

27 February 2025
File number: 35/47/3/1

Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

olg@olg.nsw.gov.au

Dear Council Governance Team,

Re: Model Meeting Code Amendments

Maitland City Council appreciates the opportunity to comment on the consultation draft of the amended Model Meeting Code and accompanying paper. At Council Meeting 25 February 2025, Council resolved to provide the following feedback in response to the amended Model Code:

1. Additional Information for Notice of Motion's (NoM) – Clauses 3.12 and 3.13 pages 6-7

The proposed removal of clauses 3.12 and 3.13 is not supported.

The removal of clause 3.12, a provision that allows the General Manager to prepare a report in response to a NoM addressing legal, strategic, financial or policy implications, is of concern and will result in uninformed decision-making.

The removal of clause 3.13 is equally concerning. That clause requires a NoM to identify a source of funding in circumstances where it relates to the expenditure of funds on works and/or services other than those already budgeted for.

In circumstances where a NoM does not provide a funding source, clause 3.13 allows the General Manager to provide a report addressing financial implications/source of funding.

Given the recent State and Federal reviews relating to the financial sustainability of local government, it is surprising a clause relating to financial management would be removed.

~~Model 3.12 If the general manager considers that a notice of motion submitted by a councillor for consideration at an ordinary meeting of the council has legal, strategic, financial or policy implications which should be taken into consideration by the meeting, the general manager may prepare a report in relation to the notice of motion for inclusion with the business papers for the meeting at which the notice of motion is to be considered by the council.~~

~~3.13 A notice of motion for the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the notice of motion. If the notice of motion does not identify a funding source, the general manager must either:~~

~~(a) — prepare a report on the availability of funds for implementing the motion if adopted for inclusion in the business papers for the meeting at which the notice of motion is to be considered by the council, or~~

~~(b) — by written notice sent to all councillors with the business papers for the meeting for which the notice of motion has been submitted, defer consideration of the matter by the council to such a date specified in the notice, pending the preparation of such a report.~~

2. Questions with Notice (QwN) – Clause 3.15 page 7

The proposed removal of clause 3.15 is not supported.

Currently, a QwN cannot comprise of a complaint against the General Manager or a staff member or imply wrongdoing by the General Manager or staff member.

It is inappropriate for a QwN to include an allegation implying wrongdoing by the General Manager or staff member in a public forum. To do so could expose Councillors to potential defamation claims, or result in a breach of their obligations under the Work, Health and Safety Act 2011.

With respect to section 29 of the Work, Health and Safety Act 2011, Councillors must take reasonable care to not adversely affect the health and safety of, in this instance, staff. It follows that questions comprising complaints or implying wrongdoing could infringe section 29 of the Act.

Conversely, it is important to note that code of conduct complaints/allegations cannot be made in a public forum.

~~3.15 A councillor is not permitted to ask a question with notice under clause 3.14 that comprises a complaint against the general manager or a member of staff of the council, or a question that implies wrongdoing by the general manager or a member of staff of the council.~~

3. Pre-Meeting Briefing Session – Clauses 3.33 to 3.38 pages 9-10

The proposed removal of clauses 3.33 to 3.38 is not supported.

The removal of Pre-meeting briefings sessions would be removing an opportunity for Councillors to ask questions and seek additional information relating to items on the agenda. This could lead to less informed decisions or result in items being unnecessarily deferred, i.e. waiting for information that could have been provided at a Pre-meeting briefing session.

Pre-meeting briefing sessions, if used correctly, are not used to make or influence decisions, but rather to provide answers to questions and any additional information to ensure informed decisions are made during the ordinary meeting.

The consultation draft paper on page 9 states that councils are still permitted to conduct workshops to provide information to Councillors. These workshops cover topics such as council functions (and professional development), service delivery and other issues. The ability to continue to hold Councillor Workshops is supported.

4. Attendance at Council Meetings – Clause 5.7 page 13

The proposed addition of clause 5.7 is supported.

Allowing an apology to have the same meaning as a leave of absence makes practical sense.

5.7 Clause 5.4 does not prevent a councillor from making an apology if they are unable to attend a meeting. Where a councillor makes an apology, the council will be deemed to have accepted the apology and granted them a leave of absence for the meeting for the purposes of section 234(1)(d) of the Act unless the council resolves not to accept the apology or to grant a leave of absence for the meeting. Where the council resolves not to accept an apology and to grant a leave of absence it must state the reasons for its decision in its resolution.

5. Attendance by Councillors at Meetings by Audio-Visual Link – Clause 5.19 page 15

The proposed amendment to clause 5.19 is not supported.

Under the proposed changes, Councillors will only be permitted to attend meetings remotely if they are unable to attend in person due to ill-health or caring responsibilities. Additionally, Councillors will be prohibited from joining meetings via audio-visual link when a Mayoral Election is scheduled to take place.

Restricting the ability to attend by audio-visual link fails to recognise circumstances where there is a legitimate barrier to physically attending, such as being overseas, at a conference, work or other unforeseen circumstances.

5.19 Councillors may attend and participate in meetings of the council and committees of the council by audio-visual link with the approval of the council or the relevant committee where they are prevented from attending the meeting in person because of ill-health or other medical reasons or because of unforeseen caring responsibilities.

6. Webcasting of Meetings – Clause 5.38 page 18

The proposed amendment to clause 5.38 is supported.

5.38 The recording of a meeting is to be made publicly available on the council's website for at least 12 months after the meeting or for the balance of the council's term, whichever is the longer period

7. Attendance by GM and Other Staff – Clause 5.44 pages 18-19

The proposed amendments to clause 5.44 (previously clause 5.43) and the proposed deletion of the previous clause 5.44 are not supported (in part).

Currently, the General Manager determines which staff members attend meetings. Under the proposed changes, the council will determine staff attendance on an as-needed basis. The lack of clarity around the rationale for this change, or how frequently the council will need to make such determinations, leaves some uncertainty about its practical implications.

Further, the removal of clause 5.44, permitting the General Manager and staff to attend Council and Committee meetings via audio-visual link is not supported.

No explanation has been provided for this restriction. While staff required to attend meetings at council currently do so in person, this change could pose challenges in circumstances where the specific expertise of a staff member is required, and they are unable to physically attend.

Whilst staff do not participate in the debate, they answer questions and provide information. It seems inconsistent to allow Councillors to attend via audio-visual link but not allow the relevant staff to do so.

~~5.44 The general manager and other council staff may attend meetings of the council and committees of the council by audio visual link. Attendance by council staff at meetings by audio visual link (other than as members of the public) shall be with the approval of the general manager.~~

8. Order of Business for Ordinary Council Meetings – Clauses 8.1 to 8.2 page 20

Clause 8.1 and the removal of clause 8.2 allows for council to set its order of business, based on its specific requirements.

9. Mayoral Minutes – Clause 9.7 page 22

The requirement for Mayoral Minutes to take into account the financial implications has been deleted, aligning with the earlier changes made to NoMs. Consequently, similar to NoMs, Mayoral Minutes will no longer be required to consider financial implications, potentially reducing the level of scrutiny over the financial impact of decisions.

10. Questions – Clause 9.17 page 23

Given there is a focus on respectful debate in the Consultation Draft, it would seem inappropriate to remove the word ‘respectfully’ from clause 9.17 below.

9.17 Councillors must put questions directly, succinctly, ~~respectfully~~ and without argument.

11. Notices of Motion – Clause 10.3 page 23

The proposed amendment to clause 10.3 is supported.

10.3 If a councillor who has submitted a notice of motion under clause 3.10 wishes to withdraw it after the agenda and business paper for the meeting at which it is to be considered have been sent to councillors, they councillor may request the its withdrawal of the motion when it is before the council at any time. If the notice of motion is withdrawn after the agenda and business paper for the meeting at which it is to be considered have been sent to councillors, the mayor is to note the withdrawal of the notice of motion at the meeting.

12. Motions Requiring the Expenditure of Funds – Clause 10.9 page 24

The removal of clause 10.9 is not supported.

The financial impacts of decisions should always be considered.

The draft Code removes the clause that previously required Councillors to identify the source of funds for any motion put forward. It also removes the requirement to defer the matter if a funding source is not identified pending a report from the General Manager. This will have an impact on the financial considerations/impacts of proposed motions before a decision is made.

~~10.9 A motion or an amendment to a motion which if passed would require the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the motion. If the motion does not identify a funding source, the council must defer consideration of the matter, pending a report from the general manager on the availability of funds for implementing the motion if adopted.~~

13. Foreshadowed Motions – Clause 10.17 page 25

The removal of clause 10.17 may be problematic and may result in items needing to be unnecessarily deferred.

As an amendment can't be a direct negative of the motion, there may be occasions where there is no way to arrive at an alternative view following the debate. For example: if a motion was moved to refuse a Development Application, there would be no way to arrive at a resolution to approve it even if all Councillors other than the original mover wanted it approved as it would be a direct negative of the original motion.

~~10.17 A councillor may propose a foreshadowed motion in relation to the matter the subject of the original motion before the council, without a seconder during debate on the original motion. The foreshadowed motion is only to be considered if the original motion is lost or withdrawn and the foreshadowed motion is then moved and seconded. If the original motion is carried, the foreshadowed motion lapses.~~

14. Voting on Planning Decisions – Clause 11.12 and 11.13 pages 26-27

Clauses 11.2 and 11.3 are supported as they align with the ICAC recommendations.

11.12 The council or a council committee must not make a final planning decision without receiving a staff report containing an assessment and recommendation in relation to the matter put before the council for a decision.

11.13 Where the council or a council committee makes a planning decision that is inconsistent with the recommendation made in a staff report, it must provide reasons for its decision and why it did not adopt the staff recommendation.

15. Representations by Members of the Public (Regarding Closing a Meeting) – Clause 14.13
page 32

The proposed removal of clause 14.13 is not supported.

Removing this clause could result in a large number of speakers (potentially all making the same representation) and unnecessarily delay the debate.

~~14.13 No more than [number to be specified by the council] speakers are to be permitted to make representations under clause 14.9.~~ Also consider 14.17

16. Resolutions Passed at Closed Meetings to be Made Public – Clause 14.19 and 14.20 page 33
(and Clauses 20.20 and 20.21 page 44 as they relate to Committees)

The addition of clauses 14.19 – 14.20 and 20.20 – 20.21 is not supported.

These clauses could create an administrative burden for councils. Governance staff will likely have to review all historical confidential agendas regularly and determine which items/reports are no longer considered confidential. The General Manager would then be required to consult with council before making previously confidential items publicly available. The consultation process is unclear.

It is suggested that the release of information is better handled under the release provisions when requested under Government Information (Public Access) Act 2009 (GIPA). This clause is also at 20.20 and 20.21 relating to Committee Meetings.

14.19 The general manager must cause business papers for items of business considered during a meeting, or part of a meeting, that is closed to public, to be published on the council's website as soon as practicable after the information contained in the business papers ceases to be confidential.

14.20 The general manager must consult with the council before publishing information on the council's website under clause 14.19.

17. Acts of Disorder – Clauses 15.10, 15.12 and 15.13 page 35

If the Code references 'gestures that would be regarded as disorderly in the *NSW Legislative Assembly*', then specific examples should be prescribed in the Code.

18. Expulsion from Meetings – Clauses 15.15 – 15.17 page 36

The proposed clause raises concerns as it extends the chairperson's authority beyond what is outlined in Section 10.2 of the *Local Government Act 1993 (NSW)*. In its current form, this clause allows the chair of a council or committee meeting to expel any individual, including a councillor, without requiring a resolution from the meeting or prior council approval to exercise such a power. A change of this nature should be legislated to avoid confusion and legal challenges to an expulsion.

If you would like to discuss this submission, please contact the Office of the General Manager on

[REDACTED]

Yours sincerely,

[REDACTED]

General Manager

DRAFT

COUNCIL RESOLUTION

THAT

1. Council note proposed amendments to the Model Meeting Code are indicated in track changes in the consultation draft (Attachment 1).
2. Council submits written feedback (Attachment 2) to the Office of Local Government on the proposed framework by 28 February 2025.
3. The feedback be amended by adding the following point to the Model Meeting Code Amendment submission by MCC to the OLG. As follows:

Expulsion from Meetings - Clauses 15.15 - 15.17

The proposed clause raises concerns as it extends the chairperson's authority beyond what is outlined in section 10.2 of the Local Government Act 1993 (NSW). In its current form, this clause allows the chair of a council or committee meeting to expel any individual, including a councillor, without requiring a resolution from the meeting or prior council approval to exercise such a power. A change of this nature should be legislated to avoid confusion and legal challenges to an expulsion.

Moved Cr A Atkinson, Seconded Mayor P Penfold

CARRIED

DRAFT

Committee

Agenda

Cr P Barsby

Cr J Baris

Cr J Berry

Cr M Brown

Cr J Harkney

Cr J Liddell

Cr J Lyden

Cr J McFarlane

Cr J Pennington

Cr J Smith

Cr J Tait

Cr J Warriner