



2 February 2023

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## **RE: Review of the Councillor Misconduct Framework - Consultation Guide**

This submission provides feedback on the Kellar report, in particular, recommendations for significant changes to the management of councillor misconduct in NSW and the establishment of an independent Councillor Conduct Commissioner and conduct review panels.

Overall, Council is supportive of the review and agrees that the current councillor accountability framework needs to be strengthened and improved. Council's position on each of the high-level points outlined in the [Consultation Guide](#) are summarised as follows:

1. The introduction of independent oversight by a Councillor Conduct Commissioner.

Council is supportive of this recommendation.

2. The establishment of independent conduct review panels (mirrored on the regional planning panels), operating under the independent oversight of the independent Councillor Conduct Commissioner.

Council is supportive of the establishment of independent Councillor Conduct Review Panels. The responsibility of the appointment of Panels should rest with the Councillor Conduct Commissioner to avoid the issue of actual or perceived bias or lack of independence.

The development of a standard councillor conduct complaint form would further facilitate effective complaints receipt and the initial assessment for compliance.

3. Cost recovery for the operational costs of the Commission and the independent panels from councils using the service.

Supportive.

4. Cost recovery from councillors found to have committed repeated misconduct or integrity breaches or behaving in a way that unnecessary prolongs an investigation.

Council is supportive of this suggestion to ensure the costs of complaints which are found to be breaches are not borne by the community.



## **Additional matters for consideration**

### **Single Code of Conduct for Councillors**

Council supports the development of a single Code of Conduct for Councillors and has made steps in our recent review of the Byron Shire Code of Conduct to develop and publish three separate Codes, one each for Councillors; staff; and Committee Members, Delegates of Council and Council Advisers.

It has been useful to separate the Codes to the extent possible, however Council would be in favour of a new code of conduct for councillors that is developed fully separate from the employee's code and focused on the specific context of elected members. This would also serve the purpose of strengthening the Code of Conduct for staff in clearly delineating Code matters that may arise through employment.

### **Sanctions and Penalties**

Currently, the only penalty available to councils for councillor misconduct is censure. Present sanctions are meaningless and ineffective and may not present enough of a deterrent to prevent breaches to the Code of Conduct.

Prescribed sanctions and penalties would provide a reasonable and equitable mechanism. As provided in Mr Keller's report, the Councillor Conduct Commissioner, or OLG, should enforce disciplinary action.

### **Oath of Office**

Council supports Mr Keller's amendments to the Oath of Office and agree that this would further reinforce the obligations and duty to the Code of Conduct.

### **Mandatory Training**

Council supports mandatory training, both as a requirement to nominate for candidacy and for elected councillors.

Prior to the 2021 Local Government Election Byron Shire Council arranged pre-election candidate workshops, facilitated by LGNSW. Attendance at these workshops was limited, despite wide advertisement, and it may be beneficial to invite feedback from elected members and potential candidates on how these workshops could be delivered to increase participation.

Council delivered an induction program following the election, which included sessions on the Code of Conduct, however it would be advantageous if this training were to be run in partnership with the Councillor Conduct Commissioner, the Office of Local Government, and others as suitable.

With regard to ongoing professional development and training, acknowledging that elected members come with different skills and experience, the introduction of a mandatory training program would enable a more consistent approach to building professional knowledge and skills relevant to the role. Currently, the capacity to participate in ongoing professional development appears to be hindered by competing priorities.

Understandably, however, Councillors are not adequately compensated for the time that they are required to dedicate to their role. As opposed to sanctions and penalties for non-compliance, this may be an opportunity to reward compliance. It is suggested that consideration be given to financial incentives or pay increases once certain professional development or training goals are met.

## **Model Code of Meeting Practice**

Council would support a review of the Model Code of Meeting Practice, with a focus on strengthening the mayor's/chair's powers and obligations.

There are some potential concerns about increasing the power of the Chair to expel Councillors without the consent of the Council but, at the same time, any changes that may affect the discretion of the Mayor in certain circumstances need further consideration. Further feedback on a revised draft Model Code of Meeting Practice will be provided when the opportunity to do so arises.

Should you wish to further discuss any of the above suggestions please contact Council's Manager Corporate Services, Heather Sills on [hsills@byron.nsw.gov.au](mailto:hsills@byron.nsw.gov.au) or telephone (02) 6626 7171.

Your sincerely

A handwritten signature in black ink, appearing to read 'Heather Sills', written in a cursive style.

Heather Sills  
Manager Corporate Services