



Berrigan Shire Council

Submission:

Consultation draft – Model Code of Meeting Practice

This submission is made by [REDACTED], Deputy Chief Executive Officer, on behalf of Berrigan Shire Council. Further information regarding this submission can be obtained by contacting [REDACTED] at mail@berriganshire.nsw.gov.au or by contacting the Council administration office on 03 5888 5100.

Background

Berrigan Shire is a small, rural Council located in the southern Riverina along the Victorian border. The shire has a population of 8,800 spread across four towns and associated rural areas.

Berrigan Shire has eight Councillors, elected at large, with a Mayor elected by the Councillors.

Summary

- Berrigan Shire Council supports the general principle of simplifying the model code of meeting practice.
- Council opposes restrictions on the use of audio-visual links to hold council and committee meetings. Such restrictions fail to recognise the particular circumstances of rural and remote councils, and the burden placed on part-time and poorly remunerated councillors. Decisions on the use of audio-visual links are best made by local councils in consultation with their communities.
- Council opposes mandating formality at council meetings. Over formality is likely not to engender respect from the community. It is more likely to generate alienation and even mockery.
- Council considers decisions relating to staff attendance at meetings and responses to questions from councillors should be made by the general manager.

Response

A. Promoting the dignity of the council chamber

1. Permitting the mayor to call extraordinary meetings

This is a reasonable and appropriate reform

The suggested wording is somewhat convoluted. Alternate wording is suggested below.

3.2. The mayor may call an extraordinary meeting. Alternatively, two councillors can call an extraordinary meeting via a request in writing to the mayor.

3.3. Once called, an extraordinary meeting must be held as soon as practicable but, in any event, within no more than fourteen (14) days.



2. Removing restrictions on mayoral minutes

The principle of separating the GM from political matters is understood and supported. However, a well-formed mayoral minute should address the matters raised in clause 9.10 and this expectation should be clear in the code. Rather than a report from the GM, this could be addressed by councillors raising points of order on poorly formed mayoral minutes.

3. Requiring councillors to stand when addressing council

This is not supported. While the proposed code makes an allowance for those who physically cannot stand, requiring other councillors to stand draws attention to those who cannot stand.

Requiring councillors to stand when it is not essential to perform the role is contrary to the principles of the *Disability Discrimination Act (Cwth) 1992*

4. Requiring councillors to stand when the mayor enters the chambers

This is not supported. While the proposed code makes an allowance for those who physically cannot stand, requiring other councillors to stand draws attention to those who cannot stand.

Requiring councillors to stand when it is not essential to perform the role is contrary to the principles of the *Disability Discrimination Act (Cwth) 1992*

Further, this formality is contrary to normal social practice in rural NSW and likely to attract mockery rather than respect.

Similarly, mandating modes of address is opposed. Suitable modes of address are best left for local councils and local communities to determine. Again, over formality in rural NSW is likely to attract derision and mockery rather than respect.

Additional formality will reduce the accessibility of local government. This would be a mistake for the level of the government that is closest to the people. Consequences could be:

- those who may otherwise be interested in becoming councillors may decide not to.
- members of the community may not engage as a consequence (council already receive comments from community members coming to talk to council that the process is very formal)

5. Removing the option for councils to reduce the duration of speeches

This is supported, subject to retaining the general time limit of five (5) minutes per speech in clause 10.22 of the current code.

6. Making it clear decisions are made in council meetings

This aim is supported in principle. All decisions binding on the council should be made in a formal council meeting or properly constituted committee. Pre-meeting briefing sessions can devolve into a decision-making arena.

Councillors do need the opportunity however to meet informally through periodic workshops and the code should not close off this avenue of information provision. Without this, councillors cannot meet their s223 obligations.



7. Refining the definitions of disorder

The definition of an “act of disorder” as per clause 15.10 of the proposed code is supported. The link to “disorderly” practice in the NSW parliament is supported as better practice and a welcome step towards holding parliamentarians and councillors to the same standards.

8. Providing as a default attendance in person and restricting the use of AV links

Council understands the principle behind the proposal and agrees physical attendance at meetings should be supported and encouraged. However, it opposes applying a blanket rule to all councils. Instead, this should be left to individual councils to determine in line with local community expectations.

Local councils and their communities are best placed to consider what is appropriate based on the social and geographic constraints of their communities. Rural councillors have larger distances to traverse and often have non-standard work arrangements. A blanket rule for physical attendance for councillors at Botany Bay Council, for example, may not be appropriate for Cobar Shire.

Councillors in rural NSW are not remunerated at a level where there should be an obligation to arrange their employment and family around their council obligations. They are less likely to have the option to prioritise their council role over their work obligations and family commitments. While councillors understand it is an honour to serve their community, they still need to make a living. If the conflict between work, family and council commitments becomes too great, it is the council commitment that will be the first to be discarded.

It is already difficult to schedule extraordinary meetings around people’s working and other commitments. Use of audio-visual links makes this process far more efficient, particularly for extraordinary meetings only considering one or two items.

For council to make an informed decision on compliance with these clauses of the code, the council as a collective and individual councillors will require access to private and personal health information. This is clearly not appropriate.

If the requirement to prove health or carer matters is retained, more thought needs to be given to how this information is provided, who has access to the information and who makes the decision on what is sufficient to demonstrate a requirement to attend via audio-visual link. Handwaving towards HRIPA and the health privacy principles is not sufficient.

Finally, it is contrary to the principles of participation, equity and access identified in the Office of Local Government guidelines for councillors’ expenses and facilities.

Councillor expenses and facilities policies should be non-discriminatory, equitable and encourage participation on council of people from diverse backgrounds that represent the demographics of the local community. They should allow councillors to represent the community in different ways and take account of, as much as possible, individual differences.

*Policies should encourage all members of the community from different walks of life, particularly under-represented groups such as those in primary caregiver roles, to seek election to council by ensuring that they would not be financially or **otherwise disadvantaged** in undertaking the civic duties of a councillor.*



Council recommends

- Clause 5.19 in the proposed code is amended to remove “where they are prevented from attending the meeting in person because of ill-health or other medical reasons or because of unforeseen caring responsibilities” and clause 5.23 should be removed.

9. Restricting the circumstances where a council may withhold a leave of absence

This is supported

10. Remove the option for staff to attend meetings by AV link

Again, a blanket rule across all NSW does not allow for the diversity of staffing arrangements across NSW. This decision is best left to individual councils in consultation with their local communities

In order to attract and retain skilled and experienced staff, many councils in rural NSW have key staff with remote or other flexible work arrangements.

Further, driving home from council meetings ending late at night is a different proposition in rural areas with poor roads and active wildlife.

Mandating in-person attendance is likely to inhibit councillors’ access to quality and timely advice from appropriately qualified staff.

This proposal is inconsistent with the proposal to allow the mayor to determine which staff should attend meetings. The council may insist on a staff member being present during debate or discussion on one report on the agenda. This staff member is now required to be present in or around the chambers until their items has been considered. This is inefficient, potentially costly and for meetings outside standard work hours, inconsistent with family responsibilities.

However, council considers physical attendance by the general manager is appropriate and should be mandatory unless the meeting is entirely via audio-visual link.

11. Allow for councillors to be expelled from meetings where they have failed to apologise for acts of disorder at previous meetings

Council does not have a position on this matter.

B. Depoliticising the role of the general manager

1. Remove the requirement for general managers to prepare reports for notices of motion

The principle of separating the GM from political matters is understood and supported. However, a well-formed notice of motion should address resource availability as mentioned in clause 10.9 and this expectation should be clear in the code. This could be addressed by councillors raising points of order on poorly formed notices of motion.

2. Providing that the mayor, not the general manager has discretion on whether council staff should respond to questions with notice



The removal of current code clause 3.15 is opposed. Its removal is inconsistent with the aim of depoliticising the role of the general manager. It allows councillors to use public meetings of council to make or infer allegations of wrongdoing against staff with no right of reply.

There are alternate pathways for complaints about the general manager and staff to be made that provide staff with procedural fairness.

The code should be clear that council cannot direct anyone other than the GM to respond to questions with notice - consistent with clause 9.15 of the proposed code. The GM may delegate a subordinate to respond if that is appropriate. The GM is responsible and accountable for the response in any case.

3. Conferring responsibility on the council to determine staff attendance at meeting

The proposed clause 5.44 is contrary to s355(i) of the *Local Government Act 1993*. It is the role of the general manager to direct staff.

It is not clear what this proposal is attempting to achieve. The general manager is responsible and accountable for the advice and actions of all council staff.

Is the intent to:

- permit staff to attend council meetings only if authorised by resolution?, or
- permit council to require any staff member to attend council meetings?

In any case, more thought and careful wording will be required.

C. Simplifying the model meeting code

1. Streamlining the code by removing unnecessary provisions

This is supported in principle.

2. Removing the non-mandatory rules governing public forums. Councils will be free to determine their own rules for public forums.

This is in line with council's long held position and supported. Decisions on appropriate community forum methods are best made by individual councils in line with community expectations. The requirements of the code are too formal and rigid to be appropriate for smaller councils.

Berrigan Shire Council's experience is that the current code's community forum requirements stifled community participation in council decision making.

3. Simplifying the rules governing public representations to the council on the closure of meetings to the public.

This is supported. Decisions on an appropriate process are best left to make individual councils to make in line with community expectations.

4. Simplifying the rules for dealing with urgent business without notice at meetings.

This is supported and removes the two-step process (resolution **and** chairperson's ruling) in the current code, at least where all councillors are present.



5. Simplifying the rules of debate by removing the provisions allowing motions to be foreshadowed.

The council has no formal position on this proposal. The intent behind specifically removing foreshadowed motions is not clear.

6. Mandating current non-mandatory provisions on audio visual attendance

This is opposed. See rationale above. Local councils are best placed to make these decisions in consultation with their communities.

D. Restricting councils from holding briefing sessions

1. Decision making by councillors must be through a resolution adopted at a council or committee meeting

This is supported in principle, subject to councils being able to gather informally to discuss strategic matters freely and openly.

2. Information is to be provided to councillors through clear and established channels

This is supported in principle. Further guidance outside this code could be made available via councillor and staff interaction guidelines and the code of conduct.

3. The mayor is not subject to these restrictions.

The council has no position on this matter.