible. Removing the two-step process is also sensible and any complaints about serious matters such as conflicts of interest should be referred to the OLG to handle is also supported.

In terms of complaints about misbehaviour, in many cases these are adequately addressed locally and that is perhaps one reason why the Hills Shire Council does not have a high incidence of code of conduct complaints. Councils should be equipped with the skills and capability to deal with matters as early as possible and in the local context where possible and strong leadership by General managers and Mayors is effective.

The referral to the local government panel should be for repeat offences, where its resulting in breakdown of key relationships and that panel should be comprised as recommended earlier in this report.

Of concern is how to manage complaints that are not about behaviour and not about conflicts of interest such as political donations, gifts and benefits, inappropriate lobbying and the like. It is recommended that these complaints also be handled by the OLG with serious corrupt conduct referred directly to the ICAC by the OLG.

Recommendation 15

The Hills Shire Council supports different pathways of dealing with misconduct based on seriousness is sensible and that removal of the two-step process is supported. The handling of serious complaints by the OLG is supported providing it also deals with complaints that are serious but do not amount to conflicts of interest. Council supports an opportunity to manage poor behaviour at the local level in the first instance.

Giving OLG the power to issue penalty infringement notices

The use of Penalty infringement notices by the OLG for minor or insignificant breaches of conflict-of-interest declarations is put forward as a solution. More serious matters will not be dealt with by a PIN. The discussion paper puts forward a question about what level of PIN is appropriate?

Comment

The PIN proposal for the use of OLG a pragmatic solution. Presumably payment of the PIN closes the matter. The question arises is how an appeal to that PIN work might and in what jurisdiction. Who bears the cost is also a relevant question.

What level of PIN is appropriate? Hard to determine as it must be sufficient to act as both deterrent and give the public confidence that the penalty fits the offence. It also needs to recognise that Councillors come from different backgrounds with different financial circumstances and the face value of the PIN needs to strike an appropriate balance.

Recommendation 16

The Hills Shire Council supports the concept of a PIN for minor breaches as outlined in the discussion paper and makes no contribution as to the penalty amount other than it needs to be sufficient to act as a genuine deterrent and be such that the community accepts as reasonable penalty for the offence.

Restoring Dignity to Council Meetings

The decision paper talks about the need to have Council Chambers as a chamber of democracy with the Mayor being the figure head that represents authority of that Council. The discussion paper indicates that the reverence to tradition is lost and so to with it, the dignity of the Chamber. The discussion paper seeks to amend the Model Code of Meeting Practice to confer the power on Mayors to expel Councillors for acts of disorder and to remove Council's entitlement to a fee for the month they have been expelled. Councillors will be compelled to apologise for disorderly conduct at the meeting it occurs and if they fail, they must do so at each subsequent meeting until they do. There is expected to be a right of review.

The reform will also extend the power of the Mayor to expel members of the public for acts of disorder and being able to issue a penalty infringement notice (PIN) where members of the public refuse to comply with such request. The decision paper poses the additional question: Are there any other powers that need to be granted to the Mayor or Chair of the relevant meeting to deal with disorderly behaviour?

Comment

The Mayor or Chair of the meeting if not the Mayor, must have the precedence at Council meetings and be treated with the respect that position deserves. Equally, Mayors should be trained and expected to be exemplary role models of behaviour. The tone is set from the top and the role of the Chair is essential in establishing the prestige of the Council Chambers.

The Local Government Act and current Code of Meeting Practice places the Mayor as being the ultimate presiding official in the Chamber. Experience at the Hills Shire Council has shown that these controls are effective. It has been a long time since there was a need to suspend meetings for disorder. It has been a long time since any Mayor has needed to expel a Councillor or a member of public. Mayors in recent times have been able to deal with acts of disorder appropriately.

The power of the Mayor to expel Councillors should be legislatively based and then reinforced by the Code of Conduct and Code of Meeting Practice. There needs to be a consistency. Penalties should be prescribed for any person not following the reasonable directive of the Meeting Chair. Whether it is appropriate for Mayors/Chairs to be able to issue a PIN is problematic and most likely unnecessary if the failure to comply is an offence that can then be punishable by the Independent Review Committee given the meeting would have been recorded.

Perhaps an alternative to the Mayor issuing a PIN, that power could be conferred to another person authorised to do so. It is necessary that it is possible to deal with the matter quickly and it would require an appeal process with the onus of proof being upon the person so penalised.

Recommendation 17

Powers of Mayors/Chairs to expel Councillors and members of the public for acts of disorder should be enshrined in the Local Government Act. Mayors issuing PIN's is considered problematic and that authority/responsibility should be given to a suitably qualified person/body. It is also necessary for Mayors/Chairs to be trained in the responsibilities to manage and control the meeting and Mayors/Chairs fairly to do so should also be on an Act of Misconduct.

Banning Briefing Sessions

This is the last session of the discussion paper and for the reasons expressed earlier in this report, the proposal to ban confidential briefings sessions is not supported.

Recommendation 18

The Hills Shire Council does not support the proposal to ban confidential briefing sessions and considers the existing Code of Meeting Practise adequately deals with this issue.

Conclusion

The discussion paper released by the OLG discusses a range of issues in relation to the Code of Conduct, Code of Meeting Practice and current legislation. It is considered timely to review these matters given the experience throughout the State and the influence of modern technology that can disrupt the functions of a Council.

The Hills Shire Council has not experienced the level of dysfunction of other Councils, has not held a history of Code of Conduct complaints and has adequately dealt with the acts of disorder under current frameworks. This report and recommendation is Council's response to the issues raised and the proposals put forward.

ATTACHMENTS

1. Draft Submission to OLG (4 pages)
2. Councillor Conduct and Meeting Practices – Discussion paper (20 pages)
3. Code of Conduct for Members (adopted 5 March 2020) (4 pages)
4. Independent Commission against Corruption Amendment (16 pages)

ATTACHMENT 1

SUBMISSION TO OFFICE OF LOCAL GOVERNMENT – COUNCILLOR CONDUCT AND MEETING PRACTICES-A NEW FRAMEWORK

The entire report will be submitted including the following recommendations:

Recommendation 1

The Hills Shire Council holds effective, efficient Council meetings chaired by the Mayor who maintains respect, order and consistency with the adopted Code of Conduct and Code of Meeting Practice. The Council meets approximately 21 times a year and considers approximately 300 items of business with the vast majority being decided within open session of the meeting. The Council does not have a history of code of conduct complaints and does not receive complaints about the Chair or conduct of its meetings.

Recommendation 2

Different pathways and penalties should be established however in councils experience the current code of conduct itself is not a problem however the procedures for its administration are. There is an opportunity for complaints to be submitted in a prescribed format to identify vexatious and frivolous complaints early. There could also be improvement to definitions of what is considered vexatious and frivolous. Council supports any change to improve the resources for fast, fair independent complaint assessment.

Recommendation 3

The Hills Shire Council supports a review of the current processing framework for code of conduct complaints. Council supports better resourcing, an independent complaints assessment process that is fair to all parties resulting in timely and appropriate finalisation of complaints.

Recommendation 4

The Hills Shire Council wishes to make the OLG aware *that the notion that the allowance provided to Councillors and Mayors as being "pay" or sitting fees is incorrect. The Hills Shire Council supports the proposal for the Council not to be the complaints handler for serious matters relating to gifts and benefits, pecuniary interests, donations, significant nonpecuniary interests and misuse of resources. Council also supports the penalties for these matters be determined by an appropriately resourced, skilled and independent structure.*

Recommendation 5

The Hills Shire Council does not support the establishment of a Local Government Privileges committee as envisaged in the discussion paper. Instead, a panel of suitably qualified and independent persons should be formed to deal with Councillor mis behaviour that has not been addressed at the local level or where the behaviour is persistent.

Recommendation 6

The Hills Shire Council has no concerns about the existing Code of Conduct rather its concerns are primarily around the administrative procedures. Any new Code of Conduct for Councillors should not be so brief as to be open to broad interpretations and should be clear to all readers of the behaviour and conduct expected, clear about the pathways for a complaint and its resolution and instil accountability whilst being fair to all stakeholders. Out of the two codes of conduct relating to the NSW parliament, the Code of conduct for ministers seems a more appropriate model for Councillors.

Recommendation 7

The Hills Shire Council supports confidential briefing sessions and the current controls in the current model code of meeting practice in relation to confidential briefings is effective. It is clear that such briefing are not to be used for decision making or be a substitute for behind closed doors decision making. An improvement opportunity exists to make it a requirement that any resolution inconsistent to that in the printed business paper be supported with reasons and a division where the record of individual councillor votes is recorded.

Recommendation 8

The Hills Shire Council supports in principle the amendment to the Oath of Office to align with the code of conduct.

Recommendation 9

The Code of Conduct should set minimum standards of behaviour and conduct and should not be aspirational.

Recommendation 10

The key elements of a Code of Conduct are

(a) A clear link to the principles for local government as laid out is Chapter 3 of the Local Government Act 1993.

(b) A clear expectation of the minimum standards of always acting ethically and honesty in the persons official capacity.

(c) What are the minimum standards of behaviour.

(d) Making a breach of the Oath of Office misconduct.

(e) Misconduct being defined.

(f) Setting a clear expectation that a Councils majority decision will be the one implemented with any public disapproval being clear that the decision is different.

(g) Setting a clear expectation around the proactive identification and management of conflicts of interest, especially around pecuniary and significant nonpecuniary interests.

(h) Clear expectations around gifts and benefits.

(i) Consequences for not complying with Code of Conduct

(j) Clear expectation around supporting any investigation into a code of conduct matter.

(k) Recognising there are probably three streams of seriousness, behavioural breach, mis conduct and corrupt conduct and setting the expectation that only the most serious matters will be considered for maximum penalties.

(l) Making clear the Work, Health and safety obligations of Councillors

(m) Making clear the responsibilities of the governing body as distinct from day-to-day management of the Councils operations.

(n) Mayor and Councillors do not to give direction to staff.

Recommendation 11

Better definition and annotation is required to give better clarity and understanding of pecuniary and non-pecuniary interests that are significant. Words such as "appreciable", "perception" and "significant" are open to broad interpretation and should be better defined so as to reduce unnecessary complaints and to give clear indication to members of the public that conflicts of interest are inevitable and what is important is there is disclosure by the elected official and removal from the conflict where it is necessary.

Recommendation 12

The Hills Shire Council have no position on the banning of developers and real estate agents and that the question be a matter for the NSW Government to determine.

Recommendation 13

The Hills Shire Council supports managing behaviour in the first instance at the local level and that serious or repeat misbehaviour be assessed and determined by a panel that is qualified, experienced and independent and that can recommend remedy, sanction or penalty.

Recommendation 14

It would be important that any such policy is realistic, provides sufficient clear definitions and a clear process of how to identify, declaring record and release to the public any discussions that are captured by the policy. It needs to be clear as to what lobbying activity is captured and what isn't.

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Recommendation 18

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City of Ryde

Submission Feedback – Councillor Conduct and Meeting Practices Framework

Principles of Change

1. Are we missing anything in the principles of change?

- Commitment to Collaboration and Community-Driven Decisions:
  - Councils function best as collaborative, community-driven bodies, rather than as arenas for political rivalry. Political party imbalances can hinder fair and impartial voting, which impacts the ability to make decisions in the best interest of the community rather than along party lines. Councillors should act with due regard for integrity, fairness, accountability, responsibility, and in the public interest, ensuring that decisions reflect the needs and voices of the community over any party-driven objectives. Strengthening non-partisan collaboration in the Code of Conduct would support this principle.

- Focus on Local Issues Over Broader Activism:
  - Local government's primary mandate is to serve residents by managing essential services, infrastructure, and local development. Councils should prioritise matters that directly impact the community. Addressing global issues or unrelated activism can dilute Council's focus and pull resources away from local priorities. By remaining focused on their mandate, Councillors can ensure their efforts and resources align with the interests and needs of the community.
- Principles of Public Trust and Accountability:
  - Recognising that Council is a public trust, the community is entitled to expect that Councillors will act with integrity, fairness, accountability, responsibility, and in the public interest. This means placing the public good above personal or political interests, maintaining transparency, and upholding ethical standards. Clear, enforceable standards that underscore these values would strengthen public confidence and align Councillor actions with the community's expectations.

Code of Conduct and Oath of Office

2. What are the key elements of an aspirational Code of Conduct that should be enshrined?

 Clear Standards of Behaviour
- We support the inclusion of clear, explicit standards of conduct that define ethical behaviour and responsibilities for all Councillors, setting a foundation for accountability and professionalism.

 Commitment to Continuous Improvement and Community Service
- Encourage continuous improvement, innovation, and the delivery of high-quality services to the community. Councillors should be motivated to enhance the environment and living conditions of the local community through their actions.

 Integrity and Honesty
- Promote transparency, fairness, and honesty in all decision-making processes. Councillors should act with integrity, striving to uphold and enhance the integrity and reputation of the Council.

 Public Interest
- Councillors should work collaboratively to achieve the best outcomes for the community, prioritising the public interest over personal or political considerations.

 Accountability
- Councillors should be accountable for their actions and decisions, accepting responsibility and being open to public scrutiny to build and maintain community trust.

 Respect and Inclusion
- Foster an environment of mutual respect, non-discrimination, and inclusion, valuing diverse perspectives and ensuring that all views are respected within Council deliberations and interactions.

 Commitment to Continuing Professional Development

- Mandate ongoing professional development for all Councillors to enhance skills, stay updated on best practices, and continue to improve service quality for the community.

3. What are your views about aligning the Oath of Office to the revamped Code of Conduct?

- Anything that assists in reiterating the importance of meeting the Code of Conduct would be supported by the City of Ryde. This should apply to both the Oath of Office and the Affirmation of Office.

- Possible addition: *That my actions and behaviour will uphold the integrity of the Council and I will comply with the Model Code of Conduct and work with all Councillors in a professional and respectful manner to achieve the best outcomes for the community. My actions will not bring the Council into disrepute.*

Definitions and Assessment of Councillor Misbehaviour

4. Is the proposed pecuniary interest framework appropriate? Is anything missing?

- The proposed pecuniary interest framework, with thresholds for accumulated values of gifts, benefits, and travel-related items, aims to promote transparency and manage potential conflicts of interest. However, it's crucial to address any ambiguity around valuation and disclosure to ensure Councillors consistently interpret and apply the rules. For example, it can be problematic to monitor and accurately assess accumulated value of gifts and benefits of more than $500, for example potential flight upgrades. This can be difficult to accurately determine, particularly when invitations to attend events or gifts are given and the value is unclear.

5. Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

- With councillors residing in the LGA, it can be difficult not to have some form of connection or association to local businesses, shops, and clubs. Statements of being 'friendly' or 'associated with' in relation to a significant non-pecuniary interest would be very challenging for council, particularly when determining perceived conflicts.

- To balance transparency with practicality, Councils could refine the disclosure of non-pecuniary interests by defining what constitutes a "significant" connection, focusing only on formal affiliations or relationships with potential influence over decisions.

Introducing categories or thresholds for disclosure can help Councillors identify relevant associations without reporting every minor interaction, reducing the administrative burden. Annual declarations with streamlined updates for major connections could simplify the process, while an online tool might further ease documentation. This approach maintains transparency for meaningful associations, allowing Councillors to focus on governance without stifling their community involvement.

6. Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

- More details around exemptions relating to councillor's abilities to buy and sell property via real estate agents would be required. Deceased estate sales, property sales for their children and extended family. All reasonable actions but could lead to potential conflicts.

7. Is this the appropriate threshold to face Privileges Committee?

- Appropriateness of the Privileges Committee Threshold
  - Establishing a threshold for referral to a Privileges Committee is critical to ensure that only significant breaches or misconduct cases are escalated, preserving resources for cases that warrant formal intervention. Implementing this threshold should balance efficiency and fairness, allowing for appropriate oversight without overburdening the committee or Council.
- Financial Implications
  - The financial impact on Council needs careful consideration. Clarity on the funding model is essential: will the process be subsidised by the NSW Government, council-funded, or charged per referral? Each approach has distinct implications for Council's budget and resource planning. Cost allocation should align with Council's priorities without diverting resources from essential community services.
- Authority and Binding Nature of the Committee's Decisions
  - Defining the committee's authority is paramount. Will its decisions be binding on the Council and published, or will it issue recommendations that require Council approval? A clear mandate would streamline enforcement and prevent procedural ambiguity, enhancing the committee's effectiveness and Council's accountability.
- Transparency and Confidentiality
  - Determining the level of transparency regarding referrals is crucial. Publicising referrals could harm a Councillor's reputation prematurely if allegations are unfounded, so it may be preferable to maintain confidentiality until an outcome is reached. Balancing transparency with confidentiality ensures fairness for accused individuals while upholding public trust in the process.

- Potential Bias and Fair Representation
    - Addressing potential biases within the committee, including political affiliations, is essential to uphold fairness. Clear guidelines and independent oversight mechanisms could mitigate bias, ensuring that decisions are perceived as impartial and credible by all stakeholders.

- Identification of Systemic Issues
    - The committee's scope could extend to identifying broader systemic issues underlying individual complaints. This capability would allow Council to address recurring problems or cultural challenges proactively, reducing the likelihood of future complaints.
- Insurance Coverage for Defence in Behaviour Complaints
    - Councillors' potential use of Council-provided insurance to cover defence costs in behaviour complaints could lead to increased expenses. Council should establish clear policies defining when and how insurance coverage applies, ensuring it is available only for cases within reasonable and justified parameters to manage cost impacts effectively.

In summary, a robust framework addressing these considerations—financial impacts, authority, transparency, impartiality, systemic issue identification, and insurance policies—would be essential for a fair, transparent, and efficient process. This approach would strengthen Council's ability to manage behaviour complaints effectively, with both integrity and accountability.

8. How else can complaints be minimised?

- Promote a Culture of Respect and Inclusion
    - Invest in fostering a respectful and inclusive environment through structured professional development focused on skills like constructive communication, empathy, and conflict resolution. This can help Councillors better understand and respect diverse perspectives, reducing interpersonal tensions that often lead to complaints.
- Clear Role Definition and Focus on Relevant Issues
    - Ensure all Councillors have a clear understanding of Council's role and responsibilities, which helps keep discussions and decisions focused on core community issues. By setting clear boundaries on relevant topics, Councillors are encouraged to prioritise issues directly impacting their constituents, reducing frustrations over unrelated or peripheral discussions.
- Mandated Continuing Professional Development

- Requiring ongoing professional development in governance, ethics, and leadership not only helps Councillors stay informed about best practices but also strengthens decision-making and accountability. This approach helps mitigate complaints by equipping Councillors with the tools and knowledge to navigate challenges professionally.

 Implement Structured and Efficient Meeting Practices

- Well-structured meetings that adhere to clear agendas, time limits, and defined protocols encourage constructive dialogue and prevent escalation of minor frustrations. Facilitating balanced participation also helps ensure that all voices are heard respectfully, minimising conflicts, and fostering a sense of shared purpose.

 Establish Proactive Support Systems

- Set up mentorship programs or access to a neutral ethics advisor to provide Councillors with guidance on handling difficult situations. These resources can help resolve potential issues early, promoting a healthier working environment and reducing the likelihood of formal complaints.

 Encourage Constructive Feedback Loops

- Regular feedback sessions provide Councillors with a forum to discuss concerns constructively, address issues in a timely manner, and continuously improve Council's operational dynamics. This proactive approach allows minor grievances to be aired and resolved informally, helping prevent escalation to formal complaints.

 Transparent Complaint Handling Processes

- Develop and communicate a clear, fair complaint resolution process that is easy for Councillors to understand and trust. When Councillors know there is a consistent, impartial approach to managing complaints, it can help prevent misunderstandings about how issues will be handled, promoting confidence in the process, and reducing friction. Ensure the complaints process is not weaponised for political purposes.

9. What key features should be included in lobbying guidelines and a model policy?

To strengthen the guidelines and model policy on lobbying, the following key features are recommended:

 Reference to the State Register of Known Lobbyists: Clear guidance on councillors' obligations to consult the State Register of Lobbyists to verify the legitimacy of lobbyists and their clients before engaging in discussions.

 Protocol for Foreign Government Representatives: Specific considerations and protocols for councillors when approached by representatives from foreign governments or agencies linked to foreign entities. This should include guidance on assessing the interests and objectives of these representatives to avoid potential conflicts of interest or undue influence.

- **Regulation of Incentives**: Clear policies addressing the offering of incentives, such as subsidised travel or accommodation, from external organisations—especially for international trips. Councillors should be required to disclose any such offers, and guidelines should limit acceptance to ensure transparency and avoid perceived or actual conflicts of interest.

Dispute Resolution and Penalty Framework

10. What level of PIN is appropriate?

- To maintain fairness and consistency in issuing penalties, it is crucial to have standardised guidelines that apply to both council staff and councillors. This would minimise perceived bias and ensure that fines are issued in an equitable manner.

- In cases involving breaches of conflict-of-interest requirements, such as failure to lodge a return of interests, councils should establish clear procedural guidelines and steps for staff. This could include timely reminders to councillors prior to the imposition of fines, helping to promote compliance and transparency.

- An appeals process should also be implemented to provide a structured pathway for reviewing and potentially overturning fines, ensuring due process is followed.

Proposed Penalty Structure:

- **Minor first offense**: $100 fine
- **Repeat minor offense or pattern of behaviour**: $500 fine
- **Significant or reportable breach**: $1,000 fine with a referral to the Office of Local Government (OLG) or a formal tribunal process involving independent arbitrators.

11. Are the penalties proposed appropriate, and are there any further penalties that should be considered?

- While it is essential to maintain an open and accessible complaints process, the issue of councillors lodging minor, frivolous, or vexatious complaints against one another can place a significant administrative and financial burden on the council. This is particularly problematic when such complaints are later withdrawn during the investigation phase, especially if an external conduct reviewer has already been engaged.

- To deter this behaviour without discouraging legitimate complaints, councils could consider introducing a mechanism that holds councillors accountable for patterns of frivolous or vexatious complaints. Possible options include:
    - **Introduction of a Warning System**: Councillors who lodge complaints that are deemed minor, frivolous, or vexatious could receive a formal warning. Repeated offenses could then lead to further review or potential penalties.
    - **Cost-Recovery Mechanism**: In cases where a councillor frequently lodges unsubstantiated complaints that are later withdrawn, a cost-recovery mechanism could allow the council to recoup some of the expenses associated with the investigation, especially when external resources are involved.
    - **Referral to Independent Review**: Persistent patterns of vexatious complaints could be referred to an independent arbiter or conduct reviewer for assessment. This would help distinguish between genuine concerns and those made without substantial basis, thereby protecting the integrity of the complaint process.

These measures would help safeguard council resources while still supporting councillors to report genuine complaints and grievances responsibly.

12. Are the existing sanctions available under the Local Government Act sufficient?

- In principle, the existing sanctions under the Local Government Act (LGA), including the ability to suspend a councillor for 1–3 months, are reasonable if they are appropriately applied and that the Office of Local Government have the capability to implement these provisions appropriately. However, challenges often arise in understanding the necessary criteria to impose these sanctions effectively.

- The proposed introduction of a Privileges Committee could enhance this process by offering a more structured and robust framework for the referral and assessment of complaints. A Privileges Committee, with a clear mandate and structured procedures, may help achieve more definitive findings and outcomes compared to the current conduct reviewer process, potentially leading to a more consistent and effective application of sanctions.

- For the Privileges Committee to gain and maintain public confidence, its composition must prioritise transparency, independence, and impartiality. Including a balanced mix of members, for example:
    - **Independent Representatives**: Appointing individuals with no direct affiliations to council operations, such as legal professionals, ethics experts, or retired public officials, would enhance impartiality, and ensure decisions are not influenced by internal biases.

- **Councillor Representation with Limitations**: Councillors serving on the committee should have a strong track record of ethical behaviour, and their roles should be balanced by independent members to prevent conflicts of interest.
- **Diverse and Inclusive Membership**: A diverse committee that represents a range of community perspectives can help build trust, showing the public that the committee is committed to fair and comprehensive assessments.

Establishing clear eligibility criteria and disclosure requirements for committee members can further support public confidence, ensuring decisions are made with integrity and transparency. This approach could strengthen accountability by ensuring that significant breaches are met with appropriate consequences, while also upholding procedural fairness. This could be further demonstrated if the reasons of decisions are made publicly available.

13. Should decisions on sanctions for councillors be made by the Department Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

- Both approaches have distinct advantages for determining sanctions for councillors:
  - **Department Chief Executive Officer**: Decisions made by the Department Chief Executive are beneficial as they are less likely to be influenced by local political dynamics, however, they could be adversely influenced by the Minister or departmental Secretary. The approach could streamline decision-making, potentially making it more efficient, with accountability to a Parliamentary committee similar to the arrangements for the NSW Ombudsman.
  - **Formal Tribunal with Independent Arbitrators**: A tribunal structure provides a more transparent, structured process, separating the roles of evidence-gathering and adjudication. This model allows independent arbitrators to objectively review evidence, conduct hearings, and make decisions in a way that aligns with principles of natural justice. The hearing structure also enables all parties to present their perspectives, which can enhance fairness and public confidence in the outcomes.

In considering the best approach, a hybrid model could also be explored, where certain cases are escalated to a tribunal based on severity, while less complex matters are addressed by the Department Chief Executive to ensure both efficiency and fairness in the process.

Restoring Dignity to Council Meetings

14. Are there other powers that need to be granted to the Mayor or Chair of the relevant meeting to deal with disorderly behaviour?

- Rather than simply expanding "powers," it is essential that the Mayor or Chair demonstrates fairness, integrity, and impartiality when managing disorderly behaviour, particularly when addressing councillors from different political parties. This impartiality is especially critical if the Mayor is affiliated with a political party holding a majority, as their actions must be seen as fair and unbiased to maintain credibility.

- Regarding the proposed power for the Mayor to issue a PIN to members of the public who refuse to leave the chamber after being expelled for disorderly conduct, additional clarification is required. Key considerations include:
    - **Process for Issuing a PIN**: Clear protocols should outline *when* and *by whom* the PIN would be issued. Additionally, there must be defined steps for obtaining the individual's details legally and respectfully, avoiding any escalation of conflict. Perhaps there should be a provision for the NCAT to review any appeals of decision.
    - **Conditions for Expelling Councillors**: The conditions under which a Mayor may expel a councillor, along with the removal of that councillor's entitlement to receive their monthly fee, should be clearly defined. This includes specifying the circumstances in which such actions are warranted, the duration for which financial entitlements can be withheld, and whether an ongoing refusal to apologise for disorderly behaviour allows the Mayor to extend this sanction.
- These expanded powers could lead to appeals by councillors to the Department Chief Executive or a formal tribunal to reinstate lost payments. Additionally, this process may prompt councillors to seek council-funded legal assistance via the council's insurer to contest the Mayor's decision. To mitigate potential conflicts, it would be valuable to establish clear guidance on the use of these powers and a transparent appeals process, ensuring all actions are fair, consistent, and legally sound.

15. Are there other measures needed to improve transparency in councillor deliberations and decision making?

- The proposed removal of private councillor briefings from staff ahead of a council meeting might provide greater transparency. This would alleviate the perception that secret deals are been made behind closed doors and support better community relations with council.

Lachlan Shire Council submission on the proposed change to Councillor Conduct and Meeting Practices

Proposed changes to the Code of Conduct

An aspirational Code of Conduct for Councillors, unless enforceable, would be meaningless.

NSW State Ministers have a comprehensive prescriptive Code of Conduct 15 pages in length, that is expected to be followed. Why then would we not expect similar standards for Local Government Councillors?

There are a few councillors in the NSW that tarnish the reputation of the industry, and in some cases, social media is being used to exacerbate the situation. Given question time at NSW Parliament House is a daily opportunity for to witness inappropriate behaviour with politicians having the protection of Parliamentary Privilege. Will Councillors be afforded the same privileges protection?

There is merit to having 2 separate Codes of Conduct for staff and Councillors, however both need to be enforceable.

Potential Changes to the Definitions and assessments of Councillor Misbehaviour

The Office of Local Government (OLG) Councillor conduct and meeting practices framework states "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 that councillors have. Closed council briefing sessions are being used to make decisions away from the public view".

How can the OLG know what is going on in individual councils?

How does the OLG justify the statement that decisions are being made in closed session? Decisions cannot be formalised without a resolution of Council. A majority of councillors must vote for the proposal.

There is a lack of confidence & it could be perceived that there is a lack of independence in Mayors and Ex-Mayors presiding on the Privileges Committee. All Mayors know each other and concerns exist that they may be required to sit in judgement on their colleagues

Will the Privileges Committee be politicised with Mayors and ex-Mayors? What makes Mayors and ex-Mayor the most appropriate people for this Committee? If the OLG perceives bad behaviour is occurring in the chamber, it is likely that on occasions, this behaviour will emanate from Mayors. A level of independence is needed to make perceived or actual unbiased decisions.

There needs to be some qualifications to sit on the Committee and how will conflicts of interest on the Privileges Committee be managed. Will Councillors be entitled to legal counsel at the Privileges Committee and would individual Councils & therefore ratepayers, be

expected to fund this? Is this an appropriate use of ratepayer funds, thereby reducing the council's ability to provide services to the community?

Who is expected to fund the Privileges Committee?

What is the process for referral of matters to the Privileges Committee? Will there still be a Complaints Coordinator or can anyone refer a complaint to the Committee? Does there need to be yet another layer of government sitting in judgement on councillors? There is already the OLG and ICAC.

We have concern regarding the referring of Councillor misbehaviour (such as bullying of Council staff on social media) to Safework or other bodies that potentially can result in a fine to the Council with no fines being applied to the individual Councillor for their behaviour. Neither Council nor the Mayor have effective control over individual Councillor behaviour. Given the extent to which reputations can be damaged, elections can be affected and morale on council staff can be impacted, misuse of social media must be effectively managed.

Is the OLG the appropriate body to deal with Pecuniary Interests?

The Office of Local Government (OLG) is not the appropriate body to deal with pecuniary interests. Many Councils have referred pecuniary interest breaches to the OLG previously, that were clear pecuniary interest breaches, and the OLG have referred the complaints back to Council because they were considered too minor for the OLG, or the OLG didn't want to investigate or didn't understand the complaint. If the OLG refers continues to refer complaints back to Council under this new structure, does it then go the Privileges Committee as Council no longer have the power to refer to conduct reviewers?

There is agreement that the General Manager needs to be removed from the process. They should not be put in a position of judgement on the Councillors, who are effectively in control of the GM's employment. GM's need to be aware and informed of what complaints have been lodged with the Privileges Committee or the OLG.

There is agreement that the OLG should be able to issue PIN's, however, can this be garnished from the Councillor meeting allowances and can it be used to subsidise the Privileges Committee. If the Privileges Committee finds a Councillor guilty and the resulting punishment is the loss of meeting fees, can that loss of payment be used to fund the Privileges Committee?

What is misbehaviour, this needs to be clearly defined and more clearly than the three limbs of misbehaviour listed in the discussion paper – what does unbecoming of a Councillor, brings Council into disrepute and is assessed as being outside the norms and expectations of a sitting Councillor mean or look like.

Property Developers and Real Estate Agents

Will Councillors who are Developers be forced to sell property or not enter into contracts therefore potentially limiting their income or impacting their livelihood? What happens if they don't sell property or they do enter into a contract, who is responsible for investigating and imposing punishment?

Council Meetings

There is concern over the Mayor having absolute power in the Chamber. The Mayor is one of a body of people elected to represent the community and should not therefore have all the power.

Councillors are often seated closely and may be seated beside a councillor who behaves inappropriately. This is especially the case when the speaking councillor is standing and could potentially be threatening. Further, will residents with disabilities or other health related matters, feel discriminated against, or be deterred from running for council due to the requirement to stand to speak.

Councillor Briefing Sessions

It is universally agreed that under no circumstances should decisions be made at briefing sessions, However, it is considered vital to informed decision making that Council that staff can provide background information, some of which is complex, or commercial in confidence or confidential, to Councillors in a closed session. Often, councillors may need time to digest all the information provided to make a considered decision.

The banning of Pre-Briefing sessions will not prevent Councillors meeting in other locations and determining how they will vote.

The definition of what is a briefing session needs to be clearly articulated.

The Mayor having more information than the other Councillors may divide the Council. There is also a substantial risk that some Mayors may limit the information provided to other councillors to ensure a particular decision is made.

This provision is not practical, Councillors are only allowed speak once for 5 minutes once on a topic in the meeting thereby reducing the Councillors ability to ask more questions. Decisions on more issues may need to be deferred if questions posed by Councillors cannot be answered at the Council Meeting.

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Councillor conduct and meeting practices – A new framework.

Submission

27 November 2024

1. Introduction

By *Circular 24-17* dated 5 September 2024, the NSW Office of Local Government issued a Discussion Paper regarding "Councillor conduct and meeting practices – A new framework". Submissions were invited from the general public, councils, individual councillors and council staff noting that these submissions are to be received by 15 November 2024.

This submission has been prepared for consideration by Council at its meeting scheduled for 26 November 2024, noting that the content has been prepared to align with the headings and questions provided within the Discussion Paper.

2. The weaknesses of existing frameworks

Identified weaknesses of the current framework were identified in the Discussion Paper as:

i. The councillor conduct framework distracts from, rather than enhances, robust democratic debate. Complaints are weaponised for political reasons, or to silence dissent from other elected representatives.
CGRC Response: Generally agreed

ii. Councillors and community members report dissatisfaction with the process for resolving code of conduct complaints – being expensive, overly legal, prone to political sparring and not timely, with average timeframes exceeding 12 months and more than 24 months if they are then referred to OLG for further investigation.
CGRC Response: Agreed

iii. Issues are not being addressed and resolved at the local level – instead complaints are escalated unnecessarily to the State Government to resolve because of the view that public censure from the local council is not a 'strong enough' punishment.
CGRC Response: Agreed

iv. Communities and councillors report that council decision making is not transparent – with decisions being seen as made behind closed doors, information not being provided or withheld, too much use of closed to the public briefings or councils going into closed sessions for no adequate rationale.

CGRC Response: **Comments elsewhere in the Discussion Paper make reference to processes being weaponised. Without the benefit of specific examples that may have been relied upon to draw the conclusion regarding "council decision making is not transparent" in the Discussion Paper, it is difficult to agree or disagree with this statement. How does the reader of the Discussion Paper have the confidence that the statement here is not as a result of weaponisation.**

Real experiences over many years demonstrates that well run briefings/workshops for Councillors enables an environment where information can be explained in a less formal environment, at the pace of the participating Councillors and offers the opportunity to explore issues by questions that may not arise in a public forum.

It is submitted that if some councils are not applying controls, resulting potentially in "decisions" being made/formulated in briefings/workshops, then those councils should be counselled or subject to performance improvement orders. The effect of this approach would be to address those that may be seen to be doing the wrong thing, instead of applying a system/framework that may have detrimental impacts right across the sector and effectively result in ineffective decision-making outcomes.

v. Bad councillor behaviour is not considered to have been addressed quickly enough and when sanctions are imposed it is too late or of little consequence.

CGRC Response: **Agreed**

vi. There is a lack of clarity around OLG's role as the sector regulator – taking too long to resolve matters and not focussing on the important financial and government concerns in the sector, instead spending time focussed on individual councillor behaviour.

CGRC Response: **Agreed**

vii. OLG reports challenges in relying on the reports of council conduct reviewers – investigations into councillors need to be done afresh, the process is cumbersome with multiple feedback loops and serious sanctions can only come from suspensions handed down by NCAT.

CGRC Response: **Generally, Agree. Perhaps the real issue in terms of the current framework is the fact that each Council is responsible for engaging Conduct Reviewers onto a Panel. Each Conduct Reviewer brings their own style and approach and this in itself results in a lack of consistency in approach which the OLG needs to address when matters are escalated for OLG consideration/resolution.**

3. Options for a better approach

Overview of the approach to both councillor conduct framework and meeting practices proposed by the Discussion Paper:

i. Make OLG directly responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest, with sanctions (suspensions and loss of pay) being determined by an appropriate tribunal or body.
CGRC Response: Agreed

ii. Refer behavioural based concerns about councillor conduct to a State-wide panel of experienced councillors to judge their peers.
CGRC Response: Agreed

iii. Reset the code of conduct to be similar to Parliamentary Codes, making it clear the expected patterns of councillor behaviour.
CGRC Response: Agreed

iv. Ensure the community can observe local democratic processes by banning closed to the public briefing sessions, while at the same time restoring the dignity and prestige of the council chamber.
CGRC Response: Agree that "decision making" must be made in open Council meetings, subject to the provisions of section 10 (A) (2). Also agree that the dignity and prestige of the council chamber should be promoted and a high priority of all councillors.

In respect of the proposed banning of closed to the public briefing sessions, the comments made at section 2 iv) above equally apply here.

Well run briefing sessions, which generate exchange of information for awareness and better understanding, generally result in the decision-making body making better decisions when the matters are formally considered at a Council meeting in the chamber.

4. What are the principles of change?

The Discussion Paper indicated a number of principles that guided the intent of the changes proposed within the Discussion Paper, namely:

i. Council leadership and decision making is paramount.
ii. Freedom of speech
iii. Transparency and accountability
iv. Significant penalties should only be imposed by a judicial or quasi-judicial body.
v. A strong and proportionate local government regulator
vi. Subsidiarity
vii. Justice is timely and proportionate.

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

The seven principles set out in the Discussion Paper are supported and by and large capture the basics for good governance in this matter.

There is perhaps one principle which is worthy of consideration:

- **A framework that enhances and encourages quality information exchange that leads to good decisions.**

Comments made at section 2 iv) and section 3 iv) provide the supporting information that would underpin this principle.

5. Potential changes to the code of conduct and oath of office

Generally speaking, reforming the councillor behavioural framework toward a succinct aspirational Code of Conduct to encourage appropriate behaviour of councillors is a positive change. Unfortunately, in the current framework, where behavioural expectations and the definitions of misbehaviour are intertwined in the same document, everyone tends to gravitate to discussions around the negative aspects rather than the higher-level positive attributes.

Also, in the current framework, the Oath of Office for councillors is in focus for the first meeting of council following an ordinary election and rarely does it get any attention, let alone mention, for the remainder of the term of the council. Ensuring that the Oath of Office and the aspirational Code of Conduct are aligned reinforces the behavioural standards and expectations from day one of councillors coming into office.

It is also submitted that in streamlining the Code of Conduct and framing it more toward the Code of Conduct for NSW Members of Parliament is a positive step, and one that encourages aspirational behaviour aligning with Members of NSW Parliament.

The comments in the 6th paragraph of page 8 of the Discussion Paper perhaps miss one important element. Councillors choosing to speak publicly on matters pertaining to their council, particularly when indicating disagreement or criticism, should be able to do so as long as they make it clear that they do so in their personal capacity, i.e. not purporting to represent the council.

It is submitted that the greater majority of councillors already aspire to represent their communities in a positive manner, displaying behaviour that generally our society expects. Given it appears anecdotally that much of the undesired behaviour originates from a relatively small cohort, the concern exists that human nature will dictate that those who choose to exploit/weaponise the Code of Conduct and/or similar processes, may well choose to continue to do so regardless of the positive changes to the Code of Conduct being explored.

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

Whilst the narrative on page 8 of the Discussion Paper in essence captures the principles that should enshrine an aspirational Code of Conduct, the following matters are considered relevant by Cootamundra-Gundagai Regional Council:

- Succinct aspirational Code of Conduct
- Absolutely essential that the Oath of Office and Code of Conduct are aligned.
- Code of Conduct to identify behavioural expectations, thus making it a positive “experience.”
- Definitions of misbehaviour should be captured in separate document/legislation.
- A subtle link to the Code of Conduct for NSW Members of Parliament could assist in the “aspirational” aspects desired.

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

Totally support the alignment of the Oath of Office to the revamped Code of Conduct. As mentioned above, the Oath of Office for councillors is in focus for the first meeting of council following an ordinary election and rarely does it get any attention, let alone mention, for the remainder of the term of the council. Ensuring that the Oath of Office and the aspirational Code of Conduct are aligned reinforces the behavioural standards and expectations from day one of councillors coming into office and acts as a constant reminder for their term of office.

6. Potential changes to the definitions and assessment of councillor misbehaviour

Question: Is the proposed pecuniary interest framework appropriate? Is anything Missing?

In brief, the proposed pecuniary interest framework appears to be appropriate. Given the clear link of the aspirational Code of Conduct to the code of conduct that applies to NSW members of parliament, it is more than appropriate to link the pecuniary interest framework utilised and defined for NSW members of parliament.

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

In general terms, agree with the principles of what constitutes a significant or major non-pecuniary interest.

From experience, the issue that arises around significant or major non-pecuniary interests is the lack of consistency in how individuals apply the test from one situation to another, and from one person to another. Totally agree that the test is whether a reasonable and informed person would perceive that the councillor could be influenced by a private interest when carrying out their official functions.

It is suggested that the principle/test of the perception of a reasonable and informed person needs to be incorporated into the aspirational Code of Conduct so that it remains front of mind for councillors.

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

Real estate agents and developers occupying the role of councillor has been a long-standing issue in local government Australia wide, not just in NSW. Essentially, there are two main reasons that this matter continues to be an issue:

1. A perception exists within communities that real estate agents and developers seek out the role of councillor within local councils to influence policies and planning frameworks specifically to benefit themselves individually; and
2. Some historical cases clearly demonstrate that some individuals, in both councillor and staff roles, have had influence within their local councils that has ultimately benefited themselves, or the interest of a spouse or de facto partner, relative, or partner or employer, or a company or other body of which the councillor/staff member, or their nominee, partner or employer, is a shareholder or member.

Whilst in principle the proposed legislation appears to be framed in the right direction to address the ongoing concerns raised about real estate agents and developers securing a profit as a result of their roles as councillors, it is submitted that legislation will not necessarily address the fundamental issues.

It is very difficult to develop legislation that will totally remove a perception that may exist within communities. Likewise, given past historical cases suggest that a small minority may have benefited individually as real estate agents/developers from their roles as councillors, by far the great majority have undertaken their councillor roles with integrity and ethical considerations in mind. The reality is that some individuals potentially will look to avoid the legislative intent, particularly given the potential profits may far outweigh prospective penalties. That is the diversity of human nature.

In summary, whilst the proposed legislation appears to address concerns about councillors undertaking real estate and development business activities, it is submitted that legislation may not totally address the potential issues that arise in this situation.

Question: Is this the appropriate threshold to face a Privileges Committee?

It is submitted that a Privileges Committee as proposed is a step in the right direction. Removing the general manager and/or staff from the current approach is a positive step, as is a consistency in having all alleged misbehaviour complaints from councils across the State being assessed by a representative panel.

In general terms the threshold proposed to face a Privileges Committee seems appropriate.

Question: How else can complaints be minimised?

The lived experience observed since the Code of Conduct principles were introduced to the *Local Government Act 1993*, and later the Model Code of Conduct in 2004, perhaps warrants recognition at this stage.

Since the code of conduct principles were introduced to the *Act*, we have observed arguably the introduction of more prescription into the Model Code of Conduct. This "prescription" was potentially introduced as a response to some individuals exploiting loopholes, and also to the weaponisation of the Code of Conduct by others.

The principles of developing an aspirational code of conduct framework linked to the conduct principles that apply to NSW members of parliament and legislation that that clearly defines misbehaviour appears to generally be a good start to minimising complaints. The reality will be the lived experience when the changes commence.

Question: What key features should be included in lobbying guidelines and a model policy?

Whilst it is submitted that the proposed introduction of lobbying guidelines and a model policy is a positive step toward guiding the appropriate behaviours for councillors in this space, once again the results will be demonstrated in how the diversity of individuals interpret and behave as a result of the guidelines and policy.

It is suggested that given the potential removal of general managers and other staff form the code of conduct process, that it may indeed be appropriate to consider to "whom" inappropriate or corrupt lobbying behaviours should be reported to. If the general manager and other staff are proposed to be removed from code of conduct reporting/investigation processes, it does not make sense to introduce

another process around lobbying and potential inappropriate behaviours which requires the general manager to be involved in.

7. Dispute resolution and penalty framework

Question: What level of PIN is appropriate?

The appropriateness of a PIN will always be a subjective assessment regardless of the authority tasked with issue of the PIN. It may be appropriate to pre-define a variety of potential breaches and then assign proposed PIN values for various categories of breaches, ranging from very minor to more substantial in nature.

As to the value, it is difficult to assess the appropriateness of the level of PIN value.

Question: Are the penalties proposed appropriate, and are there any further penalties that should be considered?

The potential penalties that could be imposed by the Privileges Committee as follows:

- Censure of the councillor
- Warning of the councillor
- Where referred following misbehaviour in a council meeting, a potential loss of sitting fees
- Referral to an appropriate tribunal or body for more serious sanction, including suspension or disallowance.

appear to be appropriate and are supported.

Question: Are the existing sanctions available under the Local Government Act sufficient?

The existing sanctions available under the Local Government Act are sufficient.

Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

The principle of significant sanctions being imposed by a judicial or quasi-judicial body, in the form of a formal tribunal with independent arbitrators and a hearing structure is supported.

This approach has the benefit of clearly separating the investigative process from the judicial process, a principle that applies in any number of other processes.

8. Restoring dignity to council meetings

Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

The powers of the mayor/chairperson to deal with disorderly behaviour in council meetings are considered appropriate, even in the context of the current code of meeting practice. The challenge often comes in the enforcement of the consequences arising from acts of disorder.

The proposed reforms seem to take the mayor/chairpersons powers in these circumstances to an appropriate level, providing the mayor/chairperson with the power to act on the consequences arising from acts of disorder.

Whilst the proposed reforms to expand the grounds for mayors to expel members of the public from the chamber for acts of disorder are supported including the issuing of a PIN in certain circumstances, it is suggested that these provisions will require significant education/awareness within communities to avoid unnecessary conflict.

Question: Are there any other measures needed to improve transparency in councillor deliberations and decision making?

Comments on the proposal to ban briefing sessions have been made in sections 2 and 3 of this submission and equally apply here.

The opening paragraph on page 18 of the Discussion Paper alludes to *"A practice has recently developed in local government where councillors receive briefings from staff that are closed to the public."* The author of this submission is not sure how the Discussion Paper defines "recent" however, from experience briefings from staff to councillors at various councils over the last twenty years has been a common practice, noting that these briefings were by and large conducted in accordance with practice notes and/or the requirements of the code of meeting practice.

Once again, from experience, if the briefings/workshops are conducted in a manner to facilitate the exchange of information, and do not act as an alternate decision making forum, then ultimately when decisions are made in the chamber, arguably the outcome for the community is a better informed and robust decision. It is stressed that it is essential that the aim of briefings/workshops for councillors should be an exchange of information. Nothing then prevents an informed debate in the council chamber by the councillors, resulting in the most appropriate outcome for the community.

To simply refer to the "banning of briefing sessions," without considering the importance of the exchange of information to enable good decisions is arguably flawed.

As mentioned earlier in this submission, should some councils be encouraging and/or experiencing "decision-making" in briefings/workshops, then these councils should be counselled or the subject of performance improvement orders to rectify, as opposed to a blanket banning on briefing sessions.

Better Planning Network Inc.

Submission: Councillor Code of Conduct and Meeting Practice Review – November 2024

About BPN:

The Better Planning Network Inc. (BPN) is an incorporated, volunteer-based, not-for-profit association established in 2012 in response to the then O'Farrell Government's proposed overhaul of NSW planning legislation that prioritised developer profits over the public interest. Our aim is to advocate for a robust and visionary NSW planning system designed to achieve Ecologically Sustainable Development as defined in the Protection of the Environment Administration Act 1991 (NSW).

Submission:

A. What are the principles of change – is anything missing?

1. We agree with the seven principles of change proposed.
2. However the obligations and responsibilities as detailed in the current principles in the Model Code of Conduct should not be in any way diminished by the proposed changes.
3. There should be an additional principle – that there is a **right to be heard** for the general public at council meetings that is enshrined in legislation as well as the Code.
4. There should be a further additional principle – a **duty of respect** for councillors to treat colleagues, council staff and members of the public, including community organisations and individuals, with respect and honesty and without prejudice or favour.
5. Where a decision regarding conduct that is not concerning pecuniary/non-pecuniary interests is disputed, there must be an access pathway to NCAT or other appropriate body available for complainants for other breaches of the Code.
6. We agree the Oath of Office for local councillors should be aligned to the Code of Conduct.

Potential changes to the code of conduct and oath of office – what are the key elements?

1. We do not agree with the code of conduct being 'aspirational' – the principles must be mandatory and enforceable, otherwise penalties will be difficult to apply even through tribunals. To be binding the code should include a statement that violations of the code may result in disciplinary action.
2. We do not agree with the implication that current Code of Conduct is inherently not easy to understand. It is quite a simple document. If councillors are unable to understand such a basic document, they will not be able to grasp complex legislation that they must turn their minds to from time to time.

3. While it is agreed that the Code could be separated into pecuniary/non-pecuniary interests and other conduct issues, it is not clear how separating the behavioural expectations of councillors from the definitions of misbehaviour reflects a "positive approach".
4. There are sections within the proposed Code that deal with issues relating to the Code of Meeting practice. If that Code is proposed for change it must be publicly exhibited for comment.
5. As above, a key element should be that there is a right to be heard for the community.

Potential changes to the definitions and assessment of councillor misbehaviour – Pecuniary interests:

1. The proposed pecuniary interest framework is reasonably appropriate.
2. However, the proposed amount of any penalty infringement notice needs to be clarified. If it is a small amount, it may not encourage compliance or persuade councillors to provide information when requested by OLG.
3. The current code also includes close friends which is now missing from the proposed framework. Close friends should be included.
4. The current "appropriate management" of pecuniary and non-pecuniary interests is insufficient to encourage councillors abide by the Code – if a conflict is not declared and managed prior to a vote, even if conflict is later declared or a complaint lodged, the vote still stands. This can encourage councillors to declare conflicts after a vote. If a failure to declare a conflict is upheld, the vote should be voided and retaken.
5. The definition of "other body" should be explained to include where councillors have, for instance, been on a committee of an association for an extended period.
6. Because Local Planning Panel members are selected by councillors, the code of conduct in relation to pecuniary interests should also apply to LPP members.

Non-pecuniary interests:

1. We agree in general with the principles that constitute non-pecuniary interest.
2. However again, the current framework for "appropriate management" is insufficient to discourage non-disclosure prior to a vote.
2. While membership of an association should not automatically be seen as a conflict, it is agreed that if there is a direct advantage to an individual or organisation, that must be publicly declared. Again, sufficient penalties and voiding of a vote are a necessary deterrent to non-disclosure.
3. The methods of "management" of significant or major non-pecuniary interests must be clearly spelled out, particularly with regard to whether a councillor can stay for, debate and/or vote on an item. While those boundaries are not clearly delineated, some councillors may stay while others may remove themselves from a debate. It cannot be left to the subjective opinion of individual councillors, it must be cleared prescribed.

Property developers and real estate agents – specific features to address concerns

1. There must be a penalty for matters of pecuniary or conflicts of interest that councillors do not declare e.g. divesting of real estate or development business activities and contractual obligations. Councillors must not be allowed to put real estate business interests into the wife's name or that of his/her family or trust
2. The Code does not appear to take into account affiliations which they currently have to declare. Declarations must be mandatory.

3. Who will be monitoring whether councillors who are currently property developers and/or real estate agents are complying with the Code? Currently the Code is self-monitoring which is inadequate.
4. In the case of penalties and disqualification, where councillors breach the Code what will the terms of disqualification be e.g. length of time?
5. The term "own property" must be clarified. If a councillor owns more than one property in their own name and that is rented out, will that be considered to be a real estate business arrangement? If this is not adequately clarified, it will create a loophole in the legislation.

Councillor misbehaviour in public office – appropriate thresholds and complaint minimization

1. We do not agree that a panel of mayors and ex-mayors should judge their fellow councillors. It is not clear how the mayors and ex-mayors would be selected or by whom. An interested and informed observer could consider that councillors from the same political party would be less inclined to sanction their fellow party members. Even the findings of parliamentary inquiries are often seen to be split along party lines.
2. The Privileges Committee should therefore be staffed by a rotation of lawyers who have a clear understanding of the proposed new legislation with regard to councillor misconduct.
3. The threshold for councillor misbehaviour must also include bullying, harassment, discrimination, fairness and equity, which are all considered to be misbehaviour under the current Model Code of Conduct.
4. While it is agreed that councillors should have freedom of speech, social media accounts can and have been used inappropriately to bully and harass others because councillor social media accounts are administered by the councillors themselves. The use of social media must be addressed in the thresholds.

Addressing inappropriate lobbying – key features

1. We agree with the proposed lobbying guidelines but more obligations are required.
2. The Code needs a definition of 'professional lobbyist'.
3. There needs to be a requirement that all meetings of mayors, councillors and senior staff of council with professional lobbyists are diarised and minuted for the public record.
4. The Code needs to expand to include financial gain from changes to zoning in an LEP.
5. Community groups should not be considered as professional lobbyists.
6. A local resident and/or local community groups calling or writing a submission on a council policy or plan could be considered a lobbyist if this is not clarified.

B. Dispute resolution and penalty framework

1. Reducing the number of complaints must not be an objective of the changes. Only vexatious complaints need to be reduced.
2. We do not agree that there should be "no investigations of misbehaviour". Racial discrimination for instance can have devastating consequences for the recipient particularly via social media which can incite violence. It is unacceptable to suggest that only pecuniary and non-pecuniary interests are serious misconduct.
3.Where the Privileges Committee considers misbehaviour to be serious enough to risk the health, safety and/or well being of others, there should be the ability for the Committee to refer the councillor to OLG for significant sanctions.
4. Mayoral and Councillors' social media must be administered by Council, so that council has the ability to remove a post or sanction councillors who breach the Code.

Abolishing the two step process

1. The length of time for OLG to deal with complaints should be indicated.
2. We agree that private investigators, who are often just trained mediators, should have no future role.
3. However there must still be a pathway for serious misbehaviour to be considered by OLG or NCAT. Concerns regarding having to satisfy evidentiary standards should not preclude investigation of serious misbehaviour.

Giving OLG the power to issue penalty infringement notices – what level is appropriate?

1. The PIN should be sufficient to encourage compliance, say $300-$500. A second offence should incur a higher PIN and so on. There must be a limit to the number of PINs that can be accrued by a councillor within the term of a council beyond which more serious sanctions can be applied.

NSW Local Government Privileges Committee – are proposed penalties appropriate?

1. The Privileges Committee should be made up of lawyers on rotation not ex mayors, to ensure an independent process with no actual or perceived political bias.
2. The use of lawyers will also ensure that should the matter be serious enough, the lawyers brief can be used at an appropriate tribunal or body with little or no further work from OLG.
3. It is inappropriate to delegate the power to dismiss certain matters to a Secretariat that has no formal or legal training.
4. Remuneration of the Privileges Committee cannot come directly from the council of the councillor in question. That could be seen to cause bias. A general levy across all councils should be applied. Where councils have a significantly higher proportion of complaints, then the levy should be increased.
5. Information needs to be provided as to how often the Privileges Committee would sit. Would it be on a case-by-case basis or on set dates?
6. The potential loss of sitting fees should not be restricted to misbehaviour in a council meeting. Such penalties should be able to be applied for all serious instances of misbehaviour.
7. A pathway for referral to an appropriate tribunal or body for more serious sanctions must be available.
8. The term “disallowance” must be clarified. The appropriate tribunal or body must have the power to disqualify a councillor from standing for council for up to a set period, say five years.

Referral of significant sanctions to appropriate tribunal or body

1. Significant sanctions should only be made by a formal tribunal.
2. If a matter is referred to a Tribunal and a resident had made the complaint there may be a situation that the resident may not have the financial capacity to be represented at the Tribunal to give evidence against that Mayor or councillor.
3. Will it be OLG that takes action in a tribunal, rather than the complainant?
4. Will the complainant have their legal costs covered if they are required to be a witness at a Tribunal hearing?
5. Will there be protection for people who make a complaint to ensure they will not be sued for defamation? It is usual that most Code of Conduct complaints are made by residents and are kept confidential to avoid defamation.
6. The existing sanctions may not be sufficient in cases of serious misconduct. It should be legislated that OLG has the power to refer serious misconduct to the police and/or ICAC depending upon the decision of the tribunal.

C. Restoring dignity to council meetings

1. Code of Conduct and Meeting Practice must ensure residents have the right to speak on a matter before council. Speakers should not be unduly restricted to just one for and one against a council agenda matter. Mayors must not have the right to select speakers – the selections could potentially be biased towards a particular viewpoint.
2. Residents must not be denied the right to free speech providing it is not defamatory.
3. Residents are not public officers of the council and are unelected so therefore should not be subject to Penalty Infringement Notices. The use of PINs could be abused by a Mayor or council to ensure a member of the public is not being entitled to free speech and submitting comments to council.
4. A resolution of council should be made before any action is taken unilaterally by a Mayor. Security is usually available at council meetings and is usually sufficient to ensure acts of disorder are appropriately dealt with.
5. Councillors or residents attending a council meeting exhibiting disorderly conduct should be given a warning prior to expelling a councillor or resident from a meeting.
6. All council meetings should be required to be audio visually recorded and archived in the interest of accountability and transparency.
7. Councillors should not drink alcohol before or during meetings and should be ejected by resolution of council for intoxicated behaviour.
8. The term “acts of disorder” must be clarified, otherwise the ability of Mayors to eject councillors could be used to stifle debate or alter a voting pattern.
9. A councillors right of review for acts of disorder is not clear. Who will review the matter when the Mayor is the ultimate authority in a council meeting? Will it be an external review? If so, by whom?
10. The proposed reforms to the Model Code of Meeting Practice must be exhibited for comment, just as the Code of Conduct has been exhibited.
11. It is unreasonable to expect councillors to stand every time they speak. It can also cause difficulties with video recordings needing constant monitoring of the camera angle.
12. It is also an anachronism for councillors and/or members of the public to stand when the Mayor enters the chamber. Mayors are not judges. While the dignity of council meetings is important, they should not feel like a court room.

Banning Briefing Sessions

1. It is agreed that staff briefings with councillors behind closed doors are seen to be not in the best interests of transparency, unless the matter pertains to matters of legal or commercial in confidence. If staff briefings are to be retained, all information provided by staff to councillors in briefing sessions must be made publicly available as part of the Business Papers of council meetings. Clearly then, all briefing sessions on a matter going before council must be concluded before the Business Papers are published.
2. The briefing sessions must therefore be minuted so that the information can be provided to the public. To ensure open discussion, the questions and responses could be recorded as being by “Council” and “Councillor” without identifying any individual.
3. Alternatively these discussions could be open to the public instead. However free and open discussion would then not be as likely.
4. Many councillors view the briefing sessions as being a very useful forum to ask detailed questions in the interests of being fully informed before they make a decision. However unless that information is made public, residents do not know on what basis the decisions are being made.

5. The definition of “legal” should be clarified as it is applied too freely.
6. As committee meetings are not public meetings in many councils, staff information must only be provided in council meetings ie as part of the Business Papers. This will also ensure that all councillors will have access to all information provided by staff, rather than some councillors not being party to all information if they are unable to attend closed briefing sessions.
7. We agree the briefing restrictions on discussions between the General Manager and the Mayor only should not be included. However it is suggested for transparency, that a record of each meeting be kept that lists the topics discussed without going into detail.
8. A further measure to improve transparency relates to Local and District Planning Panel hearings. Currently once the public and the applicant have spoken, the Panel retires behind closed doors where council staff can attend to assist in deliberations. Similarly, the Panels are able to now have behind closed doors briefing sessions with proponents and council staff prior to a Panel hearing. Both of these scenarios prevent the public from hearing what the decision makers (the Panel) are being told by the proponent and by council staff. This increases the risk of corruption and does not promote transparency. The pre and post meeting hearings must be open to the public.
9. All councils must be required to immediately commence audio/visual recording of council meetings and publish them on their website. There are several metropolitan councils that still do not do visual recordings of council meetings and/or only make recordings available under a GIPA application..
10. The period that recordings will be made available on councils' websites should be enumerated in the Code.

Better Planning Network Inc.

bpn@betterplanningnetwork.org.au

SUBMISSION

Submission to Councillor Conduct Framework Review

Lodged on behalf of Gunnedah Shire Council

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Council Resolution: 29.11/24

Meeting Date: 27 November 2024

Online submissions to:

councillorconduct@olg.nsw.gov.au

Submissions close 29 November 2024

GunnedahShire
Open New Horizons

Introduction

We welcome this review of Councillor Conduct and Meeting Practices and Gunnedah Shire Council appreciates the opportunity to make a submission to this review. Please find our feedback below.

1. What are the principles of change?

1.1. Are we missing anything in the principles of change?

Council agrees with the principles of change stated and would also suggest that a focus on ensuring clarity is provided wherever possible (for example, definitions of conflicts of interest) to assist councils with managing within the framework as much as possible. Lack of clarity leads to uncertainty and the inability for decision-makers at the lowest level to determine issues raised in a timely manner.

Council also supports the inclusion of simplicity as a principal of change.

The existing and proposed Code of Conduct is a "one size fits all" is currently system for all councils regardless of size. Council would support a Code of Conduct system that distinguishes between urban and regional/rural councils, particularly in the area of declarations of interest.

2. Potential changes to the code of conduct and oath of office

2.1. What are the key elements of an aspirational Code of Conduct that should be enshrined?

Council generally supports the proposed changes if they are in direct alignment with the principals outlined in Discussion Paper and align with the NSW Parliament Code of Conduct.

There is insufficient information about how the OLG will implement the proposed changes at the council level. Council would advocate that any proposed changes in this area be subject to a further consultation process once the details can be made available.

Council would also like to see the existing Code of Conduct retained for staff.

2.2. What are your views about aligning the Oath of Office to the revamped Code of Conduct?

Council is supportive of aligning the Oath of Office to the Code of Conduct.

3. Potential changes to the definitions and assessment of councillor misbehaviour

3.1. Is the proposed pecuniary interest framework appropriate? Is anything missing?

Council is of the view that the proposed pecuniary interest framework is appropriate.

3.2. Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

Council is of the view that a more specific definition of what constitutes a significant non-pecuniary interest is needed perhaps by way of specific examples. While it is appreciated that the test is somewhat subjective, without providing clearer definitions it will continue to lead to uncertainty by Council officials as to whether their interests may fall into this category and the likelihood of complaints being received that must then be investigated to determine this. Without further clarity, it is difficult to see how a good understanding and consistency of these interests can be gained across the local government industry.

Areas where it would be beneficial to include definitions include:

- friendships and associates; and
- involvement in sporting clubs, community and volunteer groups, including where family members are involved and at what level it would constitute a conflict of interest.

For example, the definition of significant non-pecuniary interest should include that "another person that is particularly close" is a member of the board or executive management where an interest exists in sporting clubs, community and volunteer groups.

3.3. Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

Council opposes the changes proposed to property developers and real estate agents and views this as an anti-democratic measure, particularly where it is applied in regional and rural communities, as these individuals provide a positive and valued contribution in smaller communities.

The proposed strengthening of definitions and disclosures on what constitutes a pecuniary interest is already sufficient.

Council has concerns about what would be defined as a property developer or real estate agent. For example, would stock and estate agents that deal primarily with livestock or beneficiaries from property trusts fall into these definitions.

Conflict of interest are already managed through the existing Code of Conduct and this should be the mechanism that is used to manage these risks where they may exist.

3.4. Is this the appropriate threshold to face a Privileges Committee?

Council is not in agreement with the proposed definition of misbehaviour proposed in the Discussion Paper and views it as too broad and open to interpretation. A definition should be retained that is similar to existing Code of Conduct.

Council is of the view that the threshold is appropriate, but the current process outlined lacks clarity around how the initial assessment of misbehaviour would be determined. Currently, the seriousness of complaints is determined by conduct reviewers but if they are removed from the framework then what would replace this. If all complaints need to be referred for initial assessment by the Local Government Privileges Committee this would presumably create a large burden of work on the proposed Committee. Under this scenario, how the Committee could effectively and efficiently properly review all complaints received in a timely manner to determine if they meet the definition of misbehaviour would be an important consideration.

Council is also of the view that increased diversity should be considered for the formation of such a Committee beyond senior and experienced mayors and ex-mayors. Current mayors should not be eligible as this would likely lead to situations where the Committee members may have conflicts in matters they would need to determine. Senior experienced individuals with governance and legal knowledge or backgrounds and knowledge of the local government industry would also make ideal candidates for such a Committee. For example, ex General Managers.

3.5. How else can complaints be minimised?

Complaints could be minimised by ensuring there are clear definitions about what constitutes misbehaviour supported by examples. Definitions should also be set out in simplistic terms to

ensure they can be easily read and understood by most people. The issue of social media may require consideration in the context of these definitions. Support and training resources for Council officials is also important.

3.6. What key features should be included in lobbying guidelines and a model policy?

Council does not have any feedback on this question.

4. Dispute resolution and penalty framework

4.1. What level of PIN is appropriate?

Council is of the view that no level of PIN is appropriate in the circumstances outlined in the Discussion Paper. Minor or insignificant breaches of the conflicts of interest declarations should not result in a financial penalty for councils or councillors.

4.2. Are the penalties proposed appropriate, and are there any further penalties that should be considered?

Refer to comments for 3.4 regarding uncertainty about the process for initial assessment of complaints. Council is very mindful of past cost shifting by the NSW State Government and would be concerned about any proposal to increase costs to councils to manage complaints. The Discussion Paper notes that "*The Privileges Committee process would be paid for by either individual councillors or their councils, dependent on the outcome*." However, does not provide any level of detail on what the likely costs would be, or which outcomes would result in costs for council or councillors.

In relation to the appropriateness of penalties, these appear reasonable apart from the prospect of council or councillors being required to cover costs associated with the process as noted above.

As stated under 4.1, Council is of the view that no level of PIN is appropriate in the circumstances outlined in the Discussion Paper and that loss of sitting fees should only occur if a councillor is suspended or removed from their position.

4.3. Are the existing sanctions available under the Local Government Act sufficient?

Council is of the view that the existing sanctions are sufficient.

4.4. Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

Council is of the view that a process involving a formal tribunal for the determination of sanctions may be appropriate provided that it is fully funded by the NSW State Government.

5. Restoring dignity to council meetings

5.1. Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

Council does not agree with the proposed changes until further information is provided. We feel that the existing provisions in the Code of Conduct adequately address acts of disorder at Council meetings by councillors or members of the public.

Councillors should retain the ability to retract a statement as is currently available.

5.2. Are there any other measures needed to improve transparency in councillor deliberations and decision making?

Council disagrees with the proposed ban on briefings from staff that are closed to the public. While this may be proposed due to concerns that there is a risk the process may be inappropriately used as a decision-making forum, this proposed change will have broad impacts where there may only be a small number of issues.

There are already rules in place to manage briefings and workshops that councils should be applying, and the focus should instead be on whether this is occurring and appropriately managing non-compliance.

Briefings and workshops are an important mechanism in being able to provide councillors with information and for all councillors the opportunity to receive all information in a consistent manner to ensure Councillors can make informed and timely decisions.

Implementing the proposed changes on briefings would take up a significant amount of councillor and staff time and would be a significant impost on smaller councils and another contributor to the ever-growing cost shifting burden that is experienced by local government.

General comments

The existing and proposed Code of Conduct is a "one size fits all" approach to all local governments, which does not take into consider the distinctions between urban and regional/rural communities. Councillors in smaller communities are usually involved in community and other volunteer groups.

Council notes the following concerns that have initiated this review noted on page 4 of the Discussion Paper, however, it remains unclear from the information in the Discussion Paper as to how the revised framework would reduce the volume of frivolous complaints without changes to Council's overall ability to receive and consider complaints. Rather, the revised framework appears to create further complexity and administration for councils, and likely increased costs, by introduction of the Local Government Privileges Committee. Gunnedah Shire Council would be seeking assurances that the overall changes proposed by the Dispute Resolution and Penalty Framework will not result in additional costs for NSW councils and individual councillors.

For any further information regarding this submission please contact Director Corporate Services, Kelly Stidworthy, at council@gunnedah.nsw.gov.au or (02) 6740 2100.

Date 27 November 2024

Reference File: F09299

Office of Local Government
Locked Bag 3015
NOWRA NSW 2541
councillorconduct@olg.nsw.gov.au

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.

<u>Restoring dignity to council meetings</u>

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



ROSEMARY DILLON
Chief Executive Officer



MARK GREENHILL OAM
Mayor

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www.foke.org.au www.facebook.com/ friendsof kuringgai Est. in 1994
2024 - Celebrating 30 years of Caring for Ku-ring-gai

FRIENDS OF KU-RING-GAI ENVIRONMENT INC.

NSW Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

28 November 2024

Dear Sir/Madam

RE: Councillor conduct and meeting practises review.

We thank you for the opportunity to make comments on the proposed changes to the Code of Conduct and Meeting Practises. We understand that submissions will be accepted until 29 November 2024.

Friends of Ku-ring-gai Environment Inc (FOKE) is a community group dedicated to protecting and conserving the built and natural environment of the Ku-ring-gai local government area in northern Sydney. FOKE was established in 1994 and celebrates its 30th Anniversary this year.

In the preparation of our response, we have liaised and worked in conjunction with the Better Planning Network to form the views expressed below:

A What are the principles of change – is anything missing?

1. We agree with the seven principles of change proposed.
2. However, the obligations and responsibilities as detailed in the current principles in the Model Code of Conduct should not be in any way diminished by the proposed changes.
3. There should be an additional principle – that there is a **right to be heard** for the general public at council meetings that is enshrined in legislation as well as the Code.
4. There should be a further additional principle – a **duty of respect** to council and community.
5. Where a decision regarding conduct that is not concerning pecuniary/non-pecuniary interests is disputed, there must be an access pathway to NCAT or other appropriate body available for complainants for other breaches of the Code.
6. We agree the Oath of Office for local councillors should be aligned to the Code of Conduct.

Potential changes to the code of conduct and oath of office – what are the key elements?

1. We do not agree with the code of conduct being 'aspirational' – the principles must be mandatory and enforceable, otherwise penalties will be difficult to apply even through tribunals.
2. We do not agree with the implication that current Code of Conduct is inherently not easy to understand. It is quite a simple document. If councillors are unable to understand such a basic document, they will not be able to grasp complex legislation that they must turn their minds to from time to time.
3. While it is agreed that the Code could be separated into pecuniary/non-pecuniary interests and other conduct issues, it is not clear how separating the behavioural expectations of councillors from the definitions of misbehaviour reflects a "positive approach".
4. There are sections within the proposed Code that deal with issues relating to the Code of Meeting practice. If that Code is proposed for change it must be publicly exhibited for comment.
5. As above, a key element should be that there is a right to be heard for the community.

Potential changes to the definitions and assessment of councillor misbehaviour – Pecuniary interests:

1. The proposed pecuniary interest framework is reasonably appropriate.

2. However, the proposed amount of any penalty infringement notice needs to be clarified. If it is a small amount, it may not encourage compliance or persuade councillors to provide information when requested by OLG.
3. The current code also includes close friends, which is now missing from the proposed framework. Close friends should be included.
4.The current "appropriate management" of pecuniary and non-pecuniary interests is insufficient to encourage councillors abide by the Code – if a conflict is not declared and managed prior to a vote, even if conflict is later declared or a complaint lodged, the vote still stands. This can encourage councillors to declare conflicts after a vote. If a failure to declare a conflict is upheld, the vote should be voided and retaken.
5. The definition of "other body" should be explained to include where councillors have, for instance, been on a committee of an association for an extended period.
6. Because Local Planning Panel members are selected by councillors, the code of conduct in relation to pecuniary interests should also apply to LPP members.

Non-pecuniary interests:

1.We agree in general with the principles that constitute non-pecuniary interest.
2.However again, the current framework for "appropriate management" is insufficient to discourage non-disclosure prior to a vote.
3.While membership of an association should not automatically be seen as a conflict, it is agreed that if there is a direct advantage to an individual or organisation, that must be publicly declared. Again, sufficient penalties and voiding of a vote are a necessary deterrent to non-disclosure.
4.The methods of "management" of significant or major non-pecuniary interests must be clearly spelled out, particularly with regard to whether a councillor can stay for, debate and/or vote on an item. While those boundaries are not clearly delineated, some councillors may stay while others may remove themselves from a debate. It cannot be left to the subjective opinion of individual councillors, it must be cleared prescribed.

Property developers and real estate agents – specific features to address concerns

1. There must be a penalty for matters of pecuniary or conflicts of interest that councillors do not declare e.g. divesting of real estate or development business activities and contractual obligations. Councillors must not be allowed to put real estate business interests into the wife's name or that of his/her family or trust
2. The Code does not appear to take into account affiliations which they currently have to declare. Declarations must be mandatory.
3. Who will be monitoring whether councillors who are currently property developers and/or real estate agents are complying with the Code? Currently the Code is self-monitoring, which is inadequate.
4. In the case of penalties and disqualification, where councillors breach the Code what will the terms of disqualification be e.g. length of time?
5. The term "own property" must be clarified. If a councillor owns more than one property in their own name and that is rented out, will that be considered to be a real estate business arrangement? If this is not adequately clarified, it will create a loophole in the legislation.

Councillor misbehaviour in public office – appropriate thresholds and complaint minimisation

1. We do not agree that a panel of mayors and ex-mayors should judge their fellow councillors. An interested and informed observer could consider that councillors from the same political party would be less inclined to sanction their fellow party members. Even the findings of parliamentary inquiries are often seen to be split along party lines.
2. The Privileges Committee should be staffed by a rotation of lawyers who have a clear understanding of the proposed new legislation with regard to councillor misconduct.
3. The threshold for councillor misbehaviour must also include bullying, harassment, discrimination, fairness and equity, which are all considered to be misbehaviour under the current Model Code of Conduct.
4. While it is agreed that councillors should have freedom of speech, social media accounts can and have been used inappropriately to bully and harass others because councillor social media accounts are administered by the councillors themselves. The use of social media must be addressed in the thresholds.

Addressing inappropriate lobbying – key features

1. We agree with the proposed lobbying guidelines, but more obligations are required.
2. The Code needs a definition of 'professional lobbyist'.

3. There needs to be a requirement that all meetings of mayors, councillors and senior staff of council with professional lobbyists are diarised and minuted for the public record.
4. The Code needs to expand to include financial gain from changes to zoning in an LEP.
5. Community groups should not be considered as professional lobbyists.
6. A local resident and/or local community groups calling or writing a submission on a council policy or plan could be considered a lobbyist if this is not clarified.

B. Dispute resolution and penalty framework

1. Reducing the number of complaints must not be an objective of the changes. Only vexatious complaints need to be reduced.
2. We do not agree that there should be "no investigations of misbehaviour". Racial discrimination for instance can have devastating consequences for the recipient particularly via social media which can incite violence. It is unacceptable to suggest that only pecuniary and non-pecuniary interests are serious misconduct.
3.Where the Privileges Committee considers misbehaviour to be serious enough to risk the health, safety and/or wellbeing of others, there should be the ability for the Committee to refer the councillor to OLG for significant sanctions.
4. Mayoral and Councillors' social media must be administered by the Council, so that council has the ability to remove a post or sanction councillors who breach the Code.

Abolishing the two step process

1. The length of time for OLG to deal with complaints should be indicated.
2. We agree that private investigators, who are often just trained mediators, should have no future role.
3. However, there must still be a pathway for serious misbehaviour to be considered by OLG or NCAT. Concerns regarding having to satisfy evidentiary standards should not preclude investigation of serious misbehaviour.

Giving OLG the power to issue penalty infringement notices – what level is appropriate?

1. The PIN should be sufficient to encourage compliance, say $300-$500. A second offence should incur a higher PIN and so on. There must be a limit to the number of PINs that can be accrued by a councillor within the term of a council beyond which more serious sanctions can be applied.

NSW Local Government Privileges Committee – are proposed penalties appropriate?

1. The Privileges Committee should be made up of lawyers on rotation not ex mayors, to ensure an independent process with no actual or perceived political bias.
2. The use of lawyers will also ensure that should the matter be serious enough, the lawyer's brief can be used at an appropriate tribunal or body with little or no further work from OLG.
3. It is inappropriate to delegate the power to dismiss certain matters to a Secretariat that has no formal or legal training.
4. Remuneration of the Privileges Committee cannot come directly from the council of the councillor in question. That could be seen to cause bias. A general levy across all councils should be applied. Where councils have a significantly higher proportion of complaints, then the levy should be increased.
5.Information needs to be provided as to how often the Privileges Committee will sit. Would it be on a case-by-case basis or on set dates?
6. The potential loss of sitting fees should not be restricted to misbehaviour in a council meeting. Such penalties should be able to be applied for all serious instances of misbehaviour.
7. A pathway for referral to an appropriate tribunal or body for more serious sanctions must be available.
8. The term "disallowance" must be clarified. The appropriate tribunal or body must have the power to disqualify a councillor from standing for council for up to a set period, say five years.

Referral of significant sanctions to appropriate tribunal or body

1. Significant sanctions should only be made by a formal tribunal.
2. If a matter is referred to a Tribunal and a resident has made the complaint there may be a situation that the resident may not have the financial capacity to be represented at the Tribunal to give evidence against that Mayor or councillor.
3. Will it be OLG that acts in a tribunal, rather than the complainant?
4. Will the complainant have their legal costs covered if they are required to be a witness at a Tribunal hearing?

5. Will there be protection for people who make a complaint to ensure they will not be sued for defamation? It is usual that most Code of Conduct complaints are made by residents and are kept confidential to avoid defamation.
6. The existing sanctions may not be sufficient in cases of serious misconduct. It should be legislated that OLG has the power to refer serious misconduct to the police and/or ICAC depending upon the decision of the tribunal.

C Restoring dignity to council meetings

5. Code of Conduct and Meeting Practice must ensure residents have the right to speak on a matter before council. Speakers should not be unduly restricted to just one for and one against a council agenda matter. Mayors must not have the right to select speakers – the selections could potentially be biased towards a particular viewpoint.
6. Residents must not be denied the right to free speech providing it is not defamatory.
7. Residents are not public officers of the council and are unelected so therefore should not be subject to Penalty Infringement Notices. The use of PINs could be abused by a Mayor or council to ensure a member of the public is not entitled to free speech and submitting comments to council.
8.A resolution of the council should be made before any action is taken unilaterally by a Mayor. Security is usually available at council meetings and is usually sufficient to ensure acts of disorder are appropriately dealt with.
9. Councillors or residents attending a council meeting exhibiting disorderly conduct should be given a warning prior to expelling a councillor or resident from a meeting.
10. All council meetings should be required to be audio visually recorded and archived in the interest of accountability and transparency.
11. Councillors should not drink alcohol before or during meetings and should be ejected by resolution of council for intoxicated behaviour.
12. The term “acts of disorder” must be clarified, otherwise the ability of Mayors to eject councillors could be used to stifle debate or alter a voting pattern.
13. A councillors right of review for acts of disorder is not clear. Who will review the matter when the Mayor is the ultimate authority in a council meeting? Will it be an external review? If so, by whom?
14. The proposed reforms to the Model Code of Meeting Practice must be exhibited for comment, just as the Code of Conduct has been exhibited.
15. It is unreasonable to expect councillors to stand every time they speak. It can also cause difficulties with video recordings needing constant monitoring of the camera angle.
16. It is also an anachronism for councillors and/or members of the public to stand when the Mayor enters the chamber. Mayors are not judges. While the dignity of council meetings is important, they should not feel like a court room.

Banning Briefing Sessions

1. We agree all staff briefings with councillors behind closed doors should be banned in the interests of transparency, unless the matter pertains to matters of legal or commercial in confidence. All other information provided to councillors must be made publicly available. However, the definition of “legal” should be clarified as it is applied too freely.
2. As committee meetings are not public meetings in many councils, staff information must only be provided in council meetings ie as part of the Business Papers. This will also ensure that all councillors will have access to all information provided by staff, rather than some councillors not being party to all information if they are unable to attend closed briefing sessions.
3. We agree the briefing restrictions on discussions between the General Manager and the Mayor only should not be included. However, it is suggested for transparency, that a record of each meeting be kept that lists the topics discussed without going into detail.
4. A further measure to improve transparency relates to Local and District Planning Panel hearings. Currently once the public and the applicant have spoken, the Panel retires behind closed doors where council staff can attend to assist in deliberations. Similarly, the Panels are able to now have behind closed doors briefing sessions with proponents and council staff prior to a Panel hearing. Both of these scenarios prevent the public from hearing what the decision makers (the Panel) are being told by the proponent and by council staff. This increases the risk of corruption and does not promote transparency. The pre and post meeting hearings must be open to the public.
5. All councils must be required to immediately commence audio/visual recording of council meetings and publish them on their website. There are several metropolitan councils that still do not do visual recordings of council meetings and/or only make recordings available under a GIPA application.
6. The period that recordings will be made available on councils' websites should be enumerated.

We look forward to the analysis and changes that the Office of Local Government recommend in finalising the necessary draft legislation, regulation and materials for the implementation of the revised model.

Yours faithfully

Kathy Cowley

Kathy Cowley
PRESDENT
cc. Member for Davidson Matt Cross MP
cc Member for Wahroonga the Hon Alister Henksens SC MP
cc Member for Bradfield the Hon Paul Fletcher MP
cc Mayor and Councillors Ku-ring-gai Council

27 November 2024

Mr Brett Whitworth
Deputy Secretary
NSW Office of Local Government

Via email: councillorconduct@olg.nsw.gov.au

Dear Brett,

Councillor Conduct Framework Review

On behalf of the Board of Riverina Water County Council, I have pleasure on providing our submission to the abovementioned review.

What are the principles of change?

Riverina Water agrees with the principles as outlined in the discussion paper and would like to see the inclusion of an additional principle being: Safe working environment that supports the respectful interaction between elected representatives and council staff and the work, health & safety obligations of Board Members.

Potential changes to the code of conduct and oath of office

Riverina Water does not support the proposal to have an aspirational Code of Conduct for local government. There appears to be little merit in moving from an enforceable Code of Conduct to a purely aspirational Code.

Currently State Government Ministers have a comprehensive, prescriptive Code of Conduct that they are expected to follow, so we are unclear why the State Government would not expect the same rigour in conduct for Board Members.

It is our view that aligning the Oath of Office with the Code of Conduct is unlikely to have much impact. Board Members and staff are currently trained on the Code of Conduct and affirm that they understand and will work within the parameter of the Code. This does not deter breaches of the Code and therefore we do not expect aligning the Code with the Oath will provide any greater assurance of compliance, however, we believe immediate and significant sanctions might.

We agree with the merit of having separate codes for staff and Board Members, provided both are robust and enforceable.

Potential changes to the definitions and assessments of councillor misbehaviour

There is a lack of confidence, and it could be perceived that there is a lack of independence, in Mayors and Ex-Mayors presiding on the privileges Committee. Many Mayors know each other and concerns exist that they may be required to sit in judgement of their colleagues.

A key concern is whether the Privileges Committee will be politicised with Mayors and ex-Mayors being members? What makes Mayors and ex-Mayors the most appropriate people for this Committee? If the OLG perceives bad behaviour is occurring in the Chamber, it is likely that on occasion, this behaviour may emanate from people who may sit on the Privileges Committee. A level of independence is needed to make perceived or actual unbiased decisions.

Has consideration been given to how conflicts of interest on the Privileges Committee be managed? Will Board Members be entitled to legal counsel at the Privileges Committee and would individual Councils and therefore ratepayers, be expected to fund this? Is this an appropriate use of ratepayer funds, thereby reducing the Council's ability to provide services to the community?

There is little detail included in the Discussion Paper on who is expected to fund the Privileges Committee, so it is difficult to make too many constructive comments on this aspect of the Privileges Committee at this point in time.

Councillor misbehaviour and external bodies

Referring Board Member misbehaviour to external bodies like SafeWork can result in fines for the Council rather than the individual Board Member. This approach does not hold Board Members accountable for their actions. We propose that fines and penalties be directed at the individual Board Member responsible for the misbehaviour.

Transparency and briefing sessions

It is universally agreed that under no circumstances should decisions be made at briefing sessions, however it is considered vital to informed decision making that staff can provide background information, some of which is commercial in confidence or confidential, to Board Members in a closed to the public, briefing session. Often, councillors may need time to digest all the information provided to them, in order to make a considered decision.

The OLG Discussion Paper states "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 that councillors have. Closed council briefing sessions are being used to make decisions away from the public view". How does the OLD know what is going on in individual Councils? How does the OLG justify the statement that decisions are being made in closed session? Decisions cannot be formalised without a resolution of Council and a majority of Councillors must vote for any proposal. The example provided in the Discussion Paper of decisions on DA's being made behind closed doors is but one example, noting that a good number of Councils across NSW do not consider DA's any longer.

Briefing sessions are an enormously helpful forum for recently elected Board Members. They provide the time and environment to ask the "silly or obvious questions" that are not afforded during Board meetings. Briefings allow new Board Members to more rapidly become au fait with current important matters before the Council and also, importantly, to start building effective working relationships with other Board Members.

The banning of Pre-Meeting briefing sessions will not prevent Board meeting in other locations and determining how they will vote.

It is recommended that the definition of what is a briefing session needs to be clearly articulated.

The Chairperson having more information that the other Board Members is problematic and may divide the Council. There is also a substantial risk that some Chairpersons may limit the information provided to other Board Members in order to ensure a particular decision is made.

This provision is not considered practical, as Board Members are only allowed to speak for matter of minutes, and only once per topic in a Council meeting, thereby reducing the Board Members ability to ask more questions. Banning briefing sessions may lead to decisions on more issues needing to be deferred, if questions posted by Board Members cannot be answered at the Board Meeting.

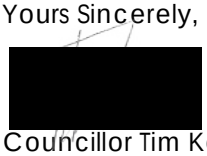
Conclusion

While we support the initiative to strengthen the Code of Conduct, we believe that certain areas in the proposed framework require further consideration and refinement. There is too little detail provided in the Discussion Paper on key aspects of how all of this might work, for us to be able to provide further constructive commentary.

We urge the OLG to ensure that the new framework provides clear guidelines and robust mechanisms for addressing Board Member misbehaviour, while also fostering a respectful,

safe and collaborative environment between elected representatives and Council staff. By doing so, we can build a stronger, more effective local government sector that better serves our communities.

Yours Sincerely,



Councillor Tim Koschel
Chairperson

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Our Reference: S4.12.1

27 November 2024

The Office of Local Government
Locked Bag 3015
NOWRA NSW 2541
By email: councillorconduct@olg.nsw.gov.au

Dear Sir / Madam,

COUNCILLOR CONDUCT FRAMEWORK REVIEW

Council would like to thank you for providing the opportunity to comment on the Councillor Conduct and Meeting Practices Discussion Paper issued on the 5 September 2024.

Council considered this matter at their Ordinary Meeting on the 30 October 2024. Council is supportive of the general principles of the proposed reforms and the efforts to address key issues surrounding Councillor conduct. Council would however suggest the following matters are taken into consideration prior to finalising the framework.

1. **Code of Conduct** – whilst simplifying the Code of Conduct is to be applauded, there is significant concern with having a two – three page aspirational model. It is considered that the Code should remain prescriptive and enforceable in nature similar to that which applies to State Government Ministers (which the reforms in part appear to be based upon). The Code of Conduct should not be vague and should be easily understood by all.

2. **Role of the OLG and Privileges Committee in determining complaints** – Removing General Managers from the complaint assessment process of Councillors is supported. The OLG will need to be appropriately resourced to efficiently and effectively deal with complaints regarding pecuniary interests.

   Whilst "independent oversight" (Privileges Committee) and proposed thresholds of behaviour to face the Privileges Committee is supported, there is significant concern regarding the make-up of the proposed committee. There is an inherent risk of bias and lack of impartiality (perceived or actual) in having current or ex-mayors (many with political affiliations) solely making up the Privileges Committee. Thought should be given to including suitable independent representatives with appropriate industry and procedural knowledge to ensure the probity of the Privileges Committee.

3. **Removal of Closed Briefing Sessions** – Council is vehemently opposed to the removal of closed briefing sessions which are a crucial platform for the free and frank exchange of information between the executive and governing body.

   Inverell Shire has effectively used such briefing sessions to ensure Councillors are kept well informed of emerging matters and have the opportunity to ask "questions without notice", something the current clunky Code of Meeting Practice does not facilitate. These sessions are not a decision-making forum and do not impact upon the extent or transparency of debate at council meetings. Instead it provides a more relaxed and collegiate opportunity to exchange knowledge and workshop matters so Councillors are better informed when setting the strategic direction of Council. Taking

this opportunity away from councils will only result in a swathe of alternate approaches around the proposed Code of Meeting Practice to facilitate such discussion. Hence, the legitimacy of closed briefing sessions (just like Ministerial briefings from departments) should be acknowledged and accepted as a legitimate component of the governance structure of councils. Failure to do so would be considered a retrograde step.

4. **Increasing Mayor's Powers** – the proposal to increase the Mayor's powers to manage disorderly conduct is supported. Adequate checks and balances do need to be put into place to ensure these powers are not misused.

Again, thank you for the opportunity to comment and if required I would be more than happy to elaborate on any of the matters raised above.

Yours faithfully

[redacted]

BRETT MCINNES

GENERAL MANAGER

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28 November 2024

Office of Local Government
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NOWRA NSW 2541

Emailed to: councillorconduct@olg.nsw.gov.au

Shellharbour City Council Submission
Councillor Conduct and Meeting Practices

Dear Sir/Madam

Shellharbour City Council welcomes the opportunity to make a submission on the Office of Local Government's Discussion Paper on Councillor Conduct and Meeting Practices.

Council's full submission is attached.

In summary:

- Council supports the removal of the Chief Executive Officer/General Manager from the Code of Conduct process, however, does not support an aspirational Code of Conduct.
- Council supports the establishment of a Privileges Committee, however, believes it should be made up of independently qualified individuals with no political persuasion.
- Council is not clear as to how the complaints process would be managed and there is ambiguity as to what would constitute misbehaviour.
- Council is supportive of briefings relating to Council business papers being open to the public, however, Council should also have the opportunity to hold workshops, other briefings and information sessions for the governing body where the matters do not relate to a business paper agenda, without being open to the public. The Chief Executive Officer/General Manager of a Council should be able to provide information to the Councillors in a confidential forum when required.

Council welcomes the opportunity to discuss these matters further. Should you have any questions, please do not hesitate to contact me.

Yours sincerely

[redacted]

Mike Archer
Chief Executive Officer

Enc

Submission
Discussion Paper Councillor Conduct and Meeting Practices

	Questions	Council's response
	What are the Principles of Change?	
1	Are we missing anything in the principles of change?	• The Principles of Change appear to be statements - not principles. A principle of change is a guiding practice that a Council should effectively follow to manage change transitions and disruptions within an organisation. • The Freedom of Speech Principle of Change needs to be in line with relevant legislation. • Having Freedom of Speech as a Principle of Change does not give an elected official the right to be disrespectful or speak adversely against the decision of a Council. • If councillors can be openly critical under the Freedom of Speech Principle of Change, it undermines the decision-making process and goes against other Councillor policies such as Appropriate Workplace Behaviour Policy and Media and Social Media for Councillors Policy. • Consider including a Principle of Change relating to Administrative Accountability. Councils need to make lawful decisions that are within their resources. • There is a need to use plain English.
	Potential changes to the code of conduct and oath of office	
2	What are the key elements of an aspirational Code of Conduct that should be enshrined?	• An aspirational Code of Conduct would be open to interpretation. There is a need for clear guidelines as to what Councillor misbehaviour in public office is. • Councillors are workers when they are in the Council Chamber under the WHS legislation. How does an aspirational Code of Conduct align to the WHS legislation with Council being the PCBU? • Will the Code of Conduct for Staff, Contractors and Volunteers also be changed to an aspirational Code of Conduct?

		• While links have been provided to the Code of Conduct for Members of the Legislative Assembly and Legislative Council, there is no link to the State Minister's Code of Conduct which is more prescriptive and detailed and aligns more to the current Code of Conduct.
3	What are your views about aligning the Oath of Office to the revamped Code of Conduct?	• These should be kept separate – it is more important to include the Oath of Office for Council Meetings.
	Potential changes to the definitions and assessment of councillor misbehaviour	
4	Is the proposed pecuniary interest framework appropriate? Is anything missing?	• The existing Code of Conduct already outlines definitions in relation to the categories listed in the discussion paper. • If the Office of Local Government (OLG) will continue to investigate alleged breaches of pecuniary interests, then there will need to be strict timeframes for completion of investigations as OLG have taken up to one year to investigate these previously. • Suggest using plain English and language for example pecuniary change to financial and non-pecuniary to pecuniary (not financial).
5	Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?	• The existing Code of Conduct provides detailed information on what constitutes a significant or major non-pecuniary interest.
6	Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?	• It is not clear how Councillors will be impacted if they have investment properties or wish to develop their own property or an investment property. • Will this mean that Councillors will need to sell their properties?
7	Is this the appropriate threshold to face a Privileges Committee?	• Agree with the Chief Executive Officer/General Manager being removed from the process. • It is not clear who would be interpreting whether conduct is unbecoming. More clear definitions are needed about what misbehaviour is. • One person's view or opinion of unbecoming behaviour would be different to another.

		• The misbehaviour definitions need to be more clearly defined and include more than three behaviours listed. • Would the process be for the individual Councillor to refer their complaints directly to the Privileges Committee or will there still be a need to have a complaints coordinator? • It is agreed that complaints should be referred externally but believe this body/committee should not have any affiliation with councillors or political parties as it could become highly politicised and there should be a need for set qualifications for members of the external body/committee. • If the Privileges Committee proceeds with the inclusion of Mayors and ex-Mayors, how would conflicts of interest be managed? • What will be the process to determine who will be on the Committee? • Will every complaint be referred to the Committee? • How would the Privileges Committee be funded? • Does this process allow the public to make complaints of public officials?
8	How else can complaints be minimised?	• Complaints can be minimised by having behaviours clearly defined in the Code of Conduct and Code of Meeting Practice. • Complaints could be minimised by expecting a fee for a person lodging the complaint and a fine if a complaint is found to be vexatious, mischievous or frivolous etc. • There should be a time limit on lodging complaints.
9	What key features should be included in lobbying guidelines and a model policy?	• No comments – Council agrees with having lobbying guidelines and a model policy.
	Dispute resolution and penalty framework	
10	What level of PIN is appropriate?	• The level of PIN needs to be substantial enough to be a deterrent and include improvement by attending training in Leadership and Behaviour.

11	Are the penalties proposed appropriate, and are there any further penalties that should be considered?	• There needs to be the ability to suspend a Councillor. • Could include other redress such as: public apologies, apology, counselling, mandatory training.
12	Are the existing sanctions available under the Local Government Act sufficient?	• Council does not believe that the current sanctions are substantial enough to be a deterrent.
13	Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?	• Council believes sanctions should be imposed by a formal independent tribunal.
	Restoring dignity to council meetings	
14	Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	• Council does not believe that giving the Mayor power to issue a PIN for members of the public is workable or appropriate during a council meeting. • Standing to address is archaic and is not relevant given that Council Meetings are now webcast. Disability and/or relevance is a factor. • Do these proposed powers cascade to whoever is in the Chair? • How do you deal with the politicisation of this?
15	Are there any other measures needed to improve transparency in councillor deliberations and decision making?	• Council has no issue for members of the public to attend briefing sessions, where a briefing relates to the Council Meeting Business Paper, however, councils should be able to retain the right to hold other workshops, briefings and information sessions for the governing body without being open to the public. • However, the following additional comments are provided: o Briefing sessions not open to the public provide elected officials the chance to ask questions in a safe space, particularly for newly elected councillors. o Elected officials may not ask clarifying questions in an open meeting for fear of public perception.

		o This may lead to councils making unlawful and/or uninformed and potentially un-resourced decisions. o Council meetings may potentially go longer or many items be deferred if councillors feel they have not received enough information or staff need to research unsolicited questions from the floor of the council.
16	**General comments**	• Council meetings are a very different setting to state government meetings and cabinet meetings. • Parliamentarians are on a fulltime wage and have many staff who undertake research. Councillors do not have their own staff and cannot dedicate the same amount of time to research. • Members of Parliament have the benefit of Parliamentary privilege – Councillors do not.

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28 November 2024

Office of Local Government
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Via Email only: councillorconduct@olg.nsw.gov.au

Dear Sir/Madam

Feedback: OLG Councillor Conduct and Meeting Practices – A New Framework

Council acknowledges the NSW Government's discussion paper – Councillor conduct and meeting practices – A new framework (September 2024) and thanks you for the opportunity to provide input into this discussion.

Are we missing anything in the principles of change?

The principles generally cover the main factors that should be considered:

1. Freedom of speech – suggest "speak freely and respectfully", be included.
2. Transparency and accountability – suggest open and fair manner, be included.

The other option is to tie the principles to the behaviours expressed in the Local Government Act.

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

Council is not sure that the behaviours in Parliament are what Councils should aspire to. To assist Councillors/Community having a full understanding of the standards and process expected, it is felt that they should be located in one place, rather than being spread over various instruments.

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

Agree.

Is the proposed pecuniary interest framework appropriate? Is anything missing?

Generally, yes, however e.g. stocks/shares may need reference to a holding value or percentage ownership. With respect to interests by other persons e.g. employer these may not be able to be readily obtained. This could create potential allegations where a person could not reasonably be expected to be aware of any potential conflict.

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

The proposal on (page 9 and page 11) of using the term "*friendly*" will need definition. It is nebulous and may lead to conflict in interpretation. It also possibly creates conflicts with the acknowledgement that councillors are often members of their local clubs and that *'this should not automatically be seen as a conflicts of interest'*.

The proposal to align an action to a casting vote or, a critical vote could be problematical as this is not known till the time of the vote occurring. So, a person votes for an item, then in the same debate is expected to declare an interest. This is problematical.

Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development activities?

In rural areas it is difficult to get candidates to stand for local office, this will exacerbate this problem. It would be better to manage the issue through relevant declaration procedures. It is questionable whether it is realistic to; "*requiring councillors to divest themselves from real estate or development business activities and contractual obligations.*"

If this goes ahead, an extensive definition of what is the category of person trying to be captured, is made.

Is this the appropriate threshold to face a Privileges Committee?

Guidelines as to what is misbehaviour will be needed to assist councillors. If it is up to Councillors to judge their fellow councillors, then the "weaponizing" concern is not removed and may in fact be greater. As with the existing system, there are concerns at what the costs may be incurred by the Council in this process.

It is considered, that there is still a role for the Council to use an independent reviewer to assess whether referral to the privileges committee should occur.

How else can complaints be minimised?

Extensive education of Councillors, with respect to standards of behaviour expected.

What key features should be included in lobbying guidelines and a model policy?

The main area of concern is matters with respect to development applications. Continuing development of Guidelines will assist in this space. Representations by contractors and Union should be addressed.

What level of PIN is appropriate?

With respect to the Dispute Framework, it is felt the use of private conduct reviewers should still be enabled. They will still be a feature in regard to complaints against staff and there may be occasions where their utilisation might simplify and speed up the conclusion of a complaint. If not available, there are possibilities the Privileges Committee maybe 'swamped'.

Also, there are times where a Mayor or General Manager may be able to resolve a dispute, this option should be allowed for in the process.

In regard to the level of penalty, this should have regard to the level of Councillor fees. Accordingly, the number of PIN points (which should be standard across councils), should be cognisant of fees paid, possibly based on the lowest fee approved by the Tribunal. Otherwise, consideration could be given to the Tribunal determining each year the dollar ($) allocation to a PIN point?

As an aside, the impact such a proposal will have on nominations for Council by prospective candidates, needs exploration.

Are the penalties proposed appropriate, and are there any further penalties that should be considered?

Generally, the penalties proposed appear reasonable. The ability to refer on complaints will potentially lead to the prolonging of a matter.

The costs incurred in this process need to be strictly regulated, this will not be a contestable market given the structure proposed and accordingly needs to be 'pegged'. Councils do not want to see the structure used as a way to further cost shift to councils.

Are the existing sanctions available under the Local Government Act sufficient?

Generally yes, as it is considered that measures such as suspension need to be dealt with externally from the elected body. The council should be able to recommend, but not impose the action to occur. The ability for the Departmental Chief Executive to take action is supported, however the Departmental Chief Executive should have the option to refer on if considered necessary, or appropriate.

Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

The ability for the Departmental Chief Executive to take action is supported, however the Departmental Chief Executive should have the option to refer on, if considered necessary, or appropriate. Council has considerable concern at the possible costs that may be incurred in the proposed processes, detailed in the discussion paper. There are times where a Mayor or General Manager may be able to resolve a dispute, this option should be allowed for in the process.

Are there any other powers that need to be granted to the mayor or chair to deal with disorderly behaviour?

The Mayor should be able to request adherence to acceptable behaviour and this is already available, including getting security to escort a member of the public from the chambers. Further responses e.g., fines is probably best left with the police. The removal of councillor entitlements, is considered to be one for a tribunal, or the elected body as a whole, not just the Mayor of the day.

Clarification will be needed as to whether, if three meetings are missed due to refusal to apologise, is this deemed to be 'vacation' of civic office. Also, provisions need to be made in regard to any alleged misbehaviours by the Mayor.

Are there any other measures needed to improve transparency in councillor deliberations and decision making?

The proposal to ban briefing sessions is in no way supported by Council. There are many times discussions need to occur on issues such as strategic planning, early budget deliberations where councillors and staff need to get together to understand the issues at hand. All decisions of the Council currently occur in the Ordinary meetings of Council and so we are in the public domain.

Council also disagrees with the suggestion around the distribution of materials to councillors. There are legitimate times when data is provided to councillors in their role as the 'Board of Directors' for the community. It is understood that this process is not what occurs in other levels of government.

The issue of 'Banning Briefing sessions' is of such significance that it should not be a "tack on" to this discussion paper. A great deal more work is needed. It is unreasonable to expect Councillors to understand the complexities of some planning decisions in the absence of briefings by Council staff, and it is unworkable to expect all briefings, which presumably extend to the answering of questions, to be conducted at a public meeting.

Trusting this assists, again thank you for the opportunity to respond.

Yours faithfully

[redacted]

D J Sherley
GENERAL MANAGER



Submission
Councillor Conduct Framework Review

29 November 2024

Randwick City Council
a sense of community

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Introduction

Thank you for the opportunity to make a submission on the “Councillor conduct and meeting practices” framework - September 2024.

As a preface to the suggestions provided in this submission, it is acknowledged that there is a need for change to the current system for managing Code of Conduct complaints due to the identified weaknesses of the existing frameworks. The “need for change” and “weaknesses of existing frameworks” as articulated in the September 2024 “A new framework” document are supported.

The suggestions offered in this submission come from this position of overall support of the need for change.

1. What are the principles of change?

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

Under the heading "transparency and accountability" it is suggested that a reference to "respectful" debate should be included as follows:

As a democracy councils need to hear, consider and debate issues in an open **and respectful** manner.

Respect is one of the important principles articulated in the OLG Model Meeting Code.

2. Potential changes to the code of conduct and oath of office

Question: What are the key elements of an aspirational Code of Conduct that should be enshrined? What are your views about aligning the Oath of Office to the revamped Code of Conduct?

We support aligning the Code of Conduct with the Code of Conduct framework for NSW Members of Parliament and with the Oath of Office.

We would go further and suggest that the Oath and Affirmation of Office make reference to the Code of Meeting Practice to strengthen the connection between the Code of Conduct and misbehaviour at meetings, as follows:

"*…… and I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 and any other act to the best of my ability and judgement* **and I will observe and comply with the Council's adopted *Code of Conduct and Code of Meeting Practice* as it applies to my office**".

Section 233A of the Local Government Act should be amended to expressly state the consequence of a Councillor breaching their Oath or Affirmation of Office – for example, that such a breach is to be deemed a breach of the Code of Conduct.

3. Potential changes to the definitions and assessment of councillor misbehaviour

3.1. Pecuniary interests

Question: Is the proposed pecuniary interest framework appropriate? Is anything missing?

The proposal to extend interests disclosed in the annual Return of Interests to "spouse or de facto partner, relative, or partner or employer, or a company or other body of which the councillor, or their nominee, partner or employer, is a shareholder or member" "to the extent the councillor is aware or should be aware of such interests" is supported, **if and only if**, the publication of Returns of Interests are not required to be published on Council website.

Information and Privacy Commission (IPC) Guideline 1 currently requires returns to be published on Council's websites. Randwick City Council has conducted a Public Interest Test under the Government Information (Public Access) Act and has determined:

That Council publish the Disclosure Returns on its website, subject to all information being redacted apart from the names and positions of Councillors, senior staff and designated officers, along with advice that unredacted Returns may be viewed free of charge at the Council Administration Office.

The publishing of this information on a website significantly impinges on individual privacy rights. Publishing unredacted Returns on our website exposes the personal information of Councillors and staff to an unrestricted audience. This is balanced against the minimal number of genuine requests received by Council to view the returns. The unnecessary risk exposure to Council officials by placing the returns on the website does not equate to the current public demand to view the returns at Council offices and this risk will be compounded by extending the declarations to relatives and employers etc.

3.2. Non-pecuniary interests

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

Agree.

3.3. Property developers and real estate agents

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

While the provisions in relation to property developers and real estate agents are supported, it is felt that, for clarity, a definition is required for:

"Real estate or development business activities and contractual obligations"

- as conflicts of this nature cannot be managed without clarity around specifically which matters/decisions will be impacted.

3.4. Councillor misbehaviour in public office

Question: Is this the appropriate threshold to face a Privileges Committee? How else can complaints be minimised?

The OLG (not Councils) should be responsible for funding external conduct reviews, if applicable.

Councillors should be required to pay for both Privileges Committee and external reviews if found guilty. This would be a significant deterrent to misbehaviour.

In terms of the cost of funding a Privileges Committee, Council does not support full cost recovery. That is not to say that some cost offset for the Privileges Committee should not be made through:

- cost recovery from councillors found to have committed a breach of the Code of Conduct – something we do support.
- in addition, all Councils could contribute to a portion of the costs of the Privileges Committee on a population (or some other equitable) basis. Councils should not have to pay for the Privileges Committee costs for complaints that originate from members of the community that are vexatious or trivial as these complaints are proposed to be made directly to the Privileges Committee and Councils will have no way of controlling the number or nature of these complaints.

It is felt that the threshold to face a Privileges Committee is appropriate.

3.5. Addressing inappropriate lobbying

Question: What key features should be included in lobbying guidelines and a model policy?

Following the March 2021 ICAC report on "Operation Dasha", the OLG advised that it would be developing the recommended lobbying of councillor guidelines (see OLG Circular 22-22 8 August 2022). However, the proposed lobbying guidelines were never released.

Operation Dasha recommendation 8:

"That the DPIE, following a reasonable period of consultation, issues guidelines under s 23A of the LGA to introduce measures to enhance transparency around the lobbying of councillors. The guidelines should require that:

- *councils provide meeting facilities to councillors (where practical) so that they may meet in a formal setting with parties who have an interest in a development matter*
- *councils make available a member of council staff to be present at such a meeting and to prepare an official file note of that meeting to be kept on the council's files (any additional notes made by the member of council staff and/or the councillor should also be kept as part of the council's records)*
- *all councillors be invited when a council conducts formal onsite meetings for controversial rezonings and developments."*

In the meantime, Councils have been required to adopt the local planning panels framework which has taken the decision making power for development applications out of the hands of the Council.

Given the Council body is no longer involved in decisions in relation to development applications, being the major area of concern for lobbyists, it is felt that a separate framework is no longer required and that inappropriate lobbying could be addressed in the new Model Code of Conduct.

4. Dispute resolution and penalty framework

4.1. Giving OLG the power to issue penalty infringement notices

Question: What level of PIN is appropriate?

NOTE: Council oppose the proposal that OLG be given the power to issue Penalty Infringement Notices, fines, or require Councillors, Mayors or members of the public to pay for costs if found to have committed a breach of the Code of Conduct.

The following suggestions are offered as options for level of PINs:

- Sliding scale based on number of occurrences or nature of breach, or
- A percentage of the Councillor Allowance that would equate to the same percentage that State Government PINs are to Sitting Fees.

4.2. NSW Local Government Privileges Committee

Question: Are the penalties proposed appropriate, and are there any further penalties that should be considered?

NOTE: Council oppose the proposal that OLG be given the power to issue Penalty Infringement Notices, fines, or require Councillors, Mayors or members of the public to pay for costs if found to have committed a breach of the Code of Conduct.

As indicated in section 3.4;

All Councils could contribute to the cost of the Privileges Committee on a population (or some other equitable) basis. Councils should not have to pay for Privileges Committee costs for

complaints that originate from members of the community and is vexatious or trivial as these complaints are to be made directly to the Privileges Committee and Councils will have no way of controlling the number or nature of these complaints.

Dot point 3 on page 15 of the consultation paper should refer to "Councillor Allowance" not "sitting fees". Should this point also refer to the proposed PINs system?

The last dot point on page 15 of the consultation paper refers to:

> *"referral to an appropriate tribunal or body for more serious sanction, including suspension or disallowance".*
>
> Should this point also refer to "removal from office"?

4.3. Referral of significant sanctions to appropriate tribunal or body

Question: Are the existing sanctions available under the Local Government Act sufficient? Should decisions on sanctions for councillors be made by the Department Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

It is agreed that the existing sanctions do not carry a significant enough weight to significantly discourage bad behaviour.

It is agreed that sanctions for elected representatives should not be imposed by a public servant and that an independent body (such as the proposed Privileges Committee or the NSW Civil and Administrative Tribunal) would be perceived as more democratic and impartial.

5. Restoring dignity to council meetings

5.1. Proposed reforms to the Model Code of Meeting Practice

Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

NOTE: Council oppose the proposal that Mayors be given the power to remove a Councillor's Allowance for a month or any length of time.

We would like to preface our comments in this section by confirming that we do not support the proposed ability for the mayor to issue a fine to a member of the public. We assert that this proposal is impractical and unworkable. In addition, it will have potential negative impacts on the working relationship between mayors and certain sectors of the local community and will do little to deter bad behaviour. The current process of issuing a warning and then removing any offenders with the assistance of the local Police, is considered appropriate.

If the proposal to grant mayors the power to issue fines is pursued, mayors would presumably need to be provided with the power to issue fines under the Local Government (General) Regulation.

A potential way forward is codification (by Regulation) of a Schedule of Councillor Conduct and Jurisdictional Enforcement Options as recommended by the 2022 Kellar Report. This would generate the requisite misconduct enforcement consistency, ensuring that matters are resolved quickly and fairly, and better deter adverse conduct. We support the following course of action as recommended in the Kellar Report:

> The Kellar Report recommended a new Code of Conduct incorporating:
>
> *"a schedule of councillor conduct standards and jurisdictional enforcement options* ….. clearly defining the behaviours that represent breaches of the code of conduct according to relevant classes, together with the associated sanctions and penalties applicable to those breaches."*

*The schedule of councillor conduct standards and jurisdictional enforcement options described in the Kellar Report are as follows:

"Given the proposed focus on Independent Councillor Conduct Review Panels, the compilation of a defined schedule of councillor conduct standards and jurisdictional enforcement options is proposed. That schedule could be promulgated under regulation and comprise information as to:

- *conduct class heading*
- *description of the conduct standard for that class and the legislative source of its specification*
- *the jurisdiction that has authority to deal with breaches of the standards*
- *the range of enforcement options available to the adjudicator*
- *the avenue of recourse (if any) from the adjudicator's decision."*

5.2. Banning briefing sessions

Question: Are there any other measures needed to improve transparency in councillor deliberations and decision making?

The proposal to ban Councillor briefings is not supported. The briefing of all Councillors on matters proposed for the agenda of future Council meetings contributes in a positive way to Councillors' understanding of the significant matters which they are required to make decision on.

We agree that the framework around Councillor briefings could be strengthened to ensure that all Councillors are provided the same information in relation to all briefing matters and that no decisions are made (or voting patterns discussed) at Councillor briefings.

We strongly believe that, used appropriately, the Councillors briefing process promotes a better understanding of complex matters on which Councillors are required to make decisions and results in better decision making at Council meetings in the interests of the broader community.

We note that the current provisions of the Model Meeting Code provide for the following framework for Councillor briefings that, properly applied, is considered more than adequate for transparency and accountability purposes:

"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.

Councillors (including the mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of a briefing at a pre-meeting beefing session, in the same way that they are required to do so at a council or committee meeting. The council is to maintain a written record of all conflict of interest declarations made at pre-meeting briefing sessions and how the conflict of interest was managed by the councillor who made the declaration".

The current framework is considered to be clear and concise and any Councils who are known to be not complying with these provisions should be dealt with in the same way that other non-compliance matters/complaints are dealt with by the OLG.

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27 November 2024

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Dear Sir/Madam

Councillor Conduct Framework Review

In response to the Office of Local Government (OLG) circular 24-17, dated 5 September 2024, Bega Valley Shire Council (BVSC) hereby makes a submission concerning the 'Councillor conduct and meeting practices – a discussion paper'.

Council resolved to make this submission at its meeting on **27 November 2024**.

The details included have been prepared in consultation with the Mayor and Councillors, as well as the leadership executive team. All stakeholders were provided with the details on the OLG's website and advised of the opportunity to make an individual submission through that site.

The details of this submission have been presented to reflect the questions asked throughout the discussion paper.

In summary, the key points made within this submission are:

- **Principles of Change**

  We support the principles of change and recommend additional items for consideration, including mandatory training for candidates, and specific accountability for behaviour that is considered a breach of the *Work Health and Safety Act 2011*.

- **Code of Conduct and Oath of Office**

  We agree with an aspirational code of conduct aligned with the oath of office if it is supported by a robust framework to manage misbehaviour and misconduct. We have outlined risks of not adequately balancing freeness of speech to publicly disagree with decisions (resolutions) of council and propose an approach to achieve a balance between freedom of speech and management of reputational and other risk.

- **Changes to Definitions and Assessment of Councillor Misbehaviour**

  We agree that definitions of misbehaviour and improved processes to assess breaches will support better management of code of conduct complaints. We have made suggestions that may strengthen the proposed pecuniary interest framework.

We support a transitional arrangement for requirements of an individual relating to property development and real estate.

- **Dispute Resolution and Penalty Framework**

  We agree broadly with a process that focuses on resolving issues as quickly as possible. We recommend a triage approach for dispute resolution and support appointment of an independent review for major breaches.

- **Council Meetings**

  We agree that the council chamber is a place of prestige and dignity, however, do not support prescriptive direction on councillors standing to address the meeting or when the Mayor enters the room. Financial consequences for disrespectful behaviour by Councillors in public meetings may achieve the desired effect of this proposal, however there may be other more effective and equitable ways to achieve the desired outcome.

  We have concerns about the administration and implementation of introducing Penalty Infringement Notices on members of the public.

  We strongly oppose the banning of councillor briefing sessions as we believe they are an effective way of ensuring informed decision making.

The principles of change

Are we missing anything in the principles of change?

Council agrees with the 7 principles of change proposed in the discussion paper and confirms support for complaints handling that is independent and timely. Referring of matters to bodies such as NSW Civil and Administrative Tribunal can be costly and lengthy for parties, which would further burden ratepayers.

We recommend an additional principle that focus on learning and development for those who are elected to local government. The purpose would be to support councillors to better understand their roles and responsibilities in performing their civic leadership duties. Incorporating mandatory training for councillors on ethics, conflict resolution, and community engagement could help with fostering a culture of respect and professionalism. This mandatory training would equip councillors with the skills needed to navigate complex issues effectively.

We also believe that additional mandatory training for Mayors focused on effective chairing of meetings would enhance conduct within Council meetings.

It is imperative that the principles of freedom of speech and transparency in decision-making when representing community interests are presented in a respectful and professional manner and provide clear policy direction that is ethical and realistic for implementation by management.

We recommend that the Code is specific regarding behaviours that constitute a breach of *Work Health and Safety Act 2011* and penalties for offences that are proven to be a breach of WHS legislation, depending on severity could include dismissal from office. We recommend the Work, Health and Safety Act 2011 be amended to further define penalties for breaches by NSW local government elected officials.

Clarity on conduct obligations, expectations and penalties for infringements that occur should be included in the code. Providing definitions and examples of minimum standards that focus on the important role of making decisions on behalf of the whole community would strengthen this governance instrument.

Potential changes to the code of conduct and oath of office

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

The OLG discussion paper on page 8 says:

'The revamped Code of Conduct could also be aligned to the Oath of Office for local councillors ensure that the behavioural standards and expectations are clear and understood when a councillor takes office…'

Council is not opposed to implementing a more aspirational code similar to that of the NSW Members of Parliament. We support the notion of a simplified, more easily understood code of conduct and acknowledge most councillors want to do the right thing. However, we are strongly advocating that the minimum standards of behaviour standards and expectations of an elected official is completed as mandatory training six months (or less) prior to a candidate nominating for election. The Code of Conduct expectations, roles and responsibilities of a councillor need to be communicated to prospective candidates well before they are elected. This model is effective in Queensland and helps candidates to understand their roles and responsibilities.

Should the code of conduct be separated as an aspirational code that is not enforceable we agree that there must be a clear framework with definitions for misbehaviour of elected officials and expect that penalties for misconduct is included.

We believe that it is important that Councils reputation and standing in the community as a result of decisions of Council is given due consideration in any proposed amendments to the conduct framework. It is important that democratically elected officials have the ability to voice their opinions either in support of or contrary to a decision of Council, however the manner in which this is done should mitigate any potential reputational risk to an individual Council or the Local Government sector.

As a practical means to achieve the balance described above, the OLG could provide a guidance document for elected officials that outlines how to delineate when they are expressing a personal view. Below is an example from the introduction of a recent public speech from a Councillor of Bega Valley Shire Council:

"My name is Peter Haggar. I am the sole Greens councillor on the Bega Valley Shire Council, and I speak today as a member of the Bega Valley Greens, as a greens councillor and as a concerned citizen. The views expressed are not necessarily those of the Bega Valley council nor are they to be taken as representative of Bega Valley councillors generally."

Guidance should also consider how a Councillor can respectfully speak in opposition to a decision of the Council that does not undermine the integrity or reputation of the Council and does not focus on the opinions of another elected representative of the Council or criticise the staff of the Council.

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

Council supports aligning of the Oath of Office to the Code of Conduct and reinforces our recommendation that this be content included in pre-election mandatory training.

Potential changes to the definitions and assessment of councillor misbehaviour

Is the proposed pecuniary interest framework appropriate? Is anything missing?

Bega Valley Shire Council supports the following proposals:

- the definition of pecuniary interests requiring disclosure
- the interests for disclosure be extended to the interest of a spouse or de facto partner, relative, or partner or employer, or a company or other body of the councillor, their nominee, partner or employer is shareholder or member. The code should include a definition for 'relative' and this should include children and children's spouses.
- the absolute prohibition for a councillor to be involved in any matter before council where a pecuniary conflict of interest exists
- the OLG be given extended investigation powers regarding alleged breaches of the code of conduct relating to pecuniary interest matters

- The OLG be given powers to compel the production of information regarding pecuniary interest declarations
- The OLG be given powers to issue Penalty Infringement Notices (PINs) to ensure cooperations with the investigation process.

In relation to the proposed pecuniary interest framework, Council would suggest the following points:

1. Any amendments to the *Local Government Act 1993* should include details about penalties for any infringement of the Act, Regulation, or Codes of Conduct.
2. The nominal value of a gift proposed in the new framework be decreased from $500 to $50.
3. It should be mandated that councillors attend and participate in training about the code of conduct.
4. The OLG develop and provide material to councils that will assist with educating elected officials about the implementation of the framework. Councillors will benefit from receiving mandatory training in the code conduct and how it is applied. Other bodies such as Australian Local Government Women's Association may be interested in supporting the development and delivery of relevant training for candidates.
5. Include definitions for campaign donations and in-kind support.

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

The Council endorses the principles regarding the identification of significant or major non-pecuniary interests and emphasises the expectation that councillors exercise the same vigilance in disclosing non-pecuniary interests as they do for pecuniary interests.

We recommend that clear definitions and illustrative examples of significant and major interests be established, along with practical strategies for their management. This approach will ensure that the disclosure requirements do not hinder individuals from pursuing candidacy as councillors.

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?

Any means introduced to manage risk of conflicts of interest occurring with property developers or real estate agents need to be clear and concise. Providing precise definitions of what constitutes a conflict of interest in real estate dealings can help mitigate confusion and ensure consistent application of the code. It is important that councillors have clear information about how these conflicts are expected to be managed and this needs to be communicated to candidates before they are elected. If implemented, the need to divest or not being able to enter real estate or development business once elected to council needs to be expressly communicated so potential candidates can make informed decisions about whether they will register and nominate for council. This legislative change will have an impact on the pool of candidates and may deter potential candidates from standing for council.

Any legislation that prescribes public disclosure requirements must have clear and specific mechanisms that measure how it contributes to transparency and accountability. Introducing and enforcing appropriate penalties for breaches may deter individuals from failing to disclose required information. When penalties are clearly defined and enforced, they can reinforce expected behaviours and contribute to a culture where public officials prioritise open communication and accountability. This is preferred to the option of developers and real estate agents being excluded from participation in public office.

We support a transitional arrangement as this approach will have significant impacts in smaller communities.

Councillor misbehaviour in public office

Is this the appropriate threshold to face a Privileges Committee?

We are supportive of the proposal to revise the definition of misconduct and refer to misbehaviour. It will support the proposal to align the code with the oath of office and focus on behaviours. Definitions and examples from case law that is being used as the benchmark for a matter to be referred to the committee should be described in detail in the supporting framework.

To effectively address instances of misbehaviour outlined in the proposed definition it is essential to have an independent process. We agree a conduct review should be completed however, there are important considerations to address such as the selection and appointment process for committee members. These must be made in a transparent and non-political manner. To mitigate this, we recommend that committee members should not be sitting councillors, mayors or staff but made up of retired, experienced and trained former Mayors, Councillors or staff. Involving former general managers or other neutral parties, such as independent professionals or professional bodies that would help remove political biases from a conduct review. We recommend that the committee is appointed as a "Conduct Review Committee".

It could be considered to set a higher level of expectation placed on a Mayor supported by a Code of Mayoral Conduct or specific section of the model code, specifically for the role of Mayor.

Additionally, clarity around the payment of expenses and adequate resourcing for the committee is necessary to support its operations effectively. We see the benefits of being able to refer complaints to other parties will assist with resolving issues in a timely way, at the lowest possible level and minimising disruption.

Any review by an independent party is to demonstrate procedural fairness with decisions based on solid evidence to enhance the credibility of the findings and recommendations. The review process is crucial for maintaining public confidence and should be robust enough to act as a deterrent for misbehaviour by individuals. We recommend that the outcome of all misconduct and misbehaviour complaints are published to develop a library of cases that can be referred to. This will benefit all Council's as over time precedent cases can be referred to, referencing outcomes that do, or do not constitute a breach. In the long term, this may support councils to deal with allegations that can be tested by precedent matters at a local level where possible.

How else can complaints be minimised?

To minimise the number of complaints it is essential to provide clarity about the seriousness of the impacts and issues from misbehaviour and how to create an environment that minimises inappropriate conduct. The revised code of conduct should focus on building awareness and transparency about expected standards. It would be useful to define frivolous or vexatious complaints, recognising that these may arise from personality clashes or political conflicts. We support implementing cost penalties for unmeritorious or frivolous complaints as these can deter such actions.

We also support a triage approach that is like the QLD Office of the Independent Assessor where complaints are categorised based on the severity and urgency of the alleged breach by a councillor. Complaints could be classified into three different categories such as minor, moderate, or serious misconduct to determine whether to take further action. Prioritising investigations this way can assist with serious matters being addressed promptly and minor matters being resolved locally. The OLG could undertake the preliminary assessment and determine the most suitable third party to resolve the complaint in the most efficient way.

We again raise our concerns about the role of a General Manager and the conflict that may arise when the General Manager is required to make decisions concerning complaints against a councillor. The General Manager should have limited involvement or at minimum, not have sole responsibility for dealing with complaints about councillors.

Addressing inappropriate lobbying

What key features should be included in lobbying guidelines and a model policy?

We support the development of the lobbying guidelines and model policy. At a minimum these documents should include requirements for councillors to disclose all meetings and communications with property developers so that council can maintain a public register of such meetings to ensure transparency and mechanisms that support reporting of inappropriate or corrupt lobbying behaviours and specific action to be taken if substantiated.

Councillors should declare any potential conflicts and remove themselves from decision-making processes where there is a conflict and if a councillor fails to do so, this is considered misbehaviour as defined in the code of conduct. To assist, training on the lobbying guidelines and policy should be mandatory for all councillors to complete within three months of being elected.

The guidelines could also include the requirement for lobbyists to disclose their interests when making donations to an individual or to council the entity.

By incorporating these features, the code of conduct can assist councils to specifically deal with disputes and penalties relating to lobbying.

Dispute resolution and penalty framework

Abolishing the 'two step process'

A time-consuming part of complaints investigation process is ensuring procedural fairness and both the complainant, respondent and any witnesses being interviewed. The complaints process would still need to be undertaken in an open and transparent way that can support the decision to take disciplinary action. The Mayor should be updated on the progress of any investigation to support effective civic leadership of the governing body during an investigation process.

The preliminary assessment process and the opportunity for minor matters to be resolved locally should be maintained. We support the OLG being responsible for initial assessment and recommend a triage approach for referral as mentioned earlier.

Giving OLG the power to issue penalty infringement notices

What level of PIN is appropriate?

Our Council does not support issuing PINs, however we recommend that the code defines minor and insignificant offences to ensure appropriate categorisation and the establishment of clear guidelines for referring cases to a tribunal. We note the option for individuals to elect to have their matter dealt with by a court. It needs to be clear that the appeal process should be at the expense of the councillor, not the council they serve.

Should the OLG play a role in management of breaches, the OLG must be resourced to do so. This is critical for dealing with the complaints in a timely way.

We have concerns over the equity of a PIN framework given that it may not equally disincentivise inappropriate conduct. In simple terms, Councillor's with high capacity to pay a PIN may not see it as a deterrent to the same extend as Councillor with a lower capacity to pay.

NSW Local Government Privileges Committee

Are the penalties proposed appropriate, and are there any further penalties that should be considered?

The penalties proposed are reasonably consistent with the current provisions. The benefit of complaints being reviewed by an independent body, such as a conduct review committee protects relationships within councils and supports quicker resolution. Recommendations by an independent committee that are administered through the OLG provides arm's-length management of poor behaviour by individuals.

We support the proposal that the process is paid for by the individual or the council depending on the outcome of the investigation and will reduce complaints by promoting accountability for behaviours and decisions of individuals.

It is crucial that any process is committed to resolving issues promptly with a clear, consistent, and efficient process for handling complaints.

Referral of significant sanctions to appropriate tribunal or body

Are the existing sanctions available under the Local Government Act sufficient?

The existing sanctions are sufficient, implementing them to be effective and manage councillor behaviour is what we hope comes out of this code of conduct review and inform the development of the OLG lobbying guidelines and policy.

Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

We recommend the OLG to consider the triage approach that aligns sanctions with the severity or seriousness of a breach and only complex matters be referred to a tribunal such as the NSW Civil and Administrative Tribunal. Hearings at tribunals can be lengthy and costly for all parties. It is noted however that reviews completed by an independent body may generate additional case law and precedence on matters relating to councillor code of conduct that could benefit the sector over the long-term.

The code could be strengthened by defining the sanctions and the decision-making process for referring matters.

Restoring dignity to council meetings

Restoring dignity to council meetings

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?

Bega Valley Shire Council agrees that the council chamber is a place of prestige and dignity.

The recommendation to provide additional powers to the Mayor or Chair of a council meeting could be strengthened by providing additional training and support to this important role. We believe that mandatory training for Mayors by the OLG on effective chairing of meetings would improve the conduct of meetings.

Linking councillor misbehaviour in meetings with councillor fees and entitlements may support improved behaviour in council meetings by individuals. The right of review is to be explicit in the code to ensure the process is open, consistent, and fair. There are risks as outlined above associated with capacity to pay considerations.

We do not support prescriptive requirements for councillors to stand to address a meeting, or when the Mayor enters the room. With the livestreaming of council meetings now required, use of technology may prevent councillors being able to comply with this proposed requirement. Each council should be able to determine how they will bring dignity and respect to each member in the chamber with leadership by the Mayor.

We have concerns that the administration and legislative support for the proposal that the Mayor can expel members of the public from the chamber and issue PINs is not currently available and would require significant change.

Banning briefing sessions

Are there any other measures needed to improve transparency in councillor deliberations and decision making?

We strongly oppose any restrictions on councillor briefings, workshops, and information sessions as they are vital for keeping councillors fully informed. These sessions are not decision-making forums, rather they serve as a forum for councillors to ask questions, provide advice and a conduit to the operational management of council. These sessions should not influence decisions, rather provide an opportunity to discuss critical insights, present research and data that is influencing the operating environment of the council. Informal sessions allow for sharing of information and education of councillors to fulfil their role as an elected official.

It is crucial to maintain a clear separation between meetings for decision-making purposes and informal sessions. These informal sessions are valuable for developing staff and future leaders, allowing them to build skills and confidence in working with mayors and councillors. Without these sessions, council meeting times would significantly increase and impact efficiency.

We agree that transparency is key in public meetings and the importance of providing supporting information that informs recommendations from staff to the governing body and that this be presented to a meeting of council for decision. Achieving effective public participation and transparent decision making can be achieved by supporting the Mayor (or Chair) to effectively manage the meeting so that deliberation and debate is raised in the public domain before a resolution of council.

We note the existing provisions in the Code of Meeting Practice that extend to Council Committees and these public meetings can sit alongside closed briefings and workshops that support elected officials with technical and specialist advice prior to decision-making. Council committees are a mechanism for the public to be involved, having input and sharing information on issues before council resolves on a decision to be implemented. This existing approach supports transparency and inclusivity in the decision-making process.

Council is supportive of having recordings of public meetings available on our website however we seek further clarification on the length of time this would be expected, as it may have financial costs to store this data on our website for several years.

Yours sincerely

[redacted]

Anthony McMahon
Chief Executive Officer

4 November 2024

Your ref:
Our ref: ARC22/5482

Office of Local Government
Locked Bag 3015
Nowra NSW 2541

Dear Sir/Madam,

Re: Councillor Conduct and Meeting Practices Framework Submission

Firstly, thank you for providing the opportunity for feedback on the proposed Councillor Conduct and Meeting Practices Framework.

Overall Council is of the view that the discussion paper provides insufficient information and justification to support the wholesale changes being put forward. Notwithstanding this Council acknowledges that the current complaint process is ineffective, administratively burdensome, costly and frequently fails to provide definitive and timely outcomes that support better practice. Council generally supports the principles which should underpin any conduct framework.

Council is concerned that the proposed changes will, as has been the experience across a range of NSW State Government services, shift a further administrative burden to Council. The discussion paper does not provide any detail to allay this concern. Armidale Regional Council strongly opposes the recommendation that seeks to disallow pre-meeting briefing sessions in the absence of the public.

Council is of the view that the framework for transparent decision making by Council already exists.

Council decisions may only be made in the Chamber during Ordinary Council meeting and Extraordinary Council meetings

Section 232(1)(b) of the *Local Government Act 1993 requires Councillors "…to make considered and well informed decisions as a member of the governing body…"*

This necessarily means that there will be occasion where further information or explanation is required to ensure that Councillors can form an opinion and participate constructively in debate. This additional information is provided in briefings.

Briefings are not Council meetings they are a forum provided and controlled by the General Manager (GM) to assist councillors meet their obligation under 232(1)(b) .

It is the GM responsibility to ensure that the forum is not used to press view points or engage in debate or make decisions.

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Opening these forums to the public risks constraining a Councillors willingness to ask questions. The consequence of this will be circumstances where Councillors are not fully informed or not all councillors will receive the benefit of the explanation from staff.

Council believes that these closed pre meeting briefing sessions play a crucial role in the effective functioning of local government and the representation of our community by fostering a safe place for councillors to ask questions, and gain an understanding of context, and historical decisions. It is imperative for councillors to be well informed to allow constructive debate during the council meetings and have the ability to seek clarification on agenda items.

1. Enhancing Informed Decision-Making
Pre meeting briefing sessions provide an invaluable opportunity for elected representatives to receive detailed information on complex issues, allowing them to make informed decisions that directly impact the community. Without these sessions, councillors may lack the necessary context and understanding to address the needs and concerns of their constituents effectively. These briefings provide a one-way flow of information which is chaired by the General Manager, there is no conversation of merit or political agendas permitted.

2. Promoting Transparency and Accountability
Briefing sessions can enhance transparency in local governance. When councillors are well-informed, they can engage in more meaningful discussions during public meetings, leading to clearer communication of decisions to the community. Disallowing these sessions could lead to a disconnect between councillors and the electorate, undermining trust in local government.

Armidale Regional Council have undertaken to audio visually record and minute briefing sessions to ensure accountability and transparency. Furthermore, a preamble is read by the General Manager at the commencement of every briefing session reiterating the purpose of the briefing and directing Councillors to refrain from any form of debate. The GM advises that debate or decision making will be is not permitted and will be immediately shut down.

The briefing sessions are called General Managers Business Paper Briefings to indicate that they are focused on the General Manager's briefings.

In conclusion, I urge the Office of Local Government to reconsider this recommendation. Councillor briefing sessions are vital for informed decision-making, transparency, collaboration, and ongoing education. Disallowing them would not only hinder the effectiveness of our elected officials but also diminish the quality of governance in our communities.

Thank you for considering this submission. I look forward to seeing a governance framework that supports the ongoing engagement and effectiveness of our councillors.

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Please contact me on [redacted] if I can be of further assistance.

Sincerely,

[redacted]

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General Manager

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GEORGES RIVER COUNCIL

Office of the General Manager

Executive Assistant: Sue Matthew
Direct Telephone: [redacted]
File Reference: D24/331567

28 November 2024

The Office of Local Government
Strategic Policy Unit
Locked Bag 3015
NOWRA NSW 2541

Via email: councillorconduct@olg.nsw.gov.au

Dear Sir/Madam

Councillor Conduct Framework Review

I refer to the Councillor Conduct and Meeting Practices (A new framework) Discussion Paper and provide Georges River Council's Officers comments and suggestions with the intent of enhancing the proposed framework.

What are the principles of change?

Georges River Council Officers support the principles outlined in the discussion paper and advocates for the inclusion of additional principles to enhance its effectiveness and comprehensiveness. Specifically, we propose the following:

1. **Safe Working Environment:** The framework should explicitly emphasise the importance of a safe working environment that supports respectful interactions between elected representatives and council staff. It should also address the Work, Health, and Safety (WHS) obligations of councillors to ensure these standards are met and upheld consistently.
2. **Standards of Behaviour:** Establishing and maintaining acceptable standards of behaviour for elected officials and council staff is critical. These standards should align with the expectations of the community, fostering mutual respect, professionalism, and accountability within the council environment.
3. **Responsible Communication:** While officers supports the principles of free speech, it notes that elected officials may, at times, lack the experience or historical context to speak authoritatively on certain topics. In such cases, the dissemination of inaccurate or incomplete information could cause harm. Therefore, the framework should encourage elected officials to ensure that public communications are accurate, informed, and considerate of their potential impact.

Additionally, officers emphasises two overarching considerations in shaping the Code:

1. **Addressing Misconduct:** The Code should be specifically designed to improve the conduct of councillors who are prone to misbehaviour or disruption. If the proposed changes to the Code fail to directly encourage positive behavioural changes among such individuals, it may necessitate a reassessment of the framework to ensure it effectively achieves this goal. The aspirational nature of the Code may limit its enforceability, potentially reducing its ability to drive the desired behavioural improvements.
2. **Guidance for New Councillors:** The document should be comprehensive enough to provide clear and detailed guidance for newly elected councillors. It must outline expectations of behaviour in a manner that equips them to understand their roles and responsibilities fully and fosters an environment of professionalism and respect from the outset.

Officers urges that these considerations and additional principles be integrated into the final Code to ensure it is both practical and impactful.

Potential Changes to the Code of Conduct and Oath of Office

Officers does not support the proposal to implement an aspirational Code of Conduct for local government, as there is little value in transitioning from an enforceable Code to one that is purely aspirational. This approach risks undermining accountability and fails to address the serious need for a clear, enforceable standard of behaviour.

Key concerns include:

1. **Lack of Rigour Compared to State Standards:** State Government Ministers are currently bound by a comprehensive, prescriptive Code of Conduct spanning approximately 15 pages. It is unclear why the State Government would not expect a similar level of rigour and accountability from local government councillors. The disparity between the standards set for different tiers of government undermines consistency and public confidence.
2. **Work Health and Safety Obligations:** Misbehaviour directed at staff constitutes a breach of the WHS Act and could result in serious legal and reputational consequences for both the individual councillor and the council as a whole. A purely aspirational Code fails to address these critical legal obligations effectively.
3. **Inconsistent Consequences for Misbehaviour:** The current proposal creates a double standard whereby unacceptable behaviour could lead to the dismissal of a staff member under the staff Code of Conduct, while the same behaviour by a councillor might carry no meaningful consequences.
4. **Ineffectiveness of Aligning the Oath of Office with the Code of Conduct:** While aligning the Oath of Office with the Code of Conduct may have symbolic value, it is unlikely to yield a significant impact on compliance. Despite current training and written commitments to adhere to the Code, breaches still occur. Without immediate and substantial sanctions for violations, there is little reason to believe this alignment would enhance accountability or deter misconduct.

Council Officers believe that a robust and enforceable Code of Conduct is essential to maintaining high standards of behaviour in local government. We support the development of separate Codes of Conduct for staff and councillors, provided both are stringent, enforceable, and reflective of the responsibilities and obligations of their respective roles.

To ensure public trust and the effective operation of councils, it is imperative that the Code of Conduct for councillors is designed not merely as an aspirational document but as a practical and enforceable framework for accountability and ethical governance.

Potential Changes to the Definitions and Assessments of Councillor Misbehaviour

Council Officers have significant reservations regarding the composition, independence, and operation of the proposed Privileges Committee as outlined in the Discussion Paper.

Concerns Regarding Composition and Independence

There is a distinct lack of confidence in the suitability of Mayors and ex-Mayors presiding over the Privileges Committee, as this could create a perception of bias or lack of independence. Many Mayors and ex-Mayors have longstanding professional relationships with one another, raising concerns about their ability to impartially judge their peers.

A key question is what qualifies Mayors and ex-Mayors as the most appropriate individuals to serve on this Committee. If the Office of Local Government (OLG) identifies behavioural issues within council chambers, it is plausible that such behaviour could involve individuals who may themselves serve on the Privileges Committee. This underscores the need for a higher degree of independence in the Committee's composition to ensure that decisions are free from both perceived and actual bias.

Council Officers believe that members of the Privileges Committee should possess relevant qualifications, such as legal or judicial expertise, to enhance the credibility, independence, and professionalism of the Committee.

Risk of Politicisation

Another critical concern is the potential for the Privileges Committee to become politicised if it is composed of current and former Mayors. This risk further erodes confidence in the Committee's ability to make impartial decisions. A clearly defined framework must be established to safeguard the Committee from political influence.

Conflict of Interest and Legal Representation

The Discussion Paper does not adequately address how conflicts of interest within the Privileges Committee will be managed. Given the potential for conflicts to arise, transparent and enforceable mechanisms must be established to mitigate such risks.

Additionally, clarity is needed regarding whether councillors appearing before the Privileges Committee will be entitled to legal counsel and whether individual councils—and by extension, ratepayers—will be expected to cover the costs of this representation. These are critical considerations that remain unaddressed in the current proposal.

Funding and Operational Clarity

The Discussion Paper lacks detail regarding the funding of the Privileges Committee. Without this information, it is difficult to provide substantive feedback on the feasibility or financial implications of the proposed model.

Referral Process and Governance Duplication

The process for referring matters to the Privileges Committee is unclear. For example:

- Will there still be a designated Complaints Coordinator to manage referrals, or will anyone be able to escalate a complaint directly to the Committee?
- How will frivolous or vexatious complaints be filtered to avoid unnecessary strain on the Committee's resources?

Council Officers question the necessity of adding another governance layer to oversee councillor conduct, given the existing oversight mechanisms provided by the Office of Local Government (OLG) and the Independent Commission Against Corruption (ICAC). Without clear justification, the establishment of a Privileges Committee risks duplicating existing functions, creating inefficiencies, and fostering confusion.

Recommendations

To address these concerns, Council Officers propose the following:

- The Privileges Committee should be composed of independent professionals with relevant qualifications, such as legal or judicial expertise, to ensure impartiality and credibility.
- A robust framework must be developed to manage conflicts of interest and protect the Committee from politicisation.
- Detailed guidance should be provided on councillor entitlements to legal representation, including the funding source for such representation.
- Clear information on the funding model and operational framework for the Privileges Committee should be provided to facilitate informed feedback.

- The necessity of the Privileges Committee should be carefully reviewed in light of the existing governance structures to avoid duplication and inefficiencies.

We strongly urge the Office of Local Government to address these issues and provide further clarity before proceeding with the establishment of the Privileges Committee.

Councillor Misbehaviour and External Bodies

The current practice of referring councillor misbehaviour to external bodies, such as SafeWork, often results in fines being imposed on the Council rather than the individual councillor responsible. This approach unfairly penalises the organisation and, by extension, the ratepayers, while failing to hold the offending councillor accountable for their actions. To address this imbalance, Council Officers propose that fines and penalties be directed at the individual councillor responsible for the misconduct.

Respectful Interactions and Accountability

The Code of Conduct should explicitly require councillors to engage respectfully with all stakeholders, including fellow councillors, the General Manager, council staff, and members of the public. This includes avoiding baseless criticism, particularly in public forums, as such actions can have far-reaching negative consequences:

- **Organisational Impact:** Unfounded public criticism can damage organisational culture, leading to increased psychosocial risks for staff.
- **Community Division:** Publicly disparaging behaviour may polarise the community and undermine social cohesion.
- **Erosion of Public Trust:** Such actions can weaken public confidence in the council's integrity and decision-making processes.

By embedding respect and professionalism as core principles, the Code can foster a collaborative and constructive environment that supports effective governance and strengthens community trust.

Importance of Constructive Debate

Robust and respectful debate is a cornerstone of sound decision-making in local government. To uphold this principle:

- Councillors must focus on discussing issues rather than attacking individuals.
- Professional respect for officers' reports and recommendations must be maintained.
- Aggressive or intimidating behaviour that stifles debate or creates a hostile environment must be explicitly prohibited.

These standards are essential to ensure that council meetings remain productive, inclusive, and conducive to balanced decision-making.

Recommendations

To enhance accountability and promote a positive and professional culture, Council Officers recommend the following:

1. **Individual Accountability for Misconduct:** Legislative or procedural changes should be introduced to ensure that penalties for councillor misbehaviour are borne by the individual responsible, rather than the council as a whole.
2. **Codifying Respectful Behaviour:** The Code of Conduct should require councillors to engage respectfully with all stakeholders and refrain from behaviours that could harm organisational culture, public confidence, or community cohesion.
3. **Zero Tolerance for Intimidation:** The Code should explicitly prohibit aggressive or intimidating conduct that undermines constructive debate or deters participation.

Privileges Committee and Complaints Process

Concerns Regarding the Role of the Office of Local Government (OLG) in Managing Pecuniary Interest Breaches

Council Officers believe that the Office of Local Government (OLG) may not be the most suitable body to handle pecuniary interest complaints. Historical evidence suggests that many councils have referred clear breaches of pecuniary interest to the OLG, only for the complaints to be returned to the council, either due to the perceived minor nature of the issues or the OLG's inability or unwillingness to investigate. This approach has created frustration and a lack of confidence in the process.

Under the proposed new structure, if the OLG continues to redirect complaints back to councils, it is unclear how such complaints will be managed, given that councils will no longer have the authority to refer matters to conduct reviewers. Does this mean such complaints would automatically be referred to the Privileges Committee? If so, clarity is required on how this process will function effectively.

Agreement on General Manager Role and Reporting

Council Officers support the proposal to remove General Managers from the complaints process. General Managers should not be placed in a position where they are required to pass judgment on councillors, as this could create conflicts of interest given councillors' role in determining the General Manager's employment.

However, it is essential that General Managers remain informed of complaints lodged with the Privileges Committee or the OLG. Transparency in this regard is critical for effective governance and management. Additionally, there needs to be clear guidance on who is responsible for determining whether misconduct is referred to the Privileges Committee.

Issuing of Penalty Infringement Notices (PINs) and Funding Considerations

Council Officers support the OLG's ability to issue PINs as a mechanism for addressing misconduct. However, clarification is required on the following points:

- Can fines or penalties be garnished directly from councillors' meeting allowances?
- Can funds from these penalties be used to subsidise the operations of the Privileges Committee?
- If a councillor is found guilty of misconduct and the sanction involves the loss of meeting fees, can these withheld payments be allocated to support the Privileges Committee?

These considerations could ensure that the financial burden of misconduct is borne by the individual councillor rather than the council or ratepayers.

Individual Performance Improvement Orders and Reporting

Council Officers seek clarification on whether the OLG will have the authority to issue performance improvement orders to individual councillors. If so, careful thought must be given to how these orders and other sanctions are reported. Key questions include:

- Will councils be required to include information on performance improvement orders or sanctions in their Annual Reports?
- Should such information be made publicly available to ensure transparency for the community, particularly during election years when voters may wish to consider councillors' conduct?
- Alternatively, will the OLG be responsible for managing and reporting this information to the public?

Definition of Misbehaviour and Schedule of Sanctions

The current definitions of misbehaviour in the discussion paper, including terms such as "unbecoming of a Councillor" and "bringing Council into disrepute," are too vague and open to interpretation. Misbehaviour must be clearly defined with specific examples to avoid ambiguity and ensure consistency in enforcement.

A detailed schedule of sanctions should also be developed to educate councillors about the potential consequences of misconduct. This schedule would provide transparency and serve as a deterrent by linking specific actions to defined penalties.

Interplay with the Code of Meeting Practice

Council Officers note that the proposals in the discussion paper frequently reference conduct in council meetings. However, the review has been conducted in the absence of a revised Code of Meeting Practice, which could clarify certain points or raise additional considerations once developed. Any changes to the Code of Conduct or related

processes must align with the updated Code of Meeting Practice to ensure consistency and avoid contradictions.

Recommendations

To address these concerns, Council Officers recommend the following:

1. **Alternative Oversight for Pecuniary Interests:** Explore whether an independent body or panel might be better equipped to manage pecuniary interest breaches, ensuring complaints are addressed appropriately and efficiently.
2. **Clear Referral Pathways:** Establish explicit processes for referring complaints to the Privileges Committee, including the roles of councils, General Managers, and the OLG.
3. **Enhanced Transparency:** Ensure General Managers are informed of complaints while maintaining their independence from the decision-making process.
4. **Defined Misbehaviour and Sanctions:** Develop clear definitions of misbehaviour and introduce a schedule of sanctions to promote accountability and understanding among councillors.
5. **Reporting Mechanisms:** Clarify how performance improvement orders and sanctions will be reported to ensure public transparency and accountability.
6. **Alignment with Meeting Practice Code:** Coordinate revisions to the Code of Conduct with updates to the Code of Meeting Practice to ensure consistency and address potential gaps.

Property Developers and Real Estate Agents

Council Officers seek clarification on how the proposed changes will impact councillors who are property developers, particularly regarding their obligations and potential restrictions on their business activities. Key questions include:

- **Implications for Property Ownership and Business Contracts:** Will councillors who are property developers be required to divest from certain properties or refrain from entering into specific contracts to comply with the new regulations? If so, how will this affect their ability to earn an income and sustain their livelihood? Such requirements could place undue financial and professional pressure on individuals serving as elected representatives, potentially dissuading qualified individuals from participating in local government.
- **Compliance and Accountability:** In the event that a councillor does not divest property or engages in prohibited contractual arrangements, what mechanisms will be in place to ensure compliance? Who will bear responsibility for investigating such breaches, and what sanctions or penalties will be imposed on councillors found to be in violation of the rules? A clear and enforceable framework is necessary to address these situations effectively.

Council Officers emphasise the importance of balancing the need for transparency and integrity with the practical realities of councillors' professional and financial circumstances. The rules must be clear, fair, and enforceable, with an established

process for investigation and accountability that does not unfairly penalise councillors for legitimate business activities.

Council Meetings

Council Officers have significant concern regarding the potential concentration of power in the hands of the Mayor within the council chamber. As an elected representative, the Mayor is part of a collective body entrusted to represent the community, and their authority should reflect this collaborative framework. Granting the Mayor unilateral decision-making power undermines the principles of shared governance and democratic representation.

Distribution of Power within the Chamber

The council chamber functions as a forum for collaborative decision-making, where all elected councillors contribute equally to representing the interests of their constituents. While the Mayor holds a leadership role, this should not translate into absolute authority over proceedings. A balanced distribution of power is essential to preserve democratic integrity and ensure that all councillors can effectively participate in deliberations and decision-making processes.

Authority to Issue Penalty Infringement Notices (PINs)

The proposal to grant Mayors the authority to issue Penalty Infringement Notices (PINs) to members of the public raises several concerns:

- **Legal Basis:** It is unclear under what legislative authority the Mayor would have the right to issue PINs. This requires detailed clarification to ensure that such powers are lawful and consistent with existing frameworks.
- **Scope of Authority:** The circumstances under which a Mayor could issue a PIN must be clearly defined to prevent potential misuse of power or arbitrary enforcement.
- **Checks and Balances:** Adequate safeguards must be in place to ensure that this authority is exercised fairly and transparently, with mechanisms for oversight and accountability.

Recommendations

To address these concerns, the Council Officers recommend the following:

1. **Reinforce Collaborative Governance:** The Code of Conduct and governance structures should emphasise the collective role of the council, ensuring that no single individual, including the Mayor, holds disproportionate power within the chamber.
2. **Clarify the Legal Framework for PINs:** The legislative basis and specific circumstances under which Mayors may issue PINs to members of the public must be explicitly defined and communicated.

3. **Introduce Safeguards:** Establish clear procedures for oversight and appeal to ensure that the issuance of PINs is subject to accountability and cannot be exercised arbitrarily.

Transparency and Briefing Sessions

Council Officers strongly support the principle that under no circumstances should decisions be made during closed briefing sessions. However, it is essential to recognise the value of these sessions in providing councillors with vital background information, including commercial-in-confidence or other confidential details, in a controlled and private setting. These briefings are a critical component of informed decision-making, allowing councillors the necessary time to absorb and reflect on complex information before making formal decisions in an open council meeting.

Misrepresentation of Closed Briefing Sessions

The Office of Local Government's (OLG) Discussion Paper asserts that closed briefing sessions are being used to make decisions outside the public view, claiming that the current councillor conduct framework fails to deliver transparency or public confidence. This assertion raises significant concerns:

- **Lack of Evidence:** It is unclear how the OLG has arrived at the conclusion that decisions are being made in briefing sessions. Decisions cannot be legally formalised without a council resolution, which requires a majority vote in an open meeting.
- **Generalisation of Practices:** The example cited in the Discussion Paper—decisions on Development Applications (DAs) being made behind closed doors—is not representative of all councils, particularly as many councils in NSW no longer consider DAs.
- **Effectiveness of Existing Frameworks:** The current Model Code of Conduct already enforces transparency by ensuring that any information provided to one councillor is made available to all councillors upon request.

Concerns Regarding the Removal of Briefing Sessions

The proposed banning of pre-meeting briefing sessions may lead to unintended consequences that could hinder effective governance:

- **Impact on Decision-Making:** Without the opportunity to ask detailed questions or seek clarification in a private setting, councillors may struggle to make informed decisions within the limited speaking time permitted during council meetings. This could result in delays and more issues being deferred.
- **Informal Meetings:** Preventing formal briefings will not stop councillors from meeting informally in other locations to discuss and decide their positions. Such informal meetings are less transparent and lack the procedural oversight of structured briefings.

- **Risks of Information Centralisation:** The proposed requirement to provide information exclusively to the Mayor conflicts with the current Model Code of Conduct, which ensures equal access to information for all councillors. This change could lead to a concentration of information and decision-making power, potentially disadvantaging some councillors and creating divisions within the council. Additionally, there is a substantial risk that some Mayors may selectively limit the information shared with councillors to influence outcomes.

Recommendations

To address these issues, Council Officers propose the following:

1. **Clarify the Role of Briefing Sessions:** Clearly define the purpose and boundaries of briefing sessions in the Code of Conduct, explicitly stating that they are for the provision of information and not for decision-making.
2. **Maintain Equal Access to Information:** Uphold the existing Model Code of Conduct requirement that staff must provide information equally to all councillors upon request. Any changes that grant exclusive access to the Mayor should be reconsidered to avoid conflicts, ensure transparency, and maintain trust among councillors.
3. **Improve Transparency Without Removing Briefings:** Instead of banning briefing sessions, introduce mechanisms to enhance their transparency, such as recording attendance or keeping a summary record of the topics discussed (excluding confidential details).
4. **Support Informed Decision-Making:** Ensure councillors have adequate opportunities to ask questions and receive detailed responses, whether during formal briefings or council meetings. If necessary, consider extending speaking times or creating additional mechanisms for raising complex issues.

Briefing sessions play a critical role in equipping councillors with the knowledge and understanding needed to make informed decisions in the best interests of the community. While ensuring transparency and maintaining public trust are paramount, banning these sessions outright risks creating unintended inefficiencies and inequities in council operations. Council Officers urge the OLG to reconsider this approach and adopt measures that enhance, rather than undermine, the effectiveness and accountability of local government decision-making processes.

Conclusion

Council Officers support the initiative to enhance the Code of Conduct framework, recognising its potential to improve accountability, transparency, and professionalism within local government. However, we believe that the proposed framework outlined in the Discussion Paper requires further detail and refinement to ensure its effectiveness and practical implementation.

The Discussion Paper lacks sufficient detail on several key aspects of the proposed framework, making it challenging to provide comprehensive and constructive feedback at this stage. Clearer information is needed on the mechanisms, processes, and practicalities of how the new framework would function. Specific areas requiring further elaboration include:

- The mechanisms for addressing councillor misbehaviour and ensuring accountability.
- How the proposed changes will foster a safe, respectful, and collaborative working environment.
- The roles and responsibilities of key stakeholders, including councillors, mayors, and council staff, under the revised framework.

We strongly urge the Office of Local Government (OLG) to ensure that the revised Code of Conduct provides:

1. **Clear Guidelines:** Unambiguous definitions of acceptable and unacceptable behaviour, supported by comprehensive examples to aid understanding and compliance.
2. **Robust Mechanisms for Accountability:** Practical and enforceable measures to address breaches of the Code, ensuring that councillors are held accountable for their actions without imposing undue administrative burdens on councils.
3. **A Supportive Environment:** Provisions that promote a culture of respect and collaboration between elected representatives and council staff, fostering an environment conducive to effective governance.

A strengthened and well-defined Code of Conduct framework is essential for building a more effective and accountable local government sector that better serves our communities. Council Officers remain committed to working collaboratively with the OLG to achieve this goal and looks forward to engaging further as more details of the proposed framework are developed.

Yours sincerely

[redacted]

David Tuxford
General Manager

Lane Cove Council

26 November 2024

Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

Attention: Strategic Policy Unit

Subject: Councillor Conduct Framework Review

Thank you for the opportunity to provide feedback on the discussion paper titled – "Councillor Conduct and Meeting Practices – A New Framework".

Council broadly supports the proposed framework. One of the key advantages of the proposed framework is that it removes the current inherent conflict, whereby the general manager and senior staff of a Council are responsible for processing, investigating and resolving Code of Conduct complaints against Councillors.

There are, however, some points of clarification Council seeks, and some alternate perspectives Council would like to share.

Potential changes to the definitions and assessment of councillor misbehaviour

Council understands that under the proposed reforms, the OLG would be responsible for handling pecuniary and significant non-pecuniary conflicts of interest, with sanctions, suspensions and Penalty Infringement Notices (PINs) being determined by an appropriate tribunal or body.

Council also understands that behavioral concerns would be addressed by a state-wide panel of experienced Councillors (Privileges Committee), while the Code of Conduct would be aligned with Parliamentary standards to clarify expected behavior. There would be three limbs to this proposed misbehaviour definition being: conduct that is unbecoming of a Councillor; brings Council into disrepute; and/or is assessed as being outside the norms and expectations of a sitting Councillor.

Additionally, Council understands that the Privileges Committee process would be paid for by either individual Councillors or their councils, dependent on the outcome. Penalties that could be imposed include censure or warning of the Councillor, where referred following misbehaviour in a Council meeting a potential loss of sitting fees and referral to an appropriate tribunal or body for more serious sanction, including suspension or disallowance.

Council generally supports these reforms, however, clarification is sought as to whether a councillor has a right to appeal a determination by the OLG or a Privileges Committee and if so, the process by which this would occur. In addition, Council seeks clarification around the cost structure associated with the formation of a Privileges Committee and who would pay for what, when and under what circumstances.

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Clarity is also sought as to whether all breaches of the Code would be subject to the same process. For example, very minor or incidental breaches of the Code may not warrant a path that consumes a significant amount of time and money for all parties concerned.

Whilst it is acknowledged that the proposed reforms relate exclusively to Councillors, it is worth noting a similar inherent conflict exists when a Mayor has to investigate a code of conduct matter involving the General Manager. Clarity is sought as to whether the OLG and/or the Privileges Committee might take responsibility for code of conduct matters involving the General Manger.

Council strongly recommends the Privileges Committee members be selected from former Mayors and Councillors (not only Mayors) using a merits based process including skills in conflict resolution and complaints handling, and provide a requirement for balance on the committee with ex councillors from a range of political backgrounds with an aim of limiting politicisation of the committee.

Furthermore, Council strongly recommends that penalty infringement notices not be imposed on councillors, particularly for isolated incidents in council meetings. There is a concern that this could be politicised and it is worth noting that even if a councillor is asked to leave a meeting, they are still engaging in other work as councillors outside of that meeting. If PINs are to be utilised they should only ever be issued by the Privileges Committee (and not by the Mayor).

The principles of change

Council understands the revised Councillor Conduct Framework will be based on the following principles of change: Council leadership and decision making are paramount; freedom of speech is fundamental, transparency and accountability are maintained, issues are dealt with at the most immediate or local level, strong and proportionate local government regulator, justice is timely and proportionate and significant penalties should only be imposed by a judicial or quasi-judicial body.

Council believes there is a need for greater clarification around legal representation in the new system and the use of Penalty Infringement Notices (PINs). Under the OLG Model Payment of Expenses Policy, legal costs relating to a Code of Conduct complaint may only be made available where the matter is referred to a conduct reviewer who makes a finding favourable to the Councillor.

The review should consider what legal representation or other support Councillors should be entitled to in challenging a PIN or other sanction under the proposed framework.

Banning of Councillor Briefing Sessions

Council understands that the framework proposes that councils will no longer be permitted to hold pre-meeting briefing sessions in the absence of the public. Whilst Council officers fully support transparency and ensuring that decisions are not made by Council during private briefings, the total banning of briefing sessions is considered an extraordinary measure and unnecessary. The example used in the paper relates to briefings on development applications. Councils in Metropolitan Sydney play no role in development applications so the relevance to corruption risk has already been eliminated.

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A typical Councillor workshop / briefing involves presentations on the more complex matters relating to upcoming Council agenda items, providing opportunities for staff and Councillors to discuss matters or for Councillors to ask questions. Many issues which a Councillor is required to consider are not straight forward and without the opportunity to have a briefing from staff, a Councillor is forced to develop their understanding entirely from the report to the meeting.

At all government levels, politicians (the governing body) receive briefings from the staff (the administrative body) as the staff have the technical knowledge on matters. To remove the opportunity would be a retrograde step to ensuring informed decision making.

The paper also suggests that the Mayor would have the opportunity to have briefings and even have access to more information about a matter. This again is a retrograde step as it is inconsistent with the principle that "information necessary for Councillors to exercise their civic functions is made equally available to all Councillors," (Pt 8, OLG Model Councillor and Staff Interaction Policy).

In summary, unintended consequences of banning briefing sessions entirely include reduced opportunities for:

- Managing corruption risk, by ensuring there is no differential access amongst Councillors to information on a matter;
- efficiency in decision making, by needing to defer matters at Council meetings for further information/questions to be answered in a further report;
- accumulating knowledge and understanding on subject matters, particularly for new Councillors faced with new complex matters;
- staff to provide frank, honest, apolitical and impartial advice;
- brainstorming sessions and the exchange of ideas, options, and alternatives.

While no change to the current process is recommended, if the OLG is insistent on reform, it is recommended as an alternate that the OLG define a limited range of subject matters that should be banned from non-public briefing sessions rather than a blanket ban on all matters.

Restoring dignity to council meetings

Council understands that the framework proposes a number of changes relating to Council Meetings, including:-

- Conferring the power on mayors to expel councillors for acts of disorder and removing the Councillor's entitlement to receive a fee for the month in which they were expelled from a meeting.
- Requiring Councillors to apologise for an act of disorder at the meeting at which it occurs and, if they fail to comply at that meeting, at each subsequent meeting until they comply. Each failure to apologise becomes an act of misbehaviour and will see the Councillor lose their entitlement to receive their fee for a further month.
- Requiring Councillors to stand, where able to do so, when addressing Council and when the Mayor enters the chamber
- Expanding the grounds for mayors to expel members of the public from the chamber for acts of disorder and enable the issuing of a PIN where members of the public refuse to leave a meeting after being expelled.

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Council believes the existing Model Code of Meeting practice provides an adequate process for expulsion from meetings due to disorder. The proposed additional penalty of removing sitting fees should be a matter considered by the proposed Privileges Committee.

Council is also of the view that the issuing of PINs to members of the public who fail to leave a meeting is not considered necessary and, in any event, would be difficult to impose.

Proposed reforms on Lobbying

Council understands that, separately, the OLG will be developing lobbying guidelines and a model policy on lobbying for councils to adopt that will:

- address how professional lobbyists are identified and the obligations on councils and Councillors if they met a professional lobbyist;
- set out inappropriate behaviours when being lobbied;
- identify steps to be taken to ensure transparency; and
- require Council officials to report inappropriate or corrupt lobbying behaviours to the Council's general manager.

Council at its June 2024 meeting resolved to develop a policy and procedure by which Lane Cove Councillors will be required to publicly disclose and keep a record of their meetings with property developers and registered lobbyists on Council's website, using the City of Sydney Policy as a basis. As an interim measure, staff are developing a disclosure form that will need to be completed prior to any meetings with external parties relating to Council business consistent with the documents required to meet with a State Government Minister, with implementation intended to be effective immediately.

Whilst Council has commenced working on this new Policy, in light of the above, it would be ideal and appropriate for the OLG Policy to integrate both developers and lobbyists into the one Model Policy.

If you have any questions in relation to this submission, please feel free to contact Mr Steve Kludass, Director – Corporate Services & Strategy on [redacted] or email [redacted].

Yours Sincerely

[redacted]

Craig Wrightson
General Manager

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28 November 2024

NSW Department of Planning, Housing and Infrastructure
Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

Contact: Keri Neveldsen
Our Ref: DOC2024/198085

Via email only: councillorconduct@olg.nsw.gov.au

Dear Minister,

COUNCILLOR CONDUCT FRAMEWORK REVIEW

Cessnock City Council welcomes the opportunity to make a submission on the 'Review of the Councillor Conduct Framework'. Please find attached Council's submission.

If you require any further information, please do not hesitate to contact me via [redacted]

Yours faithfully

[redacted]

Ken Liddell
General Manager

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Questions for consideration:		Our response:
Principles of change		
1.	Are we missing anything in the below principles of change?	Supported, noting that an additional principle on 'respect' could be included to support that while debate is encouraged and Councillors have a right to differ on points, it is important that debate is respectful and any reports of misconduct are made in good faith. There could be increased focus on assisting Councillors to understand that while they may be elected in a ward area and by a particular cohort of electors, their responsibility is to the whole of the community within the local government area. The balance of freedom of speech and representing the interests on which they were elected with the need to act fairly, ethically and without bias in the interests of the whole community can result in passions extending beyond respectful discussion and a strong local government regulator can assist with this. The focus of these proposed changes relates to Councillor conduct but does not acknowledge that the same Code of Conduct and Procedures apply to Council Officials, including staff and delegates of Council. There has been some value in all parties knowing the same Code of Conduct and behavioural standards apply.
Potential changes to the Code of Conduct and Oath of Office		
2.	What are the key elements of an aspirational Code of Conduct that should be enshrined?	A key element of an aspirational Code of Conduct should include: Respect. It is of concern that the proposed new Code of Conduct is aspirational instead of enforceable. While positive reinforcement of appropriate behaviour is welcomed, without clear definitions, behaviour would be subject to interpretation. Having definitions in a separate location from the Code of Conduct may make it harder for Councillors and the community to understand as Councillors are then required to review legislation to interpret the Code of Conduct. What is the process other than the proposed Councillor misbehaviour in public office by which Councillors be held to account for their behaviour?

		While there may be legal tests for what is “unbecoming” or “brings council into disrepute” these are generally inaccessible to local Councillors and rely unnecessarily on legal interpretation and continues to leave a vacuum in the resolution of lower-level complaints. Citing existing case law and precedents is not sufficient for establishing context and examples of expected behaviour, and continues to reinforce a subjective process based on what one Councillor might think to be appropriate which could be seen by others as offensive and whether that behaviour is actually brought forward as a matter for concern.
3.	What are your views about aligning the Oath of Office to the revamped Code of Conduct?	More information is needed on the benefits of aligning the Oath of Office to the revamped Code of Conduct. If the existing framework of legislation (including responsibilities and oath of office), Code of Conduct, Code of Meeting Practice makes it difficult to understand the expectation of standards, it is unclear in practice how aligning a revamped Code of Conduct to the Oath of Office will assist Councillors in managing their own behaviours. There is often a heavy focus on expected behaviours and the Code of Conduct during the Councillor induction program, which allows for an in-depth explanation of the expectations, discussion of appropriate behaviour and understanding of the Code of Conduct processes and consequences. By contrast, the Oath of Office is usually completed in a short session where Councillors read from the legislation, which is often viewed as the formal part of taking up all the responsibilities of a Councillor. In addition, Councils are required to include a statement in the business papers to assist in setting the tone for the meetings.
	Further comment	Councillors also have a role in assisting the community to understand and participate in democratic meetings where their viewpoint may not have prevailed on the day. Councillors are currently not restrained from the ability to speak publicly on matters, providing they are clear they are presenting their personal opinion. Councillors need to be mindful that

		continued agitation against a democratic decision could stray towards a breach of behavioural standards.
Potential changes to the definitions and assessment of Councillor misbehaviour – pecuniary interests		
4.	Is the proposed pecuniary interest framework appropriate?	Consideration should be given to whether the monetary values related to reporting of gifts and travel contributions is too high. Currently, gifts of more than token value (at Cessnock City Council, this is considered over $50, however, we note the model provides for $100) are to be reported by all Council officials, including Councillors. Raising this amount to $500 actually results in decreased transparency. Some would consider gifts between $100 and $500 to still be quite valuable and could influence a Councillor's decision-making. Council supports an absolute prohibition of Councillor involvement in any matters before Council where a pecuniary conflict of interest exists. **Seek redress from appropriate regulator** It is likely that members of the public will continue to direct complaints about Councillor misbehaviour directly to Council. This would result in Council having to redirect members of the public to either the Privileges Committee or external agencies, such as the Police, ICAC, etc. it is likely this could be seen as Council dismissing the misbehaviour, potentially resulting in matters being unreported.
5.	Is anything missing?	No comment.
Potential changes to the definitions and assessment of Councillor misbehaviour – non-pecuniary interests		
6.	Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?	Supported.

Property developers and real estate agents		
7.	Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?	No. Supported.
Councillor misbehaviour in public office		
8.	Statistics of complaints	The ability to deal with matters by alternate means lessens as a term progresses and relationships breakdown. When alternate means are actioned, General Managers may be baselessly accused in public of showing favouritism to one faction, or some Councillors, over others. The paper notes that complaints are being made for political or vexatious reasons when making a complaint for a vexatious reason is itself a code of conduct matter. It would be useful to understand of the statistics on page 4 how many complaints were found to have been made for a vexatious reason. There seems to be a prevailing view that the majority of complaints about Councillors are being made by other Councillors. We encourage staff to report any matters of concern, but this paper seems to be indicating that Councillors who are in a leadership position should potentially turn a blind eye to poor behaviour and not report it in order to reduce the number of reports.
9.	Is this the appropriate threshold to face a Privileges Committee? Question: How else can complaints be minimised?	**Clearer definitions** Council reiterates its earlier point that clearer definitions and examples are needed for what constitutes misbehaviour, as the suggested 'limbs' are highly subjective. **Time implications** Consideration should also be given to the timing implications of matters referred to the Privileges Committee. As the Discussion Paper alludes to, the role of private investigators will be removed. Complaints from all

		Councils across NSW will be referred to the one Committee. How will this be managed? **Conducting investigations** Consideration needs to be given to experience in undertaking investigations. As mentioned, it is proposed private investigators will no longer have a role in the investigation of Code of Conduct matters. Private investigators (known as 'conduct reviewers' under the current model) undergo an EOI process to demonstrate their expertise and suitability to the eligibility criteria of a 'conduct review panel'. Would something similar be implemented for the establishment of a Privileges Committee? Given their experience and role in the conduct review process, would a panel of ex-General Managers be more appropriate? Also, clarification is required of who and how the investigative process is undertaken. **Alternate approaches** There should be a step before matters proceed to a Privileges Committee to provide an opportunity to resolve matters at the outset to reduce costs. This would be similar to the current process, where complaints are received by the General Manager to determine if the matter may be resolved by alternate means.
Addressing appropriate lobbying		
10.	What key features should be included in lobbying guidelines and a model policy?	Supported.
Giving OLG the power to issue penalty infringement notices		
11.	What level of PIN is appropriate?	Council questions whether issuing a PIN is appropriate and may be too hard to quantify. Consideration should be given to whether a personal improvement order is appropriate. **Publishing of written returns**

		The Discussion Paper refers to the proposed introduction of a PIN where there is non-compliance with an OLG direction. Clarification is needed as to who would be the subject of the PIN if pecuniary interests are failed to be made publicly available given that declarations of interest are a matter for the individual and the current Code requires referral of all pecuniary interest matters to the OLG. A PIN could not be issued to a Council.
NSW Local Government Privileges Committee		
12.	Are the penalties proposed appropriate, and are there further penalties that should be considered?	**Investigations experience and qualifications** Under the proposed framework, all complaints regarding Councillor misbehaviour (except for conflicts of interest) would go to the Privileges Committee for determination. Council's Conduct Reviewer Panel would no longer have a role in the Code of Conduct process. Council questions whether this is going to result in a "speedy process for resolution" as indicated in the Discussion Paper. Additionally, it does not outline any training or requirements members of the Privileges Committee must possess in order to implement a thorough investigation that aligns with the guidance issued from ICAC (e.g. affording procedural fairness etc.) Members of Code of Conduct Review Panels have to undergo an EoI process and are subject to assessment and criteria to review CoC matters. It is unclear whether the same will be applied to members of the Privileges Committee. **Cost implications** Additionally, more information is needed on the costs involved in these matters. The Discussion Paper indicates either the Councillor or the Council will pay for the process, dependent on the outcome. This needs to be clarified. E.g. If a breach is found, is the Councillor liable to pay for the process? If Council wouldn't have referred a matter but a member of the public can refer a matter without involvement of Council, Council should not be held financially responsible. **Records management and reporting**

		Councils are currently required to submit annual reports on Code of Conduct statistics. Will Council be provided with access to information of all complaints received by the Privileges Committee relating to their Councillors? Will outcomes of serious misconduct be made publicly available? If not, how are Councillors held to account? How does Council meet its records keeping obligations under *the State Records Act 1998* (NSW)? How does this interact with the requirements under the *Public Interest Disclosures Act 2022* (NSW)? **Alternate resolution** How can we encourage Councillors to resolve matters at the outset?
Referral of significant sanctions to appropriate tribunal or body		
13.	Are the existing sanctions available under the Local Government Act sufficient?	No, the existing sanctions available are not sufficient and are not timely.
14.	Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?	Council recommends consideration be given to a panel/section within the Office of Local Government.
Restoring dignity to Council meetings		
15.	Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	**Powers of the Mayor** Whilst Council supports the power of mayors to expel Councillors for acts of disorder, Council does not support the proposed reform to confer the power on mayors to remove the Councillor's entitlement to receive a fee for the month in which they have been expelled from a meeting. Granting powers to the mayor to remove fees may lead to a perceived or actual abuse of power. The Discussion Paper provides for a 'right of review' as a check against misuse of power – who will conduct this right of review? If the General Manager is to be removed from the process, would a review be referred to the OLG? A tribunal? The Privileges Committee?

		Council does not support the requirement of Councillors to stand when addressing a meeting or when the mayor enters the chamber. This seems to be antiquated and pompous. Council's current technological set-up (including audio-visual and webcasting) would not support this. Additionally, consideration should be given to Councillors that may have a disability that would prevent them from standing as well as Councillors that may have other difficulties standing. **Issuing PINs** Council does not support granting powers to the mayor to issuing PINs. Consideration needs to be given to how this would be enforced. **Alternate reforms** Council recommends that an alternate could be if a Councillor is expelled from a meeting 3 times, this could result in a vacancy in civic office, similar to the provisions of section 234 (d) of the *Local Government Act 1993* (NSW).
16.	Council debates become slanging matches (Page 4)	The nature of community representatives is that the chairperson may not have expertise. Council's can provide training and support as part of Councillor induction however, many Councillors have not had experience in formal debating.
Banning briefing sessions		
17.	Are there any other measures needed to improve transparency in councillor deliberations and decision making?	**Not supported.** We reject the view that briefing sessions are a forum for making decisions away from the public view. Council's Code of Meeting Practice provides for pre-meeting agenda review sessions. These sessions are critical for Councillors to ask questions of Council staff to gain a better understanding of (especially complex) matters before the public Council meeting environment. **Decisions are not made during these sessions.**

		Council has a large number of new Councillors following the recent election and banning briefing sessions could discourage Councillors from seeking clarification on matters leading to uninformed decision making and could also result in longer, inefficient Council meetings. **Confidential sessions** Banning briefing sessions could also result in longer Council meetings due to the potential increase in commercial or confidential information to be provided to Councillors, resulting in more closed sessions in Council meetings. It could also result in an increase in questions taken on notice. Banning briefing sessions also removes staff development opportunities for presenting information to, or engaging with Councillors. Any material provided to Councillors that impact decision making will need to be reported to Council meetings – this will mean any Councillor Memos. This may impact the "frank and fearless" advice Council staff provide to Councillors knowing that it must be made publicly available. **Alternate reforms** An alternate consideration could the requirement to note in a Council report where a briefing has been provided and a summary of the discussion. However, this would be difficult to implement due to the timing around the preparation of Council reports and when Council briefings are usually held. Executive summaries may be included as an 'addendum' to Council reports.
18.		Why is it assumed that "Closed council briefing sessions are being used to make decisions away from the public view."? Briefing sessions allow staff to provide frank and fearless advice and for Councillors to ask "embarrassing" questions that they may not feel confident in asking in public. It provides an opportunity to workshop options without setting a particular framework and settle on a position.

		Briefings can be practical because the information is sometimes complex. They are also a mechanism to support Councillors with disabilities or learning difficulties to navigate sometimes complex documents.
19.	Other	**Censure motions** These are varied and unclear and would benefit from standard wording that all councils can use. **Sanctions** Government has always had the ability to change the Local Government Act to improve the way sanctions are imposed.

SINGLETON COUNCIL

Council Reference: 2024 Councillor Conduct Framework Review

28 November 2024

Councillor Conduct Framework Review
Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

Email: councillorconduct@olg.nsw.gov.au

Attention: Strategic Policy Unit

SUBMISSION ON PROPOSED FRAMEWORK

Thank you for providing us with the opportunity to provide feedback in response to the proposed new framework.

Singleton Council is supportive of a review of the Councillor Conduct Framework and welcomes the opportunity to provide feedback. This feedback is based on the information provided in the discussion paper and we acknowledge that there is a lot of uncertainty remaining in the areas that have not yet been fully defined. Thus, our opinion may change as further detail is developed and provided.

NSW Local Government Privileges Committee - Response
We have no issue with the current format of conduct review including referral to an independent investigator engaged via a procurement process.

- On page 15, The Privileges Committee process would be paid for by either individual councillors or their councils, dependent on the outcome. We have concerns that the current model ensures procurement policies are followed including a tender process to regulate the fees associated with the investigation. What will determine the fees charged by the Privileges Committee? Councils are already under financial pressure.
- What benefit will the Privileges Committee provide that an independent conduct investigator cannot already provide?
- However, if a privileges committee is to be formed, there is no indication of how the members of the Privileges committee will be appointed, there would need to be a requirement for independence for those on the panel. They would also need to have a process to identify and exclude should there be a conflict. Assurance would be needed that the appointment to the panel is undertaken in a transparent and non-political manner to support an equitable process.

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- The principle of this proposed change is to reduce the number of complaints that are referred to the Office of Local Government. We believe this can be achieved through the proposed streamlined wording which clearly articulates the expected behaviour, a clear distinction between what must be referred to an independent investigator, and what should be investigated internally. The serious matters that may result in formal action (censureship, PINs etc.) should be investigated independently and then referred to OLG for determination of appropriate formal action. Councils would manage this process and seek advice from OLG when required.
- The current code is heavily weighted in support of the complainant. The discussion paper does not indicate reform to the level of support provided to the Councillor who is the subject of the complaint. There is a lack of clarity regarding who the Councillor can seek support and advice and we feel this is an important matter to be considered in the proposed reform.

If you have any further enquiries, please do not hesitate to contact Melinda Curtis, Executive Manager, on telephone [redacted] or email [redacted].

Yours faithfully

[redacted]

Justin Fitzpatrick-Barr
General Manager

From:	Cr. Simon Chate
To:	OLG Councillor Conduct Mailbox
Subject:	Councillor conduct framework review
Date:	Friday, 29 November 2024 1:30:37 AM
Attachments:	seahorse_e4f42d9c-8a7d-4c44-abcd-7c82e9a8a47f.gif facebook_32x32_a16c36e2-0743-493e-b557-150c80fe1cc9.png instagram_32x32_6989661f-b4cf-48f9-ba80-ced90dc3f3bd.png linkedin_32x32_5098ae95-7967-4b5c-bb4f-53676fbfc79a.png communityconnectextraoctober2024emailfooter_1808d807-ebd9-4b4c-a379-fc62eae508d4.jpg

Good day to you, I wish to make a brief submission to the OG review of the counsellor conduct framework.

My submission is as follows:

I am supportive of all suggested areas of change With the exception of the following:

With regards holding pre-meeting briefings in the public eye, I'm concerned with the words "that councils will no longer be permitted to hold pre-meeting briefing sessions in the absence of the public." I am concerned that this could lead to a culture of calling in the token member of the public for a meeting. I would suggest instead that "briefings be held in a public forum, With the public being actively encouraged to attend the briefing." This would allow the briefing to go ahead, If no members of the public decide to attend.

With regards The proposed additional powers for Mayors to expel councillors for active disorder and to remove the councillor's entitlement to receive a fee for the month in which they have been expelled… I oppose this proposed reform strongly.

The proposed reform is just too open to possible personal and political bias that may lead to councillors being targeted by mayors who may hold personal grudges against them or the political stance that they represent. It requires these mayors to have pristine levels of integrity and to almost be "above reproach" or "infallible" when it comes to decisions about conduct unbecoming. This is simply too open to abuse and the removal of a councillor's fee is excessive.

Thank you,
Cr Simon Chate - Ballina Shire Council

Sign up to receive regular updates from Councillor Simon Chate:

https://mailchi.mp/902c4e2621d9/councillor-simon-chate

Cr. Simon Chate
Councillor

Ballina Shire Council acknowledges that we are here on the land of the Bundjalung people. The Bundjalung are the traditional owners of this land and are part of the oldest surviving continuous culture in the world.

ballina.nsw.gov.au | discoverballina.com.au
m: [redacted]

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Temora Shire Council

TEMORA
The Friendly Shire

Our reference: MKB:ATR

29 November 2024

Brett Whitworth
Deputy Secretary, Local Government
Office of Local Government
Locked Bag 3015, NOWRA NSW 2541
councillorconduct@olg.nsw.gov.au

Dear Mr Whitworth

Submission - Councillor Conduct Framework Review

Please find following Temora Shire Council's (TSC) submission to the Office of Local Government (OLG) on the *Councillor Conduct and Meeting Practices Discussion Paper*. The submission has been endorsed by Council at the Meeting held on 28 November 2024.

Introduction

TSC believe that it is best that councils provide strong and effective representation, leadership, planning and decision making, we do not agree with the Discussions Paper's assertion that this has been lost. We do, however, recognise that just as we expect our members of Parliament to act with dignity and integrity, but some fail to reach the mark, some Councillors will also put themselves first to the detriment of the council chamber and the communities they represent. When this happens there must be a robust Code of Conduct framework in place that works swiftly, supports an unbiased judgment and delivers penalties that are proportionate to the conduct.

TSC agrees that council decision making should be transparent, but do not agree with the sweeping assertion that closed council briefing sessions are being used to make decisions away from public view. TSC also does not support the statement that "council debates on issues are too often personal slanging matches, rather than forums for robust but respectful discussions on what is best for the community".

It is recognised that sometimes debates about issues of which Councillors are very passionate can become heated, even so, there is no place for personal insults during a debate. However, TSC believe that, in our experience this does not occur regularly and the statistics provided in the Discussion Paper support that.

It is TSC's experience that most Code of Conduct matters occur outside the chamber including on social media and that the expectations in relation to Councillor misbehaviour in public office be clearly addressed in the new framework and clear definitions regarding pecuniary and non-pecuniary conflicts of interest be included. The lack of detail or provision of a sample or draft Code of Conduct combined with the intention that the Code of Conduct would be "aspirational" creates concerns that the aspirational code could be less effective than the current Code of Conduct provisions.
TSC welcomes the opportunity to provide feedback to the Discussion Paper and provide the following comments on the Paper:

Principles of Change

TSC support the Principles of Change, we would suggest that "efficient and effective dispute resolution" and safe and respectful workplaces'' should be added.

It is essential that Council environments are safe for Councillors and staff and it is suggested that a reference to "safe and respectful workplaces" similar to the Prime Ministers Code of Conduct for Ministers prepared in 2022, be included please see pages 8 – 9 of the Code of Conduct for Ministers;

> *6. Safe and Respectful Workplaces*
>
> *6.1. Ministers have an obligation to demonstrate and uphold the highest workplace standards, including maintaining a safe and respectful workplace for their staff.*
>
> *6.2. As employers, Ministers must comply with all applicable Australian workplace health and safety laws and duties.*
>
> *6.3. Ministers must act consistently with all parliamentary resolutions relating to workplace culture, including complying with the independent complaints mechanism.*
>
> *6.4. Failure to engage in good faith with the independent complaints mechanism, and any substantiated independent finding of serious misconduct, may constitute a breach of the standards.*
>
> *6.5. Ministers, and their staff, are required to undertake mandatory training on safe and respectful workplaces. In addition to any reporting requirements of the Parliament, Ministers will be required to confirm to the Prime Minister that they and their staff have completed any required training.*

Potential Changes to the Code of Conduct and the Oath of Office

TSC is concerned at what appears to be a mismatch between an aspirational Code of Conduct and by aspirational we take this to mean voluntary, and legislated definitions of misbehaviour. We note that the Discussion Paper does not contain much detail on how the potential changes will be implemented or work in practice, but we do think that definitions of misbehaviour should be clearly stated to Councillors at the outset and not buried in legislation.

If they are to be judged by a legislated definition then Councillors, community and staff should be able to readily access those definitions and they must be written in plain English. The vast majority of people including Councillors, have little regular interaction with legislation and while the concept of "going to the legislation" to seek out information may be commonplace for State and Federal politicians and staff it is not the same for Councillors and their communities.

While we can see the attraction of a 2-3 page Code, if all the detail in relation to behaviour, penalties and process can only be discovered by searching the legislation we have serious concerns about the transparency of the Framework and ultimately its effectiveness. While we understand that ignorance of the law is no excuse, we also know that the reality is that most people do not find law particularly accessible.

The lack of detail or provision of a sample or draft Code of Conduct combined with the intention that the Code of Conduct would be "aspirational" creates concerns that the aspirational code could be less effective than the current Code of Conduct provisions and any elements / controls intended to manage Councillor behaviour that are not specifically referenced in legislation may have no impact on ensuring Councillor behaviour meets expected standards, it is however seen to be a positive change to encourage appropriate behaviour of Councillors in the first instance.

Oath of Office

We support tying the Code to the Oath, to ensure that Councillors taking the Oath know that their behaviours will be judged by the Code. However, if the Code is only "aspirational" can it really be used to judge behaviour? Will it be enough for a Councillor to say "I tried...I aspired to the Code... but I didn't quite get there..." Perhaps it would be more effective to say this is the standard by which you will be judged, and it is legislated.

Ensuring that the Oath of Office and the aspirational Code of Conduct are aligned reinforces the behavioural standards and expectations from day one of Councillors coming into office.

The NSW Work Health and Safety Act (2011) and Work Health and Safety Regulation (2017) require organisations to provide a work environment without risk to health and safety. The Act defines health as physical and psychological health, and the Regulation highlights psychosocial risks as a focus area.

Under the WHS Regulation Clause 55A a psychosocial hazard is a hazard that –

a) Arises from, or relates to –

(i) The design or management of work, or

(ii) A work environment, or

(iii) Plant at a workplace, or

(iv) Workplace interactions or behaviours, and

b) May cause psychological harm, whether or not it may also cause physical harm.

Under Clause 55b a psychosocial risk is defined as a risk to the health and safety of a worker or other person arising from a psychosocial hazard. Psychosocial hazards are factors in the workplace that may cause stress and lead to psychological or physical harm.

Councillors have an obligation under Sections 28 and 29 of the Work Health and Safety Act to comply with the requirements of the NSW Work Health and Safety Act and this is referenced within the current Model Code of Conduct at Section 3.12. It is essential that these expectations remain in the new or reviewed Code of Conduct.

Potential Changes to the Definitions and Assessment of Councillors Misbehaviour

TSC supports greater clarity in the definition of misbehaviour, enshrining the definitions in legislation should make interpretation more consistent. It is agreed that the definition should cover:

- Pecuniary conflicts of interest
- Non-pecuniary conflicts of interest however this should embrace both significant and non-significant conflicts. In country areas where Councillors often wear many hats within the community greater clarity around non-significant conflicts would be of benefit.
- Councillor misbehaviour in public office – this should consider misbehaviour both within the Chamber and outside. When a person is elected a Councillor they should demonstrate integrity, respect and ethical behaviours in relation to their role as a Councillor both within the Chamber

and while in public. Of particular concern has been the inappropriate use of social media by Councillors.

Pecuniary Interests

We note the list of pecuniary interests reflects the current disclosure requirements; however, it is proposed that the disclosure includes "relative". This is a very broad term and will need to be defined – does it include third cousins?

TSC supports that the OLG should have the powers to investigate and request information on corporate structures such as trusts or companies to determine underlying beneficial ownership and interests. We note that company information is readily and publicly available through ASIC and that there is already existing software that identifies common directors and links between companies. Therefore, extending OLG powers to obtain information on companies may not be necessary.

Non-Pecuniary Interests

TSC notes that the Discussion Paper recognises that "Councillors are also representatives of their community and reside in the community so membership of clubs, congregational membership etc should not be seen as conflicts of interest". This issue is of significance in non-metropolitan areas where Councillors wear many community hats. Clear guidelines on situations that create non-pecuniary conflicts of interest would be welcomed.

Property Developers and Real Estate Agents

Council remains concerned about the proposed blanket prohibition on property developers and real estate agents participating on council. We note the proposed measure to deal with this issue is to require the Councillors to "divest themselves from real estate or development business activities and contractual obligations". TSC questions the reasonableness of this proposed solution because it is effectively asking people to give up their employment or self-employment in order to fill their role on council. We remain unconvinced that this is a viable solution to the issue and whether in fact the approach still infringes "the right to political free speech implied by the Australian Constitution".

TSC is also concerned about the definition of a property developer and the need for context in the definition. For example, a company that develops 6 homes in Temora might be seen as a property developer, but are they a property developer in Sydney?

It is the position of TSC that rather than ban participation by real estate agents and property developers, who may bring valuable experience and skills to council, it would be better to tighten up Pecuniary Interest Declarations to include declarations relating to property development. In addition, substantial sanctions for breaches of Pecuniary Interest in relation to property development should be introduced that include financial penalties that are proportionate to the estimated financial gain that was generated by the breach. The penalties should also include suspension or termination of the Councillor roles.

In addition, TSC believes that where there is evidence a Councillor has benefitted whether an established property developer or not, from inside knowledge of council's land use plans, that Councillor 's breach of their obligations should be dealt with immediately by a referral to the OLG.

Councillor Misbehaviour in Public Office

The Discussion Paper proposes that misbehaviour in public office would cover behaviour ...outside the norms of behaviour expected from a Councillor ...". We are concerned about the subjective nature of this judgement. While we appreciate that the Paper has identified legal cases where standards have been established, we also note that these are not cases that occurred in a political context.

We believe that at least in the first instance, poor behaviour should be determined on the floor of the Chamber with Councillors determining whether a Councillor 's behaviour is inappropriate. The Mayor or any other Councillor could call for a motion from the floor in relation to the censure a Councillor for inappropriate behaviour, where the resolution passes the Councillor would be required to remove themselves from the Chamber. We believe that it is preferable to provide clear options for these matters to be dealt with quickly in order to "nip it in the bud" where possible.

It is essential that Councillors and staff work within a safe work environment, It is noted that "freedom of speech" should be balanced with appropriate conduct standards. Specifically, any updated requirements in this regard should require that comments cannot:

- Bring the Council or any other person into disrepute
- Be made publicly about matters considered in closed session of a Council meeting (in accordance with s10A of the Local Government Act 1993)
- Make personal attacks on Councillors or Council officials or engaging in conduct towards Councillors or Council officials in public forums including social media, or in any other form of public comment

Council suggests that a suite of comprehensive guidelines be produced for Mayors and Councillors in relation to the Code of Conduct and any areas that are changed from the current approach / definitions. This would be key in assisting Councillors to understand and comply with the behavioural requirements specified in the code and in legislation.

TSC is aware, however, that some Councillors use the floor to grandstand about a specific issue and that a removal from the Chamber is in fact a badge of honour. We see this happen regularly in State and Federal parliaments and there is no reason to think it would not happen at council level. Nevertheless, just as the Speaker is able to remove the offending member quickly from the debate, the Mayor should be able to do so with the backing of his or her Councillors.

Address Inappropriate Lobbying

We agree that lobbying is an important feature of democratic representative government and therefore we strongly support the inclusion of lobbying guidelines in the model policy.

We believe the guidelines will be particularly helpful for new Councillors unfamiliar with the political environment. It would also assist if the guidelines including ways in which Councillors can provide responses to lobbying activities that do not compromise their ability to make unbiased decisions in Chamber.

Informal lobbying can be very difficult for Councillors which occurs often when operating at the grassroots level. Councillors can feel cornered when approached by a resident in relation to an issue, new Councillors often struggle to find the right response. Consequently, we strongly suggest the inclusion of case studies in the guidance document or alternatively very short educational videos to support the materials that demonstrate the right way to deal with lobbying both formal and informal.

Dispute Resolution and Penalty Framework

Noting that the statistics show the vast majority of complaints are minor, TSC support the introduction of low-key dispute resolution process using an independent mediator.

We believe that many disputes between Councillors, between Councillors and staff and between Councillors and community members could be efficiently and effectively resolved through a mediated meeting between the parties held within a week of the dispute or conflict arising.

We believe this would reduce the weaponisation of the complaints process and the number of complaints being dealt with formally because matters of dispute could be resolved locally through mediated discussion.

TSC believes that swift action in relation to dispute resolution is a key to minimising conflict in the Chamber and community dissatisfaction with council and Councillors. The current system allows disputes and conflicts, even small ones, to fester while Councillors step through a formal and often expensive complaints process. We believe investing time and resources in a low-key mediation process would be far more effective, bringing much better outcomes.

Abolishing the 'Two Step Process'

TSC supports the implementation of a process that would provide quicker resolution of complaints while at the same time delivering on requirements for procedural fairness and natural justice.

It is unclear how improved local level resolution will be achieved by the newly proposed framework given that referrals are to be made to multiple external agencies ie ICAC, OLG and a Privileges Committee. Further information is required regarding how matters are referred to external agencies and how oversight of referrals would be managed by Council. There is also concern that multiple, separate avenues for dealing with poor behaviours may make it harder to aggregate Councillor actions and therefore make it harder to discern patterns of bad behaviours that could have resulted in more substantial penalties or even a referral to ICAC.

Giving the OLG the Power to Issue Penalty Infringement Notices

TSC questions the use of PINs for minor infringements and would struggle to support their use for instances where there was an "inadvertent failure to lodge a return of interest".

Fining Councillors for what is an oversight, is overkill. They are already essentially volunteers and this could result in creating another barrier to participation in local government, particularly for young people and those from lower socio-economic backgrounds.

However, there may be room for PINs for repeated minor infringements. There is a reasonable expectation that Councillors learn from their mistakes. For example, where the same mistake is made say three times, a PIN may be an appropriate way of reinforcing the Councillor 's obligations to declare a conflict of interest.

NSW Local Government Privileges Committee

TSC is unsure about how the creation of a Privileges Committee will speed up the complaints process.

While we can appreciate the principle of allowing "the sector to better govern itself", we think that the reality of the operation of a Committee that will require very busy people from across the State to come together on a regular basis to deal with issues of misbehaviour is problematic.

In addition, we note that the plan is that the Committee's process would be "paid for by either individual Councillors or their councils dependent on their outcome". A Committee of their peers drawn from across the State will be very, very expensive. What is the plan if a matter is referred to the Committee and the Councillor is found at fault and cannot afford to pay the costs? How will the costs

be recouped. In the reverse, is there an expectation that councils will divert funds from public facilities and services in order to pay for the costs of the Committee.

In addition, we are concerned that councils would also be required to meet the costs of the small Secretariat that would service the Committee. In addition, there is the added work that the Secretariat would be required to do in triaging the complaints in order to dismiss vexatious matters.

TSC has concerns that this could be a very expensive, unwieldy and potentially slower replacement for the Code of Conduct reviewer framework currently in operation. We appreciate there remains considerable work to be done to flesh out the concept, such as how members will be chosen, how a balance of city and country will be achieved, how they will be paid for their time and how they will meet. However, before committing to the proposal TSC would need to see those details.

Referral of Significant Sanctions to Appropriate Tribunal or Body

While in theory this appears to be a good approach again, we are concerned about costs, processes and structures.

It would appear that in order to ensure that the Councillor subject to judgement would be granted procedural fairness and natural justice that the entire issue that went before the Privileges Committee would need to be re-litigated. This would result in revisiting the issue that has previously been raised in the paper, that the OLG needs to re-investigate the work of the Conduct Reviewer.

In addition, we see the journey to the Tribunal to be a long and winding road, via Council with a referral to the Privileges Committee, the OLG Secretariat reviewing it first before the Committee hears the matter and then on to the Tribunal. It is unclear whether there is an expectation or ability for a Councillor to retain legal counsel and if the Councillor does and wins who pays the costs?

TSC is also concerned that the costs relating to the matter being dealt with by a Tribunal may fall to councils to pay.

Restoring Dignity to Council Meetings

TSC supports that debates in councils must be fair, respectful and conducted with dignity. We do not agree with the assertion that "there are too many examples here the dignity of the council meeting has been lost". We are concerned that this statement reflects the 'squeaky wheel attracting the oil', there are 128 councils and over 1,000 Councillors in NSW and in our experience the councils dignity has not been lost. The OLG should not be designing a new framework on the basis of this flawed assumption.

TSC does not support the requirement to stand when speaking in the Chamber, generally the conduct of Councillors is appropriate and this would be an unnecessary impost on the Councillors during debate and discussion in the Chamber.

Proposed Reforms to the Model Code of Meeting Practice

While our Members support the proposed reform that would confer power on Mayors to expel Councillors for acts of disorder, we are not convinced that Mayors would be comfortable stripping the Councillor of their entitlement to receive a fee.

However, we want to strongly advocate for the need for Councillors to work as a team and that Mayors should only take an action to expel in the most egregious of circumstances. We are also concerned

about the possibility of the power being misused when there is a contentious vote before council. In highly politicised councils, there may be an incentive to remove Councillors from the Chamber who are in another voting bloc, thereby ensuring that one group has the numbers needed to pass a resolution.

We support the ability of the Mayor to expel members of the public from the chamber for acts of disorder. We are not convinced that Mayors should be able to issue PINs. The issuing of PINs to disorderly members of the public could be viewed as an attempt to silence public opinion and lessen rights to speak.

Banning Briefing Sessions

Council strongly agrees that "decision making" should be made in open Council meetings, however, oppose the proposed reform to ban briefings sessions, which we assume includes Councillor workshops.

If we want effective, evidence-based decision-making from our Councillors we must be able to provide them with the opportunity to better understand the complex subjects they are required to deal with. Briefing sessions and workshops enable Councillors to hear from Subject Matter Experts as well as council staff about complex matters that may be beyond a Councillor's field of experience. It allows Councillors to ask questions that openly display their ignorance of a topic without the press and public there to witness it.

Where Councillors have insufficient knowledge about an issue it is sometimes easier to "decide not to decide". Well-constructed briefing sessions and workshops minimise the likelihood of this outcome and provide professional development opportunities that many Councillors embrace.

In addition, briefing sessions and workshops are used to develop the strategic direction of a council, to sift through the multitude of ideas that come from the Community Strategic Planning process and narrow them into achievable community goals. In these instances, they allow a free, frank, open and honest discussion of community priorities because the press and the public are not watching and passing judgement. It is an opportunity to work through solutions in a collaborative environment, establish strategic direction and to obtain feedback for Councillors and staff about the direction that council is taking.

We are recommending that the OLG provide Guidelines for delivery of briefing sessions and workshops.

Conclusion

In conclusion, TSC acknowledge the Government's commitment to Local Government and agree that councils should be accountable to their community. We thank the OLG for the opportunity to provide input on the Discussion Paper. Council acknowledges that the current Code of Conduct process takes an extensive amount of time and is costly to Councils and that a new or improved framework is welcomed and should have a goal of enabling the swift management with appropriate consequences, for breaches of the Code of Conduct. It is however, requested that Councils and other key stakeholders be provided with the intended wording for legislation changes, the draft changes of the Code of Conduct, detailed membership of any new judicial or extrajudicial bodies and cost implications prior to implementation.

Yours faithfully

[redacted]

MK Boxall
GENERAL MANAGER

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Fairfield City Council, PO Box 21, Fairfield NSW 1860
Email address: mail@fairfieldcity.nsw.gov.au

29 November 2024

Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

Dear Sir/Madam

FAIRFIELD CITY COUNCIL SUBMISSION ON THE COUNCILLOR CONDUCT FRAMEWORK REVIEW

Thank you for the opportunity for Fairfield City Council (Council) to provide further comment on the Councillor Conduct and Meeting Practices Discussion Paper (Discussion Paper). Council is supportive of a review of the Councillor Conduct Framework (Framework) and understands the challenge you have of weighing-up the many different perspectives in the sector on the best way to set and regulate standards of conduct for councillors (elected officials).

We offer the following additional comments in relation to the Discussion Paper entitled *Councillor conduct and meeting practices A new framework*.

What are the principles of change?

Q. Are we missing anything in the principles of change

The draft principles as outlined are supported.

As a third tier of government, these principles in a new Code of Conduct should not place a greater burden on an elected official than the current *Code of Conduct for NSW Members of Parliament*. The current *Model Code of Conduct for NSW Councils* is more onerous on elected officials than the equivalent *Code of Conduct for NSW Members of Parliament*.

Potential changes to the Code of Conduct and Oath of Office

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

We agree that the new Framework should be broadly equivalent to the current *Code of Conduct for NSW Members of Parliament* and that the Code of Conduct should be aspirational.

We support that the key elements of a revised Code of Conduct should continue to reflect the minimal standards of behaviour expected of elected officials, be clearly defined and cover aspects such as ethical leadership, inclusion, commitment to excellence and social responsibility.

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

We agree with the connection between the Oath of Office and Code of Conduct be aligned in particular, to reflect the commitment to service.

It should be equally recognised that elected officials within Local Government encompasses a mix of politically aligned and non-aligned representatives which is fundamental to the democratic process.

Potential changes to the definitions and assessment of councillor misbehaviour

Q. Is the proposed pecuniary interest framework appropriate? Is anything missing?

Council is supportive of the proposed change to remove the role of General Manager and/or Mayor from the complaint process for matters relating to pecuniary interest. This would reduce the potential for conflicts of interest and politicisation of these roles, increase confidence in the fairness and objectivity of the process and improve efficiency by directing these directly to the Office of Local Government.

We support the removal of uncertainty regarding management of pecuniary interests. The Framework should contain clear examples to avoid misunderstanding and be aligned with the *Constitution (Disclosures by Members) Regulation 1983.*

It is noted that Council introduced the following clause to its Code of Conduct from 2013 and has had no issue with a spouse or de facto partner of an elected official, making a written disclosure as necessary:

> What disclosures may be made by the spouse/de facto partner of a Councillor?
>
> 4.40 To assist Council in ensuring transparency of decisions and that regulatory decisions are made consistently and without bias and to increase public confidence in Council decisions, Councillors are encouraged to request their Spouse or De-facto Partner to disclose in writing their interests in real property in Australia, sources of income, interests and positions in corporations and dispositions of property (as each are defined under the Regulation). Such written disclosure should be submitted to the City Manager annually at the same time as the Disclosure of Interest Returns and if received, will be kept as part of the Disclosure of Interest Register. A Disclosure Form is available from Council upon request.
>
> **Note: Council resolution on 26 November 2013 (Item 302 Services Committee)**

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

We agree with the principles of significant or major non-pecuniary interest and would recommend clearly defining financial loss or gain.

Q. Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities

Council has neither considered nor taken a position on the activities of real estate agents within the sector however, we would expect that they be treated the same as all other professions who may have an association with Council and elected officials.

When considering any controls that could assist with managing concerns, there could be a requirement for councillors who are somewhat or closely involved in development business activities to articulate clearly the degree of their involvement, beyond the disclosures made in the Annual Disclosure of Interest Return.

Q. Is this the appropriate threshold to face a Privileges Committee

We do not support the concept of a Privileges Committee based on the additional layer of cost to Council, formation of the Committee and level of independence by members.

We would suggest that the method by which complaints are made, assessed and managed along with the workings of the Privileges Committee, be trialled. For example, specify that anonymous complaints should not be made to minimise frivolous allegations.

Q. How else can complaints be minimised

Council is supportive of any proposed changes to remove the role of General Manager from the complaint process for serious issues.

Q. What key features should be included in lobbying guidelines and a model policy

The Framework acknowledges that lobbying is an important part of the democratic process. We support the development of additional lobbying guidelines and a model policy. We would suggest expanding the provision for receipt of gifts and inducements and request that the elected official receiving a gift and inducement, stipulate the connection to council.

<u>Dispute Resolution and Penalty Framework</u>

Q. What level of PIN is appropriate

We believe the issuing of Penalty Infringement Notice (PIN) should be undertaken by the Office of Local Government.

In the absence of a fully formed structure, it is difficult to determine an appropriate level of PIN. For example, will all PINs require payment, censure, warning, loss of sitting fees, referral to Tribunal or suspension.

Q. Are the penalties proposed appropriate and are there any further penalties that should be considered

We support the application of penalties for serious conduct breaches. The success of the Framework, depends on a fully formed structure and clarifying the specifics of suspensions or monetary penalties.

Q. Are the existing sanctions available under the Local Government Act sufficient

As outlined above, the Framework requires the development of a structure to define what constitutes misbehaviour, what sanctions would result in findings of misbehaviour and the consequential penalties.

Q. Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure

We support decisions on sanctions for councillors being made only by an appropriate tribunal such as the NSW Civil and Administrative Tribunal (NCAT) as this would be a low cost option, facilitate independence in the judgement of elected officials and filter out meaningless complaints.

Restoring Dignity to Council Meetings

Q. Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour

We support the current provisions as outlined in the Model Code of Meeting Practice.

The Framework suggests that the mayor may be given the power to expel councillors for acts of disorder and to remove the councillor's entitlement to receive a fee for the month in which they have been expelled from a meeting. Further, should they fail to apologise, the councillor will lose their entitlement to receive their fee for a further month.

The proposed change to increase the powers of mayors and meeting chairs to manage disorderly conduct in meetings as outlined above, needs careful consideration that such powers are exercised appropriately to avoid misuse. We would anticipate that the misuse of these powers, may result in future complaints about the behaviour of the mayor/meeting chair and their use for political advantage.

We also question if the mayor or meeting chair would be entitled to protections, if the exercise of power to expel, was done in good faith.

Q. Are there any other measures needed to improve transparency in councillor deliberations and decision making

We strongly object to the proposed provision that councils no longer be permitted to hold pre-meeting briefing sessions in the absence of the public.

Briefing sessions provide elected officials with an opportunity to better understand policy issues, legal considerations, financial implications and strategic decisions before making their informed decisions at a formal council meeting. Briefing sessions include having council subject matter experts available, delivering training and managing confidentiality.

The banning of briefing sessions is a barrier in sharing and discussing critical information with the elected officials and the concept fails to appreciate the complex nature of matters that come before councils on a regular basis.

From the perspective of good governance, elected officials should have available all appropriate information in order to make a considered and informed decision.

In addition, would Ministers and other Members of Parliament be able to adequately undertake their parliamentary duties if they were not able to receive briefings from expert departmental staff.

Council at its Ordinary Meeting of Tuesday 26 November 2024 resolved to endorse this submission. Attached is an extract from the draft council minutes (Outcomes Item 116).

Once again, Council appreciates the opportunity to provide feedback. Should you require further information on this submission, please contact Sonja Drca, Executive Manager on [redacted]

Yours sincerely

[redacted]

Bradley Cutts
GENERAL MANAGER

Encl.

MOTION: (M Saliba/Le)

That:

1. The July to September 2024 Quarterly Report (Attachment A) be adopted.

2. The 12 projects identified to be discontinued in the July to September 2024 Quarterly Report be removed from the 2024-2025 Operational Plan.

3. The 3 projects identified to be postponed in the July to September 2024 Quarterly Report be removed from the 2024-2025 Operational Plan.

4. The 9 new projects and associated budgets in the July to September 2024 Quarterly Report be included in the 2024-2025 Operational Plan.

5. The 18 projects identified with scope changes in the July to September 2024 Quarterly Report be updated in the 2024-2025 Operational Plan.

6. The 15 services level changes identified in the report be adopted for implementation as part of the 2024-2025 Operational Plan.

7. The Budget Review Adjustments identified in Section 4 (Item 5) of the July to September 2024 Quarterly Report for that purpose, be voted.

CARRIED UNANIMOUSLY

116: Submission - Councillor Conduct Framework Discussion Paper
File Number: 09/01989

MOTION: (M Saliba/Le)

That the submission to the NSW Office of Local Government on the Councillor Conduct and Meeting Practices Discussion Paper, be endorsed.

A division was called by Councillors Mijatovic and Yousif. The division was taken with the following results:

Aye	**Nay**
Mayor Carbone	
Councillor Hoang	
Councillor Karajcic	
Councillor Khoshaba	
Councillor Lam	
Councillor Le	
Councillor Ly	
Councillor Mijatovic	
Councillor Morvillo	
Councillor C Saliba	
Councillor M Saliba	
Councillor Yousif	

Total=(12) Total=(0)

CARRIED

REPORT BY CHAIRPERSON OF THE SERVICES COMMITTEE - 12 NOVEMBER 2024

136: Australian Government Grant - Early Childhood Education and Care Workforce
File Number: 20/11570

MOTION: (C Saliba/Mijatovic)

That the grant of fifty-seven thousand and fifty-four dollars and thirty cents ($57,054.30) offered by the Australian Government under the Early Childhood Education and Care Workforce Grant be received into the 2024-2025 Operational Plan and its expenditure for that purpose, be voted.

CARRIED UNANIMOUSLY

137: Federal Department of Industry, Science and Resources Grant - Urban Rivers and Catchment Program 2023
File Number: 21/45632

MOTION: (C Saliba/Khoshaba)

That the grant of one hundred and ninety-seven thousand three hundred and fifty dollars ($197,350.00) offered by the Federal Government's Department of Industry, Science and Resources under the Urban Rivers and Catchment Program 2023 be received and the following expenditure be allocated:

1.1 Fifty-seven thousand, nine hundred and fifty dollars ($57,950.00) into Council's 2024-2025 Operational Plan and its expenditure for that purpose, be voted.

1.2 One hundred and thirty-nine thousand, four hundred dollars ($139,400.00) be considered for inclusion into the Draft 2025/2026 – 2028/2029 Delivery Program (4-year program) and its expenditure for that purpose, be voted as outlined in the report.

CARRIED UNANIMOUSLY

138: National Australia Day Council Grant - Australia Day 2025 Community Awards and Community Events
File Number: 24/02531

MOTION: (C Saliba/Morvillo)

That the grant of ten thousand dollars ($10,000.00) offered by the National Australia Day Council for the Australia Day 2025 Community Awards and Events be received into the 2024-2025 Operational Plan and its expenditure for that purpose, be voted.

CARRIED UNANIMOUSLY

Ou ref: A24/0899
29 November 2024

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

Dear Mr Whitworth,

Councillor Conduct Framework Review – Submission

Thank you for the opportunity to provide feedback on the Office of Local Government's Councillor Conduct and Meeting Practices Discussion Paper.

Please find attached Council's submission, approved at its meeting on Tuesday, 26 November 2024, for your consideration.

Yours sincerely,

[redacted]

Richard Coelho
Executive Manager, Governance

What are the principles of change?

1. Are we missing anything in the principles of change?

- Council is supportive.

Potential changes to the code of conduct and oath of office

2. What are the key elements of an aspirational Code of Conduct that should be enshrined?

- No additional comment.

3. What are your views about aligning the Oath of Office to the revamped Code of Conduct?

- Council is supportive.

Potential changes to the definitions and assessment of councillor misbehaviour

4. Is the proposed pecuniary interest framework appropriate? Is anything missing?

- Need greater clarity around expectations of disclosure for the interests of nominees, partners and employers.
- Simplify the process for returns disclosing interests.

5. Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

- Council is supportive.

6. Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

- Councillors should not be required to divest property. Councillors should be excluded from participating in and voting on matters in which they have a conflict of interest, as per the current Model Code of Conduct.
- Clarify definition of 'property developer' and what constitutes 'development business activities.'
- Any limitations should only apply to developments within the local government area.

- Council would support former councillors being ineligible to be on council-related committees and forums—particularly planning-related—for the following council term.

- Councillors should have to declare if they are employed by a property developer or if they derive income or remuneration from a property developer.

7. Is this the appropriate threshold to face a Privileges Committee?

- The Privileges Committee:
    - Should be arm's-length.
    - Should be balanced in political persuasion.
    - Should not include current councillors or any former councillor who has been the subject of a code of conduct investigation which has determined that there has been a breach of the code of conduct and made a recommendation that the respondent to the complaint be formerly censured for the breach under s440G of the *Local Government Act 1993*.
    - Should include independent qualified members (such as ex-judges, investigators, mediators and auditors).

- Council does not support the cost of the Privileges Committee process being borne by individual councillors or their councils.

8. How else can complaints be minimised?

- Raise the threshold; i.e. limit complaints to those involving serious wrongdoing.

- Penalties for trivial, frivolous and vexatious complaints and/or or repeat complainants prevented from making further similar complaints.

9. What key features should be included in lobbying guidelines and a model policy?

- Council is supportive.

- Provide more guidance on what constitutes lobbying.

Dispute resolution and penalty framework

10. What level of PIN is appropriate?

- Council does not support the PIN regime because:
    - A similar regime does not exist at the State or Federal level.
    - It is harsh and unreasonable given the nominal annual fee that councillors receive.
    - Existing sanctions are sufficient.

11. Are the penalties proposed appropriate, and are there any further penalties that should be considered?

- No additional comment.

12. Are the existing sanctions available under the Local Government Act sufficient?

- No additional comment.

13. Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

- Council supports a formal tribunal.

Restoring dignity to council meetings

14. Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

Council does not support:

- The mayor being able to remove a councillor's entitlement to receive a fee for the month in which they have been expelled from a meeting or failed to apologise for misbehaviour. This is contrary to the aim of making meetings more collaborative and dignified
- The mayor being able to expel councillors without a resolution.
- The issuing of PINs to members of the public.

- Standing when the mayor enters the meeting room. The aim should be to make meetings more accessible, collaborative and representative.

15. Are there any other measures needed to improve transparency in councillor deliberations and decision making?

- Council does not support the banning of confidential briefings for the following reasons:
    - Briefings are an opportunity for councillors to collaborate with council officers in a non-adversarial environment to fully understand and interrogate the issues.
    - They are not decision-making forums.
    - They can expedite council meetings.
- Council supports the banning of briefings for individual development applications.

Upper Lachlan Shire Council

All correspondence addressed to the General Manager, PO Box 42, Gunning NSW 2581

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ABN 81 011 241 552

File Ref: F11/106-014

29 November 2024

Office of Local Government
Locked Bag 3015
NOWRA NSW 2541
CC: councillorconduct@olg.nsw.gov.au

To whom it may concern,

RE: SUBMISSION – COUNCILLOR CONDUCT FRAMEWORK REVIEW

On behalf of Upper Lachlan Shire Council please see below submission responses as part of the proposed changes to the Councillor Conduct and Meeting Practices.

Upper Lachlan Shire Council thanks the Minister for Local Government and the Office of Local Government for the opportunity to have input into the review of the Councillor Conduct Framework.

1. **What are the principles of change?**

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

The stated principles are appropriate, however clarification on support mechanisms available in changing and implementing the framework principles is required.

Council supports the intent of the OLG framework review to reduce the weaponisation of the code of conduct complaint system. Council support the removal of the General Manager/CEO from being integral to the complaints process and agree that complaints about conflict of interest matters should be made directly to OLG and not to council.

2. **Potential changes to the code of conduct and oath of office**

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

Council note that the aspirational code of conduct will be separating the behavioural expectations in a Code of Conduct from definitions of misbehaviour. It is not clear how this separation will operate in practice.

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

Council agree with aligning the Councillor Oath of Office with the Code of Conduct.

3. **Potential changes to the definitions and assessment of councillor misbehaviour**

Question: Is the proposed pecuniary interest framework appropriate? Is anything missing?

Council supports a revised framework that councillor misbehaviour will be more clearly defined within the Local Government Act. Council supports a proposed pecuniary interest framework that aligns with NSW members of parliament disclosure requirements.

Council agree that an absolute prohibition on a councillor being involved in any matter before council where a pecuniary conflict of interest exists. This prohibition should remain unchanged in the proposed revised framework.

Council support the proposal that the interests for disclosure by the councillor are to be extended to the interest of a spouse or de facto partner, relative, or partner or employer, or a company or other body of which the councillor, or their nominee, partner or employer, is a shareholder or member.

Council agree that the OLG should have powers to compel production of information as part of investigating alleged breaches of pecuniary interests. These powers could include PINs and where there is no cooperation with an investigation by a councillor formal censure measures should be instigated.

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

Council agree with the principles outlined in the framework and all concerns regarding a significant non-pecuniary interest should be declared and appropriately managed by a councillor. Council agree that councillors should remain as vigilant about disclosure of non-pecuniary interests as they are about pecuniary interests.

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

It is acknowledged that it is a particular sensitive topic on how best to identify and regulate behaviour of councillors who are property developers and real estate agents.

Council supports legislation being developed for consultation on managing the inherent conflicts a councillor has in being a property developer or real estate agent and establishing penalties; including disqualification, PINs, expulsion of a councillor or

financial penalties being imposed where a councillor engages in contractual arrangements with real estate agents or developers.

Question: Is this the appropriate threshold to face a Privileges Committee?

A proposed revised definition of misconduct; being misbehaviour in public office may be difficult to determine and investigate. Council require further clarification around how the abolishment of "two-step process" in relation to complaints about misbehaviour being made directly to the Privileges Committee can be effectively managed via a dedicated webform and without code review panel investigators.

Council require more clarity from OLG on this proposal and how it is envisaged a Privileges Committee will operate and is unsure about supporting establishment of Privileges Committee until clarifications are provided. Council understands that the Privileges Committee would only examine issues of misbehaviour, and not conflicts of interest.

Council requests clarification on the operations of the Privileges Committee including:-

1. Who will fund this committee's ongoing operations and investigations? Council is concerned by the statement that the Privileges Committee would be paid for by either individual councillors or their councils dependent on the outcome.
2. What costs are envisaged that councils may bear in committee establishment?
3. Who controls the recruitment, selection and appointment of former councillors and former Mayors to this committee?
4. Recruitment must include transparency in appointment and merit based selection of the committee panel.
5. How will the management of conflict of interest in appointment of this committee be undertaken?
6. Do former councillors and former Mayors have the specialised skill set required to conduct investigations of misbehaviour? Is it envisaged the committee will have access to resources in the form of investigation specialists? If so, who is to fund such an approach?

Question: How else can complaints be minimised?

Complaints can be minimised by trivial and vexatious complaints being handled within mandatary set timeframes. All complaints should be handled by the OLG and they should be resourced adequately by the State Government to achieve decisive and timely complaints outcomes within set timeframes.

In addition, for complaints to be minimised for councillor bad behaviour, there should be strong deterrents such as PINs and expulsions for poor behaviour and consideration of financial penalties, such as forfeiting councillor fees for different periods of time depending upon the seriousness of the misbehaviour.

Question: What key features should be included in lobbying guidelines and a model policy?

Council supports the introduction of a model Lobbying Policy and accompanying Lobbying Guidelines based on the ICAC recommendations to assist councils in identifying the risks and addressing them through a control framework.

Council supports this draft councillor conduct framework from OLG and believe it can address the inappropriate lobbying and inducements to councillors with accompanying implementation of deterrents and penalties for misbehaviour around council decision-making on development applicants and land use and zoning of land issues

4. **Dispute resolution and penalty framework**

Question: What level of PIN is appropriate?

Council supports the intent of the OLG in implementing a PIN penalty system for breaches of conflicts of interest and suggest they be expanded for use of PINs for not just minor or insignificant breaches but be used for significant, systemic and repeated breaches of both conflicts of interest and misbehaviour of councillors.

Question: Are the penalties proposed appropriate, and are there any further penalties that should be considered?

The penalties identified in the draft OLG framework are supported by Council. In addition, penalties may also be further extended to include greater monetary fine to a councillor proven to have committed significant and systemic breaches.

Question: Are the existing sanctions available under the Local Government Act sufficient?

There is not sufficient detail within draft framework discussion paper to express a view.

Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

Council suggest that the current system that councillor sanctions are made by the OLG Departmental Chief Executive is appropriate and this position is at arm's length from the councillor initial investigation processes.

Creation of a new independent judicial arbitrator or tribunal is not supported by Council and will add to the cost impost to councils in establishment and ongoing operations and may result in increased times in decision-making and handling of appeals to a decision.

5. Restoring dignity to Council Meetings

Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

Without seeing details of the proposed powers, Council does support in principle reforms to the meeting code of practice designed to support the mayor in exercising their statutory responsibility to preside at meetings and to ensure meetings are orderly conducted.

Council supports deterrents being proposed by the draft conduct framework being imposed on councillors if they continue disorderly conduct and financial penalties such as removing a councillors entitlement to a monthly fee if they are expelled from a meeting and agree these penalties may apply for each act of disorder and continue to be imposed if an apology is not forthcoming by the councillor.

Council does not support the proposed reform that a councillor be expected to stand to address a council meeting and to stand when the Mayor enters the chamber. These reforms are unnecessary, outdated practice and largely symbolic in nature.

Question: Are there any other measures needed to improve transparency in councillor deliberations and decision making?

Council support the retaining of councillor briefing sessions. These briefing sessions may be held with or without the public being present. There remains a place for briefing sessions and they are not to be a council decision making forum. The intent of a briefing session is a forum for councillors to be informed in an informal setting on matters including; planning, budgeting, assets and legislation.

It is the role of the Mayor to ensure no debate on content provided at a briefing session. These sessions allow councillor questions to staff to get context or understanding on matters and is particularly useful for new councillors as a safe space to ask questions and receive education on council matters and procedures.

Upper Lachlan Shire Council holds the abovementioned views. In that regard Council appreciates the opportunity to make a submission and Council trusts that the issues raised will be considered further in your deliberations on submissions.

If you wish to discuss the above submission further please contact my office on (02) 4830 1000 or council@upperlachlan.nsw.gov.au



Alex Waldron
Chief Executive Officer

REROC

RIVERINA EASTERN REGIONAL ORGANISATION OF COUNCILS

Response

Councillor Conduct and Meeting Practices: A New Framework

Contact:

Julie Briggs
CEO
Riverina Eastern Regional Organisation of Councils
PO Box 646, Wagga Wagga NSW 2650
Phone: (02) 69 319050 Email: [redacted]
www.reroc.com.au

Response
Councillor Conduct and Meeting Practices
A New Framework

Introduction

The Riverina Eastern Regional Organisation of Councils ("REROC") encompasses 8 Local Government entities located in the eastern Riverina region of NSW. REROC's Member Councils are: Bland, Coolamon, Cootamundra-Gundagai, Greater Hume, Junee, Lockhart, Temora and Goldenfields Water County Councils.



Our Member Councils welcome the Government's commitment to Local Government. We agree that councils should be accountable to their community. Local Government is government at the grassroots and, at least in country areas, councillors live that community accountability everyday as they constantly come into contact and interact with the people they represent.

We agree that it is best that councils provide strong and effective representation, leadership, planning and decision making, however we do not agree with the Discussions Paper's assertion that this has been lost. We recognise that just as we expect our members of Parliament to act with dignity and integrity, and some fail to reach the mark, a minority of councillors will also put themselves first to the detriment of the council chamber and the communities they represent. When this happens there must be a robust Code of Conduct Framework in place that works swiftly, supports an unbiased judgment and delivers penalties that are proportionate to the conduct.

Our Members agree that the current process can be lengthy, it is not acceptable for the process to take up to 2 years when referred to the OLG for further investigation. However, we recognise that we operate in a political environment, where there is the capacity to weaponise Code of Conduct Frameworks. Consequently, it is imperative that investigations adhere to the principles of natural justice and procedural fairness. There is no doubt that ensuring those principles are adhered to during an investigation can considerably lengthen the time it is taking to deal with conduct matters.

Our Members agree that council decision making should be transparent, but do not agree with the sweeping assertion that closed council briefing sessions are being used to make decisions away from public view. Our Members also disagree with the statement that "council debates on issues are too often personal slanging matches, rather than forums for robust and respectful discussions on what is best for the community".

We recognise that sometimes debates about issues that councillors are very passionate about can become heated, even so, there is no place for personal insults during a debate. However, our Members believe that, in their experience this does not occur regularly and the statistics provided in the Discussion Paper support this. We note that of the 4,289 complaints received in 2020/21 most were without basis. The Discussion Paper notes that of those complaints only 14 have resulted in suspension or reprimand, 4 councillors were referred to NCAT and only one councillor was disqualified and dismissed. There are over one thousand people serving as councillors in NSW; these statistics evidence the fact that in the main, councillors are well-behaved and act in the best interests of the communities they serve.

It is our Members' experience that most Code of Conduct matters occur outside the chamber including on social media. Consequently, expectations in relation to councillor misbehaviour in public office should be clearly addressed in the new Framework including appropriate definitions regarding pecuniary and non-pecuniary conflicts of interest.

It is clear that a process needs to be put into place whereby the volume of frivolous complaints are dealt with swiftly. We believe that the introduction of triage arrangement would allow for more timely consideration of a matter. We are also recommending the introduction of a mediated dispute resolution process that could take place within 7 days of a dispute being raised.

Our Members welcome the opportunity to provide feedback to the Discussion Paper and provide the following comments on the Paper:

Principles of Change

Our Members support the Principles of Change, however, we would suggest that the following should be added:

1. "efficient and effective dispute resolution" – we believe that it is essential that this principle underpin the final design of the new Framework.

2. "safe and respectful workplaces" – it is essential that council environments are safe for councillors and staff-. Creating workplaces that reflect this principle is key to ensuring that the new Framework is effective. This principle refects a similar goal contained in the *Prime Minister's Code of Conduct for Ministers* (2022)

Potential Changes to the Code of Conduct and the Oath of Office

Our Members are concerned at what appears to be a mismatch between an aspirational Code of Conduct (and by aspirational we take this to mean voluntary) and legislated definitions of misbehaviour. We note that the Discussion Paper does not contain sufficient detail on how the potential changes will be implemented, or work in practice. We do think that definitions of misbehaviour should be clearly stated to councillors at the outset, and not buried in legislation.

The lack of detail or provision of a sample or draft Code of Conduct, combined with the intention that the new Code would be "aspirational" creates concerns that an "aspirational code" could be less effective than the current Code of Conduct provisions. This is because elements/controls intended to manage councillor behaviour will need to be specifically referenced in the legislation to actually have any impact.

If councillors are to be judged by a legislated definition then they, the community and council staff should have ready access to those definitions which must be written in plain English. The vast majority of people including councillors, have little regular interaction with legislation and while the concept of "going to the legislation" to seek out information may be commonplace for State and Federal politicians and their staff, it is not the same for councillors and their communities.

We have serious concerns about the transparency of the Framework and ultimately its effectiveness of condensing the Code to 2-3 pages. While we can see the attractiveness of the approach, if all the detail in relation to behaviour, penalties and process can only be discovered by searching the legislation transparency could be lost. While we understand that ignorance of the law is no excuse, we also know in practice most people do not find law particularly accessible and having to search for answers and definitions via legislation is not in the public interest.

Therefore, we recommend that there be a companion document to the 2-3 page Code document, that provides detailed informaiton, in plain English about expectations regarding poor conduct and penalties where standards are breached.

Oath of Office

We support tying the Code to the Oath, to ensure that councillors taking the Oath know that their behaviours will be aligned and judged by the Code. Ensuring that the Oath of Office and the aspirational Code of Conduct are aligned reinforces the behavioural standards and expectations of a councillor coming into office from day one.

However, if the Code is only "aspirational" can it really be used to judge behaviour? Will it be enough for a councillor to say "I tried…I aspired to the Code… but I didn't quite get there…" It would be more effective to state "this is the standard by which you will be judged, and it is legislated".

Potential Changes to the Definitions and Assessment of Councillors Misbehaviour

Our Members support greater clarity in the definition of misbehaviour and enshrining the definitions in legislation should make interpretation more consistent. Our Members agree that the definitions should cover:

- Pecuniary conflicts of interest
- Non-pecuniary conflicts of interest - this should embrace both significant and non-significant conflicts. In our experience, in country areas where councillors often wear many hats within the community, greater clarity around non-significant conflicts would be of benefit.
- Councillor misbehaviour in public office – we believe this should consider misbehaviour both within and outside of the chamber. When a person is an elected councillor they should demonstrate integrity, respect and ethical behaviours in relation to their role both within the chamber and while in public.

Pecuniary Interests

We note the list of pecuniary interests reflects the current disclosure requirements; however, it is proposed that the disclosure includes "relative". This is a very broad term and will need to be defined – does it include third cousins?

Our Members agree that the OLG should have the powers to investigate and request information on corporate structures such as trusts or companies, to determine underlying beneficial ownership and interests. We note that company information is readily and publicly available through ASIC and that there is already existing software that identifies common directors and links between companies. Therefore, extending OLG powers to obtain information on companies may not be necessary.

Non-Pecuniary Interests

We note that the Discussion Paper recognises that "councillors are also representatives of their community and reside in the community so membership of clubs, congregational membership etc should not be seen as conflicts of interest". This issue is of significance in non-metropolitan areas where councillors wear many community hats. Clear guidelines on situations that create non-pecuniary conflicts of Interest would be welcomed.

Property Developers and Real Estate Agents

Our Members remain concerned about the proposed blanket prohibition on property developers and real estate agents becoming councillors. We note the proposed measure to deal with this issue

is to require councillors to "divest themselves from real estate or development business activities and contractual obligations". Our Members question the fairness of this proposed solution because it is effectively requiring people to terminate their employment or self-employment in order to take-up their role on council. We remain unconvinced that this is a viable solution to the issue, and whether in fact the approach still infringes "the right to political free speech implied by the Australian Constitution".

Our Members are also concerned about the definition of a property developer and the need for context within the definition. For example, a company that develops 6 homes in Coolamon might be seen as a property developer, but are they a property developer in Sydney?

Our Members believe that rather than ban on participation by real estate agents and property developers, who may bring valuable experience and skills to council, it would be better to tighten up Pecuniary Interest Declarations to include declarations relating to property development. In addition, substantial sanctions for breaches of Pecuniary Interest in relation to property development should be introduced, that include financial penalties that are proportionate to the estimated financial gain that was generated by the breach. The penalties should also include suspension or termination of the councillor roles.

In addition, our Members believe that where there is evidence a councillor has benefitted, whether as an established property developer or not, from inside knowledge of council's landuse plans, that the breach should be dealt with immediately by a referral to the OLG.

Councillor Misbehaviour in Public Office

The Discussion Paper proposes that misbehaviour in public office would cover behaviour …outside the norms of behaviour expected from a councillor…". We are concerned about the subjective nature of this judgement. While we appreciate that the Paper has identified legal cases where standards have been established, we also note that these are not cases that occurred in a political context.

We believe, that in the first instance, poor behaviour should be determined on the floor of the chamber with councillors determining whether a councillor's behaviour is inappropriate. The Mayor or any other councillor could call for a motion from the floor to censure a councillor for inappropriate behaviour. Where the resolution passes, the councillor would be required to remove themselves from the chamber. We believe that it is preferable to provide clear options for these matters to be dealt with quickly in order to "nip it in the bud" where possible.

It is essential that Councillors and staff work within a safe work environment. "Freedom of speech", which can sometimes be used to excuse poor behaviour should be balanced with appropriate conduct standards. Specifically, any updated requirements in this regard should require that comments cannot:

- Bring the Council or any other person into disrepute
- Be made publicly about matters considered in closed session of a Council meeting (in accordance with s10A of the *Local Government Act 1993*)

- Make personal attacks on councillors or council officials or engaging in conduct towards councillors or council officials in public forums including social media, or in any other form of public comment.

Our Members suggest that a suite of comprehensive guidelines be produced for Mayors and councillors in relation to the Code of Conduct, which includes highlighted areas where approaches or definitions have changed. This would assist councillors and particuarly councillors with a long history of service to better understand and comply with the behavioural requirements specified in the new Framework.

Our Members are aware, however, that some councillors use the floor to grandstand about a specific issue and that a removal from the chamber is in fact a "badge of honour". We see this happen regularly in State and Federal parliaments and there is no reason to think it would not happen at council level. Nevertheless, just as the Speaker is able to remove the offending member quickly from the debate, the Mayor should be able to do so with the backing of his or her councillors.

Address Inappropriate Lobbying
We agree that lobbying is an important feature of democratic representative government and therefore we strongly support the inclusion of lobbying guidelines in the model policy.

We believe the guidelines will be particularly helpful for new councillors unfamiliar with the political environment. It would also assist if the guidelines included ways in which councillors can manage lobbying activities to ensure a councillor's ability to make unbiased decisions in the chamber is not compromised.

Informal lobbying, is an everyday occurrence for councillors because of the grassroots nature of the role, particularly in country locations where small communities facilitate greater access. Councillors can feel cornered when approached by a resident in relation to an issue; new councillors often struggle to find the right response. Consequently, we strongly suggest the inclusion of case studies in the guidance document, or alternatively very short educational videos to demonstrate the right way to deal with both formal and informal lobbying.

Dispute Resolution and Penalty Framework

Noting that the statistics show the vast majority of complaints are minor, our Members strongly support the introduction of a local, low-key dispute resolution process using an independent mediator.

We believe that many disputes between councillors, between councillors and staff and between councillors and community members could be efficiently and effectively resolved through a mediated meeting between the parties held within a week of the dispute or conflict arising.

We believe this would reduce the weaponisation of the complaints process and the number of complaints being dealt with formally because matters of dispute could be resolved locally through mediated discussion.

Our Members firmly believe that swift action in relation to dispute resolution is a key to minimising conflict in the chamber and community dissatisfaction with council and councillors. The current system allows disputes and conflicts, even small ones, to fester while councillors step through a formal and often expensive complaints' process. We believe investing time and resources in a low-key mediation process would be far more effective, bringing much faster and better outcomes.

Abolishing the 'Two Step Process'
Our Members support the implementation of a process that would provide quicker resolution of complaints, while at the same time delivering on requirements for procedural fairness and natural justice.

However, our Members have expressed concern that multiple, separate avenues for dealing with poor behaviours may make it harder to aggregate councillor actions and therefore to discern patterns of bad behaviours that could lead to more substantial penalties or even a referral to ICAC.

Giving the OLG the Power to Issue Penalty Infringement Notices
Our Members question the use of PINs for minor infringements and would struggle to support their use for instances where there was an "inadvertent failure to lodge a return of interest".

Fining councillors for what is an oversight, is overkill. They are already essentially volunteers and this could result in creating another barrier to participation in local government, particularly for young people and those from diverse and lower socio-economic backgrounds.

However, there may be room for PINs for repeated minor infringements. There is a reasonable expectation that councillors learn from their mistakes. For example, where the same mistake is made say three times, a PIN may be an appropriate way of reinforcing the councillor's obligations to declare a conflict of interest.

NSW Local Government Privileges Committee
Our Members are struggling to understand how the creation of a Privileges Committee will speed up the complaints' process.

While we support the principle of allowing "the sector to better govern itself", we think that the reality of the operation of a Committee that requires very busy people from across the State to come together on a regular basis to deal with issues of misbehaviour is problematic.

We note that the plan is that the Committee's process would be "paid for by either individual councillors or their councils dependent" depending on the outcome. A Committee of their peers drawn from across the State will be very, very expensive. What is the plan if a matter is referred to the Committee and the councillor is found at fault and cannot afford to pay the costs? How will the

costs be recouped? In the reverse, is there an expectation that councils will divert funds from public facilities and services in order to pay for the costs of the Committee?

In addition, we are concerned that councils would also be required to meet the costs of the small Secretariat that would service the Committee and triage complaints in order to dismiss vexatious matters. It appears that there may be an expectation that the cost of the Secretariat will be born by the local government sector.

Our Members are concerned that this could be a very expensive, unwieldy and potentially slower replacement for the Code of Conduct reviewer Framework currently in operation. We appreciate there remains considerable work to be done to flesh out the concept, such as:

- how members will be chosen,
- how a balance of city and country will be achieved,
- how they will be paid for their time, and
- how they will meet?

Therefore, before committing to the proposal our Members would need to see more detail.

Referral of Significant Sanctions to Appropriate Tribunal of Body
While in theory this appears to be a good approach, again we are concerned about costs, processes and structures.

It would appear that in order to ensure that the councillor subject to judgement would be granted procedural fairness and natural justice, a matter that has already been heard by the Privileges Committee would need to be re-litigated in front of the new Tribunal. The Discussion Paper has already identified the delays that are caused in the current process when the OLG needs to re-investigate the work of the Conduct Reviewer. We see that there is the potential for the same outcome with the proposed Tribunal.

In addition, we see the journey to the Tribunal to be a long and winding road, via council with a referral to the Privileges Committee, the OLG Secretariat reviewing it first before the Committee hears the matter and then on to the Tribunal. It is unclear whether there is an expectation or ability for a councillor to retain legal counsel and if the councillor does and wins who pays the costs?

Our Members are also concerned that the costs relating to the matter being dealt with by a Tribunal may fall to councils to pay.

Restoring Dignity to Council Meetings

Our Members agree that debates in councils must be fair, respectful and conducted with dignity. We do not agree with the assertion that “there are too many examples here the dignity of the council meeting has been lost”. We are concerned that this statement reflects the ‘squeaky wheel attracting the oil’. There are 128 councils and over 1,000 councillors in NSW, in our Members’ experience for the majority of councils, dignity has definitely not been lost. We are very concerned that the OLG is designing a new Framework on the basis of this flawed assumption.

In relation to the requriement to stand up when speaking in council, we understand that some councils may wish to introduce this requirement and others may not. Therefore we recommend that this action not be imposed on councils but rather be left to each council to determine at the commencement of its 4-year term.

Proposed Reforms to the Model Code of Meeting Practice
While our Members support the proposed reform that would confer power on Mayors to expel councillors from a meeting for acts of disorder, we are not convinced that Mayors would be comfortable stripping the councillor of his or her entitlement to receive a fee.

However, we want to strongly advocate for the need for councillors to work as a team and that Mayors should only take an action to expel in the most egregious of circumstances. We are also concerned about the possibility of the power being misused when there is a contentious vote before council. In highly politicised councils, there may be an incentive to remove councillors from the chamber in order to ensure the numbers needed to pass a resolution.

We support the ability of the Mayor to expel members of the public from the chamber for acts of disorder. We are not convinced that Mayors should be able to issue PINs. The issuing of PINs to disorderly members of the public could be viewed as an attempt to silence public opinion and lessen the rights of the community to participate in their local government.

Banning Briefing Sessions
Our Members agree that decision-making in councils should be transparent and made in open council meetings. However, our Members strongly oppose the proposal to ban councillor briefing sessions, which we assume includes councillor workshops. We do not support the proposal that all matters be dealt with by council committees, for the reasons stated below.

If we want effective, evidence-based decision-making from our councillors we must be able to provide them with the opportunity to better understand the complex subjects they are required to deal with. Briefing sessions and workshops enable councillors to hear from Subject Matter Experts as well as council staff about complex matters that may be beyond a councillor's field on experience. It allows councillors to ask questions that openly display their limited knowledge about a topic without the press and public there to witness it.

Where councillors have insufficient knowledge about an issue it is sometimes easier "to decide not to decide". Well-constructed briefing sessions and workshops minimise the likelihood of this outcome and provide professional development opportunities that many councillors embrace.

In addition, briefing sessions and workshops are used to develop the strategic direction of a council, to sift through the multitude of ideas that come from the Community Strategic Planning process and prioritise them into achievable community goals. In these instances, councillors benefit from the free, frank, open and honest discussion of community priorities that occurs because the press and the public are not watching and passing judgement. The sessions provide opportunities to work

through solutions, strategic opportunities and directions and to obtain feedback that will inform final decision-making in the chamber.

Our Members agree that these sessions should not devolve into pseudo-council meetings where decisions could mistakenly be made. Therefore, we are recommending that the OLG provide Guidelines for delivery of briefing sessions and workshops. We suggest that one of the requirements be that these sessions are always led by the General Manager and that the Mayor is only a councillor for the duration of the session. In our opinion, if the Mayor is at the head of the table during a briefing session or workshop, then the session's demeanour will take on the character of a council meeting. We think it is important that council staff take the lead in these sessions to ensure that the character of the sessions remains one of information sharing and discussion only.

Conclusion

Our Member councils welcome the opportunity to provide feedback, on the proposed changes to the Framework. We agree that the current system takes too long, is unwieldy and often does not deliver the required outcomes.

We think it is imperative that the new Framework be co-designed with Local Government and to that end we are recommending that further consultation on the Framework including meetings be held to talk through how some of the proposals would be implemented, their projected costs and how those costs will be met would be useful.

Our Members request that councils and other key stakeholders be provided with the intended wording for legislation changes, the draft changes of the Code of Conduct, detailed membership of any new judicial or extrajudicial bodies and cost implications prior to implementation and that Local Government be given the opportunity to comment on the proposals.

We note that the Discussion Paper talks about the need for the sector to govern itself. As stated above, we support this statement and believe that it is imperative that the sentiment be reflected in the design of the new Framework. It is a Framework designed to guide the conduct of the sector therefore it should be the sector that has the primary role in designing the Framework.

REROC would be happy to provide any assistance the OLG requires to arrange consutlations with our Member Councils or to particpate in same.

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From:	Andrew Greenway
To:	OLG Councillor Conduct Mailbox
Subject:	Feedback on Model Code
Date:	Wednesday, 27 November 2024 3:32:17 PM

Hi there,

I am seriously concerned about the proposal to not permit private Councillor briefings on matters going to Council.

All businesses / governments have matters that are best discussed privately in the first instance. Councillors need to be able to ask questions and get factual answers without having to worry about the politics of their questions otherwise they will be ill informed and make poor decisions.

If the aim is to have more transparent public decisions, then there has to be better ways.

If this proceeded, how would the NSW Government justify putting a higher level of transparency on local government and not apply the same standard to themself.

Andrew Greenway
[redacted]

Wollongong City Council Submission

To the Discussion Paper

Councillor conduct and meeting practices - A new framework

The OLG Discussion paper provides an overview of the proposed new approach to both the Councillor conduct framework and meeting practices. In summary the Office of Local Government (OLG) is proposing to:

- Make OLG directly responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest, with sanctions (suspensions and possible loss of Councillor allowances) being determined by an appropriate tribunal or body
- Refer behavioural based concerns about councillor conduct to a State-wide panel of experienced councillors to judge their peers
- Reset the code of conduct for Councillors to be similar to Parliamentary Codes, making it clear the expected patterns of councillor behaviour
- Ensure the community can observe local democratic processes by banning closed to the public briefing sessions, while at the same time restoring the dignity and prestige of the council chamber.

Each of the proposed changes / items for comment are listed below with Council's response to each item appearing below it.

Submission

Wollongong City Council believes that the NSW local government sector in general is operating well, and any concerns that the Office of Local Government (OLG) may have with meeting practices and the process to deal with Councillor conduct issues only relate to a small proportion of the activities of Mayors and Councillors across the state and indeed those concerns may not be evident at all at some councils.

Wollongong City Council has a cohesive and collaborative approach and relationship between Councillors and between the elected council and the Council staff. In addition, Council believes that its approach to transparency, meeting practices and the conduct of the Lord Mayor and Councillors during Council meetings uphold the standards expected of local government. This is evidenced by the fact that the training program that Local Government NSW provide on a regular basis to Council staff in relation to meeting practices and minute taking use Wollongong City Council as an example of best practice.

There would be many other Councils that are in a similar position to Wollongong City Council. As such, whilst the Councillor Code of Conduct, complaint handling mechanisms and meeting procedures are always worthy of review and refinement, Council believes that these systems need enhancements and fine tuning rather than comprehensive and wide-ranging changes.

Overall, Council believes that most of the proposals and suggestions in the Discussion Paper lack sufficient detail relating to definitions, limitations, application and procedures to allow appropriate and wholesome consideration prior to offering feedback. Council requests that following receipt of all feedback from the sector on the issues raised in the Discussion Paper, that the OLG should design, in detail, the required elements and circulate them back to the sector for further comment on the draft wordings of each element. This should include intended wording for legislation changes, the draft changes of the Code of Conduct, detailed membership of any new judicial or extrajudicial bodies

(including eligibility for membership) and criteria and definitions used to determine breaches of the Code of Conduct or legislation

The introduction sections of the Discussion Paper include the following statement:

> *The volume of frivolous complaints is crowding out the ability of the OLG and the sector to adequately deal with councillors who abuse their office or cause serious governance problems.*

Whilst Council acknowledges that the frivolous complaints may be impacting on the ability of the OLG to deal with all complaints, it is important to note that frivolous complaints are in general an indicator of the behaviour of the complainant rather than the appropriateness / suitability of the framework under which the complaint has been made. Council believes that the negative impact of frivolous complaints can be eradicated or significantly reduced if appropriate time and resourcing was allocated by the OLG to stringent triaging of complaints and quick and effective preliminary reviews of matters, rather than letting all complaints simply progress through the system.

Principles of Change

Details:

The OLG has prepared the proposed reforms on the following principles and has sought submissions on any additional principles that may be suitable:

- Council leadership and decision-making is paramount
- Freedom of speech
- Transparency and accountability
- Significant penalties should only be imposed by a judicial or quasi-judicial body
- A strong and proportionate local government
- Subsidiarity
- Justice is timely and proportionate

Council submission:

Council submits that an additional principle should be considered to guide the implementation of any proposed reforms:

> ***Councillor conduct meets community standards and expectations***

Meeting community expectations is crucial for elected representatives in local government for several reasons:

1. Building Trust and Confidence: When elected representatives adhere to community standards, they build trust and confidence among the residents and ratepayers. This trust is essential for effective governance and ensures that the community feels represented and heard.
2. Ensuring Accountability: Elected officials are accountable to the people who elected them. Whilst the community has a say in electing their representatives every four years, it is important that if the conduct of a Councillor is to be reviewed, with any potential impact on their ability to hold office, community expectations and standards should form a part of the decision-making process.

Changes to the Code of Conduct

Details:

The OLG has proposed the following reforms to the Code of Conduct:

- Streamlined/ aspirational Code of Conduct 2-3 pages, supported by a framework
- Aspirational/ expected behaviours rather than enforceable
- Misbehaviour provisions to be removed from the Code and enshrined in legislation
- Councillor will be able to speak publicly on matters pertaining to their council, even when that councillor is disagreeing with, or being critical of, the decisions of the majority.

Council submission:

Council supports a comprehensive review of the Model Code of Conduct for Councillors. However, even if a move to an aspirational / expected behaviours model is progressed and that such a model would be based on the NSW Parliament – Members Code of Conduct several important and material matters would need to be considered and addressed.

- It is noted that whilst the NSW Parliament – Members Code of Conduct is only 3-4 pages in length, the Code of Conduct for Ministers of the Crown is a more detailed document of around 15 pages. Whilst not all elements of that Code would be applicable to the holders of elected office in local government, for example shareholdings, directorships and secondary employment, most of the content would be applicable to local government and appears to require a higher standard of conduct than the Members Code of Conduct. The Preamble to the Ministerial Code states the following:

  > *"It is essential for the maintenance of public confidence in the integrity of government that Ministers exhibit, and be seen to exhibit, the highest standards of probity in the exercise of their offices, and that they pursue, and be seen to pursue, the best interests of the people of New South Wales to the exclusion of any other interest."*

  Those elected to office in local government would be expected by their communities to pursue the same best interests for the people of their respective local government areas, as such a shortened Code of Conduct could be framed in a similar level of detail and type of content as the Ministerial Code of Conduct and still achieve the objectives of a more succinct document
- Notwithstanding the above, any updated Code of Conduct should include appropriate provisions in relation to the following. Alternatively, these items could be addressed via legislation.
  - Child Protection requirements
  - A defined limit on individual/cumulative value of gifts, benefits and hospitality
  - Expectations around discourse and personal interactions from a workplace safety and psychosocial hazards perspective
  - Expectations of conduct within Council and Committee meetings
  - Clear definitions on conflicts of interests

The lack of detail or provision of a sample or draft Code of Conduct combined with the intention that the Code of Conduct would be "aspirational" creates concerns that the aspirational code could be a 'toothless tiger', and any elements / controls intended to manage Councillor behaviour that are not specifically referenced in legislation may have no impact on ensuring Councillor behaviour meets expected standards.

In relation to the proposal to allow Councillors to be able to speak publicly on matters pertaining to their council, even when that councillor is disagreeing with, or being critical of, the decisions of the majority, Council would submit that several limitations and caveats would be required to ensure that

freedom of speech is balanced with appropriate conduct standards. Specifically, any updated requirements in this regard should require that comments cannot:

- Bring the Council or any other person into disrepute
- Be made publicly about matters considered in closed session of a Council meeting (in accordance with s10A of the Local Government Act 1993)
- Make personal attacks on Councillors or Council officials or engaging in conduct towards Councillors or Council officials in public forums including social media, or in any other form of public comment

Council suggests that a suite of comprehensive guidelines be produced for Mayors and Councillors in relation to the Code of Conduct and any areas that are changed from the current approach / definitions. This would be key in assisting Councillors to understand and comply with the behavioural requirements specified in the code and in legislation.

Changes to the Oath/Affirmation of Office

Details:

The OLG has proposed to align the Oath of Office for local councillors to the updated Code of Conduct, to ensure that the behavioural standards and expectations are clear and understood when a councillor takes office.

Council submission:

Council has no concerns with such an approach and would suggest the following wording. Underlined text is in addition to current wording

> *I [name of councillor] swear (or solemnly and sincerely declare) that I will undertake the duties of the office of councillor in the best interests of the people of [name of council area] and the [name of council] and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment, and I will do so in accordance with the behaviours expected of me in the Model Code of Conduct."*

Changes to the Definitions of Councillor Misbehaviour

Details:

The OLG has proposed a range of changes to definitions and methods of assessment of Councillor misbehaviour with the main changes being:

- More clearly define misbehaviour within the Local Government Act, covering pecuniary conflicts of interest; significant non-pecuniary conflicts of interest and councillor misbehaviour in public office
- Align definition of pecuniary interests to that of NSW MPs, may extend to interested party, spouse, partner, employer etc.
- Alternative means of addressing inherent conflicts
- Councillors being required to divest themselves from real estate or development business activities
- Three limbs of misbehaviour defined (conduct that is):
    - Unbecoming of a councillor
    - Brings council into disrepute
    - Is assessed as being outside the norms and expectations of a sitting councillor

Council submission:

A number or proposals for change are listed in this section of the Discussion Paper. Council's response to each individual item is provided below.

Defining Misbehaviour

Council is supportive of more detail being provided in the Local Government Act to clearly outline and define what constitutes misconduct/misbehaviour whilst in office. Council agrees with the three proposed categories of misconduct to be defined in legislation, namely pecuniary conflicts of interests, significant non-pecuniary conflicts of interests, and Councillor misbehaviour in public office.

Pecuniary Interests

The discussion paper proposes a definition and objective test for a pecuniary interest as: *"would a councillor or one of their close associates (spouse, family members), receive a financial benefit as a result of a decision"*. Council would suggest that any definition or test would also need to allow for scenarios where a Councillor or close associate avoids a financial loss, or denies a commercial opportunity to a commercial competitor via a decision that they are involved in.

Much more clarity is required in the proposed definition of a pecuniary interest outlined above. It should include personal relationships or close associates and provide specified definitions, i.e. son, daughter, parent etc rather than family member. The current definition of a pecuniary interest in sections 4.1 – 4.4 of the Model Code of Conduct is sufficient and appropriate, and it should continue to be used. That definition is reproduced below:

4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.

4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.

4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:

(a) your interest, or

(b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or

(c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.

4.4 For the purposes of clause 4.3:

(a) Your "relative" is any of the following:

i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child

ii) your spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child

iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii).

(b) "de facto partner" has the same meaning as defined in section 21C of the Interpretation Act 1987.

Non-pecuniary Interests

The discussion paper proposes that if a decision of a councillor directly advantages (or disadvantages) a particular individual or organisation the councillor is friendly with or associates with, then they could remain involved in the matter, including voting, (subject to the conflict being publicly declared), if the councillor considered it of minor consequence, it wasn't controversial, or the councillor did not hold the casting vote.

Council is not supportive of any definition of a significant non-pecuniary interest including an assessment by a Councillor as to whether a matter is controversial or whether the councillor would have a casting vote. Not all matters of significance that are dealt with by the Council receive a lot of

public scrutiny or awareness, so this is a poor barometer of whether conduct is appropriate or whether a conflict is significant. Further, there is no ready way to pre-define what would be considered a controversial matter, and use of a subjective term like controversial, without a strict and easily understood definition could just create confusion and a potential increase in complaints due to each party having differing views on the importance of a matter.

In addition, the issue of relevance of a vote cannot be known by a Councillor prior to the conduct of a meeting. In the view of Council, it is not possible or desirable for a Councillor to know ahead of time the proposed voting intention of other Councillors, which they would need to know for this proposal to be viable. The OLG, and the ICAC have previously released a range of guidance papers about the inappropriateness of binding caucus votes, including the current Model Code of Conduct prohibiting such conduct. Whilst checking with other Councillors about their intended voting on a matter would not constitute a binding caucus vote, it does encourage a Councillor to discuss with others a matter they have a known interest in. This approach is antithetical to the intended outcome of removing Councillors from matters in which they may have an interest.

The only subjective measure that can be applied to the strength of non-pecuniary conflicts of interest is the relative strength of the relationship between Councillor and the party that may benefit/detriment from the decision and the relative strength of such impact.

Property Developers and Real Estate Agents

Council acknowledges that the conflicts of interest that exist between a councillors' public duties to make decisions on behalf of communities and the private interests that exist in securing a profit as a developer or real estate agent can create a significant cause for concern for some communities. Simple divestment by a Councillor of assets, or business holdings relating to property development, or real estate activities would not be an effective control if family members or close associates of the Councillor would still undertake those activities on those assets or holdings. Council believes that more detail would be required on any proposed legislated divestment schemes for Councillors before an informed opinion could be reached on the measure.

Given the specified risks that these roles and activities bring, it is worth noting that the current Model Code of Conduct does not make any reference to property development or real estate activities in the sections of the Code (Parts 4 and 5) relating to both pecuniary and non-pecuniary interests. Any updates to the Code of Conduct should include specific reference to these types of activities in the definitions and examples of conflicts so that the level of risk of these activities is appropriately reflected. Consideration should also be given to ensuring that remote and rural councils, with their small population bases, are still able to be represented by individuals from within their community if these provisions are enacted, as in small communities there is a high likelihood of business owners being elected as Councillors.

Councillor Misbehaviour in Public Office

Council sees no concerns with the first two limbs of the proposed misbehaviour definition (conduct that is unbecoming of a councillor or brings council into disrepute) as both principles have been tested in law and there is sufficient definition in case law. However, Council believes that there will still need to be sufficient guidance materials provided to Councils and Councillors as to the main points of these case law precedents as most elected Councillors will not have knowledge of these decisions nor will they be from the legal profession.

The third limb of the misbehaviour definition is proposed as *"Is assessed as being outside the norms and expectations of a sitting councillor"*. Council notes that adjudication of this test is proposed to be undertaken by a 'Local Government Privileges Committee' (Privileges Committee). Council will provide comment on the Privileges Committee itself later in this submission. It is noted that the intent of this provision would be to allow consideration of behaviours and actions of a sitting councillor which are considered egregious or problematic that are otherwise not captured by the other elements of the definitions. In general Council is supportive of such a provision, however much more detail is required

in relation to any steps, procedures, considerations or methodologies that the Privileges committee would be required to utilise in determining whether behaviour of a Councillor is considered *outside the norms and expectations of a sitting councillor,* to ensure uniform application of this definition across all councils, councillors and types of behaviour.

Council does not believe that these principles should apply in isolation to poor behaviour by Councillors in meetings. A detailed listing of inappropriate behaviour by Councillors in Council and Committee meetings should be defined and included in the Model Code of Meeting Practice, with specific reference that such behaviours could constitute misbehaviour on the part of a Councillor and could be referred to a Privileges Committee.

Additionally, the use of the term "norms and expectations" could inadvertently lead to an increase in complaints for several reasons. Firstly, the fact that norms and expectations are seen from an individual perspective could result in increased numbers of complaints because individuals will have different interpretations of the appropriate standards of those in elected office. Secondly, any vague terms or definitions in the Code will increase the potential for complaints, including those that may be politically motivated, as there will be no pre-determined threshold of what constitutes required behaviours.

Inappropriate Lobbying

Council is supportive of lobbying guidelines and a mandatory model lobbying policy for all Councils and would welcome the opportunity to provide feedback on a draft framework once established by the OLG.

Proposed Dispute Resolution and Penalty Framework

Details:

The OLG has proposed a range of changes to the current framework for lodgement and consideration of complaints with the main changes being:

- Abolishing the current two-step complaint process and replace with a process whereby
    - Conflict of interest complaints would be made directly to the OLG
    - Misbehaviour complaints would be made directly to the Local Government Privileges Committee via a dedicated webform
- The OLG can issue PINs for minor or insignificant breaches of conflict-of-interest declarations
- Creation of a Local Government Privileges Committee
- Imposition of the following penalties by the Privileges Committee:
    - Censure of a councillor
    - Warning to a councillor
    - Where referred following misbehaviour in a council meeting, a loss of fees
    - Referral to appropriate body or tribunal for more serious sanction

Council submission:

A number or proposals for change are listed in this section of the Discussion Paper. Council's response to each individual item is provided below.

Abolishing the two-step process

Council notes that the current process for complaints against Councillors, requires the General Manager to make an initial assessment if the complaint is valid and decide as to resolve the matter by alternate or administrative means or referring the matter to a complaints coordinator within the council, who in turn appoints an external conduct reviewer to review the matter. The current arrangement of having General Managers having to receive or make any preliminary judgment on the veracity of a complaint against a Councillor puts the General Manager in a very difficult situation, particularly when a complaint against a Councillor is made by another Councillor. This situation is

problematic as it runs the risk of damaging the working relationship between the General Manger and the Councillor/s, and a good working relationship between the General Manager and the elected Council is critical for the success of any Council. As such any amendments to the complaints framework that removes the General Manager from this process is welcomed by Council.

Council would be supportive of conflict-of-interest complaints being made directly to the OLG and for misbehaviour complaints to be made directly to a Local Government Privileges Committee subject to each body having sufficient resources available to deal with such matters in a timely manner. Any complaint against a Councillor, particularly those lodged by another Councillor, run the risk of being damaging to the smooth and efficient conduct of the business of the elected Council. This risk increases the longer it takes for a complaint to be dealt with. Sufficient resources should be provided to each body to allow them to complete the investigation phase of any matter within three months of lodgement, with the relevant hearing of the matter by the relevant body to occur as soon as possible after that date.

Whilst Council is supportive of the removal of the General Manager from the complaints handling process, the proposal to allow the lodgement of complaints via a web portal could significantly increase the likelihood of an increase in complaints as it would remove effort related barriers that may currently prevent small, frivolous or vexatious complaints.

Issuing of Penalty Infringement Notices by the OLG

Whilst Council is supportive of any approach that allows for minor matters to be dealt with expediently, the only minor matters that the discussion paper mentions that might be subject to the application of Penalty Infringement Notices are minor or administrative breaches of conflict-of-interest provisions, such as inadvertent failure to lodge a return of interests. From experience there is unlikely to be a great volume of complaints relating to failure to lodge annual returns so the expected benefit in resourcing is difficult to foresee.

There is potential merit in a PIN process for defined "minor" matters, however the OLG should develop criteria or definition of the proposed "minor" offences and the relevant values of the PIN/s. As the PIN's would be intended for minor matters, they should only be applicable for the first offence of a particular type by a Councillor and be capped at 2% of a Councillors annual fee or $500 whichever is the lowest. In addition, any PIN should be able to be appealed by a Councillor.

Establishment of a NSW Local Government Privileges Committee

The discussion paper indicates that if a Privileges Committee is established that it *would be made up by a group of experienced mayors and ex-mayors from across NSW to ensure that a variety of perspectives and experiences are considered.* Council believes that the proposed constitution/membership of the Privileges Committee specified in the Discussion Paper is inappropriate and inadequate and should be expanded to allow for a genuine variety of perspectives and experiences. It is not appropriate for any current Mayors or Councillors to be members of such a Committee due to the very significant risks that political opinions and issues may influence the operations and decisions of the Committee.

Council proposes membership of a Privileges Committee, if established, should be as follows:

- A representative/s appointed by the Minister for Local Government
- A former Mayor/s and or Councillor/s appointed by Local Government NSW
- A representative/s from the public
- A former employee/s of the NSW local government sector appointed by a relevant body
- A Chairperson who is either a current or former judicial officer or an Australian lawyer of at least seven years' standing and should have high level leadership, judgment and management skills (Equivalent to requirements to be a member of the NSW Civil and Administrative Tribunal).

Given the serious matters that may be considered by the Committee and to ensure that appropriate process is followed in all matters it is considered appropriate that the Committee be chaired by a person with an appropriate legal background.

The establishment and operations of such a Committee would be a complex and critically important matter and significantly more details would be required in relation to membership, thresholds for matters to be considered, tests or procedures to be used to determine outcomes, whether legal representation for participants would be permitted and a range of other issues. Such an important vehicle should be appropriately designed in detail and then consulted with the local government sector. Such a significant shift based on an idea discussed in a few brief paragraphs is inappropriate.

Penalties that may be imposed by a Privileges Committee

The imposition of censures and warnings as proposed penalties that may be imposed by a Privileges Committee, if established, are appropriate for the types of matters that will be considered by the Committee. However as with the above section, the issuing of fines or loss of Councillors allowances is a very significant matter and more detail on how this would operate would be required to allow an opinion to be formed on the appropriateness of such an approach.

The aim of the discussion paper was to remove burdens and inefficiency from the complaint management approach, as such allowing the Privileges Committee to refer matters to an appropriate tribunal or body for sanctions is inefficient. If a matter is of a type that would warrant such serious action, they should be referred directly to the OLG to refer to the appropriate tribunal or body, to avoid double litigation of the same issue.

Restoring Dignity to Council Meetings

Details:

The OLG has proposed a range of changes to Council Meetings and Councillor Briefings with the main changes being:

- Amendments to code of meeting practice that include:
    - Confer powers to mayors to expel councillors for acts of disorder
    - Requirement for councillors to apologise for acts of disorder at the meeting which it took place, or each subsequent meeting until the comply. Each failure to apologise becomes an act of misbehaviour and loss of fee
    - Councillors will be expected to stand (where able) when address the meeting, or when the mayor enters the chamber
- Banning Briefing sessions to Councillors

Council submission:

A number or proposals for change are listed in this section of the Discussion Paper. Council's response to each individual item is provided below.

Powers for Mayors to expel Councillors for acts of disorder

Council acknowledges the need for mechanisms to allow the expulsion of a Councillor for an act of disorder, but only if the Councillor fails to or refuses to make an immediate apology for the act of disorder.

There are currently non-mandatory provisions in the Model Code of Meeting Practice (cl15.14 – cl15.16) to allow the expulsion of a Councillor from a Council meeting, subject to a resolution of the Council or Committee. Council believes that these provisions are sufficient. If there are concerns with the need for a defined process in this area of meeting operations, clauses 15.14 to 15.16 in the Model Code of Meeting Practice should be mandatory and binding on all Councils.

Council is not supportive of the Mayor being conferred the power to remove a councillor's entitlement to receive a fee for the month in which they have been expelled from a meeting. As the imposition of such a financial penalty would be considered a serious punishment, Council believes that the appropriate body to consider such penalties for acts of disorder should by the OLG or a tribunal or judicial body, but not the Privileges Committee.

Council is concerned that giving Mayors the power to remove/dock/suspend Councillor payments would be a breach of the separation of powers doctrine. The NSW Parliament website highlights the important of this doctrine, with the following wording being drawn from the NSW Parliament website:

> *The doctrine of the separation of powers in the Westminster system is usually regarded as one of the most fundamental tenets of liberal democracy.*
>
> *The doctrine of the separation of powers divides the institutions of government into three branches: legislative, executive and judicial: the legislature makes the laws; the executive puts the laws into operation; and the judiciary interprets the laws. The powers and functions of each are separate and carried out by separate personnel. No single agency is able to exercise complete authority, each being interdependent on the other. Power thus divided should prevent absolutism (as in monarchies or dictatorships where all branches are concentrated in a single authority) or corruption arising from the opportunities that unchecked power offers. The doctrine can be extended to enable the three branches to act as checks and balances on each other. Each branch's independence helps keep the others from exceeding their power, thus ensuring the rule of law and protecting individual rights.*

The proposed powers for the Mayor to remove entitlement for a Councillors fee would be an unchecked power and has the very significant risk of misuse for political reasons. Council is not aware of any other elected official, other than Ministers of the Crown that have the power to issue fines, financial penalties or equivalent.

Powers for Mayors to expel members of the Public for acts of disorder

Council is supportive of the Mayor being conferred the power to expel a member of the public for an act of disorder. However, Council is not supportive of the Mayor being conferred the power to issue a Penalty Infringement Notice. Council is not aware of any elected official in any tier of government, other than Ministers of the Crown, that has the power to issue a fine or infringement to a member of the public. Council would be supportive of the Mayor or General Manager being able to refer a member of the public who has been expelled from a Council meeting to the OLG to consider the issuing of a Penalty Infringement Notice.

Banning of briefings

Council is supportive of the need for transparency in decision making to help mitigate corruption risks and to support good decision making. However, Council is not supportive of any proposal to ban briefings to Councillors as outlined in the Discussion Paper.

Council does not make decisions in briefings, as required by the Code of Meeting Practice.

It is important to note that the General Manager and senior staff of a Council may hold a variety of workshops, facilitated discussions and briefings with Councillors about a range of matters, that may or may not be before the council for imminent consideration. Councillor workshops are often held with Councillors to plan initial drafts of a range of documents in the Integrated Planning and Reporting Framework, or to discuss other concepts that are still in the development phase. If these discussions were made available to the public, it could lead to misinterpretation of concepts and ideas that have not been fully explored by the Council and may lead to community distrust and dissatisfaction with Council.

Council is not supportive of prohibiting the holding of briefings for Councillors due to the following:

- Removes the ability to discuss scenarios and ideas in a safe environment. Councillors may be less likely to ask "the silly question" in a public forum leading to less information informing decisions

- Committees are inefficient and create a resource burden on Council to present required information in that forum. This will make the operations of Council less efficient. Administrative staff would need to attend and minutes to be documented
- If questions cannot be answered in the Committee format, a higher rate of deferral of reports is likely to occur. Again, this would impact on the timeliness and efficiency of Council decision making

Whilst not supportive of the proposal, Council submits that if such a proposal proceeds that a very clear definition of what a briefing is needs to be provided in the legislation. The Discussion Paper provides the following proposed approach:

> *Any material provided to councillors, other than the mayor, that will affect or impact or be taken into account by councillors in their deliberations or decisions made on behalf of the community must be provided to them in either a committee meeting or council meeting*

Council proposes that information could only be deemed to be information that could *"be taken into account by Councillors in their deliberations or decisions"* if it is information that pertains to a specific report or matter to be considered by the Council or a Committee. As such the only workable definition of a prohibited briefing would be any briefing to Councillors about a report/s that have already been published to the public and are on the agenda for an ordinary, extraordinary or Committee meeting of Council.

Councils should maintain the right to hold discussion workshops with Councillors to help inform project and policy ideation if such workshops are held before the drafting of any report to Council. Such workshops should be closed to the public.

Additionally, briefings to Councillors that are closed to the public should be able to occur at any time in the following circumstances

- To discuss matters that are confidential in accordance with s10 of the Local Government Act 1993
- Where state or federal agencies request to present to Council as part of their stakeholder engagement or regulation and oversight activities
- When Council is considering information relating to the application and implementation of Public Health Orders.

The proposal that such limitations would not apply to the Mayor is problematic for several reasons:

- Providing the Mayor with more information than other Councillors about a matter before Council would empower the Mayor over Councillors in a way that is undemocratic.
- The Discussion Paper clearly states that the intention of the prohibition of briefings is to ensure that members of the public impacted by the council's decision are aware of what the councillors have been told or what has been discussed. The public would similarly expect to be made aware of such information provided to the Mayor.
- The Mayor may, for political or other reasons, then provide that information only to a portion of the elected Councillors and not others creating an uneven and likely in the long run distrusting and ineffective Council.
- Council submits that Council business papers should contain sufficient detail and information to inform recommendations made, including an overview of any information provided to councillors regarding the matter under consideration. This practice is undertaken by many councils, including Wollongong, and would be a practical solution to improve transparency in decision making for all councils whilst still allowing councillors to effectively undertake the role they have been voted by the community to perform.

CMA Submission

"Councillor Conduct and Meeting Practices" Discussion Paper

29 November 2024

The Country Mayors Association of NSW (CMA) represents 87 member mayors and their councils, together with five associate members throughout non-metropolitan NSW.

The CMA is a politically bipartisan organisation that has a long and respectful relationship with successive State leadership teams over the past 45 years in NSW; it is our strong desire to maintain that respectful relationship whilst communicating the hopes and aspirations of our rural and regional communities to ensure the ongoing prosperity of NSW. The NSW CMA stands firm on our pursuit of equity of service provision for our membership.

The CMA is optimistic that input from individual Councils and representative bodies such as the CMA and LGNSW will assist the Minister, the Hon. Ron Hoenig MP and the Office of Local Government (OLG) to achieve the objectives promoted in the media release **"Proposed reforms to stamp out bad councillor behaviour and increase transparency in local government"** [Thursday, 5 September 2024].

Detail about the CMA is available at:
About - The Country Mayors Association of NSW Inc

The Riverina Eastern Regional Organisation of Councils ("REROC") has produced a submission that the Executive Board of the Country Mayors Association (CMA) feels encapsulated the views of our members. The CMA fully endorses the REROC submission, with the addition of other concerns regarding:

"Dispute resolution and penalty framework" and "NSW Local Government Privileges Committee".

The CMA also wholeheartedly endorses motions from LGNSW, as outlined below.



Dispute resolution and penalty framework

Instead of the existing two-step process:
• Complaints about conflict-of-interest matters would be made directly to OLG, and
• Complaints about misbehaviour would be made directly to the Local Government Privileges Committee via a dedicated webform
CMA members generally support these dispute resolution pathways, providing they are adequately resourced to ensure efficient outcomes.

Where the OLG may issue Penalty Infringement notices (PIN), CMA members recommend they be proportionate but where appropriate. A Penalty Infringement Notice issued by the OLG for a pecuniary interest matter would need to be weighted, according to allowance/fees councillors receive because it can vary greatly between a small rural Council and a metropolitan Council. Some members may be concerned that a fine or PIN would be too high, relative to their remuneration. However, this could actually mean that where councillor fees are particularly low in value, as can be the case in rural and regional Councils, the penalty might not be adequate as a deterrent or consequence.
As per CMA advice regarding PINs, a misbehaving councillor might not be deterred if they are in a smaller council and the loss of a sitting fee only amounts to $1,000. It is not sufficient income that they would be depending on it for any meaningful purpose, while a councillor in a larger Council could be penalised twice as much with a loss of a sitting fee or one month allowance.

NSW Local Government Privileges Committee

Country Mayors, Councillors and senior staff already have extreme demands on their time. The CMA supports the concept of the NSW Local Government Privileges Committee in principle but advises of concerns such as how the Committee membership would be decided, funded or resourced.

Efficient time frames are a concern and behavioural matters considered sufficiently serious would have a three-step process.
Council > NSW Local Government Privileges Committee> OLG> “an appropriate tribunal or body”

The CMA welcomes the OLG’s engagement with and involvement of its members in this important process, though it advocates for embedding resourcing levels and time frame expectations with the framework.

A motion endorsed at the 2024 Local Government NSW annual conference determined that Local Government NSW write to the Minister for Local Government to:

1. Commend the Minister for prioritising the review of the Councillor Conduct Framework, as this is something that LGNSW has long been calling for;
2. Request that the NSW Government consult with the local government sector on the guidelines for the selection and appointment of privileges committee members;
3. Advocate that Privileges Committee members be required to come from the sector (local government experience) and have a limited term;
4. Advocate that councils retain discretion to hold informal briefings and workshops with councillors as a supporting mechanism to formal meeting and committee structures; and
5. Request that the Minister consult with the local government sector further on the powers proposed to be given to mayors to suspend councillors from council meetings, including implementing financial suspensions for similar periods.

The Country Mayors Association further endorses these points.

Yours sincerely,

Gary Fry
Secretariat
Submitted on behalf of the Country Mayors Association of NSW Inc.
E: admin@nswcountrymayors.com.au
P: 0427008572

Contact: Jessica Quilty

29 November 2024

Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

Via email: councillorconduct@olg.nsw.gov.au

RE: COUNCILLOR CONDUCT FRAMEWORK REVIEW

Thank you for the opportunity to provide feedback on the discussion paper *Councillor Conduct and Meeting Practices.*

Council generally supports the proposed changes to the code of conduct and oath of office, definitions and assessment of councillor misbehaviour, dispute resolution and penalty framework.

However, Council considers the banning of briefing sessions to be excessive and goes against the very 'principles of change' outlined in the discussion paper, in particular, Council leadership and decision making is paramount, freedom of speech, transparency and accountability.

Briefing sessions are designed to be interactive. They involve presentations from staff and external parties on complex matters which allows Councillors to gain an in-depth understanding on particular matters. The presentations are visually appealing, provide a structured framework for organising information and allow for greater audience engagement. The style of briefing sessions also allows for ideas to be generated and alternatives sort regarding complex issues facing Council. These issues are then presented to Council which are debated openly.

Information provided to Councillors at Council or Committee meetings are in report format. Reports, if not well structured, can be overly complex making it difficult for readers to extract key insights. Reports on complex issues can also overwhelm readers with too much information, leading to confusion rather than clarity.

Unlike the example given in the discussion paper (development applications), topics usually discussed at workshops are multifarious and include the Integrated Planning & Reporting framework (IPR), policies, projects, agreements etc.

By removing briefing sessions, Councillors ability to provide leadership and make informed decisions on behalf of their community is reduced. This will especially have adverse impacts on new Councillors that have not acquired the knowledge and understanding on complex subjects. Without this background knowledge, items of business on the agenda will either be deferred for further information, prolonging the decision making process, or extend the Council meeting timeframe. The chances of Councillors potentially moving unlawful resolutions would also increase due to a lack of understanding on particular matters.

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The discussion paper also suggests that only the Mayor would have the opportunity to have briefings and not Councillors. This is inconsistent with the principles contained within the OLG Model Councillor and Staff Interaction Policy which states *"information necessary for councillors to exercise their civic functions is made equally available to all councillors"* This makes it extremely difficult for Councillors to be accountable, speak freely and advocate for the interests of their community if they are excluded from information provided to other elected representatives (Mayor).

Please do not hesitate to contact me should you require additional information at 1300 275 782 or by email at info@svc.nsw.gov.au

Yours Sincerely,

[redacted]

Jessica Quilty
ACTING GENERAL MANAGER

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Ref: D24/85413

29 November 2024

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

Dear Sir/Madam

RE: Submission regarding Councillor Conduct and Meeting Practices Discussion Paper

Kempsey Shire Council welcomes the opportunity to make a submission regarding the Councillor Conduct Framework Review.

Are we missing anything in the principles of change?

Council agrees with the fundamental need for change and principles of the change as proposed by the Councillor Conduct and Meeting Practices Discussion Paper. In doing so Council notes that both the issues highlighted in the discussion paper, and outcomes sought to be achieved, have already been considered by the previous review of the Councillor Conduct Framework undertaken by Mr Gary Kellar PSM.

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

A Code of Conduct should address:

- conflicts and disclosures of interest,
- gifts and benefits,
- lobbying,
- access to information,
- privacy,
- work health and safety,
- improper influence of council staff,
- use of council resources,
- compliance with laws and regulations, and
- behaviour in public office.

Additionally, like the current model Code of Conduct, provision must be made for administration and integrity of the code.

The use of the term “aspirational” however is not fitting. It suggests that the standards set by the code are something to be aspired to, a hope or a dream, but not necessarily reached. The Code of Conduct needs to set out clear and enforceable expectations regarding the conduct of public officials.

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

The existing Oath of Office can easily be amended to also include a commitment to uphold Council's Code of Conduct. However, the existing content of the Oath should be retained. The Oath of Office is a solemn vow to act in the best interests of the community and is a more significant commitment than to simply complying with the Code of Conduct.

Is the proposed pecuniary interest framework appropriate? Is anything missing?

The proposed pecuniary interest framework appears to be appropriate. However, if implemented it should be reviewed within the first full term of council to which it applies.

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

The principles of what constitutes a significant or major non-pecuniary interest appear appropriate. However, if implemented it should be reviewed within the first full term of council to which it applies.

Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

Council does not support the proposed changes regarding property developers and real estate agents. It is noted that an outright ban on property developers and real estate agents would be unconstitutional. It is unclear how the requirement to divest would be any different.

However, rules could be made to ensure appropriate disclosure of property development or real estate interests need to be made by candidates prior to their election.

Is this the appropriate threshold to face a Privileges Committee?

The thresholds for facing a privileges committee appear appropriate. However, Council holds concerns regarding the costs of operating such a committee and the risk that committees made of current, or former, mayors could be politicised or fail to deliver impartial decisions.

There are several other questions that demand answers surrounding the implementation of a privileges committee. How are conflicts of interest dealt with? Many mayors are known to each other, what checks and balances will be put in place? What qualifications does a member require beyond being a mayor or ex-mayor? What legal costs are likely to arise and who is responsible for them?

Whilst recognising that many mayors or ex-mayors have qualifications and experience that would serve the Privileges Committee this is not universally true, and there are other people both inside and outside the sector that could positively and effectively contribute.

How else can complaints be minimised?

Complaints can be minimised by:

- Better triage – more complaints should be declined at the outset
- Setting a higher bar for complaints – complaints should not be progressed unless, if found to be a breach, they will lead to meaningful outcomes for communities

- Administrative responses – those complaints that are not dealt with could still lead to an administrative response such as a caution, or warning, with no finding made.

Complaints could effectively be triaged by an adequately resourced central body. Council supports the removal of general managers from the triage process. The existing code contains significant provisions to decline complaints at the outset but provides inadequate guidance and incentive for general managers to do so.

The Code of Conduct should not create, or contribute to, an adversarial relationship between councillors and general managers.

It is noted that the current Code of Conduct allows general managers to delegate their functions, doing so under the existing code could be normalised. This could be either to appropriately qualified and experience, independent Council staff, where available or to suitable external parties.

What key features should be included in lobbying guidelines and a model policy?

The following key features should be included:

- Lobbyists must be registered.
- Lobbying of councillors should be disclosed to the public.
- Councillors should not meet alone with lobbyists.
- Records must be made of meetings with lobbyists.
- Councillors should meet with lobbyists on council premises.
- Information provided by lobbyists must be shared with the general manager.
- Lobbyists should be required to put their case in writing.
- Individual members of the public representing only their own interests should not be classified as lobbyists; however, some organised community groups may fit the definition.

What level of PIN is appropriate?

PINs should only be permitted for offences which are unequivocal violations of the code, and not for those that require considered judgment or subjective decision making.

The level of the PIN should be commensurate with the seriousness of the offence in contrast to a councilor's fees. The amount of a PIN should not exceed one month's fees for any given councillor.

The potential to face personal liability for conduct in office should not become a disincentive to stand for public office.

Are the penalties proposed appropriate, and are there any further penalties that should be considered?

The proposed penalties appear appropriate for the privileges committee.

However, any censure needs to include sufficient detail of the substance of the findings to make the public aware of the seriousness of the findings.

Are the existing sanctions available under the Local Government Act sufficient?

The existing sanctions available under the Local Government Act are insufficient. A broader range is required, including but not limited to apologies, counselling and training. Ideally, the full range of sanctions that were available before the Cornish decision should be returned.

Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

Sanctions could be applied by the Departmental Chief Executive for unequivocal violations of the code, and not for those that require considered judgment or subjective decision making. Judgments should be made by formal courts or tribunals.

Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

The model code of meeting practice currently includes an optional provision allowing a mayor to remove anybody from the meeting for acts of disorder without a resolution from the council. This clause should be made mandatory. Popularly elected mayors do not always enjoy the majority support of the chamber, and the need for a resolution to deal with disorder is undesirable.

The use of short-term expulsions (for example 10 or 15 minutes) of councillors who commit acts of disorder could be considered, like the system of “calls” used by the speaker in NSW parliament. Mayors currently have little power to deal with councillors who need to be repeatedly called to order.

Are there any other measures needed to improve transparency in councillor deliberations and decision making?

Council strongly opposes the banning of briefing sessions. Briefing sessions are an invaluable opportunity for councillors to receive information and formulate questions in an informal setting.

Councils frequently deal with sensitive, complex and highly technical matters. Briefing sessions offer councillors the opportunity to explore and understand these matters deeply before proceeding to make informed decisions at an open Council meeting.

The Code of Conduct already prohibits the making of decisions in briefing sessions. If there is any evidence of this occurring, then action should be taken against those participating in such conduct.

The banning of briefing sessions will also likely have perverse outcomes, such as an increase in the amount of business dealt with in a closed session, or the formation of additional committees that hold closed meetings.

Furthermore, it would result in less informed councillors. In the absence of private briefings councillors could only be informed on matters that were suitable for disclosure in front of a public gallery.

Additional guidance should be provided to councils to implement the code of conduct, including guidelines regarding common types of less serious misconduct and recommended strategies for dealing with it.

Finally, as LGNSW noted in its submission to the Keller review, the deficiencies in the current Code of Conduct process result from its implementation rather than its design. Many of the proposed actions can be taken under the existing model Code of Conduct and supporting procedures.

Yours faithfully



Daniel Thoroughgood
GROUP MANAGER GOVERNANCE AND INFORMATION SERVICES

29 November 2024

Brett Whitworth
Strategic Policy Unit
Office of Local Government

Via email: councillorconduct@olg.nsw.gov.au

Dear Mr Whitworth,

Council Submission regarding: Councillor Conduct Framework Review

Coffs Harbour City Council (Council) welcomes the opportunity to make a submission on the review of the Councillor Conduct Framework.

In the Council's experience, managing code of conduct complaints is expensive and resource intensive, often with very little achieved by way of outcomes as the system is exposed to political motivations and relationship issues. The Council therefore welcomes the Council Conduct Framework review.

The Council is broadly in support of the discussion papers principles, however until the Council is provided with more specific detail on how the framework will look including draft documents and potential financial impacts, it is difficult to provide detailed feedback on the appropriateness of any recommended changes.

The following sections provide feedback on aspects of the draft framework:

Changes to the Code of Conduct and Oath of Office

The Council is in favour of ensuring any Code of Conduct or similar provides enough detail to assist staff and Councillors on how to navigate their responsibilities. Further to this, the aspirational aspects of the Oath and Affirmation can still be detailed in a revised Code of Conduct. However, any changes should seek to reduce the need for interpretation, not increase it.

Potential changes to the definitions and assessment of Councillor misbehaviour

The Council supports the proposal to better define and articulate misconduct and would like the framework to provide examples of behaviour that will be captured by the definitions.

Conflicts of interest

The Council, in principle, supports the proposed pecuniary and non-pecuniary interest framework. However, any changes need to have enough information to assist Councillors in deciding and identifying a conflict and the expected actions.

The Council recommends that OLG, (or designated independent body) should be the agency responsible for investigation all complaints relating to conflicts of interest, not just pecuniary.

Conflicts of interest are an issue because of bias or personal interest impacting decision making and should be investigated the same way regardless of whether a conflict is financial or relational.

Additionally, there should be greater incentive and penalties for Councillors who do not complete their annual returns, keep them updated or provide full disclosure.

There should be explicit advice on the treatment of campaign donations in relation to disclosure and management of pecuniary interests. There needs to be a clear direction that those donations be disclosed and that a significant donation creates a conflict of interest.

Code of Conduct Complaints

The objective of greatly reducing the scope for complaints is a worthy one, as is the removal of the role of Code of Conduct reviewers. To the greatest extent possible, complaints and disciplinary action should be managed by a judicial or quasi-judicial body.

While I support the general direction proposed under the changes, there must be more detail on how the review bodies would work, their scope and capacity to conduct an investigation and the right to appeal a ruling.

Privileges Committee

The Council supports actions that removes General Managers from the conduct framework and complaints process. The Council is the General Manager's employer and there is a perceived conflict in their administration of actions arising from complaints. This exposes General Managers to retribution and potentially creates sources of friction in relationships.

The Council is supportive of a separate body being established to receive, assess and deal with allegations misbehaviour. However, we do have concerns with the privileges committee being made up of mayors and ex-mayors as they may be exposed to political bias. Those appointed should be appropriately experienced and qualified in dealing with judicial processes (e.g. judges, tribunal members etc.).

The Council does not believe those responsible for determining penalties and guilt need to be elected. The NSW justice systems do not rely on elections, so why would we seek to elect them for local government.

Property developers and Real Estate Agents

The Council supports strengthening legislation to reduce risk of fraud, corruption that may arise from any industry and its relationship to Council decision making, including real estate and development. However, this needs to be balanced to prevent limitations or restrictions on who is eligible to become a Councillor.

Placing an expectation to divulge of a profession may have same result as making the person ineligible to seek election. The current pay provided to Councillors is poor and highly restrictive so asking a someone to cease their employment or profession means that the Councillor could face increased financial pressures during their term. This could increase risk of fraud and corruption and also reduces the pool of available community members willing to seek election.

The Council recommends that the NSW Government consider further investigating the mandating of local planning panels and ensuring that real estate agents and developers are ineligible from being appointed to these panels.

The Council supports legislation that prevents sitting Councillors from taking on these professions after becoming a Councillor.

Transparency and Briefing Sessions

The Council strongly oppose any prohibition of Councillor briefing sessions. While Councils must operate with a high degree of transparency, the proposal to make all briefings public would impose a serious constraint on Councillors asking questions and exploring options. It is critical that there is an opportunity for councillors to seek advice, ask difficult questions and reach a point where they can bring an informed view to meetings. Briefings are an important function that enable Councillors to discuss the details of often large business papers after they have read them, but prior to making important decisions at Council meetings. Briefings also provide the opportunity for subject matter experts to be available to provide Councillors with any information they need. It also provides staff the opportunity to investigate queries and to ensure Councillors have the information required to inform their decisions at Council meetings.

Decisions are not made at briefings; they are made at Council meetings.

The Council recommends that NSW agencies should not make broad allegations suggesting all Councils are inappropriately using briefings as this damages the communities trust in our entire sector.

Councillor Freedom to Speak

Councillors should be free, within the broader State and Federal legal framework, to express their views and the views of their community, regardless of whether those views are consistent with Council decisions.

It is a freedom afforded to representatives at all other levels of Government and Councillors should not be denied their right to speak freely. Of course, Councillors should refrain from personal attacks on each other, but there is room for vigorous public debate on issues that Council deals with.

Power of Mayor

The Council supports greater powers of Mayors to manage disorder during meetings, but do not believe Mayors should have the capacity to impose financial penalties. The Council in not aware of any other elected representatives that have this capacity, the Mayor should not be different. Fines and financial penalties should only be imposed by authorised and impartial processes.

Addressing inappropriate Lobbying

The Council has no concerns about addressing Lobbying.

Other considerations

The Council recommends that the Office of Local Government review processes for adopting or amending special documents (e.g. Codes Meeting Practice and Code of Conduct) should provide a higher standard for resolution (e.g. two thirds of Council adopt changes, not just quorum).

The Council recommends that the Office of Local Government review the processes around the dismissal of General Managers should be considered. For example, if a Council seeks to dismiss a general manager within their contract period, it should be referred to a third party to ensure appropriate grounds and reduce risk of bullying threatening tactics. Also, there should be higher thresholds for resolutions to dismiss general manager (e.g. two thirds of Council adopt changes, not just quorum).

From:	Daniel Kneipp
To:	OLG Councillor Conduct Mailbox
Subject:	Councillor Conduct Framework Review
Date:	Friday, 29 November 2024 11:17:13 AM

Good afternoon,

I am writing in response to the proposed changes to the Councillor Conduct Framework. While I support initiatives to reform council proceeding so that the ratepayers are best represented, I hold serious concerns about the proposal to install power to the mayor to deal with disorderly conduct (page 17).

All the councillors and the mayor are elected individuals, who are responsible for representing the will of those who elected them there. By allowing one individual (the mayor) to make the executive decision to censor any councillors who they don't agree with is an attack on the wishes of the electors. It enables a mayor to expel any councillor(s) that may be an obstacle to their agenda, so is not representative of what a council is elected for.

Reform in councils may be needed, but by implementing all items outlined in the Councillor Conduct Framework, you are eroding the value of all elected councillors, placing complete power in the hands of the mayors, and opening councils up to legal action whenever a councillor is suspended at the will of one individual.

My feedback: do not enable the mayors to have sole executive decision to suspend an elected councillor, but offer and alternative mechanism - similar to ICAC - who can act as an independent body (but in a quicker manner). This framework is flawed as it enables one elected official to have control over another. This is a control not enforced at a state or federal level, and sets a dangerous precedent at the local level, which does not provide fair and equitable consideration for all elected officials. These reforms cannot be implemented.

If you need anecdotes from my LGA to support this position, feel free to ask.

Regards,

Daniel Kneipp



Councillor Conduct Framework Review Submission

Liverpool Plains Shire Council

liverpoolplains.nsw.gov.au

Liverpool Plains Shire Council welcomes the opportunity to provide comment on this proposed framework within the Councillor Conduct and Meeting Practices Discussion Paper.

We wish to state at the outset, that in recent times, we have had very few code of conduct complaints or occasions of the type of behaviour that this proposed framework is seeking to remedy.

Executive Summary

In attempting to solve a particular problem, it is considered useful to state quite explicitly what the problem is in order to determine whether the proposed remedies will in fact address the problem.

It appears that the problem is summarised on page 4 as follows:

"*The **volume** of **frivolous** complaints is **crowding** out the ability of the OLG and the sector to adequately deal with councillors who **abuse** their office or cause **serious** governance problems."* (emphasis added).

It would seem therefore that if this is the real problem that needs to be solved then some sort of triage system would separate the frivolous from the serious and allow time and resources to be better focused on addressing the serious matters.

There is also no commentary on why some councillors behave poorly. In society there will always be people who do not follow accepted norms of behaviour and councillors are obviously a subset of society. However, are there systems or process issues with NSW local government in particular that create or exacerbate that behaviour?

In reviewing all complaints, both trivial and serious, over the past few years, has the Office of Local Government determined any trends or themes in this regard, or is it considered that we are just dealing with humans and not all humans behave in the same way?

How do the complaints in NSW local government compare with other states or other levels of government?

Do we have to accept that politicians will be politicians and there will always be unacceptable behaviour?

While it may be beyond the scope of this framework, there appears to be no attempt to determine the root cause of the behavioural issues.

It is interesting to note that there are very few qualifications for a person to stand as an elected member in NSW local government.

In the OLG Guidelines for Risk Management and Internal Audit there are eligibility criteria for councillors to be appointed as a non-voting member of the council's Audit Risk and Improvement Committee such as:

To be appointed as a non-voting audit, risk and improvement committee member a councillor should demonstrate the following:

- *an ability to read and understand financial statements and a capacity to understand the ethical requirements of government (including potential conflicts of interest)*
- *a good understanding of one or more of the following: risk management, performance management, human resources management, internal and external auditing, financial reporting, accounting, management control frameworks, internal financial controls, governance (including planning, reporting and oversight), or business operations*
- *a capacity to form independent judgements and willingness to constructively challenge/question management practices and information*

- *a professional, ethical approach to the exercise of their duties and the capacity to devote the necessary time and effort to the responsibilities of a councillor member of an audit, risk and improvement committee, and*
- *preparedness to undertake any training on the operation of audit, risk and improvement committees recommended by the chairperson based on their assessment of the skills, knowledge and experience of the councillor member.*

There are no such eligibility criteria for councillors who have responsibility and accountability for the financial management of the councils. It appears that it is accepted that this poor behaviour will occur and what needs to change is how the unacceptable behaviour will be dealt with?

If that is the approach, then it appears that there are 3 key elements to any proposed solution:

1. Acceptable and unacceptable behaviour must be clearly spelt out and articulated preferably with examples so that expectations are clear and set up front. It is quite surprising how some people can interpret what "respectful" behaviour means in practice;
2. Should a councillor fall short of the accepted standards of behaviour, there should be mechanisms to deal with it in a timely fashion. If the poor behaviour occurs in a council meeting for example, the chair should have the authority and tools to address the behaviour then and there such as in state and federal parliament (noting that the role of speaker of the house is not the same as the chair). If the poor behaviour occurs outside of a meeting such as online, there must be mechanisms to refer the matter immediately to an independent authority where the matter can be triaged and determined quickly if the matter is frivolous or serious; and
3. There must be appropriate sanctions relative to the nature of the behaviour. There are established processes for performance management ranging from counselling, warnings and ultimately dismissal or removal from office. Such performance management must follow the principles of procedural fairness which includes dealing with the matter in a timely fashion.

We make the following recommendations:

1. The Model Code of Conduct should be reviewed to clearly state (preferably with examples) what is acceptable and unacceptable behaviour. This should not be an aspirational standard but outline expected standards of behaviour;
2. An Independent Complaints Office (ICO) should be established to receive and investigate complaints about alleged breaches of the Code of Conduct;
3. The ICO should have the requisite authority to impose appropriate sanctions relative to the nature of any breaches of the Code of Conduct; and
4. Councillor workshops are an important element in the successful exchange of information and ideas and should not be "banned". Councillors need access to information about the council's strategic position and performance to perform their civic functions effectively. The general manager and staff are responsible for providing councillors with this information to facilitate the decision-making process. Councillors are entitled to receive this information in writing and orally by way of presentations. Councillors are entitled to ask questions and seek clarification. It is noted and acknowledged that the only place where councillors make decisions is at a formally constituted council meeting.

Specific Comments and Questions on the Discussion Paper

Page 4 – Closed briefing sessions are being used to make decisions away from the public view.
This is a sweeping statement – what is the evidence to support it?

Page 4 - data relating to complaints.
What are the trends, is there evidence to show that numbers of complaints have increased?
Complaint Statistics – 2022-23 - Office of Local Government NSW

Page 5 – How councillors behave, how they deliberate and the responsibilities they hold should be modelled on how members of Parliament are expected to behave and act.

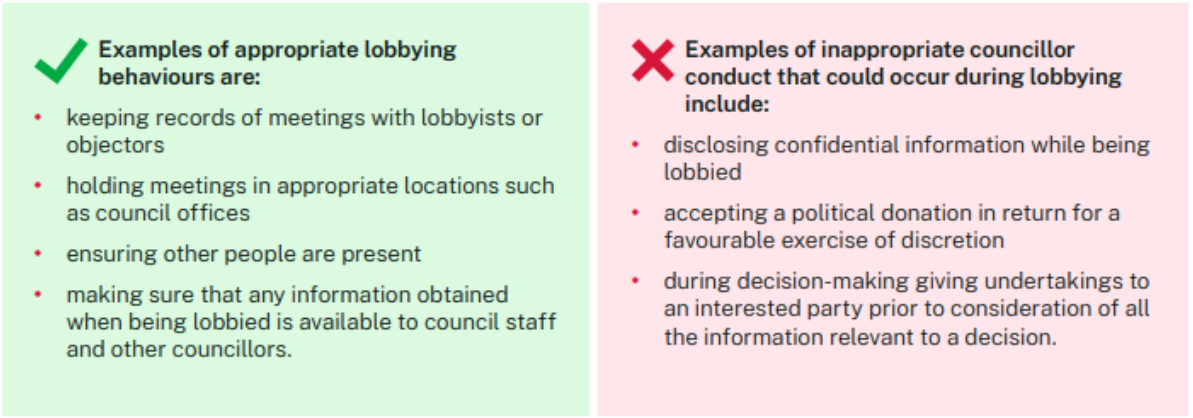
Have the Parliamentary standards improved member's behaviour?

Page 7 – freedom of speech

Yes, elected members should have the right to speak freely, however with two key provisos. One, that they like any other member of the public cannot use inciteful speech and two, that as elected members they are bound by the code of conduct and the decisions of council.

Page 8 – the aspirational Code of Conduct would not set out the definitions of misbehaviour

Why? The Councillor handbook Councilor handbook (nsw.gov.au) p 35 lists both helpful and unhelpful behaviours in a clear and meaningful manner:



… the revamped Code of Conduct will not seek to restrain the ability of a councillor to speak publicly on matters pertaining to the council, even when that councillor is disagreeing with, or being critical of the decisions of the majority.
Provided as above, the councillor is required to state the resolved position of the council, that they are expressing their own views and not the formal position of the council.
…aspirational code of expected behaviours instead of enforceable for local councillors
Why would the code not be enforceable?

Page 9 - …*receive a financial benefit as a result of a decision.*

Or disbenefit. Pecuniary interest can be a gain or a loss.

Page 10 - *Pecuniary interests*

It is one thing to **disclose** gifts or benefits received, but it is another whether such gifts or benefits should have been **received** in the first place. Councils are required to have gifts and benefits policies which provide guidance as to what gifts and benefits are permissible and these are usually of token value.

Page 11 – *To address this concern, an alternative means of managing the inherent conflict of councillors undertaking real estate and development business activity is being considered which involves requiring councillors to divest themselves from real estate or development business activities and contractual obligations*.

What does this mean? Does this mean that councillors will be required to cease these activities while a councillor? What if this is their primary source of income?

Page 14 – *Complaints about conflict of interest matters would be made directly to the OLG and complaints about misbehaviour would be made directly to the Local Government Privileges Committee via a dedicated webform*.

Removing the GM from the councillor complaint handling process is supported. There cannot be many other organisations where an employee is responsible for managing complaints about their employer. This creates an obvious tension regardless of the outcome of the process.

However it is suggested that an independent office be established to receive and investigate complaints in an impartial manner similar to the Independent Complaints Officer NSW Parliament or the Office of the Independent Assessor in Queensland.

It is unclear how a Privileges Committee, while perhaps designed to be a "jury of peers" would adequately manage perceptions of political bias along major party lines and other conflicts of interest noting that there are likely to be established relationships among those of the committee and those being reported to it.

Page 15 – *The Privileges Committee process would be paid for by either individual councillors or their councils, dependent on the outcome*.

What does this mean? Does this mean that if a councillor lodged a complaint against another councillor and it was found to be frivolous or vexatious, would the complainant be required to pay the costs of the process? Will consideration be given to security of costs? If, however, the complaint was upheld, does the council have to pay?

Page 17 - …*the power on mayors to expel councillors for acts of disorder and to remove the councillor's entitlement to receive a fee for the month*…

This may work well in a situation where you have an independent speaker. However some mayors may be reluctant to do this especially if they are reliant on certain councillors for political support.
Each failure to apologise becomes an act of misbehaviour and will see the councillor lose their entitlement to receive their fee for a further month.
Is this deterrent sufficient? Should the councillor fail to apologise for 3 meetings, would this then be referred to the Privileges Committee?
…councillors will be entitled to a right of review.
Who will conduct this review?

Page 18 - …*it is proposed that councils will no longer be permitted to hold pre-meeting briefing sessions in the absence of the public*.

If the paper is referring to pre-meeting briefing sessions as outlined in the Model Code of Conduct (section 3.33) alone, that is one issue. If, however, it is being contemplated that all briefing sessions, workshops, presentations etc. be banned, that is a completely different matter.

Councillor workshops are an important element in the successful exchange of information and ideas and should not be "banned". Councillors need access to information about the council's strategic position and performance to perform their civic functions effectively. The general manager and staff are responsible for providing councillors with this information to facilitate the decision-making process.

Councillors are entitled to receive this information in writing and orally by way of presentations. Councillors are entitled to ask questions and seek clarification. It is noted and acknowledged that the only place where councillors make decisions is at a formally constituted council meeting.

Administrative staff and elected members should be entitled to hold briefings in the absence of the public – in the same way that state and federal governments operate.

There are numerous situations where it is important for staff to brief the councillors in the absence of the public. For example, as part of the integrated planning and reporting process, briefing councillors on the development of the long term financial plan. During this briefing, there may be required to be free and frank discussions about various scenarios, proposed service cuts, special rate variations etc. Elected members are entitled to receive information about options and consequences so that they can make informed decisions at an appropriate time.

Having those conversations in public may constrain staff from giving frank advice and being quoted out of context.

Members of the public and media may draw their own conclusions from the discussion and the council may then be forced to expend enormous energy and resources dispelling myths and rumours for example, that council had decided to cut services when no such decision had been made.

Developing a major strategic document such as a Growth Management Strategy (GMS) will involve several stages and briefings to elected members. The initial briefing may cover what a GMS is and some of the underlying principles. A second briefing may involve discussion on the principles and requests for further information. A third briefing may involve consideration of a white paper or draft before being put to council for adoption.

A council meeting may be required to resolve to place a draft document out on exhibition. Following the consultation period, there may be further briefings required to consider submissions and councils responses to those submission. A further council meeting may be required to adopt the final strategy incorporating changes based on submissions.

If this process could only be done via council meetings, these council meetings would be very lengthy and may require a committee of the whole to allow for councillors to speak more than once.
At our council, we use briefings to update councillors on matters such as crime and health. These involve presentations by the relevant representatives and a question and answer session. If this was required to be done via a council meeting, the only way that this could be done in terms of standing orders would be to invite the representative to speak at the public forum. Speakers to the public forum are restricted to 3 minutes which would typically not be sufficient time to effectively brief councillors about such matters.

It is accepted that the council meeting is the forum for the elected body to make decisions not at workshops or briefing sessions.

It should also be noted that council meetings are not public meetings. They are meetings of the council to which the public is invited – there is a difference.
Local government, it can be argued, operates far more transparently than either state or federal government.

Cabinet meetings at a state and federal level are not open to the public. Caucusing is common practice at state and federal level but prohibited at local government level.
Local government invites submissions on all major decisions, policies, budgets, fees and charges – unlike state and federal government.

It is unclear how limiting councillors to only coming together in committee meetings or council meeting (if that is the intent) will improve decision making.

Page 18 – *Any material provided to councillors, other than the mayor, that will affect or impact or be taken into account by councillors in their deliberations or decisions made on behalf of the community must be provided to them in either a committee meeting or council meeting.*

Currently information is provided to the mayor and councillors via email or a councillor portal. This type of information could be regular updates from organisations such as LGNSW, OLG, Chambers of Commerce or matters such as successful grant applications, emergency situation updates and so on. These matters are typically not included on council business papers as they are for noting only and no decisions are required.

Staff will provide elected members with information that will not appear on the business paper for example the LGNSW or NGA business papers provided to council's voting delegates.
While in principle, there is no objection to this requirement, the use of the word ***must*** places an onerous requirement on the organisation.

For example, should a councillor upon receipt and reading of the business paper, pose a question to the GM prior to the meeting, and should that question be able to be responded to prior to the meeting and distributed via email to all councillors, is it a requirement that the question and response be included on the business paper?

This restriction will not apply to mayors. As the leader of the organisation, the mayor needs to have candid conversations with the general manager outside of formal meetings.
The relationship between the mayor and the GM is critical and as such they should meet regularly and discuss matters candidly.

The GM should also meet with other councillors as well:

Indicators of good working relationships between councillors and general managers

- Councillors who publicly express faith in general managers and staff
- General managers who support councillors in their role and who consider ways to improve their levels of support
- Councillors have confidence their resolutions and policy decisions are being effectively implemented
- A clear understanding about how councillors ask questions and receive information from staff, and a formal communication protocol which matches everyday practice
- An environment in which councillors can ask for advice and discuss their position on key decisions
- Opportunities for staff who are experts in their area to put forward their experiences and opinions to councillors to inform key decisions
- Council decisions which are seen as being based on merit rather than 'the numbers game'
- Relationships which are characterised by respect, good humour and good faith.

Councilor handbook (nsw.gov.au) – page 23
The GM should be able to discuss a range of matters candidly with councillors in particular personal matters relating to their caring responsibilities, disabilities or other personal circumstances that may impact their ability to carry out their functions.

The GM is required to develop a structured professional development program and this may require one on one meetings with individual councillors to discuss their specific needs and how they may be accommodated.

From:	Maria Kneipp
To:	OLG Councillor Conduct Mailbox
Subject:	Councillor Conduct Framework Review
Date:	Friday, 29 November 2024 11:18:18 AM

Good afternoon,

I am writing in response to the proposed changes to the Councillor Conduct Framework. I have concerns about the proposal to install power to the mayor to deal with disorderly conduct of councillors.

All councillors and the mayor are elected individuals, responsible for representing the ratepayers of their electorate. By allowing the mayor to censor any councillors who they don't agree with is an attack on the electors. It enables a mayor to expel any councillor who is an obstacle to their agenda, and does not representative what a council is elected for.

Reform in councils may be needed, but by implementing all items outlined in the Councillor Conduct Framework, you are eroding the value of all elected councillors, placing complete power in the hands of the mayors, and opening councils up to legal action whenever a councillor is suspended at the will of one individual.

Do not enable the mayors to have sole executive decision to suspend an elected councillor, but offer and alternative mechanism who can act as an independent body when a dispute may arise. This framework is flawed as it enables one elected official to have control over another. It is a control not enforced at a state or federal level, and sets a dangerous precedent at the local level, which does not provide fair and equitable consideration for all elected officials. These reforms cannot be implemented.

Regards,

Maria Kneipp

Councillor Conduct Framework Review submission

29 November 2024

Please do not attach my name or council affiliation to this submission.

Question 1 - Discussion Paper

Are we missing anything in the principles of change?

1. **The problem of attracting well qualified and experienced community-focused members of the public to serve on local councils.**

   Prospective candidates will likely think twice about putting up their hand to run for council after reading many of the recommendations made in the Discussion Paper for the proposed new Code of Conduct framework. The reference to "punishment " in the statement below will fill prospective candidates with fear about the consequences of speaking out at council meetings, especially those from the minority parties and independents:

   > *With so much focus on the bad behaviour of a limited number of councillors there is not enough attention given to the good work that councillors do. The role of a councillor is a noble public service, and the local government behavioural framework should support those who seek to do the right thing and* ***punish those that are not so motivated****.*

   Most people are already turned off by experiencing/watching the rough and tumble of council meetings. Many members of my community have told me they are appalled by how badly councillors from the minor parties/independents were treated by our previous mayors. By default, the mayor at our council is always a member of the majority ruling party. See comments below for a further explanation of this problem.

2. **The problem of mayoral overreach, which is already a big problem in many councils, and especially in ones where a major political party holds the balance of power.**

   On my own council, I have witnessed numerous incidents where previous mayors have deliberately cut off opportunities for members of the minor parties/independents to ask questions or propose amendments during council meetings. [redacted]

[redacted]

Whilst the current Code of Conduct is meant to prohibit caucusing before a meeting, this is typically not the case in councils where one party holds the balance of power.

Consequently, the following recommendation will likely be subject to mayoral abuse.

> *The proposed reforms will confer the power on mayors to expel councillors for acts of disorder and to remove the councillor's entitlement to receive a fee for the month in which they have been expelled from a meeting.*
>
> *As a further deterrent against disorderly conduct, councillors will also be required to apologise for an act of disorder at the meeting at which it occurs and, if they fail to comply at that meeting, at each subsequent meeting until they comply.*
>
> *Each failure to apologise becomes an act of misbehaviour and will see the councillor lose their entitlement to receive their fee for a further month.*

The threat to withdraw a councillor's entitlement to receive a fee for the month in which they have been expelled is also disingenuous. The annual stipend awarded to councillors in no way aligns with the amount of time they are required to devote to council business. It needs to be increased to more appropriately reflect the amount of work and responsibility required to do the job properly. Introducing fair compensation would also help to improve diversity on councils and attract better candidates.

The above recommendation to invest more authority in the position of the mayor also runs counter to the following very astute observations made in the Discussion Paper.

> *The current code of conduct simply enables too many complaints about councillors, all too often for political or vexatious reasons.*
>
> *The councillor conduct framework distracts from, rather than enhances, robust democratic debate.* ***Complaints are weaponised for political reasons, or to silence dissent from other elected representatives*****.**

As highlighted above, the practice of weaponising complaints for political reasons, or to silence dissent from other elected representatives, is typically a problem in councils where one party holds the majority and deliberately seeks to dominate the decision making process. Often this type of behaviour is orchestrated or prompted by the mayor.

3. **The importance of thorough and transparent community consultation.** The following observation in the Discussion Paper is a misdiagnosis of a problem:

> *Communities and councillors report that council decision making is not transparent – with decisions being seen as made behind closed doors, information not being provided or withheld, too much use of closed to the public briefings or councils going into closed sessions for no adequate rationale.*

Based on my experience, the community does not object to councillors being given private briefings by staff. Rather they object when big decisions like privatising public assets, for example, are made behind closed doors without the benefit of proper public consultation.

Personally, I've found private briefings an invaluable source of useful information that helps to inform better decision making by both councillors and staff. They offer council staff an excellent opportunity to explain the rationale behind recommendations coming before council in a more informal setting. Typically, they're supported by excellent PowerPoint presentations and/or input from a consultant. The freedom to ask questions in a more relaxed setting often yields better information/results and builds trust between staff and councillors.

Having said the above, no major decisions should be made behind closed doors. They should always be informed by thorough and transparent community consultation. Similarly, whenever possible, important information imparted in private briefings should be disclosed to the public so they can understand on what basis decisions are being made.

The following recommendation in the Discussion Paper to restrict the sharing of confidential information to the mayor will weaken the transparency that the recommendations are trying to achieve:

> *Any material provided to councillors, **other than the mayor,** that will affect or impact or be taken into account by councillors in their deliberations or decisions made on behalf of the community must be provided to them in either a committee meeting or council meeting.*

This restriction will not apply to mayors. As the leader of the organisation, the mayor needs to have candid conversations with the general manager outside of formal meetings.

Already too much happens behind closed doors with respect to discussions between the mayor and senior council staff. Too often, minority party and independent councillors, as well as members of the general public, believe that decisions have been made in advance of council meetings, a perception that weakens community confidence in the transparency of council deliberations.

If the intent of the revamp of the Code of Conduct framework is to invest more power with the mayor, which appears to be the case, then steps should be taken to ensure that all councils democratically elect their mayor.

A clearer definition of when legal advice to councils should be labelled as confidential would also be helpful. The discussion of “confidential” legal advice is the main reason why council meetings move into closed session.

Question 2 - Discussion Paper

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

- A binding shared code of ethics for councillors and staff.
- Cordiality in dealings with fellow councillors.
- Openness to debate and a willingness to respectfully listen to alternative points of view.
- A commitment to refrain from bringing up issues that are not directly related to the everyday business of the Council.
- The following recommendation in the Discussion Paper, which rightly emphasises the importance of freedom of speech:

  Freedom of speech – as elected officials, councillors have the constitutional right and democratic responsibility to speak freely about issues affecting their local community and to advocate for the interests of that community.

  Importantly, the revamped Code of Conduct will not seek to restrain the ability of a councillor to speak publicly on matters pertaining to their council, even when that councillor is disagreeing with, or being critical of, the decisions of the majority.

- The need for a mayoral code of conduct that promotes inclusivity (eg the sharing of invitations to Council and related community events with all councillors when possible), promotion on merit (eg consideration of the appointment of minor party/independent councillors to the chair and deputy chair positions on key Council committees based on their qualifications and experience), and fair and open discussions with all councillors.

Question 3 - Discussion Paper

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

Providing that the revamped Code of Conduct is not intimidatory in nature and incorporates the points listed above, referencing it in the Oath of Office is a good idea .

Question 4 - Discussion Paper

Is the proposed pecuniary interest framework appropriate? Is anything missing?

Discouraging property developers and real estate agents from serving as councillors is important, but the net should be cast wider to discourage employees of political parties from being on council. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Question 5 - Discussion Paper

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

Non-pecuniary interests are not well explained and understood.

The nature of a relationship with the developer, no matter how tangential, should be disclosed to avoid the risks as highlighted in the Discussion Paper:

> *However, inappropriate lobbying that isn't declared presents certain risks and can lead to corrupt behaviour or improper decision-making.*

Further, even when councillors disclose that they are associated with a developer, the interest is too often declared as non-pecuniary and non-significant. Any association with a developer should be declared as "significant" and councillors should be obliged to excuse themselves from further council deliberations on the matter.

Question 6 - Discussion Paper

Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

The following proposal outlined in the Discussion Paper has merit:

> *To address this concern, an alternative means of managing the inherent conflict of councillors undertaking real estate and development business activity is being considered which involves requiring councillors to divest themselves from real estate or development business activities and contractual obligations.*

Hopefully, this type of measure will likely discourage real estate agents and property developers from running for council. Its effectiveness, however, will likely depend on how divestments are allowed to be structured. If they are put into a blind trust that is controlled by a family member or a business associate, for example, the policy will likely be open to abuse.

Also has the following claim in the Discussion Paper been tested?

> *A simple change to ban developers or real estate agents from being councillors is not possible as it infringes the right to political free speech implied by the Australian Constitution.*

Question 7 - Discussion Paper

Is this the appropriate threshold to face a Privileges Committee?

I don't agree with the establishment of a Privileges Committee. See comments below.

Question 8 - Discussion Paper

How else can complaints be minimised?

- Minimising mayoral overreach. See comments above.

- Restricting the participation of big political parties in local government. Council deliberations are too often influenced by councillors kowtowing to the political agendas of the state and federal government. Too many councillors from the major parties see local government as a stepping stone to preselection for higher office. They also fear that they could be dropped for preselection in future council elections if they don't toe the party line; creating a situation that stifles debate and makes them less responsive to residents' concerns.

- The Code of Conduct should emphasise the importance of representing the interests of the local community.

Question 9 - Discussion Paper

What key features should be included in lobbying guidelines and a model policy?

I disagree with the Discussion Paper's characterisation of community groups and residents as "lobbyists:"

> *Lobbying is an important feature of democratic representative government, and all councillors get lobbied by residents, businesses and community groups.*

Councillors have a duty to actively canvass the views of their community and give due consideration to the viewpoint of residents in council deliberations.

Too often, residents associations have been derided as nuisance groups or NIMBYs if they oppose decisions taken by the controlling party on Council.

Residents associations are volunteer-based organisations that work hard to inform residents about the important council business. Most residents elect to join residents associations because they respect the work they're doing and don't have the time and/or expertise to make submissions themselves. They rely with confidence that the residents associations will appropriately advocate on their behalf.

The following initiative to address lobbying guidelines has merit, but residents associations should not be included as professional lobbyists or otherwise:

> *On the recommendation of ICAC to address these risks, OLG is developing lobbying guidelines and a model policy on lobbying for councils to adopt that will:*
>
> > *• address how professional lobbyists are identified and the obligations on councils and councillors if they met a professional lobbyist,*
> > *• set out inappropriate behaviours when being lobbied,*
> > *• identify steps to be taken to ensure transparency,*
> > *• require council officials to report inappropriate or corrupt lobbying behaviours to the councils general manager.*
> >
> > *The development of lobbying guidelines and a model policy on lobbying will ensure councillors and councils understand these risks and have effective controls in place to address them.*

Question 10 - Discussion Paper

What level of PIN is appropriate?

Councillors should be encouraged as much as possible to lodge a return of interest, but issuing penalty infringement notices (PINs) for breaches that are "minor" or "inadvertent" seems excessive.

Being a councillor is meant to be only a part-time job, but in most circumstances the workload is heavy and very time sensitive. Also, as previously highlighted, councillors are inappropriately remunerated for the amount of work involved.

Sometimes the administrative aspects of the job can be unintentionally overlooked and the proposed introduction of PINs needs to take this into account. Also, perhaps consideration should be given to providing councillors with assistance for the filling out of complicated returns:

In order to ensure information is provided to OLG more effectively, it is proposed to enable OLG the discretion to issue penalty infringement notices (PINs) for minor or insignificant breaches of the conflicts of interest declarations. The PINs would be primarily utilised in circumstances where the breach is considered minor or administrative in nature – for example an inadvertent failure to lodge a return of interests.

Question 11 - Discussion Paper

Are the penalties proposed appropriate and are there any further penalties that should be considered?

The proposed penalties sound pretty punitive especially because, as previously stated, the practice of weaponising complaints for political reasons, or to silence dissent from other elected representatives, is typically a problem in councils where one party holds the majority and deliberately seeks to dominate the decision making process.

Question 12 - Discussion Paper

Are the existing sanctions available under the Local Government Act sufficient?

Yes.

Question 13 - Discussion Paper

Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

A formal tribunal with independent arbitrators and a hearing structure is the preferred option. As highlighted throughout this paper, complaints against fellow councillors are more than likely orchestrated/prompted by the mayor of the ruling party.

Whilst the proposed process of having complaints heard by an independent tribunal is demonstrably fairer, the administration of justice can come at high cost to the councillor accused of misconduct. Resources should be provided for the accused councillor to mount a proper defence. Psychological counselling should also be made available to the accused councillor in accordance with work place safety regulations.

I don't support the idea of creating a “Local Government Privileges Committee (Privileges Committee) to examine all allegations of misbehaviour in public office, especially made up of a group of experienced mayors and ex-mayors from across NSW.” As mentioned previously, the involvement of mayors, no matter how qualified and well meaning they are, unnecessarily politicises the process.

Question 14 - Discussion Paper

Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

No, as already explained, the recommendations in the Discussion Paper are an overreach, investing too much authority in the mayor and increasing the potential of exploitation for political purposes.

Question 15 - Discussion Paper

Are there any other measures needed to improve transparency in councillor deliberations and decision making?

- More comprehensive and robust community consultation especially at the start of proposed projects.

- State government respect for the autonomy of councils.

- The following example in the Discussion Paper requires further explanation:

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

    This is far from the case at the moment. DA approval powers were taken away from councillors by the previous coalition government and replaced by planning panels. Councillors are only allowed to advocate on behalf of objectors and/or the public interest when a public hearing is held, which typically requires a minimum of 10 or more unique objections. Deliberations to determine a DA are always held behind closed doors with only the panel members and council staff in attendance. The local planning panels are dominated by “experts” appointed from a pool selected by the state government.

    The current system of assessing DAs is probably the main reason why “communities and councillors” are reporting that “council decision making is not transparent – with decisions being seen as made behind closed doors.”

The so-called “experts” on the planning panels are not accountable to the local community.

For most residents, making a submission on a DA is their first and most important touch point with their local council. Many objectors are forced to invest a significant amount of time securing the necessary number of objections for a public hearing and/or spending substantial amounts of money on town planners etc to lodge a comprehensive objection. Often they feel outgunned by developers, who are typically supported by sophisticated town planning groups that are not afraid to recommend the lodgement of non-complying DAs.

Residents often feel like their concerns are not properly considered by the local planning panel, which to some extent is because councils are under increasing pressure to approve DAs as quickly as possible. Typically, planning panel agendas are overcrowded, forcing the chair to move through the proceedings too quickly.

If the Council refuses a non-complying DA, developers usually appeal the decision in the Land and Environment Court (LEC). In most cases, the DA is then somewhat amended during an S34 Conciliation Conference, a process in which negotiations are held in secret between council and representatives for the DA applicant. Objectors are often left confused about how compromises were reached, especially in cases where non-complying DAs were refused by the planning panel.

The current system of assessing and approving DAs (including the LEC guidelines and administration) not only undermines councils’ planning standards and controls, it also erodes public trust and confidence in the ability of councils to act in the best interests of their community. Most importantly, it is leading to poor planning outcomes.

To The Office of Local Government,

I am writing as a newly elected Councillor for Leeton Shire to share my thoughts on the proposed reforms to the Councillor Conduct Framework. I would like to preface this letter of submission by stating that the views expressed herein are my own and do not represent the opinions of Leeton Shire Council or my fellow Councillors.

The NSW Government's initiative to reform the Councillor Conduct Framework is a welcome step towards fostering integrity and transparency within Local Government. I commend the Government's commitment to enhancing the standards of accountability and trust in the democratic process.

My submission is particularly focused on the critical role I and other Councillors play as elected representatives. It is essential that the revamped Councillor Conduct Framework preserves and upholds the democratic responsibilities of Councillors, including the right to speak publicly on council matters – especially when there is disagreement with, or a critique of decisions made by the majority. In my view, this is essential for upholding the credibility of Local Government.

Should the new Councillor Conduct Framework fall short in safeguarding Councillors' rights to express their opinions and concerns, even when those perspectives challenge established council policies, we run the risk of further diminishing public trust in local governance. During election campaigns, voters choose their elected representatives based on the vision and policy priorities articulated by candidates. Each elected representative should have the freedom to voice their insights, disagreements, and provide constructive criticism without fear of retribution or punitive measures.

Furthermore, I firmly believe that the process of collective decision-making should complement, rather than suppress, the fundamental rights to debate and dissent. A healthy democracy thrives on diverse viewpoints and open dialogue; without these elements, we may stifle innovation and fail to address the nuanced needs of our communities.

To this end, I submit that the restructured Councillor Conduct Framework empowers Councillors to assume a role more similar to that of Members of Parliament. This would allow Councillors greater freedom to voice their opinions against council decisions and to scrutinise the actions of their Local Councils. Such an approach would enable Councillors to articulate their perspectives and dissent from council policies more robustly, ultimately enriching the fabric of our Local Governments.

Thank you for considering my submission as part of this important reform process. I urge the prioritisation of protecting Councillors' rights to express their thoughts and engage in constructive debates, as this will be essential for restoring and enhancing public faith in Local Government.

Yours faithfully,

[redacted]

Cr Boston Edwards

Councillor for Leeton Shire

From: [redacted] on behalf of OLG Councillor Conduct Mailbox
To: OLG Councillor Conduct Mailbox
Subject: Verbal submission - Clr Percy Thompson MidWestern Council
Date: Friday, 29 November 2024 12:22:55 PM
Attachments: image001.png
image002.png
image003.png
image004.png

Councillor Percy Thompson rang to provide a verbal submission.

- Has been a Councillor for 37 years and has just been re-elected for 10th term
- Has been a Justice of the Peace for over 50 years
- General Manager, Mayor and Councillors should be completely removed from assessing conduct matters
- The process is used by the GM/Mayor or Clrs to discredit councillors and is a political, point scoring tool
- In [redacted].
- [redacted].
- [redacted].
- [redacted]
- The system and process is not encouraging good people to stand for council
- [redacted].
- [redacted]
- Review of conduct should be performed by those out of council
- Clr Thompson doesn't support the notion of a Privileges Committee made up of Mayors and ex-Mayors. They are all friend and allies and this will not stop politicisation, bias or point scoring.
- Assessment needs to be by a group of independents, appointed by the Minister
- Other option is to give councillors 'parliamentary privilege' like State and Federal Governments.
- Clr Thompson also has concerns about:
  - [redacted]
  - [redacted]

[redacted]

[redacted]

Office of Local Government
Department of Planning, Housing and Infrastructure
T [redacted] | **E** [redacted]
olg.nsw.gov.au
dphi.nsw.gov.au
Locked Bag 3015, Nowra NSW 2541



I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

Councillor Conduct Framework Review Submission

Cover Sheet

1. Your Details

I would like my name and personal details to be treated as confidential:(Required)

- ○ Yes, please keep my details confidential
- ◉ I consent to my details being shared

Name:(Required)

Graham

First

Sasnom

Last

Name of Organisation (If applicable):

UTS Institute for Public Policy and Governance

Role/Position:

Adjunct Professor

Postal Address:

[redacted]

Telephone:

[redacted]

Email:(Required)

[redacted]

Which of the following best describes you?(Required)

- ○ Council Metro
- ○ Council Metro - fringe
- ○ Council Regional
- ○ Council Rural
- ○ County Council
- ○ Joint Organisation/Regional Organisation of Councils
- ○ Industry / advocacy organisation
- ○ Member of the public
- ○ NSW State Government agency
- ◉ Other

Research Consultant

Graham Sansom

Adjunct Professor, UTS Institute for Public Policy and Governance

Submission in response to

Councillor conduct and meeting practices: A new framework

27 November 2024

This submission reflects insights gained by the author as an adviser to the previous review of councillor conduct in New South Wales undertaken in 2021-22 by Mr Gary Kellar of Reinforcements Management Consulting – specifically through a comprehensive analysis of comparable practice in other states and the Northern Territory. Many of the matters raised in the current discussion paper were also covered in detail by the Kellar review, and there are similarities in the 'direction of travel', albeit with some very important differences, notably concerning the role of the Office of Local Government (OLG).

Edited extracts from the author's 2022 report to Mr Kellar and the OLG are attached.

Overview

The discussion paper correctly identifies the need to streamline the current NSW arrangements for reviewing councillor conduct, which are simply failing under the pressure of their own complexity and weight, causing unwarranted confusion, duplication and delays. Moreover, the evidence indicates that their demands on scarce council and State resources are out of proportion with a realistic assessment of the true nature and scale of the 'problem'.

Crucially, as the discussion paper points out:

- The current framework does not adequately reflect local government's status as an independent third tier of government;
- It inappropriately empowers an unelected government official to determine penalties and guilt; and
- The current code of conduct provisions actually *enable* too many complaints about and between councillors, all too often for political or vexatious reasons.

Against that background, the proposed 'Principles of Change' are to be welcomed, as is the concept of a Privileges Committee, which would operate in a similar manner to the independent review panels used in other states and recommended by the Kellar review.

However, the paper's subsequent detailed proposals do not go far enough in devolving responsibility for behaviour management to councils. This will result in a new logjam of complaints in the proposed Privileges Committee unless a clear threshold of misbehaviour is

set below which misbehaviour ***must*** be addressed by the council itself. And the proposed role to be played by OLG remains excessive with overly centralised control – the paper's proposals actually ***increase*** OLG's functions and prerogatives, ignoring its past failings.

Therefore, to pursue the preferred 'Principles of Change' a fresh approach is required with an unequivocal move away from top-down intervention. Based on the research evidence, the best way forward for NSW would be to adopt an adapted version of the arrangements currently operating in South Australia. Those arrangements were updated just two years ago after extensive consultations with all parties, and with the endorsement of the SA Local Government Association. There is no need for NSW to reinvent the wheel.

Role of the Office of Local Government

As reported by this author in 2022, no other state agency has such an extensive role and degree of authority in relation to councillor conduct as that exercised by the NSW OLG – notably its heavy involvement in dealing with and determining mid-range complaints, as well as investigating the most serious breaches; its right to intervene (as opposed to assist) in lower-level matters being handled for councils by reviewers; and its power to impose penalties.

As a general rule, the equivalent agencies (and their chief executives) elsewhere are largely limited to oversighting the system and supporting and advising the Minister as required. In the Northern Territory and Tasmania OLG's counterpart may become involved in investigating – but not determining – the most serious offences that involve an offence under the Act or a referral to the state administrative tribunal, and the Victorian and Western Australia provide administrative support for some elements of the system (which in the latter case includes training and producing template local laws), but again neither makes determinations.

In South Australia 'integrity' matters (see below) are investigated in the first instance by the Ombudsman, who carries a responsibility that might otherwise rest with that state's (very small) Office of Local Government. Also in South Australia, a significant amount of the workload is shared with the local government association – training, providing draft local policies, administrative support for the Standards Panel (equivalent to the proposed Privileges Committee) etc.

New South Wales needs to learn from interstate practice and understand the reasoning behind their actions. ***OLG's essential roles*** in relation to councillor conduct are to advise the Minister on policy and the design of the framework; to formulate model codes and local policies that councils can apply; and to monitor how the arrangements are working, identifying problems and areas for improvement, providing technical guidance where required. As in South Australia, OLG should work cooperatively with the Local Government Association (LGNSW) to secure the best possible outcomes. For its part, the Association needs to accept greater responsibility in this regard.

Given local government's status as an independent third tier of government, none of the other current or proposed functions of OLG are appropriate for a ministerial department.

While the discussion paper suggests that the power of the OLG chief executive to impose serious penalties may be removed, it paradoxically proposes that OLG be able to issue 'penalty infringement notices' – with a right of appeal, likely creating a new bottleneck – which would simply reinstate in a different form the power of a public servant to penalise elected councillors and be contrary to the proposed Principles of Change. Moreover, in more serious cases OLG would in effect be passing judgement by investigating the matter, reaching a conclusion and then, presumably, arguing the case for a penalty before the appropriate tribunal.

Even setting aside matters of principle, continuing to clutter OLG with such a complex and demanding mix of responsibilities would perpetuate the confusion and delays noted by the Kellar review – it would be the antithesis of clarifying and streamlining. Oversight of councillor conduct would be a 'cuckoo in the nest' function, a distraction from more important responsibilities for creative policy making and system oversight and support. It would entrench OLG's regrettable image as a policeman rather than a partner, and almost certainly demand ever increasing numbers of staff and funding.

The South Australian Model

Key features of the current South Australian framework for councillor conduct management, as reviewed and revamped in 2022, are pictured in Attachment 2. They comprise the following.

- A focus solely on *councillor* conduct – behaviour of all staff including General Managers can be managed separately under workplace law and employment contracts/provisions, and administrative complaints handled by the Ombudsman.
- A clear distinction between Misbehaviour and Integrity Breaches – the former to be handled largely by councils themselves and the latter by referral to the Ombudsman.
- Inclusion of mandatory behavioural standards and definitions of Health and Safety Duties and Integrity Breaches in the Local Government Act – but no 'code of conduct' as such as it was deemed superfluous under the new arrangements.
- Devolution to councils of primary responsibility for upholding behavioural standards by adopting and implementing their own Behavioural Support and Management policies and procedures, incorporating the legislated standards.
- Preparation by the OLG and Local Government Association (LGASA) of model Behavioural Support and Management policies that councils may use and adapt (up to a point), as well as other guidance material.
- Empowering mayors and committee chairs to take effective action in enforcing appropriate behaviour in meetings (eg by ejecting members and imposing short term suspensions from future meetings) – noting , however, that mayors/chairs may themselves become subject to action and penalties if they abuse their authority (eg by using it selectively against political opponents).[1]

[1] The Queensland provisions for the role and authority of mayors/chairs in controlling behaviour at meetings also offer helpful guidance

- Establishment jointly by the Minister and the LGASA of a state-wide Standards Panel (the equivalent of the proposed NSW Privileges Committee) to deal with Serious or Repeated Misbehaviour (including breaches of Health and Safety Duties eg bullying) matters referred by councils.
- Investigation of Integrity Breaches by the Ombudsman, who may recommend action to be taken by a council, prosecution under relevant criminal law, or referral to the ICAC as appropriate.

Further detail is provided in Attachment 3, which compares the NSW and South Australian arrangements.

The critical message is that faced with scarce resources, South Australia has created a lean, streamlined set of ***decentralised*** arrangements that maximise the autonomy of councils and make the best possible use of available expertise and resources in agencies such as the LGA, Ombudsman, SafeWork SA, Office of Public Integrity (part of ICAC) and criminal investigators/prosecutors.

There is no need to duplicate the functions of those other statutory agencies, so the role of the OLG is kept to a minimum and focused on policy, practice guidance, system oversight and networking.

Applying the Model in NSW

Most of the South Australian model could and should be applied to NSW without significant amendment, but some elements may need to be 'tailored'.

- **Effective Devolution of Responsibility.** Unless there is a rigorous devolution of responsibility to councils for low-level misbehaviour, the proposed Privileges Committee will be overloaded. To make this change, the current procedures for convoluted conduct reviews will need to be abandoned and replaced by clear guidance on straightforward, transparent processes councils can use that enable matters to be resolved quickly whilst ensuring natural justice. Councils will need to adopt behavioural support and management policies similar to those used in South Australia. Extensive training will be required and supportive networks established.

  Consideration should be given to abandoning provisions for councillors to lodge formal complaints about each other's behaviour (as opposed to demonstrable integrity issues where facts can be checked). As the discussion paper notes, those provisions all too easily encourage and facilitate conflict. Similarly, it is essential that mayors/chairs have unequivocal authority and powers to control behaviour and disputes in meetings.

  In-council processes will need to be handled by the mayor or a sub-committee of councillors, advised **but not led** by the General Manager or another appropriate senior officer (eg governance manager, internal auditor). The Audit, Risk and Improvement Committee could also play a role as an extension of the internal audit function. In some instances additional external advice and assistance may be required, perhaps involving the engagement of an independent conduct reviewer. That might be facilitated by LGNSW, the chair of the Privileges Committee, or (if one is required) the Local

Government Conduct Commissioner mentioned below. However, councils should not as a general rule be allowed to escalate matters within their jurisdiction to the Privileges Committee unless they can demonstrate 'good cause' for doing so. Nor should use of consultant conduct reviewers be reinstated as the norm.

- **Operation of the Privileges Committee.** It might become appropriate for the Privileges Committee to operate somewhat differently to the South Australian model (although there should be no presumption that changes are necessary). However, care must be taken to ensure that the work of the Committee is not hindered by the same overly and unnecessarily legalistic procedures that currently apply to conduct review processes in NSW. As in South Australia, the goal must be speedy resolution of matters, subject to natural justice and due process. The Chair will play a key role, requiring high-level skills and considerable relevant experience.
- **Transfer of OLG Functions.** As noted above, the investigative functions of OLG proposed in the discussion paper would best be transferred (along with several staff positions) to the Ombudsman, who already deals with some local government matters and has widely acknowledged status and expertise. If for any reason the Ombudsman cannot accept those functions, an alternative approach – as recommended by the Kellar review – would be for Parliament to establish a parallel senior **position** of Local Government Conduct Commissioner (but **not a 'Commission'**) with a small office. The Commissioner could also provide administrative support and practice guidance to the Privileges Committee and councils. **(NB:** OLG would continue to handle policy issues and monitor the overall operation of the system.)
- **Imposition of Serious Penalties.** It seems likely that NCAT will continue to play a role in imposing penalties for more serious offences, notwithstanding concerns about its past performance. However, the South Australian model points to two supplementary approaches that warrant support. Firstly, Integrity Breaches that amount to criminal behaviour could be dealt with as such by the relevant courts. Secondly, the Privileges Committee could be empowered to impose more severe penalties in defined circumstances. This might involve acting on a recommendation from the Ombudsman or a Local Government Conduct Commissioner. The SA Standards Committee can impose suspension for up to 3 months and escalate matters directly to the CAT.

Attachment 1

Comparative Assessment of Systems in Australian States and the Northern Territory

(extract from report to NSW Office of Local Government by Graham Sansom Pty Ltd, September 2022)

Comparative assessment of the arrangements yields a number of important insights regarding differences in approach between New South Wales and common practice elsewhere. Examples of key areas of commonality across other jurisdictions, and also of innovative practice, are highlighted in the table.

The following areas of difference with current practice in NSW are considered worthy of further consideration as part of the Independent Review and subsequent implementation of agreed reforms.

- **Terminology**

  Only Vic applies the term 'misconduct' to all breaches of the Code or Act. Qld uses the terms 'unsuitable meeting conduct' and 'inappropriate conduct' for lower-level breaches. NT, Tas and WA refer simply to 'breaches'. SA has drawn a clear distinction between 'misbehaviour' (used for breaches of the legislated behavioural standards) and 'integrity' offences under the Act.

- **Scope of the Code of Conduct**

  NT, Qld, Tas and WA all have mandatory/model codes that cover similar issues to those in the NSW Code, but they are limited to elected members (and in some cases external members of committees/subsidiaries) and much briefer. As in NSW, councils are free to adopt their own codes with additional or only slightly amended material, and in some cases they are required to develop supplementary policies (eg. for gifts and benefits in NT and for meeting procedures and councillor-staff interactions in Victoria. In SA and Vic there is no standard code as such, only legislated standards of behaviour/conduct that councils must use as a basis for developing their own codes/policies.

  To varying degrees jurisdictions include systemic procedures and specified offences (as opposed to less serious misconduct) in the Act rather than the Code, with scope for additional detail to be added through state guidelines and/or council's own policies.

- **Making a Complaint**

  Most jurisdictions require considerable detail when complaints are lodged. NT and Tas require the use of a statutory form, accompanied by supplementary information, a statutory declaration and, in the case of Tasmania, a fee (refunded if the complaint is successful). Qld's OIA specifies a form, while both WA and Vic's Chief Municipal Inspector (CMI) have recommended templates. In SA, each council's Behaviour Management Policy will specify how complaints are to be made.

- **'Triaging' Complaints**

  In Qld, all complaints must be made to the OIA, which determines how they are to be handled. Elsewhere, complaints are typically lodged with the relevant council in the first

instance. The council may have unqualified authority to deal with them itself, but in most jurisdictions many (or in Tas, all) complaints are 'triaged' by the executive officer or chair of the relevant statutory panel (in Victoria the Principal Conduct Registrar or, for complaints about more serious misconduct, the CMI). They may then be returned to the council for appropriate investigation and determination, or escalated.

In all jurisdictions frivolous, vexatious or insubstantial complaints are to be dismissed, either by the council itself or the 'triage' authority. In Tas, the panel chair may direct the complainant not to repeat such an accusation. In Qld, the OIA may impose penalties for improper complaints.

- **Handling Lower-Level Breaches**

  All jurisdictions except Tasmania empower or require councils to handle lower-level breaches of the Code/adopted council policy. In Tas, the council General Manager simply makes sure the complaint is properly documented and then forwards it for consideration by a panel chair or full panel. In Qld, the OIA may return some complaints to councils for investigation and determination, or proceed to handle the matter itself. In Vic, the Principal Conduct Registrar (PCR) decides whether to return a complaint to the council, although councils may have already sought to resolve the matter themselves through mediation or counselling. In SA, all *behavioural* matters are to be handled in the first instance by councils under their Behaviour Management Policy.

  As a general rule, councils are encouraged or required to use independent reviewers, arbiters or panels to undertake investigations and recommend or make determinations. In Vic, the arbiter is appointed by the PCR. In Qld, the council must proceed in accordance with the approach recommended by the OIA.

- **Conduct in Meetings**

  Qld has distinct arrangements for 'Unsuitable Meeting Conduct', granting considerable authority to chairs of meetings to administer 'summary justice', and autonomy to councils in determining further action if required. A similar approach is being adopted in SA. There is an evident trend towards enabling councils to handle poor conduct in meetings separately from the broader complaints system, at least in the first instance.

- **Using Panels**

  For 'mid-range' breaches all jurisdictions have legislated statutory panels (in Qld, a Conduct Tribunal) to determine complaints and/or decide if they should be referred elsewhere (eg to the Civil and Administrative Tribunal, a court, a law enforcement body or back to the council). In NT and SA, such panels are established in cooperation with the state local government association.

  Panels may or may not have formal powers of investigation, but all can gather required information, compel the parties to attend, and must grant the respondent the right to make a submission. Most jurisdictions allow the panel to determine its own procedures within broad guidelines and all waive the rules of evidence. Typically, panels are instructed to proceed with as little formality and technicality, and as quickly as is appropriate, consistent with procedural fairness.

- **'Integrity' Matters and Offences**

  Except for SA, all Acts specify serious offences, as opposed to lesser breaches, and associated penalties that can be imposed by the SAT, a criminal court or (in Qld with respect to dismissal) the minister. In all states suspected corruption is a matter for the ICAC or equivalent, which may refer the case back to a panel or SAT if criminal prosecution is unwarranted.

  The SA Act prescribes councillors' 'Health and Safety Duties' (in effect not to seriously harass or bully another councillor or staff), breaches of which constitute Serious Misbehaviour and must in every case be handled by the new Standards Panel. It also prescribes 'Integrity' breaches (material conflicts of interest, improper use of information for personal gain etc), which must be investigated by the Ombudsman, who then recommends an appropriate course of action – possibly referral to the Office of Public Integrity/ICAC in serious cases. There are no specified penalties for Integrity breaches as cases may be handled in a variety of ways, including criminal prosecution.

- **Penalties**

  There is an evident trend to enabling panels to impose stiffer penalties for 'mid-range' breaches, including suspension for up to 3 months (Qld, SA, Tas) or as much as 12 months (Vic). In all jurisdictions councils themselves (in Vic, through the appointed arbiter) may order training or counselling, and in some cases censure the councillor concerned or require a public apology. In Qld, SA and Vic (again through the arbiter) councils may order various forms of short-term suspension, exclusion from specified meetings or loss of status (eg as a mayor/committee chair, representative on external bodies, or right to stand for such positions in future) .

- **Rights of Review and Appeal**

  As noted above, the focus in most jurisdictions is on handling all but the most serious breaches as expeditiously as possible consistent with natural justice and procedural fairness. Councils, panels and the Qld Tribunal are therefore allowed to exercise a high degree of discretion in terms of their procedures, and in marked contrast to NSW, there is little prescription of the parties' (and particularly the respondent's) *rights* to seek/require review loops at various stages during the process – as opposed to appealing the decision at the end.

  In Tas, appeals against panel decisions may only be made on the grounds of lack of natural justice. Elsewhere various avenues of appeal are specified, except in SA, where the prevailing view is that aggrieved parties have opportunities under other laws to seek redress and there is no need to specify processes under the LG Act.

- **Role of the State Local Government Agency**

  No other state agency has been given the extensive role and authority exercised by the NSW OLG – notably its heavy involvement in dealing with and determining mid-range complaints, as well as investigating the most serious breaches, its right to intervene (as opposed to assist) in lower-level matters being handled for councils by reviewers, and its power to impose penalties. These features evidently flow from the lack of an independent 'triage' function and of a statutory panel to handle mid-range misconduct.

As a general rule, the equivalent agencies (and their chief executives) elsewhere are largely limited to oversighting the system and supporting and advising the Minister as required. In addition, in NT, Tas and WA (pending the proposed establishment of an Office of the Local Government Inspector) the agency may become involved in investigating – but not determining – the most serious offences that involve an offence under the Act or a referral to the SAT. In Vic the agency also appoints and resources the Principal Conduct Registrar, and in WA it supports the Standards Panel, but in neither case does it make determinations.

In NT and SA a significant amount of the workload is outsourced to the local government association, and in WA the LGA provides considerable support in terms of training and producing template local laws.

As noted earlier, in SA Integrity matters are handled in the first instance by the Ombudsman, who carries a responsibility that might otherwise rest with the SA OLG.

- **Role of Council Chief Executives**

  In all jurisdictions the council chief executive's role is limited to appointing a complaints (or 'conduct') officer and/or providing administrative support to the handling of complaints. Determining how to proceed is a matter for decision by the elected council, and chief executives are not empowered by legislation/regulation to take action under their own authority (other than checking that complaints are properly documented), although they may exercise responsibilities delegated by the council. This is another significant difference between practice in NSW and the norm elsewhere.

Threshold Decisions

Based on this comparative assessment of legislation and practice in other jurisdictions, the NSW Review may need to make the following 'threshold' decisions.

1. Whether to persist with the blanket term 'misconduct', bearing in mind the message that word (as opposed to 'misbehaviour') may be sending to the broader community about the general performance of local government.
2. Whether the statutory Code of Conduct (and associated Procedures) should be restricted to councillors (and perhaps other members of committees exercising delegated authority), thus simplifying the documents. There appears to be ample scope to address the conduct of General Managers and staff by other means (contracts etc).
3. Whether some of the provisions of the Code and Procedures would be more appropriately included in the Act, particularly those relating to more serious 'integrity' matters that warrant greater prominence.
4. Whether to devolve more responsibility to councils for the processes they adopt and the sanctions they may impose in relation to *behavioural* matters – along the lines of the provisions being introduced in South Australia.
5. Whether to remove behaviour in meetings from the 'mainstream' Code and complaints system, empowering chairs of meetings to enforce 'summary justice', councils to impose further penalties when necessary, and mayors to exercise strong leadership in addressing

underlying problems (subject to safeguards against improper use of that authority as will apply in South Australia).

6. Whether to restrict the complaints-management role of General Managers and/or their delegates to purely administrative functions.
7. Whether some or all of the roles currently being played by individual reviewers on the one hand, and OLG on the other, should be transferred to an independent agency and/or statutory system of panels with their own, *separate* administrative and investigative resources, streamlined processes and authority to impose sanctions.
8. Whether investigation (but not ultimate determination) of more serious matters should be handled by the Ombudsman in order to enhance public confidence in the system.
9. Whether like its counterpart associations in several other jurisdictions, LGNSW should play an expanded role in councillor behaviour management, building on its current activities in training, mentoring and advising councils on governance issues – rather than concentrating all those functions in OLG. This might involve a Memorandum of Understanding between LGNSW and the Minister to establish agreed roles, required processes and targeted outcomes.

Attachment 2

Office of Local Government

South Australia's New Conduct Management Framework

Type of conduct	Misbehaviour	Serious or repeated misbehaviour	Corruption
Examples of behaviour	Disrespectful behaviour Bullying or harassing elected members or staff Providing inaccurate information	Repeated disrespectful behaviour Not cooperating with council's Behavioural Management Policy Behaviour that affects another member or employee's health and safety	Bribery Abuse of public office
Standards	Ministerial Behavioural Standards (these apply to all councils) The council's own Behavioural Support Policy	Repeated breaches of Ministerial Behavioural Standards or behavioural support policies Health and safety duties in the *Local Government Act 1999* (section 75G)	*Criminal Law Consolidation Act*
Investigative body	Councils – using their Behavioural Management Policy	Behavioural Standards Panel	Independent Commission for Corruption (via the Office for Public Integrity)

Government of South Australia
Attorney-General's Department

Attachment 3: Comparison of NSW and South Australian Provisions (as at September 2022)

New South Wales	South Australia
Status and Application of Code of Conduct	
*Mandatory Model Code and Procedures are Regulations under LG Act; Model Code of Meeting Practice also applies. *Code applies to Councillors, all officials, delegates, members of audit committee, other committee members (unless wholly advisory). *A council may adopt its own code if consistent with (or adding to) the Model Code.	*No Code of Conduct – replaced with behavioural/integrity provisions in the Act, Behavioural Standards established by the minister in consultation with LGA, and council policies. *Each council to develop Behavioural Support and Management Policies (BSP, BMP) consistent with the Standards. *Standards apply to councillors, members of committees and council subsidiaries.

Supporting Principles and Provisions in Local Government Act	
*Act's Guiding Principles (s.8A) include 'act fairly, ethically and without bias', plus transparency and accountability. *Very broad definition of 'Misconduct' – any breach of the Act, regulations, Code of Conduct, or an order from OLG,[i] plus 'disorder' at a meeting. *Act sets out framework for investigation and determination by OLG of some instances of alleged misconduct. *Act provides a range of penalties for Misconduct and for Serious Corrupt Conduct (investigated by ICAC). *Act also provides for Register of Interests.	*Act's principles call for open, responsible and accountable governance. *Legislated role of councillors includes acting with integrity, honesty and dure care and diligence, ensuring positive and constructive working relationships. *Act includes Integrity provisions re conflicts of interest, misuse of confidential information, managing gifts and benefits, and councillors' Health and Safety Duties (HSD) (ensuring a safe workplace without discrimination, bullying etc). *Act establishes the Behavioural Standards Panel – members appointed by Minister and LGA, presiding member appointed jointly; costs met by LGA/councils; staff provided by LGA/state agency.

Scope of Code of Conduct (or equivalent)	
*Code may apply to *any conduct* likely to bring a council into disrepute. *Code prescribes ethical and behavioural standards and values. *Covers behaviour, pecuniary interests, conflicts of interest, public interest disclosures, political donations, gifts, limits on interaction with staff, misuse of council resources/information, improper influence, harassment, bullying, discrimination. *Code not intended to address interpersonal or political conflict nor to restrict free speech and 'respectful' debate.	*Behavioural Standards cover similar themes to previous Code. *Council's BSP can add requirements to the Standards. *Council's BMP sets out its processes for handling breaches of Standards or BSP – LGASA provides a model policy. *Health and Safety Duties (HSD): councillor's acts or omissions must not adversely affect health and safety of other councillors/employees (includes serious bullying)

Hierarchy of Breaches	
*Any breach of the Code standards is 'Misconduct'. *Lower-level breaches warranting no more than a censure are handled by informal 'alternative means'[ii] or by a Conduct Reviewer – *but OLG may intervene*. *More serious breaches that may warrant stricter penalties must be referred to OLG (breaches of pecuniary interests and conflict of interests provisions plus breaches that threaten the 'integrity' of the Code[iii]). *'Serious Corrupt Conduct' (that may be an indictable offence) is handled by ICAC.	*No use of term 'conduct' – instead 'behaviour' or 'integrity' *Misbehaviour = breaches of council BSP *Repeated Misbehaviour = further breaches or failure to comply with council's order under BMP; these may be referred to the Standards Panel. *Serious Misbehaviour = breaches of HSD; automatically referred to the Panel. *Integrity offences = conflicts of interest, misuse of information for personal benefit; referred to the Ombudsman.

Behaviour in Meetings	
*Model Code of Meeting Practice proscribes a wide range of 'Acts of Disorder'. *Chair's ruling on disorder must be obeyed unless a motion of dissent is passed. *Councils *may* give chairs power to expel offenders; otherwise, a vote is required at each meeting.	*Not addressed separately as such, but breach of HSD may lead to an order by the mayor that a councillor not attend a council or committee meeting. *Mayor's orders may be referred to/reviewed by the Panel (to prevent use of orders for political purposes).

Making a Complaint	
*Generally, In writing to the council General Manager (GM)[iv] or 'another agency' (OLG, ICAC, Ombudsman) – no form *Within 3 months of alleged breach unless 'compelling' reasons. *Must not be trivial, frivolous, vexatious or made for an improper purpose. *GM may initiate action re a suspected breach even without a complaint. *Some complaints may be handled under the Public Interest Disclosures Act or 'special arrangements' with OLG	*Complaints to be lodged in accordance with the council's Behavioural Management Policy (BMP).

Initial Steps in Complaints Process	
*GM must appoint a Complaints Coordinator (senior staff or external) to administer processes. *GM may dismiss trivial, vexatious etc complaints or determine that no action is warranted. *GM may seek to resolve complaint 'by alternative means'.	*For complaints to be handled internally, as set out in BMP. *Council may reject complaint or take no further action eg if it is trivial, frivolous, made in bad faith, previously dealt with etc *Council may arrange mediation, arbitration etc or proceed to a determination. *Complaints may be escalated to the Panel by the council, mayor, at least 3

*Certain more serious complaints must be referred to OLG for review. *Otherwise, complaint referred to expert Conduct Reviewer (usually external) selected by Coordinator.	councillors or a 'responsible person'[v] *Serious Misbehaviour (breach of HSD) must go to Panel. *Panel conducts initial assessment – may decline to proceed (on the same grounds as a council) or refer back to council.

Procedures for Investigations	
*Reviewer undertakes a preliminary assessment (within 28 days) to determine (against set criteria) whether and what action should be taken eg informal resolution, refer back to GM (if agreed) or to another agency. *If assessment finds further potential breaches, they must be treated as new complaints. *Reviewer may decide to further investigate a complaint that could lead to formal censure or a greater penalty. *Complainant and respondent to be informed of Reviewer's determination. *Code details processes for investigations, preparation of reports and options for recommendations. *Investigator may not recommend action beyond censure by the council without first consulting OLG. *Council may defer its decision and seek further information from the investigator.	*For matters handled by a council – as set out in its BMP. *Panel makes inquiries into a complaint as it sees fit, and may appoint an investigator. *Panel may require evidence and attendance at hearings. *Councils and Panel are to proceed with as little formality and technicality, and as quickly as is appropriate, consistent with procedural fairness – rules of evidence do not apply. *Minister may refer any potential grounds for complaint to the Ombudsman for investigation, or the Ombudsman may self-initiate an investigation. *All Integrity breaches are investigated by the Ombudsman. *Ombudsman may recommend a council takes action against a councillor, including referral to SACAT. *Ombudsman may also refer serious integrity offences/suspected corruption to Office of Public Integrity and ICAC

Ensuring Fairness/Natural Justice	
*Respondent must be given details of a proposed investigation. *Investigations are conducted in private. *Respondent may seek further details, meet with the Investigator (with a legal or other adviser for support). *Respondent may make submissions at various specified stages of the investigation, also in response to draft reports and amendments. *Council's must consider the final report in camera, and the respondent may make a further submission.	*Procedural fairness applies. *No specific review or appeal provisions – respondents are free to use any existing channel.

Available Penalties

*Council may only censure the councillor and publish the reasons. *Council may also refer the case to OLG for further investigation and additional penalty. *OLG may impose various orders (desist, counselling, training etc), plus suspension and/or loss of fees for up to 3 months – **but NB right of appeal to NCAT.** *NCAT may intervene in matters being handled by OLG and impose greater penalties (up to 6 months suspension and/or loss of fees, disqualification for up to 5 years). *Serious Corrupt Conduct may lead to dismissal/disqualification for up to 5 years.	*No criminal penalties in Act – matters for ICAC and law enforcement. *Councils – censure, public apology or training, suspension from any office held other than councillor (eg as council's representative/delegate on external bodies). *Panel – as above plus public reprimand, reimbursement of costs, suspension for up to 3 months, escalate the complaint to SACAT. *Failure to comply with the Panel's order or one recommended by the Ombudsman is also referred to SACAT. *SACAT – as above, plus fines of $5K, dismiss from office, disqualify for up to 5 years. *Non-compliance with Panel's order – up to $10K.

Summary Role of State Local Government Agency	
*OLG has complete control over Code processes – may intervene at any time or investigate on its own initiative or on referral from Ombudsman or ICAC, impose penalties. *Various matters can only be investigated by OLG. *Minimal oversight by parliament.	*Minimal role – oversight system, support to minister, cooperation with LGA eg for training, guidance to councils.

[i] NSW Office of Local Government and/or its Chief Executive.

[ii] Options include 'explanation, counselling, training, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour'.

[iii] Complaints for an improper purpose, detrimental action against a complainant, disrupting or disclosing confidential information about the complaints process.

[iv] General Manager (chief executive) of the council or his/her delegate (may be senior staff member or external person).

29 November 2024

The Hon. Ron Hoenig, MP
Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

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

Dear Minister

COUNCILLOR CONDUCT FRAMEWORK REVIEW – SUBMISSION FROM CENTRAL COAST COUNCIL

Central Coast Council appreciates the opportunity to provide a submission in response to the Office of Local Government's discussion paper titled *"Councillor conduct and meeting practices – A new framework"*.

Council welcomes a reform of the current accountability framework and supports a framework that will strengthen leadership, foster a culture of integrity, transparency, and accountability, and will assist in maintaining dignity at Council meetings.

Council has reviewed the Discussion Paper, and at the meeting of 26 November 2024, resolved to provide the following submission.

Council's feedback on the proposed review will be made by addressing the topics and questions raised in the discussion paper.

Principles of Change

Council supports the stated principles and recommends two additional principles which could be combined into a single statement: *A focus on long term community outcomes*.

A focus on community outcomes should be the guiding principle for all activity and decision making. These activities and decisions should consider not only the immediate outcomes but also longer-term impacts of decisions, for example future impacts on the Long-Term Financial Plan or longer term consequences of planning decisions.

The inclusion of community at the heart of councillor conduct ensures that the potential focus of short-term election cycles can be overcome through clear guidance extrapolated in the principles, oath, and code of conduct.

Changes to the Code of Conduct and Oath

Council supports the alignment of the Oath of Office to an updated Code.

Council supports the need to, clearly and succinctly, outline the behavioural expectations of councillors.

The current code is complex and, in parts, difficult to understand. Council is also of the view that any code must be enforceable with defined consequences for non-compliance.

Enshrining the requirements of councillor conduct and defining misbehaviour in legislation rather than a code, givens them greater force and weight of authority.

The proposed amendments to this framework appear to add complexity by creating a tri-layered system with an aspirational code, legislated definitions of misconduct and additional details included in regulations. This is unlikely to result in a streamlined and easily understood system.

Councillor Misbehaviour

Council supports any change to the definition and assessment of Councillor behaviour that will provide greater clarity and understanding of their responsibilities and how certain behaviours will be appropriately managed. Some councillors and staff find it difficult to understand the complexities of the code such as the differences in relation to the three different forms of conflicts. (i.e., pecuniary, non-pecuniary significant and non-pecuniary less than significant).

A review of such requirements with a view to merging the pecuniary and non-pecuniary – significant requirements into one category is deemed appropriate as the identification, reporting and management requirements are essentially the same.

The proposal to amend disclosure requirements for gifts to only those with a cumulative value of more than $500 is a significant increase from the current provisions in the code. Given the close relationship between local government and the community it serves, Council would recommend the current gifts and benefits framework is more appropriate for local councils than the NSW parliamentary standard.

Council fully supports any proposal to provide the OLG with additional investigative powers to allow it to seek the necessary information required to appropriately investigate alleged breaches of pecuniary interests. The proposed enhanced guidance on lobbying activities is also supported.

Dispute Resolution

Council supports the proposal to abolish the two-step investigative process that currently exists in the Procedures for the Administration of the Model Code of Conduct.

Additionally, Council supports the suggestion that complaints about conflict-of-interest matters are made directly to the OLG, and complaints about misbehaviour being referred directly to the Local Government Privileges Committee. The removal of General Managers from this process is a positive step as it reduces the potential for conflict between the general manager and their employer.

The issuing of Penalty Infringement Notices (PINs) for minor breaches of conflict-of-interest declarations is also supported, provided it is set at a level that will dissuade councillors from breaching their responsibilities. The possibility of increasing penalties for repeat offenders may also be considered. The potential inequity of the fee level will require detailed consideration to ensure it results in deterrence without unduly impacting councillors of less means.

To reduce the administrative impact of issuing PINs and collection of amounts owed, the ability to deduct the fine directly from councillor fees should be mandated.

Maintaining Dignity

Council fully supports any actions taken to maintain dignity at Council meetings, however it is difficult to determine how requiring councillors to stand would create additional dignity. The current ability for councils to determine this for themselves should be maintained. This will allow the council to take into consideration logistical issues such a microphone sensitivity, chambers layout, and the impact on camera placement for live streaming.

The issuing of PINs by the Mayor to members of the public for failure to leave a meeting after being expelled requires further review. It is our experience that the mayor may be reticent to reduce openness and transparency through the expulsion of the members of the public from open meetings. This reticence is unlikely to be overcome by this additional power.

It is difficult to foresee how this new power would be practically implemented during a period of disruption in a council meeting, and further, how it would be implemented in a manner that is safe for the mayor and staff. Further, the appropriateness, and amount, of any PIN should be carefully considered when such behaviour can be sufficiently dealt with under existing mechanisms, for example by calling Police if meeting attendees refuse to leave the premises or by refusing access to serial offenders.

There is some concern that the cumulative impact of many proposals will result in the mayor retaining power above and beyond that conferred through the electoral process, especially in councils where the mayor is not popularly elected.

Briefings

The Discussion Paper refers to the potential for enforcing that briefing sessions be undertaken in public. While Council supports increased transparency and openness, there remains a diversity of views on whether mandatory public briefing sessions will help or hinder this.

All councillors support the ban on decision making in briefings sessions and recommend that it be made abundantly clear that debate and decisions are to take place in public during a council meeting.

There is a view that it is necessary to enable detailed discussions and review of options to take place confidentially in order for councillors to fully understand the options available and consequences of each. Some believe that it is imperative that all councillors feel safe to ask questions, offer alternate views or investigate multiple solutions to an issue. The Discussion Paper acknowledges the need for candid conversations between the mayor and general manager, however does not provide justification for other

councillors to not be afforded the same opportunity, except by virtue of confidential briefings. Council notes that both state and federal ministers may receive confidential briefings to support informed decision making.

An alternate view has also been presented, that the process of becoming fully informed can be achieved in a public format and that this level of openness and transparency is a viable and valuable goal.

As a result, Council recommends that this item be further investigated to define options that are able to achieve the desired level of transparency whilst affording all councillors the opportunity to be fully informed. Council appreciates the opportunity to contribute to this important discussion and looks forward to further consultation on an amended approach.

There is some concern that the appointment of councillors to representative roles or committees does not always reflect the democratic makeup of the Council. Council is of the view that when appointing councillors to committees and representative roles (where there is more than one position), that appointments should reflect the balance of views that make up the Council. Where possible, these positions should be filled by proportional representation.

Yours sincerely,



Lawrie McKinna
Mayor, Central Coast Council
themayor@centralcoast.nsw.gov.au

2. Principles of change (see Part 2 of the Discussion Paper for background information)

2.1. Are we missing anything in the principles of change?

QPRC supports the principles of change. These align closely with the General Conduct Obligations already listed in the Model Code of Conduct.

In regard to the Freedom of Speech' principle, it should be noted that Councillors, unlike members of Parliament are not protected by parliamentary privilege.

The principles should be clear that defamatory statements, unsubstantiated allegations or making statements that bring Council into disrepute remain.

3. Potential changes to the code of conduct and oath of office (see Part 3 of the Discussion Paper for background information)

3.1. What are the key elements of an aspirational Code of Conduct that should be enshrined?

Key points for consideration is that the aspirational Code of Conduct has to be enforceable and prioritise a safe workplace for staff who brief/liaise with Councillors or act as the interface for information exchange in a Briefing session, if they are to become public.

3.2. What are your views about aligning the Oath of Office to the revamped Code of Conduct?

QPRC does not object as long as it is simple and clear.

4. Potential changes to the definitions and assessment of councillor misbehaviour (see Part 4 of the Discussion Paper for background information)

4.1. Is the proposed pecuniary interest framework appropriate? Is anything missing?

QPRC agrees with the absolute prohibition on a Councillor being involved in any matter before Council where a pecuniary conflict of interest exists. Further, it is imperative for this to work that the OLG be resourced effectively to review matters of alleged pecuniary non-disclosure. It would also be beneficial for the OLG to provide seminars on the Annual Pecuniary Interest Declaration Form as many Councillors do not complete these properly inadvertently or intentionally given the requirement for them to be on the Council website. A greater level of importance (and repercussion) needs to be placed around the honest completion of the form for these new changes to take full effect.

4.2. Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

This needs to align with Staff Code of Conduct which makes reference to ''Significant and less than Significant'' conflicts of interest. There cannot be two varying sets of rules – one for staff and one for Councillors.

4.3. Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

Agree there needs to be an eventual prohibition on real estate agents and developers being able to hold office.

4.4. Is this the appropriate threshold to face a Privileges Committee?

The Privileges Committee is an appropriate mechanism to hold Councillors who engage in poor conduct, accountable. It would be useful if there were more specific criteria examples of definitions of what constitutes inappropriate behaviour to assist.

QPRC believes the Committee makeup should not be current Mayors, only ex/former Mayors, and include ex/former Councillors with legal or governance/risk backgrounds. A mix of metro/regional/rural ex Mayors/Councillors also essential. It needs to be clear that ex/former Mayors and ex/former Councillors forming the Privileges Committee need to abide by the Councillor Code of Conduct and have completed for that purpose disclosures of Conflicts of Interest and a Pecuniary Interest Declaration Form.

4.5. How else can complaints be minimised?

More detailed OLG reporting with public data available for each Councillor (not just overall statistics)

Requirement for more regular training (ie, not only at the start of each new term but annually)

4.6. What key features should be included in lobbying guidelines and a model policy?

The definition of lobbying needs clarity to ensure lobbying in regard to a Development Application or Planning matter. Council conducts site meetings for those Developments which are being considered by Council, after the business paper is made public, and a record of the site meeting is then reported and adopted by Council at the Council meeting. The Site Meeting Report records the date, time, all those present, a summary of what was shown, the discussion, questions and responses. Site Meetings should only be convened where the senior officers of Council have identified that one would assist with the decision making of the Council.

In recognition that lobbying will always occur, the guidelines should provide for the mandatory reporting of any meetings or representation made by lobbyists to individual Councillors which is then disclosed at the Council meeting when the particular DA is being considered.

5. Dispute resolution and penalty framework (see Part 5 of the Discussion Paper for background information)

5.1. What level of PIN is appropriate?

PINS are only appropriate if there is a consequence. It is recommended that each PIN attracts a number of demerit points, depending on severity of breach and as determined by the Privileges Committee which is cumulative. A predetermined number of points would then incur a penalty;

eg: 10 points = Councillor is barred from attending 1 Council Meeting
50 points = Councillor is barred from attending 3 Council meetings

Minor matters could remain with the General Manager as part of alternate dispute resolution.

Do not agree with mandatory reporting to OLG as it removes opportunity for the General Manager to manage minor situations in a timely way.

Where the number of Councillors on a PIN leads to ineffective Council – what does that mean for Council meetings?

5.2. Are the penalties proposed appropriate, and are there any further penalties that should be considered?

Penalties are appropriate.

5.3. Are the existing sanctions available under the Local Government Act sufficient?

No the deterrent for repeated behaviour or for Councillors is an ongoing issue even with the proposed changes. Councillors can be barred or expelled from one Council, then seek election in another local government area.

5.4. Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

This should not prevent a matter being referred under Section 11 to ICAC, NCAT, Ombudsman etc. These bodies often cannot deal with matters in a timely way.

6. Restoring dignity to council meetings (see Part 6 of the Discussion Paper for background information)

6.1. Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

How each Mayor wishes to bring order to a meeting and set the tone of respect should be a matter determined by the Mayor individually. The Principles set the foundations for respectful conduct of Council, and these are available for each Mayor to bring order.

QPRC doesn't believe that the proposed changes for the Code of Meeting Practice are respectful of diversity and inclusion principles.

The proposed requirement for a Councillor to stand when addressing the chamber or when the Mayor enters is discriminatory. Councillors attend remotely via audio visual link, chamber microphones are set for sitting and it excludes people who use a wheelchair or have a physical challenge.

6.2. Are there any other measures needed to improve transparency in councillor deliberations and decision making?

Banning briefing sessions on Development Applications that are made so as to avoid pre-determination is understood. The need for Councillor Workshops on operational matters of the Council is important so that Councillors can undertake their duties and serve their community with a greater understanding on operational matters. These Workshops should be able to be undertaken in closed session so that senior officers of the Council can provide open and frank briefing.

Whilst QPRC would be able to implement pre-meeting briefing sessions being open to the public for transparency purposes; these sessions are for information only. Councillors ask questions and receive answers from the General Manager and Directors. There is never any caucusing by Councillors, debates or decision making at these pre meeting briefing sessions.

QPRC publishes at every Council meeting an agenda item called Councillor Workshops; which notes the topic, a brief summary and who (name, role and organisation) attended the workshop on all items presented at a workshop.

Bayside Council
Serving Our Community

29 November 2024

Our Ref: SF22/4902, 24/352050
Our Contact: Meredith Wallace, General Manager (02) 9562 1666

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

Via email: councillorconduct@olg.nsw.gov.au

Dear Mr Whitworth,

Re Councillor Conduct Framework Review - Submission from Bayside Council

Thank you for the opportunity to provide feedback on the Office of Local Government (OLG) – Code of Conduct and Meeting Practices – A new framework.

Council at its meeting on the 27 November 2024 resolved as follows:

1. *That Council endorses the draft letter of response on the 'Councillor conduct and meetings practices - A new framework discussion paper' for submission to the NSW Office of Local Government (OLG) by 29 November 2024, subject to the inclusion of reference to requesting more information on the Privileges Committee, specifically impartiality of members.*

2. *That Council authorises the General Manager to make any changes discussed at the Council Meeting on 27 November 2024 prior to submission to the OLG.*

Bayside Council is supportive of open and transparent government and accountability and our submission is overall supportive of the changes proposed in the framework and seeks clarification of some elements.

Council's responses to the proposed Framework is provided below, noting this submission was endorsed by Council at its meeting on the 27 November 2024:

- **Potential changes to code of Code of Conduct and Oath of Office**

  Council is supportive of the streamlining of the Code and supports this change, noting that the separation of the Code of Conduct for Councillors to that of staff, noting this in view will provide clarity to the Mayor, Deputy Mayor, Councillors, staff and members of the public.

With regard to the ability of Councillors to speaking publicly on matters pertaining to their Council (even when Councillors disagree with the decisions of Council) whilst we note that this is a departure from the current position where the Mayor is the spokesperson for the Council, Council is supportive of Councillors being free to voice their views/disagreement with decisions when matters are before Council.

Council does however recommend that Councillors be asked to qualify this by ensuring a disclaimer when posting such on social media and/or making comment, to ensure that it is clear that these are the expressed views of themselves as an individual Councillor and do not represent the views of the Council, nor are speaking on behalf of Council.

Council notes that the Mayor would still be considered to be the spokesperson of the Council.

The above-mentioned disclaimer/qualification is to ensure that Council is not brought into disrepute and also to ensure that members of the public are aware that the views are not the views of Council but the expressed views of the individual Councillor. Council is also supportive of enabling Councillors to speak publicly on matters pertaining to Council, noting that Council has adopted the Model Social Media Policy which articulates the administrative framework for Councillors' use of social media platform, and that consideration be given to the Model Social Medial Policy being reviewed by the OLG to ensure alignment and guidance to Councillors as necessary.

- **Potential changes to the definitions and assessment of councillor misbehaviour**

  Council is supportive of the changes proposed to the definitions and assessment of Councillor misbehaviour and welcomes clarity for Councillors, members of the public and staff to ensure that misbehaviour is more clearly defined and articulated with the LG Act rather than spread across several regulatory instruments and policy documents to make it easier to navigate.

  Changes to the definitions of Councillor misbehaviours would emphasise Councillors are community leaders and therefore exemplars of good behaviour, which Council is supportive of.

- **Restrictions on Property Developers and real estate agents**

  Council is supportive of the changes proposed which would require Councillors to divest themselves from real estate or development business activities and contractual obligations. Council welcomes clarity for Councillors, members of the public and staff in this regard.

- **Addressing inappropriate lobbying**

  Council is supportive of the changes proposed and welcomes the proposed guidelines and model policy.

- **Formation of a 'Privileges Committee'**

  Council is generally supportive of proposed change to form a Privileges Committee however seeks additional information on the formation of the Privileges Committee and the management of impartiality of members (to ensure bi-partisan representation).

  Council would also recommend that the OLG consider the development of Terms of Reference to clearly articulate the operation of the 'Privileges Committee' and/or funding model for such. Council would also welcome the opportunity for further consultation on how this would operate at the appropriate time.

- **Dispute resolution and penalty framework**

  In relation to the dispute resolution and penalty framework, Council is supportive of the new proposed power to enable the Mayor to issue a Penalty Infringement Notice to members of the public who refuse to leave a meeting after being expelled. Clarification is requested on how this would be managed and we would suggest that consideration be given to Work, Health and Safety concerns for the Mayor, Councillors, Staff, members of the community present at the meeting in the Chamber at the time.

  Council is cognisant that there may also be the potential for increased costs to Council should it wish to engage security for Council and/or Committee Meetings, noting that at present Bayside Council does not typically have need for security at out Council meetings so this may place a further cost on Council meetings if implemented.

  Further details on in relation to the operation of the he Privileges Committee and how the Committee would administer penalties for misbehaviour in public office by way of Censure, Warning, Loss of sitting fees for misbehaviour at a meeting and more serious sanctions (suspension and disallowance) following referral to a tribunal or body.

- **Restoring Dignity to Council Meetings**

  Council is supportive of the changes proposed to ensure that Council meetings are conducted in an orderly and dignified manner.

  Councillors being required to stand (if able to do so) when addressing the meeting and when the Mayor enters the Chamber is supported (noting that Council is cognisant of the adhering to Disability & Inclusion Action Plan requirements), noting that is Bayside Council's current practice to stand when addressing Council.

  There may also be potential for increased costs to engage security for Council meetings which would equate to further costs for the conduct of meetings if implemented.

- **Banning Briefing Sessions**

  Council is supportive of the proposed changes to ban briefing sessions, noting that Bayside Council already ensures the community can observe local democratic processes having ceased closed to the public briefing sessions.

  Our current practice at Bayside Council utilises the Committee Meeting process to provide Councillors and members of the public with an overview of matters being considered by the Committee. This forum has been effective in ensuring Council, community and staff have access to a presentation.

We trust the above-mentioned feedback from Council will be considered as part of the proposed Framework.

Should you have any questions in relation to such, please do not hesitate to contact me directly.

Yours sincerely,

[redacted]

Meredith Wallace
General Manager

From: Adam Blakester
To: OLG Councillor Conduct Mailbox
Subject: Attention: Councillor Conduct Framework Review
Date: Friday, 29 November 2024 1:52:03 PM
Attachments: Outlook-bw0tymfl.png

Foremost, I wish to express my wholehearted agreement with the general purpose and intent as presented in the Discussion Paper, particularly:

- The urgent need to supersede the existing Code - which in my view is more accurately described as a Model of Misconduct, with the occasional references to what good governance actually entails
- The value of creating a succinct aspirational Code of Conduct, focussed on what is, rather than what is not, required
- Aligning the definition of pecuniary interests for NSW councillors with that applied for NSW members of parliament
- Clear rules to identify property developers and real estate agents
- Pecuniary conflicts of interest being handled by the NSW Office of Local Government.

There are however a few aspects of what is proposed that are concerning, namely:

- The proposed treatment of non-pecuniary interests is not fully clear. The first paragraph on p.11 has a syntax error, and is repetitive with the second paragraph. Due to these two errors, it is not possible to clearly understand what is proposed.
- I think the costs and cost-recovery arrangements, for the proposed divestment rule for property developers and real estate, need to be clarified.
- Similarly, with regard to the Privileges Committee, what is the feasibility of the proposed cost recovery model, i.e. paid for by the Councillor/s and/or Council.
- The reporting of inappropriate lobbying to the General Manager blurs governance and management/operations. It is not appropriate for a General Manager to have governance oversight and power over Councillors. Could this role also be undertaken by the NSW Office of Local Government?
- The proposal that Councillors must stand - when they speak in meetings and when the Mayor enters a meeting - is silly and antiquated. The proposed changes need to focus on the Councillors proper conduct and behaviours, not trite actions such as this.
- The proposed power for Mayoral to expel Councillors for acts of disorder is extremely risky. What is the mechanism if it is the Mayor who is disorderly? Instead, I think such matters need to be put to a vote, with a majority, or perhaps super-majority, decision required to enact expulsion of a Councillor.
- The outright banning of closed briefing sessions is overly blunt and counter-productive. Such closed sessions are of critical importance to handling matters which are confidential and sensitive, including commercially sensitive and confidential matters. Being able to discuss such matters in confidence is an essential part of good governance.

Thank you for the opportunity to review and comment on the Draft Framework.

Please feel free to contact me should you have any questions or wish to discuss this further.

Sincerely yours,

Adam Blakester | Councillor

ablakester@uralla.nsw.gov.au | 0436 621 089

www.uralla.nsw.gov.au

Vision: Be vibrant with a growing economy supporting a sustainable quality of life that values its heritage

Mission: Listen to and facilitate the aspirations of the community

Values: Unity - Safety - Commitment to service

camden council

29 November 2024

Strategic Policy Unit
Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

Sent via email to: councillorconduct@olg.nsw.gov.au

Dear Strategic Policy Unit

RE: COUNCILLOR CONDUCT FRAMEWORK REVIEW

I refer to the Office of Local Government (OLG) Circular 24-17 which notified councils about the release of the Councillor Conduct and Meeting Practices Discussion Paper (Discussion Paper) and invited written submissions in response to the Discussion Paper.

It is noted that the Discussion Paper outlines proposed changes to both the Councillor conduct framework and meeting practices.

At its Ordinary Meeting on 12 November 2024, Council resolved as follows (ORD157/24):

> *That Council endorse the submission on the Councillor Conduct Framework Review, included as Attachment 2 of the report, to be sent to the Office of Local Government.*

Please find **attached** the submission that was endorsed by Council to be provided to the OLG.

Thank you for the opportunity to make this submission and for your consideration. Please contact me via email at cr.acagney@camden.nsw.gov.au or phone me directly on 0427 406 434 if you would like to discuss it further.

Yours sincerely,

[redacted]

Cr Ashleigh Cagney
MAYOR OF CAMDEN

Cc:
Local Government NSW
GPO Box 7003
Sydney NSW 2001
Sent via email to: lgnsw@lgnsw.org.au

ATTACHMENT – CAMDEN COUNCIL SUBMISSION TO THE OFFICE OF LOCAL GOVERNMENT RE: COUNCILLOR CONDUCT FRAMEWORK REVIEW

Camden Council (Council) thanks the Office of Local Government (OLG) for the opportunity to provide feedback on the Councillor Conduct and Meeting Practices Discussion Paper (Discussion Paper). Council's submission will address each of the key focus areas of the Discussion Paper in turn.

The principles of change

Council generally supports each of the principles of change, as listed below, and does not propose any additional principles of change:

- Council leadership and decision making is paramount
- Freedom of speech is fundamental
- Transparency and accountability are maintained
- Issues are dealt with at the most immediate or local level
- A strong and proportionate local government regulator
- Justice is timely and proportionate
- Significant penalties should only be imposed by a judicial or quasi-judicial body.

Potential changes to the code of conduct and oath of office

Council supports the development of a separate Code of Conduct for Councillors and a more explicit alignment between the Code of Conduct and the Oath or Affirmation of Office for Councillors. This should make the applicable behavioural standards easier to understand and appropriately reinforce each Councillor's stated commitment to faithfully and impartially undertaking their civic duties in the best interests of the community.

Council also supports the Code of Conduct for Councillors being similar to the Parliamentary Codes for NSW politicians, given that each of these applies to elected representatives. However, even when regard is had to the proposal for Councillor misbehaviour to be more clearly defined within the *Local Government Act 1993*, it is submitted that given several recent Independent Commission Against Corruption investigations evidencing Councillor corruption at some NSW councils, further consideration should be given to whether it is desirable to make the Code of Conduct for Councillors aspirational rather than enforceable. It is acknowledged that the overall effect of the proposed changes will depend on the detail of the legislative changes and the extent to which they will reinforce Code obligations.

Potential changes to the definitions and assessment of Councillor misbehaviour

In relation to conflicts of interests, Council supports aligning the pecuniary interest framework for Councillors with that for NSW politicians, noting that this is already to some extent reflected in the Returns of Interests required of Councillors under the existing Model Code of Conduct for Local Councils in NSW. Council also supports the proposed framework for significant non-pecuniary interests, as it appears simpler (i.e., less prescriptive) yet remains generally consistent with current obligations and also enables nuance for considering individual circumstances. However, Council also considers that the guidance in the current Code, providing examples for Councillors to refer to, has value and should be retained or enhanced in a guidance document.

Council does not hold a strong view in relation to the planned requirement for Councillors to divest themselves from real estate or development business activities and contractual obligations, except to note that consideration should also be given to implementing a less onerous approach to managing inherent conflicts of interest for property developers and real estate agents by more robustly managing such conflicts within the proposed conflicts of interest framework.

In relation to the proposed definition of misbehaviour, Council is of the view that the three limbs to the definition are reasonable and further that the definition should only apply to more serious rather than trivial behaviours, as this should help to reduce the likelihood of frivolous or vexatious complaints.

In relation to inappropriate lobbying, Council supports the introduction of lobbying guidelines and a model lobbying policy, and recommends that this lobbying policy framework addresses matters such as lobbying rules and suitable protocols for administering and documenting meetings. Such measures should be appropriately tailored to the local government context rather than simply extending existing requirements of the *Lobbying of Government Officials Act 2011* (LOGO Act) to councils, given that the LOGO Act was specifically developed to combat Parliamentary and State agency corruption in NSW. For example, the OLG should be the appropriate regulatory authority for lobbying in local government, rather than the NSW Electoral Commission which has that function for NSW government agencies, and a requirement to maintain a lobbyists register could be considered an unnecessary impost on councils given the much lower incidence of professional lobbying impacting an individual council compared to the State Government.

Dispute resolution and penalty framework

Council supports the proposed abolition of the existing 'two step process' as outlined in the Discussion Paper, as it should help to ensure the timelier resolution of complaints and reduced costs for councils via the removal of a role for external conduct reviewers.

Noting the proposal for the OLG to issue penalty infringement notices (PINs) for minor or insignificant breaches of the conflicts of interest declarations, it is submitted that a maximum of $200 should be considered for this. Relevantly, minimum penalty notices for matters such as not voting, fare evasion and littering range from $55-$200, and it is likewise appropriate to have regard to the substantial variation in fees paid to Councillors across NSW so that a Councillor receiving a fee at the lower end at that spectrum is not unfairly impacted by the issuing of a PIN.

Council also supports the wide range of penalty options that are proposed, as this will allow for proportionality, and submits that decisions on serious sanctions should be made by an independent tribunal rather than the Departmental Chief Executive so that an unelected official is not standing in judgement on an elected Councillor.

However, Council notes that while the proposal for Mayors and ex-Mayors to participate in the planned NSW Local Government Privileges Committee (the Privileges Committee) could enable judicious assessment by peers when considering alleged misbehaviour, it may also create a risk of partial or political decision-making and an undue burden on Committee members as Councillors would be sitting in judgement of other Councillors. This should be considered

carefully before the composition of the Privileges Committee and its governance framework are finalised so that at a minimum, any conflicts of interest will be managed appropriately. Council considers that there is a case for the Privileges Committee (or indeed several Privileges Committees assigned to regions) to be composed of external governance or conduct experts in the same way as the Local Planning Panels rather than relying on Mayors and ex-Mayors.

Finally, the Discussion Paper is unclear as to what circumstances would require individual Councillors or their councils to pay for the Privileges Committee process, so Council recommends that further consultation takes place with local government stakeholders about this matter once those proposed details are formulated.

Restoring dignity to Council meetings

Council supports the proposed powers for Mayors to deal with acts of disorder at Council meetings, and considers it appropriate that Councillors would have a right of review in relation to the exercise of such powers as it concerns them. The framework that is established for requesting any such review should ensure that it facilitates a prompt assessment and response.

However, Council holds concerns with the practicality of the proposed requirement for Councillors to stand, on the basis that it may unnecessarily draw attention to Councillors who for health reasons are unable to readily stand, may make it harder to hear Councillors as they are further from the microphone (or require modifications to microphone placement/technology as an unnecessary cost to councils), will likely reduce the efficiency and pace of meetings (many of which take place during evenings) and will also further zoom out the view of Councillors on the livestream and video recording (to accommodate standing Councillors) thereby making it more difficult for the public to identify speakers. Council suggests that the dignity of meetings arises from strong and consistent leadership of the meeting and it is difficult to see how the benefits of standing outweigh the issues identified above.

In relation to the proposal to ban briefing sessions held in the absence of the public, Council acknowledges the importance of transparency within government generally and supports the current controls on caucusing. Nonetheless, Council holds the view that it would be counter-productive for such briefing sessions to be banned entirely. One reason for this is that the Discussion Paper's support for the Mayor holding candid conversations with the GM outside of meetings arguably also applies to Councillors as a whole, as briefings enable questions to be asked and complex issues to be candidly discussed in an informal context prior to decision-making. Another reason is that concerns raised in the Discussion Paper about transparency are already mitigated by the provision of Council meeting reports which include reasons for staff recommendations and the existing ability of Councillors to ask questions. Council is also concerned that a ban would simply drive confidential discussions underground without the benefit of all Councillors having the ability to discuss matters together and openly.

As an alternative, Council recommends that any restrictions applied to briefing sessions are limited to matters more commonly associated with corruption risks (such as development applications, as mentioned in the Discussion Paper), and also that a robust governance framework is established for briefings which addresses matters such as how conflicts of interest are to be managed and enhances transparency with respect to informing the public about what matters generally are covered at particular briefing sessions. Briefing sessions must also remain confidential where they relate to the types of matters listed at section 10A of the *Local*

Government Act 1993, concerning the grounds on which a Council meeting can be closed to the public.

Conclusion

As detailed in the above submission, Council supports in principle the significant majority of the proposals for revising the Councillor conduct framework as outlined in the Discussion Paper; however, submits that the framework would benefit from further refinement for the reasons that are articulated.

English
If you need help understanding this information, please call the Translating and Interpreting Service on 131 450 and ask them to call Camden Council on 13 22 63 on your behalf.

Chinese (Simplified) | 简体中文
如果您需要帮助理解本资料内容，可首先致电 131 450，联系翻译和口译服务（TIS），然后要求为您转接 13 22 63 联系 Camden 市议会政府。

Chinese (Traditional) | 繁體中文
如果您需要幫助理解本資料內容，可首先致電 131 450，聯絡翻譯和傳譯服務（TIS），然後要求為您轉接 13 22 63 聯絡 Camden 市議會政府。

Arabic | العربية
إذا كنتم بحاجة للمساعدة في فهم هذه المعلومات، فيرجى الاتصال بخدمة الترجمة التحريرية والشفهية (TIS) على الرقم 131 450 والطلب منهم الاتصال بمجلس Camden على الرقم 13 22 63 بالنيابة عنكم.

Spanish | Español
Si necesita ayuda para comprender esta información llame al Servicio de Traducción e Interpretación (TIS) al 131 450 y pida que llamen a la Municipalidad de Camden al 13 22 63 en su nombre.

Vietnamese | Tiếng Việt
Nếu cần người trợ giúp mình hiểu thông tin này, xin quý vị gọi cho Dịch vụ Thông phiên dịch (TIS) qua số 131 450 và yêu cầu họ gọi cho Hội đồng Thành phố Camden số 13 22 63 giùm quý vị.

Punjabi | ਪੰਜਾਬੀ
ਜੇਕਰ ਤੁਹਾਨੂੰ ਇਸ ਜਾਣਕਾਰੀ ਨੂੰ ਸਮਝਣ ਵਿੱਚ ਮੱਦਦ ਦੀ ਲੋੜ ਹੈ, ਤਾਂ ਕਿਰਪਾ ਕਰਕੇ 131 450 'ਤੇ ਟ੍ਰਾਂਸਲੇਟਿੰਗ ਐਂਡ ਇੰਟਰਪ੍ਰੈਟਿੰਗ ਸਰਵਿਸ (TIS) ਨੂੰ ਫ਼ੋਨ ਕਰੋ ਅਤੇ ਉਹਨਾਂ ਨੂੰ ਤੁਹਾਡੀ ਤਰਫੋਂ 13 22 63 'ਤੇ Camden ਕੌਂਸਲ ਨੂੰ ਫ਼ੋਨ ਕਰਨ ਲਈ ਕਹੋ।

Italian | Italiano
Se ti serve aiuto per capire queste informazioni, telefona al Servizio traduzioni e interpreti (TIS) al numero 131 450 e chiedi di chiamare per tuo conto il Comune di Camden al numero 13 22 63.

Assyrian | ܐܣܘܪܝܐ
ܐܢ ܨܒܝܬ ܥܕܪܐ ܕܬܦܗܡ ܗܠܝ ܕܝܕܥܬܐ ܐܬܘ ܠܡܫܪܬ ܬܘܪܓܡܢܐ ܘܬܘܪܓܡܢܐ ܫܘܦܝܐ (TIS) ܕܠ 131 450 ܘܫܐܠ ܐܢܘܢ ܕܢܬܨܠܘ ܥܠ ܒܝܬ ܡܕܝܢܬܐ ܕ Camden ܥܠ 13 22 63.

Nepali | नेपाली
यदि तपाईंलाई यो जानकारी बुझ्न मद्दत चाहिन्छ भने कृपया 131 450 मा अनुवाद र दोभाषे सेवा (TIS) लाई फोन गर्नुहोस् र तपाईंको लागि Camden काउन्सिललाई 13 22 63 मा फोन गर्न लगाउनुहोस्।

Serbian | Српски
Ако вам је потребна помоћ да бисте разумели ове информације, позовите Службу за писмено и усмено превођење (TIS) на 131 450 и замолите да вам назову Општину Camden на 13 22 63.

Hindi | हिन्दी
यदि इस जानकारी को समझने में आपको सहायता की आवश्यकता है, तो कृपया अनुवाद एवं दुभाषिया सेवा (TIS) को 131 450 पर कॉल करें और उन्हें आपकी ओर से Camden काउंसिल को 13 22 63 पर कॉल करने के लिए कहें।

Croatian | Hrvatski
Ako trebate pomoć da biste razumjeli ove informacije, nazovite Službu za prevođenje i tumačenje (TIS) na 131 450 i zamolite da vam nazovu Općinu Camden na 13 22 63.

Greek | Ελληνικά
Εάν χρειάζεστε βοήθεια για να καταλάβετε αυτές τις πληροφορίες, τηλεφωνήστε στην Υπηρεσία Μετάφρασης και Διερμηνείας (TIS) στο 131 450 και ζητήστε τους να καλέσουν τον Δήμο Camden στον αριθμό 13 22 63 για λογαριασμό σας.

Maltese | Malti
Jekk għandek bżonn għajnuna tifhem dan it-tagħrif, jekk jogħġbok ċempel lis-Servizz tat-Traduzzjoni u l-Interpretar (TIS) fuq 131 450 u staqsihom iċemplu lill-Kunsill ta' Camden fuq 13 22 63 għan-nom tiegħek.

Filipino
Kung kailangan mo ng tulong sa pag-unawa ng impormasyong ito, mangyaring tumawag sa Translating and Interpreting Service (TIS) sa 131 450 at hilingin sa kanila na tumawag sa Camden Council sa 13 22 63 para sa iyo.

German | Deutsch
Wenn Sie zum Verständnis dieser Informationen Hilfe benötigen, wenden Sie sich bitte an den Übersetzungs- und Dolmetscherdienst (TIS) unter 131 450 und bitten Sie diesen, die Stadtverwaltung Camden unter der Nummer 13 22 63 für Sie anzurufen.

70 Central Avenue
Oran Park NSW 2570
PO Box 183
Camden NSW 2570
13 22 63
ABN: 31 117 341 764
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www.facebook.com/camdencouncil

2024.1024 OLG copy of on-line submission form – CJJ Nov 24 suggestions

Councillor Conduct Framework

https://www.olg.nsw.gov.au/https-www-olg-nsw-gov-au-category-https-www-olg-nsw-gov-au-category-council-circulars/24-17-councillor-conduct-and-meeting-practices-a-discussion-paper/

Home » Councils » Misconduct and Intervention » **Councillor Conduct Framework**

Have your say on the review of the Councillor Conduct Framework

It is intended that the revised Framework will be based on the following principles of change:

- *Council leadership and decision making is paramount*
- *Freedom of speech is fundamental*
- *Transparency and accountability are maintained*
- *Issues are dealt with at the most immediate or local level* *WHEN the issue is CORE FUNCTION & primary role of Council*
- *A strong and proportionate local government regulator* *BE GOOD to see timely action from regulator – cash flow, FS*
- *Justice is timely and proportionate* *WHAT is past data*
- *Significant penalties should only be imposed by a judicial or quasi-judicial body* *WHAT is past data*

SHOULD BE EVIDENCE OF THE REAL QUANTUM OF ISSUES & COST HISTORICALLY, BEFORE THIS TYPE OF MAJOR DOCUMENT CHANGE (COSTING ?? FOR PLANNING< DOCUMENTING <CONSULTING _ $?TIME FOR ALL PARTIES< DRAFT LEGISLATION OR POLICY< TRAINING ETC

Who are we (OLG) seeking feedback from?
CJJ: Unfortunately no use of the term RATEPAYER – once again. Should be LOCAL COMMUNITY – ie LG area; SHOULD BE for council primary responsibilities and CORE BUSINESS – without forcing special rate variations or higher than CPI increases in mandatory charges (water, sewer, stormwater, waste etc)
Read the discussion paper here.
*Submissions will be accepted until **COB Friday ~~15~~ November 2024**. RESPONSE Date changed. Via OLG newsletter/*

What are you being asked to do?

Feedback can be provided using the online form below – OR
In writing to – councillorconduct@olg.nsw.gov.au – OR
Postal address: Locked Bag 3015, NOWRA NSW 2541.

Submissions must be clearly labelled "Councillor Conduct Framework Review"

****

Councillor Conduct and Meeting Practices - Online Submission Form word copy

CJJ: feedback is CJJ: Step 1 of 6 16%

1. Your Details (Respondent)

I would like my name and personal details to be treated as confidential:
~~Yes, please keep my details confidential~~ - OR
I consent to my details being shared *CJJ: YES to sharing*

Name:(Required)
First Last *CJJ: Cheryl Jaques*
Name of Organisation (If applicable):
Role/Position:
Postal Address:
Telephone: *CJJ:* [redacted]
Email:(Required) *CJJ:* [redacted]

Which of the following **best describes you**?(Required by OLG)
CJJ: If you are responding as a Councillor (TSC GM may separately respond or not)
Council Metro
Council Metro - fringe
Council Regional

Council Rural
CJJ: Tenterfield Shire Council (TSC) is a large with significant non rateable border rural area, TSC has a small Ratepayer base and small population (largely older aged, lower income, poor internet, MINIMAL public transport options & largely limited smart phone use or access)
County Council
Joint Organisation/Regional Organisation of Councils *CJJ TSC is part of a Joint Organisation:*
Industry / advocacy organisation *CJJ:* eg Unions, Land Councils, Tourism, Ratepayers & locality committees +
Member of the public *CJJ: Not sure why 'RATEPAYERS' is missing – They Pay TSC bills*
NSW State Government agency
Other TSC Ratepayer
CJJ: OTHER: I am a RATEPAYER of very large rural area, very small population, very low Rateable properties, poor mobile phone & internet service and limited skills - close to N border with Qld

CJJ: The categories above demonstrate part of what is very wrong about NSW "Consultation" behaviour on a Statewide basis as well as for each local government entity. RATEPAYERS & non-Ratepayer Permanent/voting Residents, who elect all councillors BUT have no say in representatives on the Joint Organisation, NOR on voting results for Regional Organisations, Industry/advocacy organisations, State Government Agencies. TSC demonstrated behaviour for Shire Wide consultation doesn't reflect reality & low numbers of participants.

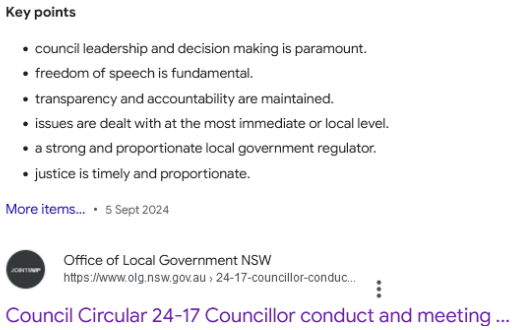
CJJ: Ratepayer & locality organisations do NOT have the same access to contact all Ratepayers as the councils or their representing entities and organisations, nor do Ratepayers & Residents have the ability to spend public money on lobbying, advocacy, legal fees, consultants, advertorials etc as the council s & their supporting entities or participating departments or entities. Capacity for input & influence is skewed against Ratepayers and some non-ratepayer permanent residents who are required to pay Mandatory Rates & Charges.

CJJ: RATEPAYERS pay all mandatory local government invoices, rates notices, access charges.
Current escalating State Government Regulations mean that there is no automatic right of property owners to pass on mandatory local government, State government, public utility, insurance, etc etc increasing charges to their leasees or tenants AND the capacity of a property owner to have a tenant removed in a timely manner, have appropriate levels of BOND to prevent the property owner being out of pocket for their continued tenancy. The government is here to help 'you' is a load of rubbish and getting worse in many areas

Eg this current consultation – is it more wasted public money which Ratepayers & Residents could easily identify a more effective use of the total $. Is this really necessary. Where is the supporting data that this is essential. The numbers referred to in the documents seem ridiculously low for the whole State.

Councillor Conduct and Meeting Practices - Online Submission Form- word copy

Step 2 of 6 33% *CJJ: Feedback is CJJ:* **2. Principles of change (see Part 2 of the Discussion Paper for background information)**



2.1. Are we missing anything in the principles of change? – as presented for this purpose

CJJ: YES – data supporting the need for any of this process & documents.
Are you saying these Principles – copied above – have not been presented previously and are not already required of all NSW Councils and the elected councillors as representatives of Ratepayer & Residents?

NSW Councils – Principles of Change for proposed OLG reforms

1 Council Leadership and decision making is paramount

2 Freedom of speech

3 Transparency and accountability

CJJ: I agree there is too much secret squirrel (in our council) and part of this is misunderstanding the concept of 'confidential', 'audit & risk committee activity', not recording pre public meeting 'community consultation' or 'community consultation' meetings across a huge physical area when the majority of RATEPAYERS will be unable to attend in person; the use of Facebook without ensuring the council webpage needs to remain the primary whole of Shire information & communication source – especially with fewer printed newspapers across the whole rural and regional areas.

4 Significant penalties should only be imposed by a judicial or quasi-judicial body
CJJ: This Must have NO CHARGE for councillors called to respond, especially for very large council areas, very small Ratepayer base, Honorarium level remuneration councils like Tenterfield Shire Council.

5 A strong and proportionate local government regulator
CJJ: This Seems to be missing in action in many respects. NSW councils ARE SUBORDINATE to the State and having every council doing their 'own thing', including taking financial liability and increased risk due to transfer of activity from the State (Federal or Private Sector) to the council is unacceptable. How come the financial instability has reached this stage if the regulators (multiple) have been performing their roles?

CJJ: SUGGEST: The LG legislation (& all public service delegations, all other legislation, policy, circulars, directions, guidelines, model documents & templates) needs to be modified so that NSW councils stick to their CORE BUSINESS, not try to take over everyone else's business- including sometimes international 'business'. This means the focus must be on EVIDENCED RATEPAYER CORE NEEDS not aspirations, community wishes, long term $ responsibilities transferred or cost shifted to councils, not the opinion of a handful or a lobby group BUT the MAJORITY of all RATEPAYERS who will bear the financial consequences of increased rates & mandatory charges. It should be ONLY council core business $ responsibility is passed to Ratepayers & Residents..

CJJ: Similarly having every NSW council & government agency creating & 'consulting' with every Tom, Dick & Harry (or even modifying the ridiculous number of pages and documents in the Regulatory & Governance of Local Government 'system') NEEDS TO URGENTLY BE MASSIVELY THINNED. Exactly How 'special' and 'different'

are these public sector agencies really? NOT! Reviewing, reading and reviewing ad-nauseum policy etc corporate documents is just an administrative 'busy job' across the whole NSW government system, which is wasteful of scarce public funds & wasteful of Ratepayers & non-Ratepayer Resident's time & money (day off work, travel costs in excess of an hour each way etc etc). Please JUST STOP with the constant, apparently unnecessary and expensive consultation and changes. Reduce the specialist & other staff if they don't have enough to do every day.

CJJ: SUGGEST: OLG (&n. all other NSW State agencies) should establish Statewide mandatory policies.

CJJ: SUGGEST: OLG & other regulatory NSW agencies actually undertake their regulatory function.
the unacceptable financial results and financial position of many NSW councils and related local government entities would strongly suggest that the regulatory role of multiple multiple NSW departments, entities and agencies has been MIA (Missing in action) for some time. Stop circular arguments and cost escalation and cost transfer among the many NSW entities.

Councillor Conduct and Meeting Practices - Online Submission Form in word format

Step 3 of 6 50% *CJJ: eg Feedback is CJJ:* **3. Potential changes to the code of conduct and oath of office (see Part 3 of the Discussion Paper for background information)**

3.1. What are the key elements of an aspirational Code of Conduct that should be enshrined?
What is special about the existing content? Why do councils or ??? need updated Codes of Conduct? If the existing multiple layers of regulators are demonstrating their lack of capacity to do their existing role, WHY DOES anyone think introducing more changes – more training – more documents – more community consultation for each council to their Ratepayers & Residents etc. WASTE OF TIME & LIMITED PUBLIC MONEY. Has anyone looked at the current cost of living, the ridiculously overspent multiple layers within the public sector.

Most proposed public sector changes just end up adding more legislative etc documents and multiple layers of additional entities, boards, etc. FOR WHAT. PLEASE STOP & be realistic.
Do your existing jobs before you start with the 'academic' optional changes and workload changes .

CJJ: NSW Councils can NOT afford ASPIRATIONAL anything, especially the very large area, very small population, very small Ratepayer base councils. This is a State $ role & responsibility.
CJJ: why doesn't the State have one Statewide Code of Conduct and ensure it is actually regulated without multiple layers of lawyers and judges and magistrates. Waste of time and public money to have multiple versions
If you want councils to collect fees, pay expenses, do consultations re aspirations, whole of state needs etc, then engage and pay them to do this on behalf of the STATE. Stop requiring 'aspirations' and 'wants' to be part of the mandatory IP&R requirements for every council when it just confuses the community (who largely don't appreciate which public sector entity is responsible for what and assume councils will do it all. NO THEY SHOULDN'T.

3.2. What are your views about aligning the Oath of Office to the revamped Code of Conduct?
CJJ: CJJ: CJJ: why don't councillors swear allegiance to Australia, the King or God? I thought NSW saw Local Government as a 4th level of Australian Government. While it is a subordinate entity of the State as is apparent by the frequency with which the NSW agencies keep trying to impose or 'lure' councils into taking long term financial and operational responsibility for NSW State roles & responsibilities.CJJ: **Councillor Conduct and Meeting Practices - Online Submission Form**

Step 4 of 6 66% *CJJ: EGs are CJJ:***4. Potential changes to the definitions and assessment of councillor misbehaviour (see Part 4 of the Discussion Paper for background information)**

4.1. Is the proposed pecuniary interest framework appropriate? Is anything missing?

CJJ: Perhaps. Are you suggesting these documents are now 'secret' for staff & councillors when they weren't previously? Is this due to personal risk to staff or councillors?

4.2. Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

CJJ: How does this change from what is existing. Presumably there is a standard legal definition of all these terms, especially if this document is proposing putting all 'councillor/mayor misbehaviour' through the judicial system – even though the numbers of issues referred to in these documents is VERY low. Has all this actually been essential or just someone's academic paper or 'fill in time' job?

4.3. Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

CJJ: NO Why are you proposing to have 'specific features' JUST FOR REAL ESTATE & DEVELOPMENT BUSINESSES? What about the unions, lobbyists, etc and all other business areas of activity. This sounds like political bias and should not exist in any way in Australia.

In very large rural area, very small population, very small ratepayer base and appropriate, but low levels of remuneration, councillors still have to earn a living and their options for $ or indirect support is also limited. In many cases councillors will have lived next door to, gone to school, work or school with, been in business with etc others. If every potential 'conflict of interest' especially the limitations for real estate & development business activity could mean half the councillors needed to excuse themselves. The relevant Ratepayers & Residents quickly let everyone know what the relationships are and surprisingly many Ratepayers & Residents prefer to elect someone who knows how business operates rather than a nominee who has a limited non business or more personal focus on what the role of councillor will be.

The current restrictions on donations from developers & real estate interests but not for the multiple unions, pressure groups, wealthy sponsors, overseas individuals or entities is VERY BIASED.

4.4. Is this the appropriate threshold to face a Privileges Committee?

CJJ: I doubt it is. The very low numbers of historical issues doesn't warrant this whole process, including the multiple changes and further restrictions..

Who is paying the time, travel, legal, advisory costs?

4.5. How else can complaints be minimised?

CJJ: Why are you proposing complaints must be MINIMISED. The numbers referred to in the discussion paper are very low when considering the # of Ratepayers State-wide or even the number of tourists, non-ratepayer residents etc. This whole paper seems to be a waste of time and money. The number of complaints does not warrant this level of wasteful activity. Complaints can be further minimised (cost per complaint unlikely to be justified) by the existing multiple layers of NSW Regulators just doing their job consistently.

CJJ: Are the very low numbers of complaints referred in these documents all negative allegations against councillors or staff?
perhaps require all 'complaints' be put on each council's website – updated frequently (monthly before each public meeting at least), Let the community decide, not yet another NSW legal cash cow – especially when the council is a very small community (everyone knows what the others know and do) far away from the entities & individuals being proposed to have more control.

Did no one learn anything from the inappropriate public sector controls imposed on the wider community during COVID. Who is paying for the consequences of that disaster – the Ratepayers & Taxpayers.

CJJ: I agree that legal costs for councillors must be minimised & the State taking responsibility for all seems 'enticing' for many . Even where remuneration is higher than for the very large rural area, very small population base, very small rateable base councils, it still is NOT designed to line the pockets of the legal entities. No data on the estimated historic nor potential legal costs, so the scale of the proposals can be validated. I doubt the whole consultation is worth the effort from the councils, their associations, unions, Ratepayers, Residents, departments. Etc. MOST using up scarce public money. Examples of some legal decisions, the ridiculous cost of any legal process & the apparent bias of some legal processes is alarming & hopefully all get back to basics and minimal charging, minimal delays etc across the board. Ratepayers & Residents do not want to keep providing more money for the legal profession, whether from expansion via this document or other legal actions covering other areas.

4.6. What key features should be included in lobbying guidelines and a model policy?

CJJ: Exclude: Terrorist organisations definitely need to be formally excluded, via minor policy amendments.

CJJ: Exclude: Non Australian individuals or entities formally excluded for lobbying, donations, political advertising of any sort.

CJJ: The role of journalists, social media, publishers & similar should be explicit as in reality these areas/entities etc have been behaving like lobbyists, especially "our ABC" and "our SBS". Really inappropriate & apparently has an inappropriate effect on the public opinion, political opinion, the legal process, $ going to legal firms at levels the average voter or elected representative can not afford. Exclude via minor policy change if not already

Councillor Conduct and Meeting Practices - Online Submission Form

Step 5 of 6 83% *CJJ: EGs are CJJ:* **5. Dispute resolution and penalty framework (see Part 5 of the Discussion Paper for background information)**

5.1. What level of PIN is appropriate?

CJJ: Rubbish. Don't make the proposed changes. Existing rules should cover this easily.

5.2. Are the penalties proposed appropriate, and are there any further penalties that should be considered?

CJJ: Seeing as how the electorate votes their representatives in NOT the regulators, NOT the courts, NOT the public "servants" (what a laugh that term has become), perhaps timely, unbiased, evidenced (NOT wikipedia or university 'research' papers, busy work, administrivia, red tape or statements) public reports is the best option, once a formal need for a penalty has been identified by the existing NSW regulators or the NSW Regulatory/Judicial system. Ie proper information (eg public reporting as per court system – NO Names until liability has been evidenced etc.

5.3. Are the existing sanctions available under the Local Government Act sufficient?

CJJ: I can see no reason to implement any of this huge theoretical process. Stop changing things. The elected councillors (correctly) get an honorarium, especially in the large, scarcely populated, largely unrateable, lower services rural areas with low numbers of Ratepayers to pay the mandatory rates and mandatory charges, so lets just get back to common law principles and existing sanctions – with the regulators actually doing their jobs.

5.4. Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

CJJ: Just stick with the existing practice unless you can demonstrate significant ethical and financial benefits (ie a cost/benefit analysis), evidenced data on justification for this whole process & how many OLG & other regulator staff positions will go due to transfer of these responsibilities to yet another new public sector entity. STOP with the public sector entities (especially those outside the departmental control model) multiplying like rabbits at the cost of Ratepayers & Taxpayers.

Councillor Conduct and Meeting Practices - Online Submission Form

Step 6 of 6 100% *CJJ: EGs are CJJ:* **6. Restoring dignity to council meetings (see Part 6 of the Discussion Paper for background information)**

6.1. Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

CJJ: Existing powers seem appropriate, including CHAIR reminder/s, muting microphones & temporarily ceasing mandatory online broadcast to remove potential 'advertorials' for unruly elected members (or public gallery). How are the State & Federal Governments going with this principle. Freedom of speech is always within existing laws, courtesy & behaviour appropriate to the office.

CJJ: Perhaps the non rural councils need to visit the bush & learn about courtesy and a firm hand by the chair of each meeting (usually the mayor). Perhaps there needs to be some more explicit qualifications for every potential elected officer. Why the 'secret' training material for newly appointed councillors. This could be the problem, especially as reading all the relevant material would probably take up every hour of their first year. Balanced? I don't think so. Our council doesn't seem to have a problem with disorderly behaviour.

CJJ: Have you asked each Mayor of each NSW council if they have had difficulty with managing the meeting/s especially for disorderly behaviour.? Perhaps the past 4 terms of Mayors & Deputy Mayors in a Very SIMPLY & Direct question.

CJJ: The content of the discussion paper seems to be tarring all NSW councils with the same brush. This seems very disrespectful. All NSW councils are required to stream & record their meetings and put on their websites, so the current regulator (OLG) could very simply review recorded meetings to obtain evidence, undertake their existing regulatory duty & reduce these huge documents seeking change. Perhaps the lack of dignity at some NSW councils actually relates to the powers the NSW allows within the local government act, which unnecessarily far exceed the CORE BUSINESS & PRIMARY ROLE of all councils – leading to dissention about why councils (eg Sydney recently funding non community minded people in another council area – where are the regulators for ultra vires expenditure?) Just get each government agency back within one departmental structure under the 'control' & 'direction' of an elected minister, stop with the 'inflated ideas' of what the roles of each agency are, save significant $ and everyone get back to basics before half the population are living in tents.

6.2. Are there any other measures needed to improve transparency in councillor deliberations and decision making?

CJJ: YES An Explicit requirement to record all community consultations (which are theoretically directly related to an agenda item which is formally approved by the GM) prior to each public meeting & all council committees or council advisory committees or community consultations for the IP&R documents, budgets, strategies, plans, policies, Fees & Charges, mandatory rates and mandatory charges etc..

CJJ: Our council used to record the "community consultations" but [redacted] For some Ratepayers it is more than a 2 hour journey each way to attend, Ratepayers have to earn their income to pay mandatory rates & charges etc etc. Ratepayers have to phone the day before the meeting & ask if there is to be a 'community presentation' as the scheduled meeting time is 9.30 but presentations start at 9.00. (both times are in the agenda – can you find this?)

CJJ: If the person seeking to present at a council public meeting, a briefing session, a workshop, a special 'closed group' & not known publicly or others can't attend, thinks the content is IMPORTANT, I would suggest online recorded access is also Important for "community members" including Ratepayers & non-Ratepayer residents.

CJJ: YES I support having all matters via a public meeting of councillors with comprehensive agendas. This is especially important for very large area, very small population, very small Ratepayer base NSW councils. There is no restriction on scheduling extra meetings to handle matters previously done via workshop, 'in house' meeting with supplicant, briefings. The standard meeting process allows resolutions to go into a 'committee of the whole' for more flexible discussions.

CJJ: If "Workshops" & "Briefings" are to cease – so all presentations, discussions etc are in the public meeting – albeit identified as "confidential" on an agenda paper or at the start of each public meeting, then similarly these community consultations should be recorded as part of the mandatory online activity of each council. I support this, but this doesn't need all this huge process, just a simple OLG directors mandatory instruction.

CJJ: Improved clarity in the Meeting Procedures so that :Tabled items are required to be included in the draft & final minutes as a complete document: Draft Minutes are to be put on council's website within 3 working days (align to timing of agenda papers to councillors & "community".

CJJ: Not all councils have expert skills in standard meeting procedures, sound financial management, recruitment, project management, financial grant cost/benefit analysis etc Eg read amended resolutions in full (even if very long as many council resolutions can be) before voting;

Reference: JG.cm:CO24/9785

Contact: Christine Cotterill

29 November 2024

Feedback on the Councillor Conduct Framework Review

Question. Are we missing anything in the principles of change?

Has it been considered that councillors unlike other elected officials do not have parliamentary privilege.

We do not agree with the view that Briefing Sessions are a forum for making decisions away from the public.

Briefings allow council officers to inform councillors of detailed and complicated issues, legal considerations, financial implications. This results in informed decision making when a matter is before council. Briefings are less formal and enable councillors to be provided with subject matter experts to answer questions, consider hypothetical scenarios and manage confidentiality. This again results in better informed decision making in the meeting.

Banning briefings is a backwards step and we do not consider that it would be in the public interest. Examples are planning considerations could impact property values. Councillors and council officers need to be able to work through concepts and concerns confidentially.

Lismore City Council has the majority of briefing sessions open to the public but it is imperative there is a mechanism that allows for some briefings to be confidential. No decisions are made at briefings – decisions making is still confined to council meeting.

The proposal would also create an additional administrative burden on councils.

Question. What are the key elements of an aspirational Code of Conduct that should be enshrined?

Making a code of conduct aspirational will not improve the conduct of councillors. It is comparable to having a suggested speed limit and then trying to fine people for exceeding that limit. The code needs to be prescriptive and enforceable. Issues with the current system are around the procedures used to administer the code not the code itself.

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

Agree with this approach.

Question Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

Agree with the principles and welcome more clarity. Suggest examples be provided.

Question Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

The proposal that councillors be required to divest themselves of all real estate and development business activity, we consider this to be too unreasonable and onerous. There are a number of requirements under legislation in place that contribute to the management of the concerns that this proposal seeks to mitigate and these include:

- the current provisions of the Code of Conduct require all councillors to disclose publicly their sources of income, including whether they are a property developer or a close relation to a property developer and any real property holdings, and
- a prohibition on property developers and their close associates being able to make political donations as per the *Electoral Funding Act 2018*.

Question Is this the appropriate threshold to face a Privileges Committee

Agree with the proposed thresholds of behaviour that would determine a councillor's requirement to face the proposed Privileges Committee.

We would welcome independent oversight of councillor code of conduct complaints, but do not agree with the membership of proposed Privileges Committee. There is a risk of bias and lack of impartiality (perceived and/or actual) by having the proposed Privileges Committee composed entirely of current and ex-mayors. More information would be required on its operating framework, including how the risk of bias (whether actual or perceived) will be managed to provide assurance as to the independence of the Committee. This role would be suited within the OLG, as they have the expert knowledge, independence and impartiality.

Question How else can complaints be minimised?

Anonymous complaints should not be accepted, this would reduce frivolous complaints and clearly indicate a vexatious complainant.

Having consistency and oversight over the handling of complaints would allow the identification of trends and help to influence a culture change in unacceptable councillor behaviour.

Question What key features should be included in lobbying guidelines and a model policy?

Agree with the introduction of lobbying guidelines and a model lobbying policy. It is noted because of their role councillors are often approached by interested parties and inadvertently or otherwise can find themselves in a potentially compromising situation as a result of that interaction.

Could include:
- councillors be required to disclose all meetings with lobbyists and developers, including the date, time, location, parties present and purpose of meeting.
- specific lobbying questions in the Annual and Update Written Returns of Interest process.

Question What level of PIN is appropriate?

Unable to provide relevant feedback without more detail.

Question Are the penalties proposed appropriate, and are there any further penalties that should be considered?

Unable to provide relevant feedback without a structure in the framework that indicates what behaviour results in what penalty.

Question Are the existing sanctions available under the Local Government Act sufficient?

No

Question Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

Decisions on sanctions should be decided by the Departmental Chief Executive, this should provide consistency. A hearing structure comes with a burden of time and cost that is not helpful or fair.

Question Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

The powers proposed to be granted to the Mayor are adequate to ensure the misbehaviour is dealt with in a timely manner. A consequence of these powers may result in an increase of complaints around the use or alleged misuse of those powers.

Question Are there any other measures needed to improve transparency in councillor deliberations and decision making?

Clarity is required around the gifts with cumulative value of more than $500.
Is in intended that there is absolutely no restraint on councillors speaking publicly on council matters?

Does the framework that applies to other elected officials result in behaviours that meet expectations?

Thank you for considering Council's input into this review.

Yours sincerely



Jon Gib
General Manager

Comments and feedback from Máire Sheehan

The .list generally is useful and relevant. My only comment is the one on ‘gifts with a cumulative value of $500’. Is that from one individual, business, and reportable annually in the councillors annual return?

The non pecuniary declaration can indeed be quite complex in terms of a councillor reaching a decision to declare or not and at what level. An issue that can be relevant and is not included is that of- public perception. It would be useful I think to include some commentary on that and why its not in the regulation but is recognised as a potential consideration for a councillor and what weight to give it in make the decision to declare or not.

Developers and RE agents can get themselves out in name only.. it mentions that consideration legislation bring drafted. Is that for the LG Act 1993 or the or the 2005 act that contains multiple regulations etc.?

It will be interesting to see what the definition will be given the it will likely include breaches of a number of acts. Will it be a legal definition in the list of definitions included at the end of the Act?

So this “Is assessed as being outside the norms and expectations of a sitting councillor.” Will be decided by the proposed Privileges committee. Decisions of the committee can be appealed yes and also can be challenged in the civil court system. It was a legal challenge to the interpretation of the
Act that resulted in any proposed sanction being shifted form a council decision to an OLG or more decision.

Minimising complaint - I think increasing access professional development and mentoring and coaching can add to minimising complaints. While the now required induction process is certainly an improvement absorbing and understanding the amount involved in induction for new councillors is far too much for a person to absorb and clearly understand. Translating technical and legal language into plain English is important while also clarifying in well run PD sessions with Q&A and ability for attendants to ask follow up questions.

lobbying is about trying to influence how councillors vote on an matter. That can be building relationships over some time so they as established when relevant matters come to council meetings or committee meetings. It has many ways of luring councillors to think in a particular way about a matter. It may be allocating a lobbyist to a councillor or several where there is a personal or community already existing relationship. That can be a challenge for new councillors as it can sometimes feel like you are rejecting a friends or colleague.
The critical thing is to include the role of the IP&R, CSP, operating plan and annual budget as a key reference. Also that decisions need to be well informed with facts (different to an opinion or view) and made in the context of the community as a whole not a specific part of the community. what to include in guidelines?

I think getting rid of the 2 step approach and going straight to OLG for conflicts and the privileges cttee for misbehaviour is a good idea. Also good not to have a bureaucrat making final decisions.

Good that penalty notices PINs and fines can be appealed - open and transparent.
Q. - what is the financial cost to the person appealing?

Privileges cttee replaces the current CoC process. Sounds good
Q. will they be volunteers or will they be paid an experience?
The eligibility appears good in terms of real experience etc. What will be public perception be? Needs to build up trust and reliability.

Good if bureaucrats cannot impose penalties. Looks like the process is the same as current for minor matters and referral for more serious sanctions will be to OLG to prepare a brief for action to relevant tribunal or body.

CoMP - mayors can expel for acts of disorder. That is good as the process currently can turn quite political However it is important that the mayor conducts the process properly and not depending on the connect with the person misbehaving or a political connections. Including clear training for mayors in important. A councillor losing the fee for that meeting can potentially be a reason not to misbehave at meetings …depending on how wealthy the person is perhaps. Good that the mayor can also require an apology and if not given councillor will lose meeting fees until the apology is provided at meeting.

Are pre meeting briefing sessions to be recorded?
Or is it just public attendance allowed?
The issue not addressed is how to deal with potential questions that may breach the privacy and competition acts? Will another way for councillors do ask confidential queries for legal reasons be set up? One of the requirements in the act is that councillors make informed decisions.

RHINDFEL CONSULTING

Councillor Conduct Framework Review

Submission – Elizabeth Wall, Director, Rhindfel Consulting

Thank you for the opportunity to provide comment on the *Councillor Conduct and Meeting Practices – A New Framework* discussion paper. My comments are set out below:

Principles of Change

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

Yes. I consider that one of the reasons for poor councillor behaviour arises as an indirect result of the level at which fees are set for councillors. Undertaking the role of a councillor is effortful and time consuming and the level of skill, maturity, capability and commitment required is not reflected in the compensation available as set by the Local Government Remuneration Tribunal.

Fulfilling the requirements of public office should no longer be seen as a donation of time with only a modest financial recognition if the state government would like to encourage a wide range of people to stand for election. If the state government would like to see broader community representation with a higher level of capability to make the significant decisions that are considered by councils then it needs to be a more attractive proposition for those people who may otherwise be inclined to stand for council but for whom the reward for their time is insufficiently motivating.

There are councillors who, despite the fees currently available, are motivated sufficiently by the public good to stand and to be elected and who are skilled and capable. I consider that raising the level of fees to be more reflective of the time, skill and capability required to be fully acquainted with the often very complex issues councils are dealing with would result in a broader range of more professional candidates less likely to engage in misbehaviour.

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

If any proposed Code of Conduct is aspirational as opposed to enforceable it is difficult to understand what value it would have in modifying less desirable behaviours.

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

A councillor will not be in a position to know whether they hold a critical vote until any motion on the issue on which they may consider that they could have a significant non-pecuniary interest is put to the vote by the chair of the meeting. On this basis it cannot logically be a consideration for determining whether their interest is significant.

Question: Is this the appropriate threshold to face a Privileges Committee?

The three 'limbs' of the definition of misbehaviour are not, in my view, likely to reduce the number of complaints made. What a person thinks is unbecoming, brings council into disrepute or being outside the norms and expectations of a sitting councillor is subjective. Cleary the committee will attempt to bring some objectivity to their assessment but if the objective is to reduce the number of complaints I consider this to be unlikely.

Question: How else can complaints be minimised?

See my response above to in relation to the principles of change.

Question: Are the penalties proposed appropriate, and are there any further penalties that should be considered?

It is not clear to me that any councillor that has engaged in behaviour that results in censure or warning is likely to be overly concerned about these penalties. It is possible that the loss of sitting fees may influence future behaviour however the fees are not sufficiently high enough for this to be a particularly significant deterrent (please refer to my answer in relation to the principles of change).

It may be worthwhile considering publication of the penalties, including in a report to be presented to the council to which the councillor is elected, so that the local community can be made aware of both the behavior, the complaint and the outcome.

More practically, given the fact that a significant number of elected councillors across NSW have some political party affiliation (and affiliation to factions within parties), it could be problematic constituting committees to minimize the apprehension of bias in the consideration of complaints and determination of penalties.

Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

I can understand the reluctance of a public official to impose significant sanctions on an elected representative and support the referral to an appropriate tribunal or body.

Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

Yes. The Mayor or chair could be given the power to close a meeting due to continued disorder and defer all remaining items to the next ordinary meeting of council. At this point, the chair can only adjourn a meeting due to disorder for no longer than 15 minutes. Occasionally this is not sufficient to deal with either a disorderly councillor who refuses to leave the chamber or an unruly public gallery who know that they only need to wait for 15 minutes before debate will resume.

Question: Are there any other measures needed to improve transparency in councillor deliberations and decision making?

Banning briefing sessions will lead to poorer decision making. There needs to be a forum in which council officers can give advice to councillors uninhibited by the way in which that advice may be interpreted by members of the public who may be present.

In addition, briefing sessions are often used by councillors to ask questions of officers that they may be reluctant to ask in a public forum as it could display ignorance or misunderstanding. This then removes an opportunity for clarification.

A better way of approaching the problem of decisions being informally reached in briefing sessions then formalised with minimal debate in council is to provide more detailed guidelines to staff and councillors on briefings being a forum for the provision and clarification of information as opposed to debate and decision-making.

Additional Issue: Model Code of Meeting Practice

Clause 10.15 of the Model Code of Meeting Practice states:

If the amendment is carried, it becomes the motion and is to be debated. If the amendment is lost, debate is to resume on the original motion.

Some councils have inferred that where an amendment is carried, the mover and seconder of the original motion are substituted with the mover and seconder of the successful amendment. This means that over the course of the life of a motion, the mover and seconder of the motion can change several times depending on the number of amendments moved in relation to that motion that are carried.

I suspect that this is an unintended consequence of unfortunate wording in clause 10.15 where the word 'becomes' has been used instead of the more conventional word 'varies'.

Amendments are generally proposed to change the motion and to differing degrees. For example, a councillor may move an amendment that doesn't change the wording of a motion but proposes it be separated into two clauses with the intent of then moving a procedural motion that the motion on the table be put to the vote in parts so that councillors are able to vote for one part of the motion but against another. Clearly this amendment would not become the motion. The result of it being carried would though vary the motion.

Another consequence of the practice of substituting the mover and seconder of the motion with the mover and seconder of successful amendments is that councillors may choose to game this by proposing benign amendments with the sole purpose of claiming ownership of the motion. Previously, and in other councils that do not engage in this practice, councillors foreshadow or move additional motions to gain ownership of a potential council resolution on an issue. Alternatively, where a councillor has moved a motion, the intent of which has changed to a point where they are no longer comfortable being associated with it, they move a procedural motion to withdraw the motion on the table and it is up to their fellow councillors to decide whether to agree to this thereby leaving the way open to another motion on the matter being moved by another councillor or for council not to make a decision on the matter.

I cannot find any authority that proposes that the mover and seconder of successful amendments are recognized as the mover and seconder of the principal motion.

Recommendation: That the word 'becomes' be replaced with the word 'varies' in clause 10.15 of the Model Code of Meeting Practice

Email: [redacted]
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RHINDFEL CONSULTING

CUMBERLAND
CITY COUNCIL

29 November 2024

Our Reference 11276230
Contact Charlie Ayoub
Telephone [redacted]

Mr Brett Whitworth
Deputy Secretary, Local Government
Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

By Email: councillorconduct@olg.nsw.gov.au

Dear Mr Whitworth

RE: OFFICE OF LOCAL GOVERNMENT – COUNCILLOR CONDUCT AND MEETING PRACTICES DISCUSSION PAPER SUBMISSION

Cumberland City Council provides the following submission on the Councillor Conduct and Meeting Practices Discussion Paper.

Broadly, Council is supportive of any reforms to the Code of Conduct framework which result in the General Manager being removed from the review or determination of Code of Conduct matters.

Council's view is that the General Manager should not be in a position where they are required to triage, mediate and in some instances determine Code of Conduct complaint outcomes following a preliminary assessment of the complaint by Council's appointed Code of Conduct Complaints Coordinator. From Council's perspective, this is both a perceived and actual Conflict of Interest, given that the General Manager is the only employee of the elected Council whose performance and ongoing employment is determined by the Council. Removal of staff involvement in Code of Conduct matters is fully supported by Council.

Further, Council is also supportive of any changes to the Model Code of Conduct which limit its ability to be weaponised. Council supports changes that will lead to a reduction in unnecessary costs and the utilisation of Council resourcing in the triaging, investigation and review of such matters across the sector. The proposed changes in Council's view are more conducive to a Council working collaboratively and effectively together.

Banning of Briefing Sessions

Council's position with respect to all other Councillor briefings and workshops outside of pre-meeting briefings, is that the ability of Council to convene these are imperative to Councillors receiving detailed context and information in understanding complex Council business, and that these briefings and workshops, when required to be held, should not be prohibited as they promote better understanding and decision making of the Council.

At times, it is critical that the elected Council can be provided with a briefing on complex matters which may have legal, strategic, policy or financial considerations to the Council, by the General Manager or delegated staff prior to be considered at a Council or Committee meeting setting.

Council and Committee meetings are decision making forums underpinned by meeting procedures and protocols outlined in the adopted Code of Meeting Practice, and these meetings typically are not intended to be mechanisms for Council to be briefed on important and complex matters and enter into dialogue and ask questions of staff outside of a public setting.

If for example such information were to be delivered at a Committee level, not all Councillors of a Council would be members of each Committee, and non-member Councillors would be excluded for example from a closed session discussion of the Committee, prohibiting them from receiving information other Councillors on the Committee are privy to.

Restoring Dignity to Council Meetings

Council is supportive of the proposed changes. It is important that the mechanism available for a Councillor who is expelled from a meeting by the Chairperson to seek a review is robust and independent.

Another important consideration is that the framework clearly address the legal mechanism to enable a power of delegation for a Mayor to issue PINs to Councillors or members of the public gallery for disorderly conduct, or failing to comply with the Chairperson's ruling on matters of order. Further, this scenario should also cover scenarios where the Mayor is not the Chairperson of a meeting, and instead a Deputy Mayor is, or another Councillor is determined as the Chairperson under the Terms of Reference, or elected as Chairperson at the commencement of a meeting.

Thank you for the opportunity. Should you wish to discuss further, please contact Council's Director Governance and Risk, Charlie Ayoub on [redacted] or via email at [redacted]

Yours faithfully

[redacted]

Peter J Fitzgerald
GENERAL MANAGER

Canberra Region Joint Organisation's submission to the Office for Local Government's Councillor Conduct Framework Review

This submission is from the Canberra Region Joint Organisation. Eleven NSW regional councils are members of the joint organisation as well as the Canberra Airport & the ACT Government.

This submission is to the Office for Local Government in relation to its review of councillor conduct framework and discussion paper 'Councillor Conduct and Meeting Practices – A New Framework' released September 2024 for consultation.

This submission is prepared by the Canberra Region Joint Organisation in its own right, is separate to individual submissions that have been made by Canberra Region Joint Organisation member councils and does not necessarily reflect the views of individual member councils and councillors.

A copy of this submission has been provided to mayors and general managers of CRJO's member councils. Mayors and general managers were provided with information regarding the review, the discussion paper and the consultation from the Office for Local Government's website and advised of the opportunity to make a council or individual submission through that site.

Canberra Region Joint Organisation welcomes the objectives of the proposed reforms and appreciates the opportunity to provide the following submission.

This submission has been presented as responses to questions asked within the discussion paper with additional emphasis on the two major proposed changes of creating a privileges tribunal and banning closed council briefings particularly with respect to work health and safety.

The principles of change

Are we missing anything in the principles of change?

The principles of change proposed in the discussion paper, which align closely with the general conduct obligations listed in the current model code of conduct, are supported as is independent and timely complaints handling, however an additional principle is necessary relating to maintaining workplace health and safety is necessary and some additional inclusions amongst the proposed principles are suggested.

Changes to legislation and codes for councillor conduct need to recognise that much of councillors' work occurs in workplaces which must be safe, physically and psychosocially. Therefore, councillors conduct must have regard for legislation associated with workplace health and safety. There should be a clear connection between councillor behaviour which breaches workplace health and safety laws and penalties under the councillor conduct framework. Similarly, legislation for workplace health and safety should be amended to specifically cover breaches by councillors acting in their role as elected local government representatives.

A further additional principle relating to councillors' right to operate in a supported environment is suggested, particularly supporting councillors' learning and development, building councillors' understanding of their roles and responsibilities and workplace health and safety requirements including psychosocial safety and training for mayors in meeting chairing good practice is also suggested.

An amendment to the transparency and accountability principle or elsewhere amongst the principles around maintaining discipline after council decisions are made is also suggested. While considering and debating issues openly is paramount, once council decisions are made councillors need to respect the fact of the majority decision and be disciplined and present a unified front regarding implementation of council decisions when speaking publicly about these decisions.

The freedom of speech principle needs additional detail making it clear that there is no protection via 'parliamentary privilege' or similar from defamatory statements or bringing council into disrepute.

Potential changes to the code of conduct and oath of office

What are the key elements of an aspirational code of conduct that should be enshrined?

An easy to read, brief and aspirational code of conduct combined with clear definitions of misbehaviour, as proposed, is supported provided these are simple and clear and provided there also exists:

- mandatory behavioural standards (not just misbehaviour definitions) to which councillors can be held to account,
- penalties that apply to breaches, clearly and simply articulated, and
- practical guidance for how to compliantly articulate views, debate, disagree with council officers and other councillors in council decision-making processes and places without breaching behavioural standards

and provided all aspects, including the aspirational code of conduct, are enforceable to ensure it is not misconstrued as optional and thereby devalued.

Separating these different aspects into short, easy to read fact sheets or similar will assist with accessibility and increase the likelihood of the documents being read and referred to.

Mandatory training for prospective councillors is needed, not just elected councillors, in the code of conduct, behavioural standards, definitions of misbehaviour, penalties and guidance for appropriately expressing views. Completion of this training needs to be a prerequisite for running for council.

Prerequisite, pre-nomination training for prospective councillors has many advantages, including:

1. may act as a deterrent for prospective candidates who feel they can't / won't comply with the standards,
2. successful candidates will know their behavioural obligations from their first day in office maximising the potential for positive behaviours during the crucial 'forming' period of every council, and ongoing, and
3. public publication of the training requirement (and potentially content) increases the likelihood of community understanding what governs councillors' behaviour and helps hold both councils and communities to account.

The framework of aspirational code of conduct, behavioural standards, definitions of misbehaviour, penalties and guidance for appropriately expressing views needs to be enforceable and prioritise maintaining a physically and psychologically safe workplace.

Consideration could be given to set a higher level of expectation for mayors via by a code of mayoral conduct or specific section of the councillor code of conduct.

What are your views about aligning the oath of office to the revamped code of conduct?

Aligning of the oath of office to the code of conduct is supported as is any change to the code of conduct that provides greater clarity regarding the behaviour expectations of councillors.

Incorporating conduct requirements in the taking of the oath of office ensures councillors publicly articulate, from day one in the councillor role, their solemn oath to achieve certain behaviour standards.

Pre-requisite training for prospective councillors combined with councillors taking the oath would result in councillors having no defence if claiming they did not understand behaviour standards and the very act of taking the oath would reinforce the content of their training.

Any amendments to legislation to amend the councillor conduct framework need to retain the current flexibility offered by locally-adopted codes of conduct. The current framework enables code of conduct updates to be made quickly and tailored to the needs of local communities without lengthy legislative change processes.

Potential changes to the definitions and assessment of councillor misbehaviour

Is the proposed pecuniary interest framework appropriate? Is anything missing?

The proposed pecuniary interest framework is generally supported, with the following additions:

- definition for 'relative' and this should include children (of councillors and councillors' spouses or de factos) and children's spouses
- definition for campaign donations, including in-kind support
- penalties for infringements in the amended Act
- mandatory training for councillors in pecuniary interest and code of conduct
- guidance how to handle less than fulsome or honest (intentionally or non-intentionally) completion of pecuniary interest forms, given challenges for councillors to correctly and fully complete forms which are to be publicly published
- defined monetary limit amount in definition of pecuniary interest for minor shareholding and memberships is needed (eg. small amount of Telstra shares or member of rewards clubs such as supermarket reward shoppers, local bowls/golf/RSL/punters club memberships)
- clear definitions and examples of pecuniary interests should be described in supporting documentation as part of the conduct framework
- alternative, timely decision-making method is needed for circumstances where a majority of councillors have a pecuniary interest in a matter and a quorum therefore can not be achieved for a council decision – refer examples below

Regarding the proposal for the absolute prohibition of a councillor being involved in any matter before council where a pecuniary conflict of interest exists, there are circumstances, particularly in rural councils, where minor pecuniary interests exist for many councillors in relation to some community-owned facilities or services.

Example 1*: most members of a rural community, including most councillors, are financial members of the local hardware store which is a cooperative and the hardware store building is the subject of a development decision before council

Example 2*: a majority of councillors sell livestock, directly or through agents, using the local livestock exchange which is the subject of a development decision before council

* *both examples are actual cases in a rural council*

Further, regarding absolute prohibition of a councillor being involved where pecuniary interest exists, the Office for Local Government needs to be resourced effectively to review allegations of non-disclosure of pecuniary interest.

Prerequiste training for running for council, including simple and common examples of conflicts of interest will help to ensure disclosure requirements do not unnecessarily stop individuals from running for council.

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

The proposed principles of what constitutes significant or major non-pecuniary interests are supported generally.

Councillors should apply the same rigour in disclosing non-pecuniary interests as they do for pecuniary interests.

Clear definitions and examples of significant and major interests should be described in supporting documentation as part of the conduct framework.

Prerequiste training for running for council, including simple and common examples of conflicts of interest will help to ensure disclosure requirements do not unnecessarily stop individuals from running for council.

Alignment of councillor code of conduct and council staff code of conduct, which defines what constitutes significant and less than significant conflicts of interest, is necessary to prevent confusion, on behalf of both councillors and staff, arising from having two sets of possibly conflicting rules.

Any proposal to provide the Office for Local Government with additional powers to allow it to seek necessary information to investigate alleged breaches of pecuniary interests is supported.

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?

Any means introduced to manage risk of conflicts of interest occurring with property developers or real estate agents need to be clear and concise.

Even with the proposed legislated requirement for councillors to divest themselves of real estate and property development activities and contractual obligations, definitions for managing conflicts of interest are needed, for example in circumstances where a councillors' family member is involved in real estate or property development activities.

It is a serious measure to require councillors to divest themselves of their real estate or property development activities as these may be the livelihood of prospective councillors and it therefore is imperative that the legislative requirement be made clear to prospective councillor candidates through mandatory prerequisite training and other express communication means.

The proposed change has the likely consequence of reducing councillor candidate numbers.

Transitional arrangements need to specifically consider implementation implications in rural and smaller communities where the proposed change will have more significant impacts.

Penalties need to support the proposed legislation including disqualification, PINs, expulsion and/or financial penalties being imposed where a councillor engages in real estate or property development activities or contractual arrangements with real estate agents or developers.

Consideration may need to be given to other agent types which give rise to conflicts of interest related to council decisions such as livestock agents.

Councillor misbehaviour in public office

Is this the appropriate threshold to face a Privileges Committee?

The proposal to revise the definition of misconduct and refer to misbehaviour is supported, however a proposed revised definition of misbehaviour in public office may be difficult to determine and investigate with the proposed misbehaviour definitions being subjective and open to interpretation.

Asking councillors to judge their fellow councillors on whether they could be considered to have misbehaved is a serious undertaking and definitions must not be ambiguous or risks resulting in a large number of referrals to the privileges committee.

That said, the assessment of misbehaviour seems to be best served via an independent panel.

Councillors and council staff can find it difficult to understand the difference between pecuniary, non-pecuniary, significant and less than significant conflicts of interest. A review of such requirements to simplify definitions and merging pecuniary and non-pecuniary conflicts where significant is supported along with identification, reporting and management requirements being essentially the same.

Definitions and examples from case law to used to determine when a matter is referred to the committee should be described in detail in the supporting framework.

The potential funding of a privileges committee by councils dependent on the outcome is not supported.

Selection for appointment to the privileges committee needs to be merit-based and consider diversity of membership, not simply automatic eligibility by virtue of being a mayor or former mayor or councillor or former councillor.

Party political alignment, whether or not overt, during the selection process must be considered as there is high likelihood of political alignment influencing the decision-making process.

A mix of metropolitan and regional and rural ex-mayors and ex-councillors also essential as there are very different levels of complexity and different pressures and risks between metropolitan councils and regional and rural councils.

Involving former general managers or other neutral parties, such as independent professionals or professional bodies, perhaps as ex-officio members may would help remove political biases from a conduct review.

Currently sitting councillors and mayors should not be eligible for privileges committee membership.

It is suggested that a local government-appropriate name for a 'privileges committee' be implemented such as 'councillor conduct review committee' or similar.

Many members councils have indicated they require more clarity on the proposal to establish a privileges committee and how it is envisaged such a committee will operate. Councils are unsure about supporting the proposed establishment of a privileges committee until clarifications are provided, despite understanding that the privileges committee would only examine issues of misbehaviour, and not conflicts of interest. Requested clarification areas include:

- funding of the privilege committee's establishment and ongoing operations and investigations
- control and ultimate decision-making as to recruitment, selection and appointment of committee members
- management of conflict of interest in appointments to and decision-making of the privileges committee
- access by the privileges committee to specialist investigative resources and funding for same

A clear framework is needed that sets thresholds and procedures around the privilege committees' processes and that clearly identifies rights and responsibilities, rights of review, cost responsibilities and remedies.

How else can complaints be minimised?

To minimise the number of complaints, an environment that minimises inappropriate conduct needs to be created. Awareness of and training in expected behavioural standards, what constitutes frivolous or vexatious complaints should be a feature of the code of conduct as this would help to reduce compliant numbers.

Implementing cost and other penalties such as removal of councillor fees for trivial, frivolous, vexatious or without merit complaints may also reduce complaint numbers.

There should be a maximum timeframe imposed for initial assessment, whether by the local council or by the Office for Local Government, as to whether complaints are trivial, frivolous, vexatious or without merit and therefore to be dismissed.

A triage approach, by the Office for Local Government, to determining the level of complaints and how and to whom they are referred for review is strongly suggested. Prioritising investigations this way would assist with serious matters being addressed promptly and pressure could be taken off the system by having minor matters resolved locally.

General managers should have only limited involvement and should not have sole responsibility for dealing with complaints about councillors.

Complaints could be minimised by publicly publishing complaints at an individual councillor level rather than overall council compliant numbers.

Complaint numbers could be minimised by more regular mandatory councillor training, such as annually.

Addressing inappropriate lobbying

What key features should be included in lobbying guidelines and a model policy?

The development of lobbying guidelines and a model policy is supported and a suggested inclusion is potential conflicts of interest with regard to property developers.

As well as requiring councillors to disclose all meetings and communications with lobbyists and property developers for public publishing of a register of meetings, lobbyists themselves should be required by legislation to advise of their lobbyist status when meeting with councillors.

The guidelines and model policy need to recognise that lobbying will always occur however guidance is required as to how councillors can engage appropriately with lobbyists. Consideration should be given to engagement with lobbyists being in the presence of a general manager or director with a requirement for the keeping of minutes and disclosure of the meeting publicly via a register and similar controls.

Guidance should contain sufficient and clear information to assist councillors to identify a lobbyist, and deal with lobbyists' engagements.

Failure of a councillors to declare conflicts and remove themselves from decision-making processes or otherwise manage conflicts should be considered misbehaviour as defined in the code of conduct.

Determining the best way to deal with declared conflicts should be determined by council resolution.

Training on the lobbying guidelines and policy should be mandatory for all councillors to complete upon election.

Engagement in inappropriate lobbying and offering of inducements to councillors needs to have suitable deterrents and penalties for misbehaviour for both councillors and lobbyists.

There should be a total ban on any lobbying of individual councillors on development or contractual matters and guidance and policy documents should include what matters a councillor may be lobbied on.

The policy should be supported with appropriate and ongoing training and the need to share such interactions with all councillors and publish a publicly available register of lobbyist engagements with councillors.

Dispute resolution and penalty framework

Abolishing the 'two step process'

The preliminary assessment process and the opportunity for minor matters to be resolved locally should be maintained.

Having the Office for Local Government responsible for initially assessing complaints and implementing a triage approach for how to and to whom complaints to be referred is supported.

Further clarification is needed regarding misbehaviour complaints being made directly to the privileges committee. This could be very problematic to manage without some form of assessment and investigation as seems to be proposed.

The proposal to abolish the two-step investigative process that currently exists is supported to the extent it can be drawn out and costly due to investigation by an independent conduct reviewer.

Giving OLG the power to issue penalty infringement notices

What level of PIN is appropriate?

The are mixed views amongst councils as to whether Office for Local Government should have the power to issue PINs.

While PINs and fines may disincentivise poor behaviour whether for reputational or financial reasons, fines do not equally deter individuals from poor behaviour, given the ability of some to better afford to pay fines than others. In this way, PINs is not an equitable way to try and reduce poor behaviour. This is problematic because penalties, to be effective, must be set at a level that will dissuade councillors from breaching their conflict of interest responsibilities and this is not a uniform level.

If the power to issue PINs is given to the Office for Local Government, then it must be properly resourced and funded to fulfil the enforcement function professionally and in a timely manner.

Regardless, the code of conduct should define minor and insignificant offences to ensure appropriate categorisation / triage and be very clear as to when matter are to be referred cases to a tribunal.

Regarding the mentioned option for individuals to elect to have their matter dealt with by a court, this gives rise to questions as to who pays for the court / appeal process and it is strongly suggested that this not be the council.

Some form of cumulative system for repeated poor behaviour may act as a stronger deterrent with pre-published, known outcomes / penalties of different severity, from missing council meetings to more serious penalties to apply as additional incidents occur.

Very minor matters could remain with or be referred to, via Office for Local Government triaging, the general manager for alternate dispute resolution. Mandatory reporting to Office for Local Government becomes problematic if initial triaging is not undertaken very quickly, as it takes the ability away for a general manager to manage minor matters in a timely way.

NSW Local Government Privileges Committee

Are the penalties proposed appropriate, and are there any further penalties that should be considered?

Review by an independent panel must demonstrate procedural fairness and evidence-based decisions with a very clear and published 'rule book' needed as to the process and basis for decision-making, to maintain public confidence and to credibly deter councillor misbehaviour.

To that end, committee decisions should be publicly published, building a library of cases over time for reference by councils. Publishing decisions creates a strong need for high quality, clear and simple, concise and accessible 'plain English' writing of decisions and this needs to be professionally resourced and funded. There are many examples of review panels and tribunals where inadequate resourcing results in significant challenges with publishing decisions.

The penalties proposed are largely consistent with the current provisions and supported, with the addition of a cumulative systems whereby the severity of penalties increase for repeated breaches.

The non-involvement of general managers from the process of determining breaches and penalties is supported as it reduces the potential for conflict between the general manager and their employer.

Again, a cumulative system to increase severity and/or quantum of penalties is needed for repeated breaches of behaviour standards. The introduction of a penalty system needs to be supported by clear thresholds for different levels of penalties.

Referral of significant sanctions to appropriate tribunal or body

Are the existing sanctions available under the Local Government Act sufficient?

The existing sanctions are sufficient, with the exception of the lack of deterrent for repeated breaches of behaviour standards, even when minor. Repeated behaviour standards breaches, even minor, should have a cumulative effect whereby the response changes in terms of how and by whom matters are dealt with and becomes as for a serious matter when repeated. Similarly, for penalties, cumulative system is preferred.

Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

Concerns with the current process of the departmental chief executive sitting in judgement of an elected official seem to be ideological in nature, rather than based on evidence of poor processes or decisions. There are some advantages to the current system, timeliness and low cost being obvious.

Creation of any new independent judicial or quasi-judicial body is not supported.

Referral to a judicial or quasi-judicial body will increase the potential cost burden for councillors, and/or councils depending on what rules are developed regarding covering the cost of legal representation. Referring of matters to bodies such as NSW Civil and Administrative Tribunal can be costly and lengthy for parties, which would further burden ratepayers should councils be forced to pay.

Of paramount importance is independence of whomever is sitting in judgement and independence can be achieved by the departmental chief executive, who is subject to strict public service code of conduct provisions.

The Office for Local Government should implement a triage approach that assesses complaints and refers appropriately with only complex matters referred to a tribunal and, it should be an existing tribunal such as the NSW Civil and Administrative Tribunal, Independent Commission Against Corruption, NSW Ombudsman and similar. Hearings at tribunals can be lengthy and costly for all parties. It is noted however that reviews completed by an independent body may generate additional case law and precedents on matters relating to councillor code of conduct that could benefit the sector over the long-term.

Restoring dignity to council meetings

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?

Mayors need support and training in chairing meetings to be available given the importance of the role and its influence on conduct in council meetings.

The high level of mayor subjectiveness and power required to be exerted to meet expectations of the proposed changes to the code of meeting practice could result in a more dysfunctional council.

Overly prescriptive requirements for councillors to stand to address a meeting or when the mayor enters a room are unnecessary, outdated and largely symbolic in nature, they are not egalitarian, are exclusive and are discriminatory to those who cannot stand. It is contended that measures such as standing to greet or address the mayor are not highly valued and indeed looked down upon by contemporary society and may therefore deter people from wanting to participate as councillors or in council meetings. Standing does not bring about respect in and of itself.

With the livestreaming of council meetings now required, use of technology may prevent councillors being comfortable or able to comply with the proposed requirement to stand at certain times during a meeting.

Rather, each council should self-determine how they will bring dignity and respect to the council chamber with leadership by the mayor, and the very process of determining this together as a council builds ownership and respect for the measures.

Clarity is needed regarding councillors' right of review where expelled by the mayor for acts of disorder as to who will conduct the review and when.

Deterrents being proposed to be imposed on councillors if they continue disorderly conduct and financial penalties are supported.

Council chambers are workplaces and therefore must be physically and psychologically safe places in all respects. This fundamental and legal right to safety applies in addition to and regardless of any other, including a desire for dignity. Dignified behaviour, even while standing, can still cause psychosocial harm to workers. This should be a matter addressed in the councillor code of conduct and an area of overlap with work health and safety legislation and it isn't currently.

Banning briefing sessions

Are there any other measures needed to improve transparency in councillor deliberations and decision making?

Councillor briefing sessions are essential for fully informed, quality decision-making to occur at council meetings. Councillor briefings are not decision-making nor caucusing forums and are important forums for councillors to ask clarifying questions and understand technical information to support decision-making when conducted at council meetings and therefore the fulfilment of councillors' roles.

There is often a significant amount of technical data and information to be received by councillors ahead of decisions. In regional and rural areas, councillors are responsible for assets and services of a much higher diversity and complexity than their metropolitan counterparts - for example livestock exchanges, airports and stock routes – and councillors must understand significant amounts of information to make fully informed decisions.

Especially when contentious, it is important for councillors to be able to receive information and ask clarifying questions and for council staff to be able to provide information and responses to councillors questions in a safe environment. Opening briefings to the public, prior to matters being at the decision-making stage, does not make for a safe environment and may lead to poorer quality briefings and, ultimately decisions.

Council briefings are also valuable for developing staff and future leaders, allowing them to build skills and confidence in working with mayors and councillors, not in the public eye.

Without briefing sessions, council meeting times would significantly increase and impact efficiency.

Conducting briefing sessions does not preclude transparency in public council meetings nor provision of supporting information in public meetings.

It is the role of the mayor to ensure no debate on content provided at a briefing session. These sessions allow councillor questions to staff to get context or understanding on matters and is particularly useful for new councillors as a safe space to ask questions and receive education on council matters and procedures.

Councillors are elected with varying skills and experience and it is important that all councillors feel safe to ask questions and understand alternate views or solutions to an issue. It is also important that council officers can provide detailed background information to councillors in relation to matters that may come before them. This process of becoming fully informed cannot be achieved within the formality of a council meeting and banning of briefing sessions may ultimately delay timely decision making.

As an alternative to banning council briefings, requirements to publish key information relating to briefings could be mandated such as briefing agenda items.

The discussion paper acknowledges the need for conversations between the mayor and the general manager outside of formal meetings. There are times that such conversations should also be extended to councillors. Only allowing such conversations to occur between the mayor and general manager could create an unnecessary information imbalance and impact on informed decision-making by the council.

State and federal ministers receive confidential briefings to support informed decision-making. It is only equitable that councillors receive the opportunity to attend briefing sessions that are not open to the public.

Council briefing sessions provide a means for councillors to both discuss and/or learn more about a specific issue without having to be concerned that the public may misconstrue councillors' frank and open discussions. If councillors are not able to have briefings, councillors may be seriously disadvantaged and attend council meetings with little specific knowledge regarding the serious issues being addressed.

Councillors should be entitled to meet with senior staff to seek further information or clarity at a briefing session so that they are better equipped to make good decisions.

Council briefing sessions decrease heated exchanges in council chambers, reduce antagonism towards the executive and staff and increase the quality of the debate at council meetings to our communities' overall benefit and welfare. Informed debate during council meetings comes about because of councillors understanding the matter before them which is brought about by briefings.

Debate at council meetings where councillors have been briefed are more issue than personality driven. Through observing other councillors' questions and staff's responses at briefings, councillors have more information on how a range of constituents could be impacted and councillors can start processing that information and modelling options and their consequences ahead of debate that bring wider community benefit. Having quality briefing information can lead to councillors having the time and space to consider their views and formulate possible alternate motions.

Without council briefings, questions that may be raised during council meeting debate would often need to be taken on notice by staff, delaying council business.

Council briefing sessions give councillors equal opportunity to access information and the ability to probe and formulate alternate motions regardless of their working relationship with the mayor who typically has more access to the general manager and executive team.

The proposed banning of council briefings appears contradictory with Section 232 of the *Local Government Act 1993* covering the role of a councillor and would make requirements such as "to be an active and contributing member" and "to make considered and well-informed decisions" difficult to achieve.

It would not be easy for councillors to be able to digest and understand information in the council meeting where they are required to make a decision without pre-briefing and would be expected to result in increased procedural motions to defer matters and questions on notice. This could put at risk the achievement of statutory timelines for matters such as development approvals, decisions on land acquisition and financial reporting or, worse, result in poorly informed decisions in order to achieve timeframes.

Opening council briefings to the public gives rise to a concern that the voices of the loudest or most passionate community members will dominate which may not in fact be representative of the community. The presence of the public before matters are at the decision-making stage may also result in unsafe working conditions for council staff and councillors in council chambers as workplaces.

There is potential for open briefings to create possible legal issues down the track if council doesn't eventually go with the officer recommendation if in a briefing an officer is also providing legal advice as part of the briefing to support their view. Likewise, appeals of planning decisions could be muddied.

Essentially, there would need to be a very different code of meeting practice if full detailed briefing sessions prior to items being ready for decisions were open to the public, covering matters such as councillor and public interaction rules, not allowing public question time or participation during briefings, consideration of who best to chair meetings and be responsible for the agenda, how to support staff to safely offer forthright views, perspectives and feedback and councillors to ask questions.

In regional and rural areas, council staff are often known to many members of the public meaning open briefings could lead to timidity from staff and less then helpful briefing for councillors. Conversely, it could allow for behaviours such as building profile, by both councillors and council staff, this not being appropriate.

Rather than banning council briefings as proposed, on the assumption that they are used as decision-making forums behind closed doors, further research including witnessing a variety of council briefings is encouraged before change is made, to ensure a factual and evidence-based understanding of what actually happens in council briefings.

Councillors are elected by their community, to represent their community and make informed decisions based on information provided by council staff. Detailed council briefings are a bonafide part of the informing process of councillors as decision-makers on behalf of their community.

Canberra Region Joint Organisation sincerely thanks the Office for Local Government for the opportunity to provide this submission.

Yours sincerely

[redacted]

Cr Julia Ham
Deputy Chairperson
Canberra Region Joint Organisation

Councillor Conduct Framework Review Submission

Campbelltown City Council welcomes the opportunity to make a submission on the 'Review of the Councillor Conduct framework'.

Local communities rightly expect the highest standards of conduct of those they elect to hold office. Failure to meet these standards undermines community confidence in individual councils and the local government sector as a whole. Campbelltown City Council is supportive of a review of the Councillor Conduct Framework and the general principles of the proposed reforms, subject to further comments below.

Principles of change

Council supports the principles of change that have guided the intent of the proposed changes:

Leadership and decision making - Council supports the independence of Council, as a legitimate third tier of government to make decisions in the best interests of the Campbelltown community.

Freedom of speech - that Councillors, as elected officials have the constitutional right and democratic responsibility to speak freely about issues affecting the local community and to advocate in the best interests of the community provided the decisions of the Council are represented accurately.

Transparency and accountability – Council supports the need to hear, consider and debate issues in an open manner.

Significant penalties should only be imposed by a judicial or quasi-judicial body – Council supports the application of procedural fairness and thorough testing of allegations, significant penalties should be given by bodies such as the NSW Civil and Administrative Tribunal.

A strong and proportionate local government regulator – Council supports the role of Office of Local Government (OLG) to create the framework for local government, ensure councils have the capacity to operate within the framework so that the regulator intervenes as rarely as needed.

Subsidiarity – Council is supportive of decisions are made at the level closest to those impacted by those decisions but notes that the 2017 planning legislation amendments which removed the decision-making authority for Part 4 development from councillors is contrary to this principle.

Justice is timely and proportionate – Council is supportive of the timely and proportionate administration of justice in accordance with the principle of procedural fairness.

Code of Conduct and Oath/Affirmation of Office

Council supports the inclusion of clear standards of behaviour and connection between the Oath/Affirmation of Office and the Code of Conduct and agrees the framework should be aspirational and broadly equivalent to the Codes of Conduct for members of NSW Parliament. Council is supportive of the submission by Blacktown City Council to further include aspirational values such as ethical leadership, integrity and honesty, accountability, compliance with laws and policies and social responsibility.

Definition of Councillor behaviours

Council is supportive of misbehaviour being clearly defined and articulated within the Local Government Act and recommends the definitions are supported in application by guidelines with examples to remove ambiguity for:

- Pecuniary conflicts of interests
- Significant non-pecuniary conflicts of interests, and
- Councillor misbehaviour in public office (for example, poor conduct in meetings leading to exclusion by the Mayor or Chair of the Committee).

Councillor misbehaviour in public office

Council is supportive of the concept of the Privileges Committee but should be comprised of independent, suitably qualified members.

Removal of Chief Executive Officers/General Managers from the complaint process

Council is supportive of the proposed changes to remove the role of Chief Executive Officers/ General Managers from the complaint process for serious issues. This would improve efficiency by reducing the duplication under the current model procedures by directing these straight to the Office of Local Government or the Privileges Committee and reduce the potential for conflicts of interest and politicisation of the Office of Chief Executive Officer.

Indemnifying Councillors

The review may need to reconsider what legal representation or other support councillors should be entitled to in challenging a PIN or other sanction under the new Code and ensure the model Expenses and Facilities Policy is updated accordingly.

Minimising complaints and costs

Alternative pathways for resolving disputes to minimise costs and administration should be considered. The framework may contemplate Councillor resolution of disputes themselves in the first instance and may consider opportunities for mediation services to resolve disputes before matters are escalated to the Office of Local Government or Privileges Committee.

Powers of mayors

Currently Councillors may only be expelled by resolution of council. The proposed powers of mayors to expel councillors and remove their entitlements must be balanced by appropriate checks and balances to avoid actual or perceived misuse. The proposed Privileges Committee may be more suitable to impose penalties or provide an appropriate review mechanism.

Transparency and confidential briefings

Council supports measures to enhance transparency and community engagement in Council decision making processes, however, Councillor briefings are not a forum for debate or decision making at Campbelltown City Council. Decisions are made in council meetings that are open and transparent to the public (unless dealing with confidential matters under section 10A of *the Local Government Act 1993)* and are livestreamed, recorded and published.

The proposal to ban pre-meeting briefings lacks definition of what information is considered a pre-meeting briefing sessions in the absence of the public. Does the proposed ban only apply to future Council meeting business? If so, in what time period? Are information sessions and

workshops also included in the proposed ban? Council requests further definition and detail in relation to the proposed briefing ban to further inform its response to the proposal.

Council is supportive of measures to enhance transparency and community engagement by ensuring material provided to councillors that will affect or impact or be taken into account by councillors in their deliberations or decisions made on behalf of the community including the briefing topics and presentations, minutes and declarations of Councillor conflicts of interest is made publicly available to the community, but this must be balanced by appropriate measures to mitigate privacy, confidentiality, defamation and copyright risks.

Council also acknowledges the value of group discussions in the absence of the public that explores concept proposals, complex policy, legal and other issues between Councillors and the CEO and/or staff with subject matter expertise - that are not to debate or make decisions - but that provide a suitable forum for Councillors to learn and feel safe to ask questions and seek clarification to better inform decision making.

Timing is another important consideration in the publication of briefing information. As councils are required to work closely with other councils, regional organisations and other levels of government, considerations of requirements of other organisations in the timing of projects, announcements or partnerships also impact the provision of public pre-meeting briefings. It is important that CEOs are not hindered in their ability to brief their council whilst maintaining confidentiality with other organisations that may not meet the requirements of section 10A(2) of the Act, but may, because of other sensitive government or political considerations, need to be held in the absence of the public at a particular point in time with the intent of publication at the appropriate time.

The suggestion in the discussion paper that briefings be banned for all Councillors other than the Mayor, who, as the leader of the organisation needs to have candid conversations with the CEO outside of formal meetings is incongruous with the role of the Mayor as the 'first among equals'. The Mayor has the same role and responsibilities as councillors with additional responsibilities that reflect their leadership role. It follows that councillors have the same requirements for candid conversation and to request information and frank, honest, apolitical and impartial advice from the CEO on matters affecting the community as does the Mayor. Meetings with individual Councillors present a far greater corruption risk, as referenced in the discussion paper, than briefings for the entire elected body. Council considers briefing sessions provide the most efficient opportunity for staff to brief councillors on matters affecting the community as a group ensuring all Councillors are provided the same information and advice at the same time.

Council supports measures to enhance transparency and community engagement and would welcome further definition in relation to proposed briefing ban. Council is supportive of the publication of appropriate supporting briefing information as a more appropriate measure to achieve this outcome than the proposed ban of Councillor briefings.



Positively PENRITH

Councillor Conduct and Meeting Practices

A New Framework, September 2024

Penrith City Council Submission to the Office of Local Government

PENRITH CITY COUNCIL

penrith.city

Introduction

Penrith City Council thanks the Office of Local Government (OLG) for the opportunity to make a further submission on the proposed Councillor Conduct Framework and Meeting Practices reforms.

Council commends the continuing efforts of the OLG in reviewing the Framework and exploring areas for improvement.

This submission is prepared by staff and therefore represents the views of Council's officers.

The submission generally supports the Discussion Paper's proposals, with a notable exception being the proposed ban on Councillor Briefings. The submission explains that briefings are a vital part of Council's effective functioning and suggests that alternative control measures should be considered.

It is Penrith City Council's long-standing practice that Councillor Briefings are not decision-making forums. In Council's view, changes can be made to ensure briefings are conducted in a more transparent manner, while still providing for critical engagement activity between the elected officials and Council's officers, State and Federal Government Departments and other technical experts when needed.

Responses to the questions asked by the Discussion Paper are provided in the following table, along with further suggestions where relevant for the OLG's consideration.

	Summary of Change	Council Response
Principles of Change		
Are we missing anything in the principles of change?	The principles for the proposed reforms are. 1. Councillor Leadership and decision-making is paramount 2. Freedom of Speech 3. Transparency and Accountability 4. Significant penalties to be issued only by judicial or quasi-judicial bodies 5. Strong and proportionate LG regulator 6. Subsidiarity 7. Justice is timely and proportionate	**Proposal principles supported.** The proposed principles are suitable for guiding the reforms however Council also supports the **additional principals suggested by LGNSW** which included Safe Working Environment, and Acceptable standards of behaviour.
Potential Changes to the Code of Conduct and Oath of Office		
What are the key elements of an aspirational Code of Conduct that should be enshrined?	Suggests moving to a streamlined, aspirational Code of Conduct similar to that for NSW Members of Parliament, with clear behavioural expectations and definitions of misbehaviour. The aspirational Code of Conduct would not set out the definitions of misbehaviour as these would be legislated. The revamped Code of Conduct will not seek to restrain the ability of a councillor to speak publicly on matters pertaining to their council, even when that councillor is disagreeing with, or being critical of, the decisions of the majority.	**Council supports the proposition to move to an aspirational Code of Conduct** for Councillors that is clear and succinct, and where Councillor misbehaviour is separately legislated. It is suggested the Code's aspirational behaviours should have regard to and be driven by: • the Discussion Paper's "principles for change", and • the guiding principles for councils prescribed by section 8A of the Local Government Act (therefore supporting the local government objective to carry out functions in a way that

	Summary of Change	Council Response
		facilitates local communities that are strong, healthy and prosperous).
What are your views about aligning the Oath of Office to the revamped Code of Conduct?	Suggests the revamped Code of Conduct could also be aligned to the Oath of Office for local councillors ensuring that the behavioural standards and expectations are clear and understood when a councillor takes office.	**Council supports aligning the Oath of Office** to a new Code of Conduct, however notes this is unlikely to have a significant material impact.
Potential changes to the definitions and assessment of councillor misbehaviour		
(Pecuniary Interests) Is the proposed pecuniary interest framework appropriate? Is anything missing?	Proposes aligning the definition of pecuniary interests for councillors with those for NSW members of parliament, and provides information on the interests that require disclosure. It is proposed there remains an absolute prohibition on a councillor being involved in any matter before council where a pecuniary conflict of interest exists, unless otherwise determined via regulation.	**Yes the proposed framework appears appropriate.** Council supports the proposition to align the definition of pecuniary interests for NSW councillors with those that are defined for NSW Members of Parliament. There are **no suggested omissions** from the framework detailed on page 10 of the Discussion Paper.
(Non-Pecuniary Interests) Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?	Emphasises the importance of managing non-pecuniary interests to ensure transparent decision-making. If a decision of a councillor directly advantages (or disadvantages) a particular individual or organisation the councillor is friendly with or associates with, then	**Yes.** Council supports the principles of what constitutes non-pecuniary interests as detailed in the Discussion Paper.

	Summary of Change	Council Response
	that can be a conflict that should be publicly declared, if the councillor considered it of minor consequence, it wasn't controversial, or the councillor did not hold the casting vote. Alternatively, if a decision of a councillor directly advantages (or disadvantages) a particular individual or organisation the councillor is friendly with or associates with, then that can be a conflict requiring the councillor to recuse themselves from being involved in the decision-making process if there was a major advantage or disadvantage (or potential for), if it was controversial or the vote of the councillor was critical.	
(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?	An alternative means of managing the inherent conflict of councillors undertaking real estate and development business activity is being considered which involves requiring councillors to divest themselves from real estate or development business activities and contractual obligations.	Council does not support the Discussion Paper's current proposal. **It is suggested that alternative control measures should be considered.** While it is accepted the issue of councillors being real estate agents and property developers is a matter that requires attention, it is questionable whether it is appropriate to require those councillors to divest and not enter into real estate or development business arrangements through contracts. Councillors in NSW are not well remunerated and generally rely on other employment of business activities for personal income.

	Summary of Change	Council Response
		The restriction proposed could deny those councillors legitimate business undertakings and income generation. Members of the public have a democratic right to run for and hold office if elected, and the public have a right to vote as they choose. Perhaps a greater focus on transparency requirements is needed (for those running for office and for elected councillors who are real estate agents or property developers). It is acknowledged this is a challenge however it is suggested that further thought should be given to options that create greater transparency and public scrutiny, rather than requiring divestment. There should also be significant appropriate penalties for breaches of those controls if established.
(Councillor misbehaviour in public office) Is this the appropriate threshold to face a Privileges Committee?	The third proposed component of a revised definition of misconduct is misbehaviour in public office. Misbehaviour in public office would cover behaviour which is inconsistent or outside of the norms of behaviour expected from a councillor. There would be three limbs to this proposed misbehaviour definition being conduct that: • Is unbecoming of a councillor • Brings council into disrepute; and/or • Is assessed as being outside the norms and expectations of a sitting councillor.	**Yes** the proposed threshold to face a Privileges Committee appears appropriate. Council supports the proposed definition of 'Councillor misbehaviour in public office' and the formation of the Local Government Privileges Committee to meet and assess the complaints against Councillor misbehaviour. Applying definitions that are based around established legal concepts such as is suggested makes practical sense. Consideration could be given to including controls that ensure complaints are assessed in a fair, non-political manner and perhaps allow for the participation of other relevant experts on

	Summary of Change	Council Response
	This would involve the formation of an 'Local Government Privileges Committee' (Privileges Committee) of senior and experienced mayors and ex-mayors from across NSW to meet and assess the complaints made against councillors.	Privileges Committee, such as people with an understanding of judicial or procedural fairness. Council is also of the view that alternate dispute resolution methods should be introduced so that Councillors can resolve minor disputes before being unnecessarily escalated to the Privileges Committee.
How else can complaints be minimised?	As above.	Council supports the proposed framework and suggests complaints might be further minimised by: • including provisions or developing a framework that deters **and manages frivolous complaints**. • Including appropriate provisions for **alternate methods of resolving disputes** before they reach the Privileges Committee.
(Addressing inappropriate lobbying) What key features should be included in lobbying guidelines and a model policy?	The development of lobbying guidelines and a model policy on lobbying to ensure councillors and councils understand these risks and have effective controls in place to address them. The OLG is developing these to: •address how professional lobbyists are identified and the obligations on councils and councillors if they met a professional lobbyist, •set out inappropriate behaviours when being lobbied, •identify steps to be taken to ensure transparency,	Council welcomes the development of Lobbying Guidelines and a Model Policy on lobbying by the OLG and would like an opportunity to consider those during an appropriate consultation process. It is suggested **some key features might include**: • Identification of lobbying risks and warning signs of inappropriate lobbying • Clear definitions of what would constitute inappropriate lobbying • Disclosure requirements

	Summary of Change	Council Response
	•require council officials to report inappropriate or corrupt lobbying behaviours to the council's general manager.	• Whistleblower protections • Compliance checks / Audits • Define penalties for non-compliance • Database of breaches (potentially publicly available)
Dispute Resolution and Penalty Framework		
(Giving OLG the power to issue penalty infringement notices) What level of PIN is appropriate?	It is proposed there be a significant change to the dispute resolution and penalties framework for misbehaviour. The approach being proposed is to create clear separation between the process for consideration of conflicts of interest and the processes for consideration of misbehaviour. Under the reforms, the investigation of serious conflicts of interest would be put entirely into the hands of OLG. Complaints about misbehaviour would be made directly to the Local Government Privileges Committee via a dedicated webform. Under the proposed approach, there would be no role for privately hired investigators to determine whether the Code of Conduct has been breached. In order to ensure information is provided to OLG more effectively, it is proposed to enable OLG the discretion to issue penalty infringement notices (PINs) for minor	Council supports the suggestion of giving the OLG power to issue PINs where the matter is minor or administrative in nature. It is agreed that this power would speed up matters for all involved and allow resources to be focussed on more serious matter. Council is **unable to comment on the specific level of the PIN to be provided until further details are proposed of how the process would work in practice**. However, Council does support the LGNSW suggestion that any revenue received from penalties should be used to offset the costs associated with any privileges committee.

	Summary of Change	Council Response
	or insignificant breaches of the conflicts of interest declarations.	
(NSW Local Government Privileges Committee) Are the penalties proposed appropriate, and are there any further penalties that should be considered?	Along with the PIN framework, it is also proposed to create a Local Government Privileges Committee (Privileges Committee) to examine all allegations of misbehaviour in public office. This would replace the existing code of conduct review framework. The Privileges Committee would only examine issues of misbehaviour, not conflicts of interest. The Privileges Committee process would be paid for by either individual councillors or their councils, dependent on the outcome. Penalties that could be imposed by the Privileges Committee are as follows: • Censure of the councillor • Warning of the councillor • Where referred following misbehaviour in a council meeting, a potential loss of sitting fees • Referral to an appropriate tribunal or body for more serious sanction, including suspension or disallowance.	**Yes** the proposed penalties appear appropriate **and suggests penalties requiring a public apology**, and/or the undertaking of **compulsory training** could also be appropriate to include in some circumstances. Council also suggests the functions of the Privileges Committee may further be strengthened by developing mandatory investigation practice guidelines to be followed when considering Councillor misconduct matters and to ensure consistency, accountability and transparency.

	Summary of Change	Council Response
(Referral of significant sanctions to appropriate tribunal or body) Are the existing sanctions available under the Local Government Act sufficient?	Under the existing processes for consideration of complaints, OLG, in particular the Departmental Chief Executive (or their delegate), can suspend a councillor for between 1-3 months with a consequential loss of sitting fees. To remedy the concerns about whether it is appropriate for an unelected official to stand in judgment on an elected councillor, it is proposed that any significant sanction, such as suspension, significant fine or disqualification from office, can only be undertaken by an appropriate tribunal or body. The role of the appropriate tribunal or body would therefore be to look at all serious misconduct matters that have either been referred by the Privileges Committee, appeals from PINs or referrals of conflict of interest matters from the OLG.	**Council suggests the existing sanctions are potentially sufficient** however the current process that sees the Chief Executive or delegate making decisions on sanctions is not appropriate. Council agrees that any significant sanction, such as suspension, significant fine or disqualification from office, should only be undertaken by an 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?	As above.	Council suggests significant **sanctions such as suspensions, significant fines or disqualification from office to be imposed by a relevant tribunal or body** instead of the Departmental Chief Executive, and supports the introduction of a judicial process. Clear description and separation of responsibilities and powers between the Privileges Committee, OLG and relevant tribunal or body would be essential.

	Summary of Change	Council Response
Restoring Dignity to Council Meetings		
(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?	Suggests reforms to the Model Code of Meeting Practice to support mayors in conducting orderly and dignified meetings, including the power to expel councillors for disorderly conduct and to remove the councillor's entitlement to receive a fee for the month in which they have been expelled from a meeting. Councillors will also be required to apologise for an act of disorder. Each failure to apologise becomes an act of misbehaviour and will see the councillor lose their entitlement to receive their fee for a further month. The proposed reforms will also expand the grounds for mayors to expel members of the public from the chamber for acts of disorder and enable the issuing of a PIN where members of the public refuse to leave a meeting after being expelled.	While Council supports the principle of strengthening the Mayor's (or Chair's) powers to ensure the efficient, fair and orderly conduct of meetings, it would prefer **an opportunity to consider a revised Code of Meeting Practice** before commenting further on what might be appropriate powers. This will allow Council to make judgements on practicality and fairness to all parties (particularly given the proposed consequences of those powers). Similarly, an understanding of the rights of appeal are also necessary.
(Banning Briefing Sessions) Are there any other measures needed to improve transparency in councillor deliberations and decision making?	To promote transparency and address the corruption risks identified by the Independent Commission Against Corruption (ICAC) that can arise from a lack of transparency, it is proposed that councils will no longer be permitted to hold pre-meeting briefing sessions in the absence of the public. Any material provided to councillors, other than the mayor, that will	**Yes.** While Council supports the principle for transparency to protect against corruption risks and instil confidence in government decision making, it does not support the banning of Councillor Briefings. Briefings provide a critical function in the Council's business and meeting cycle. Council suggests that alternative control measures should be considered.

	Summary of Change	Council Response
	affect or impact or be taken into account by councillors in their deliberations or decisions made on behalf of the community must be provided to them in either a committee meeting or council meeting. This restriction will not apply to mayors.	Council agrees the public ought to have access to information that forms the basis of decisions made by public officials, particularly where those decisions impact on the public's rights, freedoms, privileges, responsibilities and resources. The same principles and practices should apply for all tiers of government. For Councils, that information is contained in the publicly available Council reports and business papers, which include recommendations and the reasons for those recommendations. The elected officials decide on those recommendations in the public forum (which is also webcasted and recorded) and minuted. The public can scrutinise those decisions and their basis, participate in community consultation processes and exercise their rights to vote for different elected officials should they be dissatisfied with performance. Councillor Briefings at Penrith City Council are not decision-making forums. This is stipulated in Council's Briefing Charter and consistent with the Code of Meeting Practice and is enforced when reports are approved for business papers and when presentations are prepared. Councillor Briefings provide: 1. An appropriate mechanism for Council officers and other government agencies to inform Councillors on a range of matters including on the development of policies and strategies (and other relevant works) in a structured and

	Summary of Change	Council Response
		controlled manner. While allowing Councillors to clarify and better understand important and often complex technical information. 2. An essential consultation/feedback step at critical stages in the development of these works. at critical points in time and before they have suitably progressed to a state ready for public consultation. On occasions this can involve commercial in confidence information, details on the progression of technical studies or other information that might require a public interest test to determine whether that information should be released. 3. An opportunity for the elected officials to contribute information to the development of policies, strategies and other works that represents the public's interests, prior to these strategies going to a public forum for decision. Council officers are not elected officials, and it is essential for officers to hear the views provided by Councillors elected to represent their communities. Those views are not decisions, but representations for the benefit of their communities. It is suggested that allowing consultation between officers and the elected officials is not inconsistent with how other tiers of government operate and work within their departments, and Councillor Briefings provide an opportunity for this to occur in a way that is more suited to Councillors. It should be noted that

	Summary of Change	Council Response
		State and Federal Government Departments also use Councillor Briefings to appropriately engage with Councillors on particular matters at various times before they have progressed to public consultation and Council is frequently reminded that, the information cannot be shared publicly. Rather than banning Councillor Briefings, alternative controls might include: • **Requiring councils to include details of items that have been Briefed when taken to a Council meeting for decision**. (This will provide the public with notice of the matters previously briefed that has ultimately made it to a public meeting for decision and provides knowledge that allows members of the public to make information requests in accordance with accordance with Government Information Public Access Act 2009. Public interest tests can be carried out where necessary and appeal rights would be available for a decision be made not to disclose the information requested) • **Requiring councillors to declare conflicts of interests** arising out of Councillor Briefings (rather than the non-mandatory provisions in the Code of Meeting Practice currently. • **Compliance checks or audits** of the business conducted at Councillor Briefings, and/or the collection of **annual**

	Summary of Change	Council Response
		statistics provided by Councils to the OLG on the business conducted at Councillor Briefings • **Banning specific items from briefings** (This may not be necessary given the other measures suggested within this submission however if this is considered Council would welcome the opportunity to be further consulted on this).

1. Conclusion

Council thanks the OLG for the opportunity to make this submission and would welcome the opportunity for future engagement on these important issues at the OLG's discretion.

For any further information regarding this submission please contact Mr Adam Beggs, Head of Governance or Mr Stuart Benzie, Governance Coordinator on 4732 7777.



Councillor Conduct and Meeting Practices Review

A new framework draft by the Office of Local Government NSW

Individual Submission by Phil Bradley – a City of Parramatta Councillor 2017-2024 and Executive member of North Parramatta Residents Action Group

The need for change – Returning local democracy to Councils

I agree that too much information is concealed unnecessarily in closed council briefing sessions, workshops and in closed sessions of otherwise public council meetings!

The City of Parramatta Council's Councillor Staff Interaction policy even requires Councillors to treat all staff information and advice as confidential unless the CEO approves it for public release!

I also agree that personal slanging and other disorderly disruptive conduct of Councillors occurs too often at meetings and must be addressed better.

Based on the OLG figures provided, it appears that frivolous and minor complaints are occurring far too often and need to be addressed informally in the first instance. Clearly frivolous, vexatious and politically based complaints should also be considered misconduct too.

What are the principles of change?

1. Are we missing anything in the principles of change?
   A. Yes, Council decision making must be ethical and consistent with the LG Act 1993 Chapter 3 Section 8 Principles.

Potential changes to the Code of Conduct and Oath of Office

2. What are the key elements of an aspirational Code of Conduct that should be enshrined?
   A. These are largely identified but should include reference to avoiding the perception of a serious breach of the Code being referred to appropriately.
   A major concern needing rectification to reduce corruption is that the standard OLG Disclosure of Pecuniary interests and other matters form does NOT require identification of the principal place of residence (PPR).

This has led to the redaction of ALL property interest addresses on the public Parramatta Council website and thereby a lack of transparency of potential Councillor pecuniary conflict of interest when voting on nearby re-zoning etc.

Where Council agrees (Information & Privacy Commissioner advice), the PPR (and Councillor signature) may be redacted, but multiple address redactions are opposed unless the General Manager determines " there is an overriding public interest against the disclosure of some of the information contained in a return". Suppression requests may be made, but must be documented.

3. What are your views about aligning the Oath of Office to the revamped Code of Conduct?
   A. I support this.

Potential changes to the definitions and assessment of Councillor misbehaviour

4. Is the proposed to pecuniary interest framework appropriate? Is anything missing?
   A. Yes, but the definition should also make reference to disbenefits and pecuniary loss conflict of interest.

5. Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?
   A. Gift of cumulative value more than $500 is too high. I recommend declaring gift disclosure of over $100 cumulative and all travel contributions. It is also suggested that a Councillor who is on the Executive or Board of a club, association, group or business there is a significant conflict of interest in related decisions, but an ordinary member usually does not have a significant conflict of interest.

6. Are there any other specific features that should be included to address concern about councillors undertaking real estate and development business activities?
   A. Councillors should be subject to rigorous conflict of interest provisions in these areas. **Another recommendation to facilitate the identification of serious Code of Conduct breaches** is the amendment and enforcement of the same OLG Disclosures form section F which asks, "Were you a property developer or a close associate of a property developer **on the return date**?" This precludes the LG Act definition of a property developer including recent past years activity, and also known future property developer association, and precludes

the question asked of planning panel members whether the member is a real estate agent.

7. Is this the appropriate threshold to face Privileges Committee?
   A. I think another threshold could be a community complaint about Councillor misbehaviour signed by at least ten residents and/or ratepayers.
   I oppose the suggestion of the Privileges Committee consisting of mayors and former mayors as this will likely politicise decisions. The Committee should comprise experienced community independents.

8. How else can complaints be minimised?
   A. In the first instance, the Code should emphasise the need for a complaint or conflict to be resolved in an informal manner, preferably with a neutral mediator.. If that fails, the complainer could be warned if thought appropriate, of the possibility of penalties for vexatious or frivolous complaints. These penalties need to be codified.

9. What key features should be included in lobbying guidelines and a model policy?
   A. The lobbying guidelines should require key senior staff and Councillors to maintain a publicly available register of lobbying by email, phone and in-person meetings. It should include the names and positions of people conducting the lobbying, others included in emails, or present at any meeting, arguments use in favour or against and details of any gifts offered, promised or given by the lobbyist/s. ICAC no doubt had more suggestions.

Dispute resolution and penalty framework

10. What level of PIN is appropriate?
    A. A schedule of fines could be appropriate. The Mayor/Chair has the ability to exclude a Councillor from a meeting if persistent misbehaviour occurs. This should be a last resort, as exclusion also penalises the community which elected the Councillor to represent them.

11. Are the penalties proposed appropriate and are there any further penalties that should be considered?
    A. Not sure how the relevant penalties to be proposed will be assessed, but there is a need for clear guidelines to provide fairness and consistency, and an appeal process is supported. I oppose the suggestion of the Privileges Committee consisting of mayors and former mayors, especially where fines and referral to a tribunal are being proposed, as this will likely politicise

decisions. The Committee should comprise experienced community independents.

12. Are the existing sanctions available under the local government act sufficient?
    A. They could be if applied quickly, fairly and consistently.

13. Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?
    A. I support sanctions being determined by an experienced, independent Tribunal, not the Departmental Chief Executive.

Restoring dignity to Council meetings

14. Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?
    A. Usually if warnings not observed, short term expulsion of the offending Councillor is usually sufficient. If this fails, longer expulsion from that meeting only would be appropriate. Mayors must not impose fines or remove fee entitlement! Councillors should not be required to stand where they need to read from notes, if a disability makes this difficult and where the relevant speaker's microphone is at a height that makes it difficult to be heard when standing. Standing when the Mayor enters should not be necessary either.
    I am not prepared to support "expanded grounds" for Mayor's to expel members of the public from the chamber, as these grounds are not specified.
    I definitely oppose the Mayor being able to issue PINs to the public!

15. Are there any other measures needed to improve transparency in Councillor deliberations and decision-making?
    A. I strongly support pre-meeting briefing sessions being open to the public! In Parramatta LGA, Council most business papers are made publicly available only 5-6 days before the Council meeting approval or otherwise. Sometimes supplementary papers are only made available on the day of the meeting. This is unfair for the public to have any engagement in Council decision-making and is anything but transparent, especially as public forum submissions close at 4 pm on the Thursday before the public Council meeting on Monday.
    I submit that pre-meeting briefings, workshops and staff advice to Councillors in emails and other meetings must not be deemed confidential either, other than for the prescribed genuinely confidential matters such as

commercial in confidence business, legally privileged matters and personal privacy issues.

Also, phone and written requests by the public about issues on the Council meeting agenda are usually not answered before the meeting, never mind before the 4pm Thursday deadline. Even then, questions raised in the public forum submission are not usually answered, even at the public forum session during the subsequent Monday Council before the issue is debated.

There needs to be specific requirements including timeframes for responding to community questions via service requests, before the related decision is made.

Live-streaming and quick public website posting of Council meetings should be mandatory!

LOCAL GOVERNMENT NSW

Submission:

Discussion Paper on Councillor Conduct and meeting practices

29 November 2024

ONE VOICE FOR COUNCILS



Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

OVERVIEW OF THE LOCAL GOVERNMENT SECTOR

Local government in NSW employs **55,000 people**

Local government in NSW looks after more than **$177 billion** of community assets

Local government in NSW spends more than **$2.2 billion** each year on caring for the environment

NSW has more than **350 council-run libraries** that attract tens of millions of visits each year

Local government in NSW is responsible for about **90% of the state's roads and bridges**

NSW councils manage an estimated **4 million tonnes of waste** each year

NSW councils own and manage more than **600 museums, galleries, theatres and art centres**

NSW has more than **400 public swimming and ocean pools**

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Opening

Local Government NSW ("LGNSW") welcomes the opportunity to provide a submission to the Office of Local Government ("OLG") on the *Councillor Conduct and Meeting Practices Discussion Paper* ("Discussion Paper"). The submission is informed by the policy positions of LGNSW and consultation with member councils, county councils and joint organisations.

Please note this submission is provided as a draft, pending endorsement by the LGNSW Board at its next meeting on 6 December 2024. We will advise of any amendments to the submission in due course.

Background

As it stands, the stated purpose of the Model Code of Conduct for Councils in NSW ("Code") and the Procedures for the Administration of the Model Code of Conduct ("Procedures") is to ensure that council officials (at page 5 of the Code):

- understand and comply with the standards of conduct that are expected of them,
- are able to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence, and
- act in a way that enhances public confidence in local government.

As the Hon. Ron Hoenig MP, Minister for Local Government, has pointed out, the Code is "too open to weaponisation" for political purposes. Although the abuse of the current instrument can often be attributed to a small portion of the collective, the actions of this minority have a profound impact in undermining public trust in local government.

Any changes to the Code and the Procedures should strive to build public trust in local government, minimise vexatious complaints, increase cost efficiency and ensure high standards of integrity and probity.

LGNSW support many of the proposed changes in the Discussion Paper, however, we have major concerns with the following:

1. The proposed ban on confidential briefings prior to Council meetings; and
2. Restrictions on how information will be able to be shared with councillors;
3. The composition and operation of the proposed Privileges Committee; and
4. The nature and timeliness of penalties and/or outcomes.

The above concerns are expanded upon below.

LGNSW Policy

As the OLG and Minister are aware, LGNSW Annual Conferences are the supreme policy-making body of LGNSW where mayors and councillors from across the state come together to share ideas and debate issues that shape the way LGNSW is governed and advocates on behalf of the local government sector.

The following Conference resolutions are specifically relevant to the issues raised in the Discussion Paper:

2024 Annual Conference (Item 9)

"That Local Government NSW write to the Minister for Local Government to:

1. *Commend the Minister for prioritising the review of the Councillor Conduct Framework, as this is something that LGNSW has long been calling for;*
2. *Request that the NSW Government consult with the local government sector on the guidelines for the selection and appointment of privileges committee members;*
3. *Advocate that Privileges Committee members be required to come from the sector (local government experience) and have a limited term;*
4. *Advocate that councils retain discretion to hold informal briefings and workshops with councillors as a supporting mechanism to formal meeting and committee structures; and*
5. *Request that the Minister consult with the local government sector further on the powers proposed to be given to mayors to suspend councillors from council meetings, including implementing financial suspensions for similar periods."*

2023 Annual Conference (Item 23)

"That Local Government NSW formally requests the NSW Government to undertake comprehensive reform of the existing Code of Conduct complaint system with specific regard to:

1. *Code of Conduct complaints about councillors to be lodged directly with an independent tribunal to centralise the code of conduct complaint system, increasing efficiency, transparency and fairness.*
2. *An independent tribunal be created to assume full responsibility for the entire process of triaging complaints and managing or undertaking preliminary assessment and full investigation, to resolve complaints.*
3. *That the Commissioner be required to maintain a central register of councillor conduct complaints and their management, and that a copy of all investigation reports are published for transparency, on the Commissioner's website."*

2023 Annual Conference (Item 19) and 2022 Special Conference (Item 16)

"LGNSW supports legislation to ban the following from serving as councillors, and increased penalties for false declarations on this matter:

(a) Property developers and their relatives and close associates including investors, owners and beneficiaries
(b) Real estate agents (except in rural areas) and their relatives and close associates including investors, owners and beneficiaries."

The principles of change

[Question] Are we missing anything in the principles of change?

LGNSW generally supports the principles outlined on page 7 of the Discussion Paper which have guided the discussion and intent of the proposed changes.

Further to these principles, there is a need for:

1. Greater clarity on the purpose of the Code (see ICAC's website for information on the purpose of a code of conduct),

2. Information about the rights of council officials who are the subject of code of conduct complaints (noting that the current and proposed principles are geared towards the protection of the person making the complaint, the principles should also enshrine the rights of persons whom the complaint is directed towards), and

3. Definitional clarification of certain principles, specifically:
    - The meaning of "significant" and "major" non-pecuniary conflicts of interest,
    - The meaning of "significant penalties",
    - The "Freedom of speech" principle of change should be amended to provide that "*as elected officials, councillors have the constitutional right and democratic responsibility to speak freely about issues affecting their local community and to advocate for the interests of that community, provided it is done in a lawful and respectful manner*".

In LGNSW's opinion, a major shortcoming of the current system is the absence of intervention by the regulator (or slow intervention by the regulator) and a noticeable absence of meaningful sanctions for obvious and serious breaches of the Code.

LGNSW has had the opportunity to review the submission made by the United Services Union ("USU") on approximately 6 November 2024. We agree with the following observation by the USU in relation to the principle "*A strong and appropriate local government regulator*":

> *"...We disagree with the underlying premise that intervention is inappropriate – **regulators should be given power to intervene when necessary and with effect.**"* (emphasis assed)

Potential changes to the code of conduct and oath of office

LGNSW does not oppose moving to a streamlined, aspirational Code of Conduct for elected representatives, provided it does not result in a dilution of meaningful sanctions for misbehaviour.

If implemented, the proposed (aspirational) Code should contain clear definitions to ensure the Code's requirements are unambiguous and easily understood.

[Question] What are the key elements of an aspirational Code of Conduct that should be enshrined?

LGNSW generally supports the key elements of an aspirational Code as proposed on page 8 of the Discussion Paper.

In addition to the elements referred to on page 8 of the Discussion Paper, an aspirational Code should:

1. contain a statement about its purpose (i.e. why does it exist),

2. allow elected representatives to speak freely about issues affecting their local community and to advocate for the interests of that community, provided it is done in a lawful and respectful manner, and

3. contain guidance for persons who are the subject of a code of conduct complaint, including but not limited to what support mechanisms are available, such as who they can go to for support and advice, and when.

In LGNSW's opinion, there should also be a requirement that mandatory training for mayors and councillors be completed within a prescribed time. Simply requiring the general manager to make training available to mayors and councillors, and reporting on those who don't complete the training, is insufficient.

[Question] What are your views about aligning the Oath of Office to the revamped Code of Conduct?

LGNSW supports aligning the Oath of Office with the revamped Code of Conduct.

Potential changes to the definitions and assessment of councillor misbehaviour

Pecuniary Conflicts of Interest:

[Question] Is the proposed pecuniary interest framework appropriate? Is anything missing?

LGNSW generally supports the proposed changes for pecuniary interests as outlined on page 10 of the Discussion Paper. However, LGNSW does not support the proposal that the interests for disclosure by councillors be extended to include the interests of a spouse or de-facto partner, relative, or partner or employer, or company or other body of which the councillor, or their nominee, partner or employer, is a shareholder or member. In our opinion, this would constitute an unnecessary und unjustifiable overreach into the private and personal affairs of persons who are not themselves elected representatives.

LGNSW would welcome more specific definitions (and/or examples) on what is meant by a "*pecuniary interest*" and "*significant financial impact or loss*".

LGNSW supports the proposal to extend investigation powers to the OLG to investigate and request information on corporate structures such as trusts or companies to determine whether elected representatives have any underlying beneficial ownership and interests.

Non-Pecuniary Conflicts of Interest

[Question] Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

LGNSW generally supports the proposed principles on what constitutes a significant or major non-pecuniary interest, as outlined on pages 10 and 11 of the Discussion Paper. However, further definitional clarity is required on the meaning of 'significant' and 'major' in this context, as well as how to distinguish between the two. LGNSW would welcome further examples on how close a 'friendship' or "association" needs to be to give rise to a significant or major non-pecuniary interest?

Property developers and real estate agents

[Question] Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

As a matter of policy, LGNSW supports legislation to ban the following from serving as councillors, and increased penalties for false declarations on this matter:

(a) Property developers and their relatives and close associates including investors, owners and beneficiaries
(b) Real estate agents (except in rural areas) and their relatives and close associates including investors, owners and beneficiaries.

LGNSW understands and supports the intent behind requiring councillors to divest themselves from real estate or development business activities and contractual obligations (except in relation to real estate agents in rural areas). We also note that legislation is being drafted to achieve this outcome. Noting that LGNSW has not seen the draft legislation, we are not currently able to provide further comment. We request that the NSW Government engage

further with LGNSW and the local government sector about this proposed reform, before it is implemented.

Councillor misbehaviour in public office

[Question] Is this the appropriate threshold to face a Privileges Committee?

LGNSW supports in general terms only the proposed three limbs of a misbehaviour definition ("threshold"), as outlined on page 12 of the Discussion Paper. By removing the current categories of behavioural standards as found in the current code, we are concerned that trying to determine what actions might be '*outside the norms and expectations of a sitting councillor*' will be very hard to define and potentially very inconsistent in its application leading to partial outcomes.

[Question] How else can complaints be minimised?

While we support the reduction of complaints, it should be acknowledged that some complaints are necessary and need to be able to be brought forward in a safe and trusted environment and through this, improvements can be made across the sector and actions taken to address inappropriate behaviour or standards. However, more needs to be done to minimise frivolous and/or vexatious complaints. A potential option (for serious complaints brought before the Privileges Committee or equivalent body), is to empower the proposed Privileges Committee to require the payment of a complaint filing fee, perhaps similar to a GIPA application fee, and/or to recommend the OLG consider action potentially including either a suspension or costs order against complainants who are found to have made a frivolous and/or vexatious complaint.

There is a need to triage complaints based on their level of seriousness. With the removal of complaint investigation processes from any future code, and the Minister's stated intent of removing external code of conduct investigators, it is unclear how any Privileges Committee would receive sufficient information to form either an initial view about a matter or to receive a sufficient level of detail to fully determine a matter.

A potential option is to adopt the system used by the Queensland Office of the Independent Assessor ("Office"). The Office undertakes an initial assessment of all complaints about

councillor conduct. It investigates misconduct complaints about mayors and councillors and, where appropriate, prepares applications for hearing by the independent Councillor Conduct Tribunal which determines the outcome. The Independent Assessor reports directly to the Minister for Local Government. The amended *Local Government Act 2009* states that the Independent Assessor is not subject to direction by another person in regard to exercising its powers.

Addressing inappropriate lobbying

[Question] What key features should be included in lobbying guidelines and a model policy?

LGNSW does not oppose lobbying guidelines and a model policy being applied to local government, subject to consideration being given to:

(a) the unique local government context, the representative role of councillors and the importance of community consultation at a local level; and
(b) the existing and extensive regulation of local government under mechanisms other than the LOGO Act, in order to avoid duplicative or unnecessary regulation.

Any guidelines and model policy must:

- be very clear about the difference between lobbying that is sanctioned as being part of the role of a councillor and lobbying that is improper.
- be proportionate to the risk, consider the regulatory and cost impact on councils.
- take into account that councillors receive much less administrative and financial support than State and Federal MPs.
- consider the voluntary and part-time nature of the office of a councillor and that many councillors are in full time employment in addition to being elected representatives.
- be guided by a principle of maximum transparency regarding the work of lobbyists.
- require lobbyist registration and near to real-time disclosure about when lobbyists meet with elected representatives.

Dispute resolution and penalty framework

Abolishing the 'two-step process' (removal of General Managers from the complaints process)

LGNSW strongly supports the minimisation of the role of the general manager in the complaints process.

Giving OLG the power to issue penalty infringement notices

[Question] What level of PIN is appropriate?

LGNSW generally supports giving the OLG the discretion to issue penalty infringement notices (PINs), however the reference to "*minor or insignificant breaches of the conflict of interest declarations*" on page 15 of the Discussion Paper requires clarification and definition. In LGNSW's opinion, PINs should not be issued for minor and inadvertent breaches if the elected member acts in a timely manner to rectify the breach.

LGNSW notes that NSW Parliament has an Independent Complaints Officer who has a similar remit, including for minor breaches of the pecuniary interest disclosure scheme. Where the Independent Complaints Officer finds that a breach has taken place, but it is minor or inadvertent, and the member has taken action to rectify the breach, the ICO will report on the breach confidentially. There are no PINs available to the Independent Complaint Officer for these kinds of circumstances, and it is appropriate that provisions for councillors mirror the provisions for MPs in this regard.

PINs should be focused on reforming the performance of the individual rather than a mere financial penalty.

NSW Local Government Privileges Committee

<u>Proposed Local Government Privileges Committee</u>

LGNSW does not oppose the concept of a Local Government Privileges Committee ("Committee"). However, we have several concerns about the proposed composition and operation of the Committee.

LGNSW strongly agrees that privileges committee members should come from the sector (local government experience) as contained in the motion to our recent 2024 Annual Conference (Item 9) which has been reproduced in full above. However, LGNSW shares the view of many of our members who have expressed concern over the potential for Committee decisions to involve (or to give rise to a perception that they involve) politically motivated outcomes, particularly where the committee members are currently serving as elected representatives. Appropriate checks and balances are needed to minimise political biases and prejudice influencing the outcome of Committee decisions.

LGNSW is also concerned that privileges committee members may have a dual role of being both the investigator and decision maker for alleged breaches of the Code. If this is the case, it raises serious questions about whether natural justice will be afforded to persons who are brought before the Committee.

If the role of privileges committee members is to involve undertaking investigations into alleged breaches of the Code, it is imperative that they be trained in conducting interviews and that they have a proper understanding of procedural fairness.

If the Government had a different view about the nature and makeup for alternative models for the Local Government Privileges Committee we would be pleased to participate in those discussions including drawing on our broad experience of investigation and dispute resolution, noting particularly our experience of industrial committees formed under section 198 of the *Industrial Relations Act 1996*.

We request that the OLG and NSW Government consult further with the local government sector on the guidelines for the operation of the Committee and the selection and appointment of privileges committee members. LGNSW would welcome the opportunity to further discuss:

- the appointment process,
- who can refer a matter to the privileges committee,
- what is the threshold for complaint to be referred to the privileges committee,
- will there be a right of appeal,
- whether committee members will be paid,
- whether committee members will receive training,

- whether committee members will be appointed for a fixed term,
- whether committee members will be required to undertake investigations, including interview witnesses and writing an investigation report,
- how will conflicts of interest be dealt with,
- will legal representation be permitted, and
- who will bear the cost.

[Question] Are the penalties proposed appropriate, and are there any further penalties that should be considered?

LGNSW generally supports the proposed penalties outlined on page 15 of the Discussion Paper. However, the penalties will be ineffective in deterring misbehaviour if they are sparingly or seldom imposed.

An example which demonstrates the current failings and inadequacies of the penalty system is the outcome of *Executive Director, Local Government, under delegation from the Secretary, Department of Planning, Industry and Environment v Hindi (No 2)[2024]* NSWCATOD 144. In that decision the complaint arose out of Mr Hindi's conduct during a council meeting in May 2021 where he was reported to have made several inappropriate comments towards council staff imputing improper conduct. This matter was not resolved until September 2024, whereby Mr Hindi was punished with a censure. This penalty does not seem commensurate with Mr Hindi's misconduct nor the amount of time this matter was with the Tribunal. Future penalties must be commensurate in our submission with the councillor's misconduct, and they must achieve something more substantial than a slap on the wrist so that they are taken seriously and act as an effective deterrent.

As mentioned earlier, more needs to be done to minimise and deter frivolous and/or vexatious complaints, such as by empowering the proposed Privileges Committee to require the payment of a complaint filing fee or to make/recommend a suspension or costs order against complainants who are found to have made a frivolous and/or vexatious complaint.

Referral of significant sanctions to appropriate tribunal or body

[Question] Are the existing sanctions available under the Local Government Act sufficient?

In LGNSW's opinion, the existing sanctions available under the Act are appropriate. However, what is missing is timely enforcement action where serious breaches of the Act and/or Code have occurred, and a failure to use the available penalties to deter future bad behaviour.

[Question] Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

LGNSW supports the proposal that judgements for significant sanctions, such as suspension, significant fine or disqualification from office, be undertaken by an appropriate tribunal or body.

Restoring dignity to council meetings

Proposed reforms to the Model Code of Meeting Practice

[Question] Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

LGNSW generally supports the proposed reforms to the Model Code of Meeting Practice, as outlined on page 17 of the Discussion Paper.

LGNSW members have expressed mixed views about the proposed requirement that persons in the chamber be required to stand when the mayor enters. If this proposed change proceeds, exceptions would need to be made for persons in wheelchairs and other persons who are unable to stand. General feedback is that each council should be able to use their own discretion in this area.

Banning briefing sessions

LGNSW strongly opposes the proposed ban on pre-meeting briefing sessions in the absence of the public.

LGNSW (and our members) appreciate that members of the public have a right to know what decisions are made by their elected representatives. Briefing sessions are not a decision-making forum and are not where decisions are made. The decisions are made during council meetings, in full view of the public.

Briefing sessions provide elected representatives an opportunity to ask questions of staff (some of whom may not attend council meetings) which may be too sensitive to ask or respond to in public. Banning these sessions will result in elected representatives being less informed, which will in turn lead to poorer decisions.

It is acknowledged that Councils have the ability to use formal committee structures or to resolve to go into closed (confidential) sessions of formal council meetings, however these formats are for distinctly different purposes and are not substitutes for briefing sessions.

By way of comparison, the NSW Government, Opposition and Crossbench are briefed on draft legislation before it's tabled in Parliament, and Ministers receive briefings from staff and departmental officers as part of the process of preparing draft bills and motions for consideration and before debating matters in Parliament. These private briefings lead to better informed MPs and more informed decision making once a matter comes to the public forum in Parliament.

LGNSW agrees that mayors may need to have candid conversations with the general manager outside of formal meetings. However, we have serious concerns with the proposal to specifically allow mayors to be provided with information that may affect or impact or be taken into account by the mayor in their deliberations or decisions, which is not also to be provided to other councillors. All councillors should continue to have a right to be provided with the same information that other councillors receive from their council, which may affect or impact or be taken into account in their deliberations or decisions.

[Question] Are there any other measures needed to improve transparency in councillor deliberations and decision making?

During our discussions with members, the following miscellaneous issues were raised which we agree are worthy of note:

1. Introducing conflict resolution training for mayors and councillors, with a focus on handling difficult conversations.
2. The process of a mayor managing the behaviour of a member of the public, particularly in a council meeting environment, including the possibility of issuing a PIN to a member of the public.

Conclusion

Thank you for the opportunity to make this submission. LGNSW would welcome the opportunity for ongoing dialogue on issues raised during the review. For further information in relation to this submission, please contact Chiara Napoli, Legal Officer on 02 9242 4058 or chiara.napoli@lgnsw.org.au.

SURVEY RESULTS

Bullying, Harassment & Intimidation in NSW Local Government

January 2024



AUSTRALIAN LOCAL GOVERNMENT WOMEN'S ASSOCIATION
NEW SOUTH WALES BRANCH

Survey Results

WHAT WE WANTED TO FIND OUT & WHY

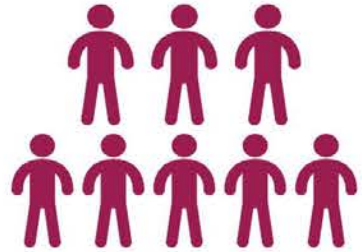
In November 2023, the Australian Local Government Women's Association (ALGWA) NSW Branch launched a survey for all current and former female councillors in New South Wales.

The confidential survey of bullying, harassment and intimidation in NSW Local Government was sent to all serving female councillors and all local governments in NSW.

It sought feedback regarding incidents of bullying, harassment and intimidation during the election, induction and also the council term.

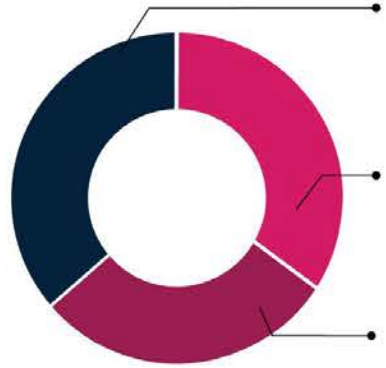
This report details the findings provided by respondents.

WHO RESPONDED



139
respondents

28%
of councillors completed survey



35%
regional councils
population above 20,000

33%
metropolitan councils

31.5%
rural councils
population 20,000 or below

0.5% of responses stated none of the above.

Length of service



Scope of Survey

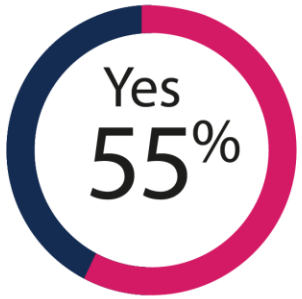
The survey was circulated to all female councillors and councils in NSW.
It examined all stages of being an elected councillor, including:

- Pre-election
- Elected Councillor
- Nature of Bullying, Harassment or Intimidation
- Knowledge and confidence in reporting
- Governance and Policies

Bullying, Harassment and Intimidation during Pre-election

Respondents were asked about their experiences during the election phase, including at voting booths.

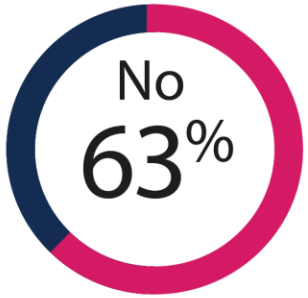
Did you experience bullying, harassment or intimidation during the election process



Respondents identified the following sources:

1. Other candidates;
2. Supporters and volunteers of other candidates; and
3. Members of the public.

Did you feel comfortable to advertise your residential address?



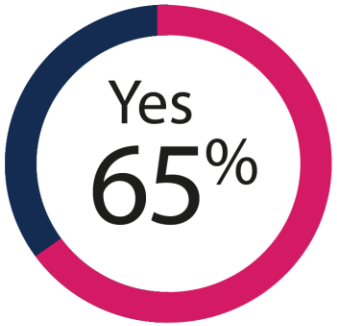
Concerns included:

1. Breach of privacy;
2. Vulnerability of self and family; and
3. Property damage.

Bullying, Harassment and Intimidation as an Elected Councillor

Respondents were asked about their experiences during their first term as a councillor.

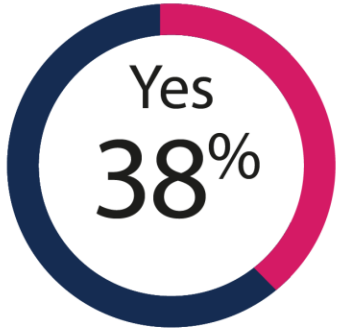
Do/did you feel you were supported by fellow councillors, and senior council staff members?



Of the 35% that did not feel supported, reasons included:

Feeling ostracised; lack of guidance; and difficulties experienced when a councillor encounters lack of support or bullying.

Do you feel any information / details were neglected at your induction?

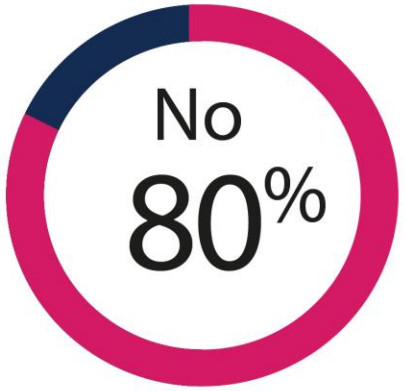


Respondents called for more support with:

1. Handling bullying, harassment, slander, confrontation and physical intimidation;
2. Managing social media;
3. Understanding councillors' roles

Bullying, Harassment and Intimidation as an Elected Councillor

Do you feel the remuneration you receive is adequate?



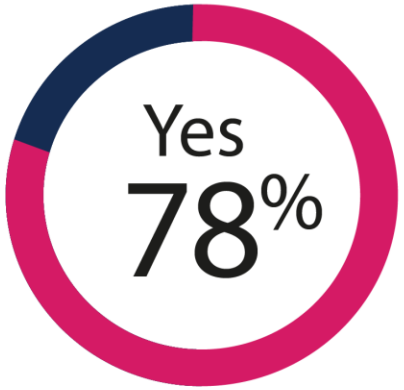
> *"Remuneration in rural areas should be increased, the responsibilities and commitments are the same as metro areas with a much greater land area"*

Prevailing themes include:

1. The role requires 20-40 hours / week;
2. The level of remuneration is a deterrent for individuals who work full time;
3. There is a remuneration disparity across LGAs;
4. In rural councils, Councillors may travel up to 3 hours one-way to attend a meeting;
5. The lowest level of remuneration reported is $12,000 / year.

Bullying, Harassment and Intimidation as an Elected Councillor

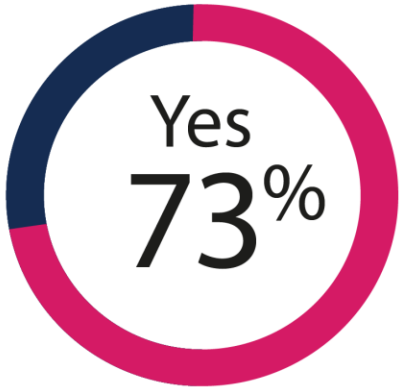
Should it be mandatory for all councils to video record, as well as audio record, Council and Committee meetings?



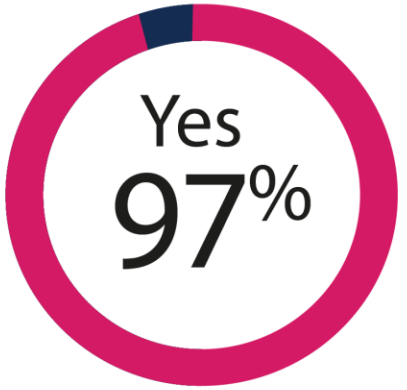
With several councils not video recording meetings, respondents indicated it would assist with curbing poor behaviour in meetings.

Questions were raised regarding cost to councils to implement this.

Are relevant resources and / or information provided to attend meetings, events & conferences?

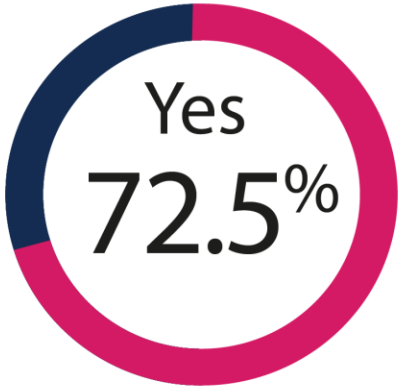


Would it be beneficial if all councillors were provided opportunities to attend events, openings, etc?



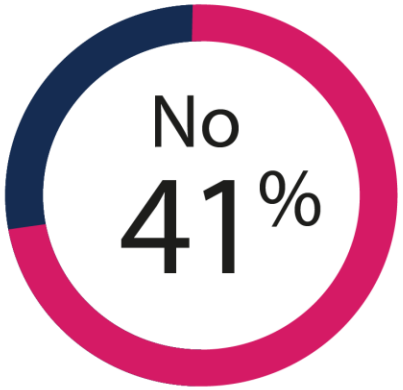
Bullying, Harassment and Intimidation as an Elected Councillor

Is adequate notification or notice of training information forwarded to councillors?



> *There is no information on what would be the most helpful for new/experienced Councillors. Visiting other Councils, eg metro, would give perspective not otherwise available*

Is there an adequate budget for councillors' training & development needs?

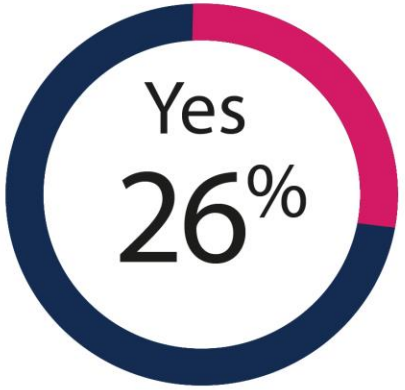


Key findings include:

1. There is an unspoken pressure on councillors to not attend training as it is often costly;
2. Training is often held in metropolitan areas which can be cost-prohibitive for rural councils.

Bullying, Harassment and Intimidation as an Elected Councillor

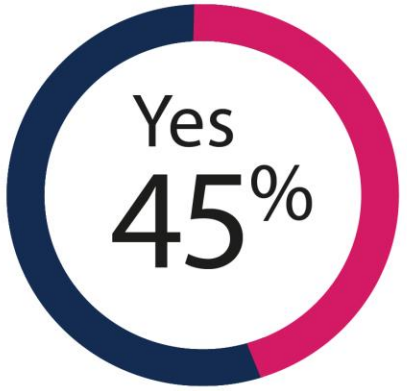
Are there any areas in your council workplace where you feel unsafe?



Key sources of feeling unsafe included:

1. The council chambers due to a toxic culture and the public gallery sitting behind councillors;
2. Poorly lit council carparks and public transport when leaving council meetings after dark;
3. Dealing with angry community members and / or fellow councillors.

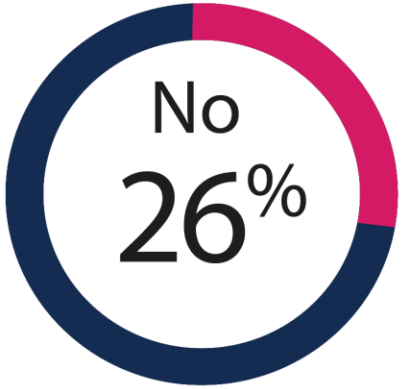
Have you experienced or witnessed bullying, harassment or intimidation when you have voiced your preferences for training, committee selections and/or conferences?



> *"Opportunities are given dependent on relationship with the GM"*

Bullying, Harassment and Intimidation as an Elected Councillor

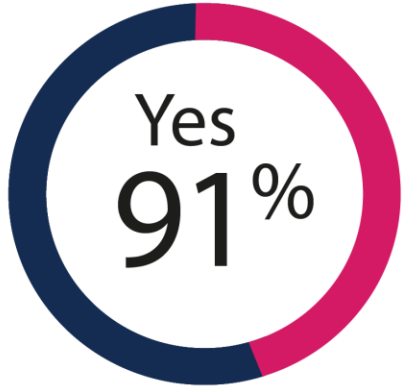
Since you have become a councillor, are you aware of the litigation risks associated with being a serving councillor?



Key findings:

1. Councillors would benefit from a refresher on this topic to ensure their knowledge is up to date; and
2. There are respondents who indicate they have received no information regarding this risk.

Should free legal / financial re-imbursement and / or support be available to alleviate the need for councillors to cover their own legal expenses?



While respondents overwhelmingly agreed that councillors should be offered free legal / financial reimbursement and support, many stated this should only be provided where a councillor has not acted dishonourably or dishonestly.

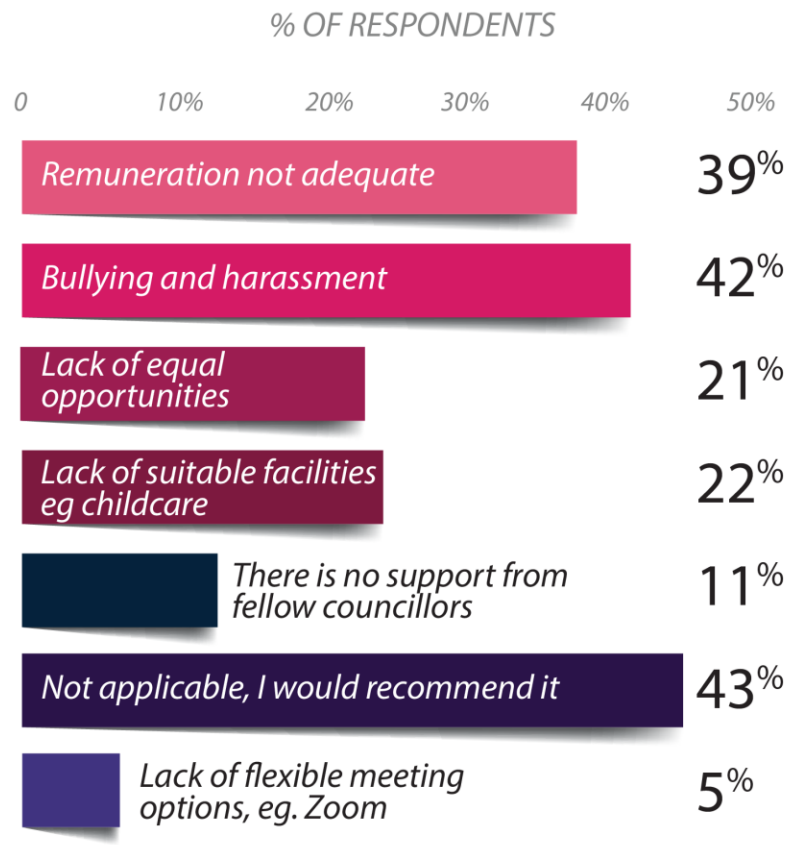
Bullying, Harassment and Intimidation as an Elected Councillor

74% **of respondents stated they would stand for re-election**

The most common reason for not recommending local government:

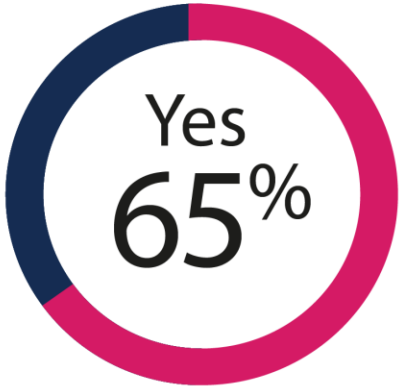
1. Bullying and harassment, with respondents indicating they have received bullying from female councillors as well as male councillors.
2. Inadequate remuneration was also a barrier to recommending running for council to other women.

Key reasons why a councillor would not recommend the role to another woman:



Nature of Bullying, Harassment and Intimidation experienced or witnessed

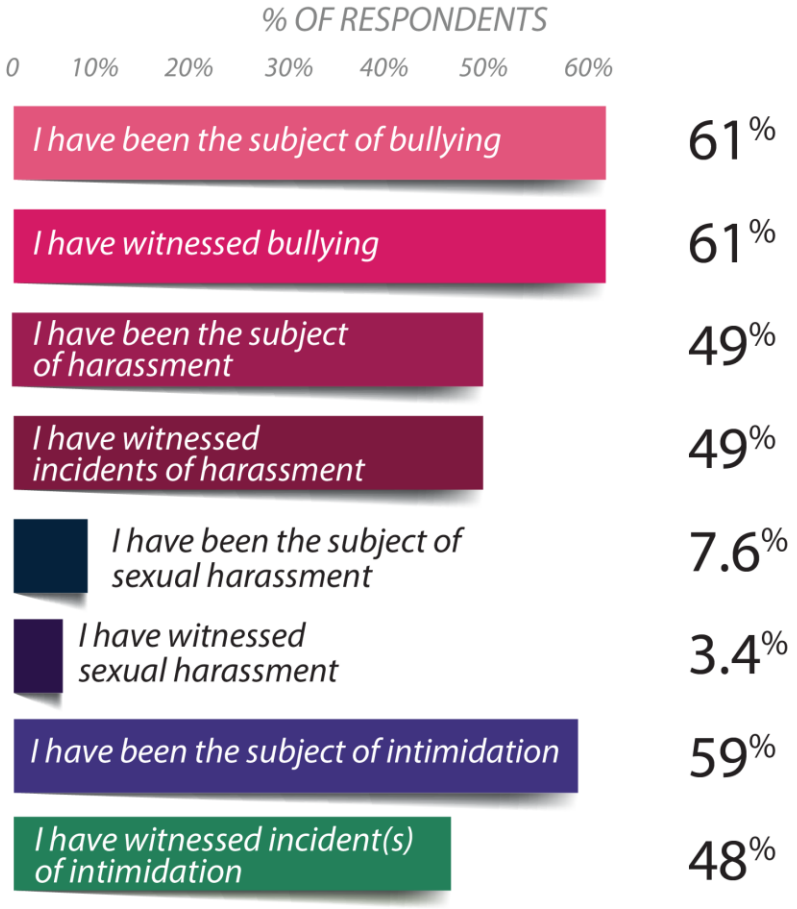
Do you feel comfortable to lodge a complaint if you would not be supported by your council?



Key findings:

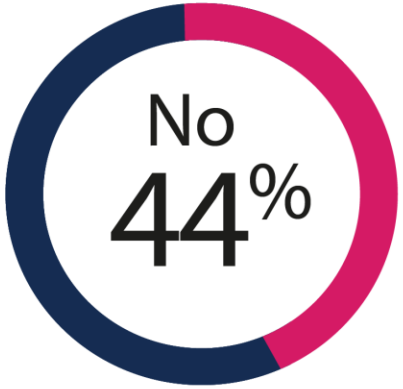
1. 21% of respondents identified the GM / CEO as a road block to progressing their complaint;
2. Complaints are not taken seriously or actioned at council level; and
3. It is difficult to lodge a complaint when it concerns the CEO / GM and / or mayor.

Have you been the subject of or witnessed bullying, harassment and intimidation?



Nature of Bullying, Harassment and Intimidation experienced or witnessed

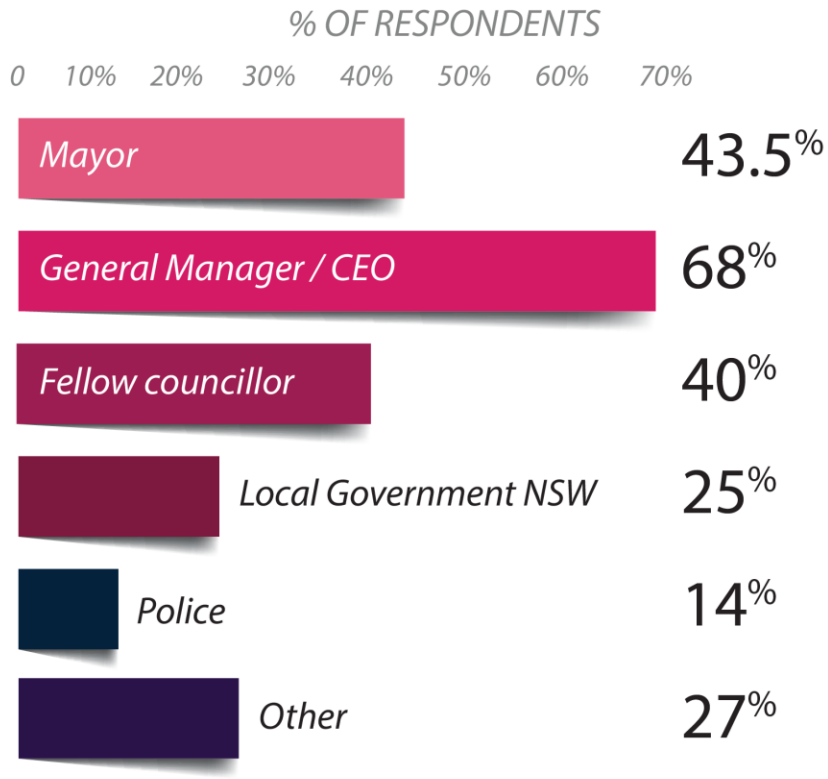
If you have experienced or witnessed bullying, harassment or intimidation in your role as councillor, did you report it?



Key findings:

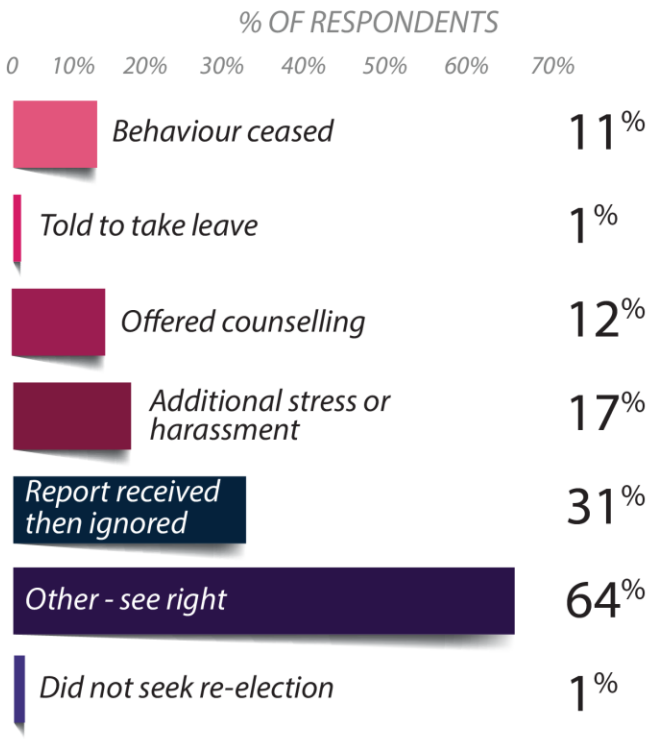
1. There is a lack of confidence in OLG and Council's reporting process;
2. Fear of repercussions; and
3. It is difficult to lodge a complaint when it concerns the CEO / GM and / or mayor.

Who did you report the behaviour to?



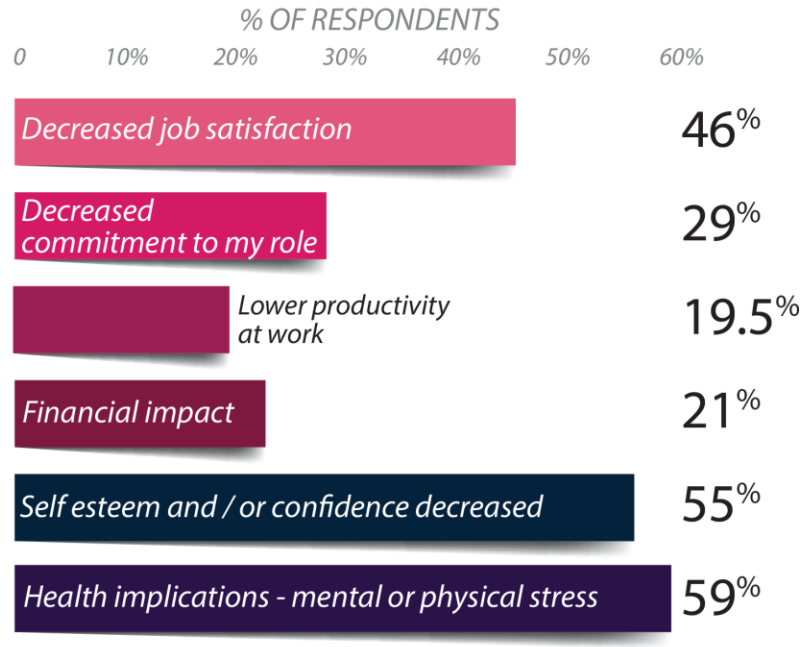
Nature of Bullying, Harassment and Intimidation experienced or witnessed

What was the outcome of you reporting bullying, harassment or intimidation?



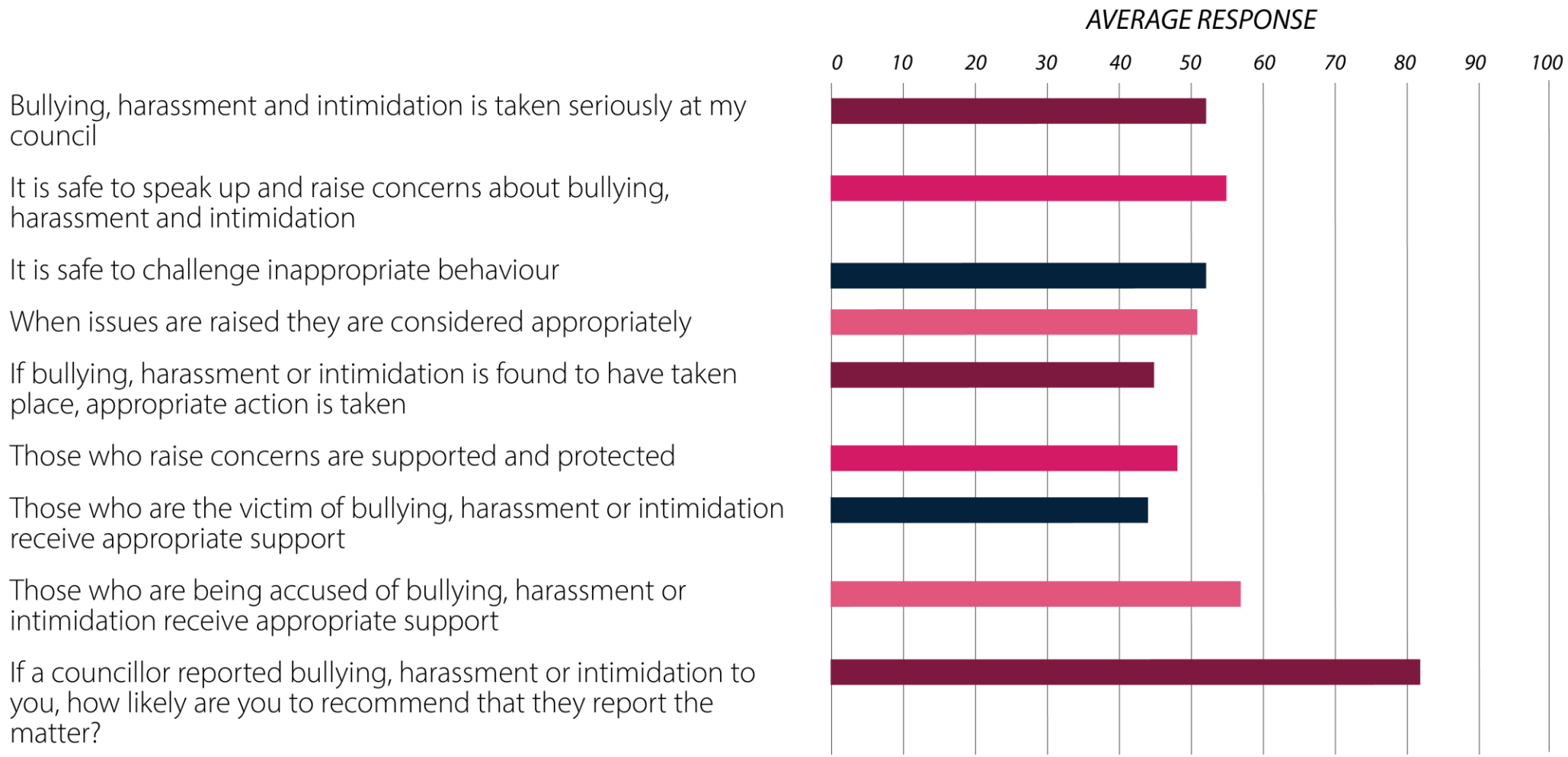
'Other' includes respondents which indicated their complaint was still in progress; unresolved / dismissed; or no action was taken.

As a result of the incident/s (victim or witness), have you experienced any of the following?



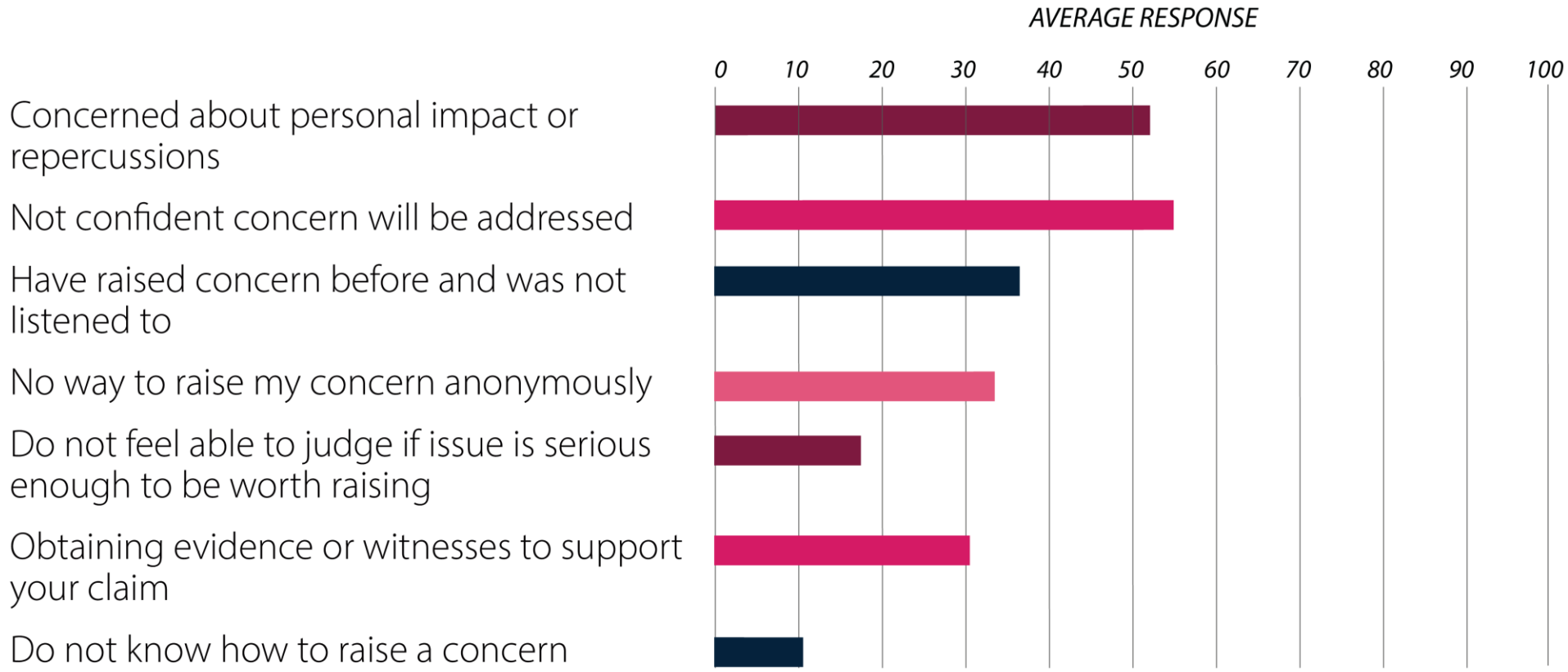
Many respondents stated there are no ramifications for perpetrators.

Knowledge and Confidence in Reporting Bullying, Harassment and Intimidation



Knowledge and Confidence in Reporting Bullying, Harassment and Intimidation

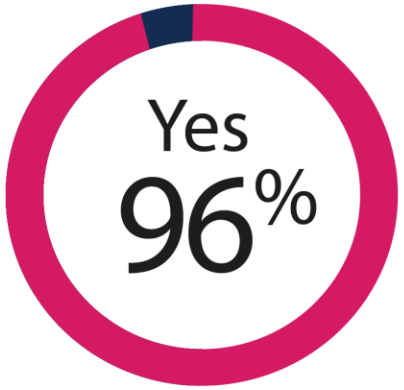
What factors do you view as a barrier to reporting bullying, harassment, intimidation, and other misconduct?



Governance and Policies

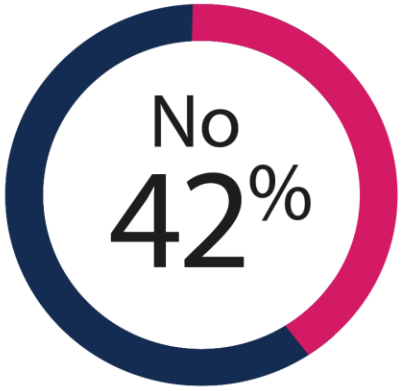
100% of respondents stated they have read and understood their council's Code of Conduct

Should all councillors have to attend a compulsory training session on the Code of Conduct?



80% of respondents stated they know how to report issues regarding bullying, harassment and intimidation

Adequate information and training is available for local government councillors about bullying, harassment and / or intimidation



61% of respondents reported concerns about whether council's Code of Conduct is adhered to

88% of respondents know how to find current policies relating to workplace bullying, harassment and intimidation



AUSTRALIAN LOCAL GOVERNMENT WOMEN'S ASSOCIATION
NEW SOUTH WALES BRANCH

www.algwa.org.au

OLG Councillor Conduct and Meeting Practices Discussion Paper Sep 2024

Closed Briefings - Submission by John Riggall 29 Nov 2024

Thankyou for the opportunity to make a submission re the above. I and my family strongly support the proposal to ban closed briefing sessions of Councillors by management, which started with Wollongong's new Council 13 years ago in 2011, after the Administrators left, and open Standing Committees were not re-introduced. The most welcome OLG paper clear states that a principle of change includes to ensure transparency and accountability, and as a democracy Councils need to hear, consider and debate issues in an open manner.

We've been ratepayers and residents in Wollongong LGA for 37 years, and I have extensive LG experience, including 23 years senior management at three NSW Councils (Eurobodalla, Wollongong & Parramatta), then 23 years as a consultant, providing mainly strategic planning & project management services to Councils. Over many years I have been responsible for hundreds of reports to open meetings of Council and Standing Committees, and always welcomed transparency, accountability and opportunities to respond to public questioning, as do Councillors.

Because I have not been able to attend Wollongong's closed briefings, my submission is based on website lists of topic headings discussed at briefings (no agendas, reports or minutes), observations and in particular a Notice of Motion by an independent Councillor on 27January 2015 (Attachment A). This noted the OLG Handbook includes that Councillors are accountable to the community through community engagement, open and transparent decision-making. But that WCC closed Briefing Sessions have been a de-facto, closed and non-recorded decision-making forum on matters coming to Councillors. They do not deliver the necessary procedural fairness, transparency, accountability and good governance.

On 27 Jan 2015 I made a presentation supporting the NoM to the Public Access Forum at the start of that Council meeting (Attachment B). This included it was enlightening to find a Councillor's perception, based on their experiences over the past 4 years, since the 11 "first time" Councillors (85%) embarked on a very steep learning curve. Also the presentation addressed the need to resume open Standing Committees, which enable Councillors to develop expertise within their "portfolio", and arguably lead to better-informed decisions.

For over 10 years I attended open Neighbourhood Committee meetings of residents complying with Council's Charter, until Council disbanded NCs in 2005. Community concerns included the influence of vested interests re planning decisions, [redacted] In 2008 the Administrators re-introduced Neighbourhood Forums, and for the past 13 years I have been involved in open meetings of NF5, which covers the rapidly growing central area. The lack of transparency and consequential risks to good governance and credibility due to closed briefings have often been raised by residents.

At NF5 meeting 7 Feb 2024 Council was complimented on conducting Community Satisfaction Surveys every two years for the past 30 years, by phone and recently also by on-line. These provide statistically reliable and representative measures of community perceptions and trends of Council's performance. There were many positives in the 2023 report by consultants, but satisfaction with Council's Overall Performance dropped significantly to 52% in 2023, compared with 64% in 2021.

In Sep 2024, eight (61%) of the thirteen councillors elected are new, and the OLG provides extensive information to assist. The trend has been that all Councillors are required to understand and make decisions on each item in Agendas running to hundreds of pages of management reports. Also Council's Community Engagement Strategy & Policy includes involvement by various methods and voluntary groups, which can develop well-researched options and recommendations to assist. Sometimes confidential discussions will be essential, and if parts of meetings are agreed to be closed, the LG Act has long included relevant provisions to be followed.

It is noted that on 25 Nov 2024 a report to Council about the OLG paper included that "Council is supportive of the need for transparency in decision making to help mitigate corruption risks and to support good decision making", but not supportive of any proposal to ban briefings, and states Council does not make decisions in briefings. Yet there are community concerns that at the start of each Council meeting a Councillor lists the staff recommendations for many Agenda items be adopted as a block, thus no discussions, which raises a question of how this list was arrived at? (eg 33% of items at meeting 28 Oct 2024).

Also the report gave puzzling reasons (eg re potential for embarrassment and affect efficiency?) for not supporting the proposal, ie:

- Removes the ability to discuss scenarios and ideas in a safe environment. Councillors may be less likely to ask "the silly question" in a public forum leading to less information informing decisions;
- Committees are inefficient and create a resource burden on Council to present required information in that forum. This will make the operations of Council less efficient. Administrative staff would need to attend and minutes to be documented;
- If questions cannot be answered in the Committee format, a higher rate of deferral of reports is likely to occur. Again, this would impact on the timeliness and efficiency of Council decision making.

It is not clear how these reasons stack up with Council's professed support for "the need for transparency in decision making to help mitigate corruption risks and to support good decision making".

In summary, I wholeheartedly support the OLG Paper's "Option for a better approach" to "ensure the community can observe local democratic processes by banning closed to the public briefing sessions, while at the same time restoring the dignity and prestige of the council chamber."
If any clarification and/or further information is required, please contact me

John Riggall
[redacted]

EUROBODALLA
LOCAL GOVERNMENT COMMITTEE

Secretary: Jim Bright Tel: [redacted]
P O Box 612, Narooma, NSW 2546

Deputy Secretary
Office of Local Government
Nowra NSW 2541

COUNCILLOR CONDUCT FRAMEWORK REVIEW

I refer to the discussion paper that was publicly circulated by OLG in September 2024 regarding a proposed new framework for councillor conduct and meeting practices.

The ALP's Eurobodalla Local Government Committee (the LGC) wishes to provide the following comments on two specific matters that are contained in that discussion paper. Those matters are (a) the proposal on page 18 for mandating an entitlement for public access to councillors' pre-meeting briefing sessions and (b) the possible implications of the suggestion on page 6 that the existing conduct code arrangements for council staff are adequate for purpose and therefore need not change.

Our LGC very strongly supports proposal (a) and is quite concerned about suggestion (b).

Access of the public to councillor briefings

Our LGC is very highly supportive of the increased accountability and transparency of decision-making that will come from this change. Authoritative expert opinion is clearly and overwhelming on the side of the view about the public benefit that accrues from measures such as this.

In addition to the improvements in accountability and transparency, public attendance at such briefings also increases the likelihood of

councillors being made aware, by members of the community, of any possible errors and gaps in the relevant information that is provided to them by staff.

With regard to what the local community and councillor views might be on this particular proposal with this Shire, we would draw your attention to the following information.

At the most recent ordinary meeting of the Eurobodalla Shire Council (the ESC) on 19 November 2024, a council staff report was presented to the councillors seeking their endorsement of the contents of a draft response to the discussion paper that had been circulated by OLG in September. The major recommendation contained in that draft response was that the ESC councillors should endorse a rejection OLG's proposal that pre-meeting briefings be opened to the public.

During the meeting's Public Forum, all the speakers, who made presentations on this particular issue, urged councillors not to accept that staff recommendation. When the agenda item was later brought before the councillors for decision, the motion, by one of the councillors that the staff's recommended submission to OLG be endorsed, lapsed due to the lack of a seconder.

<u>The need for change to the staff conduct code framework</u>

Our LGC is very concerned about the possible implications of the following comment on page 18 of OLG's discussion paper.

"*These changes are only proposed for councillors and there is no change proposed for the code of conduct for Local Government staff. Feedback from stakeholders is that the existing code of conduct of staff remains fit for purpose and is largely effective.*"

However, the feedback that had been provided in the recent past by our LGC was that serious major reform of this State's existing council staff conduct framework must be a significant component in any serious conduct reform within the local government sector.

In this regard, in 2023, our LGC wrote to the Minister for Local Government providing a detailed eight page submission (plus

attachments) in support of our concerns about the current situation. The first paragraph of that submission explained its purpose as follows.

"*The purpose of this submission .... is to strongly urge major change and reform to some parts of this State's local government integrity framework. At present, some crucial elements of that framework are, for most intents and purposes, either effectively non existent or seriously inadequate. The particular elements in question relate primarily to the conduct and behaviour of council staff.*" (A copy of that submission (minus its attachments) is enclosed.)

Our 2023 submission to the Minister (which we understand has been forwarded by the Minister's office to OLG) identified

(a) the current absence of an appropriate 'general jurisdiction' watchdog in our local government sector, and

(b) the lack of any promulgation by OLG, to councils and council staff, of accepted public sector standards of good conduct and administration

as crucial components of the cause of existing problem in this sector.

We therefore respectfully request that serious and urgent attention be also given by OLG to our LGC's detailed submission on the need for major reform to the existing conduct framework that currently applies to the staff employed by the 128+ local government bodies in this State.

Yours sincerely

Jim Bright
Secretary
Eurobodalla Local Government Committee
Australian Labor Party
29 November 2024

Mr Brett Whitworth
Deputy Secretary
NSW Office of Local Government
5 O'Keeffe Avenue, NOWRA NSW 2541

Dear Mr Whitworth

NSW OLG Councillor Conduct Framework Review 2024

Thank you for the opportunity to make a submission to the review of the Councillor Conduct Framework for NSW.

The discussion paper raises many vital issues impacting on the effectiveness of local government across NSW. The central concern - how councillors act and the impact of their behaviours on making the best possible decisions for their community as a whole - sits at the heart of community trust in local government.

This submission is made by Democracy Matters, a non-partisan organisation offering ethics training to local government to equip councillors with the skills and confidence to make good decisions on behalf of their community and to grow professionally during their time in council.

This submission responds to selected discussion questions where I feel my expertise as an ethics trainer is relevant. The submission also makes suggestions about developing a robust evidence base to fully understand the complex problem of councillor behaviour, before moving to drafting the next framework for local government in NSW.

Response to selected discussion paper questions

1. *What is missing from the principles for change?*

- Administrative law principles. Councillors rarely understand they are required to enter council meetings with an open mind (rather than a predetermined outcome), a willingness to genuinely consider all information presented to them in a council meeting and to make a decision based on the merits of the breadth of the information available to them across the entire decision making process (stakeholder meetings, briefing by council staff, public statements in council meetings and contributions by other councillors)

- Ethical dimensions of public office. The public expects elected representatives to put the demands of the office above personal or partisan interests.
- Alignment with the guiding principles of the NSW Local Government Act.

2. *What are the key elements of an aspirational Code of Conduct that should be enshrined?*

- This question assumes that making the code aspirational rather than enforceable is a solution to the large numbers of code of conduct complaints. To test this assumption, there is value in asking OLG equivalents in other states and territories for their insights following their investigations into raising the standard of behaviour in council meetings and improving council decision making. Insights or 'aha moments' help us understand the core of a complex problem.

3. *Should the Oath of Office be aligned with a revamped Code of Conduct?*

   Yes, all aspects of the framework need to be harmonised.

   Councillors have told me they would appreciate a diagram showing the legislative and policy elements of the context they operate in.

4. *Questions regarding pecuniary interest*

   Perceived conflict of interest is not mentioned in this section. It can be a difficult test for councillors to apply, however it is central to community trust in the exercise of public office and should be in any future code of conduct.

5. *Councillor misbehaviour in public office*

   I strongly support the three limbs of the misbehaviour definition (page 12).

   I also support the development of a committee, eg a 'Privileges Committee' to assess complaints. I am concerned by the suggestion however that committee members be 'senior and experienced ex-mayors' who may have experience in local government but no formal qualifications in administrative law or handling of complaints which leaves the committee members and their decisions open to being discredited.

I urge the OLG to look at other models in other states and territories, eg for example to consider the Victorian Arbiter panel approach[1] which draws on a range of professional experiences to resolve complaints.

A solid evidence base for diagnosing behaviour problems in local government

The behavioural problems identified in the discussion paper are complex. It is vital that the problems are interrogated from multiple perspectives and are understood accurately before moving to the solution phase, otherwise the same problems will keep occurring in future terms of council.

I urge the OLG to expand the range of analysis methods to build a robust evidence base to inform the future framework. Suggested approaches include:

- Round table discussions with council governance practitioners, administrators who have stepped in when councils have been dismissed and experts in local government to generate deeper analysis of the questions and proposals in the discussion paper.

- Using case studies to help understand the range of problems experienced in councils. For example, what were the drivers of dysfunction in councils that have been dismissed in NSW in the last two decades? What enabled the poor behaviour? What disabled any councillors who wanted to speak up?

  Equally, look at case studies where councils have functioned above community expectations, eg Lake Macquarie Council (see example in the Concluding remarks section of this submission.) What enabled the development of a positive culture in the council? What disabled poor behaviour?

- Use real dilemmas to test draft frameworks.[2] Any code of conduct should be tested by identifying the tough dilemmas councillors routinely face and asking 'how well does the code of conduct help councillors resolve this dilemma ethically and appropriately?' Codes of conduct will remain words on a page and have no bearing on behaviour if they are not tested using real world dilemmas. For example, how well does the proposed

[1] https://www.localgovernment.vic.gov.au/council-governance/councillor-conduct-framework-and-councillor-conduct-panels

[2] https://hbr.org/2024/07/build-a-corporate-culture-that-works

framework help the elected members of the Snowy Monaro Regional Council, including Councillor Andrew Thaler, to work productively for their community as a whole?

- Analysing the 4289 code of conduct complaints received by OLG in 2020/21 to 2022/23 for trends and insights on the types of behaviours and issues that frustrate good council decision making and respectful council meetings. For example, there is likely to be evidence on what enables and disables effective council decision making which in turn would inform the revision of the local government framework.

- It is worth noting that the Australia New Zealand School of Local Government is also considering how to build positive or pro integrity cultures. They are using an action research approach to understand why principle based approaches eg codes of conduct fail. Considering the scope, research questions and methodologies in the 'Improving public sector integrity through action research' project[3] would inform OLG's review.

- Councillors I have worked with when delivering 'Professional ethics - Navigating the grey zone' workshops, have found the Local Government NSW Capability Framework to be a very comprehensive, informative and practical resource for understanding the scope of their role and what professional behaviour looks like. I suggest this is a very useful reference point for OLG in the review process.

Building a positive culture

Being a councillor is a demanding task. It is a tier of government with a broad scope of matters with councillors who often carry out their role on a part time basis and often as a second job. A councillor's experience during their term of council is often determined by the leadership style of their mayor.

During her term as Mayor of Lake Macquarie Council, Mayor Kay Fraser gained a reputation for being an ethical leader. At the beginning of each council meeting, all elected representatives would stand while the Mayor read the the following statement:

> *"Councillors, I invite you to pause before we begin this meeting to reflect on the responsibility you have in making decisions on the matters before you.*

[3] ANZSOG research project to examine how to build a pro-integrity culture

As elected representatives we have a duty to carefully consider the implications of the decisions we make and to strive to act in the best interest of our community. I remind you that the Local Government Act requires us to act honestly, exercise care and diligence in carrying out our functions.

And to conduct our meetings constructively and courteously in accordance with our Code of Meeting Practice. It is incumbent on us to be open, transparent, honest and accountable for our actions and decisions. Also to demonstrate respect for each other, staff and the members of the public present." [4]

Mayor Fraser would then model the behaviours in the statement. Even when Labor councillors were in the majority on Lake Macquarie Council, Mayor Fraser ensured all councillors had adequate time to share their concerns, ask questions and represent their constituents.

On other councils, Mayors seek to stifle debate, silence councillors and make meetings adversarial by:

- Limiting discussion to 2 councillors speaking for a motion and 2 speaking against.
- Voting opposing councillors off council committees, even when their expertise is directly relevant to the matters being discussed.
- Using a majority on council to systematically reject notices of motion by opposing councillors and replacing them with foreshadowed motions to table substantially the same motion which is passed by the majority.

It is no surprise that a significant number of councillors do not seek a second term. For some it is juggling two paid roles. But for many more it is the lack of professional respect they experience in council meetings for their peers.

Research by Deloitte Access Economics indicates that organisations with a robust culture of ethical behavior and decision-making report better mental and physical health among their members. Further, Deloitte found unethical behaviour leads to poorer financial outcomes for businesses.[5]

[4] https://webcast.lakemac.com.au/archive/video24-0826.php

[5] https://www.deloitte.com/au/en/services/economics/perspectives/ethical-advantage-economic-social-benefits-ethics-australia.html

To help councillors perform well in their roles and exercise good governance, I suggest looking at behaviour change research for strategies focused on creating well functioning cultures. If we follow the advice from the research paper 'How culture change really happens'[6] then the future code of conduct will:

- Be solution focused rather than problem focused.
- Describe the goal rather than being bogged down in details.
- Encourage councillors to accept that the role of a councillor is challenging and they must act ethically when those challenges arise.

Concluding comments

I commend the NSW Office of Local Government for examining the problematic behaviours that distract councils from exercising good governance and respect for the office they hold.

I am available to respond to any questions this submission raises.

Yours sincerely

Ms Sandy Killick
Sydney, NSW
Managing Director, Democracy Matters
0409 204 100
sandy@democracymatters.com.au
https://www.democracymatters.com.au/

[6] https://neuroleadership.com/your-brain-at-work/how-culture-change-really-happens/

From:	Peter Jones
To:	OLG Councillor Conduct Mailbox
Cc:	IPC-Info; OLG - Fairfield City Council
Subject:	Councillor Conduct Framework Review
Date:	Friday, 29 November 2024 7:09:05 PM
Attachments:	2023-10-09 Peter Jones to Fairfield Council.pdf 2023-11-23 Fairfield Council to Peter Jones.pdf 2024-11-29 Submission by Peter Jones to OLG Review.pdf

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Dear Office of Local Government,

Please see attached… my submission to the Councillor Conduct Framework Review.

Kind Regards,

Peter Jones
Ph: [redacted]

CC: Gigi Huang, Regulatory Officer, Information and Privacy Commission, and Bradley Cutts, General Manager, Fairfield City Council

Peter Jones
[redacted]

29 November 2024

Mr Brett Whitworth
Deputy Secretary, Local Government
NSW Department of Planning and Environment

By Email: councillorconduct@olg.nsw.gov.au

Dear Deputy Secretary,

Councillor Conduct Framework Review

This submission addresses the non-compliance and inconsistent application of the Government Information (Public Access) Act 2009 **[GIPA Act]** by councils, particularly regarding the mandatory proactive release of open access information, including councillors' disclosure of interest returns.

While some councils fully meet their obligations under the GIPA Act, others only partially comply, and some fail entirely. These inconsistencies undermine the objectives of the GIPA Act, especially its aim to promote transparency, accountability, and equitable public access to government information.

I generally support the views expressed in the Councillor Conduct & Meeting Practices Discussion Paper **[OLG Discussion Paper]** published by the Office of Local Government in September 2024. The Discussion Paper is well-researched, carefully considered, and offers many practical, common-sense recommendations for reform.

Information and Privacy Commission

I would like to thank the Information and Privacy Commission **[IPC]** for their considerable work in this area, particularly the publication of:

- *Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons,* issued in September 2019 **[IPC Guideline 1]**.
- *Local Government Sector GIPA Compliance Report, July 2021* **[2021 IPC Report]**.
- *Local Government Sector Follow-up GIPA Compliance Report, June 2023* **[2023 IPC Report]**.

The 2023 IPC Report found that of the 52 councils surveyed:

- 12% (6 councils) failed to comply with the requirement to make returns of interests publicly available.

- 19% (10 councils) failed to ensure that returns were up to date, significantly undermining the objectives of disclosure.
- 70% (32 councils) failed to maintain records of withheld information as required under section 6(5) of the GIPA Act, indicating widespread misunderstanding or disregard for this requirement.

I encourage OLG to carefully consider the IPC's reports and to adopt their views and recommendations wherever appropriate.

Recommendations

I wish to make two simple recommendations for consideration:

1. That responsibility for the local government disclosure regime be moved from individual local councils to the Office of Local Government **[OLG]**.

   Placing the OLG in charge of the process will resolve most of the issues identified by the IPC in their 2021 and 2023 reports.

2. That OLG and IPC improve coordination of their compliance efforts to more effectively achieve the objectives of the GIPA Act.

   There is considerable overlap between the OLG and IPC's responsibilities. The current situation risks both double handling and gaps in the compliance process.

Each of these suggestions align with the views expressed in the OLG's Discussion Paper and the IPC's 2021 and 2023 Reports.

Fairfield Council

My views are shaped by personal experience with the current system.

- On 9 October 2023, I applied to Fairfield Council for copies of Mayor Frank Carbone's disclosure of interest returns. A copy of my application is attached.
- On 20 November 2023, Fairfield Council provided me with what they described as "copies of information identified as being responsive to the scope of your request." A copy of Council's response is also attached.

The documents provided were so heavily redacted that they were effectively useless.

- Of the 64 pages provided, 54 were completely blank.

  Presumably each blank page represented a page that had been redacted in its entirety. However, nowhere was this explained.

- The remaining 10 pages contained significant and impermissible redactions. Only two of these pages were dated.

- Four of the ten non-blank pages were watermarked with *"Informal GIPA Application CRM Ref: 564185/2023"*. I suspect Council's intention was to watermark all pages.

  The obvious purpose of the watermarks was to track the use of the disclosed documents. These efforts are completely contrary to the objects of the GIPA Act.

My application to Fairfield Council should not have been necessary, as the requested information was clearly open access information, under the GIPA Act, and should have already been made available on Council's website.

I thank the OLG for the opportunity to make this submission.

Yours sincerely,

[redacted]

Peter Jones
Email: [redacted]
Phone: [redacted]

From: [redacted]
Subject: Confidential Letter to General Manager
Date: 9 October 2023 at 9:20 AM
To: mail@fairfieldcity.nsw.gov.au
Cc: olg@olg.nsw.gov.au, ipcinfo@ipc.nsw.gov.au

PJ

Dear Mr Cutts,

Please see attached, my letter to you.

Regards,

Peter Jones
Ph: [redacted]

CONFIDENTIAL - Cr Carbone DoI Returns.pdf

Peter Jones
[redacted]

9 October 2023

Mr Bradley Cutts
General Manager
Fairfield Council
By email: mail@fairfieldcity.nsw.gov.au

cc. Mr Brett Whitworth
Deputy Secretary, Local Government
Office of Local Government
By email: olg@olg.nsw.gov.au

cc. Ms Elizabeth Tydd
NSW Information Commissioner
Information and Privacy Commission NSW
By email: ipcinfo@ipc.nsw.gov.au

Dear Mr Cutts,

CONFIDENTIAL

Councillor Disclosure Returns by Cr Frank Carbone

I am writing to request copies of all Annual Disclosure of Interests Returns, including any amendments to those returns [Councillor Disclosure Returns] lodged by Councillor Frank Carbone with Fairfield City Council since his election to council in September 2008.

I request that you provide this information in PDF format by email to [redacted], within seven days of receipt of this letter.

Mandatory Proactive Release Provisions

Councillor Disclosure Returns are subject to the Mandatory Proactive Release / Open Access Information provisions of the following legislation and policies:

- The *Government Information (Public Access) Act 2009* (GIPA Act).
- The *Government Information (Public Access) Regulation 2018* (GIPA Regulation).
- The Model Code of Conduct for Local Councils in NSW 2018 (Model Code).
- *Information Commissioner's Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons developed under the Government Information (Public Access) Act 2009 (NSW)* (Guideline 1).

The combined effect of these laws and policies is to require you to make Councillor Disclosure Returns readily available to the public on Council's website, free of charge.

I also draw your attention to the adverse findings made against Fairfield Council by the NSW Information Commissioner (*Local Government Sector – Follow-up GIPA Compliance Report, June 2023),* regarding Council's non-compliance with its Mandatory Proactive Release obligations.

Purported Public Interest Considerations

I note that Council claims on its website that "Council has determined that there is an overriding public interest against publishing the Returns on its website".

If you intend to refuse my application (in whole, or in part) on the basis of that determination, can you please provide me with:

- The relevant council resolution.
- Copies of all related documents and correspondence.
- A list of the specific permissible public interest considerations taken into account by Council in making its determination.

To assist you, the only considerations that may be taken into account are set out in:

- The table in Section 14 of the GIPA Act, and
- Schedule 1 of the GIPA Act.

Confidentiality

I believe that the true purpose of Council's policy is to provide council staff and councillors with knowledge they are not entitled to, including:

- What specific Open Access Information has been sought, and
- The identity of the person seeking the information.

Obviously, such a purpose is improper and is not permitted by the legislation.

I therefore request that the existence of my application and its contents are not disclosed to any councillor, including and especially Cr Carbone.

Should you feel compelled to inform (directly or indirectly) any councillor of my application, can you please provide me two clear business days' notice in writing before doing so.

Yours sincerely,

[redacted]

Peter Jones
Ph: [redacted]

Attached: Peter Jones Informal Access to Information Application Form
Government Information (Public Access) Act 2009

Informal Access to Information Application Form
Government Information (Public Access) Act 2009

Please complete this form to apply for informal access to Council held information under the *Government Information (Public Access) Act 2009* (GIPA Act). If you require assistance completing this form, please contact the Manager Information and Records on 9725 0222 or visit our website at www.fairfieldcity.nsw.gov.au.

1. Applicant details

Full name: ..... Title: Dr/Mr/Mrs/Ms/Miss

Company: .....

ABN: .....

Postal address: .....

..... Postcode:..... ....

Telephone number.: [redacted] ..... Mobile: [redacted] .....

Email: ....

☐ I agree to receive correspondence at the above email address.

2. Description of Council held information

Please describe the information you would like to access in enough detail to allow us to identify it. Include a date range, property address and any relevant factors that can be taken into consideration.
Note: If you do not give enough details about the information, Council may refuse to process your application.

.....

.....

.....

Street address:.....

Suburb:..... Postcode:.....

If known: Lot:..... Section: ..... DP or SP: .....

DA or CC No.(s): DA .....

Are you the current owner of the above property? ☐ **Yes** ☐ **No**
If no, written authorisation may be required from the property owner, consenting to the release of information about this property.

3. Details of information

Please indicate the copied item(s) you require as part of this application:

☐ Development Application Form
☐ Site Plan
☐ Engineering Plans
☐ Other (please specify):

☐ Consent or Letter of Refusal
☐ Architectural Plans
☐ Statement of Environmental Effects

.....

.....

.....

.....

Note: Copyright applies to most plans and reports. Council cannot reproduce copies of these documents without written permission of the person or company that created them (*Copyright Act 1968* section 36). Where possible, council will try to supply details of the Copyright Owner so that you can obtain the necessary permission.

4. Form of access

How do you wish to access the information?

- ☐ By email
- ☐ A copy of the documents
- ☐ Inspect the documents
- ☐ Collect the document/s from Council's Administration Centre
- ☐ Other way (please specify):

.....

.....

Should you wish to view a Development Application file(s), you will be contacted by a Council Officer to arrange a mutually convenient time to view the file(s). File(s) can only be viewed at Council's Administration Centre, 86 Avoca Road Wakeley on work days (excluding public holidays). Arrangements for viewings can be made with the Manager Information and Records.

5. Photocopying charges

The photocopying of plans will be provided based on the existing size of the plans/documents within the file. A letter will be sent advising that your documents are ready for collection and the amount to be paid for the photocopying.

The following photocopying charges apply:

A4 and A3:	Nil
A2:	$3.90 per page
A1:	$5.00 per page
A0:	$9.30 per page

Applicant's signature: [redacted] **..... Date: .....**

Please post or lodge this form to the attention of the Access to Information Coordinator at:

Fairfield City Council
PO Box 21 Fairfield NSW 1860

OR

Fairfield City Council
Administration Centre
86 Avoca Road, WAKELEY 2176

OR mail@fairfieldcity.nsw.gov.au

PROTECTING YOUR PRIVACY – The personal information requested on this form will only be used to fulfil the purpose for which it is being collected. The supply of this information by you is voluntary but if you cannot or do not wish to provide the personal information sought, we may not be able to process your application. Council is regarded as the agency that holds the information and will endeavour to ensure that this information remains accurate and up-to-date. You may also request an amendment to information held by Council or for suppression of your information from a Public Register. Should you require further information please contact Council's Privacy Officer.

OFFICE USE ONLY

Cashier Code 16

Fee payable: $..... Receipt number: .....

Receipted by: ..... Date: .....

From: **Mail Mail** mail@fairfieldcity.nsw.gov.au
Subject: Informal GIPA Application CRM Ref: 564185/2023.
Date: 23 November 2023 at 11:24 AM
To: [redacted]

MM

Dear Sir,
Please see **attached** information identified as being responsive to the scope of your request. If you wish to discuss your application, please contact the Right to Information Team on 9725 0222 and quote the reference number above.

Kind regards,
Right to Information Team

This email is intended for the addressee(s) named and may contain confidential and\or privileged information. If you are not the intended recipient, please delete it immediately and notify the sender. Any views expressed in this email, are those of the individual sender, except where the sender expressly and with authority, states them to be the view of Fairfield City Council.

Wakeley Avoca Road 86 - Response to applicant P Jones...

WINNER AR BLUETT MEMORIAL AWARD 2018
'Most progressive council in NSW'

In reply please quote: CRM564185/2023 **Contact**: Right to Information Officer on 9725 0221

20 November 2023

Mr P Jones
[redacted]

By email: [redacted]

Dear Mr Jones

INFORMAL ACCESS TO INFORMATION REQUEST UNDER THE *GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009* (GIPA Act)

I refer to your informal access application requesting to Council held information,

namely Councillor returns submitted by Cr F Carbone from September 2008 to date.

Please find **attached** copies of information identified as being responsive to the scope of your request.

Should you require further information on the access to information process, please contact Council's Right to Information Officer on 9725 0221, quoting the CRM reference number above.

Yours faithfully,

RIGHT TO INFORMATION OFFICER

Informal GIPA Ref: CRM564185/2023.
sed

(1)

Date Received: 22.9.09.

Received by: _____

Checked by: _____

Receipt Issued: Y / N

LOCAL GOVERNMENT ACT 1993

DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS RETURN

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Part 8 of the Local Government Act (General) Regulation 2005.

(2) If this return is the first return required to be submitted by you after attaining the position of councillor or designated person, do not complete Parts C, D and H of the return. All other Parts of the return should be completed with appropriate information as at the return date i.e. the date on which you attained that position.

If this return is not the first return required to be submitted by you after attaining that position, all Parts of the return should be completed with appropriate information for the relevant return period since the last return ie. the period from the return date of the last return to 30 June in this year or the period from the end of the last return period to 30 June in this year (whichever is appropriate).

(3) The particulars required to complete this form are to be written in block letters or typed.

(4) If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.

(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

(6) * means delete whichever is inapplicable.

IMPORTANT INFORMATION

This information is being collected for the purpose of compliance with section 449 of the Local Government Act 1993. You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular. Complaints made about contraventions of these requirements may be referred to the Local Government Pecuniary Interest Tribunal.

The information collected on this form will be kept by the General Manager at the council chambers in a register of returns. Everyone is entitled to inspect the register of returns free of charge. You may correct or update the information contained in the register of returns by submitting a fresh return at any time.

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS

By. Frank Carbone
(full name of councillor or designated person)

* as at 18/08/2009
(return date)

24/9/08 - 30/6/09

[redacted]

* in respect of the period from . ~~18/08/20 to 17/08/2010~~
(return period)

[redacted]

18/08/2009
(date)

(councillor's or designated person's signature)

YELLOW FORM - TO BE COMPLETED BY COUNCILLORS
GREEN FORM - TO BE COMPLETED BY DESIGNATED PERSONS

Objective: xx04441g.doc

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest *at the return date/*at any time during the return period	Nature of interest
[redacted]	

Dpnd GIPA Ref: CRM564185/2023

B. SOURCES OF INCOME

1. *Sources of income I reasonably expect to receive from an occupationn the period commencing on the first day after the return date and ending on the following 30 June:

   *Sources of income I received from an occupation at any time during the return period:

Description of Occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
[redacted]		
Councillor	Fairfield City Council	Fairfield City Council
NIL		
NIL		
NIL		
NIL		

2. *Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June:

*Sources of income I received from a trust during the return period:

Name and address of settlor	Name and address of trustee
[redacted]	

3. *Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June:

*Sources of other income I received at any time during the return period:
(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)

[redacted]
National Australia Bank
Commonwealth bank

C. GIFTS

Description of each gift I received at any time during the return period	Name and address of donor

D. CONTRIBUTIONS TO TRAVEL		
Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period.	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken
nil		
Nil		
nil		
nil		

(5)

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position *at the return date/*at any time during the return period	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) *at the return date/*at any time during the return period	Description of position
NIL	NIL.
NIL	NIL

ormed CIPA Re s

G. DEBTS

Name and address of each person to whom I was liable to pay any debt *at the return date/*at any time during the return period.

NAB

H. DISPOSITIONS OF PROPERTY

1. Particulars of each disposition of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.

2. Particulars of each disposition of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

NIL

I. DISCRETIONARY DISCLOSURES

[redacted]

LOCAL GOVERNMENT ACT 1993
DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS RETURN

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Part 8 of the Local Government Act (General) Regulation 2005.

(2) If this return is the first return required to be submitted by you after attaining the position of councillor or designated person, do not complete Parts C, D and H of the return. All other Parts of the return should be completed with appropriate information as at the return date i.e. the date on which you attained that position.

If this return is not the first return required to be submitted by you after attaining that position, all Parts of the return should be completed with appropriate information for the relevant return period since the last return i.e. the period from the return date of the last return to 30 June in this year or the period from the end of the last return period to 30 June in this year (whichever is appropriate).

(3) The particulars required to complete this form are to be written in block letters or typed.

(4) If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.

(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

(6) * means delete whichever is inapplicable.

IMPORTANT INFORMATION

This information is being collected for the purpose of compliance with section 449 of the Local Government Act 1993. You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular. Complaints made about contraventions of these requirements may be referred to the Local Government Pecuniary Interest Tribunal.

The information collected on this form will be kept by the General Manager at the council chambers in a register of returns. Everyone is entitled to inspect the register of returns free of charge. You may correct or update the information contained in the register of returns by submitting a fresh return at any time.

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS

by Frank Carbone
(full name of councillor or designated person)

*as at 14/08/2010
(return date)

*in respect of the period from 1/7/10 to 30/7/11
(return period)

18/8/2010
Date of Signature

[redacted]
Signature

THIS FORM ONCE COMPLETED MUST BE PRINTED AND SIGNED AND RETURNED TO COUNCILLOR SERVICES TO BE SCANNED INTO COUNCIL'S RECORD MANAGEMENT SYSTEM - OBJECTIVE

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest * at the return date/* at any time during the return period	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1 *Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June:

* Sources of income I received from an occupation an any time during the return period:

Description of Occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
[redacted]		
Councillor	Fairfield City Council	Councillor

2 *Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June:

*Sources of Income I receive from a trust during the return period:

Name and address of settler	Name and address of trustee
[redacted]	

3 *Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June:

*Sources of other income I received at any time during the return period:
(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received.

[redacted]

National Australia Bank - Interest

Commonwealth Bank - Interest

[redacted]

C. GIFTS

Description of each gift I received at any time during the return period.	Name and address of donor.

D. CONTRIBUTION TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period.	Dates on which travel was undertaken.	Name of States, Territories of Commonwealth and overseas countries in which travel was undertaken.

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position * at the return date/* at any time during the return period	Nature of interest (if any)	Description of position	Description of principal objects of corporation (except in case of public company)

F POSITIONS IN TRADE UNIONS PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name and address of each corporation in which I had an interest or held a position * at the return date/* at any time during the return period	Nature of interest (if any)	Description of principal objects of corporation (except in case of public company)

G. DEBTS

Name and address of each person to whom I was liable to pay any debt * at the return date/* at any time during the return period

NAB (National Australia Bank.)

H. DISPOSITION OF PROPERTY

1. Particulars of each disposition of real property by me at any time during the return period whereby I retained, either or wholly any part, the use and benefit of the property or the right to reacquire the property at a later time.

2. Particulars of each disposition of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use of the property.

I. DISCRETIONARY DISCLOSURES

Local Government Act 1993 No. 30 - Part 1 of Schedule 3, Disclosure of Interests (secs 449,450)

OFFICE USE ONLY

DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS

SECTION 449(3) RETURN

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Division 2 of part 2 of Schedule 3 to the Local Government Act 1993.

(2) If this return is the first return required to be submitted by you after attaining the position of councillor or designated person, use section 449 (1) return.

If this return is not the first return required to be submitted by you after attaining that position, all Parts of the return should be completed with appropriate information for the relevent period since the last return i.e. the period from the end of the last return period to 30 June in this year (whichever is appropriate).

(3) The particulars required to complete this form are to be written in block letters or typed.

(4) If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.

(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the work "NIL" is to be placed in an appropriate space under that heading

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY Frank Carbone
(full name of councillor or designated person)

IN RESPECT OF THE PERIOD FROM 1 July 2010 TO 30 June 2011
(return period)

27/9/11 ..... [redacted] .....
(date) *(councillor's or designated person's signature*

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest at any time during the return period	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I received from an occupation at any time during the return period:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Councillor	Fairfield City Council, 86 Avoca Road, Wakeley	Councillor
[redacted]		

2. Sources of income I received from a trust during the return period:

Name and address of settlor	Name and address of trustee
[redacted]	

3. Sources of other income I received at any time during the return period:
(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)

Rental - [redacted]
Interest - National Australia Bank, Commonwealth Bank
[redacted]
Councillors allowance

C. GIFTS

Description of each gift I received at any time during the return period	Name and address of donor
Nil	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
Nil		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at any time during the return period.	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the return period.	

G. DEBTS

Name and address of each person to whom I was liable to pay any debt at any time during the return period.

NAB (National Australia Bank)

H. DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.

Nil

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

Nil

I. DISCRETIONARY DISCLOSURES

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision.

Nil

Local Government Act 1993 No. 30 - Part 1 of Schedule 3, Disclosure of Interests (secs 449,450)

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S.Dreg
14/2/2012

DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS

SECTION 449(3) RETURN

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Division 2 of part 2 of Schedule 3 to the Local Government Act 1993.

(2) If this return is the first return required to be submitted by you after attaining the position of councillor or designated person, use section 449 (1) return.

If this return is not the first return required to be submitted by you after attaining that position, all Parts of the return should be completed with appropriate information for the relevent period since the last return i.e. the period from the end of the last return period to 30 June in this year (whichever is appropriate).

(3) The particulars required to complete this form are to be written in block letters or typed.

(4) If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.

(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the work "NIL" is to be placed in an appropriate space under that heading

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY FRANK CARBONE
(full name of councillor or designated person)

IN RESPECT OF THE PERIOD FROM 1 July 2010 TO 30 June 2011
(return period)

~~27/9/2011~~ 8/2/12.
(date)

[redacted]
(councillor's or designated person's signature

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest at any time during the return period	Nature of Interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I received from an occupation at any time during the return period:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Councillor	Fairfield City Council, 86 Avoca Road, Wakeley	Councillor
[redacted]		

2. Sources of income I received from a trust during the return period:

Name and address of settlor	Name and address of trustee
[redacted]	

3. Sources of other income I received at any time during the return period:
(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)

[redacted]
Interest – National Australia Bank, Commonwealth Bank
[redacted]
Councillors Allowance

C. GIFTS

Description of each gift I received at any time during the return period	Name and address of donor
Nil	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
Nil		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at any time during the return period.	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)
[redacted]			

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the return period.	

G. DEBTS

Name and address of each person to whom I was liable to pay any debt at any time during the return period.

National Australia Bank (NAB)

H. DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.

Nil

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

Nil

I. DISCRETIONARY DISCLOSURES

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision.

[redacted]

Local Government Act 1993 No. 30 - Part 1 of Schedule 3, Disclosure of Interests (secs 449,450)

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Rec 7/9/12

DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS

SECTION 449(3) RETURN

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Division 2 of part 2 of Schedule 3 to the Local Government Act 1993.

(2) If this return is the first return required to be submitted by you after attaining the position of councillor or designated person, use section 449 (1) return.

If this return is not the first return required to be submitted by you after attaining that position, all Parts of the return should be completed with appropriate information for the relevant period since the last return i.e. the period from the end of the last return period to 30 June in this year (whichever is appropriate).

(3) The particulars required to complete this form are to be written in block letters or typed.

(4) If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.

(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the work "NIL" is to be placed in an appropriate space under that heading

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY MAYOR FRANK CARBONE
(full name of councillor or designated person)

IN RESPECT OF THE PERIOD FROM 1 July 2011 TO 30 June 20[redacted]
(return period)

7/9/12 ..... [redacted]
(date) *(councillor's or designated person's signature)*

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest at any time during the return period	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I received from an occupation at any time during the return period:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Councillor	Fairfield City Council, 86 Avoca Road, Wakeley	Councillor

2. Sources of income I received from a trust during the return period:

Name and address of settlor	Name and address of trustee
[redacted]	

3. Sources of other income I received at any time during the return period:
(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)

[redacted]
Interest – National Australia Bank, Commonwealth Bank
[redacted]
Councillors Allowance

C. GIFTS

Description of each gift I received at any time during the return period	Name and address of donor
Nil	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
Nil		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at any time during the return [illegible]	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the return period.

G. DEBTS

Name and address of each person to whom I was liable to pay any debt at any time during the return period.

National Australia Bank (NAB)

H DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.

Nil

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

Nil

I. DISCRETIONARY DISCLOSURES

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision.

Nil

Local Government Act 1993 No. 30 - Part 1 of Schedule 3, Disclosure of Interests (secs 449,450)

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MP 9/11/12

DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS

SECTION 449(1) RETURN

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Division 2 of part 2 of Schedule 3 to the Local Government Act 1993.

(2) If this return is the first return required to be submitted by you after attaining the position of councillor or designated person, use section 449 (1) return.

If this return is not the first return required to be submitted by you after attaining that position, all Parts of the return should be completed with appropriate information for the relevant period since the last return i.e. the period from the end of the last return period to 30 June in this year (whichever is appropriate).

(3) The particulars required to complete this form are to be written in block letters or typed.

(4) If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.

(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the work "NIL" is to be placed in an appropriate space under that heading

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY

.....Frank Carbone ..... AS AT ...25 September 2012...

(full name of councillor or designated person)

9.11.12

(date) *(councillor's or designated person's signature*

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest at the return date	Nature of interest

B. SOURCES OF INCOME

1. Sources of income I reasonably expect to receive from an occupation in the period commencing of the first day after the return date and ending on the following 30 June:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Councillor	Fairfield City Council, 86 Avoca Road, Wakeley	

2. Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June:

Name and address of settlor	Name and address of trustee

3. Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June:
(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)

[redacted]
Interest – National Australia Bank, Commonwealth Bank
[redacted]
Councillors Allowance

C. GIFTS

NOT APPLICABLE

D. CONTRIBUTIONS TO TRAVEL

NOT APPLICABLE

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at any time during the return period.	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)
[redacted]			

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the return period.	

G. DEBTS

Name and address of each person to whom I was liable to pay any debt at any time during the return period.
National Australia Bank (NAB)

H. DISPOSITIONS OF PROPERTY

NOT APPLICABLE

I. DISCRETIONARY DISCLOSURES

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision.

Local Government Act 1993 No. 30 - Part 1 of Schedule 3, Disclosure of Interests (secs 449,450)

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3/4/13

DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS

SECTION 449(3) RETURN

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Division 2 of part 2 of Schedule 3 to the Local Government Act 1993.

(2) If this return is the first return required to be submitted by you after attaining the position of councillor or designated person, use section 449 (1) return.

If this return is not the first return required to be submitted by you after attaining that position, all Parts of the return should be completed with appropriate information for the relevant period since the last return i.e. the period from the end of the last return period to 30 June in this year (whichever is appropriate).

(3) The particulars required to complete this form are to be written in block letters or typed.

(4) If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.

(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the work "NIL" is to be placed in an appropriate space under that heading

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY MAYOR FRANK CARBONE
(full name of councillor or designated person)

IN RESPECT OF THE PERIOD FROM 1 July 2012 TO 30 June 2013
(return period)

3 April 2013 ..... [redacted]
(date) *(councillor's or designated person's signature)*

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest at any time during the return period	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I received from an occupation at any time during the return period:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Councillor	Fairfield City Council, 86 Avoca Road, Wakeley	Councillor

2. Sources of income I received from a trust during the return period:

Name and address of settlor	[redacted]
[redacted]	

3. Sources of other income I received at any time during the return period:
(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)

[redacted]
Interest – National Australia Bank, Commonwealth Bank
[redacted]
Councillors Allowance
[redacted]

C. GIFTS

Description of each gift I received at any time during the return period	Name and address of donor
Nil	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
Nil		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at any time during the return period.	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the return period.	
Nil	

G. DEBTS

Name and address of each person to whom I was liable to pay any debt at any time during the return period.

National Australia Bank (NAB)

H. DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.

Nil

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

Nil

I. DISCRETIONARY DISCLOSURES

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision.

Nil

Local Government Act 1993 No. 30 - Part 1 of Schedule 3, Disclosure of Interests (secs 449,450)

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14/5/13

DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS

SECTION 449(3) RETURN

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Division 2 of part 2 of Schedule 3 to the Local Government Act 1993.

(2) If this return is the first return required to be submitted by you after attaining the position of councillor or designated person, use section 449 (1) return.

If this return is not the first return required to be submitted by you after attaining that position, all Parts of the return should be completed with appropriate information for the relevant period since the last return i.e. the period from the end of the last return period to 30 June in this year (whichever is appropriate).

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(4) If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.

(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the work "NIL" is to be placed in an appropriate space under that heading

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY MAYOR FRANK CARBONE
(full name of councillor or designated person)

IN RESPECT OF THE PERIOD FROM 1 July 2012 TO 30 June 2013
(return period)

3 April 2013 [redacted]
(date) *(councillor's or designated person's signature)*

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest at any time during the return period	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I received from an occupation at any time during the return period:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Councillor	Fairfield City Council, 86 Avoca Road, Wakeley	Councillor

2. Sources of income I received from a trust during the return period:

Name and address of settlor	Name and address of trustee
[redacted]	

3. Sources of other income I received at any time during the return period:
(include description sufficient to identify the person from whom, or the circumstances in which, that income was received)

[redacted]
Interest – National Australia Bank, Commonwealth Bank
[redacted]
Councillors Allowance
[redacted]

C. GIFTS

Description of each gift I received at any time during the return period	Name and address of donor
Nil	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
Nil		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at any time during the return period.	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the return period.	
Nil	

G. DEBTS

Name and address of each person to whom I was liable to pay any debt at any time during the return period.

National Australia Bank (NAB)

H DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.

Nil

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

Nil

I. DISCRETIONARY DISCLOSURES

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision.

Nil

Local Government Act 1993 No. 30 - Part 1 of Schedule 3, Disclosure of Interests (secs 449,450)

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.....
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.....10/9/13.....
.....

DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS

SECTION 449(3) RETURN

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Division 2 of part 2 of Schedule 3 to the Local Government Act 1993.

(2) If this return is the first return required to be submitted by you after attaining the position of councillor or designated person, use section 449 (1) return.

If this return is not the first return required to be submitted by you after attaining that position, all Parts of the return should be completed with appropriate information for the relevant period since the last return i.e. the period from the end of the last return period to 30 June in this year (whichever is appropriate).

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(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the work "NIL" is to be placed in an appropriate space under that heading

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY MAYOR FRANK CARBONE
(full name of councillor or designated person)

IN RESPECT OF THE PERIOD FROM 1 July 2012 TO 30 June
(return period)

10/9/13.
(date)

[redacted]
(councillor's or designated person's signature)

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest at any time during the return period	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I received from an occupation at any time during the return period:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Councillor/Mayor	Fairfield City Council, 86 Avoca Road, Wakeley	Councillor

2. Sources of income I received from a trust during the return period:

Name and address of settlor	
[redacted]	

3. Sources of other income I received at any time during the return period:
(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)

Same as in section A, B & E

C. GIFTS

Description of each gift I received at any time during the return period	Name and address of donor

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at any time during the return period.	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the return period.	

G. DEBTS

Name and address of each person to whom I was liable to pay any debt at any time during the return period.

National Australia Bank (NAB)

H DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

I. DISCRETIONARY DISCLOSURES

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision.

Local Government Act 1993 No. 30 - Part 1 of Schedule 3, Disclosure of interests (secs 449,450)

OFFICE USE ONLY
Mazehas.
28/8/14

DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS

SECTION 449(3) RETURN

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Division 2 of part 2 of Schedule 3 to the Local Government Act 1993.

(2) If this Return is the first return required to be submitted by you after attaining the position of councillor or designated person, use Section 449(1) Return.

If this Return is not the first return required to be submitted by you after attaining that position, all Parts of the Return should be completed with appropriate information for the relevant period since the last return i.e. the period from the end of the last return period to 30 June in this year (whichever is appropriate).

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(4) If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.

(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the work "NIL" is to be placed in an appropriate space under that heading

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY: MAYOR FRANK CARBONE

(print full name of councillor or designated person)

[redacted]

(councillor's or designated person's signature)

IN RESPECT OF THE PERIOD FROM 1 July 2013 to 30 June 2014
(return period)

1.8.14
(date)

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest at any time during the return period	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I received from an occupation at any time during the return period:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Councillor /Mayor	Fairfield City Council, 86 Avoca Road, Wakeley	Councillor

2. Sources of income I received from a trust during the return period:

Name and address of settlor	
[redacted]	

3. Sources of other income I received at any time during the return period:
(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)

Same as in section A, B & E

C. GIFTS

Description of each gift I received at any time during the return period	Name and address of donor

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at any time during the return period.	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the return period.	

G. DEBTS

Name and address of each person to whom I was liable to pay any debt at any time during the return period.

National Australia Bank (NAB)

H DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

I. DISCRETIONARY DISCLOSURES

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision.

NAB

Local Government Act 1993 No. 30 - Part 1 of Schedule 3, Disclosure of Interests (secs 449,450)

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Angelas 18/9/14

DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS

SECTION 449(3) RETURN

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Division 2 of part 2 of Schedule 3 to the Local Government Act 1993.

(2) If this Return is the first return required to be submitted by you after attaining the position of councillor or designated person, use Section 449(1) Return.

If this Return is not the first return required to be submitted by you after attaining that position, all Parts of the Return should be completed with appropriate information for the relevant period since the last return i.e. the period from the end of the last return period to 30 June in this year (whichever is appropriate).

(3) The particulars required to complete this form are to be written in block letters or typed.

(4) If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.

(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the work "NIL" is to be placed in an appropriate space under that heading

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY: MAYOR FRANK CARBONE

(print full name of councillor or designated person)

[redacted]

(councillor's or designated person's signature)

14-09-14

(date)

IN RESPECT OF THE PERIOD FROM 1 July 2013 to 30 June 2014
(return period)

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest at any time during the return period	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I received from an occupation at any time during the return period:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Councillor /Mayor	Fairfield City Council, 86 Avoca Road, Wakeley	Councillor

2. Sources of income I received from a trust during the return period:

Name and address of settlor	
[redacted]	

3. Sources of other income I received at any time during the return period:
(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)

Same as in section A, B, E

C. GIFTS

Description of each gift I received at any time during the return period	Name and address of donor

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at any time during the return period	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)
[redacted]			

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the return period.	

G. DEBTS

Name and address of each person to whom I was liable to pay any debt at any time during the return period.

National Australia Bank (NAB)

H. DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

I. DISCRETIONARY DISCLOSURES

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision.

Owner

[redacted]

Local Government Act 1993 No. 30 - Part 1 of Schedule 3, Disclosure of Interests (secs 449,450)

DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS

SECTION 449(3) RETURN

OFFICE USE ONLY
Mayoral
21/9/15

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Division 2 of part 2 of Schedule 3 to the Local Government Act 1993.

(2) If this Return is the first return required to be submitted by you after attaining the position of councillor or designated person, use Section 449(1) Return.

If this Return is not the first return required to be submitted by you after attaining that position, all Parts of the Return should be completed with appropriate information for the relevant period since the last return i.e. the period from the end of the last return period to 30 June in this year (whichever is appropriate).

(3) The particulars required to complete this form are to be written in block letters or typed.

(4) If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.

(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the work "NIL" is to be placed in an appropriate space under that heading

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY: MAYOR FRANK CARBONE

(print full name of councillor or designated p

(councillor's or designated person's signatu

(date) 13/9/15

IN RESPECT OF THE PERIOD FROM 1 July 2014 to 30 June 2015
(return period)

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest at any time during the return period	Nature of interest

Co-o

1. Sources of income I received from an occupation at any time during the return period:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Councillor Mayor	Fairfield City Council – 86 Avoca Road, Wakeley	

2. Sources of income I received from a trust during the return period:

Name and address of settlor	
	Frank Brazzano, Brazzano & Associates PO Box 266 Drummoyne

3. Sources of other income I received at any time during the return period:
(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)

Same as in section A, B & E

C. GIFTS

Description of each gift I received at any time during the return period	Name and address of donor

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at any time during the return period.	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the return period.	Description of Position

G. DEBTS

Name and address of each person to whom I was liable to pay any debt at any time during the return period.

National Australia Bank (NAB)

H DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

I. DISCRETIONARY DISCLOSURES

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision.

Separate to this disclosure I have made other voluntary disclosures that are not required under section 449-3, which includes Spousal declarations forms for transparency purposes only to the council administration.

These declarations do not form part of this disclosure return and are voluntary.

Local Government Act 1993 No. 30 - Part 1 of Schedule 3, Disclosure of Interests (secs 449,450)

DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS

SECTION 449(3) RETURN

OFFICE USE ONLY
G.S.
27/9/2016.

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Division 2 of part 2 of Schedule 3 to the Local Government Act 1993.

(2) If this Return is the first return required to be submitted by you after attaining the position of councillor or designated person, use Section 449(1) Return.

If this Return is not the first return required to be submitted by you after attaining that position, all Parts of the Return should be completed with appropriate information for the relevant period since the last return i.e. the period from the end of the last return period to 30 June in this year (whichever is appropriate).

(3) The particulars required to complete this form are to be written in block letters or typed.

(4) If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.

(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the work "NIL" is to be placed in an appropriate space under that heading

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY: MAYOR FRANK CARBONE

(print full name of councillor or designated person)

Frank Carbone

(councillo[redacted]

(date) 26.9.16.

IN RESPECT OF THE PERIOD FROM 1 July 2015 to 30 June 2016
(return period)

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest at any time during the return period	Nature of Interest
[redacted]	

Co-o

1. Sources of income I received from an occupation at any time during the return period:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Councillor Mayor	Fairfield City Council – 86 Avoca Road, Wakeley	

2. Sources of income I received from a trust during the return period:

Name and address of settlor	
[redacted]	

3. Sources of other income I received at any time during the return period:
(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)

Same as in section A, B & E

C. GIFTS

Description of each gift I received at any time during the return period	Name and address of donor

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at any time during the return period.	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)
[redacted]			

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the return period.	Description of Position
USU	member.
Maroochi	Honorary Member. 2017.

G. DEBTS

Name and address of each person to whom I was liable to pay any debt at any time during the return period.

National Australia Bank (NAB)

H DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

I. DISCRETIONARY DISCLOSURES

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision.

Separate to this Disclosure I have made other voluntary disclosures that are not required under section 449(3), which includes Voluntary spousal forms for transparency purposes only to the council administration.

These declarations do not form part of this disclosure return and are voluntary

Local Government Act 1993 No. 30 - Part 1 of Schedule 3, Disclosure of Interests (secs 449,450)

OFFICE USE ONLY
Hazelwood
19/10/2016

DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS

SECTION 449(1) RETURN

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Division 2 of part 2 of Schedule 3 to the Local Government Act 1993.

(2) If this return is the first return required to be submitted by you after attaining the position of councillor or designated person, use section 449 (1) return.

If this return is not the first return required to be submitted by you after attaining that position, all Parts of the return should be completed with appropriate information for the relevant period since the last return i.e. the period from the end of the last return period to 30 June in this year (whichever is appropriate).

(3) The particulars required to complete this form are to be written in block letters or typed.

(4) If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.

(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the work "NIL" is to be placed in an appropriate space under that heading

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY

Frank Carbone
(full name of councillor or designated person)

AS AT [redacted]

...19/10/16
(date)

(councillor [redacted])

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest at the return date	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I reasonably expect to receive from an occupation in the period commencing of the first day after the return date and ending on the following 30 June:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Mayor	Fairfield City Council, 86 Avoca Road, Wakeley	

2. Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June:

Name and address of settlor	[redacted]
[redacted]	

3. Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June:
(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)

Same as in section A, B & E

E. INTERESTS AND POSITIONS IN CORPORATIONS

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at any time during the return period.	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)
[redacted]			

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the return period.	
USU	

G. DEBTS

Name and address of each person to whom I was liable to pay any debt at any time during the return period.

National Australia Bank (NAB)

I. DISCRETIONARY DISCLOSURES

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision.

Separate to this disclosure I have made other voluntary disclosures that are not required under section 449-1/3, which includes Spousal declarations forms for transparency purposes only to the council administration.

These declarations do not form part of this disclosure return and are voluntary.

Local Government Act 1993 No. 30 - Part 1 of Schedule 3, Disclosure of Interests (secs 449,450)

OFFICE USE ONLY
Julie Lien
Jlien
26/07/2017

DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS

SECTION 449(3) RETURN

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Division 2 of part 2 of Schedule 3 to the Local Government Act 1993.

(2) If this Return is the first return required to be submitted by you after attaining the position of councillor or designated person, use Section 449(1) Return.

If this Return is not the first return required to be submitted by you after attaining that position, all Parts of the Return should be completed with appropriate information for the relevant period since the last return i.e. the period from the end of the last return period to 30 June in this year (whichever is appropriate).

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(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word "NIL" is to be placed in an appropriate space under that heading

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY: Mayor Frank Carbone

(print full name of councillor or designated person)

[redacted]

(councillor's or designated person's signature)

IN RESPECT OF THE PERIOD FROM 1 July 2016 to 30 June 2017
(return period)

04/07/17
(date)

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest at any time during the return period	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I received from an occupation at any time during the return period:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Mayor	Fairfield City Council – 86 Avoca Road, Wakeley	

2. Sources of income I received from a trust during the return period:

Name and address of settlor	Name and address of trustee
[redacted]	

3. Sources of other income I received at any time during the return period:
(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)

Same as in section A, B & E

C. GIFTS

Description of each gift I received at any time during the return period	Name and address of donor
NIL	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
NIL		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at any time during the return period.	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the return period.	Description of Position
USU	Member
Marconi	Honorary Member 2017

G. DEBTS

Name and address of each person to whom I was liable to pay any debt at any time during the return period.

National Australia Bank (NAB)

H DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.

NIL

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

NIL

I. DISCRETIONARY DISCLOSURES

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision.

Separate to this disclosure I have made other voluntary disclosures that are not required under Section 449 – 1/3, which includes Spousal declarations forms for transparency purposes only to the council administration.

These declarations do not form part of this disclosure and are voluntary.

Local Government Act 1993 No. 30 - Part 1 of Schedule 3, Disclosure of Interests (secs 449,450)

OFFICE USE ONLY
S.Dreg
10/7/2018

DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS

SECTION 449(3) RETURN

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Division 2 of part 2 of Schedule 3 to the Local Government Act 1993.

(2) If this Return is the first return required to be submitted by you after attaining the position of councillor or designated person, use Section 449(1) Return.

If this Return is not the first return required to be submitted by you after attaining that position, all Parts of the Return should be completed with appropriate information for the relevant period since the last return i.e. the period from the end of the last return period to 30 June in this year (whichever is appropriate).

(3) The particulars required to complete this form are to be written in block letters or typed.

(4) If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.

(5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word "NIL" is to be placed in an appropriate space under that heading

DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS BY: Mayor Frank Carbone
(print full name of councillor or designated person)

[redacted]
(councillor's or designated person's signature)

IN RESPECT OF THE PERIOD FROM **1 July 2017 to 30 June 2018**
(return period)

10 - 7 - 2018.
(date)

A. REAL PROPERTY

Address of each parcel of real property in which I had an interest at any time during the return period	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I received from an occupation at any time during the return period:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Mayor	Fairfield City Council – 86 Avoca Road, Wakeley	

2. Sources of income I received from a trust during the return period:

Name and address of settlor	Name and address of trustee
[redacted]	

3. Sources of other income I received at any time during the return period:
(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)

Same as in section A, B & E

C. GIFTS

Description of each gift I received at any time during the return period	Name and address of donor
NIL	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
NIL		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at any time during the return period.	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)
[redacted]			

F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at any time during the return period.	Description of Position
USU	Member
Marconi	Honorary Member 2017

G. DEBTS

Name and address of each person to whom I was liable to pay any debt at any time during the return period.

National Australia Bank (NAB)

H DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.

NIL

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.

NIL

I. DISCRETIONARY DISCLOSURES

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision.

Separate to this disclosure I have made other voluntary disclosures that are not required under Section 449 – 1/3, which includes Spousal declarations forms for transparency purposes only to the council administration.

These declarations do not form part of this disclosure and are voluntary.

Fairfield City Council Code of Conduct Part 4

DISCLOSURE OF INTERESTS RETURN

OFFICE USE ONLY
G.S 8/7/19

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW.

(2) If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.

(3) If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.

(4) If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.

(5) This form must be completed using block letters or typed.

(6) If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

(7) If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

DISCLOSURE OF PECUNIARY INTERESTS AND OTHER MATTERS BY:

Mayor Frank Carbone

(full name of councillor or designated person)

AS AT 9/7/19
[return date]

[redacted]
(councillor's or designated person's signature)

IN RESPECT OF THE PERIOD FROM **1 July 2018 to 30 June 2019**

(date) 9/7/19

A. REAL PROPERTY

Street Address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Mayor	Fairfield City Council – 86 Avoca Road, Wakeley	

2. Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	Name and address of trustee
[redacted]	

3. Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June
[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

Same as in section A, B & E

C. GIFTS

Description of each gift I received at any time since 30 June	Name and address of donor
NIL	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
NIL		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
[redacted]			

F. WERE YOU A PROPERTY DEVELOPER OR A CLOSE ASSOCIATE OF A PROPERTY DEVELOPER ON THE RETURN DATE? (Y/N)

G. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of Position
USU	
Marconi	Honorary Member 2017
Canley Heights Rsl	

H. DEBTS

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

National Australia Bank (NAB)

I. DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

NIL

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

NIL

J. DISCRETIONARY DISCLOSURES

Fairfield City Council Code of Conduct Part 4

DISCLOSURE OF INTERESTS RETURN

COPY

OFFICE USE ONLY

GS 8/7/19

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW.

(2) If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.

(3) If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.

(4) If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.

(5) This form must be completed using block letters or typed.

(6) If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

(7) If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

DISCLOSURE OF PECUNIARY INTERESTS AND OTHER MATTERS BY: Mayor Frank Carbone

AS AT 4/7/19. *[return date]*

(fu [redacted]

IN RESPECT OF THE PERIOD FROM 1 July 2018 to 30 June 2019

(councillor's or designated person's signature)

(date) 4/7/19.

A. REAL PROPERTY

Street Address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Mayor	Fairfield City Council – 86 Avoca Road, Wakeley	

2. Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	Name and address of trustee
[redacted]	

3. Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June
[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

Same as in section A, B & E

C. GIFTS

Description of each gift I received at any time since 30 June	Name and address of donor
NIL	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
NIL		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
[redacted]			

F. WERE YOU A PROPERTY DEVELOPER OR A CLOSE ASSOCIATE OF A PROPERTY DEVELOPER ON THE RETURN DATE? (Y/N)

G. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of Position
USU	
Marconi	Honorary Member 2017
Canley Heights Rsl	
Mount Pritchard County Club.	

H. DEBTS

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

National Australia Bank (NAB)

I. DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

[redacted]

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

NIL

J. DISCRETIONARY DISCLOSURES

Additional Property details of company provided in PART(A) & PART(B) of Voluntary disclosure for transparency.

GS. 24/6/2020

OFFICE USE ONLY
GS 8/7/19

DISCLOSURE OF INTERESTS RETURN

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW.

(2) If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.

(3) If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.

(4) If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.

(5) This form must be completed using block letters or typed.

(6) If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

(7) If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

DISCLOSURE OF PECUNIARY INTERESTS AND OTHER MATTERS BY:

Mayor Frank Carbone

AS AT 4/7/19
[return date]

(full n [redacted]

IN RESPECT OF THE PERIOD FROM 1 July 2018 to 30 June 2019

(councillor's or designated person's signature)

(date) 4/7/19

A. REAL PROPERTY

Street Address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Mayor	Fairfield City Council – 86 Avoca Road, Wakeley	

2. Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	Name and address of trustee
[redacted]	

3. Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June
[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

Same as in section A, B & E

C. GIFTS

Description of each gift I received at any time since 30 June	Name and address of donor
NIL	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
NIL		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
[redacted]			

F. WERE YOU A PROPERTY DEVELOPER OR A CLOSE ASSOCIATE OF A PROPERTY DEVELOPER ON THE RETURN DATE? (Y/N)

G. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of Position
USU	
Marconi	Honorary Member 2017
Canley Heights Rsl	

H. DEBTS

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

National Australia Bank (NAB)

I. DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

NIL

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

NIL

J. DISCRETIONARY DISCLOSURES

Various ASX 200 Share holders

6/5/20

dated 1/the 9/7/19.

23/6/20 Additional details of Company/Trust owned privately Provided in part A & B of Volunteer disclosure for transparency.

Fairfield City Council Code of Conduct Part 4

DISCLOSURE OF INTERESTS RETURN

OFFICE USE ONLY
GS 8/7/19

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW.

(2) If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.

(3) If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.

(4) If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.

(5) This form must be completed using block letters or typed.

(6) If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

(7) If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

DISCLOSURE OF PECUNIARY INTERESTS AND OTHER MATTERS BY: Mayor Frank Carbone

AS AT 4/7/19 *[return date]*

(full name of councillor or designated person)

[redacted]

(councillor's or designated person's signature)

IN RESPECT OF THE PERIOD FROM 1 July 2018 to 30 June 2019

(date) 4/7/19

A. REAL PROPERTY

Street Address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Mayor	Fairfield City Council – 86 Avoca Road, Wakeley	

2. Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	Name and address of trustee
[redacted]	

3. Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June
[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

Same as in section A, B & E

C. GIFTS

Description of each gift I received at any time since 30 June	Name and address of donor
NIL	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
NIL		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
[redacted]			

F. WERE YOU A PROPERTY DEVELOPER OR A CLOSE ASSOCIATE OF A PROPERTY DEVELOPER ON THE RETURN DATE? (Y/N)

G. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of Position
USU	
Marconi	Honorary Member 2017
Canley Heights Rsl	

H. DEBTS

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

National Australia Bank (NAB)

I. DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

NIL

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

NIL

J. DISCRETIONARY DISCLOSURES

Various ASX 200 Share holders

6/5/20

Fairfield City Council Code of Conduct Part 4

DISCLOSURE OF INTERESTS RETURN

OFFICE USE ONLY
CS 24/9/2020

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW.

(2) If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.

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(4) If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.

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(6) If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

(7) If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

DISCLOSURE OF PECUNIARY INTERESTS AND OTHER MATTERS BY: Mayor Frank Carbone

AS AT 26-08-2020
[return date]

IN RESPECT OF THE PERIOD FROM 1 July 2019 to 30 June 2020

(full name of person making return) [redacted]

(position) [redacted]

(date) 26-08-2020

A. REAL PROPERTY

Street Address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Mayor	Fairfield City Council – 86 Avoca Road, Wakeley	

2. Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	Name and address of trustee
[redacted]	

3. Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June
[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

Same as A,B & E

C. GIFTS

Description of each gift I received at any time since 30 June	Name and address of donor
NIL	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
NIL		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
NIL			

F. WERE YOU A PROPERTY DEVELOPER OR A CLOSE ASSOCIATE OF A PROPERTY DEVELOPER ON THE RETURN DATE? (Y/N)

No

G. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of Position
Marconi member	
Canley Heights Rsl	
Mount Pritchard Community Club	

H. DEBTS

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

National Australia Bank

I. DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

Nil

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

Nil

J. DISCRETIONARY DISCLOSURES

Various Asx 200 Shares

[redacted]

Additional Disclosure of Company owned property provided in part A of Voluntary Disclosure.

(1)

Fairfield City Council Code of Conduct Part 4

DISCLOSURE OF INTERESTS RETURN

OFFICE USE ONLY
R.K 4/3/2021

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW.

(2) If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.

(3) If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.

(4) If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.

(5) This form must be completed using block letters or typed.

(6) If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

(7) If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

DISCLOSURE OF PECUNIARY INTERESTS AND OTHER MATTERS BY: Mayor Frank Carbone

AS AT 2-03-2020
[return date]

(full name of councillor or designated person) Frank Carbone

IN RESPECT OF THE PERIOD FROM 1 July ~~2019~~ to 20 to 30 June ~~2020~~ 2021

(councillor's or [redacted]

(date) ~~29-06-2020~~ 2/3/2021

A. REAL PROPERTY

Street Address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Mayor	Fairfield City Council – 86 Avoca Road, Wakeley	

2. Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor		Name
[redacted]		

3. Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June
[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

From listed items on Section A & B

C. GIFTS

Description of each gift I received at any time since 30 June	Name and address of donor
NIL	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
NIL		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
[redacted]			

F. WERE YOU A PROPERTY DEVELOPER OR A CLOSE ASSOCIATE OF A PROPERTY DEVELOPER ON THE RETURN DATE? (Y/N)

No. No development Applications lodged in Fairfield Council since being elected to council in 2008.

G. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of Position
Marconi member	Member
Canley Heights Rsl	Member
Mount Pritchard Community Club	Member

H. DEBTS

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

National Australia Bank

I. DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

Nil

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

Nil

J. DISCRETIONARY DISCLOSURES

1)Shares ASX NAB [redacted] embership of various local clubs- Mounties, Canley Heights Rsl, Marconi

2)Discretionary of Spousal declaration also attached.

Fairfield City Council Code of Conduct Part 4

DISCLOSURE OF INTERESTS RETURN

OFFICE USE ONLY

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW.

(2) If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.

(3) If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.

(4) If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.

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(6) If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

(7) If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

DISCLOSURE OF PECUNIARY INTERESTS AND OTHER MATTERS BY: Mayor Frank Carbone

AS AT 13-04-2021
[return date]

(full name of councillor or designated person) [redacted]

IN RESPECT OF THE PERIOD FROM 1 July 2020 to 30 June 2021

(councillor's or designated person's signature)

(date) 13-04-2020

A. REAL PROPERTY

Street Address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Mayor	Fairfield City Council – 86 Avoca Road, Wakeley	

2. Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	
[redacted]	

3. Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June
[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

From listed items on Section A & B

C. GIFTS

Description of each gift I received at any time since 30 June	Name and address of donor
NIL	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
NIL		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
[redacted]			

F. WERE YOU A PROPERTY DEVELOPER OR A CLOSE ASSOCIATE OF A PROPERTY DEVELOPER ON THE RETURN DATE? (Y/N)

No, No development Applications lodged in Fairfield Council since being elected to council in 2008.

G. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of Position
Marconi member	Member
Canley Heights Rsl	Member
Mount Pritchard Community Club	Member

H. DEBTS

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

National Australia Bank

I. DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

Nil

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

Nil

J. DISCRETIONARY DISCLOSURES

1) Shares ASX NAB [redacted]

2) [redacted]

J. DISCRETIONARY DISCLOSURES

[redacted]

Fairfield City Council Code of Conduct Part 4

DISCLOSURE OF INTERESTS RETURN

OFFICE USE ONLY
R.Khammo 8/9/2021

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW.

(2) If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.

(3) If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.

(4) If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.

(5) This form must be completed using block letters or typed.

(6) If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

(7) If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

DISCLOSURE OF PECUNIARY INTERESTS AND OTHER MATTERS BY: Mayor Frank Carbone

AS AT 16-08-2021

..... *[return date]*

IN RESPECT OF THE PERIOD FROM 1 July 2020 to 30 June 2021

(full name of councillor or designated person) [redacted]

(councillor's or designated person's signature)

(date) 16-08-2021

A. REAL PROPERTY

Street Address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Mayor	Fairfield City Council – 86 Avoca Road, Wakeley	

2. Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	
[redacted]	

3. Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June
[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

From listed items on Section A & B

C. GIFTS

Description of each gift I received at any time since 30 June	Name and address of donor
NIL	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
NIL		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
[redacted]			

F. WERE YOU A PROPERTY DEVELOPER OR A CLOSE ASSOCIATE OF A PROPERTY DEVELOPER ON THE RETURN DATE? (Y/N)

No NO development Applications lodged in Fairfield Council since being elected to council in 2008.

G. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of Position
Marconi member	Member
Canley Heights Rsl	Member
Mount Pritchard Community Club	Member

H. DEBTS

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

National Australia Bank

I. DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

Nil

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

Nil

J. DISCRETIONARY DISCLOSURES

[redacted]

Fairfield City Council Code of Conduct Part 4

DISCLOSURE OF INTERESTS RETURN

OFFICE USE ONLY
SC 1.03.22.

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW.

(2) If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.

(3) If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.

(4) If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.

(5) This form must be completed using block letters or typed.

(6) If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

(7) If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

DISCLOSURE OF PECUNIARY INTERESTS AND OTHER MATTERS BY: Mayor Frank Carbone

AS AT 28/2/2022
(return date)

IN RESPECT OF THE PERIOD FROM **20 December 2021 to 30 June 2022**

(councillor's or designated person's signature)

28/2/2022
(date)

A. REAL PROPERTY

Street Address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of Interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Mayor	Fairfield City Council – 86 Avoca Road, Wakeley	

2. Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	Name and address of trustee
[redacted]	

3. Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June
[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

Refer A to B.

C. GIFTS

Description of each gift I received at any time since 30 June	Name and address of donor

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
[redacted]			

F. WERE YOU A PROPERTY DEVELOPER OR A CLOSE ASSOCIATE OF A PROPERTY DEVELOPER ON THE RETURN DATE? (Y/N)

G. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of Position

H. DEBTS

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

Nab Bank

I. DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

J. DISCRETIONARY DISCLOSURES

A5185035

Fairfield City Council Code of Conduct Part 4

DISCLOSURE OF INTERESTS RETURN

OFFICE USE ONLY
AP 31/08/2022.

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW.

(2) If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.

(3) If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.

(4) If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.

(5) This form must be completed using block letters or typed.

(6) If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

(7) If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

DISCLOSURE OF PECUNIARY INTERESTS AND OTHER MATTERS BY: Frank Carbone

AS AT 27-07-2022
[return date]

(full name of councillor or designated person)
[redacted]
(councillor's or designated person's signature)
27-072022
(date)

IN RESPECT OF THE PERIOD FROM 1 July 2021 to 30 June 2022

A. REAL PROPERTY

Street Address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Mayoral salary- Annual donation to Mayoral community fund.	Fairfield City Council – 86 Avoca Road, Wakeley	
A/Electoral Officer part time for short period to assist with office set up - No longer Employed 28/10/22.	Fowler Electorate office. 2A/32 Hughes Street Cabramatta NSW 2166 few weeks	No longer Employed.

few hours 26/10/22. fwd

2. Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	Name and address of trustee
[redacted]	

3. Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June
[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

FROM ITEMS LISTED - In Section A & B

C. GIFTS

Description of each gift I received at any time since 30 June	Name and address of donor
Nil	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
Nil		

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
[redacted]			

F. WERE YOU A PROPERTY DEVELOPER OR A CLOSE ASSOCIATE OF A PROPERTY DEVELOPER ON THE RETURN DATE? (Y/N)

NO

G. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of Position
Nil	

H. DEBTS

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

National Australia Bank

I. DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

Nil

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

Nil.

I. DISPOSITIONS OF PROPERTY

Nil

J. DISCRETIONARY DISCLOSURES

[redacted]

Member of Club MARCONI, Mounties, Canley Heights and Parramatta rsl.

Fairfield City Council Code of Conduct Part 4

DISCLOSURE OF INTERESTS RETURN

OFFICE USE ONLY

ML 10/08/2023

DIRECTIONS:

(1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW.

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(7) If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

DISCLOSURE OF PECUNIARY INTERESTS AND OTHER MATTERS BY: Frank Carbone

AS AT 9 - 08 - 2023
[return date]

(full name of councillor or designated person)

IN RESPECT OF THE PERIOD FROM 1 July 2022 to 30 June 2023

(councillor's or designated person's signature)

9 · 8 · 2023.
(date)

A. REAL PROPERTY

Street Address of each parcel of real property in which I had an interest at the	Nature of interest
[redacted]	

B. SOURCES OF INCOME

1. Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
Mayor	Fairfield City Council – 86 Avoca Road, Wakeley	

2. Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	
[redacted]	

3. Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June
[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

As per Section A

C. GIFTS

Description of each gift I received at any time since 30 June	Name and address of donor
Nil	

D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel undertaken
	Nil	

E. INTERESTS AND POSITIONS IN CORPORATIONS

Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
[redacted]			

F. WERE YOU A PROPERTY DEVELOPER OR A CLOSE ASSOCIATE OF A PROPERTY DEVELOPER ON THE RETURN DATE? (Y/N)

NO

G. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of Position

H. DEBTS

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

National Australia Bank

I. DISPOSITIONS OF PROPERTY

1. Particulars of each dispositions of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

2. Particulars of each dispositions of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

J. DISCRETIONARY DISCLOSURES

~~Member of~~
Member of Club Monaco & Monaco.

NORTHERN RIVERS JOINT ORGANISATION

NSW Office of Local Government
Strategic Policy Unit
Locked Bag 3015
NOWRA NSW 2541
councillorconduct@olg.nsw.gov.au

18 November 2024

Dear NSW Office of Local Government's Strategic Policy Unit,

Councillor Conduct Framework Review

Thank you for the opportunity to make a submission in response to the *Councillor conduct and meeting practices: A new framework* discussion paper as part of the Councillor Conduct Framework's review.

This submission is made by the Northern Rivers Joint Organisation (NRJO) on behalf of its 7 member councils (Ballina Shire, Byron Shire, Clarence Valley, Kyogle, Lismore City, Richmond Valley and Tweed Shire) in relation to the NSW Northern Rivers region.

Overall, the NRJO supports any reforms that reduce the administrative costs of managing the conduct of elected local government officials while enhancing procedural fairness for and promoting informed decision making by them. However, any proposals with the potential to create further layers of bureaucracy are not supported, especially where appropriate governance structures already exist.

Principles of change

Generally speaking, the NRJO supports the principles of change outlined in the discussion paper.

Currently, however, local government's independence to make decisions is restricted by State led initiatives, State determined priorities, cost shifting by the State, limited State funding and the processes for setting fees, charges and ordinary rates.

While freedom of speech is important, ensuring statements are not false or defaming is equally as important. So too is the ability for councillors to respond to statements by others. The proliferation and widespread use of social media poses significant challenges to this balance, which is an issue the revamped Code of Conduct should seek to address.

A timelier local government regulator is also needed, both in terms of providing advice and guidance about legislative and other changes as well as responding to and handling Code of Conduct complaints.

Further to the NRJO's comments above in relation to the constraints on local government decision-making, the concept of subsidiarity is also currently restricted given many of the decisions that impact local communities are already made for local government by State laws.

Finally, timely justice should not be at the expense of a fair and thorough investigation as incorrect findings will erode trust in the handling of Code of Conduct complaints and the broader local government sector.

Potential changes to the code of conduct and oath of office

A clear and succinct outline of behavioural expectations for councillors is needed. Legislated definitions of misbehaviour must capture the full breadth of unacceptable behaviours including those currently detailed in the Code of Conduct along with emerging behaviours both inside and outside of council chambers.

Key elements of an aspirational Code of Conduct the NRJO would like to see enshrined include:

- standards to which councillors must strive to uphold in order to serve as role models the community look up to and respect
- behaviours councillors must demonstrate that reflect the values the community expects from its elected leaders
- requiring councillors to always engage in respectful interactions with fellow councillors, council staff and the community.

Aligning the Oath of Office to the revamped Code of Conduct is supported by the NRJO.

Potential changes to the definitions and assessment of councillor misbehaviour

The NRJO supports a more descriptive and definitive pecuniary interest framework that makes the rules for disclosure clear. Proposals outlined in the discussion paper regarding the definition of pecuniary interests requiring disclosure and extending the interests for disclosure by councillors are also supported. To reduce the risk of accidental misreporting or under reporting, the Office of Local Government should ensure adequate up-to-date guidance material about the pecuniary interest framework is provided to councillors and the local government sector.

While the NRJO agrees with the principles of what constitutes a significant or major non-pecuniary interest, guidance about these interests and their disclosure is frequently sought by councillors. Again, the Office of Local Government should ensure adequate up-to-date guidance about non-pecuniary interests is readily available to councillors and the local government sector.

As part of this review, the NRJO also suggests that a more efficient process for providing annual written returns of interests be considered. Given the NRJO's governing body is comprised of 7 mayors, all must complete duplicative identical written returns of interest. For some they must complete these in triplicate because they also serve as members of Rous County Council's governing body.

Formation of a Local Government Privileges Committee to meet and assess complaints made against councillors is supported by the NRJO. However, the Privileges Committee should not only comprise senior and experienced mayors and ex-mayors. It would benefit from including more diverse members with a broad range of experience, especially as many complaints are about misbehaviour outside the council chambers and involve the behaviour of councillors towards council staff. As such, the Privileges Committee should also be comprised of former general managers with significant experience in NSW local government.

To help minimise complaints, the Office of Local Government should consider:

- strengthening the provisions of the *Local Government Act 1993* in relation to eligibility to stand for election as a councillor
- mandating a minimum requirement for local government candidates to attend relevant, approved information sessions
- mandating a minimum requirement for elected councillors to attend relevant training during their tenure
- better defining what constitutes councillor misbehaviour on social media.

Lobbying guidelines and a model policy should include a clear definition of lobbyists/lobby groups and adequately cover all lobbying type activities from incentives via gifts and inducements through to the dissemination of misinformation and other inappropriate behaviour aimed at improperly influencing local government decision-making. The model policy should put the onus on councillors to properly consider the impact of lobbyists on their decision making. Consideration should also be given to restricting former councillors, general managers and senior executives from carrying out lobbying activities for a specified period after they cease employment.

Dispute resolution and penalty framework

Penalty infringement notices should be set at a level sufficient to deter inappropriate behaviour.

Ordering mandatory attendance at specified training should be considered as a further penalty, with the cost to be borne by the councillor if previous training had already been provided by the council or joint organisation.

Consideration should also be given to whether any penalty infringement notice or other penalty imposed on a councillor should be published/reported publicly, for example, as part of the council's Annual Report or joint organisation's Annual Performance Statement.

Restoring dignity to council meetings

Introducing courtroom etiquette, such as standing when speaking and formal/reverent manners of address, into the council chambers, is not supported by the NRJO. Such reforms will only serve as a barrier to diversity and inclusion. Further, introducing the practice of standing when a mayor enters the room will be problematic for NRJO meetings where each member of its governing body is a mayor.

Any other powers granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour must be accompanied by appropriate safeguards to ensure the risk of abusing those powers is mitigated. To this end, councillors participating in the relevant meeting must also be empowered to be able to deal with disorderly behaviour by the mayor or chair.

The proposal to no longer permit councils or joint organisations to hold pre-meeting briefing sessions is not supported by the NRJO. Briefing sessions ensure more informed decision-making can occur at formal meetings by providing councillors an early opportunity to clarify matters to be considered by the council or joint organisation and ask questions of senior staff and other subject matter experts without fear of media scrutiny or public judgment. Without these sessions, meeting times would likely increase significantly as to would the risk of staff feeling restrained from responding publicly especially if the matter is contentious. It is also important to remember the right to access council information by members of the public is already preserved and regulated under the *Government Information (Public Access) Act 2009*.

Should you need to discuss any of the above further, please do not hesitate to contact me directly.

Yours sincerely

Phillip Rudd
Executive Officer
Northern Rivers Joint Organisation

Response

Councillor Conduct and Meeting Practices

Preamble

In general, the fundamentals of the proposed framework are excellent, however I strongly believe that additional considerations need to be made regarding some underlying principles contained within the proposed framework, in order to make it more effective in achieving its goals.

It is agreed that under the current system, the OLG is, in many ways, rendered ineffectual, and unable to act on the matters that require the most attention. Even when the OLG is able to act, it's actions can only impose limited discouragement of poor behaviour and improper activities of Councillors in NSW.

The responses below are written in a very particular light shone by the rural nature of our LGA, and by our small population, however I believe that they are somewhat universal issues which are reflected in the conduct of elected Local Government Officials in every LGA.

Underlying Principle 1 – The Capacity of Elected Local Government Officials

The proposed framework wishes to treat Local Government Councillors under the same model as elected members of NSW Parliament. In principle an excellent position. However, the difference between the two levels of Government do not appear to have been considered or addressed.

A NSW State Parliamentarian occupies a full-time role. In essence they are a professional politician/ government official with all the additional skills that this focus on full time activities can bring.

A Local Government Councillor is a member of the local community, who receives a very small financial contribution for their governance of their LGA. They must maintain other work, or be retired, or have some other form of income in order to fill this role. In essence they are (and this is in no way meant to be disparaging) an amateur politician/ government official. They will not necessarily have the additional skills required to match those of full time NSW Parliamentarians, nor will they necessarily have the time to commit to developing those skills.

Furthermore, the capacity of Local Government elected officials to understand sophisticated concepts, or even standards of good behaviour, may be significantly below the capacities of NSW Parliamentarians. Let us not forget that in some Local Government Areas elections were completely uncontested – the enrolment to stand for election was the only selection process that took place – which did not even give the community an opportunity to carry out some form of candidate vetting or selection.

This is not to say anything negative about elected local government officials. I fully applaud their desire to serve their community and to make a difference where they live. This is to say that when drafting frameworks, rules and guides for councillors to abide be, we need to consider that one cannot set the bar for election at one level, and then expect conduct, understanding and capacity, at an entirely different level.

The proposed Framework does not allow for this difference. It assumes that all elected officials are immediately able to, and willing to, perform at a level which may far exceed their potential experience, depth of knowledge and recompensed time.

Underlying Principle 2 – The perception of the OLG

The proposed framework makes clear that the OLG is hamstrung and overwhelmed by vexatious and trivial complaints, and is, as a direct result, largely ineffectual.

It is perceived as the "enforcer" of the rules of not only conduct but also behaviour but it's most significant possible disciplinary actions against elected officials present very little discouragement to Councillor conduct and behaviours. Additionally, and as a result of the significant number of complaints lodged with the OLG, it is only able to focus on a very narrow field of misconduct, effectively giving Councillors who go off track (deliberately or inadvertently) permission to behave poorly in areas outside of OLG's narrow focus with no fear, or possibility, of being called out.

Underlying Principle 3 – The role of Council Staff

The proposed Framework appears to diminish the role of Council Staff, and inflate the role of elected Mayor. Any considerations or amendments must consider the reality for many Local Government bodies – that Council Staff provide the continuity and expertise for the LGA, and Elected Councillors come with widely disparate levels of skills, focus and engagement with the community as a whole.

It is disingenuous to imply that Councillors are the only people in Council who care about the local community. The vast majority of Council Staff are the local community, and in some ways, better positioned to gain a balanced cross section of community views about any topic than an elected councillor who may only represent one political group or affiliation.

Council Staff work for Council because they care about their local community and choose to use their considerable levels of skill and expertise in providing the best services possible for that community. If the amended Code does not allow for expertise of staff to be utilised by Councillors or if Councillors perceive a decrease in the levels of oversight and controls of their behaviour, in some cases we may be destined for more failures of Councils, and if not outright failures, certainly a substantial decrease in the effectiveness and ability of Councils to implement their Delivery Programs & Operational Plans.

We see this reflected clearly in the early days of newly elected officials. They do not possess sufficient knowledge to engage with the intricacies of the Local Government system in an effective manner. However, their overriding "mandate from the community" empowers them to act outside any of the controls that are currently in place – if we were to remove said controls, or place those controls in the hands of one elected official, it is feared that Council's would likely become ineffective very quickly.

Who is best placed to stop this from happening? As the Discussion Paper clearly establishes, this is not the OLG. It falls on Council Staff to continually educate, advise and guide Councillors through the byzantine Local Government systems, and it is counter productive to diminish this role of Council Staff.

Principles of Change

Councillors have a difficult task to navigate dual roles in the local community: representing the local community AND representing Council itself. Whilst I agree that they should be free to speak about issues affecting their local community, they should not be free to disparage the Council, even under the guise of speaking for the community. As the employers of the General Manager, and through that position all Council Staff, Councillors have a duty as an employer to foster a safe and productive workplace. Continual negative messaging in the local community about Council, especially in a small

community, is taken personally by staff and can have serious detrimental effects on their health & wellbeing.

Councillors also must, despite the particulars of their political party or electorate support, take a fair, balanced & equitable view on anything that is put toward them.

Potential Changes to the code of conduct and the oath of office

The paragraph regarding the removal of the restraint of a Councillor speak publicly regarding matters of Council, to which they disagree, or to criticise the decisions of the majority is a significant retrograde step. Every modern principle of leadership and management calls for healthy debate at the appropriate times, and then alignment with the majority decision once it has been made.

One of the indirect but very significant roles of Councillors is to model good behaviour to Council Staff and to the local community. The standard of behaviour that is set by Councillors, is the standard of behaviour that will be followed by everyone else in the LGA. If Councillors do not respect the institution to which they belong sufficiently to align themselves with majority decisions, we have no chance of getting this to happen in the workforce or community. Dissent will become the standard to which people aspire.

This also reflects a social media influenced trend whereby one does not have to accept a decision made, and can continue to make noise about it, ad infinitum. If we, as local government are forced to continually revisit every decision made because one person disagreed, I rather suspect that we will make one decision and then revisit that decision for the remainder of council term.

Furthermore, this allowance directly contradicts that bringing Council into disrepute is defined as misbehaviour.

Potential changes to the definitions and assessment of councillor misbehaviour

Taking the previous comments in this submission as caveats, generally this is fine. I would however like additional stress on the duty as employers that Councillors have to provide a safe workplace under the WHS Act & Regulation. Unless explicitly identified this is very easy to overlook.

With regard to Pecuniary Conflicts of Interest, the cumulative value of gifts received is too high and should be reduced. It must be apparent at a glance that gifts exceed the amount – by setting this figure too high the possibly of disregarding small gifts which can quickly accumulate is much more significant.

With regard to non-pecuniary interests, it is also of significant value to identify political interests as a possible source of conflicts. Significant careers can be forged from starts in Local Government, and political conflicts can be overlooked and used as the foundations of these careers.

One area in which the current Code and the proposed code struggle is a conflict of interest between someone's personal values, and the duties enshrined in their position. A Councillor can for any number of reasons take personal offense or opposition to another person or motion or concept, and use their position in Council to enact their personal views upon the other individual. Even though no overt pecuniary or non-pecuniary conflict can be identified, I am still acting with a conflict of interest if I direct certain actions to take place simply because I don't like the way another person does things (or their hair colour, or who they are married to, or their gender or perceived sexual orientation).

Councillor misbehaviour in public office

The second of the three tenants needs to be expanded to include Council Officials in addition to Council. It appears that these tenants of misbehaviour are aimed primarily at the personal conduct of an individual Councillor, rather than the potential effects of something that a misbehaving Councillor may do.

I would regard a Councillor widely criticising a decision made by a majority of Council, as bringing Council into disrepute. I would regard a Councillor stating in a public forum that a Director of Council was incompetent as bring a council official into disrepute. This cannot be supported by an attempt to characterise this behaviour as "freedom of speech". It is misbehaviour.

The third tenant – being outside the norms and expectations of a sitting councillor – is insufficiently described. A consequence of this loose definition is that where poor behaviour is seen in a Council, this type of behaviour would never be referred to the Committee. Yet at another Council where standards of behaviour are higher, every infraction may be reported. It is this inability to enforce consistent behaviour that remains the problem with this approach. Especially if the arbiters of such behaviours are other councillors.

I cannot see how this would in anyway stop or reduce false or vexatious claims.

Addressing inappropriate lobbying

Councillors should have it clearly spelled out what conversations are inappropriate, and not rely on their own discretion to identify potential issues. A councillor may use Council Staff to lobby for some action which they wish to take place, or may use third party contractors to attempt to achieve the same ends. This is where the involvement of the political arm of council can stray into the operational arm of Council.

The requirement for Council Officials to report inappropriate or corrupt lobbying behaviours is sound. However, it cannot work unless those officials have some form of protection that is better than current whistle-blower protections. A staff member may hesitate reporting said behaviours of someone who can subsequently tell the GM to fire them or it's their job, and provide no other reasons. This comes back to underlying Principle 1 – the assumed levels of training, knowledge and skills of Councillors, which are not necessarily reflected in reality.

Dispute Resolution and penalty framework

The formation of the Privileges committee is a welcome move. Code of Conduct matters, especially in relation to elected Officials, are particularly difficult to effectively deal with. Of the two people who can make referrals and determinations, one can be summarily sacked with no reason given, and the other is often one of the offenders regarding Code of Conduct abuses (particularly behavioural). It cannot be ignored that a position of power can be inherently attractive to individuals with personality types that lead them to abuse that power, whether intentional or not. Adding the political element to the role can lead to compromised evaluations reading the behavioural wrongdoings of others. For example, it might seem to be prudent for a Mayor attempting to solicit favour with certain councillors to allow them to act out, while staunch opponents are given no such leniency. Obviously, this type of behaviour falls outside the bounds of appropriate behaviour.

Penalty infringement notices

In principle this seems like an excellent idea. It is difficult to determine what level of PIN is appropriate for minor or administrative breaches. It must be considered that Councillors across NSW

vary widely in their disposable income, what may be an insignificant amount to one, may be a hugely unrealistic sum for another. I propose that the PIN level is determined by correlating the level of fine with the Councillor's income or net worth – the greater the disposable income of a Councillor, the higher the PIN would be – as an equitable system which accommodates the entire NSW Local Government environment.

Privileges Committee

I do not believe that the mooted penalties are sufficient to stop, or even diminish, misbehaviour or other ethical and standard breaches. In some circles censures or warning might be regarded as badges of honour, and used as proof that the official is "having strong and robust arguments". Continual violations of meeting standards and etiquette stop the democratic process, and cannot be allowed to continue.

I recommend a one strike and you are out approach. After an official has been censured or warned, if the behaviour is repeated they should be suspended from council for a period of time to be determined by the Committee. Should further poor conduct or misbehaviour follow, or in the event of serious breaches, the official should be removed from office as quickly as possible.

Significant sanctions

The concern over a public servant passing judgement on an elected official is a valid one, however one must remember underlying principle 1 – Councillors are not all professional politicians with vast amounts of experience. Whereas the public servant may well have many years in service to the people of NSW, with corresponding experience and skills.

Creation of a Tribunal seems like a good option. It does though, create a new issue, which is directly in contravention of the aim of this framework: to reduce complexity, simplify the number of steps and time required to arrive at an outcome. This option seems to be an additional step in the process.

Existing sanctions under the Local Government Act are woefully insufficient, and provide no disincentive for elected officials to use their position in Local Government for their own ends, whether those ends be personal, political, or financial.

In order to streamline the process as far as possible, Department Chief Executives should be authorised to make decisions on sanctions at this level of government.

Restoring dignity to council meetings

The aim of these reforms appears to be to strengthen and streamline the Local Government process, by passing more responsibility for elected officials actions onto themselves. It seems quite paradoxical that the framework would then specify, in detail, what to do when a person enters the chambers.

If it is felt necessary to define to this level of detail how officials conduct themselves in chambers, this writer fails to understand how the other detail in the existing Code of Conduct and Code of Meeting Practice could even be considered to be thrown out, and we rely on officials' own values to conduct themselves appropriately.

The behaviour of members of the public in Council meetings, can in some instances, be directly influenced by the behaviour of councillors themselves. Not even directly – if councillors are discrediting their council, continuing to debate matters in public that have already been resolved, etc, how can we possibly expect members of the public to behave themselves?

Councillors must be the models for exemplar behaviour at all times, and demonstrate, to their communities, their commitment to creating and enhancing a cohesive community that understands issues, is considerate of its members and promotes positive behaviours.

Whilst stronger powers are welcomed, this writer believes that the reforms may be setting mayors very significant challenges, both in controlling members of the public, and controlling other councillors. As previously mentioned, it is always politically astute for a mayor to encourage two standards of behaviours – a lenient one for their own supporters, and a much more severe one for their opponents. With the mayor as the sole arbiter we cannot reasonably expect consistently applied rules, or, in some cases even awareness of, the rules.

Similarly to the previous section with concerns over public servants passing judgement on elected officials, a much fairer system would be the creation of a meeting standards role within council, who's function is to provide guidance to the mayor, in real time, regarding acceptable and unacceptable behaviour. Mayors would not be obliged to follow this person's advice, however if they choose to disregard it they must be able to demonstrate, to a panel of their peers if necessary, why they did so.

Banning briefing sessions

The desire for greater transparency in local government is admirable, and fully supported. There should be a number of significant differences between a briefing session, and a Council Meeting which would allow, and encourage, these councillor sessions to foster better local government.

Briefing sessions should follow guidelines to ensure that they are used to facilitate good government.

The purpose of briefing sessions is to allow Councillors greater understanding of matters of which they may be unfamiliar. It is not for making decisions, or for debating matters, it is purely so that Councillors can acquire the knowledge that they need in order to have a debate and/or make a decision.

Expecting Councillors to go into a debate in a public environment with high levels of assumed knowledge is not a recipe for good government, instead, for fear of looking foolish, it may stifle debate & good government, as Councillors may opt to remain silent when they, if they were previously briefed on a matter, have been given the chance to form a well-founded opinion.

Instead this concept has the potential to not only silence Councillors, but also seems to be encouraging snap opinions, in the heat of the moment. We want all aspects of government to be founded on principles of being able to make an informed decision.

Whilst it is true that Council papers are distributed to Councillors prior to meetings, and Councillors should take the time to familiarise themselves with the matters being brought to them, in reality, and given the part time nature of their roles, this seldom happens. Instead the briefing session gives Councillors the opportunity to have matters presented to them, any queries answered, any misunderstandings clarified, before the matter moves to the public arena for debate & decision.

EF12/65

29 November 2024

Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

Email: councillorconduct@olg.nsw.gov.au

To Whom It May Concern

Councillor Conduct Framework Review - Leeton Shire Council Submission

Thank you for the opportunity to provide comment. While we have in the past been fortunate to have little need for the Code of Conduct in relation to elected officials, we understand from the experience of others that a review is timely.

Below please find our feedback to the discussion paper.

1. Contact:

Jackie Kruger
General Manager Leeton Shire Council
(A large rural council)
email: [redacted]
phone: [redacted]

2. Principles of Change:

Leeton Shire Council supports the idea of a dedicated Code of Conduct for Councillors. We generally support the proposed guiding principles outlined in the document although make additional comment on the following:

- *Freedom of speech is fundamental – yes, provided that all speech is delivered respectfully and every effort is made to be factually sound. Respectful dialogue should be a foundation stone for an effective code of conduct. The Mayor should still remain the official spokesperson for Council to avoid confusion in the community. Importantly, this principle shouldn't circumvent the obligation of a councillor to respect the resolutions of the majority of the Council. Also, the Code should ensure that freedom of speech should never be weaponized to undermine public confidence in the local Council.*

- *Transparency and accountability are maintained – yes, declarations are needed both in disclosure documents and at Council meetings, where relevant, and inappropriate lobbying disallowed. However, in relation to the proposal to ban all closed out-of-meeting sessions of council, we consider councils should have the right to hold informal discussions (where no decisions are being made) with no public present to examine or explore ideas, issues, opportunities or risks that are not yet fully formulated and might cause distress or misunderstanding across the organisation or in the community if made public prematurely. Mayors could be empowered and trusted to determine what is appropriate in consultation with the GM. Where a Council abuses this right, the OLG can deal with that Council individually.*

- *Subsidiarity – yes, decisions should be made at the level closest to those impacted by the decisions. Note that this principle, by implication, includes land-use planning decisions, which we support strongly.*

- *Justice is timely and proportionate – yes, it is imperative that complaints get assessed and dismissed or dealt with in a timely manner. We agree that there needs to be a much higher threshold for complaints so that the system is not clogged with trivial matters. There should also be a process in place to deter recidivist complainants.*

We also recommend two additional principles (see bullets below) or perhaps these sentiments can be incorporated into the first principle Council leadership and decision making is paramount.

- *Collegiality and Respect*. The underpinning principles for the code of conduct should first and foremost promote a constructive environment for governing the Council where the intent of engagement between councillors (and with community and staff) is for the greater good and differences of opinion around the Council table are welcomed with genuine curiosity, due consideration, respectful debate and a willingness to accept the final decision.

- *Ongoing Learning. To be an effective Councillor that makes good decisions, there should be an expectation in the Code that councillors will prepare appropriately (including reading their papers ahead of a council meeting) and avail themselves of training opportunities that will support them to make good decisions on behalf of their community (eg about statutory compliance considerations).*

3. Aspirational Code of Conduct

Leeton Shire Council supports an Aspirational Code. Promoting a constructive and respectful working relationship between councillors should extend to working relationships with staff too.

There should be a strong requirement in the code to ensure information presented as facts publicly - by anyone - is correct.

When speaking publicly in disagreement with a decision that has been made, comments or criticism of peers should still be made respectfully and carefully. Local government is close to the people and an unfettered ability to criticise in a way that fosters confusion and chaos in the minds of residents will quickly undermine confidence in the local Council. Councillors should all be able to explain the reasons for their position / decision publicly but should still publicly respect the resolve of the majority. The Major should at all times be considered the official spokesperson unless they delegate a matter specifically to one of their peers. There are other mechanisms for challenging a decision procedurally, if necessary, and this too should be done respectfully.

4. Aligning the Code of Conduct and Oath of Office

   Leeton Shire Council supports this. We have in fact done it in a form ourselves for the last two terms, having asked Councillors to individually confirm they have read and understood the Code of Conduct after they have taken the Oath or Affirmation. Bringing it altogether would be a good idea.

5. Meeting Practices

   Leeton Shire Council considers that it should be up to the Mayor to determine meeting protocols – such as entering arrangements, standing or sitting when speaking etc. Each Council has its own culture and practical considerations (like microphones) and should be allowed to operate in the manner best suited in the eyes of the Mayor. However, the practice of being silent when the Mayor stands should be enshrined in the Code.

6. Dealing with Complaints

   Leeton Shire Council supports the three limbs definition of misbehaviour and acknowledges the challenge of dealing with behaviours defined as being ''outside the norms and expectations of a sitting councillor''.

   Leeton Shire Council considers it best for Mayors and GMs not to have to deal with Code of Conduct Complaints – determining 'validity' is fraught especially for behavioral matters. We consider the OLG an appropriate body for assessing complaints for which there is case law and support the issuing of fines where a complaint is upheld, provided that the fine does not exceed the Councillor's annual fee payment. The fine should be commensurate with the seriousness of the breach. For more serious breaches, the fine could be accompanied by being stood down for a period of time.

   Where egregious or problematic behaviours are reported, and are not supported by case law, an independent body, like the proposed Privileges Committee, is a good

option. If former Mayors are to be recruited for this function, it is imperative that they have had no previous knowledge of or dealings with either the complainant or the person being accused of breaching the Code. Local Government is a small 'family' in NSW and the potential of bias from previous engagements should be avoided at all costs.

Abolishing the two step process complaint handling is also supported (including Councils not undertaking their own investigations first), however we would recommend that all complaints go to a central point at the OLG first and that the OLG then determines whether they or the Privileges Committee are best placed to handle the complaint. Despite best endeavours to differentiate between matters such as conflict of interest, unbecoming behaviours, behaviours bringing disrepute and egregious behaviours, many circumstances will see a blend of two or more which is why a central clearing house at the OLG is recommended instead.

It would also be imperative that both the OLG and Privileges Committee consider investigation costs carefully as these can quickly escalate and compromise a small council's financial reserves.

7. Real Estate Agents and Developers

We agree it would be inappropriate for real estate agents or developers to be prohibited from becoming elected councillors. However, requiring them in a Code of Conduct to divest themselves of all their business activities and contractual obligations is draconian and unfair. No other councillors are being made to give up their work / income stream to represent their community. There is much more to councils than property development and reducing the pool of potential candidates (especially in rural areas) is unhelpful given we already struggle to get sufficient people to stand for council. In Leeton Shire Council's view such persons have a very obvious conflict of interest and they would simply be required to declare those and refrain from participating / voting, where relevant.

Yours faithfully



Jackie Kruger
General Manager

North Parramatta Residents Action Group
Email: infonprag2024@gmail.com
DATE: 29 Nov 2024

The Hon. Ron Hoenig MP
Minister for Local Government NSW
Parliament House
Sydney, NSW, 2000

Subject

Councillor Conduct and Meeting Practices

A new framework draft by the Office of Local Government NSW

Submission by North Parramatta Residents Action Group (NPRAG)

The need for change – Returning local democracy to Councils.

The **North Parramatta Residents Action Group** (NPRAG) is a local Community Group that advocates mainly of Community issues impacting our Local Community and therefore has constant interaction with our local council (Parramatta City Council) and various State Government Departments that have issues that significantly impact the local residents and the direction and impact of their developments in our community. As part of this process, we have had a member regularly attend the Parramatta City Council meetings and we examine All the agenda items presented to the Council. We have considerable concerns about the operation of the Council practices and the actions of the Councillors and the Senior Management. Many of them regard the publics evaluation and response to their activities as an unnecessary annoyance and where possible make it as difficult as is possible, by limiting and restricing our ability to information in order to understand their activities and to protect the Communities interest.

The following points is our **response to Minister Hoenig enlightened strategy to review and update the rules and regulations that should require more public consultation** through **informed discussions** with the Council. Many of our members and Supporters have extensive experience in Local Government arena as Councillors or

other roles and we have been dismayed by the performance of the Parramatta Council over many years.

North Parramatta Residents Action Group (NPRAG) agrees that too much information is concealed unnecessarily in closed council briefing sessions, workshops and in closed sessions of otherwise public council meetings!

The City of Parramatta Council's Councillor Staff Interaction policy even requires Councillors to treat all staff information and advice as confidential unless the CEO approves it for public release! Even if it is public knowledge in the Local Press.

NPRAG also agrees that personal slanging and other disorderly disruptive conduct of Councillors occurs too often at meetings and must be addressed better.

Based on the OLG figures provided, it appears that frivolous and minor complaints are occurring far too often and need to be addressed informally in the first instance. Clearly frivolous, vexatious and politically based complaints should also be considered misconduct too. However, the problem is who determines the status of an action or complaint, what and when is the resolution of the problems. The actions within the Council have resulted in two significant legal cases going to Court for resolution which in opinion could have been resolved by positive action at the start. Yet NO one is held accountable for this inaction. And the costs incurred.

What are the principles of change?

1. Are we missing anything in the principles of change?

A. Yes, Council decision making must be ethical and consistent with the LG Act 1993 Chapter 3 Section 8 Principles.

Potential changes to the Code of Conduct and Oath of Office

2. What are the key elements of an aspirational Code of Conduct that should be enshrined?

A. These are largely identified but should include reference to avoiding the perception of a serious breach of the Code being referred to appropriately.

A major concern needing rectification to reduce corruption is that the standard OLG Disclosure of Pecuniary interests and other matters form does NOT require identification of the principal place of residence (PPR).

This **has led to the redaction of ALL property interest addresses** on the public Parramatta Council website and thereby a lack of transparency of potential Councillor pecuniary conflict of interest when voting on nearby re-zoning etc.

The Council should be required to make these declarations easily accessible on the Council Web site as a main topic rather than being hidden in the labyrinth of the Council database. The other issue is that if a inspection is done in the Council premises the inquirer is NOT permitted to use appropriate tools to record the information that is being sought and available (or NOT).

Where Council agrees (Information & Privacy Commissioner advice), the PPR (and Councillor signature) may be redacted, **but multiple address redactions are opposed** unless the General Manager determines "there is an overriding public interest against the disclosure of some of the information contained in a return". Suppression requests may be made but must be documented or disclosed.

3. What are your views about aligning the Oath of Office to the revamped Code of Conduct?

A. NPRAG supports this.

Potential changes to the definitions and assessment of Councillor misbehaviour

4. Is the proposed to pecuniary interest framework appropriate? Is anything missing?

A. Yes, but the definition should also refer to disbenefits and pecuniary loss conflict of interest.

5. Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

A. Gift of cumulative value more than $500 is too high. NPRAG recommends declaring gift disclosure of over $100 cumulative and all travel contributions. It is also suggested that a Councillor (or has a relative) who is on the Executive or Board of a club, association, group or business that there is a significant conflict of interest in related decisions, but an ordinary member usually does not have a significant conflict of interest.

6. Are there any other specific features that should be included to address concern about councillors undertaking real estate and development business activities?

A. Councillors should be **subject to rigorous conflict of interest provisions** in these areas. Another recommendation to facilitate the identification of serious Code of Conduct breaches is the amendment and enforcement of the same OLG Disclosures form section F which asks, "Were you a property developer or a close associate of a property developer on the return date?" This precludes the LG Act definition of a property developer including recent past years activity, and also known future property developer association, and precludes the question asked of **planning panel members** whether the member is a real estate agent.

- We believe that the Act should include a requirement to disclose any Assets / Property that is owned in an external country.
- In addition, the declaration does NOT require that a councillor or Director and anyone required to make a statement is including contractors and consultants, if they are a beneficiary of a Family Trust
- It is suggested that the Dept of Local Government (or its delegate) conduct random audits of about 8% annually of Councillors and Executive Directors as to the validity of their declaration. Focusing upon councillors who moved / second motions regarding property and commercial transactions. If a problem is found then a high number checked or Full check of all declarations.

7. Is this the appropriate threshold to face Privileges Committee?

A. NPRAG thinks another threshold could be a community complaint about Councillor misbehaviour signed by at least ten residents and/or ratepayers.

We oppose the suggestion of the Privileges Committee consisting of mayors and former mayors as this will likely politicise decisions. The Committee should comprise experienced community independents.

8. How else can complaints be minimised?

A. In the first instance, the Code should emphasise the need for a complaint or conflict to be resolved in an informal manner, preferably with a neutral mediator.. If that fails, the complainer could be warned, if thought appropriate, of the possibility of penalties for vexatious or frivolous complaints. This should include All staff and servants of the Council. These penalties need to be codified and monitored.

9. What key features should be included in lobbying guidelines and a model policy?

A. The lobbying guidelines should require key senior staff and Councillors to maintain a publicly available register of lobbying by email, phone and in-person meetings including the diaries and appointments of the Lord Mayor, CEO and Planning staff. It should include the names and positions of people conducting the lobbying, others included in emails, or present at any meeting, arguments used in favour or against and details of any gifts offered, promised or given by the lobbyist/s. ICAC no doubt had more suggestions. These should be publicly available however the Council put hurdles in the way including the **fees charged for obtaining the information** which should be readably available as they are a computer report in many cases.

Dispute resolution and penalty framework

10. What level of PIN is appropriate?

A. A schedule of fines could be appropriate. The Mayor/Chair has the ability to exclude a Councillor from a meeting if persistent misbehaviour occurs. This should be a last resort, as exclusion also penalises the community which elected the Councillor to represent them.

[redacted] The subject of the complaint also had the power to continue with reimposing the penalty. This is clearly a failure in natural justice for those subject to the action. Another issue in this case was a demand by the Council to require the Councillor to hand over any contemporaneous notes and records they had, we think this is a step to far and the rights of the individual Councillor must be protected. It also **created a loss of voting numbers** on contentions issues before the Council and could be little more than **a political tactic**.

11. Are the penalties proposed appropriate and are there any further penalties that should be considered?

A. Not sure how the relevant penalties to be proposed will be assessed, but there is a need for clear guidelines to provide fairness and consistency, and an appeal process is supported. We oppose the suggestion of the Privileges Committee consisting of mayors and former mayors, especially where fines and referral to a tribunal are being proposed, as this will likely politicise decisions. The Committee should comprise experienced community independents.

12. Are the existing sanctions available under the local government act sufficient?

A. They could be if applied quickly, fairly and consistently.

13. Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

A. NPRAG supports sanctions being determined by an experienced, independent Tribunal, not the Departmental Chief Executive.

Restoring dignity to Council meetings

14. Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

A. Usually if warnings not observed, short term expulsion of the offending Councillor is usually sufficient. If this fails, longer expulsion from that meeting only would be appropriate. Mayors must not impose fines or remove fee entitlement! Councillors should not be required to stand where they need to read from notes, if a disability makes this difficult and where the relevant speaker's microphone is at a height that makes it difficult to be heard when standing. Standing when the Mayor enters should not be necessary either.

NPRAG is not prepared to support "expanded grounds" for Mayor's to expel members of the public from the chamber, as these grounds are not specified. We definitely oppose the Mayor being able to issue PINs to the public!

15. Are there any other measures needed to improve transparency in Councillor deliberations and decision-making?

A. NPRAG strongly supports pre-meeting briefing sessions being open to the public! In Parramatta LGA, Council most business papers are made publicly available only 5-6 days before the Council meeting, approval or otherwise. Sometimes supplementary papers are only made available on the day of the meeting. This is unfair for the public to have any engagement in Council decision-making and is anything but transparent, especially **as public forum submissions close at 4 pm on the Thursday before** the public Council meeting on Monday.

NPRAG submits that pre-meeting briefings, workshops and staff advice to Councillors in emails and other meetings must not be deemed confidential either, other than for the prescribed genuinely confidential matters such as commercial in confidence business, legally privileged matters and personal privacy issues.

Also, phone and written requests by the public about issues on the Council meeting agenda are usually not answered before the meeting, never mind before the 4pm Thursday deadline. Even then, questions raised in the public forum submission are not usually answered, even at the public forum session during the subsequent Monday Council before the issue is debated.

There needs to be specific requirements including timeframes for responding to community questions via service requests, before the related decision is made.

- Live-streaming and quick public website posting of Council meetings should be mandatory!

A concern is the recording of the Council meeting and committees. most Councils have a secretary that takes the Notes of the meeting including the motions, amendments ETC. At the same time, most Councils record the Meeting in a more comprehensive way including particularly any statements by the CEO and senior Directors. These are **significant statements** and in our opinion should be included in the Council Official minutes that records the meeting. The question needed to be asked, **what is the most accurate record of the proceedings of the meeting,** the Note Takers recollection or the recorded video?

Another item is the availably of the **Councils minutes and online recording** of their meetings. The regulations should mandate that the records should be publicly available for **at least the two previous Council terms** before being archived. This will be more critical if the Council adopt a policy to reduce the number of Council meetings over the year. There should be a **capacity for the public to be able to undertake a search the council minutes and records** to locate the decisions the Council have made over time. The current system does NOT assist the Community to have a clear view of the Councils policies and decision making activities.

[redacted]

- [redacted]

- [redacted]

[redacted]

[redacted].

Parramatta City Council Meeting 25 Nov 2024

Item 16.3 example:

16.3 Strategic Partnership - Request for Council to Enter into a Confidentiality Deed
This report is confidential in accordance with section 10A (2) (g) of the Local Government Act 1993 as the report contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

- It should be compulsory that a report is produced by the Lord Mayor and CEO to council at the next meeting of Council of ALL actions taken using delegated Executive powers in holiday breaks and transitions between Council terms.

This is NOT a comprehensive list of CONCERNS about the performance of Councils generally and the public ability to monitor their most important governmental representative however we would be pleased to assist in the future.

I look forward to your prompt response.

[redacted]

Yours sincerely,

Mr P Russo, OAM

President of the North Parramatta Residents Action Group

Infonprag2024@gmail.com

COUNCILLOR CONDUCT FRAMEWORK REVIEW

Councillor Marcus Cornish makes the following submission:

Reducing the causes of Codes of Conduct matters should be the main goal. With this in mind, a committee should be set to reform Local Government, to look at a range of issues starting from who can run for Local Government through all aspects of Governance and Representation.

The Code of Conduct is used more as a weapon than its intended use, creating persecution and kangaroo court situations greatly taking focus away from local issues and wasting taxpayer money.

Penalties should be applied to those who make false or frivolous accusations or are misusing the Code of Conduct.

Independent or minority groups of Councillors are often the ones being persecuted by the majority by using false or frivolous Code of Conduct complaints and the only current option to be heard is to take the matter to The Supreme Court at great expense. Any continuation of the Code of Conduct needs to include safeguards to protect freedom of speech and the publics representation.

1) **Abolish the Code of Conduct**
   a) The code of conduct to be abolished as all people are covered by Common Law.
   b) Councillors be allowed to $10,000 for legal advice regarding perceived breaches, paid for by their Council

2) **Alternatively**
   a) All conduct reviewers are to be appointed from a pool of conduct reviewers supplied by the OLG, not by individual Councils and paid for by the relevant Council to reduce the occurrence of bias or perceived bias.
   b) That OLG, provide 2 inspectors to attend Council meetings, unannounced, to ashore they are conducted in accordance with the relevant guidelines.
   c) Councillors be allowed up to 10,000 for legal advice regarding perceived breaches, paid for by their Council

3) **Limit Councillor terms**
   (a) Limit Councillor terms to 3 consecutive terms (12 years) on a single Councill. Councillors may contest an election at the same council after a one term break. This will reduce the over dominance of any one person or group and reduce “dominant friction” (empire building) as all Councillors are equal within Councils and freedom of speech is fundamental. This initiative would reduce conflicts and provide a focus on Council decision making.
   (b) Limiting Council terms would also provide Councillors with an honourable way to cease Council service.

4) **Popularly Elected Mayor and Deputy Mayor**
   (a) Having a Popularly elected Mayor and Deputy Mayor in all Councils in NSW will reduce the politics and conflict within local Councils and refocussing on issues at hand.

(b) Parties use these positions to promote individuals prior to them running for State or Federal Seats, a misuse of the positions and a source of great conflict within councils.
(c) A popularly elected Mayor and Deputy Mayor in all Councils in NSW will provide stability for a whole term of office.
(d) A Popularly elected Mayor and Deputy Mayor do not need experience as they are guided by their General Manager and Directors.

(c) (a) Determinations should only be made by legal bodies, or a body made up of members with legal credentials, not a body made up of "political peers" or those more likely to have other agendas.

Councillor Marcus Cornish
Penrith City Councillor 9 years
Hawkesbury River County Councillor 9 years
Mid-Western Regional Councillor – Current

Legal
Cornish vs OLG, Supreme Court – Case Law
Cornish vs Penrith City Council – Current

From: Bernard Smith
To: OLG Councillor Conduct Mailbox
Subject: Submission
Date: Monday, 2 December 2024 2:33:44 PM
Attachments: ATT00001.png
ATT00002.png
ATT00003.png
ATT00004.png
ATT00005.png
ATT00006.png
ATT00007.png
ATT00008.png
ATT00009.png
ATT00010.png

Good Afternoon, I was dutifully filling out the submission form (noting one day late) today and it seemed to disappear. This has been discussed with Councillors.
Two Points

1. The Privileges Committee is problematic, on the surface, untrained pay people with varying degrees of objective critical thinking skills sitting in judgement, may work most of the time but maybe not all!
2. Pre-meetings/Workshops etc. Not uncomfortable with doing away with Pre-meetings. It is imperative that informal workshops where matters are discussed for information but no decisions are made are vital.
   They take many forms including induction sessions, budget meetings, IP and R meetings, meetings with residents etc.
   Regards
   Bernard

Bernard Smith
General Manager
General Manager's Office
GLEN INNES SEVERN COUNCIL

[redacted]
[redacted]
[redacted]
Main Administration Office:
265 Grey Street, Glen Innes NSW 2370
Correspondence: PO Box 61, Glen Innes NSW 2370

gisc.nsw.gov.au

Glen Innes Severn Council acknowledges and pays respect to the Ngarabul people as the traditional custodians of this land, their elders past, present and emerging and to Torres Strait Islander people and all First Nations people.
- - -
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Office of Local Government
Locked Bag 3015
NOWRA NSW 2541
councillorconduct@olg.nsw.gov.au

COUNCILLOR CONDUCT FRAMEWORK REVIEW
WOY WOY PENINSULA RESIDENTS ASSOCIATION SUBMISSION

The Peninsula Residents Association (PRA) welcomes the opportunity to provide comments on proposed changes to the framework for councillor conduct and meeting practices in NSW.

Code of Councillor Conduct
PRA supports the concept of an aspirational code of councillor conduct.

The NSW Parliamentary Codes are a useful starting point. They should be adapted to fit the needs and circumstances of local government.

The code should set out openly and clearly the standards of behaviour expected of councillors as a community's elected representatives.

A councillor's primary responsibility is to the electors whom he or she is representing.

The code should include their democratic role of expressing the views of their electors, particularly in the face of the majority of councillors expressing different views.

It is important that the code of conduct is not to be used to inhibit freedom of expression and democratic processes.

The code should affirm that serving the community, and providing good governance for the wellbeing and benefit of the community, are primary roles of councillors and council staff.

The code should aim to help councillors understand the behaviour and conduct expected of them in the service of the community and to which they are accountable.

The code should be kept simple and concise, use common language that is readily understood, with the active rather than the passive voice.

Code length should be determined by fitness for purpose considerations.

The relations between councillors and council staff should be covered.

The relationship to the media, including social media, should be addressed as well.

While the code should focus largely on positive behaviours, it should also make councillors and the public aware of the consequences of breaches and the type of conduct that could lead to action being taken against them.

Consideration should be given to publishing a supporting guide with examples and case studies to illustrate key provisions in greater depth.

The code should be kept under regular review.

Code of Conduct for Local Government Staff
The Association notes that no change is proposed for the code of conduct of local government staff as it is considered fit for purpose and largely effective.

PRA does not support that decision. It should be reconsidered.

For good governance reasons, the code should be subject to public scrutiny at the same time as the councillor code of conduct. They are companion documents. It should be kept up to date in light of developments in the NSW public sector generally. A new code of conduct and ethical framework for NSW public servants will be introduced in late 2024.

It is timely to review the local government staff code of conduct in NSW.

Councillor Misbehaviour, Dispute Resolution and Penalty Framework
The Association welcomes the intention to introduce a clearer framework and definitions for councillor misbehaviour and to strengthen the dispute resolution and penalty framework.

It is difficult to comment on the proposals given the limited details provided.

The proposal to increase the powers of the Office of Local Government in this area is a concern. It will concentrate a range of local government functions (policy, regulation and policing) in one agency. It is unclear if there are sufficient checks and balances to counter these risks and ensure integrity.

Property Developers and Real Estate Agents
The Association considers that allowing property developers and real estate agents to stand for council remains a major weakness in the governance framework of local government in NSW.

Divestiture is a poor substitute to dealing with the clear and insidious nature of conflicts of interest that exist between their professional and council roles.

As councillors, they have access to privileged information that could confer commercial advantage.

That information is not just about development and rezoning applications and changes to council planning documents such as the DCP and LEP. It also covers road, traffic, park and street upgrades, and other infrastructure plans. All of which affect land and property values. All of which compromise their ability to fulfil effectively a councillor role.

Public interest concerns in this area far outweigh the political free speech rights of the individual.

The public interest is best served by banning property developers and real estate agents from standing for council in NSW.

Lobbying Guidelines and Model Policy on Lobbying for Councils
Improved public visibility of lobbying activity around councils and councillors is supported.

While identifying professional lobbyists should be relatively easy, there are many grey areas around lobbying of councillors and councils by people to further their financial interests.

The policy and guidelines should not deter advocacy of councillors.

Model Code of Meeting Practice – Giving Mayors Increased Powers
The Association does not support the proposal to give mayors the power to expel councillors for acts of disorder and to remove councillors' entitlement to receive a fee for the month in which they have been expelled from a meeting.

The mayor may have been elected either by the public or by their peers. The power could be misused, abused and used as a political weapon to stifle views and debate.

While the right of review is proposed to deal with unjust use by the mayor, it is not a practical or timely response.

Mayors should be competent in managing meetings and dealing with problems as they arise.

Banning Closed to the Public Briefing Sessions
The Association supports in principle the measures proposed to increase transparency around the deliberations and decisions of councils. Openness and honesty are essential to public confidence in local government and their decisions.

Meetings in Person
The code should emphasise that it is the duty and responsibility of a councillor to attend all council meetings and in person to ensure they represent their area and participate in discussion and debate.

Yours sincerely

Sally

Sally Wilson, Secretary

Secretary
2nd December 2024
contact@peninsularesidents.org.au

Greens NSW submission to the
Councillor Conduct Framework Review

29 November 2024

Prepared by Dr Amanda Cohn MLC, Greens NSW Spokesperson for Local Government

1. Introduction

Local government is closest to the community and in the best position to identify and respond to community needs. It is an essential component of democracy.

In October 2023, Dr Amanda Cohn MLC described the current code of conduct framework as ineffective, stating that "instead of providing justice, it is used to gag, intimidate and shame political rivals. It is slow and expensive, lacks transparency, is inconsistent with the principles of natural justice and is frequently used for vexatious complaints over political disagreements."[1]

The Greens welcome the review of the Councillor Conduct Framework as an opportunity to improve transparency and accountability for elected representatives in local government. We strongly support the *principles of change* underpinning the proposed reforms, namely that council leadership and decision making is paramount, freedom of speech for councillors as elected officials, transparency and accountability, procedural fairness, a strong and proportionate regulator, subsidiarity, and that justice is timely and proportionate. We appreciate the opportunity to provide a detailed response to the proposed reforms themselves, which we believe require revision.

This submission has been informed by the experiences of current and former Greens councillors, as well as the Greens NSW Planning and Environmental Law Officer, who supports Greens councillors in the performance of their duties. As of the elections held on September 14, 2024, there are 73 Greens Councillors elected to a broad range of councils across the state.

We would welcome the opportunity to discuss any part of this submission and can be contacted via the office of Dr Amanda Cohn MLC at amanda.cohn@parliament.nsw.gov.au.

2. The weaknesses of existing frameworks

The Greens share the view expressed by the Discussion Paper that the current councillor behavioural framework as implemented in NSW does not facilitate a safe workplace for councillors, the best outcomes for communities, or resolve issues and complaints satisfactorily or efficiently.

Greens councillors have been subjected to vexatious or frivolous complaints for political reasons, or to silence councillors who disagree with the position of the majority, while simultaneously, complaints of repeated misbehaviour and bullying and harassment have been inadequately responded to. In addition, the process of councils engaging private conduct reviewers is both expensive and often duplicative when the Office of Local Government is also involved in assessment of a complaint.

[1] NSW Legislative Council Hansard, 19 October 2023: https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-93890/link/2300

Examples provided by current and former Greens councillors of inappropriate complaints and investigations have been subject to include:

- Allegedly having a conflict of interest because they were friends with a resident on Facebook and that resident was also a member of the the same political party,
- Presenting a petition on behalf of a residents group of which they were a member before being elected,
- Making comments about a large housing estate development using information which was in the public domain,
- Speaking with their fellow councillors about the performance of the General Manager,
- Making comment on council activities where the contents of a confidential council decision to spend public funds on a sponsorship had been leaked to multiple major media outlets and were the subject of widespread public debate,
- Allegedly bringing the council into disrepute by describing the efforts of council management to force staff to return to the council administration building full time for work as being discriminatory towards women
- Allegedly bringing the council into disrepute by stating that the council's policy had gone backwards in relation to a specific issue
- Failing to state frequently enough during a radio interview that a councillor was expressing their own opinion.

Some councillors and senior staff including General Managers or Chief Executive Officers in local government have expressed the view that robust and active local debate somehow detracts from local government, and that councillors ought to express a unified position. To the contrary, the Greens believe that as elected representatives of their communities, elected councillors should be able to disagree with each other, and must be unafraid to disagree. Healthy local democracy should involve transparent and robust civic debate - of course with appropriate caveats, for example around hate speech. The nature of the confidentiality requirements of the Code are such that it is very hard to have a full understanding of how many times councillors are complained about and investigated simply for expressing a political or personal opinion.

Currently there is not transparency regarding previous investigations and the standards of behaviour that are found to be acceptable and not acceptable. There is no commonly accepted method or measure regarding how to evaluate complaints and where to draw an appropriate line. Investigations are performed by a range of differently skilled persons, and the outcome of an investigation can vary widely depending on who is appointed to investigate. Greens councillors have reported their experiences of not being properly notified of the substance of a complaint, of investigators making findings regarding behaviour which was not notified, and of findings being declared before procedural fairness has been afforded or a final report published. A priority for reform should be a consistent standard of investigation and thresholds for making determinations, the results of which are published.

3. Proposed changes to the code of conduct and oath of office

The Greens do not object to an aspirational Code, however the premise of the responsibilities of councillors being modelled on members of Parliament will only be fair if councillors are also entitled to the privileges of members of Parliament, including Parliamentary Privilege and adequate remuneration and support to fulfil the requirements of their role. There are far more councillors in NSW than MPs (approx. 1400 compared to 135 members of NSW Parliament) and councillors make determinations that frequently have the potential to attract conflicts of interest. In addition, all councillors participate in decisions that at a state or federal government level would be made by Ministers. Further, NSW MPs have staff to assist them with research and professional advice whereas NSW councillors generally do not. Further, councillors receive only a nominal fee that is not a living wage, leaving most councillors reliant on other employment in addition to their responsibilities as a councillor.

In these circumstances, combined with the lack of support provided to Councillors (for example, councillors are not able to call the Office of Local Government and seek confidential advice - whereas Mayors and GMs can) the Code should provide detailed guidance on what constitutes a conflict and what behaviour is acceptable.

The discussion paper states the aspirational document will be supported by *a clearer framework and definitions for misbehaviour of elected officials.* This is welcome, however it is not clear how the aspirational document will differ from the current format if councillors also have to refer to a second document which contains more detail and definitions.

The Greens also support strong conflict of interest provisions and urge clear guidelines for Councillors and community members, particularly with regard to significant non-pecuniary conflicts. The current discussion paper does not provide detail around the content of such guidelines, and we call on the NSW Government to ensure further documents such as this are meaningfully consulted on before adoption including being placed on public exhibition.

4. Proposed changes to the definitions and assessment of councillor misbehaviour

This is an area where reform is necessary and welcomed by the Greens. In particular, the abolition of the ‘two step process’ is likely to improve both the efficiency and consistency of complaints handling. Any reform should prioritise a consistent standard of investigation and thresholds for making determinations. However, the Greens do not support the proposal for there to be no investigations of misbehaviour. We believe the public has a reasonable expectation that all reports of abusive or offensive behaviour by councillors will be investigated.

Pecuniary interests

The Greens support the majority of the thresholds proposed for pecuniary interest declarations. However, we believe the Code should explicitly include a requirement to declare interest in overseas property, which we note was the subject of the Local Government Amendment (Pecuniary Interests) Bill 2024, which passed the Legislative Council in November 2024. In addition, provisions to redact property addresses for the privacy of Councillors in public disclosures should only apply to their primary residence and not to additional properties.

Further, the threshold of $500 for gifts (cumulative) in one year is too high. It is inappropriate for a Councillor to receive a gift valued at up to $500 and not have to declare it. The community do not expect elected representatives to be receiving gifts of more than token value, and it is our view that more than $100 is more than token value. In our view, any increase in this amount will undermine community confidence in local government.

Non-pecuniary interests

The Greens agree with the principles of what constitutes a non-pecuniary conflict of interest. However, this is difficult to assess in practice, and councillors would benefit from a practical guide to support their decision-making around assessing and managing non-pecuniary conflicts of interest, recognising that the circumstances of each case have to be taken into account.

For example, being close friends with someone—regularly attending their birthday celebrations, their children's events, or even going on holidays together—would likely indicate a particularly close relationship. As a councillor, this would constitute a conflict of interest if a matter affecting that person were to come before the Council. If you are the President of the business chamber, or of the soccer club, you will have a conflict, however if you are just a normal financial member but not a member of the executive it is usually judged that as a councillor you do not have a significant conflict. It has also been established that just because a councillor might be a member of the same political party as a resident, that relationship is not ‘particularly close’. (I.e. your political relationship, and/or your political opinion, is not a conflict of interest).

These are the scenarios which councillors face and the new Code needs to give practical guidance to councillors and to the community of what is likely to comprise a conflict and what is not.

Property developers and real estate agents

The Greens welcome efforts to deal with the inherent conflicts of interest that exist for property developers and real estate agents and the role of a councillor.

Legislation that requires a councillor connected with the property industry to divest themselves of their commercial and professional interests may be unconstitutional. A similar effect could be achieved by drafting the Code in a manner which defines a conflict to include decisions related to property development and real estate interests, including but not limited to rezoning and subdivision, for any councillor with interests in the industry. The Code is currently applied to the effect that a real estate agent is deemed not to have a conflict in voting for a subdivision if they do not have a current contract (or option) to offer the resulting titles of land for sale. Similarly, a councillor with interests in property development could vote on a rezoning of land if they weren't the current owner of the land, even though they might in the future take a role in developing the rezoned land. A significant non-pecuniary conflict should include, for a person who is employed by or who has interests in property development or real estate, all related decisions made by a council even though the councillor does not immediately or tangibly benefit from the decision.

Councillor misbehaviour in public office

The discussion paper proposes three aspects of councillor misconduct, being conduct that:

- is unbecoming of a councillor;
- brings the council into disrepute; and/or
- is outside the norms and expectations of a sitting councillor.

The Greens are concerned that without significantly more detail regarding these aspects of misconduct, the changes proposed may perpetuate political weaponisation of the Code and lead to a large number of unhelpful complaints.

Despite the legal definition provided, 'bringing the council into disrepute' has previously been interpreted by conduct reviewers and councillors as including even the most mild criticism of the council. It has been the experience of some Greens councillors to be told by a General Manager or Chief Executive Officer that expressing any opinion in public which is critical of the council is to bring the council into disrepute. Some council social media policies have been used to imply that councillors may not express their opinion in public unless it has been approved by council staff. However, the functioning of local government as a democracy and the implied right of freedom of political expression in the Australian Constitution (and found to specifically apply to local government) mean that councillors cannot be prevented from speaking publicly, nor can they be told what they should say publicly provided it is not offensive, discriminatory or malicious.

5. Proposed dispute resolution and penalty framework

Complaints concerning misbehaviour are proposed to be assessed by a Local Government Privileges Committee made up of mayors and ex-mayors. The Greens believe that no sitting mayors or councillors should sit on a Privileges Committee, but that former and experienced

councillors would add valuable insight to such a committee. The committee should be assisted by a person trained in procedural fairness. Further detail is required on how this committee would ensure merit-based appointment and a balance of political affiliation. If General Managers, Chief Executive Officers and/or mayors are to be involved in the process of administering and adjudicating the Code, the Greens recommend investment in a substantial training program with regard to procedural fairness, freedom of political expression, and decision making based on probative evidence.

All Code of Conduct investigations should be published, including those that find the Code was not breached. It is important that Councillors and Council staff are able to refer to what conduct does not constitute a breach of the Code.

The Greens are supportive in principle of the proposed additional work to address lobbying of councillors.

The discussion paper proposes that all conflict of interest complaints are referred to the OLG for investigation. While the Office of Local Government certainly has the technical expertise and capability to conduct investigations, it likely requires additional resourcing to have the capacity to perform this function.[2] In conflict of interest matters, timeliness is even more important than misconduct cases as the community are usually worried about the impact of continuing involvement of the councillor in voting on matters they have an interest in.

The proposal to have no investigation of misconduct complaints is very concerning. It is our experience that complaints can be very general and broad, and even defining what the substance of complaint is can take some time and clarification. Claim and counterclaim can sometimes vary dramatically. Supporting evidence is often required to demonstrate claims. Without an investigation that produces a statement of facts, a privileges committee (no matter who is on it) is unlikely to make accurate or just findings. This is of particular concern given the proposed powers of the Privileges Committee to impose a range of penalties.

Requiring complaints to be made via a web form is likely to disadvantage some members of the community. For example, for people with low digital literacy or without digital connectivity at home who attend local libraries and request help to fill in online forms, they are unlikely to use this method to make a complaint about a member of the Council.

The Greens do not support giving the OLG power to issue infringement notices without significant further information regarding the circumstances in which notices would be issued, what criteria would be used, and opportunities for defending and appealing this power.

[2] Budget Estimates: Portfolio Committee No. 8 - Customer Service. 5 September 2024: https://www.parliament.nsw.gov.au/lcdocs/transcripts/3329/Transcript%20-%20PC8%20-%205%20September%202024%20-%20Budget%20Estimates%20(Hoenig)%20-%20CORRECTED.pdf

The Greens agree that all significant penalties should be determined by a tribunal such as the NCAT. This would have the advantage of resulting in published decisions and greater transparency.

6. Proposed changes to restore dignity to council meetings

The Greens are supportive of proposed changes to ban private or closed briefing sessions for councillors. Transparency is an important principle of local government accountability to the community it serves, and residents should have all of the information available to Councillors, with the exception of limited matters such as those listed in Section 10A of the *Local Government Act*. In addition, mayors should not be afforded greater access to information than other councillors. All information provided to councillors at a briefing session should be made available to the public in a timely manner. Greens councillors have experienced (in the current term) occasions where developers have been invited to give presentations to the Councillors in closed and confidential briefings.

The Greens agree that many council meetings are conducted without appropriate respect and dignity, but do not agree with the proposed reforms to the Model Code of Meeting Practice. If appropriate and fair chairing could be achieved uniformly, the quality and effectiveness of local government in NSW would be improved significantly.

The Greens do not support that councillors should stand for the entrance of the mayor, nor does it support compelling councillors to stand to speak. This will not increase respect in the chamber or the efficiency of meetings - a good mayor earns respect of councillors, staff and the public in the chamber through fair, respectful and consistent chairing of meetings. The Greens understand that disability groups were not consulted at the time of publication of the discussion paper, and must be if this proposal is to be pursued. In addition, there is significant diversity in the physical infrastructure of council chambers in terms of size, layout, and furnishing which should be taken into account.

The Greens do not support the proposal for mayors to be empowered to remove councillors' fees or to issue penalty infringement notices to members of the public. Mayors currently have ample power (by standing) to intervene when a councillor is refusing to follow procedural rulings. A mayor also has the power to call an adjournment. Similarly, the Greens do not agree that a mayor should have the power to compel a Councillor to apologise. This proposal is likely to exacerbate complaints and appeals. Mayors may be incorrect or politically motivated in their rulings - some Greens councillors have been asked to retract comments that are not offensive, and are merely an expression of a different political opinion than that held by the mayor. If a Councillor is deliberately disrupting a Council meeting with excessive disobedience to procedural rulings, it may be appropriate to be able to refer a councillor to the OLG for 'deliberate disobedience' and potential suspension for 1 month. The video recording of the Council meeting will be essential in providing support for such a referral. It is important that claimed deliberate disobedience is not confused with robust and political debate. Therefore it is essential that an

objective third party observe the debate, including the context which might include deliberate provocation.

A major contributor to the lack of respect in Council meetings is the failure by mayors to conduct meetings in accordance with the Code of Meeting Practice. We acknowledge there are many highly skilled and respected mayors in local government in NSW. To watch a skilled and fair mayor in operation is a privilege and a pleasure. Invariably, meetings conducted by these skilled and fair mayors are more efficient and respectful than those which aren't. To this end, the Greens recommend that the OLG initiate a Mayors School to provide an intensive training course on how to respectfully and fairly chair a meeting. The treatment of Council meetings and councillors with disrespect by experienced mayors is a problem in some councils. The requirement to apply the Code of Meeting Practice fairly should be emphasised in any new Code, and misconduct of the mayor (ie. chairing a meeting unfairly) should be subject to penalties from the OLG if persistent despite training.

Submission number	151
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Big
Last Name	Rob
Name of Organisation (If applicable)	Lismore City Council
Role/Position:	Councillor
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Councillor
Principles of change **Question: Are we missing anything in the principles of change?**	* Freedom of speech needs to be defined more clearly. For example, many councillors currently think it is a code of conduct breach to say something which may embarrass council or other councillors. Using the 'bringing council into disrepute' argument is also often raised, when this is something far more serious than making silly comments about something in the Chamber or online. Disrepute really needs to be defined to reduce the number of trivial complaints. * Penalties, even lesser penalties should be imposed independently of council. This will avoid decisions being made by political opponents, personal feelings dictating outcomes, or issues arising between individuals who must continue working together. It is unusual to have work colleagues deciding punishments against other work colleagues. Councillors should certainly never be put in such a position. * Subsidiarity should not include determining outcomes of complaints. * Justice should also include such things as procedural fairness. Withholding a

	complainant's name prevents a respondent from alleging that a complaint may be frivolous, vexatious or with merit based on history with a complainant, even such a submission is provided for in the procedures. Remaining silent results in guilty findings, and there is no right of appeal unless punishment is beyond censure or reprimand. With procedural fairness completely lacking, an adverse finding can still be made by political opponents, published without explanation and do serious damage to the respondent's reputation, and further threats of code of conduct breaches are made against any respondent who dares to share information to reduce the damage to their reputation. If such matters get into a Tribunal or Court, they are completely open to the public. Considering this is local government, it is supposed to be open, transparent and accessible. Clearly we have a major issue with justice. * Unless something is so obviously offensive, a similar thing to parliamentary privilege should extend to council meetings so councillors can speak freely during debate without fear of repercussions. Many councillors rarely speak at all. This is quite disappointing considering the community wants to know why councillors decide things the way they do. Most recently, Lismore City councillors were dragged into and named in a Land and Environment Court dispute as individuals for making a decision the Applicant didn't like. That matter is still pending and awaiting a decision, which may impact every councillor in the State regarding planning matters. Councillors should not risk being sued for doing their civic duty.
Potential changes to the code of conduct and oath of office	I believe we should aspire to what is already quite clearly outlined in the legislation. We could also try to mirror much of what is contained in highly

Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?	respected codes of conduct, such as those applying to lawyers, accountants, members of the Australian Institute of Company Directors, etc. Key elements obviously include such things as compliance, professionalism, and good values.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	I cannot support this based on the current code of conduct's operation, since it is a very broken system with no procedural fairness . The code of conduct is not clear, it is not interpreted and applied by sufficiently qualified individuals, and it does considerable damage to individuals when it is easily weaponised simply because a person is not popular or well liked and has many political opponents. It is astounding that a single staff member of council can pick and choose which complaints they refer to conduct reviewers. Until a procedurally fair, clear and without bias system is implemented, I have a major problem committing to it.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Allowing councillors to disclose and manage their own pecuniary conflicts when many have no idea what a pecuniary conflict actually involves is madness. The perception component becomes subjective to many, and they decide not to disclose. Meanwhile, most others very clearly see an issue. Staff then allow such conflicts to continue without disclosure when they advise councillors it is for them to decide, disclose and manage. Induction is arranged but it is not required, since many councillors did not even show up to the training. It should be a requirement to sign off on understanding the requirements. Allowing an underfunded and understaffed agency to investigate such things will result in almost nothing being investigated. The OLG cannot keep up now. There will also be an issue with privacy due to the nature of the

	information being sought and accessed, such as where shares are not beneficially held. If this is to progress, there must be strict privacy guidelines relating to the information. Penalty infringement notices concern me since these may be used to pressure someone to do something they don't want to do or may not have to do if they have a genuine concern or complaint about what is being asked. If there are no rights to seek clarity or appeal decisions, this is just further pressure which can be applied to respondents to comply without daring to question authority. This is not procedural fairness.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	There needs to be a mechanism to force councillors to recuse themselves when they subjectively determine there is no issue but it is objectively clear to most others that there is. Possibly a brief confidential session to debate and resolve how to progress the matter, since there are no repercussions relating to resolutions carried after the fact. This does not ooze confidence to the public if it is later revealed that a significant or major non-pecuniary interest existed.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	As councillors, they have access to privileged information that could confer commercial advantage.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	The Mayors are the biggest problems in local government. Many think they have more than one vote and can decide things unilaterally. Power corrupts. To give Mayors more power over political opponents, or the ability to protect those they are aligned with is not appropriate. Allowing subjective determinations in relation to behaviour 'outside the norms and expectations of a sitting councillor' is a recipe for disaster. What if a highly

	conservative councillor finds it offensive to drink alcohol at the pub? If determinations will only relate to behaviour during meetings, this may be acceptable. But to try and control or silence councillors who do their thing outside formal council meetings is definitely not appropriate. I am certainly not comfortable with empowering sitting Mayors to have such power of colleagues.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Having clear definitions and dismissing trivial complaints will help. Allowing political opponents to weaponise complaints, which are then forwarded on to conduct reviewers who offer no procedural fairness needs to be looked at more closely. Decisions to refer complaints should pass through more than one set of hands, since the cost to council of flicking them on to conduct reviewers, who can then unilaterally decide to make thousands more dollars when moving from preliminary review to investigations, which is a pecuniary conflict right there, is not acceptable.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	There should be a lot more clarity about what can and can't be or should not be accepted by councillors. For example, many councillors attend Chamber of Commerce events at local businesses where alcohol and food is provided free of charge by businesses with applications before council. A few beers and some food can quickly exceed disclosure limits. Would the average person see this as a conflict or just lobbying?
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	I don't think a PIN is appropriate when someone is giving up so much time to undertake the role of a councillor. Employees certainly don't get fined for doing something wrong. Suspension or withholding some councillor sitting fees going forward seems more appropriate. I do not support the OLG issuing PINs to councillors at all.
Dispute resolution and penalty framework	As long as there are procedurally fair rights of review and appeal. Allowing

Are the penalties proposed appropriate, and are there any further penalties that should be considered?	councillors to be publicly censured or warned without procedural fairness is offensive to me. I don't support sitting Mayors sitting on a Committee but referral to appropriate Tribuanls or bodies is appropriate where required.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	Yes
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Definitely decided by a formal Tribunal such as the NCAT. Procedural fairness will most certainly be applied and leave respondents more likely to accept the decision made.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	I will certainly never stand for a political opponent who has one equal vote, unless there is a deadlock. The right to exclude will also see power tripping Mayors abuse the power. Many Mayors already think they have more power than they do, often making decisions which are acted on by staff without a council resolution.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	Mayors/Chairs need extensive training to better understand their role and how to interpret and apply the Code of Meeting Practice, and now the Code of Conduct if their powers are being extended. Many are clueless and let staff direct them when staff should not be making such decisions.

Submission number	152
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	John
Last Name	Moratelli
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	Not that I can see.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Avoiding significant conflicts of interest. Not knowingly using public resources for private benefit. Not bullying or trying to improperly influence staff. Not bullying or abusing other councillors. It should also be recognised that councillors are elected on platforms and it's appropriate for them to advocate and vote accordlingly.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	It's difficult to say. The Oath of Office could end up being quite long. I think it would be preferable to simply include something in the Oath along the lines of 'I will uphold the Code of Conduct'
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	I think the $500 for income or gifts is too high - it should be less. Any contribution to travel should be a pecuniary interest. Not any shareholding should be a pecuniary interest; there should be a set value. I'm not sure why positons in unions or professional associations should be considered pecuniary interests if they are honorary positions. Otherwise no comment.

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	I think the formulation of significant as equivalent to whether there is a major advantage or disadvantage to a person or organisation the councillor associates with or is friendly with, is inappropriate. The formulation ignores the nature of the association. For instance, a councillor may be a member of a golf club which leases the course from the council. If the council doesn't grant the lease the club would cease to exist, which would be a major disadvantage to the club. Presumably a councillor's membership of the club would mean that they should recuse themselves but what if the council was proposing to reduce the size of the lease so that the course had to be reduced to a smaller course. Wouldn't such issues as how often the councillor played, whether they played the full course etc be relevant? That is, it's not only the nature of the impact on the association which is relevant but the nature of the association. Also, there needs to be some further conceptualisation of what major odisadvantage to a person etc a councillor has an association with means. For instance, while a golf club having its lease changed could well be a major disadvantage to the club, an environmental organisation not being successful in its submission to council on a policy issue, as opposed to say something which goes to the survival of the organisation such as financial support, should not normally be considered to be a major disadvantage to the organisation.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	That information is not just about development and rezoning applications and changes to council planning documents

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	A councillor should only be referred to the proposed PC if they breach the Code of Conduct. The three limbs suggested are too vague.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	No comment.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	I don't think councillors should allowed themselves to be lobbied in relation to developments they have some control over except by e.g. meeting community organisations, or participating in public meetings, council workshops etc.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	I don't think councillors should be issued with PINs. If they have e.g. failed to lodge a return they should, after due notice, be suspended until they have done so.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	I think the penalties which could be imposed by the PC are appropriate.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	No comment.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	A formal tribunal. It's inappropriate to have a public servant impose significant sanctions on an elected representative.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	I don't believe a mayor should be able to remove the councillors fee for the month in which they have been expelled.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in**	I support the proposal to ban pre-meeting briefing sessions except for matters which need to be dealt with in confidential session. Having pre-meeting

councillor deliberations and decision making?	briefings in relation to such matters can significantly reduce the length of a council meeting, at which members of the public may be waiting to address council, or simply attending to observe. I am a councillor on Willoughby Council and am very concerned by the lack of transparency created by pre-meeting briefing sessions.

Submission number	153
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Mary
Last Name	Lyons-Buckett
Name of Organisation (If applicable)	Hawkesbury City Council
Role/Position:	Councillor (former Mayor/Deputy Mayor)
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Councillor
Principles of change **Question: Are we missing anything in the principles of change?**	Not really- the challenge is translating them from words into effective action.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Respect Fairness Acting in the best interests of the community.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	The proposal in the Discussion Paper does not provide the clarity which is needed in this area. I am however pleased to see the proposed extended investigation powers for the OLG to investigate entities which may have matters up for decision where the underlying beneficiary could be a Councillor, a relative or a close affiliate of a Councillor. However two issues which exist around pecuniary interests in the code relate to: 1. Timeliness of investigations - when planning (and sometimes other decisions) are made, by the time the

	investigation may take place the action has occurred and any penalties for a breach do not alter the outcome, which may be detrimental to a community or the environment. 2. There is no mechanism to consider the intent of when a conflict declaration may deliberately be withheld to directly benefit someone, or when a Councillor's self-assessment of a situation may result in such failure. Overall the application of findings of breaches of pecuniary interests, and the decision of when to proceed with an investigation appears to be fraught with inconsistency. Stronger definitions are required in this area. Councillors who are often juggling multiple obligations do not have staff on hand to assist with decisions around such things as following up with OLG to discuss issues around conflicts of interest, so it would be beneficial to actually have the code provide stronger definitions.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	From what is written in the Discussion Paper, I am unsure if it is suggesting that when a Councillor has the casting vote (so usually the Mayor or chair of a committee) a higher threshold exists. If that is the intent I believe that should be included, as when controversial decisions are made with the casting vote the utmost scrutiny should be applied as to any interests the person with the casting vote has. I would like clarity on this.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	such as the DCP and LEP. It also covers road, traffic, park and street upgrades, and other infrastructure plans. All of

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	I find the idea of a Privileges Committee comprised of mayors and ex-mayors to be problematic, and would think there is no reason why former experienced Councillors would not so be included. Many very experienced councillors may never had held a leadership position due to the political makeup of a Council but that does not make them any less worthy of being engaged in such a committee. I do not agree this would be the way forward to improve Councillor misbehaviour. I feel this Paper is attributing a higher status to Mayors collectively, whereas in reality they vary in effectiveness and integrity just as much as Councillors do.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	I would think employing dispute resolution techniques to try and deal with behaviours would be beneficial in some, although not all cases. A Councillor who repeated exhibits misbehaviour is unlikely to change their ways through any mechanism which does not ready exist such as suspension etc.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	I fully support a public register of lobbyists, especially when such lobbyists have previously served on the Council as an elected representative, or when they have political or familial ties to serving Councillors. Public records of who and what they are lobbying for would deliver increased transparency.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	I do not support this system, at least from what is provided about it in the discussion paper. There is no detail about any subsequent mechanism to deal with cumulative PINs being issued. Do a series of minor breaches ever amount to a major one requiring more investigation? Are they published, or are they confidential? What is the definition of 'minor' ? Would the OLG require a significant increase in staff and resources to be administering this type of system, and

	other proposed changes? If so, is there provision for such changes from the Government - it is not always easy to access information or assistance from the OLG.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	I find this proposal highly concerning. I just cannot envisage how it would be enacted with an appropriate level of fairness and impartiality. I strongly object to removal of sitting fees for misbehaviour within a council meeting. If behaviour is severe enough to breach behavioural standards then it should be investigated, but having a Privileges committee determine this leaves it open to weaponisation as a political tool just like the current code. Also, Councillors can be passionate about issues, which could be construed as misbehaviour by some. Current provisions around conduct in meetings are adequate in my opinion.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	The sanctions are adequate, but the appeal rights are not. For example, if a penalty is given of reprimand or counselling, there is no right of appeal, and yet such a finding can be made public at the discretion of the Departmental Chief Executive. This is a blatant denial of procedural fairness that any adverse finding can be allowable with no avenue of appeal, and it should be amended.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Decisions on sanctions should be determined by independent arbiters/tribunal with appropriate levels of procedural fairness in place.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	I disagree with the proposed changes. There are adequate provisions which currently exist to deal wi5 any disorder in meetings. The position of Mayor is often a political appointment, not necessarily based on merit or capacity to perform the role. I would neither feel comfortable standing

	when a Mayor enters, nor as Mayor (having previously served), expect Councillors to do so. A Mayor is not the equivalent in status to a member of the judiciary. I have seen Mayor's specifically shut down certain Councillors from expressing their point of view on certain issues. To think a Mayor had the power beyond the current practices, to expel Councillors and impose loss of entitlement of a Councillor to a fee is an unpalatable increase of power. There is a distinct difference between Councillors respecting the office of Mayor, in which case a standard of civil behaviour is maintained, and being forced into a situation of having to stand for an individual colleague who may not have earned respect on a personal level. Additionally the level of control suggested, undermines free expression, as the potential arises whereby a Mayor and allies could ensure meetings enabled certain voices to be silenced.
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	Briefings at times, require confidential sessions. However I have no objection to the public knowing what information is given to Councillors from staff briefings, and that confidential information would be subject to the same process as in Council meetings. Our ratepayers nd residents should know what information we have on which we are basing decisions. I would like to see encouragement of Councillors to express their reasons for why they vote as they do on major issues. If our communities are impacted by our decisions I believe they deserve to know on what basis such decisions are taken.

Submission number	154
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Stephanie
Last Name	McCall
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	Yes. You are relying on a council to deal with complaints about themselves. [redacted]
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Those councillors [redacted] who refuse to abide by the code of conduct will continue to abuse their position if the codes are aspirational. They must be enforceable.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	It should include a section swearing to abide by the code.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a**	Yes

significant or major non-pecuniary interest?	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	which affect land and property values. All of which compromise their ability to fulfil effectively a councillor role.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	By the councillors to have significant training in behaviour and an understanding that they are beyond reproach and that the CEO themself is fallible.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	Lobbyists should meet everyone at the same time and not individuals or small groups.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	A weeks pay
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	Yes
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	Yes along as they are implemented.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a**	A formal tribunal.

formal tribunal with independent arbitrators and a hearing structure?	
Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	No
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	Agreed that pre meetings are now disbanded and promote transparency.

Submission number	155
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	need to ensuire that complaints from memebers of the public are not treated as vectacious. many of the complaint are valid but are often dismissed.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	ensure there are clear definitions and examples of inappropriate behaviour both verbal, non-verbal and written communications including social media
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	N/A
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	n/a
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	appears to be appropriate

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	The public interest is best served by banning property developers and real estate agents from standing for council in. Public interest concerns in this area far outweigh the political free speech rights of the individual.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	n/a
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	more transparancy in the actions and dealings by councillor - they need more training on effective and inclusive communications. additional comment - small rural councils do not have the whereall to deal with code of conduct complaints and provide appropropriate recourse or retobution back to the community. Many of them have limited staff and no expertise in these areas on conflict that lead to complaint.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	n/a
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	agree no role for private investigators
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework	

Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?	
Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	no the mayor or chair of the relevant meeting may be involved in the disorderly behaviour and it is not disclosed
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	proper minutes of meetings being undertaken and review by all members …rather just recording a resolution

Submission number	156
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	I support the principles of change as outlined in the discussion paper
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	The key elements of an aspirational Code of Conduct should be transparency in decision-making, commitment to the local community, declaration of conflicts of interest - both pecuniary and non-pecuniary (the latter is, in my view not given sufficient weight by councillors), and respectful behaviour to other councillors, staff and members of the community.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	I support the Oath of Office being aligned to the Code of Conduct so councillors and the community are aware of how important this Code of Conduct is, and those making it can be held to account by the community.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Yes it's appropriate but how will it be overseen?

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes. I agree with the principles of what constitutes a significant or major non-pecuniary interest, particularly with elaboration that the test that it is not in the mind of the individual who is subject to the conflict of interest. It is whether a reasonable and informed person would perceive that the councillor could be influenced by a private interest when carrying out official functions. Having observed direct conflicts of non-pecuniary interests by a majority of Councillors and them declaring them as non-financial and non-significant, with even the Council's governance officer saying it is up to the Councillor to determine this, there is much to be done in educating existing and future councillors and staff on this issue.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	In my view real estate agents and property developers should be banned from office.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Establishing a Local Government Privileges Committee is, in my opinion, a step in the right direction. However, my concern is with the committee being made up of mayors and ex mayors or councillors. I think the committee could easily fall prey to an 'old boys network' mentality and have difficulty remaining true to the purpose of the committee. I believe the committee should also include less interested and possibly more objective members.
Potential changes to the definitions and assessment of councillor misbehaviour	More extensive councillor training once elected could help, including all the points this paper is seeking to address.

Question: How else can complaints be minimised?	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	I support the highly aspirational lobbying guidelines and model policy outlined in the paper. Strategies for oversight may need to be adapted over time to ensure compliance.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	I support OLG having the power to issue penalty infringement notices for minor conflicts of interest such as those where they are basically administrative in nature. The provision of a right of appeal and for consideration of special circumstances is appropriate. However, if this were to continue or be repeated then the penalty should be stronger. Indeed, in that situation I think it should be referred to a higher body, preferably a tribunal.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	I support the proposed sanctions. However, in my view, the penalty should be made public. so that the community is aware that action has been taken. Otherwise, as is currently the situation, the process and outcome are not transparent. My own opinion – and I know it reflects the opinion of many in my community – is that continuing misbehaviour should result in removal from the Council. This type of behaviour is deliberate and is costly for a Council in extended or adjourned meetings, particularly for Council staff who have to attend these meetings.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	The existing sanctions under the Local Government Act arguably do not work and are not held in high regard by the community. I believe the current situation where an unelected Departmental

	public servant makes a judgement on a councillor is not appropriate and cannot be seen to be transparent. These sanctions should be made, as suggested, by a formal tribunal with independent arbitrators with relevant experience.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	See 5.1
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	I generally support the additional powers proposed for mayors or chairs of meetings, particularly those to expel a councillor for acts of disorder, to demand an apology and to remove a councillor's entitlement to a sitting fee. However, currently mayors and chairs of meetings already have the power to demand an apology and expel a councillor from a meeting. Unfortunately, in my experience, the demand for an apology can be politically partisan. They can and do expel members of the public, again often on a politically partisan basis. I'm unsure that this issue of political partisanship can be addressed by giving these additional powers unless it is acknowledged throughout this Framework Review that the behaviour of mayors and chairs of meetings can themselves commit misbehaviour that can result in complaints against them.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	I've been attending council meetings as a member of the public for over 10 years. I am enormously frustrated that any debate appears to have already been held behind closed doors. General

	meetings seem scripted, with particular councillors assigned roles to fulfil to give the impression of participation but the actual effect is to dull debate. In my opinion, this is not transparent practice and is dismissive of potential community contributions. I would be fully supportive of councils being compelled to allow community members into their briefing sessions, and for information provided to councillors also being made available to the public.

Submission number	157
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Geoff
Last Name	Markwell
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	IPART rate fixing interferes with councils ability to make long term decisions. If the the ethical behaviour of councillors can be improved and enforced they may be able to be given more responsibility. It will take a while for the damage caused by Auburn & Canterbury etc councils to be forgotten. "Timely and Proportionate" enforcement powers are the key
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	The majority of councillors do want to do the right thing but it is the minority who look for every loophole that the Code of Conduct who may need more than an "aspirational" C of C. Spell out clearly what is required.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	A single document clearly and unambiguously stating what is required is needed for the rogues and this may dissuade them from participating. Treating them like children - yes probably! Detailed guidance - yes. Many councillors have no experience at all in participating in a meeting let alone making decisions.
Potential changes to the definitions and assessment of councillor misbehaviour	Pecuniary interests of members/ backers of local government parties could be clarified.

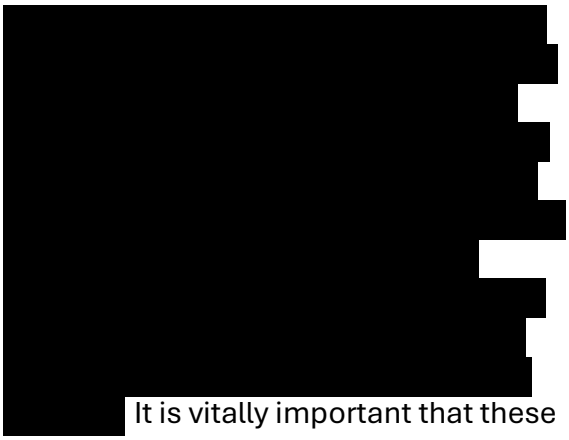
Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?	Agree with absolute prohibition on councillor involvement where there is a chance of conflict. OLG advice has always been "if in doubt, GET OUT" but that has not been clear enough in Strathfield Council and no doubt others.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	There will always be "grey areas" so there needs to be a process whereby a rapid decision can be made.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	The proposal " requiring councillors to divest themselves etc ..." has to be clearly stated. Being elected to council is voluntary. If the proposed rules affect the income of a councillor all the more reason to bring in the new rules.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	The privileges committee should have guidance. A tabular presentation of the severity of the offence - 3 grades?, how the offence occurred, accidentally, lack of oversight, intentional deception, and effect of misbehaviour graded as well.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Councillors judging fellow councillors will not work even without the party system. A privileges committee should work but will need more than mayors - senior council staff as well. Councils with Local Planning panels have residents as panel members (retired panel members as well) who are familiar with the council issues and councillors who would have invaluable input.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	Lobbying to take place by registered lobbyists on council premises with council staff present.

Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	Suspension and loss of fees/allowances.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	A tribunal - as long as the tribunal is empowered to gather the information required promptly. Otherwise the decision will be made on the information available.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	No
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	Technology to video record meetings is readily available and could be posted on council websites

Submission number	158
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	(I AGAIN REQUEST THAT MY PERSONAL INFORMATION BE PROTECTED) Yes, at point 3 - 'ACCOUNTABILITY' should also include "real" penalties for misbehaviour and/or misconduct of a councillor inside or outside the chamber including on social media. Conduct deemed to be offensive behaviour, intimidation, bullying members of the public or fellow councillors will have ramifications including suspension up to the full term of council, not just one month, and he full loss of all sitting fees. ACCOUNTABITY should be just as important in this new draft legislation as not declaring pecuniary interests. [redacted] This is also related to ACCOUNTABILITY. [redacted]

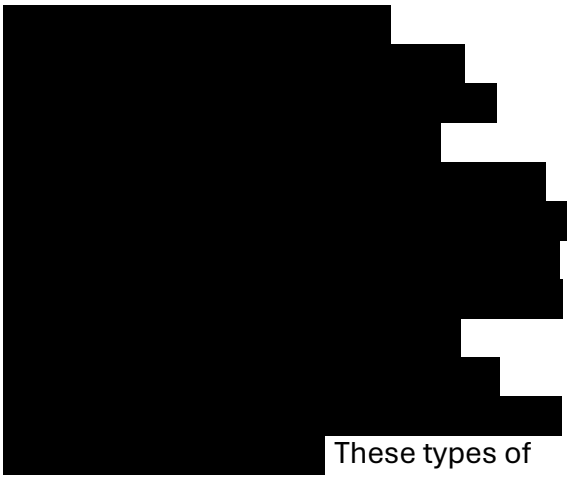
	[redacted] This waste of public funds and time is unacceptable. [redacted] 🤗 [redacted] This continuing conduct is bringing this council and the position of councillor into disrepute.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	With the current Code of Conduct being treated as a joke by councillors, making the new code of conduct an aspirational code instead of being enforceable for local councillors is taking a step backwards in the public interest. [redacted] the system that is broken - as admitted by the Minister. This new framework admits that dealing with misbehaviour will become a weaker process instead of strengthening it to appropriately deal with councillors who are out of control in the chamber and online social media. There has been no penalty for outrageous prior misconduct by this councillor. Without stronger measures to control his and others' contemptuous behaviour in the chamber and stop him posting as a councillor to bring the council into disrepute it is a joke, this process will be a waste of time and money if the penalties for misbehaviour are not strengthened.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	What is the penalty for breaching the Oath of Office? Unless there are formalised penalties for these breaches it is a waste of time. Introducing penalties for non-compliance with the Oath of

	Office would be a good move. Absolutely, the Oath should be aligned to the revamped Code of Conduct.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Missing is: Disclosure of personal relationship that influences their allegiance to the proponent A relationship with proponents that are seen by a reasonable person to exit that would influence the decision of the councillor due to the personal relationship. [redacted] Their ability to make an unbiased decision is not able to be seen by a reasonable person as without favour to the proponent.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	The personal relationship between the councillor and the proponent or applicant has not been in my opinion appropriately declared on many occasions. For a regional area, there will always be friendships that need to be declared. But the councillor should recognise that a strong, long relationship and business relationship with a proponent or applicant will without a doubt be perceived by a reasonable person as biased.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	Absolutely this issue is vital to be addressed. No real estate agent, town planner or developer should be permitted to run for office as a councillor. If they wish to run they must divest themselves of their interest in real property and business interests in property developments and make an undertaking if in the future they resume their previous occupation, their role as a councillor will not have been to benefit their future

	interests - this will be hard to police so will require adequate wording.  It is vitally important that these professions be excluded from the decision making of a council that will benefit them and their colleagues, either currently or into the future. There is no room for them without a reasonable person recognising a conflict of interest. I am also aware of town planners purchasing a significant council-owned property at less than market value - a transaction that was not made the subject of a public process or appropriate scrutiny. The relationship between town planners and councillors needs to be disclosed.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Is it possible to add any misconduct or unreasonable conduct including on social media to this list? Is bullying the Mayor, councillors, council staff or the public at any time neatly fitting into these proposed definitions?
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Expel repeat offenders - they will no longer attract more complaints. Send a strong message misbehaviour will not be tolerated and there is now REAL penalties for such misconduct. In the public interest, misbehaviour penalties need to be strengthened NOT weakened. Remind the public that complaints for minor infractions will be dealt with by the councillors' peers.
Potential changes to the definitions and assessment of councillor misbehaviour	Example: 

Question: What key features should be included in lobbying guidelines and a model policy?	[redacted]
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	I am disturbed to read the following included in the discussion paper: "There would be no investigations of misbehaviour, instead councillors would e required to demonstrate to their peers why their actions, which may have led to the complaint, were appropriate to the circumstances." This brings to mind the current sitution where the council has a majority to pass any motion they see fit. I believe leaving this open to a majority of councillors to reprimand and "outsider" councillor to be unacceptable. There is every possibility that the majority group will NEVER see wrongdoing of one of their own. To quote the Hon Anthony Whealy KC: "When legislation critical to integrity in public administration is introduced, it should not be sullied with the slightest perception that its genesis lies in the entrenchment of incumbents rather than in the advancement of the public interest." I request that this valid quote be included in discussions or communications to persons developing the draft legislation.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	Penalties should automatically be imposed for more serious breaches. Censuring and warning a councillor seems to be a waste of money - the penalties should be automatic and only after they are imposed the councillor has a right of reply. Council's legal costs would be reduced from the current broken system of just censuring councillors and they continue ignore it and make a joke of not being able to be reprimanded by the current system.

Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	A current councillor is making a mockery of the current broken system, to quote the Minister. The reform should NOT reduce existing powers of the Departmental Chief Executive to impose penalties. This is going to encourage more misbehaviour, is my opinion. Strengthening the powers of the CE to impost penalties, and reinforce the role of OLG to appropriately penalise the offending councillor is required. It is unacceptable to water-down the powers. Please consider regular misbehaviour inside and outside the chamber, online denigrating the Mayor, councillors, staff and the public. This conduct should not be tolerated as it is now. Strengthening powers to all sectors be more likely to deter repeat offending.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Yes. The Departmental Chief Executive and the OLG should be provided with additional powers to deter repeat offenders. Expulsion for the term of the council for the most serious misbehaviour and offences, and exclusion of sitting fees.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	Immediate expulsion from the meeting for one month for councillor for misconduct and misbehaviour towards councillors or the public in attendance. If no apology is forthcoming to the chamber, the expulsion and sitting fees should be extended for a second month immediately. The Mayor in our council has been far too tolerant of one councillor. [redacted]
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	It is my opinion that all councillor workshops and briefings should be not only open to the public, but should be live streamed. It is in the public interest to see what is being presented to

	councillors and give the public an opportunity to contribute, if this is appropriate. Recordings of council meetings and committee meetings should be made available on the agency's website for a period of not less than 7 years.  These types of "deals" should go through a tender process and be able to be openly reported to the public and not held behind closed doors, as this one was. (I AGAIN REQUEST THAT MY PERSONAL INFORMATION BE PROTECTED)

Submission number	159
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Quintin
Last Name	King
Name of Organisation (If applicable)	Cessnock city council
Role/Position:	Councillor
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Councillor
Principles of change **Question: Are we missing anything in the principles of change?**	Ability for councillors to ensure bureaucrats operate above board according to established rules and procedures without the threat of disciplinary action taken against them for being negative towards staff.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Ability for councillors to publicly speak freely on matters important to their constituents in an open and transparent manner without unelected officials suppressing their ability to do so.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	upholding long standing traditions should be considered.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a**	

significant or major non-pecuniary interest?	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	If a councillor owns 1 of 2 businesses in the community, and the decision for example changing a road in front of their only other competitor may have a negative impact on their competitor, that should be a conflict of interest even if the councillor may not believe that it is.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	bringing council into disrepute is open for interpretation and leaves room for biased weaponising of the code of conduct. (saying anything that is not considered positive may fall into this category, making it impossible for elected officials keeping unelected officials accountable).
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	the rules needs to be specific, black and white.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a**	A formal tribunal with independent arbitrators and a PUBLIC hearing structure. Confidentialaty around code of conduct breaches as currently carried out in councils has reputational risk to

formal tribunal with independent arbitrators and a hearing structure?	councillors, irregardless wether they are guilty or not.
Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	Public briefings is a great idea.

Submission number	160
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	Social Media Behaviour!
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Councillors should conduct themselves as respectable citizens whilst representing the Local Government Office and should refrain from bullying practices online in social media posts whilst using the title "Councillor" before their name.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	A DEFINATE Conflict of Interest. When a councillor owns real estate/property that will be affected by a decision made by the Elected Body.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	Councillor behaviour outside of the Council Chambers should also be considered, especially when the Councillor is using his/her "Councillor" title on social media and bullying members of the public online.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Formal Tribunal with Independant Arbitrators and a hearing Structure.

Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	ALL Councillor briefings should not only be open to the public but they should also be webcast as the monthly meetings currently are, so people can watch from home if they cannot attend.

Submission number	161
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	I believe this proposal is flawed as it appears that it does not extend to gross misbehaviour of councillors outside the council chamber and would allow harmful actions to continue unchecked. There is no safeguard for the community against councillors can weaponising their position on council to bring actions against businesses, spread misinformation/disinformation about business and individuals and make unproven accusations of fraud and threats against others in a very public way through the use of social media. There should be an effective avenue through the governance processes to deal with such misbehaviour and resulting harm. Under the current inadequate system, an offender can face repeated censures for the same types of misbehaviour against the same victim but continue the misbehavior without consequences. My reading of the discussion paper suggests that even that opportunity for at least recognition of the wrongdoing will disappear. Such an omission would be a step backwards and remove the ineffective recognition of

	what can be a very serious issue and allow the harm on a community to continue unchecked.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Transparency, truth and respect.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	I don't think the oath covers the issue of misbehavior. Although it is a good starting point there needs to be something more explicit. Oath I [name of councillor] swear that I will undertake the duties of the office of councillor in the best interests of the people of [name of council area] and the [name of council] and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	A declaration by a councillor can be worthless and in my observations ignored while councillors deny close associations and have approved inappropriate applications against the advice of the planning department.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	I agree with the principles but there is a flaw in the dependence of the councillors' self declaration. I have seen this abused on many occasions just on the relationships of which I am well aware and often in clear public view.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	I don't believe real estate agents should serve on a council. [redacted]

	[redacted] There was a serious lack of consideration for those most in need at a time of crisis while these councillors pursued long-term solutions that favoured developers. There has also been support for inappropriate developments, one later overturned by a higher tier of govt and another awaiting a court decision at this time. [redacted]
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	I believe complaints would be minimised if councillors had to face actual consequences for their misbehaviour. I believe that they would be more careful about the way they acted. [redacted]

	[redacted] Adequate controls without restricting the codes reach would be more appropriate than allowing end empowering the wolf to roam free among the sheep outside the council chamber. At this time my read of the discussion paper makes me fell as if I and others like me would be abandoned in this proposal. I strongly believe that the OLG has a responsibility in this matter.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	I believe lobbying guidelines would be a good idea, but I am unsure how this can work, especially when you have sectors of the administration working hand in hand with some elements of the elected council. My observation is that this can be to the detriment of other sectors of the elected Council and it is heartbreaking to watch. The result is the certain sector of the community gets looked after and another sector is left behind and, [redacted] a sector that is in the most urgent.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	I support this proposal as I believe the present system where it is left up to councils to decide what action is to be taken is totally flawed and allows protection for misbehaviour of one of their peers to the detriment of the victims. I believe a privileges committee would be at arms' length to guide against such protective systems. I do believe, however, that there has to be some assurance that misbehaviour will lead to some more appropriate action rather than an inappropriate ineffective slap on the wrist that allows misbehaviour to continue on checked, otherwise the proposal offers little improvement on what exists with a flaw of having reduced its coverage.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	The proposal I read does not seem to offer any more penalties than already exist and until this is changed I can see little change to the misbehaviour within the chamber and the actions inflicted on

	the community. The proposal offers a better system of consideration but I don't see any real punishment for the wrongdoing. I don't believe under the present system that many matters would be referred to a higher authority. Until effective consequences are in place I don't think much will change other than you have reduced the number of complaints to handle because you have tightened the sphere of consideration. An offending councillor really needs to feel the pain that they have inflicted on others whether they be a councillor or a person in the community so that they don't simply laugh at it and continue with the same modus operandi. Fines, suspension, sackings ... until then other councillors and community members are like lambs to the slaughter.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	NO!!! IMO, as matters exist a councillor can be given an opportunity to chatreate havoc on a council, its operations, its staff and the community with no way of stopping the havoc. [redacted] A particular councillor here mocks and abuses the system because he knows he can. The doubtful actions of others have no mechanism in place to halt what is happening.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	That sounds ideal. This needs to be taken out of the hands of a local council, although I question whether there is a need for a formal hearing where a matter is clear cut. I fear that if everything depended on a formal hearing less matters would be dealt with.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	Mayors already have the power to demand apologies and expel a councillor or community member, but in my experience a misbehaving councillor can refuse and the mayor can feel powerless to do anything. I have also witnessed occasions when this is a very biased process and does not apply to people on his own ticket, although well deserved. So I believe they have the power, but that

	does not overcome the personal biases of the May or the person cheering a meeting. I don't know how this process can be improved because it is up to the application by the person in that position.
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	Stop the secret meetings, and disclose the information from those meetings. When relevant information is withheld from a community that community understandably loses trust in what those councillors are doing, especially when those decisions are detrimental to the community as a whole.

Submission number	162
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Charlie
Last Name	Harris
Name of Organisation (If applicable)	Central Tablelands Water
Role/Position:	General Manager
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	County Council
Principles of change **Question: Are we missing anything in the principles of change?**	Council leadership and decision making is paramount: "It is critical that the sector, as the third tier of government, is given independence to make decisions in the best interests of the community". We agree with this principle Freedom of speech: Councillors should have parliamentary privilege to allow true freedom of speech. Councillors need to speak freely about issues without the risk of litigation and need equality in this matter with other tiers of government. Any change to the code of conduct and meeting practices must reflect this amendment. Transparency and accountability: "Councils need to hear, consider and debate issues in an open manner". CTW agrees with this, however without parliamentary privilege debate is effectively stifled in the formal Council chamber. Briefing sessions allow for a more open exchange of ideas without fear of reprisal or public misinterpretation. If the OLG wishes to ban briefing sessions, then it must extend parliamentary privilege to formal Council meetings. The

	OLG may wish to initiate signing of disclosure forms at the conclusion of briefing sessions confirming no decisions have been made in the confidential briefing sessions. Section 10A of the LG Act must also be amended should briefing sessions be banned, to enable closed meetings to discuss topics that are of a sensitive nature or may give rise to discord in the communities. Council meetings should be conducted in a way that provides and records reasons for decisions made rather than just for recording decisions made 'on the nod'. Formal Minutes of meetings should include brief summaries of the discussions held and questions asked by Councillors, however this does depend on the minute-taking resources available. A strong and proportionate local government regulator The LG regulator must be truly independent (and seen to be so) and rapid in its deliberations, to ensure that code of conduct processes don't drag out for months or even years. Justice is timely and proportionate Agreed, one of the biggest failures in the current code of conduct system is the length of time taken for complaints to be dealt with.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	CTW supports the concept of a clear and succinct outline of behavioural expectations, however the examples provided for NSW Parliament do not touch on work, health and safety for Councillors amongst peers and for our council workforce. Threats, intimidation, belittling, overbearing, aggression, humiliation and other such examples provided in the current Model Code of Conduct appears to be lost in the NSW Members of Parliament framework provided. CTW support ability to act with integrity, ethically and morally in delivering

	community focused outcomes that provide for future generations.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	CTW supports this concept.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	The proposed pecuniary interest framework is appropriate. However, in the instance of "obtaining private benefit" as outlined in the current Model Code, this implies "obtainment" – when some of the inherent issues relate to the approach to obtain and requires further provisions and parameters around intimidating and threatening approaches.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes. However, what is currently missing from both the Model Code and the Discussion Paper is the addressing of Councillors who declare a conflict of interest to avoid voting. 'Non-pecuniary interest' is open to interpretation and is up to the individual to declare this themselves. As the Discussion Paper alludes to that 'an interested and informed observer should be confident a decision made by a councillor is free from bias or a reasonable apprehension of bias'. An interested and informed observer should also be able to be confident that a councillor is not leaving a room to avoid voting when faced with challenging issues. There should be a process to call them out on what the electors have elected them for, to make difficult and challenging decisions. Similarly, councillors who have openly been elected on a platform of ideals as expressed by their election material, should be allowed to debate and make decisions when issues related to these are being discussed in Council. An example might be a Councilor who belongs to a political party or declared community lobby group. They should be allowed to debate and make decisions on issues that reflect their declared position

	at election, unless there is an obvious personal financial benefit obtained from the decision.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	It would be exceedingly rare for CTW Board members to be in a position to obtain benefit from a CTW decision regarding water delivery to a development. If so, our standard practice would be a declaration of a conflict of interest and leaving the chamber while a decision is being made. CTW is not currently consulted nor party to GP Council decisions regarding developments, however this should probably change to ensure better management of water access to such developments. If so, we would need to consider what eligibility restrictions should apply. CTW Board members are Councillors in their own Shires and therefore rules regarding pecuniary interests and definitions of real estate developer access to councils should rest with their GP Councils. It should be noted that rural and regional areas have limited candidate opportunities compared to metropolitan areas, and hence any restrictions on eligibility should take this into account.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	The Privileges Committee could also extend to ex-General Managers to allow for a balanced point of view that is free from bias or reasonable apprehension of bias. It should also contain independent investigators who have previously undertaken investigations for code of conduct complaints – there is still a role for the credible investigators who have served the code of conduct process for many years who provide legal specialist advice. In relation to social media/media, the Privileges Committee could also extend members to technical experts and legal specialists in social media. The Privileges Committee could have oversight of a

	chairperson who has delegated authority to impose sanctions. These sanctions should extend to councillors whose misbehaviour occurred while in office but no longer hold the position. Councillors should not be able to quit to avoid consequences, nor be allowed to comment via social media on material they had privileged access to while in office.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	If the NSW Government is to introduce a Privileges Committee, they should therefore have powers to suspend a Councillor and depending on the severity of the issue and suspension, make a recommendation to the Minister for Local Government to disqualify a person from holding Civic Office. The use of social media by councillors requires better definition of appropriate behaviour in the model code of conduct. CTW has a Code of Conduct for social media. Removing the General Manager and/or the Mayor from the decision-making process on code of conduct complaints removes retaliation complaints that should lessen the number of subsequent complaints over a council term.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	Unions should be banned from contacting and lobbying councillors, especially around staffing matters.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	A tiered approach to PIN should be considered, with the severity of the breach and the number of breaches per councillor as contributing factors (much the same as player misconduct in the NRL). Loss of some councillor fees should be considered at a minimum, with full expulsion and/or police action required for more egregious misconduct.
Dispute resolution and penalty framework	

Are the penalties proposed appropriate, and are there any further penalties that should be considered?	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	Many Councillors believe that sanctions have little impact on councillor behaviour. The behaviour is set by the standards of the Council and in the case of CTW there has been no misconduct breaches or need for sanctions in living memory.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Neither, the Privileges Committee could have oversight of a Chairperson who has delegated authority to impose sanctions.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	While we appreciate the concept around councillors standing to speak in a rowdy Chamber, it may not be physically possible for certain Councillors with disabilities. In CTW's case, there has never been a need for this and we would suggest that each Council be given the discretion to decide if standing is allowed or mandated. If the latter, we suspect this rule will be 'more honoured in the breach', and is not something that we envisage CTW adopting. The process for enabling of a PIN to members of the public who refuse to leave a meeting after being expelled is not really an issue for CTW, as our meetings rarely attended by members of the public. If unruly behaviour persist, removal of a person should become a police matter.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	CTW does not support the banning of briefing sessions. Pre-briefing provides equity, and supports those councillors who prefer or need a verbal briefing to make an informed decision. If run correctly these sessions do not impact councillors' right to debate in open council. Board members have expressed the view that workshops and briefing sessions have in fact improved the

	conduct of Council meetings by allowing a less formal forum for frank discussion, and a more rapid information exchange on complex matters . For example, a zero fleet transition plan pre-briefing meeting can provide opportunities for elected members to be consulted and ask questions. Given that Business Papers can run to many hundreds of pages, all to be read and digested in a very short time, extra briefings are invaluable to ensure the best decisions are made in the Council chamber.

Submission number	164
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Debrah
Last Name	Novak
Name of Organisation (If applicable)	Clarence Valley Council
Role/Position:	Elected Councillors
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Councillor
Principles of change **Question: Are we missing anything in the principles of change?**	Yes. Any investigation finding should be made public and not voted on to keep it in house.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	1) Key elements should be mandatory not aspirational 2) As adults we should already know the difference between right and wrong 3) When its aspirational it is open to interpretation and argued. 4) The Code Of Conduct should be enforced and enschrined by a panel not elected Councillors nor local people.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Absolutely agree with this 100%. Oath of Office should be a legal signed document that enshrines and upholds the key elements of the Model Code of Conduct.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Yes this is missing. Annual face to face training for elected Councillors as a reminder of their pecuniary interests.
Potential changes to the definitions and assessment of councillor misbehaviour	Yes I agree.

Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	This should be a merit based system based on the size, foreign ownership and land interests of the developer. I don't support property developers large or small running as a candidate for any local election or being allowed to make a donation to a political party as this sector sets and controls the land and housing market. A small family owned and operated Real Estate Agent business focus is traditionally on rentals, supporting external housing and welfare agencies. They don't control the housing market unlike developers.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	I don't support this OLG concept of a Privileges Committee.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Put complaints through an ARIC Committee that has had training on this matter.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	Need to outline what exactly is a professional lobbyist? Any NFP lobby group that has as their vision statement 'we will use force if we have to' should not be allowed to engage in this process. Political parties should not be allowed to lobby local government councillors.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	I don't support creating a Local Government Privileges Committee as I believe this would be seen as putting the fox in charge of the henhouse. I believe an independent fresh set of trained eyes like the ARIC Committee that only has allegiance to upholding the Model Code Of Conduct Mandatory Standards and processes is closer to the

	local community than a panel sitting in Sydney. I don't believe complaints should go to a GM or a Mayor they should go to an Independent agency/committee for determination if there is an alleged breach of the Model Code Of Conduct.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	I believe penalties could be harsher to include fines. These fines could be $5K, $10k or $20K and the payment of fines would go back to their local Council.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	No
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	I support a formal tribunal or independent body like our existing ARIC to carry out serious codes of conduct matters.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	All Councillors should receive mandatory training on how to chair a meeting prior to taking the oath of office. When a Councillor is disciplined by the Mayor withholding their fees is minimal as we only receive $2.75 an hour for our service unlike our city councils and interstate cousins. If a Councillor is disciplined they should be made to undertake behaviour and communication therapy so they can regulate their emotions and language.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	I don't have a problem with a closed briefing session as I can always ask the same question again in a meeting that is being recorded and this is what I already do. These briefing sessions are relaxed and informative and opens up curiosity and thought processes in questioning staff. I don't support standing up while speaking.

	Dignity and respect are earned rights of passage not a given because you have a title. Honour and respect are values not many people share nor understand. It's like a wife having to be obedient to her husband because of their marriage vows yet he practices coercive control and gaslights her into submissive behaviour. Transparency begins with the live televising of Council meetings. Councillors have 5 minutes to explain why they are voting the way they are. Placing these recordings on the Councils website along with declarations improves transparency.

Submission number	165
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	
Name of Organisation (If applicable)	
Role/Position:	Councillor
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Councillor
Principles of change **Question: Are we missing anything in the principles of change?**	The principles of change provide an encouraging view of the position of councils, free speech and independence of decision making but this is not backuped by the actions of the OLG or successive NSW state govts who have acted contrary to these principles, especially with regard to planning, amalgamation and local govt financial arrangements. If the Minister expects the community to view councillors with respect, he should spend less time talking negatively about our worth on the public record.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Transparency, accountability, consultation, community representation rather than vested interest, intergenerational equity, protection of environment and place.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	I think this is reasonable although I fundamentally disagree with switching to a NSW parliamentary style Code. I've worked in the NSW Parliament. The current code of conduct is inadequate and does not result in respectful behaviour, nor does it provide adequate penalties for abusive and unsafe conduct. [redacted]

	[redacted] This is detailed in Hansard, as is the President's lack of powers to adequately deal with the abusive conduct. The Broderick Report shows just how poorly the NSW Parliamentary Code has worked. Councillors do not have the advantages of state MPs. We have no privilege, no staff, no offices, very few supports and poor remuneration. I have no problem aligning the Oath to the Code of Conduct but the Code must provide Councillors with adequate guidance and protection. A two pager is not going to do this. Poor behaviour of Councillors to each other or worse, to Council staff and members of the public, is a workplace health and safety issue and must be treated as such.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	The framework seems appropriate. $500 seems a high figure for cumulative benefits. Ours is currently $50, an amount unanimously accepted as reasonable and consistent with public expectations
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes, although enough detail needs to be included to make determining a threshold of significance easy. The current Code does this well in my experience. Additional provision will need to be made for Councillors who act as council representatives in paid and unpaid positions on County Councils or other organisations. This section of the Code must be clear enough to ensure that allegations of significant interest cannot be weaponised, as they have been here.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors**	Councillors who are agents, property development managers, developers or close associates of agents, developers or development managers should not be on Councils. It is not possible to balance both roles without bias or benefit, and these councillors have influence over

undertaking real estate and development business activities?	their colleagues even if they leave the chamber and don't vote. They should just be banned. I welcome the suggested changes and the increased powers to examine business structures. It has been too easy in the past to manipulate the definition, hide behind convoluted family and business structures, and outright lie to the OLG when questioned. This does not meet community expectations, destroys faith in local government, and unfairly advantages some unscrupulous developers and councillors at the expense of communities.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	I strongly object to the inclusion of a charge of "conduct unbecoming" in the Code. This is a charge that originates in the Defence Force and applies only to Commissioned Officers, who are selected, groomed and trained for long periods. Councillors are afforded none of this training and support. It is a highly subjective charge and has been misused in Defence to discriminate against minority groups, particularly LGBTQIA+ men. "Moral" does not have an objective definition and varies across the social and political spectrum, as well as changing over time. If the OLG is determined to lift subjective charges from Defence, the related charge "Conduct prejudicial to good order and discipline", leveled at other ranks and non-commissioned officers, would be more easily defined and less open to manipulation and weaponisation. The fact that Councillors are the only level of elected representatives to be denied the legal protections of "privilege" must remain at the forefront of any considerations. this remains an unreasonable impost on elected officials and our families, especially when we remain poorly paid, poorly supported and are afforded the least separation from our constituents.

	Sitting mayors should not be allowed to sit in judgement on other councillors. Nor should panels be limited only to former councillors who have been mayors. Mayors are populist and political appointees, not merit appointments. [redacted] If this is indicative of the standard of mayors in NSW, they are not fit to sit in judgement of anyone and should not be given increased powers.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	The goal should not be minimising complaints but minimising bad behaviour. There should be strong penalties for vindictive and vexatious complaints, and costs of vexatious complaints should be made public. A Code that makes it clear that Councillors are encouraged to engage in political speech would do much to deter manipulation of the complaints process by those seeking to silence opposing arguments, tone police, and control political discourse to their own advantage. Unpicking the confusion between political speech and "bringing council into disrepute", including increasing councillor privilege, would remove a major avenue of complaint and strengthen political discourse.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	All councillors should be given identical information and access to staff. Mayors should not have special access. Mayors' diaries should be public documents Councillors should be required to keep and provide file notes from any meetings with developers and lobbyists

	Council staff should provide file notes for any meetings with lobbyists and developers.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	Many Councillors and our families have given up significant financial remuneration to do our jobs, especially on small rural and regional councils. Financial penalties should only be applied as a last result due to the high likelihood of financial distress. Mayors should not be considered the most appropriate panel members due to their political biases. Councillors must have the right to refuse panel members due to perceived bias under the principles of natural justice.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	I don't have enough knowledge to make an informed decision but Councillors must be afforded a right of appeal at each level.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	Standing for the mayor will not ensure respect and dignity. It will open up another avenue for disrespectful behaviour from recalcitrant councillors and provide officious mayors with another avenue to berate Councillors they don't like or indulge in narcissistic displays of false power. Standing is sham measure that doesn't confer respect. Respect is conferred on us by those whom we serve based on our work as representatives, not by how often we sit and stand.

	Standing actively discriminates against anyone who cannot repeatedly sit and stand easily. It is ableist and ageist. It will force those Councillors to identify themselves, ask for special treatment, and then will continue to draw attention to them every meeting. It also advantages confident speakers, those with better eyesight (given the average age of councillors, that's not a lot of us), and promotes "performing" and grandstanding. Our council chamber would require expensive IT upgrades to enable it. After multiple natural disasters, we have more important uses for rate-payer funds. Mayors should not be able to impose financial penalties on their fellow councillors. [redacted] Allowing them to impose financial penalties would have resulted in further abusive behaviours, grossly unfair penalties and stifling of political debate. It would be completely untenable. Councillors should not be forced to apologise when they are not contrite. That just makes hypocrites of us.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	The Code must allow and require increased procedural fairness. Currently it does not. This must include the right to appeal. Investigations of significant and pecuniary interest must be timely, especially when decisions involve development or business-related matters. Too often, findings come long after the horse has bolted. I am conflicted on the subject of public briefings. Councillors already struggle to extract adequate information from general managers and staff. Open briefings will make this worse.

	Discussions can be more open and less political if held behind closed doors, especially when councillors are denied privilege, and when council meetings are placed under time pressures by councillors and staff wanting shorter meetings or forcing voting via "put" motions. Removing the ability to force a vote and therefore silence debate would ensure more open debate. Stronger controls on the use of confidential sessions may also help, including requiring any amendments moved and lost in confidential session. Councillors should not be banned from discussing what was discussed in briefings and briefing notes should be available to the public. Councillors should be trained and encouraged to use "committee of the whole" to allow open debate in full public view, and be encouraged to reach consensus decisions rather than the "current winner takes all" approach Public forums and the ability for the public to speak on every item on the business paper should be mandatory provisions in the Code of Meeting Practice.

Submission number	166
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Nicole
Last Name	Turnbull
Name of Organisation (If applicable)	Neon Shed
Role/Position:	Founder and Chief Courage Officer
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	Are we missing anything in the principles of change? Yes, the principles of change outlined in the discussion paper are missing several critical elements that would support a more constructive, preventative, and relationship-focused approach. To genuinely improve councillor conduct and meeting practices, the following principles should be included: Prevention and Early Intervention Emphasise strategies to prevent conflicts and misconduct before they escalate. This includes offering training on governance, ethics, and interpersonal communication as part of councillor induction and ongoing professional development. Education and Capacity Building Equip councillors with the skills to perform their roles effectively, including conflict resolution, emotional intelligence, and leadership training. An educated and well-supported councillor body will naturally foster better decision-making and community engagement. Support and Relationship Building

	Recognise the importance of fostering collegiality and trust among councillors. Implement structures for mediation, coaching, and mentoring to address tensions or disagreements constructively, ensuring that conflicts are resolved internally and collaboratively. Restorative Practices Introduce a restorative framework to address misconduct, focusing on repairing relationships and rebuilding trust. This approach shifts the focus from punishment to accountability, mutual understanding, and positive change. Recognition of Positive Contributions Balance the focus on misconduct with mechanisms to acknowledge and celebrate councillors' contributions to their communities. This could include awards or public recognition for effective governance, ethical leadership, and community engagement. Proportionality in Complaint Handling Implement triage processes to differentiate between frivolous, vexatious, or minor complaints and those requiring serious investigation. This will streamline complaint handling and prevent regulatory bodies from being overburdened with minor issues. Empowerment of Local Mechanisms Strengthen local-level mechanisms to handle disputes and conduct issues, ensuring councils take responsibility for their governance. This aligns with the principle of subsidiarity and reduces reliance on state-level interventions. Cultural Change Embed a culture of respect, accountability, and shared purpose within councils. This requires leaders to model ethical behaviour and foster an environment where diverse perspectives can be expressed without fear of retribution or personal attacks. By incorporating these principles, the framework would address not just the

	symptoms of poor conduct but the root causes, ultimately leading to more effective local governance and stronger relationships within councils and with their communities.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	An aspirational Code of Conduct should aim to foster a positive, respectful, and inclusive culture among councillors, while also supporting psychological safety. Key elements to include: 1. Respect and Dignity ○ Councillors must treat each other, staff, and community members with respect, promoting a culture of civility in all interactions. 2. Collaboration and Collegiality ○ Emphasise the importance of working collaboratively as a team, even in the face of disagreements, to achieve the best outcomes for the community. 3. Transparency and Accountability ○ Councillors should commit to open and honest communication, ensuring that decisions are made transparently and with accountability to the public. 4. Commitment to the Community ○ Highlight councillors' role as public servants working for the benefit of the entire community, prioritising collective over personal interests. 5. Psychological Safety and Wellbeing ○ Foster an environment where councillors feel safe to express their views without fear of personal attack, ridicule, or reprisal. 6. Continuous Learning and Growth○ Encourage councillors to engage in ongoing professional development, including training in governance, ethical leadership, and conflict resolution. 7. Inclusivity and Equity ○ Councillors should champion inclusivity, ensuring all voices within the community are heard and valued. 8. Restorative Practices Promote a commitment to resolving conflicts constructively and repairing relationships when misunderstandings or tensions arise.

Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Aligning the Oath of Office with the revamped aspirational Code of Conduct is an excellent idea. This alignment would: 1. Reinforce Key Values ○ Embedding the principles of the Code of Conduct into the Oath of Office ensures councillors acknowledge their commitment to upholding these values from the outset. 2. Provide Clarity ○ By linking the Oath and the Code, councillors will have a clear understanding of their expected behaviours and responsibilities. 3. Strengthen Accountability ○ Taking an oath tied to the Code emphasises accountability, creating a sense of personal and collective commitment to maintaining high standards of conduct. 4. Support Psychological Safety ○ Explicitly including elements like respect, equity, and collegiality in the Oath underscores the importance of creating a psychologically safe and supportive environment. 5. Facilitate Consistency Aligning these frameworks ensures councillors begin their terms with a unified understanding of behavioural expectations, minimising ambiguity.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	The proposed pecuniary interest framework has several strengths, including alignment with existing frameworks for NSW Members of Parliament and a clear outline of the obligations for councillors. However, there are additional considerations to ensure the framework is both comprehensive and supportive of councillors' psychological safety, while fostering courage and accountability: Positive Aspects: 1. Clarity and Uniformity: Aligning with parliamentary standards promotes consistency and helps councillors understand their obligations in a familiar framework. 2. Comprehensive Disclosure: Including a broad range of interests (e.g.,

	property, income, gifts) ensures a robust mechanism to identify potential conflicts. 3. Investigation Powers: Strengthening OLG's authority to investigate corporate structures enhances transparency and accountability. Missing Elements: 1. Support and Education: ○ Introduce mandatory training for councillors on managing conflicts of interest and understanding disclosure requirements. This not only ensures compliance but builds confidence and competence in navigating complex situations. ○ Provide access to a confidential advisory service for councillors seeking guidance on potential conflicts before they arise. 2. Psychological Safety and Restorative Practices: ○ Establish processes for addressing breaches that prioritise education and behaviour correction over punishment, particularly for first-time or minor infractions. ○ Ensure investigations are handled with procedural fairness and sensitivity, minimising undue stress on councillors while maintaining public trust. 3. Encouragement of Transparency and Courage: ○ Recognise and promote councillors who demonstrate exemplary transparency in handling conflicts, creating role models within the sector. ○ Reaffirm councillors' freedom of speech, ensuring the framework doesn't inadvertently discourage open debate or critical analysis. 4. Public and Council Collaboration: ○ Include a mechanism for councillors and communities to collaboratively assess and suggest improvements to the framework, promoting trust and adaptability. 5. Technological Integration: ○ Provide user-friendly digital tools for managing and submitting disclosures, reducing administrative burden and enhancing accessibility.

	By incorporating these elements, the framework can better support councillors to act with integrity, courage, and transparency while safeguarding their psychological well-being. This balanced approach ensures compliance without undermining the principles of justice, education, and community leadership.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	I agree with the general principles outlined for determining significant or major non-pecuniary interests. The framework acknowledges the complexity of non-financial relationships and provides a practical approach to managing potential conflicts while recognising the unique role councillors play within their communities.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	The proposed measures to address conflicts of interest for councillors engaged in real estate or development business activities are thorough and well-aligned with the goal of restoring public confidence.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	The proposed threshold for councillors to face a Privileges Committee—where behaviour is assessed based on whether it is "unbecoming of a councillor," "brings council into disrepute," or is "outside the norms and expectations" of a councillor—raises several concerns, particularly when viewed in the context of psychosocial safety, restorative practices, and the overall approach to conflict management. And what will be the cost to Council for this Committee? 1. Clarity and Specificity of the Threshold While the terms “unbecoming,” “bringing into disrepute,” and “outside the norms and expectations” are legally established concepts, they remain vague and open to interpretation. The subjective nature of these assessments may lead to inconsistent application of the threshold and could potentially lead to misuse of

	the committee. Councillors may find themselves facing a Privileges Committee over disputes that could be resolved through education or conflict resolution, rather than formal investigation. A clearer framework for identifying misbehaviour could help reduce ambiguity and ensure a fairer process. Instead of using broad terms, more specific guidelines based on behavioural examples and performance metrics would be better suited to making objective decisions about misbehaviour. This would ensure that the threshold is met only when significant harm is done to the council's reputation or to the working environment, rather than for minor issues that can be resolved through other means. 2. Restorative Approach vs. Punitive Action As mentioned previously, restorative practices have proven to be highly effective in addressing misbehaviour in a way that fosters accountability, understanding, and behaviour change. The idea of holding councillors accountable through a Privileges Committee risks escalating minor conflicts into adversarial processes. A restorative approach to resolving misbehaviour allows for councillors to openly discuss their actions, understand the impact of their behaviour, and come to mutual agreements on how to move forward, rather than focusing solely on the punishment for their conduct. A Privileges Committee may inadvertently reinforce a punitive culture, rather than one focused on improvement and support. Punitive systems do not encourage growth; instead, they create fear of reprisal and defensiveness, which can hinder learning and real change. By focusing on education and support (such as conflict resolution training), councillors can correct their behaviour

	without the need for formal committees or disciplinary measures. 3. The Impact of Public Trust The Privileges Committee may serve as a deterrent to negative behaviour, but its presence could also erode trust within the council. If councillors are too frequently brought before such a committee, the reputation of the entire council could be undermined. Councillors may feel isolated or defensive, which will harm collaboration and create an atmosphere of distrust. In this case, it is important to balance transparency and accountability with a culture that encourages mutual support. Councillors should not fear being reported to a Privileges Committee over reasonable disagreements or tensions. Instead, they should feel comfortable seeking advice or mediation before issues escalate to that level. 4. The Need for Peer-Led Decision-Making The proposed structure of the Privileges Committee, consisting of senior and experienced mayors and ex-mayors, introduces a peer-led approach, which is valuable in ensuring decisions are made by those who understand the councillor role. However, peer review systems can still be problematic if the councillors on the committee are not trained in restorative justice principles and conflict resolution. Without a proper framework that includes skills for de-escalation, understanding, and empathy, a peer-led system could become an adversarial process, focusing on assigning fault rather than understanding the underlying causes of behaviour. 5. A Healthier, More Productive Approach A better approach would be to create a tiered system of intervention: ○ First, councillors who exhibit inappropriate behaviour could undergo mandatory coaching or conflict resolution training to correct their

	behaviour. ○ Second, where issues persist, mediation or external facilitation could be introduced to help resolve disputes and manage interpersonal dynamics. ○ Third, only in cases of serious misconduct—where restorative measures have failed, or where there is an egregious breach of public trust—should a Privileges Committee become necessary. This approach focuses on prevention and education before moving to formal processes that could damage a councillor's career or the council's reputation. It's also important to note that a focus on positive reinforcement for good behaviour can be more impactful than focusing only on punitive measures. Conclusion The threshold to face a Privileges Committee, as proposed, is potentially too broad and could result in unnecessary escalation of minor issues. A restorative, preventive approach—based on education, support, and conflict resolution—is far more effective in creating sustainable change in councillor behaviour. Instead of focusing on punitive measures through a Privileges Committee, we should encourage councillors to be proactive in addressing misbehaviour before it reaches a point of crisis. This would not only reduce complaints but foster a more collaborative, healthy, and effective council environment.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Minimising complaints against councillors is not only about setting clear definitions of misbehaviour or creating punitive frameworks. Instead, the most effective and sustainable approach to reducing complaints is through education, training, support, and a focus on restorative practices, rather than blame and punishment. 1. Education and Training

	Councillors, like any other professionals, benefit greatly from comprehensive education that builds their skills in conflict resolution, communication, and emotional intelligence. When councillors are well-equipped to manage their own behaviour and respond constructively to difficult situations, there is less likelihood of conduct being misinterpreted or creating unnecessary conflict. As an example, a study by the Restorative Practices International organisation found that organisations that invest in training for staff in restorative approaches see a 40-60% reduction in disciplinary issues within the first year of implementing these practices. This demonstrates that when individuals understand the impact of their behaviour and are taught positive ways to address issues, outcomes improve. 2. Support Structures for Councillors Creating a supportive environment where councillors are encouraged to seek help when faced with challenges (whether interpersonal or stress-related) can lead to fewer incidents of misbehaviour. This could include: ○ Access to mental health resources, ○ Peer support networks, ○ Regular check-ins or mentoring by experienced councillors or external professionals to guide new councillors in managing their roles. In this environment, councillors would feel safe to raise concerns, seek guidance, and be less likely to act out of frustration or isolation. As seen in corporate settings, offering emotional support and mental health resources can significantly reduce burnout and interpersonal issues that often lead to complaints. 3. Restorative Practices Restorative practices are a proven way to not only resolve disputes but also to foster mutual understanding and accountability. Research shows that when individuals engage in restorative

	conversations, where the focus is on repairing harm rather than assigning blame, there is a higher rate of behaviour change and long-term reconciliation. For example, a study by the International Institute for Restorative Practices showed that schools using restorative practices saw up to 50% fewer suspensions and reduced disciplinary referrals over time. When applied to councils, this could result in fewer formal complaints, and ultimately, a healthier workplace culture. 4. Conflict Resolution and Mediation Conflict resolution mechanisms, such as mediation, can help to resolve issues before they escalate into formal complaints. By fostering a culture of dialogue and collaboration, where councillors are encouraged to mediate conflicts themselves with the support of trained facilitators, the need for adversarial processes like a Privileges Committee is minimised. 5. Psychosocial Hazards and the Work Health and Safety (WHS) Framework Another important avenue to explore in reducing complaints is to integrate councillor conduct into the WHS framework, treating councillors as workers. This would mean addressing the psychosocial hazards (e.g., stress, bullying, and harassment) that can contribute to misconduct, with strategies in place to manage and mitigate these risks. Using these already established definitions of harmful behaviours should be considered, rather than additional definitions of misbehaviours. The WHS Regulations (2011) already outline a Code of Practice for managing psychosocial hazards. Councils could adopt these guidelines, recognising harmful behaviours like bullying, harassment, and workplace stress as workplace hazards that must be managed just like physical safety

	hazards. This approach shifts the focus from punishing behaviour to preventing harmful behaviours in the first place, creating a more respectful and productive working environment. 6. Respect Over Punishment Finally, real change in behaviour comes from a place of respect and empathy, not from punishment. If we aim to change behaviour, particularly in elected officials, we need to foster a culture of respect and collaboration. Councillors should feel supported in their roles, encouraged to make positive contributions, and empowered to resolve differences in a constructive manner. Research shows that when individuals feel respected and valued, they are more likely to modify negative behaviours without the need for external sanctions. The Centre for Creative Leadership conducted a study showing that leaders who are respected and given the opportunity to work through their challenges in a supportive environment are more likely to improve their performance by 60-70% compared to those who are punished or reprimanded. This is because respect fosters intrinsic motivation, whereas punishment typically leads to external compliance without addressing the root cause of the issue. Conclusion Rather than expanding the punitive framework through a Privileges Committee, the focus should shift towards building an inclusive culture of support, education, and restorative practices. By treating councillors the same as any employee and applying the psychosocial hazards provisions under WHS legislation, councils will reduce complaints, encourage personal responsibility, and foster a positive working environment for all. This approach doesn't just address

	misconduct; it creates lasting change by empowering councillors to act in the public interest while maintaining their dignity and the trust of their communities.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	The Importance of Retaining the Two-Step Process The proposed reforms suggest abolishing the current two-step process for handling complaints and misbehaviour, which involves an initial review by conduct reviewers followed by possible referral to the Office of Local Government (OLG). While the intention is to streamline processes and reduce the burden on regulators, it is crucial to retain the two-step process for a number of reasons. 1. Encouraging a Non-Adversarial Approach The two-step process currently provides a more balanced and respectful approach to resolving complaints. By involving external conduct reviewers and ensuring that matters are carefully examined before reaching a formal tribunal or committee, this process reduces the potential for a "dob-in" culture that could encourage adversarial or combative behaviour. Abolishing the two-step process would shift the focus toward peer-level adjudication without sufficient checks and balances. This could escalate minor misunderstandings or disagreements into more significant conflicts that are damaging to councillor relationships and to the public perception of the council. 2. Promoting Collaborative Resolution A key concern with the proposed reforms is that it may shift the responsibility of resolving disputes from a professional

	external body to the councillors themselves. This could introduce biases, undermine objectivity, and potentially harm the culture of collaboration within the council. Disputes, especially those that may arise from misbehaviour, should be resolved through processes that foster respect, education, and mutual understanding, rather than through a combative peer review. Restorative practices are more effective when there is a clear opportunity for reflection and corrective action, without immediately resorting to formal punishment. 3. The Risks of an Overly Simplified Process Simplifying the complaint process may seem like an efficient approach, but it risks undermining the fairness and depth of investigation needed to address misbehaviour adequately. A two-step process ensures that all parties have had their chance to present evidence, and it prevents quick judgments that might be made in the heat of the moment. A streamlined process that eliminates the initial external review could lead to biased decision-making, where the impact of minor misconduct is disproportionately amplified without the opportunity for thorough examination and due process. 4. Long-Term Cultural Change and the Need for Fairness Cultural change within councils requires an emphasis on respect, education, and conflict resolution. Councils should foster environments where councillors can learn from mistakes and understand the consequences of their actions, rather than merely imposing punitive measures. The two-step process facilitates a more thoughtful and respectful consideration of complaints, ensuring that both the complainant and the councillor in question are treated fairly, which ultimately helps improve overall conduct and collaboration.

	The proposal to introduce Penalty Infringement Notices (PINs) for minor or administrative breaches of the conflicts of interest declarations is highly problematic. PINs for behavioural issues such as misbehaviour do not align with a respectful and restorative approach to conflict resolution. Instead of addressing the root causes of behaviour or encouraging growth and learning, PINs could become an adversarial tool that promotes blame and punishment. This undermines the opportunity for dialogue, understanding, and meaningful change. PINs risk becoming a quick-fix solution that fails to consider the context or the underlying psychosocial factors contributing to the behaviour. This is particularly concerning when dealing with matters that require a more nuanced understanding of human interactions and decision-making processes. Behavioural issues are complex and require thoughtful responses, not punitive measures that could foster resentment, division, and a culture of fear within councils. A focus on punitive measures like PINs would not help to change behaviour in the long run. Real change comes through respect, empathy, and restorative practices that encourage councillors to learn from their mistakes, seek support, and develop the skills needed to improve their conduct. Rather than resorting to quick fixes like PINs, a more effective approach would involve targeted education, training, support, and a commitment to conflict resolution. By investing in these areas, councils can foster a culture of accountability and growth, rather than one of blame and punishment. Furthermore, the potential overuse of PINs could quickly escalate trivial matters and overwhelm both councillors and the regulatory bodies involved. In the

	long term, this could detract from the more serious issues that require careful and thorough investigation. Instead of adopting PINs as a tool, the emphasis should be on creating a system that allows for reflection, learning, and improvement. This approach would better serve the goals of promoting integrity and transparency within local government, while respecting councillors' roles as public servants.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	I believe the shift towards a punitive, adversarial approach is misguided. It promotes a combative and divisive culture within councils, where the focus is on punishing councillors rather than resolving issues constructively. This type of framework risks overusing penalties and undermines the collaborative nature of local government. I strongly support retaining the two-step process that currently exists. The two-step process – involving the conduct reviewer and then OLG – provides a balanced approach. It allows for a more thorough examination of complaints, reducing the likelihood of complaints being escalated unnecessarily. By maintaining a process that includes both internal and external review stages, there is an opportunity for fairer, more informed decision-making. This system promotes transparency and accountability, rather than immediately escalating matters into punitive measures. Rather than focusing on punitive measures like fines or disqualification, the system should prioritise support, education, and restorative practices that encourage councillors to learn from their actions and work toward better conduct. Restorative approaches foster positive change by emphasising understanding, respect, and personal growth, not punishment. This approach helps to build trust, improve behaviour over time, and

	create a healthier working environment for councillors and staff alike. In my view, penalties like censure, loss of sitting fees, or suspension may be necessary in some extreme cases, but they should be reserved for clear, egregious misconduct. They should not be the first response to what may be a misunderstanding, a minor breach, or an isolated incident. Instead, focusing on communication, education, and proactive behaviour management will lead to more meaningful, long-term improvements in councillor conduct.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	I believe the current sanctions may be too focused on punitive measures. While sanctions such as suspension or fines can be appropriate in cases of serious misconduct, I believe that we should prioritise restorative practices and education as primary tools for addressing misbehaviour. The existing framework should focus on rehabilitation and guidance rather than simply punishment. This would help in creating long-term behavioural change and foster a more constructive working environment in councils. If there are instances where significant sanctions are deemed necessary, these should be carefully considered and should come after all other approaches, such as education and conflict resolution, have been exhausted.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	I agree that decisions on sanctions for councillors should be made by a formal tribunal with independent arbitrators and a hearing structure. However, this should be reserved for major issues of misconduct. Less significant matters should not escalate to this level. Minor complaints or breaches should be handled through more appropriate, less adversarial means, allowing the focus to remain on resolution and accountability rather than punishment. This would help ensure that the process is fair and

	proportionate, and avoid the overuse of punitive measures for lesser issues. Ultimately, the focus should be on creating an environment where councillors are empowered to do their best work, with clear guidelines for behaviour, and where any issues can be addressed in a supportive and respectful manner. This will ensure that disciplinary action, when necessary, is proportionate, fair, and conducive to the long-term health of local government processes.
Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	The proposed reforms to restore dignity to council meetings are a step in the right direction, but it's important to balance the power granted to mayors with safeguards that ensure fairness and prevent potential abuse. Expulsion powers and the requirement for councillors to apologise for disorderly behaviour are reasonable, provided they are used appropriately and not to stifle dissent or criticism. However, there are a few additional powers that could be considered to further support the mayor or chair in managing disorderly behaviour in meetings: 1. Mediation or Conflict Resolution Tools: Before resorting to expulsion, it would be beneficial to offer councillors the opportunity for mediation or conflict resolution. This could be particularly useful in cases where disorderly behaviour arises from underlying personal or political differences. A trained mediator could help resolve tensions without the need for punitive measures, promoting dialogue over punishment. 2. Temporary Suspension: For cases where a councillor's behaviour disrupts the meeting but does not warrant expulsion, the mayor could have the power to temporarily suspend the councillor for a brief period. This allows the meeting to continue while the councillor has time to cool down and reflect on their behaviour.

	3. Warnings and Gradual Escalation: Rather than immediately expelling a councillor for disorderly behaviour, the mayor could issue a formal warning or use a graduated response system. For example, after an initial warning, a councillor could be removed for the remainder of that session if disruptive behaviour continues. This allows for proportionality in response, with expulsion as a last resort. 4. Psychosocial Support: If the councillor's behaviour is linked to stress or personal difficulties, providing support through counselling or resources on managing stress and conflict could help address the root causes of the disruption. This approach aligns with restorative practices, focusing on resolving underlying issues rather than punishing the symptoms. 5. Public Accountability: In addition to private apologies, councillors who are expelled or who engage in repeated disorderly behaviour could be required to make a public statement to the community. This would reinforce the importance of maintaining professionalism in public office and demonstrate a commitment to restoring dignity in council meetings. In summary, while the power to expel councillors for disorderly conduct is essential to maintain order, it is crucial to use such measures judiciously. Incorporating conflict resolution tools, offering temporary suspensions, and ensuring that there is a fair and proportional escalation process would help balance authority with fairness. This approach could also reduce the adversarial nature of the process, supporting collaboration and mutual respect in council meetings.
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in	Banning briefing sessions is a significant step that could have unintended negative consequences, especially for new councillors and the overall functionality

councillor deliberations and decision making?	of local government. While transparency is critical, it's important to strike a balance that promotes openness without compromising the effectiveness of decision-making or the support systems that councillors, particularly those new to the role, need. Here are several reasons why banning briefing sessions could be detrimental: 1. Lack of Knowledge and Preparation for New Councillors: Briefing sessions are vital for providing new councillors with the information and context they need to perform their duties effectively. Local government is complex, and many councillors may not have experience with the processes, policies, or specific issues at hand. Without these briefings, new councillors would likely feel unprepared and potentially ridiculed for not knowing how the system works. This could undermine their confidence, affecting their performance and potentially their ability to contribute meaningfully to council meetings. Psychological safety is essential for councillors to feel comfortable in their roles and make informed decisions, and banning briefings could create an environment where new councillors feel insecure and unsupported. 2. Increased Pressure and Workload: Councillors are already paid less than the minimum wage, especially when considering the significant time and effort required to prepare for meetings, attend sessions, and represent their communities. Briefings provide an essential opportunity for councillors to ask questions and clarify issues in a less formal setting, which helps alleviate some of the pressure of understanding complex material on their own. Without these briefings, councillors may need to spend more time outside of meetings conducting independent research or consulting with staff, further increasing

	their workload without the resources they need. 3. Impact on Decision-Making: Briefing sessions allow councillors to receive expert guidance and clarification on matters that will influence their decisions. They can ask questions and address potential concerns before decisions are made in a public forum. This process is crucial for making informed, thoughtful decisions that serve the best interests of the community. Without pre-meeting briefings, councillors may be less prepared to engage in productive discussions, which could hinder decision-making and lead to decisions being made without full understanding or consideration of all factors. 4. Reduced Effectiveness of Council Meetings: The goal of transparency is important, but eliminating briefings might cause delays in council meetings or result in decisions being rushed or poorly informed. Councillors may need to raise more questions during formal meetings, potentially prolonging discussions and reducing the overall efficiency of council proceedings. This could also open the door to misunderstandings, as the complexity of certain issues may not be easily grasped without prior explanation or expert input. 5. Risk of Overloading Public Forums: While the intention behind the proposal is to make deliberations more public, forcing all discussions into open meetings could overwhelm public forums, especially on complex matters. It could shift focus away from constructive debate and potentially create a more combative environment. The public may not always understand the nuance and complexity of some issues without the necessary context that briefings provide. This could lead to increased tension, confusion, or a sense of frustration among the public,

	who might feel they are not being adequately informed. Alternative Solutions: Instead of banning briefing sessions, a more balanced approach could involve: • Public Briefings: Allowing some level of transparency by making briefings public or streaming them, so the community can see and hear the information being presented to councillors. • Clear Guidelines on Briefing Content: Establishing clear guidelines for the type of information shared in briefings, ensuring that it focuses on factual, relevant content rather than influencing decisions inappropriately. • Documentation Sharing: Ensuring all briefing materials, such as reports and presentations, are made publicly available ahead of time, increasing transparency without losing the value of the briefing session. • Post-Briefing Disclosure: Providing a brief summary of what was discussed in briefing sessions after the fact, so the public can stay informed, while allowing councillors to engage in necessary preparation before formal discussions. In conclusion, while transparency is crucial, banning briefing sessions could lead to negative consequences that undermine the support for councillors and hinder the effectiveness of decision-making. Instead, the focus should be on improving transparency through alternative methods that do not compromise the functioning of local government.

Submission number	167
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Felix
Last Name	Bronneberg
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	Yes - In terms of transparency, it is important for the Councillor Conduct Framework to require the General Manager and the Lord Mayor to publish extracts from their diaries, detailing meetings held with organisations and individuals who seek to influence Council policy or decisions.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Impartiality - Fairness / Equitable Access to Services / Objective / Neutral Integrity - Honesty / Good Faith / Truth / Responsibility / Genuine / Trust Accountability - Efficient / Timely / Value for money / Transparent / Open // Continuous Improvement Responsiveness - Customer Focused / Diligence / Local Engagement / Participation / Democracy / Public above personal interest / Selflessness Leadership - Innovation / Courage / Initiative / Progressive / Strategic / Encourage community of interest Respect - Support Council / Reasonable Care / Punctual / Loyalty /confidence in system of government / Open Communication / Environmentally Responsible / Courtesy / Collaboration / Teamwork / Accept and Give Feedback

Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Support
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	No
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	For the purposes of the Model Code, a pecuniary interest is one held by the councillor and designated person, or his or her spouse, de facto partner, relative, partner or employer, or a company or other body of which the person, or a nominee, partner or employer of the person, is a shareholder or member.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	tes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	That the Lord Mayor and General Manager have an open diary thats published on a regular basis as must the Premier of NSW.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	Agree with the proposed PIN framework

Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	No
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Should be heard by a formal tribunal with independent arbitrators and a hearing structure
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	Private briefing sessions should be banned. Councillors should hold public forums to discuss significant matters. The General Manager and the Lord Mayor should have an open diary.

Submission number	168
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Helen
Last Name	Robinson
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	[redacted] Occasionally councillors talk about sanctions but not often enough. Mostly council does nothing. Is there a way in this new code to actually deal with such situations or will it just carry on as is?
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Councillors should be held to the same standards members of the public are or higher
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Yes please
Potential changes to the definitions and assessment of councillor misbehaviour	Seems to be

Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	Looks good but who is going to raise such matters with olg? Other councillors do not.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	People will always be upset and complain when decisions don't go their way. It's more important that anything of a potentially serious nature be investigated and not dismissed as sour grapes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	Lobbying can be invisible and therefore really hard to control
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	They may be but our mayor does nothing to stop the Abussive councillor
Dispute resolution and penalty framework	No

Question: Are the existing sanctions available under the Local Government Act sufficient?	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	CE - INDEPENDENT ARBITRATORS WOULD BD TOO SLOW
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	Our mayor does nothing regardless of powers - all to do with getting council to vote his way
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	No secret meetings

Submission number	169
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	NA
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	generally agree with the seven principles of change proposed. 2. However the obligations and responsibilities as detailed in the current principles in the Model Code of Conduct should not be in any way diminished by the proposed changes. 3. There should be an additional principle – that there is a right to be heard for the general public at council meetings that is enshrined in legislation as well as the Code. 4. There should be a further additional principle – a duty of respect to council and community. 5. Where a decision regarding conduct that is not concerning pecuniary/non-pecuniary interests is disputed, there must be an access pathway to NCAT or other appropriate body available for complainants for other breaches of the Code. 6. generally agree the Oath of Office for local councillors should be aligned to the Code of Conduct.
Potential changes to the code of conduct and oath of office	I strongly object with the code of conduct being 'aspirational' – the principles must be mandatory and enforceable,

Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?	otherwise penalties will be difficult to apply even through tribunals. I disagree with the implication that current Code of Conduct is inherently not easy to understand. It is quite a simple document. If councillors are unable to understand such a basic document, they will not be able to grasp complex legislation that they must turn their minds to from time to time. I agree that the Code could be separated into pecuniary/non-pecuniary interests and other conduct issues, it is not clear how separating the behavioural expectations of councillors from the definitions of misbehaviour reflects a "positive approach".
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	while Perhaps that the Code could be separated into pecuniary/non-pecuniary interests and other conduct issues, it is not clear how separating the behavioural expectations of councillors from the definitions of misbehaviour reflects a "positive approach". There are sections within the proposed Code that deal with issues relating to the Code of Meeting practice. If that Code is proposed for change it must be publicly exhibited for comment. A very crucial point should be that there is a right to be heard for the community.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	The proposed pecuniary interest framework is reasonably appropriate. the proposed amount of any penalty infringement notice needs to be clarified. If it is a small amount, it may not encourage compliance or persuade councillors to provide information when requested by OLG. The current code also includes close friends which is now missing from the proposed framework. Close friends should be included. The current "appropriate management" of pecuniary and non-pecuniary interests is insufficient to encourage councillors abide by the Code – if a conflict is not

	declared and managed prior to a vote, even if conflict is later declared or a complaint lodged, the vote still stands. This can encourage councillors to declare conflicts after a vote. If a failure to declare a conflict is upheld, the vote should be voided and retaken. The definition of "other body" should be explained to include where councillors have, for instance, been on a committee of an association for an extended period. As Local Planning Panel members are selected by councillors, the code of conduct in relation to pecuniary interests should also apply to LPP members.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	The current framework for "appropriate management" is insufficient to discourage non-disclosure prior to a vote. While membership of an association should not automatically be seen as a conflict, it is agreed that if there is a direct advantage to an individual or organisation, that must be publicly declared. Again, sufficient penalties and voiding of a vote are a necessary deterrent to non-disclosure. methods of "management" of significant or major non-pecuniary interests must be clearly spelled out, particularly with regard to whether a councillor can stay for, debate and/or vote on an item. While those boundaries are not clearly delineated, some councillors may stay while others may remove themselves from a debate. It cannot be left to the subjective opinion of individual councillors, it must be cleared prescribed.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	What about council staff??Various ICAC investigations have demonstrated the access developers have to General Manager and planning staff - the codes of conduct should be applied and interactions between staff and developers stopped There must be a penalty for matters of pecuniary or conflicts of interest that councillors/staff do not declare e.g.

	divesting of real estate or development business activities and contractual obligations. Councillors must not be allowed to put real estate business interests into the wife's name or that of his/her family or trust The Code does not appear to take into account affiliations which they currently have to declare. Declarations must be mandatory. Who will monitor whether councillors who are currently property developers and/or real estate agents are complying with the Code? Currently the Code is self-monitoring which is inadequate. In the case of penalties and disqualification, where councillors breach the Code what will the terms of disqualification be e.g. length of time? The term "own property" must be clarified. If a councillor owns more than one property in their own name and that is rented out, will that be considered to be a real estate business arrangement? If this is not adequately clarified, it will create a loophole in the legislation.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	I strongly disagree that a panel of mayors and ex-mayors should judge their fellow councillors. An interested and informed observer could consider that councillors from the same political party would be less inclined to sanction their fellow party members. Even the findings of parliamentary inquiries are often seen to be split along party lines. The Privileges Committee should be staffed by a rotation of lawyers who have a clear understanding of the proposed new legislation with regard to councillor misconduct. The threshold for councillor misbehaviour must also include bullying, harassment, discrimination, fairness and equity, which are all considered to be misbehaviour under the current Model Code of Conduct.

Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	use of social media accounts should be addressed
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	more obligations should be required for both councillors and staff A definition of 'professional lobbyist'. is required There needs to be a requirement that all meetings of mayors, councillors and staff of council with professional lobbyists are diarised and minuted for the public record. The Code needs to expand to include financial gain from changes to zoning in an LEP. Grassroots Community groups should not be considered as professional lobbyists. but groups such as Yimby and Urbantaskforce would be A local resident and/or local community groups calling or writing a submission on a council policy or plan could be considered a lobbyist if this is not clarified.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	The PIN should be sufficient to encourage compliance, say $300-$500. A second offence should incur a higher PIN and so on. There must be a limit to the number of PINs that can be accrued by a councillor within the term of a council beyond which more serious sanctions can be applied.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	The PIN should be sufficient to encourage compliance, say $300-$500. A second offence should incur a higher PIN and so on. There must be a limit to the number of PINs that can be accrued by a councillor within the term of a council beyond which more serious sanctions can be applied. he Privileges Committee should be made up of lawyers on rotation not ex mayors, to ensure an independent process with no actual or perceived political bias. 2. The use of lawyers will also ensure that should the matter be serious enough, the

	lawyers brief can be used at an appropriate tribunal or body with little or no further work from OLG. 3. It is inappropriate to delegate the power to dismiss certain matters to a Secretariat that has no formal or legal training. 4. Remuneration of the Privileges Committee cannot come directly from the council of the councillor in question. That could be seen to cause bias. A general levy across all councils should be applied. Where councils have a significantly higher proportion of complaints, then the levy should be increased. 5. Information needs to be provided as to how often the Privileges Committee would sit. Would it be on a case-by-case basis or on set dates? 6. The potential loss of sitting fees should not be restricted to misbehaviour in a council meeting. Such penalties should be able to be applied for all serious instances of misbehaviour. 7. A pathway for referral to an appropriate tribunal or body for more serious sanctions must be available. 8. The term "disallowance" must be clarified. The appropriate tribunal or body must have the power to disqualify a councillor from standing for council for up to a set period, say five years.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	. The existing sanctions may not be sufficient in cases of serious misconduct. It should be legislated that OLG has the power to refer serious misconduct to the police and/or ICAC depending upon the decision of the tribunal.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Significant sanctions should only be made by a formal tribunal. If a matter is referred to a Tribunal and a resident had made the complaint there may be a situation that the resident may not have the financial capacity to be represented at the Tribunal to give evidence against that Mayor or councillor.

	Will it be OLG that takes action in a tribunal, rather than the complainant? Will the complainant have their legal costs covered if they are required to be a witness at a Tribunal hearing? Will there be protection for people who make a complaint to ensure they will not be sued for defamation? It is usual that most Code of Conduct complaints are made by residents and are kept confidential to avoid defamation.
Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	We agree with the seven principles of change proposed. However the obligations and responsibilities as detailed in the current principles in the Model Code of Conduct should not be in any way diminished by the proposed changes. There should be an additional principle – that there is a right to be heard for the general public at council meetings that is enshrined in legislation as well as the Code. There should be a further additional principle – a duty of respect to council and community. Where a decision regarding conduct that is not concerning pecuniary/non-pecuniary interests is disputed, there must be an access pathway to NCAT or other appropriate body available for complainants for other breaches of the Code. agree the Oath of Office for local councillors should be aligned to the Code of Conduct. This should include council staff
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	removing any opportunity for council staff and councillors to be paid off by developers

Submission number	170
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	
Name of Organisation (If applicable)	
Role/Position:	Councillor
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Councillor
Principles of change **Question: Are we missing anything in the principles of change?**	
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	To serve the best interests of the local community. Also, as stated in the discussion paper: "Importantly, the revamped Code of Conduct will not seek to restrain the ability of a councillor to speak publicly on matters pertaining to their council, even when that councillor is disagreeing with, or being critical of, the decisions of the majority." That is a huge improvement on the current situation!
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	The majority of the Privileges Committee should be comprise lay people and serving and former councillors as, with a at most a minority of experienced mayors and ex-mayors.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Publish case lists so that everyone know what is and isn't acceptable
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	

Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Formal Tribunal
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	Should be a decision of the whole council, not the Mayor.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	Give more power to councillors instead of allowing mayors to make decisions behind closed doors. Expand GM performance review committees to allow all interested parties to participate.

Submission number	171
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	Change required URGENTLY [redacted]
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	No

Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Yes
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	

Submission number	172
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Felicity
Last Name	Prideaux
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	Whilst I agree with all of the principles, I don't believe that it is explicit enough concerning WHO runs the Council. I note, that on Page 4 of the paper, it states that "Effective local Government comes when Councillors are visibly in control of their Council". However there is no principle that supports that or, from what I can see, any redress when in fact it is the Bureaucracy that is Controlling the Council. There needs to be some inclusion/ consideration of providing an avenue for when the community have concerns about the bureaucrats.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	There is one element that I may have missed, but it is surely the most important ! That is to serve the COMMUNITY and treat not only staff, but members of the community with respect. Point 10 of the Members Code of Conduct refers to the treatment of staff and others working but NOT the community that Councillors were voted in to serve. This, in my opinion is a major oversight and should be rectified immediately
Potential changes to the code of conduct and oath of office	I can see a benefit but as I am dissatisfied and disappointed in the Code of Conduct

Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?	then I think that they both should be thrown out and rewritten.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Yes, it does not include monies, gifts or payments that are for children (private school fees, post school activities etc), that would be paid by "someone" directly to the school of activity coordinator, without the Councillor ever seeing the money. This could also be considered for parents aged care etc - funds could be paid to a provider.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	This is the hardest one to prove and I can offer no additional comments
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	It is simply a NO. They should not in any way shape or form be able to be involved with any developments. This type of activity simply can never ever pass the "pub test" and when community concerns are blatantly ignored because there is an association with a Councillor, this simply causes dissent. A firm no. Should not happen, with the exception of buying or selling a family home. I support the position of the paper
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	I support the establishment of the Local Government Privileges Committee. However I believe there needs to be extremely strict governmance and it should be based on a Community Support model, not a 'protect the Councillors at all costs, old boys model"
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	i think every complaint should be looked at as legitimate - why would someone go to all the trouble to write a complaint. I also believe that it isnt too hard to group compaints,, so whilst the LGPC might want to dismiss a complaint a frivolous, perhaps some research needs to be undertaken to see if similar complaints have been received. This is simply to

	achieve through correct filing, cataloging and electronics storage of complaints.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	The creation of an online registry for mandatory reporting of contacts with Councillors by lobbyists. Failure to report should be classed as a severe breech of code of conduct.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	I do like the framework but found the lack of examples as to what the PIN might be disturbing . Until I see something demonstrable as to what is being considered I am not in a position to determine what is appropriate. I do believe that the PINS should include short (one meting) suspensions and fines of up to $500
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	NO. These a lip service penalties and bear little or minimal pecuniary impost.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	I tried to read through the Act and couldn't seem them itemized so I am not able to comment
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	A Formal tribunal so that there is consistency and also the ability to review and account for decisions
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	I agree with expulsion and the relevant loss of fees. the creation of a public on line Sanctions registry could also hold Councillors to account.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	Definitely no secret meetings The Ability for Community who attend the DA Forums to ask questions of Developers and Council That DA's remain on website until finalized or cancelled . No time limit If a DA is reactivated, that wide community consultation be held as new

	community members may have moved to the area and not be aware that they are impacted. That after a set period of months (say 6) since last public community consultation, a full and complete community process, (including meeting) be held.

Submission number	173
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Merilyn
Last Name	Fairskye
Name of Organisation (If applicable)	
Role/Position:	Artist
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	I think you are missing the situation where a Mayor belonging to a major party and with a majority of Councillors also belonging to that party, where the Mayor holds sway over those councillors due to his/her seniority and party connections, and may use their powers under this proposed change to further shut down debate from independent or minor party councillors and members of the public with whom they do not agree. As a long-term resident in the [redacted] area, I have seen persistent examples of this behaviour, [redacted] from the incumbent [redacted] I have experienced this at first hand when attending Council meetings when local matters of concern are to be addressed. [redacted] Councillors have been silenced on many occasions, [redacted] And I have to declare that in federal elections, I am a Labor volunteer, donor and voter.

Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Declaration of conflicts of interest, no matter how minor. [redacted]. Allegiance to residents' concerns not wider party politics. [redacted] Collegial conduct towards independent and minor party councillors [redacted] Manageable agendas that don't run to over 1000 pages [redacted] Councillors to live in the electorate.,
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Sure.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Seems ok to me.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Looks good to em.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	No, looks pretty comprehensive to me.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	I think so.

Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	It's complicated and not necessarily straightforward. We have a situation in the [redacted] area where its not so much Councillors who are the problem [redacted] makes decisions that impact negatively on long-term residents and bullies residents into not complaining.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	Behave decently towards everyone.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	Don't undertsand this.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	Don't have an opinion.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	Don't know.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Yes
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	No. Our mayor [redacted] already too powerful, and no one is able to stand up to him.

Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	Yes, keep agendas below 1000 pages and invite and facilitate resident input into Council meetings.

Submission number	174
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	David
Last Name	Lewis
Name of Organisation (If applicable)	Nil
Role/Position:	
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	1. The independence to make decisions is currently abused.This paper is not likely to address the current issues, like not replying to correspondence or bullying of ratepayers (not referring to myself, my problems with the current [redacted] Council are of a different nature). Independence assumes equitable behaviour and accountable reporting and knowledge of processes. [redacted]
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	1 Following principles of separation of the executive and adminsitrative. 2. Not creating a system of judgment of peers as this allows for trading of helping each other. 3. Creating a process where groups of councillors with common interests block criticism or ignore genuine issues. 4. Formal training should be essential (and not ignored as at present) given that

	legal issues, such as the difference between hearsay and solid evidence should be known and other basic legal processes should be included.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	The oath should not seek to avoid other community and legal obligations.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Training is critical. In my Council area one councillor has failed to identify a non-pecuniary conflict of interest, and another, long standing, councillor has failed in declaring an interest over a number of years.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	I agree with aligning the pecuniary interest definiton with the requirement of MPs. Judgment on the definition of non-pecuniary interest should be evaluated by an independently appointed ethical arbitrator (sadly, given our local experience).
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	When current applications are being considered by the Council the relevant councillor should be suspended from council until the matter is resolved. As a seperate but related matter development applications relating to Council property should be subject to the same processes as other development applications with an added proviso that an independent arbitratrator should review any such application in order to avoid re-definition of any existing status that results in a significant re-evaluation that might be used in balancing the books.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	No comment
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Appointing an independent complaints person employed seperately from council funds to recommend to the Council and failing that to the OLG advising next steps to be taken in pursuing a complaint (and

	not, as in our council, having even the present complaints office position vacant for many months)
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	No comment
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	I had to laugh, having your peers adjudicate why actions are inappropriate when, in many councils, rulings are made on an inappropriate basis, like political or group affiliation. Bit like making decisions relating to your fellow offenders.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	No comment.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	Existing sanctions should be aligned with similar sanctions relating to similar offences in other legislation.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	By a formal tribunal as when I raised a matter, whilst the advice given was professional, it failed in contentby not referring to other options in the legislation. I felt that the culture of the department was not enabling in circumstances when a different approach should have happened.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	This needs to be treated on a case by case process leding to an updating of the process on a regular basis. This is based on the change over time in the behaviour of protestors.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	I find it extraordinary that changes should be proposed in a way that heaviy impacts on councillors who workharder and longer than any other local government participator, so time consuming that their ability to carry out normal functions is impeded. Putting the pressure on in such a way that the system will implode. And the good councillors are those who stop it

	collapsing while suffering an immense but unpaid workload.

Submission number	175
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Rural
Principles of change **Question: Are we missing anything in the principles of change?**	The guiding principles listed do not include compliance with legislation. Local government is a heavily regulated industry and councillors must have a good understanding of the parameters within which they operate. While compliance may be implied by the guiding principle of 'accountability', it should be explicitly referenced in a councillor framework. Further, councillors have specific responsibilities under various pieces of legislation besides the Local Government Act 1993 and may benefit from defined and explicit guidance on compliance with relevant legislation.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Aligning the oath or affirmation of office with the code of conduct would be a positive move to reinforce the solemnity with which councillors should regard the code of conduct. However, the OLG should ensure it provides advice to

	general managers on how to manage new councillors taking the oath or making the affirmation. If councillors are expected to make an oath or affirmation based on, or aligned with, the code of conduct, they may reasonably be expected to understand the commitment to which they are signing their name. On that basis, advice should be given on attending induction sessions before the first Council meeting after an election.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	The proposed pecuniary and non-pecuniary interest framework would be improved by greater definition of terms used. For example, the Discussion Paper posits that a significant non-pecuniary conflict of interest arises where a councillor participates in a decision and a direct advantage/disadvantage is created for a person or company the councillor is friendly with or associated with. In a small community [redacted] the test of a councillor being 'friendly' with a particular person would preclude most councillors from involvement with most decisions. This would very soon become unworkable.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Broadly, yes.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	The proposal (still in development, according to the Discussion Paper) to address the inherent conflict arising from councillors undertaking real estate and development business activity by requiring councillors to divest themselves from such activity will likely act as a disincentive to run for the office of councillor. Smaller, rural councils already face challenges in attracting candidates and this requirement would further reduce the number of willing candidates.

	[redacted] Council considers the existing conflict of interest framework to be sufficient for councillors to manage the conflicts that arise from their real estate and property dealings.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	[redacted] Council would need to see more information on the structure of a Privileges Committee before supporting the proposal. Appointments to the committee must not be political, nor have the potential to be politicised. Further, the committee must be appropriately resourced to handle a potentially high volume of complaint investigations. The Discussion Paper is somewhat vague on the costs of committees, stating they would be paid for by either individual councillors or their councils, depending on the outcome. Councils are already buckling under ever-increasing cost-shifting, as highlighted in submissions made to the NSW Government inquiries earlier this year. Many will struggle to incorporate yet another new cost imposed by the State Government, be that as a direct cost or increased insurance premiums.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	The proposed definitions of misbehaviour would be enhanced by the inclusion of appendices providing real world examples. While appreciative of the aim to reduce the size of the code of conduct document, behaviour … outside the norms and expectations of a sitting councillor is a very broad definition and, being quite subjective, is unlikely to have the desired effect of minimising the number of complaints received.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework	

Question: What level of PIN is appropriate?	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	[redacted] Council strongly opposes the move to require councillors to stand, where able to do so, when addressing a meeting and when the mayor enters the chamber. A new councillor conduct framework should be focused on moving forward, not looking back to antiquated practices. Where councils have largely moved on from the practice of standing, it has been an organic process over many years. Further, the mayor already holds considerable authority in an environment that has the potential to be inequitable and non-inclusive. Compelling those who are "able to do so" to stand only illustrates certain physical disabilities and does not foster inclusiveness in the organisation or at meetings.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	[redacted] Council strongly opposes the proposal to ban confidential briefing sessions. These sessions are informational and are not decision-making forums. Briefing sessions provide: • assurance that all councillors are receiving the same information in the same manner at the same time,

	• a comfortable place for councillors to receive information and ask any questions necessary to understand the complex issues they decide on, • the capacity for councillors to hear presentations from subject matter experts in depth and outside of a public forum, which is time limited and does not allow for full briefing, and • an opportunity for staff development, where the future leaders of the organisation can develop their skills and build confidence in effectively working with the governing body.

Submission number	176
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Larissa
Last Name	Hackett
Name of Organisation (If applicable)	Cowra Council
Role/Position:	Director - Environmental Services
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Large Rural
Principles of change **Question: Are we missing anything in the principles of change?**	The principles of change itself are well written. Concerns are raised about the removal of closed to the public briefings, however. It is appreciated that briefings need to be chaired well and with a level of transparency, but they are valuable in that they offer opportunity for councillors to ask questions to clarify without fearing that the public will judge them for not knowing in the first place. Removing private briefings could have an adverse effect - either push meetings 'underground', or simply not encourage councillors to speak up if they are not sure.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Respectful language, not personlised, considerate of community opinion
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	No objection is raised to alignment of oath. An aspirational Code of Conduct not defining misbehaviour. Councillors should be encouraged to focus on the 'what to do' rather than on the 'what not to do'

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	The pecuniary interest framework in its current form is considered to be sufficient
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	It is considered that being a developer or real estate agent should preclude you from being a councillor
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Ensuring that each Councillor attend mandatory training and professional development
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	The inescapable expectation of all Councils and Councillors is the betterment and advancement of their communities. First, last and foremost. If the activity being discussed or undertaken is not feeding directly into some broad community benefit, improvement or advancement then why are we spending time on it?
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	No comment
Dispute resolution and penalty framework	Yes. Should there be repeated behavioural infringements or threatening

Are the penalties proposed appropriate, and are there any further penalties that should be considered?	behaviour, then expulsion from the role of an elected official should be a consideration
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	Yes
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	A formal tribunal with independent arbitrators to ensure transparency within the process
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	No
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	No

Submission number	177
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Colin
Last Name	Shephard
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	Freedom of speech is a necessity, and so too is honesty. Councillors who provide remarks that are at dishonest must be called out and required to admit to making dishonest remarks, inform Council of their dishonesty and provide direct admissions and apologies to any/all community members referred to in such dishonest remarks.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	100% honesty, anything less is totally unacceptable
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Very good idea
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	All persons who are real estate agents and/or property developers must be prohibited from being local government councillors. The right to free speech of an individual should not reviewed when that right has serious consequences for other persons who are not privy to the entire interests of RE agents and/or property developers.

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	

Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	

Submission number	178
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	The underpinning approach of philosophy upholding the principles of change should be to ensure all of these principles are enacted from a benefit to the people approach, and if the application of the principles do not have an overarching benefit to the people that the local govt serves, then the principles must be carefully enacted. The wellbeing of council and the people it represents should be the central philosophy.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	I think alignment with parliamentary codes should be put in place. Also, everyone who enters local govt should have a clear history or service to the public in other capacities of at least 10 years, have relevant standing in the community as described by the community at large, and demonstrate an altruistic and genuine care for fair and just political participation. They should have no criminal or other history that demonstrates a lack of good character in any aspect of their life, because this reflects on their behaviours and actions they will undertake as a politician. A background check, and a significant

	character reference should be required (an official with independent standing). And each and every councillor should have training on ethics, appropriate conduct, and standards of behaviour and engagement as expected by community.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Please align them.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	It's appropriate. I believe there should be easy mechanisms of review of the process and adjustments made to ensure this new process is working. Review and evaluation should take place alongside the functional aspect of the new framework.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	This information must be publicly available, as well as each councillor must answer a standardised declaration of conflict of interest in govt participation that may contain areas where a conflict pf interest might arise, and if there is a conflict of interest as defined by the standardised declaration they complete prior to participating in that council activity, then they must follow standard restrictions of participation or withdraw from engaging in that particular action or participation in council matters. Eg: do not have a councillor engage in actions to do with development proposals when they are personal friends with the developer, or when they have any other interest or involvement or association to the development proposal, and that task is handed to an independent/not associated/no conflict councillor.

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	All councillors are cautioned against personal attacks, poor conduct designed to discredit off the topic, and their misconduct excludes them from participation
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	All donations are disclosed to the public during all lobbying and elections. All lobby promises have a planned method of delivery otherwise they are not allowed to be promised as part of a campaign.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	In conjunction, and if a decision cannot be made, councillors are removed from office.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	Remove anyone from meetings who stray from strict conduct codes, or who use their position to abuse others.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in**	Make all processes have a sitting member from the community, via a rotating position, where a community volunteer sits in and contributes their views

councillor deliberations and decision making?	regarding how the decisions made will impact their community.

Submission number	179
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Matthew
Last Name	Meir
Name of Organisation (If applicable)	Byron Shire Council
Role/Position:	Legal Counsel
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Regional Town/City
Principles of change **Question: Are we missing anything in the principles of change?**	Broadly, no. Council's view is that the principles are sound. It notes that some principles intersect – for instance, freedom of speech for both elected representatives and their electors is fundamental to democratic Council leadership and decision making. And it also notes that it wouldn't weight each principle equally. In this context, freedom of speech should be emphasised in an effort to reduce the number of trivial Code of Conduct complaints. By contrast, subsidiarity is less important. In some cases, the proposed changes will result in a move away local decision making – e.g., having a statewide standards committee for Councillors. But in this context, that is a good thing.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Council sees merit in an aspirational code of conduct being brief. It regards the NSW Parliamentary codes as reasonable starting points for a revised Councillor code. In Council's experience, trivial complaints under the Code are generally linked to the 'general conduct' obligations under part three. It notes there isn't an

	equivalent set of obligations under the NSW parliamentary codes. The trade-off for a shortened Councillor code may be that some of the current provisions that reflect NSW local government structures need to be moved to the Local Government Act 1993 or Regulation. For instance, the provisions of part 7 of the Code; regarding the relationship between elected Councillors and Council staff.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Council generally supports the oath of office referring to a reformed Code.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	The framework is appropriate.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	Council has no further suggestions.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Generally, yes.
Potential changes to the definitions and assessment of councillor misbehaviour	On complaint minimisation – beyond a streamlined Code no longer being enforceable, but only aspirational – further consideration should be given to

Question: How else can complaints be minimised?	who can refer a Councillor to the proposed Privileges Committee.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	Professional lobbying isn't a significant feature at Byron Shire Council. However, Council generally thinks the proposed guidelines and policy should be guided by a principle of maximum transparency regarding the work of lobbyists. This principle should support measures such as lobbyist registration and near to real-time disclosure about when lobbyists meet with elected representatives. Council thinks the bigger challenge is to provide increased transparency around amateur lobbying of Councillors where the purpose of that lobbying is to further a person's financial interests.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	This is a matter for the NSW Parliament. However, Council notes that the current highest penalty notice under the LG Regulation is $330 – mostly for carrying out an activity without approval or failing to comply with an order. Interest declaration requirements are fundamental to Councillors performing their role in the public interest. A Councillor's competing interests must be on the public record. Given this, Council's view is that a breach of these provisions will generally be more objectively serious than the above breaches of the LG Act. As a result, Council thinks a penalty notice in the high hundreds and working up from there is a reasonable starting point. Infringements could also potentially be scaled according to how long it took a Councillor to publicly declare any interests.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	A time-limited ban on attending further Council or committee meetings should also be considered as a proposed penalty.
Dispute resolution and penalty framework	Generally, yes.

Question: Are the existing sanctions available under the Local Government Act sufficient?	If the NSW Civil and Administrative Tribunal (NCAT) is given the responsibility for sanctioning Councillors under the LG Act, it should possess a wide power to make orders as it sees fit to remedy the matter before it.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Council appreciates the separation of powers principle that underpins this question. Council regards it as a balancing act. OLG's potential ability to issue PINs for some misconduct is one exception to the general principle that the executive branch can't 'punish' a wrongdoer. It's a common exception, given the ability of various Government executive agencies and bodies – including Local Councils – to issue fines for legislative breaches. Generally, Council supports non-monetary sanctions being within the jurisdiction of a body like NCAT. Though it also acknowledges that this can slow proceedings and increase complexity. Giving the OLG non-monetary sanction powers but with rights of appeal to NCAT may be an alternative. Meanwhile, under the proposed changes where OLG handles conflict of interest issues and the Privileges Committee handles egregious Councillor behaviour, it isn't clear to Council how sanctions for misbehaviour would be regulated. The paper (page 16) mentions a Committee referral to a body like NCAT. However, it isn't clear who the applicant in a cause of action against a Councillor would be.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	The proposed reforms to the Model Code of Meeting Practice would further empower the person holding the position of Mayor or chair. Conferring this power on an individual, who may have been elected either by their peers or by the public, could prove problematic. The suggested check against misuse of this power is a right of review. Assuming reviews would occur sometime after the relevant event, this lag may not

	adequately remedy unjust Council meeting management by a chair. Meanwhile, consideration should be given to whether the right granted by the LG Act to members of the public to attend Council meetings should be further qualified to provide for potential time-limited prohibitions for persistently disorderly members of the public. Currently, the Act only provides for expulsion from the Council meeting in which a person has been disorderly. Lastly, while Council supports the notion of restoring dignity to Council meetings, requiring Councillors to stand when the Mayor enters the room likely won't achieve this. Further, mandating that Councillors stand when they speak will impose costs on Council to retrofit its audio system. This addition to the Code is not supported.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	The proposal to prohibit Councillor "briefings" is not supported. Council acknowledges the details of this proposal are minimal. Its opposition to the proposal as provided is based on the following principles. First, the proposed ban is inconsistent with discussion paper's overall thrust to bring the third tier of government more into line with the other two. This proposal works against that principle. It does this by applying a different rule to Council than to other government tiers. Neither the NSW nor Australian Governments receive every briefing from their respective public services in full public view. Government operations at a State and Federal level would be seriously hampered if they were subject to the discussion paper's proposal. Council appreciates that the Westminster cabinet system doesn't apply at the local government level. Councillors aren't responsible for

	government departments the way State and Federal Ministers are. Despite these differences, the paper acknowledges the broad similarity between the three tiers of government regarding their respective dealings between elected representatives and staff, by exempting the Mayor from the proposed meeting ban. Preventing non-Mayor Councillors from accessing information between formal meetings doesn't reasonably account for the similarity between government tiers. Second, it isn't clear why Councillor-staff exchanges between formal meetings are perceived as riskier to good decision making than Councillor-member of the public dealings between formal meetings. A development application opponent doesn't know if a development proponent has met with a Councillor or Councillors to lobby for a decision between Council meetings. Nor vice versa. There is – rightly – no suggestion these general public "briefings" should be banned. In this context, impartial and timely Council staff advice on a matter can provide a crucial check for Councillors against only hearing from vested interests. This is especially so in a context where NSW Councillors are not full-time office bearers and are generally at more risk than elected representatives in other government tiers of not being across all the formal reports attached to a Council meeting. Third, the proposed prohibition is not a reasonable response to the risk that Councillors will pre-judge a matter due to be determined at a formal meeting because of a prior meeting with Council staff. The information provided to Councillors between formal meetings by Council staff does not result in final decision-making. Rather, the purpose of Councillor-staff

	information sharing between meetings is to assist good ultimate decision making. It does this by refining the real issues relevant to the matter to be determined. In Byron Shire Council's experience, its "Councillor workshops" enhance decision-making, collaboration, and learning. Workshops provide an opportunity for Councillors to gain deeper understanding of upcoming strategic matters in a safe and collaborative space. This is particularly useful for providing input into strategic documents during the drafting phase. Further, Councillor workshops provide opportunities for Councillors to ask questions without risk of unreasonable criticism. On occasion, public meetings threaten Councillor safety. Councillor safety is of the utmost importance. Fourth, the status quo already provides high degrees of transparency regarding Council decision making. Regarding the development application example in the discussion paper, the Council reports to formal meetings are on the public record. Council resolutions are made on the public record. Development applicants have merit appeal rights against planning determinations. Development opponents have judicial review rights where they think Council has unlawfully determined a matter. None of these existing checks would be enhanced by the proposed ban. Fifth, the ban risks causing unintended consequences. For example, if Councillors could only receive information from staff on a matter before them at a formal meeting, Council meetings are likely to increase in time and complexity. This may reduce the desire in members of the public from attending, listening to or engaging with Council meetings; thus reducing transparency.

	A further example is that excluding non-Mayoral Councillors from receiving information between Council meetings risks concentrating power in a Mayor's hands at the expense of other duly elected Councillors by creating an information imbalance across the elected body. This risks increasing division between Councillors. Another potential unintended consequence is reduced information accessibility. The opportunity for Councillors to receive verbal briefings on matters can support their understanding and decision making by providing information to them in an accessible way and meaningful way.

Submission number	180
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Patricia
Last Name	Krzeminski
Name of Organisation (If applicable)	Hawkesbury City Council
Role/Position:	Manager Governance and Risk
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Metropolitan Fringe
Principles of change **Question: Are we missing anything in the principles of change?**	Council supports the principles of change.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	General Comments: Council would support the introduction of an aspirational Conduct Commitment that frames a positive approach to expected Councillor behaviour and conduct. It would be recommended that a Code of Conduct Commitment form part of the current Code of Conduct, to ensure that clear and definitive aspirations and the description behaviours can be found in one place. Specific Comments to 3.1.: Council sees the key elements of an aspirational Code of Conduct as providing the fundamental benchmark of Councillor behaviour. Council would suggest the inclusion of a Commitment within the Code of Conduct, to align Council's commitment to professional conduct and the Oath / Affirmation of Office.
Potential changes to the code of conduct and oath of office	Council supports the alignment of the Oath of Office with the Code of Conduct. This approach embeds the fundamental benchmark of positive behaviour into a

Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?	public declaration made by the elected Councillor. It would also provide early understanding of the expected behaviour fundamentals to prospective candidates prior to nomination, and election to Council.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	General Comments: Council would support clear definitions of the expectations on Councillors to disclose conflicts of interest and clear definitions of misbehaviour in the Local Government Act, referencing regulations and other statutory instruments for further explanation as appropriate. Specific Comments to 4.1.: Council acknowledges the current requirement for Councillors to disclose pecuniary interests in returns individually and any relative as defined in the Code of Conduct. Council acknowledges the inconsistency within Part 4 of the Code of Conduct that requires the disclosure of pecuniary interests, including the interests of a relative, and the requirement to disclose matters in written returns. Council would seek clarification of this point and whether annual disclosures would need to include those interests that a relative of the Councillor or designated person has as defined under Clause 4.4 of the Model Code. Council supports the provision of investigative powers to the Office of Local Government to investigate and request information on corporate structures to determine any underlying beneficial ownership and interests. Council supports the introduction of clearly defined consequences in the event of non-disclosures and the effect any non-disclosure may have on a decision before the Council.
Potential changes to the definitions and assessment of councillor misbehaviour	Council agrees with the principles of what constitutes a significant or major non-pecuniary interest.

Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?	Council would suggest further emphasis be placed on the requirement for the Councillor to identify, declare and appropriately and transparently manage any conflict. Council would seek clearly defined consequences in the event of non-disclosure and the effect any non-disclosure may have on a decision before Council.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	Council supports legislation that would provide clear expectations on property developers / real estate agents and the relationship with Local Government, and obligations should they chose to become a Councillor.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Council would support the proposed thresholds as outlined in the OLG Discussion Paper, including the threshold to face a Privileges Committee. Council acknowledges that there is the risk that the poor behaviour of a few Councillors has the potential to lose public confidence in the whole of the governing body. Council would support the introduction of measures to rehabilitate Councillor misbehaviour as well as sanctions if behaviour does not improve.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Council would support additional frameworks that allow the General Manager to dismiss trivial and/or unwarranted complaints (as is currently in the Code), to reduce the number of complaints referred to the relevant Committee or Tribunal.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	Council supports the introduction of lobbying guidelines and a model lobbying policy, and makes the following recommendations for inclusion: 1. Clear definition of lobbying and what is a lobbyist. 2. How a Councillor should report lobbying interactions.

	3. The requirement for a register of lobbyists.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	General Comments: Council supports the abolishment of the two-step process of referring Code of Conduct complaints regarding conflict of interest matters directly to the Office of Local Government. The only avenue for Council to repeal a decision where a Councillor has not declared a significant / pecuniary interest is by way of a motion to rescind or alter the decision. Council would suggest the framework be reviewed to manage up front instances where decisions of this kind are made. Council would further support the introduction of a warning system for complaints regarding misbehaviour for Councillors to correct the behaviour before being referred to the Local Government Privileges Committee. Council would not support the appointment of current Mayors and/or Councillors to a Local Government Privileges Committee, noting the potential for conflicts arising from relationships between sitting Mayors and Councillors. Council would seek further information regarding the role, structure, management and outcomes of a Local Government Privileges Committee to be communicated to the Council and the community to uphold transparency and community confidence. Specific Comments to 5.1.: Council would recommend a percentage of the annual remuneration of a Councillor, scaled and equitable across all NSW councils. E.g. 5% of annual remuneration, or one month's remuneration.
Dispute resolution and penalty framework	Council supports the proposed penalties as outlined in the OLG Discussion Paper.

Are the penalties proposed appropriate, and are there any further penalties that should be considered?	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	Council supports the existing levels available under the Local Government Act.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Council would support the establishment of a tribunal to determine sanctions.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	General Comments: Council generally supports the proposed reforms to the Model Code of Meeting Practice as outlined in the OLG Discussion Paper. Council would express concern in providing additional powers to the Mayor to sanction and/or impose penalties on other Councillors, due to the potential for political conflict or bias. Specific Comments to 6.1.: Council would support the following amendments to the Model Code of Meeting Practice: 1. Clauses that strengthen the requirement to manage Points of Order. 2. Clauses that require Points of Order that have been upheld by the Chair, to be included in the minutes of the meeting. 3. Mandatory clauses that limit Council Meetings to continue past midnight.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	Council does not support the banning of briefing sessions. Council supports the ability for briefing sessions and workshops to be held between Councillors and staff. These are invaluable tools to allow informal discussion between the collective governing body and staff. However, Council would support the development

	of a more structured framework to facilitate informal discussions between the governing body and staff.

Submission number	181
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	Self Employed
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	*Expected behaviour needs to be described, modelled and enforced.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	* The modelling of it on its equivalent in NSW Parliament, is a key element that should be enshrined.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	* I support the proposed alignment.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	* Income is usually cited with reference to a period of time, ie $500 PER MONTH etc.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	* The feature of "exemptions" (point 4) undermines confidence in this reform, and should be withdrawn.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	* On the condition that the Privileges Committee members are physically and socially sufficiently distanced from the Councilor in question.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	* By requiring or incentivising the Privileges Committee to undertake their own review of Councilors' behaviour, either systematically or randomly.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	* The industry for which the lobbyist represents should be a key feature.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	* The OLG should have liberty to decide apon and vary this as their capacity varies over time.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	* Further penalties may include a monetary fine.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	Unsure
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	A formal tribunal is preferable.

Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	Yes, the power to limit the duration of speaking, number of opportunities to speak and overall time allocated to any one Councilor needs to be controllable to discretion of Mayor.
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	Yes, all council briefings, workshops and meetings should be live-streamed via internet. This is becoming 'standard practice' in today's world and must be legislated (along with Hansard) to uphold confidence in the minds of contemporary society.

Submission number	182
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	I don't know.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Councillors should conduct themselves in a civil manner towards other Councillors, Council staff, businesses, community organisations and members of the community at all times. Civil manner includes tone and pitch of voice, not being dismissive, disparaging, disrespectful, or denigrating in speech, writing or on social media and not "targetting or singling out" people or organisations.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	It would seem to be a good idea.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Yes. (From my limited knowledge of such things.)
Potential changes to the definitions and assessment of councillor misbehaviour	Yes. (From my limited knowledge of such things.)

Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	I didn't really understand this section. I noted that it is not legally possible to ban real estate agents and property developers from being Councillors. Instead the proposal is that they divest themselves from such activities. Are you saying that they will not be permitted to act as real estate agents or property developers while holding the office of Councillor? If so, I agree with the proposal as it would presumably in effect stop real estate agents and property developers from being Councillors. I don't have any other specific features to add.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	It sounded fine to me.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	I don't know but they definitely need to be minimised. I'm relatively new to watching Council meetings but I can see that complaints or the threat of them is used to stifle free discussion. And tactics are used to prevent free discussion. For example, I have only recently learned that only one Councillor can speak FOR a motion and if no Councillor speaks AGAINST the motion, the motion has to be PUT and other Councillors who might wish to speak FOR are not allowed to. This inhibits a full discussion of issues. The public wants to see full discussion, what every Councillor wants to say FOR or AGAINST - I think that this is very important in a democracy and for the public to feel that the matter has been dealt with fairly and transparently.
Potential changes to the definitions and assessment of councillor misbehaviour	I don't know.

Question: What key features should be included in lobbying guidelines and a model policy?	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	I don't know.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	They seemed OK to me.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	Definitely not. The system needs to change.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Definitely by a formal tribunal with independent arbitrators and hearing structure. I like the idea of a panel of former Mayors and Deputy Mayors. General Managers should be taken completely out of the system.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	I can't think of any. From what I have witnessed, Mayors have difficulty dealing with "inappropriate" behaviour by Councillors in meetings. Once something is said it's out there in the public domain and can't be taken back even if the Councillor retracts it or apologises. I have witnessed personal attacks/slanging which has then euphemistically been called "robust debate". I've also witnessed Mayoral and Deputy Mayoral pre-election statements/speeches where the candidate draws attention to the inadequacies of other candidates instead of focusing on the reasons that they themselves should be elected as Mayor or Deputy Mayor.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	Change the system so that all Councillors are able to speak in Council meetings regarding a motion without having to say they are FOR or AGAINST. That way, every Councillor can hear what every other Councillor has to say and come to a more

	informed opinion. The public can also hear what every Councillor has to say. Hearing what every Councillor has to say and how they say it is also very useful deciding whom to vote for when election time comes around. I completely agree with banning briefing sessions that are not open to everyone in the community to attend, watch online or watch a recording.

Submission number	183
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	Principles of change When a council such as Lismore, is political in nature then it provides a disservice to the community. Currently there is a voting block which controls the council that has already endorsed the decision to change times of the council meeting from 6pm to 10am thereby preventing the local working community from attending. I feel it necessary to point out that absolute power corrupts absolutely and as far as this recent change in council is concerned it will be interesting to see how the next few years pans out. Especially for the people impacted the most in North and south lismore.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	To be apolitical Community minded and meeting addressing community leaders and their supporters Enshrine a citizens assembly Declaring all conflict of interests
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Roll on

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	Yes. Developers should not be allowed to run in council.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	

Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	

Submission number	184
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	Member of the Public
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	N/A
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	N/A
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	N/a
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	N/A
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	N/A

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	N/A
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	N/A
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Complaints could be minimised if there was open government
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	N/A
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	N/A
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	N/A
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	N/A
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	N/A
Restoring dignity to council meetings	N/A

Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	If your Aim is to open government then all breefing sessions ,workshops call them what you like should be either banned or open to the public At present our council has workshops that are closed and everything is kept secret with all debates and decisions are made here. Council meetings are a mere formality We are not allowed to know the elected representatives' view is or how they vote on anything. While it is being run like this there can be no community input. There is no use trying to run for council elections as you can't run a campaign because we don't know how our elected are representing us No use talking to our elected representatives because we arnt allowed to see how they represent us  I have raised this with the General manager and his attitude is we are allowed to do it. This attitude doesn't lead to open government.

Submission number	185
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	Not that I can see.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	No comment
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	No comment
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	I see a distinct conflict - The discussion paper says - " Significant non-pecuniary conflicts of interests (for example where a councillor participates in a decision and a direct advantage/disadvantage is created for a person or company the councillor is friendly with or associated with), " Then the Local Government Act, Sect 374 (d), still allows the Council resolution to 'stand' and not be challenged, even though a Councillor may have substantial 'aided' a mate (done a favour for a developer mate), and voted a certain way when they should have declared a non-

	pecuniary significant interest and left the room and taken no part in the debate or vote on a council resolution.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	No
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Heavier penalties for Councillors found to be in breach of the Code of Conduct. If found guilty of a code of conduct complaint, they should be publicly named and the offence made public. Name and shame, as the saying goes.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	No comment
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	No comment
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	No comment
Dispute resolution and penalty framework	No comment

Question: Are the existing sanctions available under the Local Government Act sufficient?	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	No comment
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	No comment
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	Totally support the suggestion of banning briefing sessions. In my opinion, closed briefing sessions between Councillors and staff (and at times with the Developer) have been abused by the Local Council in my area. Councillors have stated that these 'briefing sessions' are needed 'to get their heads around complex issues', however when a matter goes to a full Council meeting it seems very orchestrated, with the outcome of a decision being pre-determined at a prior briefing session. If briefing sessions are to be still allowed, they should be open to members of the public (ratepayers) so full transparency can occur.

Submission number	186
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	[redacted]
Role/Position:	[redacted]
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	A new Framework for Councillor conduct and meeting practices is proposed because the current system is broken, is not fit for purpose and has undermined confidence in local government. Quotes in the Media Release Thursday 5 September 2024 include: "The NSW Government is proposing reforms to overhaul the broken Code of Conduct system for elected councillors, which is generating thousands of trivial complaints making it almost impossible to act swiftly and fairly on matters of genuine concern" "The current code of conduct framework is overly complex, distracts from robust democratic debate and is being increasingly weaponised for political reasons" "The current councillor code of conduct system is fundamentally broken. "It is too open to weaponisation, with tit-for-tat complaints diverting critical council resources and ratepayer money from the things that matter most to communities" "For far too long the system has been abused. It's time to restore public

	confidence in councils and ensure the dignity of this vital third tier of government is upheld” I was elected as a Local Government Councillor. What should have been an honour and a privilege, a time to serve as a leader of my community, was not the experience I imagined it would be. I am not alone in thinking this. The more I talked to colleagues, particularly women, the more I heard the stories of bullying, intimidation, of sexism, hidden or glossed over as “robust discussion” “that’s politics” or “it’s a numbers game.” I have worked in corporate environments, some very male orientated industries for over 30 years, but this was the most toxic environment, yet was supposed to a cornerstone of leadership, government and democracy. And because I thought it was the right thing to do, I called out the bullying, the underhand deals, the meetings that happened behind closed doors, that not all Councillors were aware of, or invited to. Weaknesses of the current framework that are identified in the report. Being told what could and couldn’t be said on camera, what questions could or couldn’t be asked. The budgets and financials that were not presented to Councillors, were late or didn’t add up. And for that I was targeted. I was subjected to bullying, harassment and intimidation. I also witnessed the bullying, harassment and intimidation of staff, fellow Councillors, committee members and community members. People who stood up to the bullies, were bullied, belittled and humiliated too. Others saw the behaviours, and did nothing, because if they did, they would have a target on their back. It didn’t matter if the allegations were made up, the accusations falsified. Because truth was not part of the process. Nor was duty of care or procedural fairness. The culture is so

	ingrained, it has been normalised. And is reinforced in the recruitment process, in appointments to what should be independent bodies like ARIC, consultants, contractors, private investigators and regulators. Reading the report, the most common words I see repeated are weaponised Codes of Conduct, weaponisation of the complaints process, vexatious and frivolous complaints, trivial complaints, misbehaviour, governance problems, community leaders and broken system. We need to rebuild integrity, transparency and support into Local Government. Not just as words rolled out at election time, but as part of the fabric of the industry, starting with this review of the Code of Conduct framework. I was hopeful, in reading that a review was on foot, that some of the issues would be addressed. And in reading the report, some of the issues have been identified. But I feel that the solutions proposed, whilst a step in the right direction, will not resolve the issues. The key reforms outlined in the discussion paper, are not enough. We need a brave solution. But we need further thought. Better pathways put forward for addressing poor Councillor behaviour. Democracy depends on it. I will show why I say this with reference to two local government reports - the ALGWA survey report into Bullying Harassment & Intimidation in NSW Local Government released in January 2024 and the Candidate and Councillor Diversity Report issued by OLG in April 2024. 1. Survey Report Bullying Harassment & Intimidation in NSW Local Government Issued by ALGWA, Australian Local Government Women's Association NSW Branch, January 2024

	2. Candidate and Councillor Diversity Report 2021/22 Issued by the Office of Local Government NSW, April 2024 Local Government is the tier of Government closest to the people. A sentiment echoed by the Minister and the President of LGNSW. Page 4 of this report states “Strong and thriving communities need effective local government. No other level of government is as close to the issues and people”. And In an article by City Hub President of LGNSW Councillor Darriea Turley was quoted as saying “Councils are the closest level of government to their communities, so to ensure everyone has a voice it is important that they reflect the communities they represent” “LGNSW is the voice of local government in NSW, working with councils to support, promote and improve communities” A survey conducted by the Australian Local Government Women’s Association (ALGWA) on the bullying and harassment of women councillors in local government has revealed ongoing issues of inequity. The results, released at ALGWA’s March conference, found that overwhelmingly women councillors experienced mental and physical health impacts due to harassment and bullying they faced in the workplace. As we face a crisis of family and domestic violence in Australia, let Local Government be a leader in the community, as the tier of Government, to bravely deal with the issue of Bullying in their ranks. And we state the attributes of Local government is the tier of Government closest to the people. A sentiment echoed by the Minister and the President of LGNSW, why are such TOXIC behaviours, tolerated?

	What example is that to those people, those communities, in addressing an issue that is a crisis levels in our communities, in our society? If we are talking about aspirational Codes of Conduct, I think we have found a worthy end goal. Actions and Behaviours Let's start by looking at the statistics presented in this report: Office of Local Government (OLG) has shown there has been 4289 complaints over the last 3 years (2020/21 to 2022/23) through the code of conduct process. Overall: • 420 were referred for preliminary enquiries and then discontinued • 136 were investigated as potential pecuniary interest matters • 102 were investigated as potential misconduct (not pecuniary interest) • 36 related to public interest disclosures, and • 2 related to political donations But of these thousands of complaints, in the years since 2020/21 OLG has: • taken action against 14 councillors by way of a suspension or reprimand • referred 4 councillors to NCAT for misconduct, and • disqualified and dismissed one councillor on the basis of ICAC recommendations Scale of the problem There were 4289 Complaints over the 3 years 2020/21 to 2022/23 There are 1255 Councillor positions in NSW So, if my maths is correct there were more than 3 complaints for every Councillor position in the period Consequences of the problem Action by way of a suspension or reprimand was taken against 14 councillors in 4289 complaints = 0.003% 4 councillors in 4289 complaints were referred to NCAT for misconduct = 0.0009%

	1 Councillor in 4289 complaints was disqualified and dismissed on ICAC recommendations = 0.0002% Or let us reframe that to better understand the consequences … Of 4289 Complaints, NO ACTION was taken by way of a suspension or reprimand in 4275 complaints. NO ACTION was taken by NCAT In 4285 complaints and In 4288 cases, the Councillor was not dismissed or disqualified on ICAC recommendations Experience of Councillors 43.2% of elected councillors had no previous experience And there are no formal or required qualifications to be a Councillor And yet we ask people to be elected and represent their communities, be the leaders of their communities with no support – A Councillor is not an employee A Councillor is not covered by Fair Work Laws A Councillor is not represented by Safe Work NSW A Councillor is not represented by a Union A Councillor Is not covered by an Employee Assistance Program (EAP) A Code of Conduct is confidential, so the Councillor cannot talk to support people A Code of Conduct is confidential, so the Councillor cannot disclose to colleagues or peers A Code of Conduct is confidential, so cannot disclose to Council staff A Code of Conduct is confidential, so cannot disclose to their community And can only seek support and assistance with a lawyer under privilege even if the Code of Conduct is unsubstantiated BUT

	? The General Manager or Mayor decides if the Councillors request for legal expenses is put to a meeting, ? a Councillor is left to fund an investigation, upfront, on a Councillors allowance, ? with no guarantee of reimbursement, even if the complaint is unsubstantiated, ? which can only occur after the investigation, ? Professional indemnity insurance applications are channelled through the council staff Overlay the requirement if being a Councillor, the responsibility taken, the support given to who the Diversity statistics identify as a "The typical councillor" Profile of a Councillor The typical 2021 councillor is an English-speaking male aged 60-69 years with a professional occupation, who did not identify as an Aboriginal or Torres Strait Islander person or as having a disability, and who has had previous experience as a NSW councillor. Participation and Diversity of Councillors Local Government NSW (LGNSW) President Darriea Turley announced in 2021 that women now make up 39.5 per cent of all councillors in NSW. In 2021 1,622 females stood as candidates - the highest number and percentage of female candidates and councillors on record (42.1 per cent of all candidates) and 490 of these were elected to council, making 39% of elected representatives in NSW female. In 2016/17 women made up 31.2 per cent of all councillors in NSW – an increase of 8.5 per cent on the proportion of women elected from 2016/17 to 2021(Page 7 Candidate and Councillor Diversity Report 2021/22) Mayor as the Figurehead of authority in Democracy

	"A council chamber is a chamber of democracy, and the mayor as figurehead represents the authority of that council" Page 17 Councillor conduct and meeting practices The Typical Mayor The Candidate and Councillor Diversity Report 2021/22 shows us that 72.2% of Mayors in 2017 and 72.6% of Mayors in 2021 were Male. Demographics state that the majority of mayors 61.3% are aged between 50 and 69, with 60–69-year-olds making up the largest demographic at 37.1 per cent. There are 2 mayors aged between 25 and 29. One mayor is an Aboriginal person. 6 mayors have a first language learned other than English. Women make up 39.5 per cent of all councillors in NSW but the leaders of the Council, the Mayors are 72.6% majority Male. Cross Referencing We have the opportunity in this review to look at the way the system is, and how it is working, yet we seem to have blinkers on, missing an opportunity. Remember the statistics from page 4 of the Framework review 420 complaints were referred for preliminary enquiry than discontinued, 102 potential misconduct cases were investigated, but action was only taken against 14 councillors from 4289 complaints over the 3-year period. Only 4 Councillors were referred to NCAT for misconduct. And the ALGWA Survey tells us, • 61% of women in local government have been subjected to bullying, and 61% have witnessed that Bullying • 49% have been subjected to harassment and 49% witnessed that harassment • 59% have been the subject of intimidation and 48% have witnessed that behavior

	• 44% of participants do not feel comfortable to lodge a complaint about Bullying harassment and intimidation • 35% of participants do not feel comfortable to lodge a complaint about Bullying and be supported by their Council • 45% of respondents have experienced or witnessed bullying, harassment or intimidation when voicing preferences for training, committee selections and or conferences • 55% of respondents experiencing bullying, harassment during the election process. • 42% of participants said they wouldn't recommend entering a career in local government as a result of the harassment they faced • 26% of respondents said they would not stand for re-election • 26% reported concerns that the Code of Conduct is not adhered to. The framework review acknowledges the system is broken, but these figures suggest it is not Fit for purpose. ? "A council chamber is a chamber of democracy, and the mayor as figurehead represents the authority of that council" Page 17 Councillor conduct and meeting practices ? "To restore the prestige and dignity of the council chamber reforms to the meeting code of practice are being developed to support the mayor in exercising their statutory responsibility to preside at meetings and to ensure meetings are conducted in an orderly and dignified manner " The report then, goes on to say, "Unfortunately, many council meetings are conducted without the appropriate level of dignity or reverence for tradition that suggests the importance of the debate and the need for civility. Councillors are not expected to agree with each other, in fact debate is

	encouraged, but the debate should be fair and respectful. A council meeting, and the council chamber itself, should see meetings conducted with dignity. Unfortunately, there are too many examples where the dignity of council meetings has been lost, either because councillors are not appropriately reverential and respectful, or the manner of debate is lowered by inappropriate chamber design or meeting practices" Page 17 Councillor conduct and meeting practices." Overlay the key reforms proposed in this review with the findings of the Survey Report Bullying Harassment & Intimidation in NSW Local Government Issued by ALGWA, Australian Local Government Women's Association NSW Branch, January 2024. The ALGWA report clearly shows the solutions put forward are not going to resolve the issues prevalent, the issues that need to be addressed in the local government industry. Actually, it seems to me, that we have a complete blind spot, on what the issues are. Q22. Have you been the subject of or witnessed bullying, harassment and intimidation? 61% of respondents said they had been the subject of Bullying and a further 61% admitted they had witnessed Bullying. 49% have been subjected to harassment, and 49% witnessed that harassment, 59% have been the subject of intimidation and 48% have witnessed that behavior. 44% have not reported the incidences of bullying, intimidation and harassment BUT most shocking is that Page 43 of the report states 61% of incidents involved another Councillor This report suggests improving the system by establishing Mayor led Local Government Privileges Committees. We are suggesting the solution is to put

	power into the hands of Mayors and ex Mayors in a Local Government Privileges Committee and self-regulation by your peers Self-regulation in the Police Force and the legal system, has not weeded out bad behaviour. The Jenkins report and the Broderick reports have identified the issues in Parliamentary cultures. Also, from the ALGWA survey report, 100% of Councillors have read and understood the Code of Conduct (Q39) 96% feel all councillors should have to attend a compulsory training session on the Code of Conduct (Q40) and 80% are aware of how to report issues (Q41) but they don't … And that is the critical question we need to understand …
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Local Government is the tier of Government closest to the people. A sentiment echoed by the Minister and the President of LGNSW. Page 4 of this report states "Strong and thriving communities need effective local government. No other level of government is as close to the issues and people". In an article by City Hub President of LGNSW Councillor Darriea Turley was quoted as saying "Councils are the closest level of government to their communities, so to ensure everyone has a voice it is important that they reflect the communities they represent" "LGNSW is the voice of local government in NSW, working with councils to support, promote and improve communities" A survey conducted by the Australian Local Government Women's Association (ALGWA) on the bullying and harassment of women councillors in local government has revealed ongoing issues of inequity. The results, released at ALGWA's March conference, found that overwhelmingly women councillors experienced mental

	and physical health impacts due to harassment and bullying they faced in the workplace. As we face a crisis of family and domestic violence in Australia, let Local Government be a leader in the community, as the tier of Government, to bravely deal with the issue of Bullying in their ranks. And we state the attributes of Local government is the tier of Government closest to the people. A sentiment echoed by the Minister and the President of LGNSW, why are such TOXIC behaviours, tolerated? What example is that to those people, those communities, in addressing an issue that is a crisis levels in our communities, in our society? If we are talking about aspirational Codes of Conduct, I think we have found a worthy end goal.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	If we want a streamlined Code of Conduct and clear and succinct behavioural expectations, we should also streamline and make clear the roles of and supports for Councillors. Why is it that a Councillor from a larger Metro Council is provided with or entitled to allowances and supports such as travel or phone or printing, support from Council staff, office facilities. Is provided training and encouraged to attend conferences and events. Another Councillor from a regional or rural Council is not provided any administration support, is discouraged from participating in industry events. Or even in my lived experience, 2 Councils 30 minutes apart, where one group of Councillors is encouraged and nurtured by a supportive Mayor, compared to the next Council where the General Manager disallows Councillors from attending or being reimbursed to attend meetings, committees or engaging with the community.

	Particularly with the statistics presented by the ALGWA survey on bullying in the sector, you will need to be addressing issues to attract community minded, dedicated people to volunteer their time to aspirational, civic leadership roles.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	I have no issues with declaring pecuniary interests. If however, these are published in business papers which are readily available on the Council website, there is an issue of personal privacy, individual rights and cyber security risk, particularly for someone who has experienced and domestic violence including financial abuse, who might not wish this information to be publicly available. We are required to be mindful of corporate information, so much so, that I am unable to read Council emails on my home computer or send a Council email to my personal email address, but my home address, all my financial details, my employer, income, family, property, debts, professional and business associations are published online. Privacy is sacrificed to regulate against the possibility of corruption, when most Councilors do the right thing. I am not sure of the answer, but from my perspective, as an individual, this public sharing of all my personal information was a huge decision in standing for election? Not because I have anything to hide, but because of FDV, was my safety and security, was my children's safety, or anonymity important, cyber security risk, or did I have to give that up, to be a local government representative? Should that be a choice I have to make? Is there a better way, particularly if we want people to stand for local government?
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a**	I feel that there needs to be more review of what is in closed council business papers, as this is a way to hide information from the public. Also, I find a way to hide information from Councillors is to use "late reports" and

significant or major non-pecuniary interest?	the "ambush approach" to publish a huge amount of information such as policy reviews or reports in a business paper in one month, or so there is not enough time given to adequately discuss the proposal/report, or time to make changes or adjustments before statutory deadlines to adopt. It also prevents adequate discussion that might allow other Councillors to ask appropriate questions or uncover if there is a conflict of interest or pecuniary interest. In our Council the Mayor simply moved anything he did noy want the community to know about to closed Council, and then Councillors were prevented from discussing the matter under confidentiality clauses. “An interested and informed observer should be confident a decision made by a councillor is free from bias or a reasonable apprehension of bias.” Page 10 Councillor conduct and meeting practices. Yet no mechanism, no pathways given for this to occur.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	One of the key reforms this report suggests improving the system is by establishing Mayor led Local Government Privileges Committees. But what would be the threshold? A threshold would traditionally be a dollar figure, but that would not apply to a misbehaviour matter. Could a threshold be the times you annoy the Mayor, or the number of other Councils that don't like you. That just doesn't seem fair or right. So instead let's look at the concept of a privileges committee first.

	Overlay the key reforms proposed in this review with the findings of the Survey Report Bullying Harassment & Intimidation in NSW Local Government Issued by ALGWA, Australian Local Government Women's Association NSW Branch, January 2024. BUT most shocking is that 61% of incidents involved another Councillor. For those who like to go back to the data here is a summary of questions …. Of the 139 participants in the survey, - Q22. Have you been the subject of or witnessed bullying, harassment and intimidation? 61% of respondents said they had been the subject of Bullying and a further 61% admitted they had witnessed Bullying. 49% have been subjected to harassment, and 49% witnessed that harassment, 59% have been the subject of intimidation and 48% have witnessed that behaviour. - Q23. If you have experienced or witnessed bullying, harassment or intimidation in your role as councillor, did you report it? 44% of participants do not feel comfortable to lodge a complaint about Bullying harassment and intimidation. If the behaviours were reported, they reported to, in Q24 - Q24. Who did you report this behaviour to? GM/CEO 68%, Mayor 43.5%, Fellow Councillor 40%, LGNSW 25% - Q21. Do you feel comfortable to lodge a complaint if you would not be supported by your council? 35% of participants do not feel comfortable to lodge a complaint about Bullying and be supported by their Council but more concerning is the key findings that 1. 21% of respondents feel the GM / CEO is a roadblock in progressing complaints

	2. There is a lack of action from OLG on complaints which are lodged 3. There is a concern about repercussions following lodgment of a complaint 4. Complaints are not taken seriously or actioned at Council level and 5. Councillors indicate it is difficult to lodge a complaint when it concerns the CEO/GM and/or Mayor Q16. Have you experienced or witnessed bullying, harassment or intimidation when you have voiced your preferences for training, committee selections and/or conference interests? 45% of respondents have experienced or witnessed bullying, harassment or intimidation when voicing preferences for training, committee selections and or conferences Q6. 35% of respondents said they were not supported in their first term as an elected councillor, by fellow councillors, and senior council staff members. Those who did not feel supported reported the following common areas of concern: 1. Feeling ostracised and excluded; 2. There was a lack of guidance by re-elected councillors and senior staff; and 3. Difficulties experienced when a councillor feels a lack of support or bullying from the Mayor and/or General Manager. Q7. 62% of respondents believe information/details was neglected in their induction. The number 1 area for more support was in handling bullying, harassment, slander, confrontation and physical intimidation. Q11. 78% of respondents believe it should be mandatory for all councils in NSW to video record, as well as audio record, Council and Committee meetings as a useful tool for deterring poor behaviour in meetings.

	Q19. If you would not recommend another woman running for council, please outline why? There is a lack of confidence the matter would be actioned – either by the Council or OLG, because of concerns about repercussions for lodging a complaint, or because the matter concerned the General Manager /CEO or the Mayor This report suggests improving the system by establishing Mayoral led Local Government Privileges Committees and self-regulation by your peers. Also from the ALGWA report, Q39. I have read and understood my council's Code of Conduct? 100% of Councillors have read and understood theCode of Conduct (Q39) 96% feel all councillors should have to attend a compulsory training session on the Code of Conduct (Q40) and Extracts from Page 13 of the Councillor conduct and meeting practices: • "the determination of whether the misbehaviour occurred would be undertaken by the peers of the councillor" • "This would involve the formation of an 'Local Government Privileges Committee' (Privileges Committee) of senior and experienced mayors and ex-mayors from across NSW to meet and assess the complaints made against councillors." • "The Privileges Committee would be supported by OLG, but decisions would be made by the mayors or ex-mayors on the Privileges Committee" Page 15 Councillor conduct and meeting practices • "aim to provide a speedy process for resolution and assessment of behavioural complaints against councillors." • "It also allows for the sector to better govern itself".

	? “The Privileges Committee would only examine issues of misbehaviour, not conflicts of interest.” ? “The Privileges Committee would be made up by a group of experienced mayors and ex-mayors from across NSW to ensure that a variety of perspectives and experiences are considered” ? “delegated the power by the Privileges Committee to dismiss matters that are vexatious, trivial, where the Privileges Committee lacks jurisdiction, or where there is an alternative remedy available.” ? “The Privileges Committee process would be paid for by either individual councillors or their councils, dependent on the outcome” I was going to post some of the comments about the power imbalances, the realities of misconduct in the chamber, in a Council, be it from, Mayors, CEOS and other councillors. I went to copy comments from the ALGWA report into my submission here, but realised there are just too many. When you think that popular elected Mayors are popularly elected by their peers, because they have the numbers, because they have the support of their peers, what you are also saying is, let the power imbalance be part of the process, and those with the numbers, who have served for longer, who know the way the game works, be the judge of misconduct allegations. If a Councillor wants to report that there might be something not quite right, that voice might just be lost by those with more “privilege” on the “privileges committee” Reading the comments, I would suggest a lot of the failure of the system is in the inequality. Given the diversity of Councillors and the characteristics of who are Mayors, from the OLG own Diversity reports, would the Privileges Committee “ensure that a

	variety of perspectives and experiences are considered" as it is proposed to do? Further given the statistics presented in the ALWGA survey with the alarming numbers of bullying experienced by and witnessed by female Councillors, the failure to report bullying, harassment and intimidation, that occurs during the election period, in Council, in committees, in access to training and education, in opportunities to events, and in the decision to stand for election or the decision not to stand for re-election because the issue is ignored, how can this be considered as a key recommendation for reform? As we use the saying in DFV "not all men" and we know there are some wonderful former Mayors, who are fantastic, dedicated individuals, who have served their communities well, and do an amazing job. But as we have identified, the system is broken, has been weaponised, and there is no pathway to bring to account a Mayor who is not performing well, who has lost the confidence of their Councillors, the staff or the community. How can we put this forward as the best solution to rebuild integrity into Local Government? When people in the system are telling us, it isn't working, and the numbers are alarming. Councillor Raphaela Pandolfini told City Hub "I do think that things go unchecked. I've specifically spoken to lots of younger women councillors from different states who won't be running again, because of the experience that they've had" She went on to note that because local governments rarely participate in public surveys like the ALGWA one, they are often excluded from the gender parity conversation and remain the least equitable tier of government. Then I also look at Q17 and Q18 of the ALGWA Survey,

	74% of Councillors are aware of the litigation risks associated with being a serving councillor. And 91% agree with a legal /financial support/ reimbursement for Councillors to cover legal fees. But this is not a part of the reform as quoted on page 15 Councillor conduct and meeting practices “The Privileges Committee process would be paid for by either individual councillors or their councils, dependent on the outcome” So Councillors are still liable to pay for frivolous and vexatious claims, unsubstantiated allegations and accusations. And further, a key reform is to Banning private councillor briefing sessions, except in very limited circumstances but the reforms are still permitting Mayor to have private conversations with the general manager that other Councillors are not privy too. “As the leader of the organisation, the mayor needs to have candid conversations with the general manager outside of formal meetings” Page 17 Councillor conduct and meeting practices. This seems to revert back to a double standard.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	I do agree with the proposals on page 14 to • “This has the benefit of removing general managers from being central to the complaint process.” • “Under the proposed approach, there would be no role for privately hired investigators to determine whether the Code of Conduct has been breached.” • “The approach also removes the existing ‘two step’ process of referrals to conduct reviewers and then OLG. “ I agree that removing private investigators from the councillor conduct process is a good step. Private investigators who give the illusion of independence. But what does independent mean when the

	investigators are appointed by Council staff, are paid by the Council, on evidence provided by the Council, and produce a report for the Council who appointed them. A bit of a captured market it would seem. Private investigators are not required to specify the allegations made, who made the allegation or particularise how the allegation is a Code of Conduct. Private investigators will produce a draft report before interviewing the accused, or witnesses of the accused. Other Councillors, or your peers, are not, or should not be aware of a Code of Conduct under the confidentiality rules, and in my lived experienced, key witnesses, were not asked to give evidence until lawyers got involved and asked questions about procedural fairness and natural justice. Further the independent investigator was not registered as a lawyer, so was not themselves required to operate under rules of evidence, an industry standard or Code of Practice. The proposal puts forward options to strengthen the role of the Office of Local Government as the sector regulator. The OLG, unfortunately has the reputation as a toothless tiger. Addressing this would be a beneficial to the inductry.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	What is written on Page 13 in addressing lobbying guidelines, suggests developing guidelines for “professional lobbyists” In my experience in a rural Council, the lobbyists are not professional, but rather individuals of standing in the community, who have family or personal ties to the Council, the Mayor or other Councillors. Similarly reporting inappropriate or corrupt behaviours to a Council general manager, is missing or putting a lot of faith, that the general manager has not been similarly captured by the individual or lobbyist.

	More pathways are required. More alternatives that don't keep leading back to the Mayor and General manager – as the mayors are also proposed to run the Privileges committee
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	Further penalties should be considered for false and misleading claims particularly for those that are proven to be falsified from the beginning, when evidence has been provided upfront that the alleged conduct did not occur, the alleged behaviour was misreported, misconstrued. Also if the accused was able to provide evidence or witnesses that were not questioned or their evidence set aside, ignored, or they were asked to lie to sanction a Councillor for nefarious reasons.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	There are no penalties for unsubstantiated allegations or accusations or for continuing to investigate matters that do not need to be investigated. General Managers have the power to make a complaint, escalate a complaint, table the evidence, provide the list of witnesses or witness statements, engage the conduct reviewer or investigator. The general manager decides if a motion is brought to Council or not, or if a matter would bring the Council into disrepute, and yet OLG can only suggest the actions of the General Manager are directed back to a performance review panel, that is headed by the Mayor. Who is now also integral to the privileges committee as well. There are no redundancies built into the system for independence.

	There is no procedural fairness, rules of evidence or natural justice at play in the system currently.
Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	We need pathways to deal with Mayors who are not preforming in their roles, who may be personable and have charisma as people persons but lack the skills of leadership and meeting protocol to be a good Mayor. Remember the Mayor is elected at the first meeting of a new Council, voted in by their peers, generally by new Councillors who are yet to know each other, and form a team. So it comes down to a numbers game, who made promises or phone calls to get people to support them.
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	There would be three limbs to this proposed misbehaviour definition being conduct that: • Is unbecoming of a councillor • Brings council into disrepute; and/or • Is assessed as being outside the norms and expectations of a sitting councillor. Page 12 Councillor conduct and meeting practices – A new framework The final point I will make is on the definition of misconduct. The definition itself can be seen as misinformation or disinformation. Let me explain with an example. Say I was to bring attention to a financial issue in my Council. Say there is an anomaly in the financial statements or that the cash in the bank was less than what is needed for reserves. I would be liable for misconduct, by a panel of my peers, for making that public. It might be true, but making it public, brings the Council into disrepute. It is not normal for a Council to be financial unsustainable, and my colleagues, other sitting Councillors certainly, do not want others to know there is an issue. So, by one Councillor speaking up, under this definition, they would be found in breach of a Code of Conduct for Misconduct, bringing the Council into disrepute, for speaking up, even though it is the truth.

	Similarly, if there was an act of bullying, and someone was to report what happened, or what they witnessed. Their fellow Councillors, may not want that to be made public, or even for an allegation to be aired. So, the Councillor who makes the accusation is found to have breached the Cde of conduct, for speaking the truth. There is a Duty of Care to staff in a workplace to protect workplace Health and Safety. The result is still misconduct for doing what is right, because that would bring the Council into disrepute. "Importantly, the revamped Code of Conduct will not seek to restrain the ability of a councillor to speak publicly on matters pertaining to their council, even when that councillor is disagreeing with, or being critical of, the decisions of the majority." Page 8 Councillor conduct and meeting practices. "The new code of conduct system would see minor complaints about councillor misbehaviour dealt with by a councillor's peer" Media Release Thursday 5 September 2024 "Effective local government comes when councillors are visibly in control of their councils." Page 4 Councillor conduct and meeting practices. And that is what we have lost. One elected member described it as "upside down Councils" where staff run the organisation. "The simple, but compelling premise is local councils should be accountable to their community with council staff being accountable to their councillors, through the General Manager. The best way to achieve this aim is for councils to provide strong and effective representation, leadership, planning and decision making. Unfortunately, this simple concept has been lost." Page 5 Councillor conduct and meeting practices. "Therefore, misbehaviour only needs to be defined as those issues which go to

	the nature of councillors as elected officials, being conflicts of interest or misbehaviour in public office." Page 9 Councillor conduct and meeting practices. "Misbehaviour in public office would cover behaviour which is inconsistent or outside of the norms of behaviour expected from a councillor, particularly given their role as a community leader". Page 12 Councillor conduct and meeting practices – A new framework "it is appropriate that councillors judge their fellow councillors on whether they could be considered to have misbehaved" Page 12 Councillor conduct and meeting practices – A new framework Does this align with "Communities, residents, workers and fellow councillors expect their elected officials to act in an appropriate and ethical way, including observing workplace health and safety, environmental and criminal laws. If there is an offence or complaint under these other laws, people should seek redress from the appropriate regulator including SafeWork, Independent Commission Against Corruption or the NSW Police." Page 9 Councillor conduct and meeting practices. BUT If Councillor becomes aware of an issue, and wishes to report this matter, as outlined above: • Councillors are not covered by SafeWork • ICAC requires Proof and if the evidence is part of Closed Council business, a Councillor is unable to provide that evidence • Cannot disclose to the community closed Council business, communications or discussions • Cannot share with the media • It is a not a Police matter

	• DV laws are for a “domestic relationship” not a workplace relationship • Staff interaction Policy prevent a Councillor raising a Bullying compliant on behalf of a staff member, if they observe the behaviours or if a staff member discloses such behaviour to the Councillor So HOW do they seek REDRESS from an appropriate regulator?

Submission number	187
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Kristoffer
Last Name	Mitchell
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	No
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Binding oath with severe penalties to wilfully breach the code
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Long overdue
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Real estate agents should be automatically assumed to hold disqualifying interests
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	Real Estate agents and developers should not be eligible to sit on council in line with Victoria
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Hopefully yes.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Establish an independent body
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	NA
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	Further penalties required. For example for councillors who have been censured multiple occasions they should be disqualified from office, have all payments including stipends stripped and in serious cases ie bullying held liable both civilly and criminally in serious cases
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	No
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a**	Yes

formal tribunal with independent arbitrators and a hearing structure?	
Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	The mayor to have power to remove a disorderly councillor immediately without recourse.
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	Keep code of conduct matters including results public.

Submission number	188
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	Failure of strict/ strong actions for repeated CODE of CONDUCT
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	STRONGER PENALTY for KNOWN REPEATING OFFENDERS
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	Councillor being available to decide DA applications when leading Real Estate office in town
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
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Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	YES , local council hasn't teeth

Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	Stronger PENALTIES should be available to repeat CODE of CONDUCT offender ie 6 times last term 2 years 6 months (Covid) this term 2 months 2 Codes already
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	

Submission number	189
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	[redacted]
Role/Position:	[redacted]
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Large Rural
Principles of change **Question: Are we missing anything in the principles of change?**	re Transparency and accountability – The proposal to ban closed council briefing sessions provided by staff would have significant adverse impacts on councillor's opportunity to be fully informed prior to decision making during a council meeting.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	1. Integrity and Honesty 2. Transparency and Accountability 3. Respect and Fairness 4. Guidelines on identifying, disclosing, and managing conflicts of interest to maintain public trust. 5. Proper handling of confidential information to protect privacy and sensitive data. 6. Demonstrate professionalism, competence, and diligence in their duties. 7. Actions and decisions should prioritise the public interest over personal or political interests. 8. Adherence to all relevant laws, regulations, and council policies.
Potential changes to the code of conduct and oath of office	Agree.

Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	No
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Monitoring that Councillors have taken the mandated professional development and financially penalising those that that do not.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	See Central Coast Council's lobbying policy as a best practice example.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	The penalties should be designed to be proportionate to the severity of the breach. Minor infractions might incur fines ranging from a few hundred to a few thousand dollars, depending on the circumstances.

Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	Where referred following misbehaviour in a council meeting, a potential loss of sitting fees - should have the word potential removed.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	No 'can suspend a councillor for between 1-3 months with a consequential loss of sitting fees' is too soft - it should be must and for 3 months.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Formal Tribunal
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	No
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	Proposal to ban closed council briefing sessions provided by staff - any move to ban private briefings would have significant adverse impacts on councillor's opportunity to be fully informed prior to decision making during a council meeting. If Commonwealth and State Government members are allowed to have private briefings why isn't local government.

Submission number	190
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	Regarding the principles of change, here are additional considerations and areas that may be missing: Preventing Councillor Overreach and Undue Influence: The principles should explicitly address preventing councillors from exerting undue influence over planning staff and decision-making processes, such as applying pressure for premeditated outcomes. This undermines fairness and transparency in council decisions. Promoting Fair and Open Engagement with Applicants: Councillors should have a responsibility to engage openly with applicants and work towards negotiated solutions rather than resorting to costly and adversarial court actions. This aligns with the goals of transparency, accountability, and reducing unnecessary costs for ratepayers. Minimising Misinformation and Lobbying Misconduct: A principle should be added to ensure councillors are held accountable for spreading misinformation or lobbying community members against certain projects. Transparent and accurate

	communication is essential to build trust with the community. Validation of Complaints: There should be a requirement for the Council to validate complaints before they are escalated. This would prevent frivolous or politically motivated complaints from draining resources and ensure that only legitimate issues receive attention. Such a measure would promote efficiency, reduce unnecessary costs, and maintain public confidence in the complaints process. Openness and Support for Positive Applications: Councillors should demonstrate openness and a supportive stance towards business, agriculture, recreation, and tourism applications that provide a positive benefit—economic or otherwise—to the shire. Encouraging such initiatives would foster economic growth, community development, and overall prosperity within the region. Analysis of Court Costs and Decision Transparency: Councils should be required to provide an analysis of court costs to the community, detailing which Development Application (DA) these costs relate to, why the DA was refused, and whether meaningful engagement or Requests for Further Information (RFIs) were pursued. Additionally, any consultant costs relating to court cases should be included within the overall court costs to give a complete picture of the expenses incurred. This would help ensure councils are not using deemed refusal at the Land and Environment Court as a justification for high costs while avoiding appropriate engagement with applicants. Safeguarding Community Trust: Emphasise the importance of rebuilding and maintaining community trust through transparent actions, ethical behaviour, and upholding the integrity of council processes.

	Balancing Freedom of Speech with Professional Conduct: While freedom of speech is a fundamental principle, it should be balanced to ensure it does not devolve into spreading false information, personal attacks, or behaviours that obstruct effective governance. Efficient Use of Resources: Highlight the importance of using council and taxpayer resources efficiently by reducing unnecessary court actions and frivolous complaints. Encouraging local-level dispute resolution would help achieve this goal. Incorporating these elements would create a framework that promotes fairness, transparency, responsible governance, and support for initiatives that bring tangible benefits to the community.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	In considering the key elements of an aspirational Code of Conduct for councillors, the following components should be enshrined to promote effective, ethical, and transparent governance: Integrity and Accountability: Councillors should commit to acting with integrity, honesty, and accountability in all decisions and actions. This includes upholding their obligations to the public, refraining from conflicts of interest, and taking responsibility for their decisions. Transparency and Open Communication: Councillors should ensure their actions and decisions are made transparently and communicated openly to the community. This includes holding public deliberations, avoiding closed-door decision-making where possible, and providing accurate information. Support for Positive Community Development: The Code should emphasise a commitment to supporting business, agriculture, recreation, tourism, and other initiatives that offer positive benefits to the community,

	fostering economic growth and community wellbeing. Respectful and Inclusive Conduct: Councillors must demonstrate respect in all interactions, avoiding personal attacks and engaging in respectful debate and dialogue. Inclusivity and consideration for diverse perspectives within the community should be central to their conduct. Prevention of Undue Influence and Misuse of Power: The Code should strictly prohibit councillors from using their position to exert undue influence over planning staff, applicants, or community members. Clear boundaries must be maintained to prevent any misuse of power that could undermine public trust. Commitment to Ethical Decision-Making: Councillors should commit to making decisions impartially, ethically, and in the best interest of the community, avoiding actions motivated by personal, political, or financial gain. Engagement and Negotiation: The Code should encourage councillors to engage openly with applicants, community members, and other stakeholders to seek fair resolutions and avoid adversarial routes, such as unnecessary court actions, whenever possible. Financial Accountability and Transparency in Legal Matters: Councillors should be required to provide a detailed analysis of court-related expenses, including all court and consultant costs associated with Development Applications (DAs). This transparency ensures accountability for legal actions taken, especially when high costs arise from council decisions to refuse applications without sufficient engagement or issuing Requests for Further Information (RFIs). Balance Between Freedom of Speech and Professional Conduct: While councillors should have the right to freely

	express their views, this must be balanced with an obligation to ensure public statements are accurate, not misleading, and do not undermine public confidence or council operations. By embedding these elements, the aspirational Code of Conduct will promote ethical, transparent, and community-focused governance, ensuring councillors serve their roles with integrity and in the best interests of their constituents.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Aligning the Oath of Office to a revamped Code of Conduct is a positive and necessary step for ensuring that councillors fully understand and commit to the standards expected of them from the outset of their term. This alignment would reinforce the importance of ethical behaviour, transparency, and accountability, embedding these principles into their role from the moment they take office. By taking an Oath that reflects the key elements of the Code of Conduct, councillors are making a public, binding pledge to uphold the highest standards of conduct in their work. This can serve as a constant reminder of their responsibilities and help cultivate a culture of integrity, respect, and community-minded decision-making. Moreover, aligning the Oath of Office with the Code of Conduct strengthens the connection between councillors' commitments and their day-to-day duties, fostering consistency in behaviour and expectations. It provides a clear framework for accountability, ensuring councillors are aware that breaching their Code of Conduct may have serious consequences tied directly to their sworn Oath. Overall, this alignment reinforces trust within the community, highlights the gravity of the councillor role, and promotes the continuous integrity and

	transparency of local government operations.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	The proposed pecuniary interest framework is a positive step toward ensuring councillors are held to high ethical standards, and it aligns with practices seen in other levels of government. However, there are a few areas where the framework could be strengthened or where clarity may be beneficial: Enhanced Transparency and Accessibility: Pecuniary interest disclosures should be easily accessible to the public in a transparent manner, such as through regular publication or online access. This ensures the community can easily review and monitor potential conflicts of interest, enhancing trust and accountability. Scope and Definitions: The framework proposes aligning pecuniary interest definitions with those used for NSW Members of Parliament, which is a good foundation. However, further clarification may be needed to ensure that all forms of financial benefit or advantage, including indirect benefits that may not be immediately apparent, are adequately covered. This will help capture complex financial arrangements, such as beneficial ownership through trusts or other entities. Regular Updates and Auditing: There should be a requirement for councillors to regularly update their pecuniary interest declarations and a provision for independent auditing to verify the accuracy and completeness of these declarations. This would ensure compliance and reduce the potential for oversight or deliberate non-disclosure. Penalties for Non-Compliance: While the framework includes penalties for breaches, it should specify a clear and proportional range of penalties based on the severity of the non-compliance. This

	would help differentiate minor administrative errors from more serious, deliberate breaches. Conflict Management and Recusal: A more robust framework for handling conflicts of interest, including clear guidelines on when a councillor must recuse themselves from decision-making, would be beneficial. This should cover not only pecuniary interests but also situations where there is an appearance of bias or a perceived conflict, to maintain public trust in the integrity of council decisions. Education and Awareness: Introducing mandatory training for councillors on the new pecuniary interest framework and conflict management could ensure they fully understand their obligations and the potential consequences of non-compliance. In summary, while the proposed pecuniary interest framework is a step in the right direction, additional measures around transparency, clarity, auditing, and education would further strengthen its effectiveness in promoting accountability and ethical governance.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes, the principles of what constitutes a significant or major non-pecuniary interest, as outlined in the proposed framework, are appropriate and align with the goal of maintaining public trust and transparent decision-making by councillors. However, there are a few key considerations to ensure the principles are both comprehensive and effectively implemented: Objective and Clear Definitions: The framework's focus on defining significant or major non-pecuniary interests based on an objective test—whether a reasonable and informed person would perceive that a councillor could be influenced by a private interest—is critical. This standard ensures decisions

	are judged fairly and prevents councillors from interpreting conflicts in their favour. Transparent Declaration and Management: Requiring councillors to openly declare any potential or perceived non-pecuniary interests is essential for building public trust. Additionally, there should be a clear and consistent process for managing these conflicts, including whether councillors should recuse themselves or how their participation should be limited in specific cases. Consideration of Relationships and Affiliations: The principles appropriately capture relationships or affiliations that may influence decision-making, such as familial, personal, or organisational connections. However, it is important that the criteria for what constitutes a "significant" or "major" interest are applied consistently to prevent arbitrary or biased determinations. Nuanced and Proportionate Approach: The proposed framework's nuanced approach, which allows for the consideration of the context and potential impact of non-pecuniary interests, is important. Councillors must assess whether a conflict is of minor consequence or if their involvement in a decision could lead to a substantial advantage or disadvantage for a related party, particularly in controversial or critical votes. Community Awareness and Transparency: Ensuring that the public is aware of non-pecuniary interests declared by councillors and how they are being managed is critical to maintaining public confidence in local governance. This requires transparent record-keeping and proactive communication. Overall, the principles outlined provide a solid foundation for ensuring councillors act in the public interest, free from improper influence. To maximise their effectiveness, a consistent application

	process, training, and regular reviews of how these principles are implemented would further enhance their impact and public trust.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	To address concerns about councillors undertaking real estate and development business activities, the following specific features should be considered for inclusion: Mandatory Disclosure and Transparency: Councillors with direct or indirect involvement in real estate and development businesses should be required to disclose these interests publicly and regularly update their declarations. This disclosure should cover financial interests, business partnerships, or any other relevant association with developers, ensuring complete transparency. Prohibition on Participating in Related Decisions: Councillors with real estate or development interests should be prohibited from participating in, voting on, or influencing decisions that may affect their business interests or those of their associates. This measure would help eliminate conflicts of interest and reinforce the integrity of the decision-making process. Divestiture Requirements for High-Risk Roles: Consideration should be given to requiring councillors involved in substantial real estate or development dealings to divest these interests or place them into a blind trust while serving in public office. This would prevent potential conflicts and ensure councillors are acting solely in the public interest. Enhanced Monitoring and Auditing Mechanisms: Implement regular audits of councillor activities related to real estate and development decisions. This would include reviewing communications, lobbying efforts, and votes to identify potential conflicts of interest or unethical behaviour.

	Clear Guidelines for Meetings and Interactions: Establish clear guidelines on how councillors can interact with developers and real estate agents to prevent inappropriate lobbying and undisclosed meetings. Any meetings or discussions should be transparently documented and made publicly accessible. Penalties for Non-Compliance: Introduce strict penalties, including suspension, fines, or disqualification, for councillors who fail to disclose relevant interests, attempt to influence decisions for personal gain, or violate restrictions on their involvement in related matters. Education and Training: Provide mandatory training for councillors on managing conflicts of interest, ethical conduct in real estate and development dealings, and understanding the implications of their actions on public trust and community confidence. By including these features, the framework would significantly mitigate risks associated with councillors' involvement in real estate and development business activities, enhance transparency, and ensure that public trust is maintained.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Yes, the proposed threshold for facing a Privileges Committee appears appropriate, as it ensures that only significant cases of councillor misconduct are escalated for review. This threshold, focusing on issues such as conduct that is "unbecoming of a councillor," "brings the council into disrepute," or falls "outside the norms and expectations of a sitting councillor," strikes a balance between maintaining a high standard of behaviour and avoiding unnecessary escalation of minor issues. However, there are some considerations that could further refine this approach: Clarity and Consistency in Definitions: Clearly defining what constitutes

	"unbecoming conduct," "disrepute," and behaviour "outside the norms" is essential. Without clear definitions, there is a risk of subjective or inconsistent application, which could undermine the committee's effectiveness and fairness. Transparency and Due Process: Ensuring that councillors accused of such misconduct are afforded due process, including the opportunity to present their case and respond to allegations, is critical for maintaining trust in the system. The Privileges Committee's proceedings should be transparent, with clear protocols for decision-making and appeals. Safeguards Against Misuse: To prevent misuse or weaponisation of the process, there should be safeguards in place to filter out frivolous or politically motivated complaints before they reach the committee. Only serious cases with substantiated evidence should proceed. Proportionality of Penalties: The penalties or outcomes imposed by the Privileges Committee should be proportionate to the severity of the misconduct. This ensures that councillors are held accountable without imposing excessive or punitive measures that could deter robust democratic debate or public service. Handling Concerns Raised by the Community: If a community member, business, tourism operator, or group raises a concern, it should be reviewed, investigated, escalated, and dealt with appropriately, with feedback provided to the originator. This would demonstrate a commitment to addressing public concerns seriously and transparently, enhancing trust and engagement with the community. Overall, the threshold is appropriate, provided it is supported by clear definitions, due process protections, and safeguards to ensure fairness and

	consistency. This approach would maintain a strong standard of conduct for councillors while ensuring community concerns are appropriately addressed and fostering public trust in the governance process.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	To minimise complaints effectively, a multifaceted approach should be taken that focuses on proactive measures, transparency, and fostering a culture of ethical conduct and constructive dialogue within councils. Here are some strategies to achieve this: Proactive Engagement and Mediation: Establish structured mediation and conflict resolution mechanisms to address disputes and concerns at an early stage before they escalate into formal complaints. Providing a clear pathway for open dialogue and resolution can help diffuse tensions and misunderstandings quickly. Clear and Consistent Communication: Councils should prioritise transparent communication with the community, ensuring that decisions are explained clearly, and the rationale is understood. Providing accurate, timely information helps prevent misinformation and misunderstandings that often lead to complaints. Engagement with the Community and Reducing Obstructive Behaviour: Councils should engage constructively with the community and work collaboratively to address concerns, rather than creating unnecessary obstacles. Adopting a cooperative, open-minded approach to community input helps build trust and reduces frustrations that lead to complaints. Refrain from Overreach and Undue Influence: Councillors must refrain from overreach and exerting undue influence on council staff, which can undermine fair decision-making processes. Councillors should respect the

	independence of staff to carry out their duties without coercion or improper pressure. Avoidance of Misinformation and Encouragement of Complaints: Councillors should avoid spreading misinformation or encouraging neighbour complaints that may be politically or personally motivated. Instead, they should foster open, fact-based discussions that promote understanding and collaboration within the community. Training and Development for Councillors: Mandatory training on ethical conduct, conflict of interest management, communication, and the councillor code of conduct should be provided regularly. Well-informed councillors are more likely to adhere to best practices and less likely to engage in behaviours that lead to complaints. Streamlined Complaints Handling Process with Validation: Simplify and clarify the complaints process to ensure legitimate concerns are quickly identified and addressed, while frivolous or politically motivated complaints are filtered out through a validation process. Validating complaints ensures that only genuine and substantiated concerns proceed, preserving resources and building trust in the process. Community Feedback Mechanisms: Create accessible and effective channels for community members to provide feedback or raise concerns without necessarily resorting to formal complaints. This can include community forums, open days, online feedback forms, or dedicated liaison officers to handle community engagement. Internal Ethics and Conduct Reviews: Implement regular internal reviews of councillor conduct and ethics, overseen by an independent body or ethics panel, to proactively identify and address

	potential issues before they become public complaints. Transparency in Decision-Making Processes: Conducting public meetings, avoiding closed-door sessions when possible, and openly documenting decision-making processes can reduce perceptions of misconduct and build public trust. When community members feel included and informed, they are less likely to resort to complaints. Encouraging Constructive Feedback Culture: Foster a culture where constructive feedback and differing opinions are valued within council meetings. This approach can lead to healthier debate and resolution of differing viewpoints, reducing the likelihood of personal grievances and complaints. Prompt Response to Requests for Information (RFIs): Ensuring that applicants and stakeholders receive timely and thorough responses to their Requests for Further Information (RFIs) prevents frustrations from escalating into formal complaints and demonstrates a commitment to engagement and resolution. Accountability and Follow-Up Mechanisms: Councils should be transparent about the outcomes of complaints, providing regular updates to the community and ensuring that actions taken are clearly communicated. This transparency fosters a sense of trust and accountability. Open and Positive Engagement with Community Stakeholders: Councillors should actively and positively engage with residents, businesses, tourism operators, and those within the agriculture sector to support and assist applications that provide tangible benefits to the shire. By fostering open communication and collaboration, councillors can help drive economic

	growth, community development, and overall prosperity within the region. By implementing these measures, councils can reduce the volume of complaints, foster a culture of ethical governance and proactive engagement, and build stronger, more trusting relationships with their communities.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	When developing lobbying guidelines and a model policy for councillors, several key features should be included to ensure transparency, accountability, and integrity in decision-making processes. Here are the essential elements to consider: Clear Definitions of Lobbying Activities and Lobbyists: The policy should clearly define what constitutes lobbying and who qualifies as a lobbyist, including professional lobbyists, developers, business representatives, and community interest groups. This ensures a shared understanding of lobbying activities covered by the policy. Registration and Disclosure Requirements: Lobbyists should be required to register with the council and disclose their interests, including the clients they represent and the nature of their lobbying activities. Councillors must also disclose meetings and communications with lobbyists in a publicly accessible register, specifying the purpose and outcomes of such interactions. Mandatory Record-Keeping of Interactions: Councillors should keep detailed records of any interactions with lobbyists, including the date, topics discussed, and any relevant materials shared. This ensures transparency and provides a clear record in case of scrutiny. Prohibition on Private and Undeclared Meetings: Private meetings between councillors and lobbyists should be discouraged. All lobbying interactions

	should occur in public forums or be fully declared and documented. This measure prevents the risk of hidden influence or decision-making behind closed doors. Conflict of Interest Declarations: Councillors must declare any potential conflicts of interest arising from lobbying activities. If a councillor has a personal, financial, or other connection with a lobbyist or their client, they should recuse themselves from related decision-making processes. Code of Conduct Alignment: Lobbying guidelines should be aligned with the councillor code of conduct, emphasising the need for ethical behaviour, integrity, and acting in the public interest. Any breaches of lobbying policies should be treated as breaches of the code of conduct and subject to investigation and potential penalties. Transparency of Influence and Outcomes: Councillors should be required to disclose any influence or input received from lobbyists that may impact their decisions. Transparency of how lobbying efforts may shape council policies or decisions helps maintain public trust and ensures accountability. Restrictions on Gifts, Benefits, and Inducements: Councillors should be prohibited from accepting any gifts, benefits, or inducements from lobbyists. This includes meals, travel, or other forms of hospitality that could create a perception of bias or preferential treatment. Training and Awareness: Regular training should be provided to councillors and council staff to ensure they understand their obligations under the lobbying guidelines, how to manage interactions appropriately, and how to identify and report potential breaches. Complaint and Reporting Mechanisms: The policy should include a clear and accessible mechanism for reporting

	suspected breaches of lobbying rules, with appropriate protections for whistleblowers. Complaints should be investigated promptly, transparently, and with appropriate accountability measures. Periodic Review and Updates: The lobbying guidelines and model policy should be regularly reviewed and updated to reflect changes in legislation, emerging risks, and best practices in ethical governance. By including these key features, the lobbying guidelines and model policy can promote transparent, ethical, and accountable interactions between councillors and lobbyists, ensuring decisions are made in the best interest of the community.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	When determining the appropriate level of Penalty Infringement Notices (PINs) within the dispute resolution and penalty framework for councillor conduct, the following considerations should guide the decision: Proportionality of the Offence: The level of the PIN should be proportional to the severity of the breach or misconduct. Minor infractions, such as administrative oversights or minor breaches of procedure, should attract lower-level penalties. More serious breaches, such as conflicts of interest or significant ethical violations, should result in higher-level PINs. Tiered Penalty System: Implementing a tiered system for PINs allows for differentiated levels of penalties based on the nature and gravity of the misconduct. For example: Low-Level PINs (e.g., $200 - $500): Issued for minor administrative breaches or first-time infractions with limited impact on council operations. Mid-Level PINs (e.g., $500 - $1,500): Applied to more significant but non-malicious breaches, such as failure to

	declare a non-pecuniary interest or minor ethical lapses. High-Level PINs (e.g., $1,500 - $5,000): Reserved for serious breaches that have a significant impact on governance, transparency, or public trust, such as deliberate conflicts of interest, significant ethical violations, or repeat offences. Deterrent Effect: The level of the PIN should be sufficient to deter future misconduct by councillors. It should not be perceived as a minor cost of doing business or an easily dismissed inconvenience, particularly for more serious offences. Procedural Fairness and Opportunity to Rectify: Consider allowing councillors the opportunity to rectify minor breaches before a PIN is issued. This can encourage compliance and learning without immediately resorting to penalties, which may foster a more cooperative and constructive culture. Public Perception and Trust: The level of the PIN should also be set with consideration for public perception. Penalties that are perceived as too lenient may undermine trust in the system, while overly harsh penalties may be viewed as punitive or excessive. The balance should ensure public confidence that councillors are being held accountable appropriately. Ability to Appeal or Escalate: Councillors should have the ability to appeal a PIN if they believe it was issued unfairly. In cases where the breach is part of a broader pattern of behaviour or a more serious issue, there should also be a mechanism to escalate the matter for further review or more significant penalties. In summary, an appropriate level of PIN would involve a tiered system that considers the severity of the breach, promotes deterrence, maintains public trust, and allows for fair processes. This

	approach ensures that penalties are proportionate, meaningful, and transparent, encouraging ethical behaviour and accountability within local governance.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	The proposed penalties within the dispute resolution and penalty framework for councillors appear generally appropriate, as they provide a range of measures to address different levels of misconduct. By encompassing warnings, censures, loss of fees, and referral to a higher tribunal for more serious breaches, the framework allows for a proportionate response to various infractions. However, there are several considerations and potential additional penalties that may further strengthen the framework: Proportionality and Flexibility: The proposed penalties, such as warnings, loss of sitting fees, and suspensions, provide a graduated and flexible approach. This is appropriate, as it allows penalties to be proportionate to the severity and context of the misconduct. Ensuring that this flexibility remains central to the penalty system is critical to maintaining fairness and legitimacy. Additional Penalties to Consider: Mandatory Training or Counselling: Councillors found in breach of the code of conduct could be required to undergo ethics training, conflict of interest workshops, or counselling sessions. This approach addresses underlying behavioural issues and encourages councillors to improve their conduct. Community Service: Introducing community service requirements as a potential penalty could allow councillors to visibly contribute back to the community, reinforcing their accountability and commitment to public service. Ineligibility for Leadership Positions: Councillors who commit serious

	breaches could be temporarily barred from holding leadership positions within the council, such as mayor, deputy mayor, or committee chair roles. This would serve as a deterrent for serious misconduct while maintaining their role as a councillor. Public Apology Requirement: Requiring a public apology can serve as a restorative measure, demonstrating accountability and helping to rebuild trust with the community. Increased Penalties for Repeat Offenders: Councillors who repeatedly breach the code of conduct should face escalating penalties, reflecting a commitment to maintaining high standards of behaviour and deterring ongoing misconduct. Transparency in Enforcement: Ensuring that penalties are applied consistently and transparently is essential for maintaining public trust. Clear guidelines on how penalties are determined, applied, and communicated to the public should be included in the framework. Appeals and Fairness Mechanisms: Councillors should have the opportunity to appeal penalties if they believe they have been unfairly applied. This maintains procedural fairness and ensures that penalties are applied appropriately based on evidence. Overall, the proposed penalties are largely appropriate, offering a range of responses to misconduct. The inclusion of additional measures such as training, community service, or restrictions on leadership roles could further enhance accountability and encourage ethical behaviour, fostering greater trust and integrity within local government.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	The existing sanctions available under the Local Government Act are a useful starting point for addressing councillor misconduct; however, there are areas where the sanctions may need

	strengthening or greater flexibility to ensure they are fully effective in promoting accountability, ethical behaviour, and public trust. Here are some points to consider: Proportionality and Range of Sanctions: While existing sanctions, such as warnings, suspensions, and fines, provide options to address different levels of misconduct, they may not cover the full spectrum of behaviours or adequately deter repeat offenders. Introducing a broader range of sanctions, such as mandatory training, public apologies, or restrictions on leadership roles, could help address more complex or persistent issues. Escalating Penalties for Repeat Offenders: Existing sanctions may not sufficiently address councillors who engage in repeated misconduct. An escalating penalty system, where repeat offences result in increasingly severe consequences, would help reinforce the seriousness of continued breaches and encourage compliance. Transparency and Public Accountability: Public trust is crucial in local government. To maintain and build this trust, sanctions should be applied transparently, with clear communication to the public about why and how they are being enforced. This ensures that councillors are held accountable not only to their peers but also to the community they serve. Consistency in Application: There may be inconsistencies in how sanctions are applied across different councils, which can undermine their effectiveness. Strengthening the guidelines and criteria for applying sanctions and providing a central oversight mechanism may help ensure consistency and fairness in their enforcement. Incorporation of Educational and Restorative Measures: Sanctions should

	not only be punitive but also rehabilitative. Options like mandatory ethics training, mediation, or counselling sessions for councillors who breach the code of conduct can address underlying issues and encourage positive change. Community-Centric Sanctions: Introducing sanctions such as community service, where councillors are required to contribute visibly to the community they serve, can reinforce accountability and demonstrate their commitment to public service. This can also be a way to repair trust with constituents following misconduct. Referral to Independent Bodies for Serious Breaches: For serious or complex cases, it may be necessary to refer the matter to independent tribunals or regulatory bodies. While this exists under the current framework, ensuring such referrals are efficient, transparent, and timely is key to maintaining confidence in the process. Appeal Mechanisms: Councillors should have the right to appeal sanctions through a fair and transparent process. This ensures procedural fairness and allows for a review of decisions if new evidence arises or if there is a perceived miscarriage of justice. In conclusion, while the existing sanctions under the Local Government Act provide a foundation for addressing councillor misconduct, there is room for improvement. Expanding the range and flexibility of available sanctions, incorporating rehabilitative measures, and ensuring consistency and transparency in their application can strengthen the framework, promote ethical behaviour, and build public trust in local governance.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by**	Decisions on sanctions for councillors should ideally be made by a formal tribunal with independent arbitrators and a structured hearing process rather than

the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?	solely by the Departmental Chief Executive. This approach offers several advantages: Impartiality and Fairness: A formal tribunal with independent arbitrators ensures that decisions are made impartially, free from potential biases or conflicts of interest that may arise when handled by a single departmental executive. This promotes a fair and transparent process, enhancing public confidence in the integrity of the system. Structured Hearing Process: A tribunal with a structured hearing process provides an opportunity for all relevant evidence and arguments to be presented, examined, and tested. This ensures that decisions on sanctions are based on a comprehensive assessment of facts, context, and mitigating factors, resulting in fairer outcomes. Expertise and Consistency: An independent tribunal composed of individuals with expertise in governance, ethics, and local government can bring valuable insights and consistency to decision-making. This expertise helps ensure that sanctions are applied appropriately and consistently across different cases, reducing the risk of arbitrary or inconsistent penalties. Transparency and Public Trust: Decisions made by a tribunal with an open and transparent process are more likely to be trusted by the public. This transparency reassures the community that sanctions are applied fairly, without political interference or personal bias, thereby upholding the integrity of local government. Appeals and Accountability: A formal tribunal provides a clear avenue for appeals, ensuring that councillors have a fair opportunity to challenge sanctions they believe to be unjust or disproportionate. This reinforces procedural fairness and accountability,

	which are essential for maintaining trust in the process. Focus of the Departmental Chief Executive: Removing the burden of sanctioning decisions from the Departmental Chief Executive allows them to focus on broader regulatory and oversight functions, such as ensuring compliance with governance frameworks and developing policies to strengthen local government practices. Complexity and Seriousness of Cases: More serious cases of councillor misconduct, especially those involving complex ethical issues or significant public interest, are better suited to review by a tribunal with the capacity to thoroughly evaluate all aspects and make informed judgments. In conclusion, while the Departmental Chief Executive may play a role in initial assessments or administrative processes, the ultimate decisions on sanctions should rest with a formal tribunal. This model enhances fairness, impartiality, transparency, and accountability in handling councillor misconduct, which is essential for maintaining public trust in local government operations.
Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	To restore dignity to council meetings and effectively address disorderly behaviour, while preventing misuse of powers by the mayor or chair, the following safeguards and measures should be considered: Immediate Suspension of Speaking Privileges: The mayor or chair should have the power to immediately suspend a councillor's speaking privileges for a specified period if they engage in disorderly, offensive, or disruptive behaviour. However, this power should be exercised with clear guidelines and subject to review if challenged by the affected councillor. Enhanced Authority to Issue Warnings and Escalate Actions: The ability to issue

	a formal warning for disruptive conduct with escalating consequences, such as temporary removal, must be coupled with a clear process for recording and reviewing the circumstances of each warning. This helps ensure the powers are used fairly and transparently. Power to Call a Recess: The ability to call an immediate recess to restore order should be exercised judiciously, with an expectation that it is used to de-escalate conflict rather than to obstruct discussion. Proper documentation of the reasons for the recess should be maintained. Public Apology Requirement: Requiring a public apology for severe misconduct should involve a structured process to ensure it is not used punitively or arbitrarily. This measure would only apply for behaviour deemed significantly disruptive and agreed upon by a majority vote of councillors, if necessary. Expulsion for a Defined Duration: Expulsion from meetings must be accompanied by a transparent appeal process and criteria that justify the expulsion. Independent oversight or peer review mechanisms could be incorporated to prevent misuse of this power. Referral to an Independent Conduct Panel: For serious breaches, the ability to refer matters to an independent conduct panel ensures accountability and impartial review. This approach provides a check against misuse of mayoral powers by requiring external evaluation and recommendations. Removal of Voting Rights Temporarily: Temporary removal of voting rights, if introduced, should be subject to clear thresholds for behaviour and require a majority council vote to enact. This prevents unilateral misuse by the mayor or chair.

	Clear Guidelines and Training for Mayors/Chairs: Providing comprehensive training on de-escalation techniques, ethical conduct, and the limits of their powers ensures that mayors and chairs understand their responsibilities. The guidelines should explicitly prohibit the use of these powers for personal or political gain. Regular Review and Oversight: Establishing a regular review mechanism to assess the use of powers by mayors or chairs ensures accountability. Complaints or concerns raised by councillors or the public regarding misuse can be addressed through an independent oversight body. By implementing these safeguards, any additional powers granted to mayors and chairs can be balanced with mechanisms that prevent misuse, ensuring their application remains fair, transparent, and focused solely on maintaining order and dignity in council meetings.
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	Yes, several measures can be implemented to improve transparency in councillor deliberations and decision-making, ensuring fairer, more accountable governance. Key recommendations include: Prohibition Against Misinformation in Deliberations: Councillors must be prohibited from making up or presenting incorrect reasons to refuse applications. If any claims or reasons for refusal arise during deliberations, applicants should have the right to address and correct the misinformation before a final decision is made. This ensures that decisions are based on accurate and complete information and prevents potentially damaging errors from influencing outcomes. Mandatory Provision of Requests for Further Information (RFIs): Councils should be required to issue a Request for Further Information (RFI) to every

	applicant before making any decision to refuse an application. This gives applicants a fair opportunity to provide additional details or clarify any concerns raised by councillors or staff, ensuring decisions are informed and transparent. Mandatory Public Documentation of Deliberations: All deliberations, key discussions, and decision-making processes should be documented and made publicly available, including the rationale behind any decisions. This transparency allows the community to understand how and why decisions are made. Open Meetings and Reduced Closed Sessions: Councillor meetings should be open to the public as much as possible, with closed sessions limited to matters of genuine confidentiality (e.g., legal advice, personal information). This openness encourages accountability and public scrutiny. Real-Time Access to Meeting Records: Ensure that council meetings are recorded and streamed online, with transcripts and minutes made available shortly after meetings conclude. This allows community members, stakeholders, and applicants to access deliberations and outcomes without delay. Public Access to Councillor Voting Records: Councillors' voting records should be publicly accessible, showing how each councillor voted on specific issues. This accountability measure helps the community understand councillor positions and encourages decisions based on public interest. Independent Oversight and Review Panels: Establish independent panels to review major or contentious decisions, particularly those involving planning applications, to ensure that councillors' reasons are valid, lawful, and based on accurate information.

	Mandatory Conflict of Interest Declarations: Councillors must declare any conflicts of interest and abstain from participating in deliberations or votes where there is a conflict. Publicly documenting these declarations enhances trust and transparency. Engagement with Applicants Prior to Decisions: Councillors should be required to engage in meaningful dialogue with applicants before making decisions, allowing applicants the opportunity to present additional information or correct potential misunderstandings. This ensures fair treatment and informed decision-making. Transparency in Lobbying Activities: Any interactions between councillors and lobbyists or interested parties should be recorded and disclosed publicly. This includes documenting the content and purpose of meetings to prevent undue influence and maintain public confidence in councillor objectivity. Ethics and Accountability Training for Councillors: Regular training on ethics, accountability, and transparent governance for councillors can reinforce the importance of honest, fair, and transparent deliberations and help prevent misconduct. Regular Reporting and Community Updates: Councils should provide regular updates to the community on key issues, upcoming decisions, and how community input has been considered. This fosters trust and demonstrates that community concerns are being taken seriously. Disclosure of Undue Influence or Overreach: Any attempts by councillors to exert undue influence or overreach on council planning officers or compliance officers must be disclosed and documented. This ensures transparency, prevents improper influence on planning and compliance decisions, and holds

	councillors accountable for their interactions with staff. By implementing these measures, transparency in councillor deliberations and decision-making can be improved, building trust within the community, ensuring that applicants are treated fairly, and preventing refusals based on misinformation, inadequate communication, or undue influence.

Submission number	191
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Dianne
Last Name	Layden
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	No. Transparency and accountability in council discussions should be mandatory. In the Local Government NSW Candidate Briefing handbook 2024 it states that councillors are accountable to the local community for the performance of the council. This should be emphasised.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Should be clear and to the point.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Should be aligned with expectations and standards set out and easy to understand.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	No
Potential changes to the definitions and assessment of councillor misbehaviour	Yes

Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by**	

the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?	
Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	No
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	I strongly support the NSW Office of Local Government proposal that councils will no longer be permitted to hold pre-meeting briefing sessions in the absence of the public. Discussion at these sessions should be transparent and should give a clear idea of why decisions are made by councillors at the monthly meetings. Councillors should not make decisions at these closed sessions. Council meetings which previously took up to 5 or 6 hours were reduced to one hour in some cases with little or no debate taking place at the council meeting. Issues should not be hidden by executive staff under the term "operational", which means no questions can be asked about these matters.

Submission number	192
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	
Name of Organisation (If applicable)	
Role/Position:	Councillor
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Councillor
Principles of change **Question: Are we missing anything in the principles of change?**	The fact that you are trying to restrict councilors more while sugar coating it.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Councilors should be governed less and have unfretted freedom of speech.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	NO.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Leave it as it is.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	As a Councilor we are closely associated with the whole community so we would have to leave the area or not vote on anything. This whole exercise is poorly thought out.

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	Why ask an obvious question?
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	If everyone avoids public office.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	
Restoring dignity to council meetings	Honesty and common sense.

Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	See above

Submission number	193
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Karen
Last Name	Litchfield
Name of Organisation (If applicable)	Tamworth Regional Council
Role/Position:	Acting Executive Manager Strategy & Performance
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Regional Town/City
Principles of change **Question: Are we missing anything in the principles of change?**	No
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	An Aspirational Code of Conduct for Councillors would just be another document, unless it is enforceable, it would be meaningless. State Ministers have a full Code of Conduct that is 15 pages long that they need follow which is more prescriptive, why would we not expect that for Local Government Councillors. There is merit to having 2 separate Codes of Conduct for staff and Councillors, however both need to have teeth and be enforceable. Will the staff code of conduct still be mandatory?
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	The Oath of Office is being ignored now with no consequences so what will happen is it is ignored under a revamped Code of Conduct
Potential changes to the definitions and assessment of councillor misbehaviour	The Office of Local Government (OLG) is not the appropriate body to deal with pecuniary interests. Many Councils have referred pecuniary interest breaches to the OLG previously, that were clear

Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?	pecuniary interest breaches, and the OLG have referred the complaints back to Council because they were too minor for the OLG, the OLG didn't want to investigate or didn't understand the complaint. If the OLG refers continues to refer complaints back to Council under this new structure, does it then go the Privileges Committee as Council no longer the power to refer to conduct reviewers?
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Concern over referring Councillor misbehaviour (such as bully Councillor staff on social media) to Safework or other bodies that potentially can fine the Council but not the individual Councillor for their behaviour. Council or the Mayor has no control over Councillor behaviour. What is misbehaviour, this needs to be clearly defined and more clearly than the three limbs of misbehaviour listed in the discussion paper – what does unbecoming of a Councillor, brings Council into disrepute and is assessed as being outside the norms and expectations of a sitting Councillor mean or look like.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	Will Councillors who are Developers be forced to sell property or not enter into contracts therefore potentially limiting their income or impacting their livelihood? What happens if they don't sell property or they do enter into a contract, who is responsible for investigating and imposing punishment?
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	There is a lack of confidence in Mayors and Ex-Mayors presiding on the Privileges Committee. All Mayors know each other and concerns exist that they may sit in judgement on their friends. Will the Privileges Committee be politicised with Mayors and ex-Mayors and what makes Mayors and ex-Mayor the right people for this Committee. There needs to be some qualifications to sit on the Committee and how will conflicts of interest on the Privileges Committee be

	managed. Will Councillors be entitled to legal counsel at the Privileges Committee and would Council have to pay for that? What is the process for who can refer matters to the Privileges Committee? Will there still be a Complaints Coordinator or can anyone refer a complaint to the Committee? There is agreement that the General Manager needs to be removed from the process, they should not be put in a position of judgement on the Councillors, and they still need to be aware and informed of what complaints have been lodged with the Privileges Committee or the OLG.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	There is agreement that the OLG should be able to issue PIN's, however, can this be garnished from the Councillors wages and can it be used to subsidise the Privileges Committee. If the Privileges Committee finds a Councillor guilty and the resulting punishment is the loss of sitting fees, can that loss of payment be used to fund the Privileges Committee.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	No

Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Yes
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	There is concern over the Mayor having absolute power in the Chamber. How can Mayor issue PINs to the public?
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	It is vital to the business of Council that staff can inform Councillors without the public present. It is universally agreed that under no circumstances should decisions be made at briefing sessions, however, the need to have a safe space for Councillors and staff to meet, provide information, ask questions and discuss issues is crucial. This will not prevent Councillors meeting in other locations and determining how they will vote. The definition of what is a briefing session needs to be articulated. Councillors will not be provided all the information to make decisions if all information has to be made public. The Mayor having more information than the other Councillors may divide the Council, and the Mayor may choose to only brief the Councillors they want to or like. This provision is not practical, Councillors are only allowed speak once for 5 minutes on a topic in the meeting, this reduces the Councillors ability to ask more questions. More items will need to be deferred by Council if questions posed by Councillors cannot be answered at the Council Meeting, and in the current Code of Meeting Practice staff are not required to answer question without notice.

Submission number	194
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	I am not sure. It could be covered by transparency, perhaps. [redacted] To address these issues, it would be prudent for all councillors to undergo a character assessment and receive ethics training. [redacted]

	Given that housing development decisions are a central responsibility of councillors, any affiliations that might lead to conflicts of interest should be fully disclosed. Transparency is essential to ensure that councillors' decisions are free from any personal gain or advantage, safeguarding the integrity of their role.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Respectful, Honest and Professional Behavior: Emphasize mutual respect and civility in all interactions, specifically addressing and preventing bullying and intimidation. All councillors should commit to acting professionally and fostering a collaborative and respectful environment. Transparency and Accountability: Councillors should fully disclose any personal, business, or family affiliations that may influence or appear to influence their decisions, particularly when related to industries impacted by council decisions, such as housing and construction. Integrity and Impartiality: Councillors should pledge to make decisions in the public interest, avoiding conflicts of interest and refraining from behavior that might suggest "tit-for-tat" voting or preferential support based on alliances rather than objective reasoning. They should be committed to unbiased decision-making that benefits the community as a whole.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	I think it is a good idea.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Adding your personal experience highlights a critical issue: when key figures, such as the General Manager (GM) or the OLG, have strong personal or political connections with certain councillors, the impartiality of investigations and sanctions can be

	compromised. [redacted]  Under the proposed system, a shift to an independent tribunal could offer a more objective and impartial process. Here's how it might address these issues: Independent Tribunal for Serious Misconduct: With serious complaints being handled by a tribunal rather than the GM or the OLG's Chief Executive, there would be less opportunity for personal or professional relationships to interfere in the investigation or outcome. Since the tribunal is independent, it would be less susceptible to local alliances or internal political pressures, enhancing accountability. Focus on Evidence and Fair Process: An independent tribunal would likely base decisions on documented evidence and witness testimonies rather than relying on internal reports or potentially biased perspectives from council-affiliated officials. This structure could prevent situations where staff or officials ignore complaints due to their ties with the individuals involved. Streamlined and Transparent Process: By limiting the OLG's role to preparing evidence rather than determining sanctions, there is a clear separation between investigation and judgment. This reduces the likelihood of procedural delays or dismissive handling of complaints, as an impartial tribunal would be responsible for addressing misconduct directly.

	To enhance transparency further, it would also be beneficial for the tribunal process to include regular public reporting on outcomes. This would allow community members to see that complaints are taken seriously and ensure that councillors are accountable to both their peers and the public. Your experience suggests that, without these changes, there's a risk that interpersonal dynamics can override the need for fair governance.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	See my comments above.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	as set out above.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Encourage a Positive Council Culture Team-Building and Culture Workshops: Councils could benefit from regular team-building sessions focused on collaboration and respectful communication. These workshops could help councillors see themselves as part of a shared mission, reducing instances of personal rivalry. Emphasize Service Orientation: Fostering a culture where councillors prioritize their duty to the community rather than personal alliances can encourage more ethical and accountable behavior. Community-oriented discussions and

	reflections can remind councillors of their commitment to public service. By reinforcing a culture of accountability and professionalism within the council and establishing independent oversight mechanisms, councils can reduce the frequency and severity of complaints while improving public trust. Develop Clear Pathways for Community Concerns Community Feedback Channels: Having well-defined, accessible channels for community members to voice concerns or provide feedback may address minor issues before they escalate into formal complaints. Anonymized feedback options can also encourage more candid community input. Community Awareness Campaigns: Educating the public on how to report councilor misconduct can ensure that complaints are handled through the appropriate channels, reducing unnecessary or misdirected complaints. Escalate Penalties for Repeated Offenses: For councilors who repeatedly receive complaints, having clear, escalating penalties could deter ongoing misconduct. If councilors know that repeated ethical breaches lead to more severe consequences, they may be less likely to engage in problematic behavior. An independent body, such as an ombudsman's office but not over-worked with a genuine interest in resolutions, should handle and assess complaints outside the influence of council staff or political alliances. This body would ensure that complaints are handled without bias. Regular, transparent reporting on complaints and their resolutions allows the public to see how misconduct is addressed. This openness can reduce perceptions of bias or favoritism within council decisions.

	Engaging the community in the development or revision of the code of conduct reinforces that councilors serve their constituents. Regular forums or surveys can gather public feedback on councilors performance, which may deter misconduct. Encourage early and easy resolution and mediation. Sometimes, minor conflicts or misunderstandings escalate into larger issues. Offering a neutral mediation service can help resolve disputes informally and may prevent the need for formal complaints. Councilors should be required to regularly disclose any personal or business interests that could influence their decision-making. A transparent system where these disclosures are regularly reviewed by an independent body can minimize conflicts. Third-Party Oversight: An independent integrity officer or ethics committee could review these declarations and investigate any potential conflicts, especially in areas like property development or procurement decisions.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	Effective lobbying guidelines and a model policy should address transparency, accountability, and integrity to ensure lobbying practices are clear, fair, and ethical. Some key features that should be included are: 1. Clear Definitions and Scope: Define Lobbying: Clarify what constitutes lobbying, covering both direct and indirect communication aimed at influencing government decision-making, policy, or legislation. This includes in-person meetings, phone calls, emails, and other forms of communication. Specify Who Is Covered: Identify individuals and organizations considered lobbyists, such as professional lobbyists, consultants, in-house lobbyists, and advocacy groups. This ensures all

	relevant entities are aware of their obligations under the policy. 2. Mandatory Registration: Require lobbyists to register with a government or council registry to increase transparency. This can include details about the lobbyist, their organization, their clients, and the specific issues they are lobbying about.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	This depends on: Severity of Breach: The fine should correspond to the severity of the violation. Minor issues may warrant a smaller fine, while serious breaches, such as repeated ethical violations, should incur larger fines. Proportional Deterrence: Fines should be high enough to deter misconduct, with repeated offenses leading to escalating penalties. Scale of Fines: A tiered approach, where minor infractions incur smaller fines and major violations lead to substantial penalties, ensures fairness. Public Expectations: The fine should align with public expectations for transparency and accountability in local government. History of Violations: A councillor's prior record should factor into the fine, with more severe penalties for repeat offenders. In serious cases, escalating the matter to a tribunal for further sanctions should be considered.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	I believe it would be more appropriate for an independent tribunal, rather than an unelected official, to determine significant sanctions like suspension or disqualification. This would provide a clearer, more transparent process and address the potential conflict of interest

	when the decision-making power lies with a public servant. While many complaints are resolved informally at the council level, I am concerned about the effectiveness of the system when strong relationships exist between councilors as it is evident in my council, which has hindered the proper investigation and resolution of complaints. When misconduct is linked to personal interests or conflicts, this can lead to perceived biases or a lack of accountability, which is also a problem. For a stronger and more effective system, it may be beneficial to have an independent body responsible for making decisions on serious cases of councillor misconduct, ensuring that the decision-making process is free from internal political influences
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	I prefer a public tribunal. It would offer an independent, unbiased platform for evaluating the evidence and imposing sanctions. It would also allow for a more thorough and accountable process, ensuring that significant penalties, such as suspension or disqualification, are only applied after a fair and comprehensive review. Additionally, a tribunal structure would allow for an open hearing, where both sides can present their case, which would provide greater transparency and confidence in the decision-making process. Such a system would reduce the influence of political ties and ensure that sanctions are consistent with the principles of fairness and justice, particularly when dealing with high-stakes or serious cases of misconduct
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	
Restoring dignity to council meetings	The existing powers may not always be sufficient, especially when disorderly

Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	conduct disrupts proceedings or when there is repeated non-compliance with meeting rules. To better address such issues, the mayor or chair could be granted additional powers, such as: Directing immediate suspension from the meeting for a specified time in cases of disruptive behavior including whispering into the ear of another councilor during the meeting. Excluding the disruptive councilor from the meeting if the behavior is severe or continuous. Issuing a formal warning or fine as a deterrent for future misbehavior. Referring repeated or serious misconduct to a tribunal for review or further action. I believe these measures would provide clear and decisive actions to address disorderly behavior without compromising the chair's role in maintaining the order of the meeting. Furthermore, enhancing these powers would help ensure that disciplinary actions are taken promptly, reducing the burden of relying solely on external bodies like tribunals for matters that could be handled within the meeting context itself. It would also be helpful reassuring for the public to see that action is taken and councilors don't get away with misconduct.

Submission number	195
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Trevor
Last Name	Lobb
Name of Organisation (If applicable)	
Role/Position:	Retired General Manager
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	Needs to be considered with Code of Meeting Practice. Freedom of Speech - I am aware of a council where questions are objected to at meetings or not permitted as Questions with Notice, because they may "bring the council into disrepute" or "I am feeling threatened." Questions don't do this, but answers may reflect poorly on staff. They should not be refused for those reasons. Suggestion: any Questions with Notice refused by the GM should be listed in the Business Paper with the reason for refusal.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	
Potential changes to the definitions and assessment of councillor misbehaviour	The monetary amounts are mostly different and would be better to be all the same.

Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?	Similarity with State Government amounts is not important and the scale can be vastly different eg: a gift of up to $500 could be a lot of money for a councillor.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	The "principles" are very vague and ill-defined for people who may not have legal training. More is needed here.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	Private meetings of councillors with developers and agents should be banned. If necessary or advantageous, any such meetings should be arranged through the council office with a senior staff member present.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	"Disrepute" requires a tighter definition to limit trivial claims. In particular, asking questions should be specifically excluded'
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	The Privileges Cttee seems a good idea at face value. Membership could be tightened to require members to have more that 2 terms as I have seen some mayors who would never have an adequate understanding of administration and the application of consistent standards. A professional or management background might also be beneficial. Suggestion: keep the lawyers out of it if you really want to simplify things and speed things up. However the chair may need to refer matters to a legal person occasionally (ex OLG).
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	

Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	Removal of the GM from the process is fully supported, particularly when the GM may be the reason for certain complaints. Similarly conduct reviewers do not seem to be working. In my (limited) experience they can be reluctant to bring down findings against council management in case it affects their likelihood of further work. PINs are not considered appropriate for people (councillors) who are largely volunteers (in rural areas, anyway). Suggestion: suspension with loss of payment, and/or local publication of adverse findings for serious matters, might be preferable.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	See above. Long term suspension might be a useful deterrent.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	A 3 months suspension seems adequate as a maximum.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Local Government is a creation of the NSW Government so I see no problem with the OLG CE being able to impose penalties. That should be quicker and hopefully more consistent than operating some other form of committee.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	The existing power of suspension needs to be reconsidered. In my opinion, this power should only be exercised after a resolution of warning has been passed by the council, to remove the possibility of a mayor unfairly targetting a councillor for personal reasons. Ability to penalise members of the public requires careful thought. Who issues the Notice? When? Does the council need to have a Ranger present just in case? Or is it the GM?

Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	Standing for the mayor is a ritual throwback. Should be a recommendation only. Many meetings progress quite satisfactorily without the speakers having to stand. Could be a recommendation only. Concurrent reform of the Code of Meeting Practice is also highly desirable, as mentioned above. Banning of Pre-Meeting Briefing Sessions is strongly supported as these meetings are being used by some councils to avoid public scrutiny of contentious issues.

Submission number	196
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Wayne
Last Name	Feebrey
Name of Organisation (If applicable)	Bathurst and District Branch National Trust
Role/Position:	Chair
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Advocacy and Community Groups
Principles of change **Question: Are we missing anything in the principles of change?**	Would like to see more transparency in Council decision making. No secret meetings with developers that lock out community groups and residents. Councillors and council staff to make known any conflicts of interest prior to voting on particular DAs and the like
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Truth, transparency, accountability and trust based on community consultation and involvement from the start.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Good.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Looks good
Potential changes to the definitions and assessment of councillor misbehaviour	Need to be made clear that it's not just the money.

Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	Would like to see developers and real estate agents banned from being Councillors and prevented from financially backing council candidates in local council elections as had happened here recently.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Put prospective candidates through a rigorous course underlining their responsibilities and possible consequences.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	More community consultation and involvement at all stages of decision making. Removal of personal ideologies of Directors and Council staff from the decision making process.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	Not being able to run for Council again.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by**	Yes

the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?	
Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	Removal of people who are disrespectful and disruptive from the Chamber. Security Guards?
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	Community involvement, no secrecy, Early notice to residents if DA's that are likely to effect them. Include residents at every meeting with developers / proposals. Councillors to meet with community to discuss contentious issues.

Submission number	197
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	[redacted]
Role/Position:	[redacted]
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	
Principles of change **Question: Are we missing anything in the principles of change?**	Yes I think social media posts made by councillors on any page whether personal or other that are offensive, denigrating or misleading should also be punished in the same way as misbehaviours at council's meeting are.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a**	

significant or major non-pecuniary interest?	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	No I think a three strikes method should apply. If a councillor continues to misbehave for three times he should be dismissed from the role without the need for a recount or new election
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a**	Tribunal of independent arbitrators

formal tribunal with independent arbitrators and a hearing structure?	
Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	Mayor should be able to address councillors misbehaviour outside the chamber as well for example for offensive and disparaging comments made on social media
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	

Submission number	198
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	[redacted]
Role/Position:	[redacted]
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	While I agree with the change of concept for the Code of Conduct, I feel that "expected behaviours" should be coupled with accountability and transparency.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	I believe that every new Councilor should be made aware of the expectations on them from a behavioural standpoint. I do think, however, that they should also be made to state during their swearing in, that they understand the Code of Conduct and the potential penalties for breaches. That leaves little wiggle room for "I didn't know that..."
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	I think this covers everything.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a**	As the discussion paper says, the opportunities for non-pecuniary interests are many, then it will be hard to cover all. One thing I think should be considered is that the impacted Councilor should have

significant or major non-pecuniary interest?	the ability to speak to the GM or other Councilors for advice. That should also be mentioned when Conflicts of Interest are called for suring meetings so the community can see that process of decision-making. This lends itself to transparency and accountability.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	My only concern about this is a Councilor using exemptions to buying their own property, as it would have to be spelled out quite clearly what that means. What's to stop a Councilor from using development and infrastructure knowledge to buy a property, and then afterwards turn that into a B'n'B straight after, knowing that certain developments are on the cards to increase tourism etc?
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	I find this concept both smart but also problematic. I agree that the formation of a Privileges Committee can help decide on the behaviours of a Councilor. I think they should be the first point of call for something that happens outside of Chambers. But if a Councilor is reported for misbehaviour inside the Chamber, I would expect the GM (or whoever was highest "ranked" at the meeting in question) would be the first point of call for a complaint. They were in the room, would know whether any bad language/gestures/insults and mud-slinging was out of order or simply heat of the moment-type situation. And, if the GM thinks the complaint should be moved forward to the Privileges Committee, then they should be required to do so within 7 days.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	In a perfect world, Councilors would just behave themselves. That said, people are people and things happen. Sadly, that also applies to the community too. I am sure every LGA has their fair share of "chronic complainers." I am sure there are also those who simply don't like

	certain councilors and will find any reason to make complaints. This is why I feel that the GM should probably receive any complaint in the first instance. They, or their staff, will know the seriousness of the complaintant or allegation and decide what should happen next. But there is also a need for transparency in that process as well. Councilors need to be made aware of a complaint - vexatious or otherwise - to give them the opportunity for self-reflection and change, if necessary.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	I am of the opinion that Councilors should recieve NO gifts from lobbyists and the like. There is no grey area there. I see no reason why a councilor, especially in a regional or rural Council, would need to be gifted something except for the hope of favouritism or a vote. Get rid of it. Too easy to be manipulated.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	I like the idea of local councils having a PIN system for minor breaches of conflicts of interest, especially in cases that involve simple disclosures or lodgements of paperwork. Removing the need to escalate some of those low-level complaints/breaches would certainly free up other bodies/committees to deal with bigger issues and get resolutions quicker.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	I don't believe that censuring people in Chambers will make much of a difference to anyone. I understand it is a first official step but I think it should be a part of a penalty, not just on its own. I also think that there should be a penalty for subsequent minor breaches - 3 strikes and you lose sitting fees or voting rights for a length of time.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	Absolutely. They cover the seriousness of breaches well. Will the "3 strikes and suspended" situation remain?

Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Independent body every time. The more seperation between the decision-making and the OLG, the better.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	I have grave concerns with the powers being granted to the Mayor. I feel that power can be abused on delicate matters before Council. As an example, our Council has nine members. There are two distinct camps, leading to a number of 5-4 votes on major issues. I am concerned that a Mayor could abuse their power - even just once - to win or defeat a proposal. If they were to expel on person from the opposition, the vote becomes 4-4 and the Mayor will get the deciding vote. What concerns me the most is that while the Councilor has the right to reply and may very well get their fees returned, what about the decision that was made? Will it be reviewed? What about every subsequent decision at that meeting? Is this power going to be used for the benefit of the community - or the Mayor?
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	I think that, instead of giving the Mayor easily abused powers, that in the case of disorderly behaviour, that the Mayor should be able to stop debate, raise a censure motion be raised in Chambers and, if successful, the general manager review it and decide whether it needs to be sent to a Priviliges Committee or similar. I don't think that the community should be denied a proper representation because the Mayor doesn't like a word someone said. I am not a fan of closed council, although I do understand the need for it in certain cases, I can certainly see that some issues could be discussed without revealing the names or the person/organisation. One feels that deals are being done behind closed doors. Could there be a mechanism where the

	person/organisation has a private meeting with Councilors before the meeting to plead their case and then it is debated in open council without disclosing individual names? I think if the community were able to see how those kinds of decisions were reached would add to our understanding of the whole process and add some trustworthiness to Council.

Submission number	199
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Peter
Last Name	Harle
Name of Organisation (If applicable)	Liverpool City Council
Role/Position:	Councillor and Deputy Mayor
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Councillor
Principles of change **Question: Are we missing anything in the principles of change?**	
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	The current definitions are inadequate and allow developers and real estate agents to be elected by claiming they do not fall into that category.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	Appropriate as is.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	I believe so.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Formal tribunal with independent arbitrators and a hearing structure depending on the seriousness of the case.

Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	The Chairperson has sufficient powers to conduct an orderly meeting.
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	The Chairperson should not have a casting vote, it is undemocratic that one person should have two votes in the case of a deadlocked decision. A deadlocked vote by Councillors should be regarded as in the negative or lost. Councillors need to understand that a majority is required for a final decision, it should not rely on one person with two votes. decisions need to be reached by compromises. The current system is flawed and changed to be similar to that of Parliament, the Speaker / Chairperson does not vote nor participate in the debate. Several Council Committee charters or constitutions do not allow the chairperson to vote nor participate in debates, move, and or second motions, mayoral minutes are to be the only exception. The Chairperson should be impartial, however if the Mayor / Chairperson wishes to participate in the debate then that person must step down and the deputy Chairperson conducts the meeting for the duration of the debate. The present system is unfair and undemocratic and needs to be changed.

Submission number	200
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Helen
Last Name	Hayden
Name of Organisation (If applicable)	Councillor Oberon
Role/Position:	Councillor
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Councillor
Principles of change **Question: Are we missing anything in the principles of change?**	Principles of change requires some addition I have listed those below. 1. Freedom of opinion: Amend the code of conduct to explicitly include the principle of freedom of opinion without bias. This change will protect councillor's and community right to express their views openly and without fear of retribution or discrimination. 2. Removal of party-based politics: Introduce measures to eliminate party-based politics within local councils. Local government should be about serving the community's best interests rather than advancing party agendas. This change will foster a more cooperative and less divisive environment in councils. 3. Informal Briefing sessions: Include provisions for informal briefing sessions that allow councillors to discuss sensitive issues with directors and general managers/CEO's that cannot be addressed at public meetings. These sessions are especially beneficial for smaller rural and regional councils, facilitating in open discussions on workforce activities and the completion of councils resolutions. They also allow

	councillors to bring sensitive issues within the community to the general managers and directors attention. 4. Transparency and Accountability: Strengthen transparency and accountability measures to ensure that council decisions and actions are made openly and can be scrutinized by the public. This includes clear documentation and publication of council meetings, decisions, and policies. 5. Mandatory training and attendance: Introduce a mandatory requirement that councillors must attend training, as well as all meetings, including delegation to committees and conferences. This ensures councillors are well-informed, equipped with the necessary skills, and are fully engaged in their duties as elected officials. 6. Training and education: Provide ongoing training for councillors and staff on the principles of open governance, the importance of freedom of speech, and the need to avoid bias in decision-making processes. This will ensure all council members are well-equipped to uphold these standards. 7. Community engagement: Enhance community engagement efforts to encourage diverse perspectives and ensure that all voices are heard and considered in council decisions. This includes regular public forums, surveys, and consultation.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	1. Purpose and scope: Is clearly defined 2. Ethical Principles: Has outlined the core values and ethical principles 3. Behavioural expectations: Detailed expected behaviours, clearly defined, including professionalism, respect and integrity. 4. Compliance with laws: Emphasise the importance of adhering to Local, State and federal laws.

	5. Conflicts of interest: Provide guidelines on avoiding and addressing conflicts of interest. 6. Confidentiality: Stress the importance of protecting sensitive information. 7. Reporting and Enforcement: Outline clearly the process for reporting violations and the consequences for non-compliance. 8. Training and Communication: Include provisions for training and clear communication of the code.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Aligning an oath or affirmation with a revamped code of conduct can bring several benefits to council. 1. Reinforces commitment 2. Promotes accountability 3. Enhances community trust and expectation 4. Strengthens ethical culture, enhances integrity and respect 5. Enhances consistency around expected behaviour in decision making and debate 6. provides a clear reference.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Seems sufficient
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	regular audits and oversight: Implement regular audits of disclosures and activities to ensure compliance. Training on ethical standards. Whistle blower protections. Code of conduct revisions Community Engagement

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	possibly, needs clear definition and what typically involves serious breaches of privilege or misconduct define rules of procedure
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Clear communication Training and education Have feedback Mechanisms in place Pro-active problem solving Accountability Transparency and fairness Learning and adapting
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	1. Purpose and scope 2. Definitions 3. Registration and Disclosure 4. Transparency 5. Ethical Standards 6. Prohibitions 7. Reporting Requirements 8. training and Education 9. Monitoring and Enforcement 10. Review and Update 11. Public Participation
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	For serious breaches 1. Suspension or removal from office 2. Fines 3. Public Disclosure 4. Disqualification 5. Mandatory Training 6. Legal Action The Goal should be to create a robust system that holds individuals accountable while promoting ethical behaviours and protecting the public interest.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	yes dependant upon the breach
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	reasonably

Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Independently
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	This is very subjective, as there may be times a Mayor may not follow the COC and use extra powers in the wrong manner
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	No

Submission number	201
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	[redacted]
Role/Position:	[redacted]
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	
Principles of change **Question: Are we missing anything in the principles of change?**	No
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	
Restoring dignity to council meetings	

Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	I do not agree that councillor briefings should be made public. This is the elected bodies chance to ask questions, recieve information (that may be commercial in confidence) without any thought of the politics involved. Your aim is for better run councils, but this will have the effect of less informed decisions by councillors.

Submission number	202
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Maree
Last Name	Duffy-Moon
Name of Organisation (If applicable)	retired
Role/Position:	ex Councillor from Shellharbour City Council
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	Yes - The Senior Staff/Directors draft agenda papers based on what they want the Governing Body to review, these drafts go up the chain to the GM for sign off. Councillors get no input or opportunity to contribute to agendas, briefing materials are pre determined. I used to wonder the amount of public interest issues were not brought to us, or suddenly appeared upon the public bringing it to us. Principles of change must consider the role more definitively of the Bureaucracy and the effect on the decision making processes. There should be a Work in Progress and upcoming issues for discussions with obvious 'issues arising' allowances. Clrs may then contribute to draft agenda proposals. Closed briefings or meetings should not occur unless' Staffing in Confidence' or limited serious concerns around 'Commercial in Confidence'. I was astounded by lack of transparency for residents on many concerning issues. Secrecy and lack of transparency is determined by the GM and possibly the Mayor, Councillors receive briefings in

	secret if determined by the aforementioned.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	An Aspirational Code of Conduct needs to be guided around Human Rights and respect for all. It should be separate to religious beliefs or principles, none of that should be a part of the debates. The Code should reflect that. An Oath of Office means that you must put the concern for your constituents above that of any allegiances you might have, leave your bias at the door. The Code of Conduct is fraught with misinterpretations about what constitutes unacceptable behaviour. Seeking answers to questions on notice or clarification when deliberate obfuscation occurs is not behaviour, it is seeking answers to questions on behalf of the residents. Councillors should ask respectfully but should be able to ask repeatedly without being subject to intimidation or misuse of power by the Mayor/Chair. Councillors should also be able to seek answers from Senior Directors through the GM/CEO, asked respectfully but answers should be forthcoming in their expertise area and with clarity.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	A good change
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Recognition of the important part pecuniary interest plays in Council and to residents respecting Councils and the Governing Body is good news. Allowing Councillors to self report conflicts of interests is insufficient, more often than not, it does not occur even when it is clear there are breaches. The training, examples and possible repercussions of this cannot be stressed enough. It is something that needs to be made very clear to candidates prior to their Oath or Affirmations. The area of possible

	influence from Developers, Agents or other private concerns that may receive benefits has been opaque and abused. As we go into a busy time of planning, developing Greenfields and construction, ensuring Councillors (and for that matter staff) are fully aware of their obligations under the Act and as a part of their integrity as Councillors is uppermost prior to any decisions. Rigorous application is important to avoid even the perception of personal benefits or benefits to others via associations.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes and refer above to reasons.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	Who beneficiaries may be needs to be made patently clear in the non significant declaration of pecuniary interest. If a parent, a spouse or sibling are developers, are directly employed by developers or either own or are franchisees of real estate agencies, this could easily result in benefit from knowledge shared around upcoming transactions of land or Council properties. Prior knowledge due to valuations on properties being discussed is knowledge that can be of benefit. So I would include Valuers in this proposition. Remove all perception of risk.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Yes I see this as a valuable and useful process, and threshold sems appropriate.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Complaints should stop at the GM/CEO and the Governance Officer. The fact that so many went to OLG over past years is a demonstration that there has been an abrogation of responsibility, 'a too hard' approach to dealing with conflicts. Much

	of the angst that occurs between Councillors is often due to a CEO's own failures at communication and abilities to mediate. taking temperatures down and discussing issues across a table. They should be and be seen to be bi partisan, they should meet individually with all Councillors not just the Mayor, issues could be thrashed out prior to eruptions in the Chamber. It is obvious when tensions are at boiling point and quiet intervention can lessen the impact. My experience to be fair was appalling in this space, not regular meetings were set with either the CEO or the Mayor. This undermines any sense of a team.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	Whilst lobbying may occur it should never be in private, it should be recorded and there should be a lobbyist register. [redacted], so clear training and advice around acceptable v non acceptable lobbying should play a part in any revision.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	3 Strikes and suspension. Appeals should be considered as lack of ongoing conflict management by GM/ CEO or an inexperienced Mayor could be treated as a misbehaviour but could rather be frustration due to ongoing refusal to provide transparent responses. Abuse of power by Mayors can also result in a conflict that leads to a Councillor suspension.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	Yes they are fine.

Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	No, there are no real concerns currently over sanctions they are currently weak and perceived to be weak.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Sanctions need to be considered by an experienced bi partisan panel in a hearing structure. Councillors should always have representation and arbitration options available.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	Well run meetings with a competent Chair or support to a Chair by good Governance staff, have no need to become unruly or undignified. Also I feel the reference to Parliamentary rules of conduct in Chambers is almost laughable, both in State & Federal Parliaments we see undignified and repeated unruly behaviour. Abuse of power by the Chair at Council meetings is commonplace and there needs to be rules and procedures that also call the person sitting in that position to order along with Councillors. Tempers flare when people are refused right to speak on items unfairly. Other than that the rules around Meeting Practice are clear and shoudl be practiced.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	Yes ensure the information provided to Councillors to make decisions is transparent, clear and easy to explain to residents. Allow time in briefigng for all Councillors to ask questions, upcoming items as part of a workflow so Councillors can perhaps familiarise themselves with the issues as they might pertain to residents. Giant business papers with so much to digest is unfair and risky. Councillors have families, jobs and caretaking responsibilities outside their roles, Staff are often intimately knowledgeable about their subject matter, but Councillors have to get across it in just days before decisions are made. Briefigings to suit Senior Staff timetables

	and not those of Councillors presented with a 7-- page paper at a briefing is a deliberate obfuscation. it is non transparent collusion and behaviour.

Submission number	203
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Jo-Jeanette
Last Name	Honess
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	No
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Transparent and honest and represent the people
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Chief executive
Restoring dignity to council meetings	No. No. No Nooooooooo!

Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	The mayor's are often the problem Why don't you understand this!
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	

Submission number	204
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Keara
Last Name	Conroy
Name of Organisation (If applicable)	Lake Macquarie City Council
Role/Position:	Councillor
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Councillor
Principles of change **Question: Are we missing anything in the principles of change?**	The principles of change identified are an excellent framework and I particularly enjoy the identification of council leadership and decision making is paramount, transparency and accountability and freedom of speech. I believe the principles of change thorough and appropriate.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	It is positive to see the revamped code removing restraint on the ability of councillors to speak publicly on matters pertaining to the council including direct constructive criticism of council decisions. This restraint has led to some poor decision-making in the past in a number of councils and remove the imperative for continual improvement in the delivery of local government services in particular
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	It is essential to place conduct as central part of how councillors undertake their duties.
Potential changes to the definitions and assessment of councillor misbehaviour	

Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Penalties of councillors who try to weaponise the complaints process. Education on the new code when released to ensure councillors understand the threshold for declarations of conflicts of interest, expected appropriate behaviour and the thresholds for initiating a complaint.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	It should either not be permissible for councillors to meet developers without council staff present to bear witness or not suitable for councillors to meet with developers at all. the information required for decision making in relation to development matters are presented to councillors and developers are able to submit large amounts of information to assist in decision making. If meetings with developers are permissible it is important that there are registers of the meetings and who was present and there should be a framework for what matters regarding development can be discussed.

	Also councils often permit site inspections of proposed development sites and these are frequently used by both developers and objectors to development to address councillors. I believe OLG should decide if this is an appropriate manner in which to conduct site inspections.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	Not sufficient.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Formal tribunal with independent arbitrators a s a hearing structure.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	The banning of councillor only briefing sessions is absolutely welcome as I have received a number of briefings from development proponents without objectors to development having a similar access to councillors. In some councils such as my own objectives to development have been able to make written submissions only and have limited ability to address public forums. Whilst every objector will not sway my position on a development matter I believe the lack of access to councillors

	in some councils has led to a reduced dialogue in the community regarding development matters. This can reduce the transparency and accountability And the quality of leadership and decision making from counsellors in addressing significant community concern. In the current housing crisis it is very important for residents in areas facing significant development to be in a dialogue with the council in order to better educate residents about the nature of development in their area and the benefits of the development from both housing an economic benefit for the local community. Dialogue between the community and the council on development issues can improve the communities understanding of development processes. Another concern I have in relation to the banning of briefings ais that I am concerned newer or less confident councillors will not be prepared to ask questions in the chamber where they feel they have a lack of understanding of content or processes. I am also concerned that when there are complex policy issues to resolve particularly in regards to long term planning briefings and workshops have been useful in improving the quality of policy delivered by the council. Is it possible to consider some items as appropriate for briefings and workshops particularly if recorded and available for the public. Otherwise I very much support the banning of briefings.

Submission number	205
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	doug
Last Name	eaton
Name of Organisation (If applicable)	Central Coast Council
Role/Position:	deputy mayor
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Councillor
Principles of change **Question: Are we missing anything in the principles of change?**	No
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	service to commu nity
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	agreed
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	no - much too onerous - simpolifcation required increase sublimits to $5000 , too easy to go over $500 for things like bank interest , one off job , share dividens etc bank interets , piblic shares should be exempt proprty interests out side of LGA ?state shld be exempt
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	ok

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	in most metro councils , councillors have no involement at all in deveopemnt applciations - so no issues This proposal limits the type of people that can be councillors - un democratic Environmentalist s arguably have signifcant conflcit of interets in planniong matters and so equally should be excluded
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	ok
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	not sure
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	should apply to any lobbying eg by environmental/ comunity reps not just developers
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	200
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	ok
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	too slow , too easy to make nuisance complaints
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	tribunal

Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	should be a sin bin provsion of say 15 min , to allow councillor to cooldown
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	as above

Submission number	206
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Anthony
Last Name	Patterson
Name of Organisation (If applicable)	Kempsey Shire Council
Role/Position:	Councilor/Deputy Mayor
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Councillor
Principles of change **Question: Are we missing anything in the principles of change?**	you don't hold pecuniary and non-pecuniary interest serious, in my time as a councilor 12 years i have seen it played with constantly, [redacted]
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	The code should be the same as Working in the private sector, with real repercussions. the public who speak at council should not be allowed to question a councilors integrity,they should only be allowed to speak for or against the organisation.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Long overdue

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Real penalties
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	no
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	we need all types of councilors peaople who build or develope are also rate payers.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Complaints should be delt with.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	councilors should be more than sanctioned as this means nothing to many.

Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	No
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	and the full council that person is part of.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	

Submission number	207
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Neil
Last Name	Gow
Name of Organisation (If applicable)	NA
Role/Position:	NA
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	No
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	the objective of attaining and maintaining social hesi9n with8n the co7ncil area.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	agree
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	yes and no
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	history and actions of all councillors and senior staff should be assessed when elected or appointed.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	effective leadership of meetings, including rigorous application of meeting procedure by the chair.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	professional lobbyists and industry association representatives should have to register with council/OLG.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	as for all NSW law
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	Yes
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	possibly, but if criminal conduct is discovered it should be investigated by the police or other law enforcement authority. Corrupt conduct should be reported to the ICAC
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	a formal tribunal with independent arbitrators and a hearing structure
Restoring dignity to council meetings	No

Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	The proposal on page 18, top make mandatory open access to public and the media of councillor briefings the s critical area of the discussion paper. I have recently participated in a local government election and as I had not been a prior councillor, I became acutely aware of the imbalance of information available to me compared to those candidates who had previously served as councillors. This imbalance seriously impaired my ability to discuss and debate a range of matters with those prior councillors against whom I was standing.This is even more extreme for general members of the public. This proposal must be adopted to ensure a more transparent and equal process. Thank you

Title	Mr
First name	Neil
Last name	Gow
Phone	[redacted]
Email	[redacted]
Street address	[redacted]
Suburb	[redacted]
State	[redacted]
Postcode	[redacted]
Subject	OLG Discussion Paper Councill9r Conduct and Meeting Practice
Type of enquiry	Comment
Message	Neil Gow [redacted] [redacted] The Hon Ron Hoenig, MP Minister for Local Government of NSW Parliament House Macquarie Street SYDNEY NSW 2000 2nd December 2024 Dear Minister, OLG Discussion Paper Councillor Conduct and Meeting Practices I am a resident of Eurobodalla Shire, which I understand, has not made a submission to the above discussion paper, as the motion to support the proposed submission, which opposed public access to Councillor briefing meetings, did not attract a seconder! Hence there was no discussion of the matter at that Council meeting held on 19th November 2024.. I strongly support the suggestion made on page 18 that the public be accorded access to councillor briefings (apart from those sensitive personal or commercial sections which are considered in closed session following the OLG Guidelines for Code of Meeting Practice of 2022) in the same manner in which they have access to council meetings. Such a development would contribute significantly to the achievement of the fifth goal of the Eurobodalla Shire Council's (ESC) Community Strategic Plan i.e. Our Engaged Community with Progressive Leadership which states "our leaders act fairly, listen to, and represent our community. They are accountable and transparent in their decision making process." The current Community Engagement Strategy (September 2022) of ESC also advocates wide community consultation about all substantial matters, and includes templates on how council staff can achieve the objective of informing and consulting ratepayers and residents of the shire of their activities across a wide range of policy areas. This objective is laudable, but needs to be applied even in areas which may be argued are lower order issues. Public access to councillor briefings is a natural extension of this strategy. As a candidate in the recent ESC local government elections, I was often at a distinct disadvantage compared to those candidates who had previously been councillors, as they had

	been briefed on council matters prior to Council meetings, but that information was not publicly available, unlike the council meeting minutes and attachments. Such briefings provide councillors with the opportunity to absorb, test and weigh the information provided to them in order to determine their responses, and ultimately in deciding their vote on all issues. Neither, of course, can there be any media coverage of these briefings to inform residents and ratepayers without such access being in the public domain. If all ratepayers and residents are to be accorded the same level of information as councillors, they would be in a better position to respond to the council agenda and assess the responses of the councillors, who are of course, their representatives. Also pubic access to councillor briefing meetings would often obviate the need for ratepayers to make enquiries to council, and thus avoid staff time in responding to individual requests. I would ask that you strongly support this suggestion in order to improve the transparency and accountability of our council and the decisions of councillors, whose votes determine these matters for all of our community. Yours sincerely Neil Gow [redacted]
I would like a response	Yes
Privacy Collection Notice	NSW government Privacy Statement: **Agreed**

Submission number	208
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	
Principles of change **Question: Are we missing anything in the principles of change?**	I support the principles of change - nothing missing.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	I agree with the statement in the second paragraph of page 8 of the discussion paper. Councillors need clearer guidelines of what is acceptable behaviour in particular in relation to public comment.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Fully supportive
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	I agree with the proposed changes to the legislation to have real estate agents and developers leave those industries while on council.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	The Local Government Privileges Committee may be the best way to go.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	How and when it is appropriate for councillors to meet with developers and members of the public. Who should be present and what records need to be kept.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	I would think that only deliberate breaches of the code would need to be dealt with a PIN. Inadvertent breaches should be dealt with by counselling or training.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	Penalties appear to be appropriate.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	Yes
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	A formal tribunal.

Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	The powers are presently adequate.
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	I note that the pre-meeting briefings are recommended to be banned but they do have a positive role in briefing councillors prior to a formal meeting. The only change necessary is to make them open to the public.

Submission number	209
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	
Restoring dignity to council meetings	

Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	I do not want my name and personal details published. **Questions taken on notice** During council meetings I've sometimes witnessed council staff not being able to answer questions, so they take the question on notice and then provide the answers/information to councillors at a later date. This information is never published or made public. So it's shared with the councillors and not the general public. I think every council should have a page on their website with a register sharing this information.

Submission number	210
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	
Principles of change **Question: Are we missing anything in the principles of change?**	Freedom of speech should be done in an inclusive and respectful environment to encourage transparency, accountability and diversity of community representation;
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	A clause on respectful behaviour in Council and in public would be of value. On the campaign trail unauthorised/disrespectful/non transparent behaviour was not addressed by the Electoral Commission - the behaviour we walk past is the behaviour we accept.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	An excellent idea.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Transparency relating to political partnership and support throughout Council representation - not just membership of parties. [redacted]

	[redacted]. Transparency may not address the on-going conflict of interest but will make it much harder to hide.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Transparency relating to political partnership and support throughout Council representation - not just membership of parties.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	All real estate activities by the estate agent should be stopped during councillor role engagement. [redacted]
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	All real estate activities by the estate agent should be stopped during councillor role engagement. Transparency relating to political partnership and support throughout Council representation - not just membership of parties.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	Transparency relating to political partnership and support throughout Council representation - not just membership of parties. A very strong voice that is being heard at the Nambucca Valley Council is currently lobbyists from the local/State/Federal National Party. This does not represent

	65% of the community and makes it hard to undertake a democratic Council process.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	As outlined.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	As outlined.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	Yes
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Independent formal tribunal process.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	

Submission number	211
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	
Principles of change **Question: Are we missing anything in the principles of change?**	P. 5.: Dot-point 6. "...not focusing on the important financial and ..." is mentioned. But that's the only time financial management is quoted. As well as declaration of interests and misbehaviours, there needs to be something that holds popularly elected councillors, who mostly have inadequate financial management capabilities, to a greater account of managing public funds. To start with, there needs to be mandatory training for councillors. If they do not attend, some form of penalty. ASIC have provisions for company directors, yet many councils have budgets far exceeding a great many companies. Councillors make financial decisions, for example, to not apply for a Special Rate variation, which under ASIC principles is effectively condoning a company to trade whilst insolvent if the council is running a deficit. There are no repercussions for this, which in the private enterprise world would be considered criminal. P.6. Dot-point 1: Comment. The sanctions (suspension or loss of pay) need to proportionally match the benefit a councillor would receive.

	P.7. There appears to be no mention anywhere about disciplinary action for repeated breeches. P.8.: Last paragraph. Comment on aspirational versus enforceable. I cannot see anything but strongly applied rules and penalties working to control recalcitrant individuals. I am privy to knowing ex-councillors who hold a Code of Conduct against them as a badge of honour. I feel they'd see 'aspirational' as a get-out-of-goal-free-card. The current system is a slap on the wrist, and in some instances actually acts as a promotional opportunity. To adopt a narrative such as 'aspirational' may not deliver the results sought.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	See previous comment on aspirational.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Anything would be better than what we've got. Better to try and fail than not try at all.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	No. P.9. Last paragraph under the heading 'Conflicts of Interest.' There is nothing about proxy votes. I've been in the situation, and may again, where the councillor with a pecuniary conflict simply words up their voting block to push through. I have no idea how the OLG can stop this from happening. If there isn't provision the responsibility will fall onto the CEO/GM. There are instruments in the ICAC Act and through a PID, but that's after the fact.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a**	See answer to 4.1.

significant or major non-pecuniary interest?	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	Yes. Last paragraph. P.11.: Comment. I'm sure the OLG will ensure Family Trusts and other vehicles to distance names from actions/funds/investments etc. will be covered.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Yes, but concerned about the success. Page 12. The three dot-points. The more cunning and unscrupulous councillors, quite simply, just ask a proxy to make public comment to avoid bringing the council into disrepute. So any monetary fine won't worry them. In councils where they all hate each other, or vote in blocks or multiple blocks, it's going to be challenging to assess who is outside the norm. Challenging, but a commendable pursuit, nevertheless. I can't help with a meaningful suggestion as to how to overcome.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	In councils where the OLG/ICAC send an observer, I've seen a temporary change in behaviour (City of Ryde circa 2013). Unfortunately, once a council gets to know they're being watched they'll change their behaviour while being observed, then go back to normal when the public gallery empties. Would it be possible for the OLG to engage local observers, on a regular basis, to report on meetings?
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	Have all councillors who engage with a lobbyist submit a disclosure at the start of the next council meeting. Penalties for not doing so.
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	None of my councillors ever served for the small amount of remuneration they received. Quite a few in every council I've worked in were very or extremely well off. So losing $1400 for a month, or $5200 for three months, wouldn't deter most.

	The PIN needs to be linked to self-esteem and dinting an ego, through media: both newspapers and social.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	Three strikes and you're out - orchestrated in a timely fashion.
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	[redacted] So, no, it's insufficient.
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Whoever makes the decision needs to only have ONE job. I realise that the Department Chief Executive will delegate to a specific section or arm. But ultimately, they'll have to sign off. The challenge with the Departmental Chief Executive being (ultimately) responsible, is that there's so many other important activities to manage in parallel. Moreover, there is a risk that 'Blue' or 'Red' political pressure will be placed on the Exec (depending on who is in power at the time). 'Independant' has almost become a cliché in the halls of government. This is a risk that must be managed.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	In theory, giving a mayor more power may assist. In practice, a mayor can be just as fallible, corrupt, vindictive, or bias as anyone else. There's safety in numbers. Three strikes and you're out - for good.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	6.3 Banning briefing sessions [redacted] As meeting procedure is very formal, it would be unlikely that councillors would be voting on exactly knowing the topic, as discussion would be more limited. Singling out a mayor only (p.18), will decrease the level of transparency

	amongst the councillors and cause immense distrust. This is even more problematic if there is a sub-optimal mayor, perhaps with ulterior motives. This is open to abuse and risk. Briefing Sessions are different to Workshops though, but the phrase, 'Any material provided to councillors…,' worries me, as that infers any material - including that provided at workshops. We must keep the Workshops, but maybe publish an agenda on a council website? Understanding complex issues takes much more time to answer questions than in a formal council meeting. [redacted]

Submission number	212
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	The document highlights the importance of "transparency and accountability" for local councils. Seems ironic given the lack of transparency when it comes to NSW state government. Why, for example, doesn't NSW Cabinet debate issues in an open manner? It appears that local government has different rules to state government.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	

Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	The current problem is that the OLG is a very weak, under-funded department with no real powers.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	The mayor is often the problem so relying on the mayor to control disorderly behaviour is laughable. Similarly the general manager is appointed by the councillors so don't want to upset them if they want to keep their job.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	The document refers to councillors receiving briefings from staff. The document needs to clearly define "briefings" in this instance. Unrealistic to expect all interactions between councillors and staff to occur in public. Refer to previous comments regarding the lack of transparency in the NSW state government system.

Submission number	213
I would like my name and personal details to be treated as confidential:	I consent to my details being shared
First Name	Jason
Last Name	Shepherd
Name of Organisation (If applicable)	Goulburn Mulwaree Council
Role/Position:	Councillor
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Councillor
Principles of change **Question: Are we missing anything in the principles of change?**	Think the changes are balanced. A focus on transparency with briefing is appreciated. The disciplinary rule to allow mayors to throw councillors out of a meeting is open to abuse and will be used as a political tool and to sway vote numbers on tight items for consideration. It needs to be reconsidered and an in meeting warning three times your out rule applies.
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	Listen to the community and be guided by community consultation / feedback. Empower councillors to push back against council staff deadlines to affect change.
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Good idea
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	No

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	It should not be allowed. It is a clear conflict of interest and even when divested the conflict remains through family and associates in real or perceived benefits.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Matters need to be addressed more openly and quicker. Public need to understand what the code of conduct relates too as it allows the councillor in question to hide behind and politicise the code of conduct rather treat it as a penalty.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	Direct reporting to OLG is a good step and will minimise complaints as influence real or perceived cannot be put on the mayor and or gm / ceo.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	Not allowed
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	What's a speeding ticket wort? Makes it commiserate with other penalties so the community understands it better.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	The disciplinary rule to allow mayors to throw councillors out of a meeting is open to abuse and will be used as a political tool and to sway vote numbers on tight items for consideration. It needs to be reconsidered and an in meeting warning three times your out rule applies.
Dispute resolution and penalty framework	Not sure

Question: Are the existing sanctions available under the Local Government Act sufficient?	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Yes if video link attendance available to regional and rural concils.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	The disciplinary rule to allow mayors to throw councillors out of a meeting is open to abuse and will be used as a political tool and to sway vote numbers on tight items for consideration. It needs to be reconsidered and an in meeting warning three times your out rule applies.
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	Encourage open brieifings. Less closed doors.

Submission number	214
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	The proposed definition of Pecuniary Interest should not only include "financial benefit" but should also include "financial loss".
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	The principles are very unclear and will lead to even more confusion in the sector. The word "nuanced" conjures up uncertainty. It is a noble objective to manage non-pecuniary interests based on the individual circumstances but in reality, this will not work.

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	It is pleasing that the Constitution blocks any attempt to ban developers and real estate agents from holding the office of councilor. Such a ban would contravene a democratic right to hold public office. Additionally, such a ban does not apply to State or Federal parliamentary elected representatives so it should not apply at the local government level. There is nowhere near enough detail in the discussion paper to enable stakeholders to make objective comment about councilors dealing in real estate. If there is a need to get tough on this then have more stringent penalties on councillors who do not appropriately declare pecuniary conflicts of interest. This discussion paper attempts to put a blanket ban across the whole sector.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	The first 2 categories should be combined into one. ie "Behaviour that is unbecoming of a councillor or brings a council into disrepute." The third category (which becomes the second category, needs to be better defined. The only definition provided is behaviours that are considered "egregious or problematic". It is proposed that members of the Privileges Committee will be Mayors or past Mayors therefore some members of the Privileges Committee could themselves be the subject of complaints referred to that body. How will those circumstances be managed? Who appoints the membership of the Privileges Committee? What assurance is there that these members are not politically affiliated or conflicted with those who have complaints lodged against them?
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	

Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	The OLG should have authority to issue PINs and they should be significant. There should be real and substantial consequences for those councillors who breach standards of behaviour and this is the fundamental problem with the current system.
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	The penalties proposed are not sufficient. Some councillors will consider a "censure" or a "warning" as a badge of honour. If this is not strengthened then the entire reform process will be a waste of time. Suspension should be used much earlier in the process
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	The Dept Chief Executive Officer should be given power and he/she should use it.
Restoring dignity to council meetings **Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?**	
Restoring dignity to council meetings **Question: Are there any other measures to improve transparency in councillor deliberations and decision making?**	Workshops with councillors that are used to provide background information regarding strategically important issues to councillors should be permitted. These are not Council meeting agenda briefing sessions. [redacted]

	[redacted]

Submission number	215
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	[redacted]
Role/Position:	[redacted]
Which of the following best describes you? - **Council Metro** - **Council Metro- fringe** - **Council Regional** - **Council Rural** - **Joint Organisation/Regional Organisation of Councils** - **Industry / advocacy organisation** - **Member of the public** - **NSW State Government agency** - **Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	No
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	NIL
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	N/A
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	I think that Councillors being committee members on Section 355 Committees needs to be addressed. [redacted] Should Councillors be allowed to be voting

	members on committees and hold roles such as president, treasurer, secretary etc. on these committees and if so, should they declare a conflict of interest when the committee they are a member of is discussed?
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	No
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	Yes
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	No feedback
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	No feedback
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework	

Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?	
Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	

Submission number	216
I would like my name and personal details to be treated as confidential:	Yes, please keep my details confidential
First Name	[redacted]
Last Name	[redacted]
Name of Organisation (If applicable)	
Role/Position:	[redacted]
Which of the following best describes you? **- Council Metro** **- Council Metro- fringe** **- Council Regional** **- Council Rural** **- Joint Organisation/Regional Organisation of Councils** **- Industry / advocacy organisation** **- Member of the public** **- NSW State Government agency** **- Other**	Community member
Principles of change **Question: Are we missing anything in the principles of change?**	
Potential changes to the code of conduct and oath of office **Question: What are the key elements of an aspirational Code of Conduct that should be enshrined?**	
Potential changes to the code of conduct and oath of office **Question: What are your views about aligning the Oath of Office to the revamped Code of Conduct?**	Not sure how impactful that will be.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is the proposed Pecuniary Interest Framework appropriate? Is anything missing?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?**	

Potential changes to the definitions and assessment of councillor misbehaviour **Question: Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?**	.
Potential changes to the definitions and assessment of councillor misbehaviour **Question: Is this the appropriate threshold to face a Privileges Committee?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: How else can complaints be minimised?**	
Potential changes to the definitions and assessment of councillor misbehaviour **Question: What key features should be included in lobbying guidelines and a model policy?**	
Dispute resolution and penalty framework **Question: What level of PIN is appropriate?**	
Dispute resolution and penalty framework **Are the penalties proposed appropriate, and are there any further penalties that should be considered?**	
Dispute resolution and penalty framework **Question: Are the existing sanctions available under the Local Government Act sufficient?**	
Dispute resolution and penalty framework **Question: Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?**	Tribunal sounds good. But why is it only mayors or ex-mayors? Why not councillors or ex-councillors?

Restoring dignity to council meetings Question: Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?	I think giving the power to the mayor to take away the allowance of a councillor is absurd. The whole review is partially based on removing political infighting from councils. This extra powers just makes that more likely. Or gives mayors the ability to threaten councillors, or prevent councillors from standing up to mayors. The document seems to have a view that mayors are all great people, but this is not the case and giving them powers that impact councillors to pay rent or for food is too much. It also assumes a very antiquated view that councillors are serving as a side hobby and not treating it like a real job. Many councillors reduce full time work to be a councillor, and now that is at risk at the whims of a mayor.
Restoring dignity to council meetings Question: Are there any other measures to improve transparency in councillor deliberations and decision making?	Removing confidential briefings is ridiculous. Many briefings allow for councillors to understand a range of issues and have frank conversations with each other and staff. Removing them won't stop those conversations happening but instead will make councillors do it one on one instead of working together and sharing ideas and asking 'dumb' questions. When state government make all their briefings open to the public, whether that be ministers with department staff, or cabinet meetings, then I will consider this a reasonable suggestion, but that will never happen because they recognise the importance of having a place to discuss it freely without every comment and suggestion being a front page story.