

ITEM 8

SUBMISSION TO THE OFFICE OF LOCAL GOVERNMENT - COUNCILLOR CONDUCT AND MEETING PRACTICES DISCUSSION PAPER

The Office of Local Government (OLG) is currently reviewing the Councillor Conduct Framework with a view to facilitate and support local decision making. The OLG has released a discussion paper *"The Councillor conduct and meeting practices – A new framework"* and is seeking the views of the community, key stakeholders, and the local government sector about the proposed changes.

RECOMMENDATION

- 1 The Discussion Paper for the Councillor conduct and meeting practices framework be noted.
- 2 The General Manager be authorised to finalise the draft submission (Attachment 1) and forward it to the Office of Local Government for their consideration.

REPORT AUTHORISATIONS

Report of: Todd Hopwood, Manager Customer and Business Integrity
Authorised by: Renee Campbell, Director Corporate Services - Connected + Engaged City

ATTACHMENTS

- 1 WCC Submission - Councillor Conduct and Meeting Practices Discussion Paper

BACKGROUND

The Office of Local Government (OLG) is reviewing the Councillor Conduct Framework, with the stated intention to ensure that the framework delivers on the need for transparency and ensures that councillors are visibly in control of their councils.

The OLG believes that Councillors should act fairly, ethically and without bias in the interests of the local community. They should be responsible employers and provide a consultative and supportive working environment for staff.

The OLG have advised that the revised Councillor Conduct 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.

PROPOSAL

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 the 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.

The Discussion Paper states that the volume of frivolous complaints being made against Councillors 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 frivolous complaints may be impacting on the ability of the OLG to deal with all complaints, these types of 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's submission will propose 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.

Overall, 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's submission 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.

Whilst additional detail would be welcomed on these proposed changes, Council has prepared a detailed submission on the proposals as they are outlined in the Discussion Paper as the OLG has not committed to undertaking any further consultation with the sector on these proposals. That submission is attached to this report for consideration and endorsement by Council.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2032 Goal 4. It specifically delivers on the following:

Community Strategic Plan 2032		Delivery Program 2022-2026	
Strategy		Service	
4.7	Demonstrate responsible decision-making based on our values, collaboration, and transparent and accountable leadership	Governance and Administration	

RISK MANAGEMENT

Wollongong City Council believes that the NSW local government sector in general is operating well, and any concerns that the 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.

If the proposals in the Discussion Paper are implemented in whole or in part, Council may be required to implement significant changes to the operation of meetings and how it provides information to Councillors. There is a risk that such changes to process may have impacts on resourcing and the efficient administration of the Council meeting and briefing process, with additional risks relating to the efficient operation of the elected Council when considering information relevant to decision making.

CONCLUSION

Both the Councillor Code of Conduct and the Code of Meeting Practice have a significant bearing on the application and delivery of the roles of the Lord Mayor and Councillors, as such any changes in either document can have significant impacts on how Councillors perform their role and how the elected Council undertakes its combined functions. The submission to the Discussion Paper ensures that Council's views on these very important topics are taken into consideration before any changes are considered for implementation by the Office of Local Government.

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 of 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 of 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 Manager 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 they 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 of 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 be 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.