

Wollongong City Council Submission

To the Discussion Paper on a New Model Code of Meeting Practice

Consultation draft

The OLG Discussion paper and accompanying draft Model Code of Meeting Practice (Model Meeting Code) outlines a proposed new approach to Council meeting practices. In summary the Office of Local Government (OLG) is proposing to update the Model Meeting Code to deliver the following outcomes:

- promoting transparency, integrity and public participation
- promoting the dignity of the council chamber
- depoliticising the role of the general manager
- simplifying the Model Meeting Code
- restricting Councils from holding briefing sessions

The discussion paper provides a brief overview of the proposed changes under each of the five above mentioned broad objectives. The draft Model Meeting Code provides a more complete and detailed description of the proposed changes.

Council's response to the proposed changes is provided below and have been grouped together in the five objective categories specified by the discussion paper.

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 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 meeting procedures and Model Meeting Code are always worthy of review and refinement, Council believes that the Model Meeting Code needs enhancements and fine tuning rather than comprehensive and wide-ranging changes. It is also noted that for many of the proposed amendments, the rationale behind the change or the driver for the proposed amendment is not known, making it difficult to respond or to provide alternate solutions.

Promoting transparency, integrity and public participation

Details:

The OLG has proposed the following amendments to promote greater transparency and public participation:

- Requiring information considered at closed meetings to be made public after it ceases to be confidential.
- Requiring recordings of meetings to be published on council websites for the balance of the council term, or, in the case of an election year, for at least 12 months.
- Providing that councils must not make final planning decisions without a staff report containing an assessment and recommendation.

Council submission:

Council submits that the requirement for information considered at closed meetings to be made public after it ceases to be confidential may have administrative burdens and impacts that outweigh the perceived transparency improvements due to already existing methods for the public to seek access to this information.

All councils are bound by the requirements of the *Government Information (Public Access) Act 2009* (GIPA Act). Under the GIPA Act members of the public can apply to Council to seek access to any information held by Council, including information relating to confidential Council reports. Under the GIPA Act Council cannot refuse access simply because a report was considered in confidential session, it must determine access in accordance with the GIPA Act and can only refuse access for reasons specified in s14 of the GIPA Act. Wollongong City Council, like all other councils, does receive GIPA applications that include requests to access confidential information.

In these circumstances if an assessment under the GIPA Act determines that the confidential Council report should be released to the GIPA applicant, Council does so in accordance with the Act. Council believes that this mechanism sufficiently allows the public to seek access to formally confidential information. To assist in the OLG's intent to increase transparency in this area, Council proposes that an amendment to the GIPA Act should be made to require councils that release a formerly confidential Council report in response to a GIPA application to have the Council publish that report in its GIPA Disclosure Log that is required to be published on every government and council website.

Having this decision to publish formerly confidential reports be triggered by release in response to a GIPA application has the following advantages over the proposed approach in the discussion paper:

- Assessment of confidentiality occurs under the existing legislated framework established by the GIPA Act
- Expert staff make the assessment in accordance with the GIPA Act
- Refusal to provide requested information is subject to established legal appeal avenues to the NSW Civil and Administrative Tribunal and the NSW Information Commissioner
- Removes the potential for a report to be maintained as confidential by the elected Council for reasons not related to the confidentiality status of the information.

Notwithstanding the above, if the OLG proposes to implement these requirements as stated in the discussion paper Council requests that to minimise the administrative burden of constant review, Council's should be required to conduct such a review no more frequently than every 12 months.

Council commentary on specific draft Model Meeting Code changes:

Section	Details of Change	Council Submission
Amendment of Clause 5.37	Amendment of rules of how long webcasts of council meetings must be on the council website. Now a minimum of 12 months or for the balance of the council term, whichever is longer	Council is supportive of the proposed change as a minimum approach. Wollongong City Council publishes recordings back to 2013.
New clause 11.12 - planning decisions	New clause stating a Council cannot make a final planning decision without receiving a staff report with an assessment and a recommendation	This is a standard practice and Wollongong City Council and Council has no objection to this being a mandated requirement.
New clause 11.13 - planning decisions	New clause stating a Council that makes a planning decision contrary to a staff recommendation, must provide reasons for not adopting the staff recommendation	Subject to appropriate guidance of required content and level of detail required to outline Council's reasoning for such a decision, Council has no objection to this being a mandated requirement.

Promoting the dignity of the Council chamber

Details:

The OLG has proposed the following amendments to promote the dignity of the Council chamber:

- The mayor will be permitted to call extraordinary meetings without a request and the restrictions on mayoral minutes will be removed.
- Requiring councillors to stand when addressing the meeting, or when the mayor enters the chamber.
- Removing the option for councils to reduce the duration of speeches
- Refining the definitions of disorder to remove phrases that could be weaponised to impede debate.
- Providing as a default that councillors are to attend meetings in person. Councillors will only be permitted to attend meetings by audio visual link where they are prevented from attending a meeting in person because of ill health or another medical reason or unforeseen caring responsibilities.
- Restricting the circumstances in which the council may withhold a leave of absence.
- Removing the option for staff to attend meetings by audio visual link.
- Strengthening the deterrence against disorder by codifying the common law position that allows councillors to be expelled from successive meetings where they fail to apologise for an act of disorder at an earlier meeting.

Council submission:

Whilst it is reasonable to expect that the default attendance mode for Councillors to attend meetings is in person, Council strongly opposes the proposal that Councillors will only be permitted to attend meetings by audio visual link where they are prevented from attending a meeting because of ill health/medical reasons or unforeseen caring responsibilities.

The proposed alteration to c15.19 to restrict the reasons Councillors may remotely attend a Council or Committee meeting provide only a very narrow range of reasons that are unreasonably restrictive. The OLG has stated on many occasions that it would like to see a wider diversity in the candidates that stand for office and become Councillors, so they genuinely reflect the communities that they serve. Most Councillors have a range of commitments, both personal and work related, that they must balance with their significant time requirements of the role of Councillor. If unforeseen or unavoidable circumstances arising from a Councillor's personal or work life make the ineligible to attend a meeting remotely it may be a disincentive for people to stand for election as a Councillor.

In addition, there may be very genuine situations where remote attendance is required, and appropriate, for example, where a Councillor's personal safety is threatened (eg. travel to attend a meeting during severe adverse weather conditions) and in person attendance may escalate those risks, or in situations where a Councillor is undertaking Army reserve deployment, SES and RFS deployment or undertaking jury duty. The proposed provisions in the Model Meeting Code would not allow remote attendance by a Councillor in any of the above scenarios. Council strongly encourages the maintenance of the current provisions in the Model Meeting Code relating to remote attendance of Councillors at meetings, which is simply that each Council will determine its own approach in relation to these matters to ensure Councillors can best represent the community they serve.

Similar to the above, Council is also strongly opposed to the deletion of clause 5.44 of the Model Meeting Code that permits the General Manager and other staff to attend meetings by audio visual link. Council proposes that the attendance of the General Manager at a meeting remotely should be at the discretion of the Council and the attendance of staff at a meeting remotely should be at the discretion of the General Manager. It is important to note that staff who may be required to attend a Council meeting to speak to a report or be available for questions on a report may only be required for a single item and requiring that staff member to attend for an entire meeting that could be very lengthy is impractical and would have unnecessary impacts on the staff member. This could be exacerbated by the fact that some Council staff live well outside the Council area and very long travel times are required, often at night after meetings. Given these

circumstances will be unique to each staff member, the General Manager is the person in the best position to decide on such matters.

The draft Model Meeting code proposes a change to clause 15.10, amending what constitutes an act of disorder. The first amendment is to remove the restriction that states Councillors commit an act of disorder if they make an allegation of a code of conduct breach against a Council official in a Council meeting. Council does not support this change as it will allow Councillors to allege other Councillors, the General Manager or Council staff have breached the code of conduct. Permitting any person to make such allegations in an open council meeting, particularly in circumstances when such allegations are made maliciously or without evidence or could be defamatory in nature creates significant risk of personal harm to any person subject to such allegations.

In addition, a further change to clause 15.10 is proposed to add a new requirement that a Councillor commits an act of disorder if they use language, words or gestures that would be disorderly in the NSW Legislative Assembly. Council is not supportive of this change as Councillors are already bound by the standards of conduct and behaviour in the Model Code of Conduct and requiring Councillors to understand and comply with a second set of behavioural standards creates potential confusion and conflicting standards of behaviour. Council believes that clarity in standards and a single source of truth can only be achieved by having a single Code of Conduct that applies to Councillors.

The draft Model Meeting code proposes a range of new clauses relating to disorder that:

- Where a Councillor does not comply with a direction of the chair after committing an act of disorder, the chairperson may require them to do that action at each subsequent meeting until they do so. If they refuse it will constitute another act of disorder
- Allow Councils to grant authority to the Mayor to expel a Councillor from a meeting without the need for a Council resolution.

Council believes the authority to expel a Councillor from a meeting should remain a power that resides with the Council and should require a resolution of Council to implement.

Whilst the OLG has not proposed in this series of changes to address the issue of gender identity in the modes of address section (Part 7 of the Model Meeting Code), Council believes that adjustments are required to reflect current community expectations in relation to gender identity and gender referencing. Council suggests the below amendments to this section to remove the need for any gender identification when addressing another person in the chamber, with titles and surnames being sufficient descriptors.

7.2 *If the chairperson is the **Lord Mayor or mayor**, they are to be addressed as **'Lord Mayor'** or **'Mayor'** ~~'Mr Mayor'~~ or ~~'Madam Mayor'~~.*

7.3 *Where the chairperson is not the mayor, they are to be addressed as **either 'Mr Chairperson'** or **'Madam Chairperson'** or **'Chair'**.*

7.4 *A councillor is to be addressed as **'Councillor [surname]'**.*

Council commentary on specific draft Model Meeting Code changes:

Section	Details of Change	Council Submission
New Clause 3.3	Mayor may call an extraordinary meeting without the need to obtain signature of 2 councillors.	Council does not support the addition of this clause. At present this area of the Model Meeting Code does not appear to be overly burdensome or restrictive as only two signatures are required, and the Mayor is permitted to be one of those signatories. In addition, as the Mayor has the authority to place any item on a business paper without notice via Mayoral Minute this clause appears unnecessary
New clause 7.1	New clause requiring councillors and staff to stand when the mayor enters the chamber and when addressing the meeting	Council has no objection to the introduction of such a clause; however, Council suggests that this should be a non-mandatory clause. For some Council's technology issues with microphones and cameras for webcasting may make remaining seated more practical and a non-mandatory clause will allow flexibility in how this is applied locally.
Deletion of clause 10.24	Deletion of clause permitting the Council to shorten the duration of Councillors speeches to expedite a particular meeting	Council notes that the standard approach for most councils is to allow 5 minutes for speeches, plus an extension period determined by each Council. Council has no objections to removing this clause.

Depoliticising the role of the General Manager

Details:

The OLG has proposed the following amendments to depoliticise the role of the General Manager:

- Removing the requirement for general managers to prepare reports for notices of motion.
- Providing that the mayor, not the general manager, has discretion on whether council staff should respond to questions with notice. It will be open to the mayor to rule a question with notice out of order at the meeting if it breaches the disorder provisions of the council's code of meeting practice.
- Conferring responsibility on the council to determine staff attendance at meetings. It will be a matter for the council to determine which staff attend meetings.

Council submission:

Council is not supportive of the change to move responsibility for determining which staff are to attend a Council meeting from the General Manager to the Council, as it considers the General Manager is best placed to determine which staff member has the necessary background, skills and knowledge for a particular item of business. Removing this responsibility from the General Manager presents real risk that the business of Council may have to be deferred if the appropriate staff member is not in attendance to address questions. In addition, the proposed change would seem to be inconsistent with the role of the General Manager as specified in s335 of the Local Government Act 1993, which is outlined below:

335 Functions of general manager

The general manager of a council has the following functions—

- (a) to conduct the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council,*
- (b) to implement, without undue delay, lawful decisions of the council,*
- (c) to advise the mayor and the governing body on the development and implementation of the strategic plans, programs, strategies and policies of the council,*
- (d) to advise the mayor and the governing body on the appropriate form of community consultation on the strategic plans, programs, strategies and policies of the council and other matters related to the council,*

(e) to prepare, in consultation with the mayor and the governing body, the council’s community strategic plan, community engagement strategy, resourcing strategy, delivery program, operational plan and annual report,

(f) to ensure that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their functions,

(g) to exercise any of the functions of the council that are delegated by the council to the general manager,

(h) to appoint staff in accordance with the organisation structure determined under this Chapter and the resources approved by the council,

(i) to direct and dismiss staff,

(j) to implement the council’s workforce management strategy,

(k) any other functions that are conferred or imposed on the general manager by or under this or any other Act.

Of note to this issue are two subsections. Firstly subsection 335(f) states that it is the role of the General Manager to ensure that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their functions. The subsection clearly articulates that the General Manager is to determine the provision of administrative and professional support. The determination of which professional staff should attend a Council meeting to provide advice to Councillors is clearly a legislated role of the General Manager.

Subsection 335(i) states that it is the role of the General Manager to direct and dismiss staff. The responsibility for directing staff in their duties, including any required attendance at a Council meeting is clearly a legislated role of the General Manager.

The draft Model Meeting Code proposes to delete clause 3.15 which prohibits a Councillor from asking a question with notice that comprises a complaint against or implies wrongdoing of the General Manager or Council staff. Council does not support this change as it will allow Councillors to make allegations or impugn the reputation of the General Manager or Council staff. Permitting any person to make such allegations in an open council meeting, particularly in circumstances when such allegations are made maliciously or without evidence or could be defamatory in nature creates significant risk of personal harm to any person subject to such allegations. In addition, allowing a question of that nature would appear to be in contravention of cl7.6(h) of the Mode Code of Conduct which states that Councillors cannot make personal attacks on council staff or engage in conduct towards staff that would be contrary to the general conduct provisions of Part 3 of the Code in public forums.

Council commentary on specific draft Model Meeting Code changes:

Section	Details of Change	Council Submission
Deletion of Clauses 3.12 and 3.13	Deletion of previous “non-mandatory” clauses: 3.12 – GM can make comment or prepare a report on a notice of motion 3.13 – Notice of Motion voting funds outside budget process, GM must prepare a report on funding options 10.9 -	Council has no objection to the deletion of these clauses, noting that these were non-mandatory clauses previously. Councils would still be free to resolve their own approach in this regard.

Simplifying the Model Meeting Code

Details:

The OLG has proposed the following amendments to simplify the Model Meeting Code:

- Streamlining the code by removing unnecessary provisions.
- Removing the non-mandatory rules governing public forums, and public representations to the council on the closure of meetings to the public. Councils will be free to determine their own rules on both topics.
- Simplifying the rules for dealing with urgent business without notice at meetings.
- Simplifying the rules of debate by removing the provisions allowing motions to be foreshadowed.
- Mandating some current non-mandatory provisions including those allowing meetings to be cancelled or held by audio visual link in the event of natural disasters and public health emergencies and those governing councillors' attendance at meetings by audio visual link.

Council submission:

Council does not support the amendment of the Model Meeting Code to require that answers to Questions with Notice must be provided in writing, and published in the Business Papers and that verbal answers will not be permitted. Given business paper publishing requirements at most Councils require the papers to be prepared between 7-10 days prior to a meeting and the timeframe for Councillors to lodge a Question with Notice, may result in the General Manager only having one or two days to prepare the answer. For complex matters, or matters that require research to produce an answer, this may not be sufficient time to allow development of an appropriately comprehensive response. By allowing a verbal answer at a meeting in such circumstances, a detailed response can be provided. Council suggests that in lieu of the proposed amendment the Model Meeting Code could be amended to require the full transcript of a verbal answer to a Question with Notice to be tabled to the meeting and provided in the minutes of the relevant meeting.

Council is not supportive of the proposal to remove the ability to foreshadow a motion for debate. The discussion paper states the aim of this change is to allow a simplification of the rules of debate, to only have a motion and amendments as items for debate. Council is concerned that the removal of this option may limit some types of motions/amendments being moved by Councillors since the Model Meeting Code does not permit an amendment that is a direct negative of the original motion. The intent of that provision is based on the principle that if a Council is not supportive of a motion and no amendments are proposed the Council can simply vote down and defeat the motion. However, there are foreseeable circumstances where a Councillor wishes to move a motion that may be considered a direct negative by the chairperson but should still be permitted to be moved. Having the ability to foreshadow motions permits this to occur.

The most obvious scenarios where this could occur, are scenarios where the report recommendation or original motion are drafted in the negative, i.e. *"that Council does not purchase the property"* or an example based another proposal in the discussion paper *"that Council does not publish the listed prior confidential reports"*. In the scenario of releasing formerly confidential reports it would be a reasonable motion for a Councillor to move *"that Council publish the listed prior confidential reports"*. This would be a direct negative of the original motion, and under the current rules for amendments could be ruled out of order by the Mayor/Chairperson as a direct negative of the original motion. If the current clauses of the Model Meeting Code were retained, a Councillor could flag that they wished to move the above as a foreshadowed motion.

The draft Model Meeting Code proposes to delete the clause that requires business papers to include a reminder to Councillors of obligations under their oath or affirmation of office. Council notes that one of the stated purposes of the suite of changes proposed is as follows:

As observed in the September discussion paper, council meetings can be conducted without the appropriate level of dignity or reverence that suggests the importance of the debate and the need for civility. Councillors are not expected to agree with each other. In fact, debate is encouraged, but the debate should be fair and respectful.

Reducing the prominence of the oath or affirmation of office could be seen as reducing the focus of Councillors on the purpose of their role and the expected behavioural standards.

The draft Model Meeting Code proposes to make a range of amendments to the provisions around the use of Mayoral Minutes. The changes remove all subject guidance and limitations for Mayoral Minutes and the Mayor will have full discretion to bring any topic of their choosing to be considered by the meeting. Council notes that the current provisions that restrict Mayoral Minutes to topics within the jurisdiction of the Council, or of which the Council has official knowledge already allows a sufficiently broad range of topics to be brought forward under a Mayoral Minute.

Council commentary on specific draft Model Meeting Code changes:

Section	Details of Change	Council Submission
Urgent Business	A range of changes to allow for situations where all Councillors are present at a meeting, and council resolves to consider urgent business, the Mayor/ chairperson will not be required to agree as well	Council is supportive of the proposed change as it simplifies the process and removes a step when all Councillors are in attendance
Public Forum	Deletion of previous “non-mandatory” clauses 4.2 – 4.24 about how forums are run.	Council is supportive of the removal of these clauses, that in the current version of the Model Meeting Code were non-mandatory clauses. Council is supportive of the proposal to allow each Council to make their own determination of how this part of meeting should operate.
Amendment to clause 10.3	Amending clause on withdrawing Notices of Motion after publishing, to state that can be withdrawn any time, and the Mayor will note the withdrawal at the meeting	Council is supportive of the proposal to allow a Councillor to withdraw their Notice of Motion at their discretion without the need to “request” its withdrawal at the Council Meeting
New clause 14.11	New clause stating that Council can go into closed session to hear representations from the public about whether a report should be dealt with in closed session, if the representations themselves relate to confidential matters	Council supports this proposal. Previously all representations had to be made in open session, which potentially risked disclosure of potentially sensitive information. The new clause allows Council more flexibility to appropriately handle confidential matters
Deletion of clauses 14.12 – 14.17	Deletion of clauses relating to procedure for public to object to a matter being considered in closed session.	Council is supportive of the removal of these clauses. Council is supportive of the proposal to allow each Council to make their own determination of how this part of meeting should operate.

Restricting Councils from holding briefing sessions

Details:

The OLG has proposed amendments to the Regulation that will restrict councils from holding briefing sessions. The amendments will establish the appropriate ways councillors are to make decisions and receive information.

Council submission:

It is noted that the OLG has not provided the proposed wording of regulation amendments to allow the sector a full and robust consideration of this especially important topic, with all relevant information available prior to comment.

Wollongong City Council takes pride in the transparency that it provides in its decision making. This is evidenced by the very infrequent use of confidential reports to Council meetings. This transparency helps mitigate corruption risks and supports good decision making. However, Council is not supportive of any proposal to ban briefings to Councillors as outlined in the Discussion Paper and in the Model Meeting Code.

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, which 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

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.

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 rationale for this change in this, and the prior, Discussion Paper 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 eventually distrusting and ineffective Council.

Whilst not supportive of the proposal, Council submits that if such a proposal proceeds, that a clear definition of what a briefing is needs to be provided. Council would prefer that the proposed wording for regulations to bring this prohibition into effect be circulated to the industry for comment prior to consideration of final implementation.