

Model Meeting Code Amendments

OFFICE OF LOCAL GOVERNMENT
LOCKED BAG 3015
NOWRA NSW 2541

ATTENTION: Office of Local Government's Council Governance Team.

Submission from Shoalhaven City Council on Proposed Changes to Model Code of Meeting Practice

This is to advise that on 18 February 2025 MIN25.43, Shoalhaven City Council (Council) resolved as follows:

That Council endorse the Draft submission provided as Attachment 1 to the report, for submission to the Office of Local Government, and direct the Acting CEO to work with staff to make the following amendments:

- a. Re-word part 1 of the submission, confirming the Council's in principle support for public briefings, noting that Council may need to hold confidential briefings in line with section 10A(2) of the Local Government Act.
- b. Strengthen comments around the importance of enabling online attendance at meetings for Councillors and staff.

Accordingly, the comments and feedback outlined below constitute the resolved position of the Council:

1. Removing confidential pre-meeting councillor briefings:

- a. Council supports in principle public briefings, however, this option should be available to inform Councillors on reports to Closed sessions of Ordinary Meetings in accordance with 10A(2) of the Act.
- b. 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 an Ordinary Meeting. Further, briefings are not a forum for decision making or establishing a binding position at Shoalhaven City Council.
- c. It is noted that at NSW Parliament level that Members of Parliament are briefed on draft legislation before it is tabled in parliament and Ministers receive briefings from their staff and well as departmental officers, as part of the process of preparing draft bills and motions for consideration before parliamentary debate.

The consideration of banning briefings is at odds with other proposals within this discussion paper to align local government elected representatives with state government elected representatives.

- d. Although individual Councillors often seek (and have the right to request) information from staff prior to making a decision of Council at an Ordinary Meeting; the pre-meeting briefing sessions provide opportunity to provide the information to all Councillors and allows Councillors to as a group ask follow-up

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questions to ensure clarity around key concepts including risks and opportunities for the community and organisation.

Council is of the view that a ban on private briefings would have significantly adverse impacts on councillors' opportunity to be fully informed prior to decision making during council meetings for items under Section 10(A)two of the Local Government Act.

- e. Should current arrangements be removed and Council only be permitted to hold public briefings, guidance and / or direction will be required with respect to required public notice of briefings, preparation and publication of minutes, recording and/or webcast requirements and how the Council will need to deal aspects of privacy, confidentiality, defamatory statement, public attendance, and associated copyright risks, whilst still provide Councillors with the information they require to make decisions.
- f. Further, closed briefings could continue at a time after the agenda has been made public to assure public transparency of the officers' recommendations and evidence of not having been influenced at a briefing.
- g. If confidential briefings are not permitted, more clarity is required in the Act/Regulation/Guidelines and your Model Interaction with Staff and Access to Information by Councillors Policy regarding permissible/appropriate provision of information to Councillors.

For example, is it acceptable to send all Councillors an email with updates/information about items proposed or included on the Ordinary Meeting Agenda?

2. Requiring information considered at closed meetings to be made public after it ceases to be confidential:
 - a. Council is of the view that the provisions for Information Access via the Government Information Public Access (GIPA) Act are sufficient to address circumstances where members of the public wish to access documentation that was previously determined to be Confidential in accordance with 10A (2) of the Local Government Act, 1993 . The proposal will create a further un-resourced burden on the organisation for historical information which may not be of interest or relevance.
3. The Mayor will be permitted to call extraordinary meetings without a request and the restrictions on mayoral minutes will be removed:
 - a. Council proposes the Mayor should be able to call extraordinary meetings in consultation and agreement with the CEO.
4. Providing as a default that Councillors are to attend meetings in person:
 - a. It is considered that the removal of the ability to attend meetings remotely without formal approval is a retrograde step and will ~~tend to~~ reduce accessibility to the role of Councillor for members of the community who have disability, carer commitments or other personal circumstances and obligations that conflict with

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their ability to attend the chambers to attend a meeting. This proposal is likely to impact women more than men.

This will result in a smaller pool of potential candidates, particularly rural and regional women candidates and in large geographical Council areas where the distance to travel to the Council Chambers is considerable. .

- b. Online attendance at meetings fosters the ability for :

Collaboration: participants from diverse geographical locations to collaborate without the need for travel, resulting a more inclusive perspective.

Efficiency: It saves time and costs associated with commuting, making meetings more efficient and accessible.

Flexibility: It provides flexibility for attendees who might have different commitments, schedules, or constraints, ensuring that everyone can participate.

Environmental Impact: Reducing the need for physical travel contributes to lower carbon emissions and a smaller environmental footprint.

- c. Council advocates that if this change is implemented, it should not be applied to this current term of Council where Councillors have been elected on the expectation that remote attendance at Ordinary meetings is an option.
- d. Council seeks clarity on how the reasons given by a Councillor will be assessed as being appropriate and what and when evidence may be required?

5. Removing the option for staff to attend meetings by audio-visual link:

- a. Comments from 4b above are relevant to this point however, in addition, Council recommends the attendance of staff via audio-visual link should not be removed and attendance via this method would be best determined by the General Manager given the specific operational circumstances.
- b. The proposed changes are silent with respect to consultants/advisors and it is strongly recommended that the ability to join via audio-visual link should be retained. To do otherwise will have cost implications for this and other regional Councils who would incur additional expenses for advisor participation to cover travel/accommodation and associated costs.
- c. This is a misalignment with the principle of flexible working arrangements which are necessary for attraction and retention and which include the opportunity to work from home. Councils provide a range of flexible working arrangements to attract and retain a diverse workforce.
- d. At times where there have been protests, physical threats or poor behaviour at Ordinary Meetings by members of the public in attendance, a Work Health and Safety Control measure has been the ability to reduce the number of staff present in the Council Chamber. Requiring physical attendance in the Chamber will remove the ability to apply this control and mitigate safety risks.

6. The proposed amendments to the Act will empower Mayors to expel Councillors from meetings for acts of disorder:

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- a. Council is seeking clarity on the overlap with provisions outlined in the Model Code of Conduct, the Model Code of Conduct Procedures and changes required to Part 2, Division 5 of the Local Government Act to bring the proposal with respect to the removal of entitlement into place.
 - b. A mechanism for appeal would need to be enacted, In this regard Council suggests that an independent appeal mechanism via the Office of Local Government (OLG) would be appropriate.
7. Providing that the Mayor, not the General Manager (CEO), has discretion on whether council staff should respond to questions with notice:
 - a. Whilst Council is not opposed to this provision , before enacting these aspects of the proposal , clarity is sought on the following:
 - i. Is it intended that the Mayor will make a decision on whether a question on notice is included on the paper before publication?
 - ii. Will the Model Code of Meeting Practice be amended to provide direction as to whether dissent can be moved on the Mayor's ruling on this matter?
 - iii. Will debate be allowed before the decision by the Mayor?
 - iv. What transitioning of provisions will be applied for Questions on Notice which have been previously submitted?
 - v. Why the OLG is proposing to remove provision 3.13 regarding comments from the General Manager or staff. This appears to be without context provided. in the case of the question on notice being removed, it requires a clear directive and rule for the chamber.
8. Conferring responsibility on the council to determine staff attendance at meetings:
 - a. Allowing Council to determine which staff attend meetings blurs the divide between the strategic role of the Council and the operational role of the General Manager and the provisions of the Model Staff & Councillor Interaction policy in relation to operational matters. As such, it is not supported by Council.
 - b. As a corollary, Council disagrees with the proposal and is of the view that staff attendance at meetings should be left at the discretion of the General Manager. The General Manager will be better placed to assess the skills, experience, and qualifications of staff and determine what level of expertise in the Chamber is required for a particular issue.

The proposal if bought into effect, may result in some delays where a staff member has not have prior approval by the Council to attend a meeting but is determined by the General Manager as a valuable resource to the meeting to answer specific, technical and unforeseen questions without notice.
9. Councils will be free to determine their own rules for public forums (deputations):
 - a. Council agrees that differing arrangements for public forums should be permitted and arrangements made to suit the particular requirements of the Council and their communities.

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- b. Council seeks clarification on expectations of webcasting for public forums and if they may be attended remotely, given the other provisions included in the discussion paper.
 10. Amendments will also be made to the Act and Regulation to empower councils to issue penalty infringement notices to members of the public who disrupt meetings:
 - a. Council is unable to comment at this time given the limited detailed information available in the discussion paper. Council is seeking clarification on the following:
 - i. Details of the types and forms of conduct that may prompt infringement.
 - ii. Warnings and application of discretion available prior
 - iii. Given there is no permitted system for identification or registering of persons in attendance at meetings;
 - How would the Council correctly identify the individual to whom a Penalty Infringement Notice (PIN) would be issued?
 - What would the process be for the issuing of the PINs and mechanisms for review
 - How this relates to provisions within the Code of Meeting Practice with respect to expulsion from a meeting.
11. Acts of Disorder - amendments reflecting behaviour in the NSW Legislative Assembly:
 - a. Should the amendments be applied, Council requests clear direction and wording within the Model Code of Meeting Practice on the behaviours in question rather than a broad direction referencing NSW Government documentation. Without this, the Model Code of Meeting Practice will lose its current functionality of being a succinct reference and guidance document on Meeting Practice.
12. The General Manager (CEO) must consult with Mayor regarding confidential reports:
 - a. Whilst the Council is not concerned with this proposal, clarification is sought on the following points:
 - i. What level of consultation is required with the Mayor and what are the obligations of the General Manager when the Mayor does not agree?
 - ii. Whether the Mayor and/or Chair will need to be consulted in cases of Closed Agenda items for Extraordinary or Committee meetings as the reforms are silent on this.
13. Option for Council to debate rescission at the same meeting:
 - a. Council does not have concerns with the proposal however, if adopted considers that similar to the proposal for Clause 17.12 the number of Councillors in attendance would be a factor for process.
14. Time limits of Council meetings:

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- a. Council does not have concerns with respect to the removal of the time limit but would seek clarification if the end of the meeting time can be amended to be applied at the same meeting.

Council would urge OLG to consider other provisions of the Code Of Meeting Practice where clarity or amendments could be made where it is unclear for example rescission of a rescission.

Council appreciates the opportunity to provide feedback on these proposed changes. Should you require any further information or clarification, please do not hesitate to contact me on

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Yours sincerely,

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Brooke Aldous
Governance Coordinator
Shoalhaven City Council