

SECOND SUPPLEMENTARY AGENDA

of the
Ordinary Meeting of Council
held in
Council Chambers,
Wingecarribee Shire Council Civic Centre,
68 Elizabeth Street, Moss Vale
on

Wednesday 14 December 2022

The meeting will commence at **3:30 pm**

**AGENDA OF THE ORDINARY MEETING OF COUNCIL
WEDNESDAY 14 DECEMBER 2022**

SA21 GENERAL MANAGER3

SA21.1 NSW Office Of Local Government: Consultation On The Outcomes Of The
Review Of The Councillor Misconduct Framework3

SA21 GENERAL MANAGER

SA21.1 NSW Office of Local Government: Consultation on the Outcomes of the Review of the Councillor Misconduct Framework

Report Author: Executive Assistant to Director Corporate Strategy and Resourcing

Authoriser: General Manager

PURPOSE

The report advises Council that the Office of Local Government (OLG) has released a Review of Councillor Misconduct Framework. This is an independent review of the framework for dealing with Councillor misconduct in NSW.

The OLG is seeking written submissions in response to the consultation paper from the general public, Councils, individual Councillors and Council staff by close of business on 3 February 2023.

THAT:

- 1. The General Manager be delegated authority to make a submission to the Office of Local Government on the Review of Councillor Misconduct Framework on behalf of Council with the concurrence of the Administrator by the closing date of 3 February 2022**
- 2. The submission be report to the Ordinary Meeting of Council on 15 February 2023 for noting.**

REPORT

BACKGROUND

The Wingecarribee Shire Council was subject to a Public Inquiry, which was conducted from September 2021 through to April 2022. The Terms Reference for this Inquiry were:

- Whether members of Council's governing body fully understand their roles and responsibilities and have adequately, reasonably and appropriately carried out their roles and responsibilities during the current term of Council.
- Whether, during the current term of Council, there has been improper interference by the elected body of Council, or by individual councillors, in operational matters, with particular reference to staffing and planning functions.
- Whether members of Council's governing body have been and will continue to be in a position to direct and control the affairs of Council in accordance with the Local Government Act 1993 and to otherwise fulfil its statutory obligations.
- Any other matter that warrants inquiry, particularly those that may impact on the effective administration of Council's functions and responsibilities or the community's confidence in the Council being able to do so.

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The Minister for Local Government appointed Mr Ross Glover as Commissioner to undertake the Inquiry. The Inquiry report was tabled in the NSW Parliament on 13 July 2022 and included the following recommendations:

1. *The Minister recommend to the Governor that the Civic Offices of the Wingecarribee Shire Council be declared vacant forthwith.*
2. *That the elections for the Wingecarribee Shire Council be deferred to coincide with the statewide local government elections in 2024.*
3. *That a standardised mandatory induction program be developed for all councillors to in New South Wales covering (at least):*
 - a. *the statutory roles and responsibilities of a councillor (including detailed guidance on the distinction between the strategic roles of a councillor and the operational function of the council staff*
 - b. *the Model Code of Conduct, including how breaches of it are dealt with;*
 - c. *the Model Code of Meeting Practice and meeting procedure, including clear guidance for moving motions, amendments, foreshadowed motions, rules of debate, and acts of disorder and how they may be dealt with;*
 - d. *councillor misconduct, and the available responses to it;*
 - e. *other “core” councillor skills necessary to fulfil the statutory obligations of a councillor.*
4. *4. That a standardised mandatory training for Mayors and Deputy Mayors be developed in relation to the Model Code of Meeting Practice (which can be supplemented to include any variances in the particular Code adopted by the particular council) and skills and techniques for chairing meetings, including particular focus on meeting procedure, maintaining order, and techniques and powers for dealing with acts of disorder.*
5. *That consideration be given to amending cll 183 and 184 of the Local Government (General) Regulation 2021 to make attendance at compulsory induction training (including of the kind referred to in recommendations 3 and 4 above, if adopted) mandatory within a short period following election (as a councillor, or Mayor or Deputy Mayor), say six months.*
6. *That consideration be given to amending the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW to require that, in circumstances where a councillor has been found following an independent review to have been in breach of the Code of Conduct:*
 - a. *The Conduct Reviewer include in their report a short summary of the breach(es) of the Code of Conduct that have been found, which identifies the factual circumstances and a list of each provision contravened;*
 - b. *The resolution of Council reported to the public meeting and recorded in the Minutes must include:*
 - i) *an identification of the Councillor who was in breach of the Code of Conduct;*
 - ii) *a short summary of the conduct that constituted the breach of the Code of Conduct found by the independent reviewer from the report as identified in subparagraph (a) above, including an identification of the provision(s) of the Code of Conduct that had been contravened; and*
 - iii) *a summary of the action taken by the governing body in response to that report, including the reasons for any departure from the recommendation of the independent conduct reviewer (if that be the case).*
7. *That consideration be given to requiring councils to maintain a public register of each established breach of the Code of Conduct by councillors, recording:*

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- a. *the councillor who was in breach of the Code of Conduct;*
 - b. *a short summary of the conduct that constituted the breach of the Code of Conduct found by the independent reviewer including an identification of the provision(s) of the Code of Conduct that had been contravened; and*
 - c. *a summary of the action taken by the governing body in response to that report, including the reasons for any departure from the recommendation of the independent conduct reviewer (if that be the case).*
8. *That the Model Code of Conduct be amended to capture other circumstances where conflicts of interest may arise and which do not fall within the current definition of “personal interest”, including where a councillor has aided an applicant or objector to a development application or for any other service to Council.*
 9. *That consideration be given to amending the Local Government Act to make the division between “operational” and “strategic” responsibilities clearer by making it clear in the statute that a councillor is not permitted to direct or seek to influence (whether directly or indirectly) council staff in the performance of their duties.*

REPORT

The Minister for Local Government appointed Mr Kellar to undertake an independent review of the framework for dealing with councillor misconduct in New South Wales. Mr Kellar was a member of the expert panel which conducted a review of the local government misconduct framework in Queensland in 2017 and was general manager of Logan City Council for 26 years.

Mr Kellar’s review has examined the current administrative framework under which complaints about councillor misconduct are managed, with the aim of identifying areas for improvement. The review has included an examination of similar frameworks used in other jurisdictions.

Mr Kellar has made 49 recommendations, which amongst other things, has recommended the establishment of a new framework for dealing with councillor misconduct in which code of conduct complaints about councillors are managed by regionally based Independent Councillor Conduct Review Panels under the regulatory oversight of an independent Councillor Conduct Commissioner. Panels will have stronger disciplinary powers than those currently available to councils including the ability to impose monetary penalties. Councils will be required to meet the panels’ and the Commissioner’s costs in dealing with complaints about their councillors.

Other recommendations include:

- requiring candidates at local government elections to participate in training before they can nominate
- mandating training for councillors
- allowing councillors to be prosecuted for breaches of their oaths of office
- empowering mayors to expel councillors from meetings for disorder, and
- placing a positive duty on mayors to deal with disorder at meetings – a failure by mayors to do so will constitute serious misconduct.

Given the past of Wingecarribee Shire Council and to support an effective future Council, this Consultation Paper provides an opportunity to share the learnings from the past.

The Consultation Paper and associated information is available on OLG’s website: <https://www.olg.nsw.gov.au/councils/misconduct-and-intervention/review-of-councillor-misconduct-framework/>

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COMMUNICATION AND CONSULTATION

Community Engagement

N/A

Internal Communication and Consultation

N/A

External Communication and Consultation

N/A

SUSTAINABILITY ASSESSMENT

Environment

NIL

Social

NIL

Broader Economic Implications

NIL

Culture

NIL

Governance

NIL

COUNCIL BUDGET IMPLICATIONS

NIL

RELATED COUNCIL POLICY

NIL

CONCLUSION

The OLG have released an independent report on the Review of the Councillor Misconduct Framework. This report recommends that Council make a submission by the 3 February 2023.

ATTACHMENTS

Nil
