



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 on 9777 7567.

Yours sincerely

Hugh Phemister
GENERAL MANAGER



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 vexatious 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 breaches 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.