



27 February 2025

Office of Local Government
Submitted by email to olg@olg.nsw.gov.au

Councillor conduct framework review

Council refers to the Office of Local Government's consultation on the Model Code of Meeting Practice for Local Councils in NSW. Enclosed is Council's submission in response to the consultation paper. The submission was endorsed by Council resolution 25-017 on 27 February 2025.

Council has addressed each of the questions posed in the consultation paper, providing our feedback on the proposed amendments.

Thank you for considering Council's submission. We appreciate the opportunity to contribute. Should you require any further information or clarification, please do not hesitate to contact us.

Your sincerely



Mark Arnold
General Manager

Responses to Questions

Will the proposed amendments made in the consultation draft of the Model Meeting Code achieve the policy outcomes identified in this paper?

The consultation draft indicates that the proposed amendments to the Model Code of Meeting Practice are designed 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

Council supports the aims of the Code of Meeting Practice to *promote transparency, integrity, and public participation*. Some features of the proposed amendments will contribute to these outcomes, such as:

- Requiring the recordings of meetings to be published and retained on council websites for longer is a positive step towards greater transparency. Byron Shire Council already complies with this measure, retaining meeting recordings beyond the minimum 12-month period currently specified. This practice helps ensure that the public has easy access to council proceedings, which aligns with the aim of fostering public participation and transparency.
- Requiring that staff reports be considered by Council before making decisions on planning matters is already an established practice at Byron Shire Council. Furthermore, to support the integrity of planning decisions, Council holds a dedicated meeting each month specifically for planning matters. This ensures that planning-related decisions are made in a thorough and transparent manner. The Council is supportive of this approach and believes it strengthens public trust in decision-making.
- The additional requirement for Council to provide reasons where they make a decision on a planning matter that departs from the staff recommendation is supported to further enhance public trust and transparency in decision making.

The proposed measures *promoting the dignity of the council chamber*, such as requiring Councillors to stand and mandating modes of address, may promote formality, however they are artificial and fail to genuinely foster dignity in the council chamber. These measures will not necessarily contribute to a more respectful or productive meeting environment. Council believes that the dignity of the chamber should be grounded in genuine respect, open dialogue, and collaborative decision-making rather than rigid procedural formalities.

The amendments propose arbitrary removal of the word “respectfully” from clause 9.18: “Councillors must put questions directly, succinctly, respectfully, and without argument” which further contradicts this aim.

These imposed formalities also counter to the overarching objective of simplifying the Model Meeting Code and adds complexity to the process, which may ultimately hinder the efficiency of meetings.

In terms of *depoliticising the role of the general manager* the proposed amendments again fall short. Byron Shire Council does not support the removal of the requirement for the

General Manager to prepare reports for notices of motion. This measure does not, in our view, achieve the outcome of depoliticising the role of the General Manager.

Responding to notices of motion is considered good practice and ensures councillors have access to information to inform good and effective decision making. This practice also ensures that the information is given to Councillors in an open and transparent manner, published in the Agenda for the meeting at which the decision will be made.

Given that the removal of the requirement does not preclude the General Manager from doing so, Byron Shire Council will continue to support and encourage this practice.

Some of the proposed measures to achieve *simplifying the Model Meeting Code* are supported. Amendments to remove the two-limb approach to urgency simplifies and streamlines what is otherwise an inequitable and confusing process.

Likewise, requiring that a leave of absence be automatically granted unless council resolves not to do so on reasonable grounds is appropriate.

Byron Shire Council is concerned with the removal of the optional items (for example Public Forums). This does nothing to simplify the Model Meeting Code. Removal of these provisions means that councils have to formulate their own rules to ensure a safe, fair, and orderly way for members of the public to address council.

We prefer that the (optional) provisions on the operation of public forums be retained in the Code. Allowing councils to modify these sections while still having the ability to point to the Model Meeting Code has been useful in demonstrating that the provisions adopted by Council are consistent with guidance from the OLG, and not perceived as ways to stifle participation by members of the public.

Are there any other amendments you would suggest that will achieve these policy outcomes?

Byron Shire Council had hoped to see a more modern Code of Meeting Practice that would encourage a more inclusive and collaborative atmosphere for decision-making. We envisioned a Model Meeting Code that would reduce the formality and rigidity in the rules of debate, allowing for more dynamic and productive discussions that foster collaboration among Councillors.

Unfortunately, the revised Model Meeting Code introduces additional layers of formality that could detract from the spirit of open and effective dialogue. Rather than promoting flexible and constructive decision-making, these formalities could serve to maintain outdated conventions that limit the opportunity for Councillors to engage in more meaningful discussions.

Will the proposed amendments have any unintended consequences?

Removing the option for councils to reduce the duration of speeches does not enable councils to implement practices appropriate to their circumstances. For example, to facilitate effective debate we have implemented 3 minute speeches with requests for extension of time to a maximum of 5 minutes. This has the same effect as mandating 5 minutes, as proposed in the draft Model Meeting Code, whilst still encouraging Councillors to keep speeches to the point and managing the overall length of the meeting.

Removing provisions for foreshadowed motions: Foreshadowed motions allow an item to be properly resolved if it's voted down. Without them, issues may not be revisited, leaving important decisions unresolved, especially when consensus can't be reached through a series of amendments.

This is particularly relevant for planning matters and other time sensitive issues, where a determination must be made one way or the other.

This also inhibits the ability of a councillor to put forward a contrary view / motion, as clause 10.10 remains "*An amendment to a motion must relate to the matter being dealt with in the original motion before the council and **must not be a direct negative of the original motion... a direct negative of the original motion, must be ruled out of order by the chairperson***"

Consider a situation where a Council is discussing a planning application. Councillor A moves to refuse the application, seconded by Councillor B. The remaining Councillors wish to approve the application. Clause 10.10 restricts Councillors from proposing an amendment that is a direct negative of the motion.

Without the option to foreshadow a motion, if the motion to refuse the application is voted down, the matter cannot be resolved. This leaves the application without a determination, potentially causing the application to miss the statutory decision timeframe, which could then result in a deemed refusal.

It is worth considering the suggestion that, without the ability to foreshadow motions, Councils might instead use the provisions of Clause 17.12 to rescind a motion that has been lost. While Clause 17.12 does provide a mechanism for rescinding decisions, relying on it in this context introduces unnecessary complexity and creates further unintended consequences.

Firstly, Clause 17.12 requires a formal process to rescind a decision, which typically involves giving notice of the intention to rescind and following specific procedural steps. This adds time and administrative burden to an already time-sensitive decision-making process. Secondly, using Clause 17.12 to rescind a lost motion introduces uncertainty and diminishes transparency of the decision-making process. This could result in confusion or frustration for both Councillors and the community, as they are left unsure whether the issue will be reconsidered.

Without foreshadowed motions, and given the constraints of Clause 10.10, Councillors are left with limited options to propose alternative recommendations than the first motion moved. This may lead to unresolved or prolonged debates that hinder the decision-making process.

Removal of restrictions on raising complaints about the general manager and staff in questions with notice. This provision protects staff from unfair criticism, airing of personal grievances, and reputational damage. Retaining this clause supports the smooth running of meetings and effective relationships between councillors and staff.

Attendance by audio-visual link: the preference is for Councillors to participate in-person in council meetings. It demonstrates effective decision-making when Councillors attend in person and give their full attention to the meeting. Exceptions to accommodate medical or caring responsibilities are reasonable.

Removal of the option for staff to attend by audiovisual link could create logistical challenges or reduce the quality of the support staff provide to council meetings. For example, a technical expert may only be required for short period which can be accommodated through audio-visual link when necessary.

Shifting responsibility for determining staff attendance at meetings from the General Manager to Council undermines the role of the General Manager in managing staff and the efficient and effective operation of the organisation. The General Manager is best positioned to understand the staff availability and wellbeing considerations, ensure that the right personnel are present to provide expert advice or support, and manage resources efficiently. Furthermore, this change is in direct conflict with requirements of the *Model Code of Conduct* that “*Councillors or administrators must not direct council staff other than by giving appropriate direction to the general manager...*”.

Information considered at closed meetings to be made public after it ceases to be confidential supports the principle of transparency and availability of business papers to the public (in line with ICAC recommendations). However, Byron Shire Council acknowledges that this measure could be practically difficult to implement. As written, this amendment imposes an open-ended duty on council to continually monitor all previous business papers, determine whether all the reasons for them being made confidential have lapsed and then publish them.

Identifying the point at which information transitions from confidential to public domain can be complex, and there are already adequate mechanisms under GIPA. Byron Shire Council has considered some options for how this could be achieved, such as through the inclusion of wording in the resolution to instruct when the confidential information can be made public.

Acts of Disorder: The definition of disorderly conduct is based on the practices and expectations in the NSW Legislative Assembly. Conduct should not be defined by other protocols that are otherwise irrelevant to the operation of council meetings. Expectations should be written into the Code.

Are there any other amendments the Government should consider?

The Government should consider providing clear definitions before any amendments are made to the Regulation that could restrict councils from holding ‘briefing sessions.’ At present, there is uncertainty around whether Councillor Workshops are considered part of the definition of ‘briefing sessions.’

The accompanying material suggests that periodic workshops may still be permissible, stating that: “*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).*”

In Byron Shire Council’s experience, its “Councillor workshops” enhance decision-making, collaboration, and learning. Workshops provide an opportunity for Councillors to gain deeper understanding of upcoming strategic matters in a safe and collaborative space. This is particularly useful for providing input into strategic documents during the drafting phase. These sessions facilitate open discussion, allow for clarification of technical matters, and enable councillors to receive timely updates on emerging issues.

By restricting these opportunities, the proposed amendments risk diminishing the quality of council decision-making and reducing councillors’ ability to serve their communities.