

File number: F18/289

27 February 2025

Attention: Council Governance Team
Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

By email: olg@olg.nsw.gov.au

Dear Sir or Madam

Submission on the Model Meeting Code

Blacktown City Council welcomes the opportunity to make a submission on proposed amendments to the Model Code of Meeting Practice (Model Meeting Code).

Please find attached Blacktown City Council's submission endorsed by Council at its Ordinary Meeting on 26 February 2025.

Whilst we welcome the changes that promote community confidence in council decision making and simplify the Model Meeting Code, we make the following further comments:

- we strongly oppose any prohibition of Councillor briefing sessions. Councils consider a vast variety of highly complex, technical and sensitive issues. Briefing sessions provide councillors an opportunity to better understand intricate policy issues, legal considerations, financial implications and strategic implications and consequences before making their informed decisions at a Council meeting
- we strongly oppose restricting the circumstances where councillors and staff can attend meetings by audio visual link, as it does not take into account that many councillors hold full time employment, given the minimum remuneration councillors are paid, that might require them to work away from home or council chambers
- any increase to the mayors and meeting chairs powers to manage disorderly conduct in meetings must be balanced with checks to avoid misuse. Further clarity is required on the type of conduct that is deemed to be an act of disorder that could be weaponised to impede debate.

If you would like to discuss any of our responses, please contact me on [REDACTED]

Yours sincerely

[REDACTED]
Acting Chief Executive Officer

Attachments: Submission on a new model code of meeting practice.

Changes proposed	Our response/position
Promoting transparency, integrity and public participation	
<p>a. Removing pre-meeting councillor briefings. It is the Government's expectation that any material provided to councillors, other than the mayor, that will affect or impact or be considered 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. The restriction on briefing sessions will be prescribed in the Regulation.</p>	<p>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.</p> <p>Councils deal with a vast variety of highly complex, technical and sensitive issues and we note that Cabinet in confidence provisions are a common feature of all Westminster governments, including both State and Federal Governments in Australia.</p> <p>Banning briefing sessions is retrograde and the concept fails to appreciate the complex nature of matters that come before councils on a regular basis. For example, planning decisions can have a profound effect on property markets and values (land or otherwise). Early discussions on potential re-zonings must not be held in public. Councillors must be provided with an avenue to work through concepts, issues and concerns in a confidential manner.</p> <p>We note New Zealand is a jurisdiction where workshops as a form of pre-meeting sessions are conducted in addition to council and committee of council meetings.</p>
<p>b. Requiring information considered at closed meetings to be made public after it ceases to be confidential, as recommended by ICAC. The general manager will, after consulting with the council, be required to publish business papers for items considered in closed meetings on the council's website after the information in them ceases to be confidential.</p>	<p>We support that information should be made public once the information or matter is no longer confidential. However, how this is managed needs to consider the ongoing costs of monitoring and managing such records.</p> <p>Further guidance is required on what is considered consultation and what the process should be in the event that council and the general manager have a different view on whether information is still confidential. Would the matter be referred to OLG for determination?</p>
<p>c. 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</p>	<p>Supported.</p>

Changes proposed	Our response/position
d. Providing that councils must not make final planning decisions without a staff report containing an assessment and recommendation, as recommended by ICAC.	Supported.
e. Requiring councils to give reasons where they make a decision on a planning matter that departs from the staff recommendation, as recommended by ICAC.	Supported.
Promoting the dignity of the council chamber	
a. Enhancing the authority of the mayor to call extraordinary meetings without a request and removing the restrictions on mayoral minutes	Supported.
b. Requiring councillors to stand when a councillor addresses the meeting, or when the mayor enters the chamber, as well as by mandating modes of address at meetings.	Supported. Do these provisions also apply to meetings attended by audio-visual link?
c. Removing the option for councils to reduce the duration of speeches, to ensure all councillors may have their say on important community issues.	Supported.
d. Making clear to the community that decisions are made in council meetings and not in other forums that the community can't access, like briefing sessions.	We refer to our earlier response rejecting the view that briefing sessions are a forum for making decisions away from the public view.
e. Refining the definitions of disorder to remove phrases that could be weaponised to impede debate.	<p>Further clarity on the type of conduct that is deemed to be considered an act of disorder is required by way of clear definitions and examples within the Model Code to ensure the power to manage disorder is not weaponised.</p> <p>Councillors should not be required to keep abreast of the position taken by the NSW Legislative Assembly, noting the various sources of information they would be required to review including:</p> <ul style="list-style-type: none"> • Legislation Assembly Standing Orders: 140 pages containing some 368 rules • Legislative Assembly Sessional and Other Orders: 24 pages with 1 additional (to those above) rule and 20 amendments to rules

Changes proposed	Our response/position
	<ul style="list-style-type: none"> • Decisions from the Chair considered Rulings: 71 pages with 68 provisions • Legislative Assembly Guide to Chamber procedure: 74 pages • Legislative Assembly Fact Sheets: 11 fact sheets • Legislative Assembly Practice, Procedure and Privilege: 437 pages in 40 Chapters in 2 parts with 7 Appendices (all currently under review).
<p>f. 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. Councillors will not be permitted to participate in meetings at which a mayoral election is being held by audio visual link. To facilitate this, the rules governing attendance at meetings by audio visual link will be mandated.</p>	<p>We support the principle that where possible councillors should attend meetings in person. However, we strongly oppose the limited circumstances that allow a councillor to attend a meeting by audio visual link. The proposed changes do not take into account that many Councillors hold full time employment, give the minimum remuneration councillors are paid, that might require them to work away from home or council chambers.</p> <p>There are a number of reasonable circumstances where a councillor may be prevented from attending a meeting in person such as holidays, however they would still be able to participate in a meeting by audio-visual link. Councillors are best placed to determine whether they are in a position where they can still attend a meeting by audio-visual link instead of seeking a leave of absence.</p> <p>Consideration be given to making it mandatory that Councillors be in attendance for at least 5 meetings of Council, with the rest of attendance via audio visual link being resolved at the discretion of Council.</p>
<p>g. Restricting the circumstances in which the council may withhold a leave of absence. Where a councillor gives an apology from attending a meeting, the council will be deemed to have accepted the apology and granted a leave of absence from the meeting unless the council resolves otherwise and gives reasons for its decision</p>	<p>Supported.</p>
<p>h. Removing the option for staff to attend meetings by audio visual link.</p>	<p>We refer to our earlier response on councillor attendance by audio-visual link.</p> <p>We strongly oppose this amendment. There are similar reasonable circumstances where a staff member may be prevented from attending a meeting in person and should be afforded the opportunity to attend by audio-visual link when attendance in person is not possible.</p>

Changes proposed	Our response/position
<p>i. 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.</p>	<p>Any increase to the powers of mayors and meeting chairs to manage disorderly conduct in meetings must be balanced with checks to avoid misuse, particularly if that power results in the removal of a councillor's entitlement to receive a fee for the month in which they are expelled or fail to apologise.</p> <p>We would anticipate that the misuse of these powers by a Mayor will, itself, potentially result in future complaints about behaviour unbecoming and provides a powerful tool for the Mayor to use his or her political advantage.</p>
<p>Depoliticising the role of the general manager</p>	
<p>a. Removing the requirement for general managers to prepare reports for notices of motion. General managers will no longer be required to prepare reports on notices of motions with financial implications or to identify sources of funding where a notice of motion proposes expenditure that has not been budgeted for. These will be matters for the council to determine.</p>	<p>Supported.</p>
<p>b. 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.</p>	<p>Whilst we acknowledge that the Mayor is responsible for managing a meeting, how would this change align with Section 352 of the <i>Local Government Act 1993</i> regarding the independence of staff not being subject to direction regarding any advice or recommendation.</p>
<p>c. Conferring responsibility on the council to determine staff attendance at meetings. Because councillors are best placed to determine what support they require from staff at meetings, it will be a matter for the council to determine which staff attend meetings.</p>	<p>The general manager is responsible for managing staff. Whilst we support that councillors can request an author of a staff report to attend a council meeting, it should be the general manager who determines any additional staff that may be required to attend a council meeting to assist in answering any questions on a staff report or council business, based on the qualifications, position and knowledge of the relevant staff member on the matter before council. This would also align with Section 352 of the <i>Local Government Act 1993</i> regarding the independence of staff.</p>

Changes proposed	Our response/position
Simplifying the Model Meeting Code	
a. Streamlining the code by removing unnecessary provisions.	Supported.
b. Removing the non-mandatory rules governing public forums. Councils will be free to determine their own rules for public forums.	Supported.
c. Simplifying the rules governing public representations to the council on the closure of meetings to the public.	Supported.
d. Simplifying the rules for dealing with urgent business without notice at meetings.	Supported, however we note the differing process to manage urgent business when all councillors are not in attendance adds a layer of complexity when the intent is to streamline the code, and it may cause confusion for members of the public.
e. Simplifying the rules of debate by removing the provisions allowing motions to be foreshadowed.	Supported.
f. 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.	We refer to our earlier response on attendance at meetings via audio visual link that should consider circumstances outside of ill health, medical and carers responsibilities.
Restricting councils from holding briefing sessions	
<p>a. Proposed amendments to the Regulation will restrict councils from holding briefing sessions. The amendments will establish the appropriate ways councillors are to make decisions and receive information based on the following principles:</p> <ul style="list-style-type: none"> • Decision making by councillors must be through a resolution adopted at a council or committee meeting. • Information is to be provided to councillors through clear and established channels: <ul style="list-style-type: none"> ○ information may be provided to councillors by staff in response to a request for information or action made through the councillor request system, 	<p>We refer to our earlier response rejecting the view that briefing sessions are a forum for making decisions away from the public view.</p> <p>We support that decisions must be made through a resolution adopted at a council or committee meeting.</p> <p>In addition to briefing session, we support the provision of information to councillors in the listed options.</p>

Changes proposed	Our response/position
<ul style="list-style-type: none"> ○ general information to assist councillors' understanding of sector wide issues (e.g. legislative changes), should be received from the general manager (and other external sources), ○ training materials to meet learning and development requirements come through established training programs, ○ information to enable councillors to understand the function, service delivery standards, strengths, weaknesses, threats and opportunities of council operations should be provided in periodic workshop format (e.g. an annual strategic planning workshop), and ○ information requiring a specific decision or resolution of council is to be provided by the general manager as a part of a report prepared for the business papers of a council or committee meeting. <ul style="list-style-type: none"> • The distribution of information in a meeting or format that is not consistent with the above pathways (e.g. through briefing sessions), is not permitted. • The mayor will not be subject to these restrictions and may receive information in order to undertake their functions under the Act. 	