

17.3 Submission to the Office of Local Government - Councillor Conduct FrameworkResponsible Director: Planning, Environment and Communities

Report

The Office of Local Government (OLG) prepared a Discussion Paper to seek the views of the community, key stakeholders and the local government sector about the proposed changes to the Councillor Conduct Framework.

The discussion paper was broken down into the following sections –

- Principles of change
- Potential changes to Code of Conduct and Oath of Office
- Potential changes to the definitions and assessment of Councillor misbehaviour
- Dispute resolution and penalty framework
- Restoring dignity to Council meetings

This report is to provide Council with a copy of the submission prepared and submitted to the OLG – refer to Attachment 1 for the questions for consideration and Council responses.

Communication/Community Engagement

N/A

Risk implication

Any changes to the Councillor conduct framework and the meeting practices of Councils will require changes to the Local Government Act 1993, as well as updating the various regulations, codes and policies that apply. Until such time as the OLG advise that a new framework has been implemented, any potential strategic, financial, regulatory, or reputational risk to Council is unknown.

Attachments

- 1 Submission to the OLG - Councillor Conduct Framework [↓](#)



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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

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)	<input checked="" type="checkbox"/> I consent to my details being shared
Name	Jane Stroud
Name of organization	Kiama Municipal Council
Role/Position	Chief Executive Officer
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Email	janes@kiama.nsw.gov.au
Which of the following best describes you?(Required)	<input checked="" type="checkbox"/> 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 outline 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 ?	<ul style="list-style-type: none"> • 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 <ul style="list-style-type: none"> ○ 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
		<ul style="list-style-type: none"> ○ 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.

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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
<p>6.2 Are there any other measures needed to improve transparency in councillor deliberations and decision making ?</p>	<p>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.</p> <p>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.</p> <p>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.</p> <p>The following points also require consideration –</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>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.</p> <p>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 ?</p>