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SUBMISSION

Submission to:
Model Meeting Code Amendments

Lodged on behalf of Dungog Shire Council

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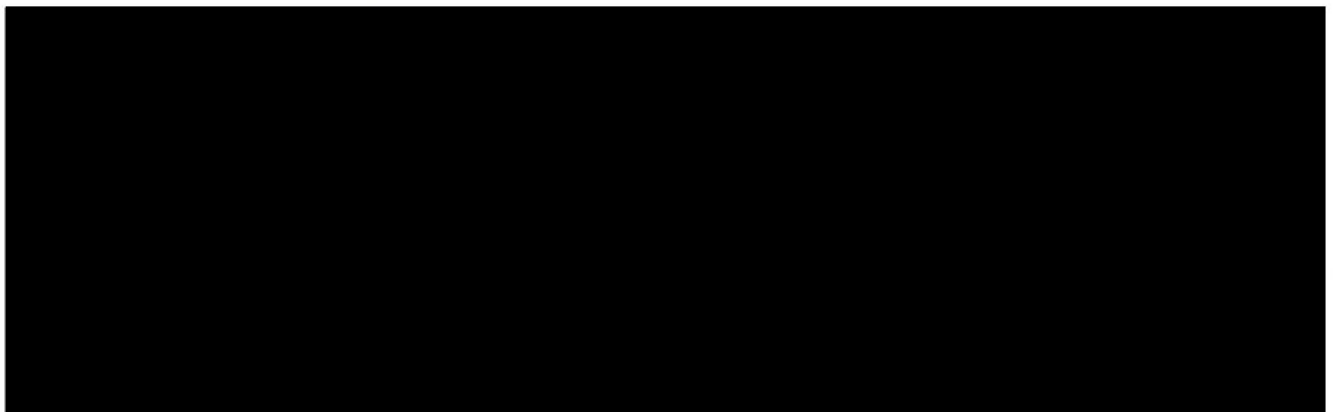
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Council Resolution: 2025/27

Meeting Date: 19 February 2025

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

Submissions Close: 28 February 2025





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Proposed Changes to the Model Code of Meeting Practice

Submission to the Office of Local Government by Dungog Shire Council

The Office of Local Government (OLG) is proposing changes to the Model Code of Meeting Practice and is inviting feedback from local Councils. The proposed changes are intended to grant greater powers to the Mayor to control the agenda and activities of their council. The changes are also intended to reinforce the boundaries between councillors and general manager by depoliticising the role they play in Council meetings.

The Office of Local Government (OLG) is reviewing the Model Code of Meeting Practice with the proposed principles of change listed as follows:

- 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
- Restricting councils from holding briefing sessions



SUBMISSION

Dungog Shire Council believes that the NSW local government sector in general is operating well and any concerns that the Office of Local Government (OLG) may have with the meeting practices and processes to deal with Councillor conduct issues only relate to a small portion of councils across the state and may not be evident at all in some councils.

The role of a councillor is not a full-time paid role in regional and rural communities; whilst these prescribed documents are imperative and always worthy of review, the codes in which they must abide by must not strive to an unachievable standard.

Dungog Shire Council has a collaborative approach and relationship with councillors and between the elected council and council staff. Additionally, Council believes that its approach to transparency, meeting practices, and general conduct uphold the standards expected of Local Government.

Overall, some of the proposed amendments will achieved the desired policy outcomes, however, Council has noted below where it disagrees.

Removing pre-meeting councillor briefings

Council believes that pre-meeting briefings provide the best opportunity to provide councillors with the forthright and open information and advice together at one time. The current provision of pre-council meeting briefings mitigates the risk that Councillors may not receive the same information. By removing the opportunity for Councillors to learn out of the public eye, this will stifle the democratic system, whereby the elected representatives will be afraid to discuss and debate issues in fear of appearing ignorant. It has long been understood and respected that decision making happens by way of formal Council resolution, and that questions of benefit to the community are to be asked in the meeting to ensure transparency of decision making.

It is important to note that the General Manager and senior staff of a Council may hold a variety of workshops, facilitated discussions and briefings with Councillors about a range of matters, that may or may not be before the council for imminent consideration. Councillor workshops are often held with Councillors to plan initial drafts of a range of documents in the Integrated Planning and Reporting Framework, or to discuss other concepts that are still in the development phase. If these discussions were made available to the public, it could lead to misinterpretation of concepts and ideas that have not been fully explored by the Council and may lead to community distrust and dissatisfaction with Council.

Council is not supportive of prohibiting the holding of briefings for Councillors due to the following:

- Removes the ability to discuss scenarios and ideas in a safe environment. Councillors may be less likely to ask "the silly question" in a public forum leading to less information informing decisions. Committees are inefficient and create a resource burden on Council to present required information in that forum. This will make the operations of Council less efficient. Administrative staff would need to attend and minutes to be documented



- If questions cannot be answered in the Committee format, a higher rate of deferral of reports is likely to occur. Again, this would impact on the timeliness and efficiency of Council decision making. Whilst not supportive of the proposal, Council submits that if such a proposal proceeds that a very clear definition of what a briefing is needs to be provided in the legislation. The Discussion Paper provides the following proposed approach:
 - Any material provided to councillors, other than the mayor, that will affect or impact or be taken into account 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.
 - Council proposes that information could only be deemed to be information that could "be taken into account by Councillors in their deliberations or decisions" if it is information that pertains to a specific report or matter to be considered by the Council or a Committee. As such the only workable definition of a prohibited briefing would be any briefing to Councillors about a report/s that have already been published to the public and are on the agenda for an ordinary, extraordinary or Committee meeting of Council.
 - Councils should maintain the right to hold discussion workshops with Councillors to help inform project and policy ideation if such workshops are held before the drafting of any report to Council. Such workshops should be closed to the public.

Additionally, briefings to Councillors that are closed to the public should be able to occur at any time in the following circumstances:

- To discuss matters that are confidential in accordance with s10 of the Local Government Act 1993
- Where state or federal agencies request to present to Council as part of their stakeholder engagement or regulation and oversight activities
- When Council is considering information relating to the application and implementation of Public Health Orders.

The proposal that such limitations would not apply to the Mayor is problematic for several reasons:

- Providing the Mayor with more information than other Councillors about a matter before Council would empower the Mayor over Councillors in a way that is undemocratic.
- The Discussion Paper clearly states that the intention of the prohibition of briefings is to ensure that members of the public impacted by the council's decision are aware of what the councillors have been told or what has been discussed. The public would similarly expect to be made aware of such information provided to the Mayor.
- The Mayor may, for political or other reasons, then provide that information only to a portion of the elected Councillors and not others creating an uneven and likely in the long run distrusting and ineffective Council.



- Council submits that Council business papers should contain sufficient detail and information to inform recommendations made, including an overview of any information provided to councillors regarding the matter under consideration. This practice is undertaken by many councils and would be a practical solution to improve transparency in decision making for all councils whilst still allowing councillors to effectively undertake the role they have been voted by the community to perform

Resolutions at closed meetings

Council support the principle of transparency and availability of business papers to the public (in line with ICAC recommendations) but are concerned about how this would be implemented in practice. As written, this amendment imposes an unreasonable and open-ended duty on council to continually monitor all previous business papers determine whether all the reasons for them being made confidential have lapsed, consult with the council and then publish them. Identifying the exact point at which information transitions from confidential to public domain is complex, and there are already adequate mechanisms under the GIPA Act 2009.

Attendance by audio-visual link

Restricting the ability of Councillors to participate remotely in council meetings disadvantages those with work or carer commitments and may discourage them from running for office. Regional and rural Councils that have restricted resources and cover a large geographical area are already disadvantaged in meeting their obligations and by removing the option for staff and/or councillors to attend via AV link is a step backwards in an increasingly digitally connected world. There is also no clear description of how this change will change or benefit the identified policy outcomes.

Acts and Subsequent Acts of Disorder

Council does not support the definition of disorderly conduct 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. The existing provisions in the Code of Conduct adequately address acts of disorder at council meetings by councillors or members of the public. Council is also not aware of any elected official at any tier of government with the power to issue an infringement notice to a member of the public. Council would instead support a system to refer expelled members of the public to the OLG to consider the issuing of a penalty infringement notice.

Questions with notice

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.

Public forums



Council would prefer that the (optional) provisions on the operation of public forums be retained in the Code. Removal of these provisions means that councils have no guidance on how to set rules for public forums that provide a safe, fair and orderly way for members of the public to address council.

Unintended Financial Impacts

The proposed removal of current Code clauses 3.12, 3.13, 9.10, 10.9 pertaining to Notices of Motions, Mayoral Minutes and Amendments will result in unintended consequences. The effect of these provisions is to ensure that resolutions cannot be made that bind councils to actions requiring additional resources, financial or otherwise, that are not within the capacity or adopted budget of the council. The reason these provisions are specifically in the Code is to address the passing of council resolutions that cannot be carried out for this reason. This scenario may also lead to staff be at fault for not carrying out council resolutions that are beyond the availability of current resources and budget. Council strongly disagrees with the proposed removal of these provisions from the Code, particularly in light of the current significant focus on local government financial sustainability

Approval of Attendance of Staff at Meetings

1. Council does not support the proposed amendments that would shift responsibility for determining staff attendance at meetings to the council. This amendment undermines the statutory role of the General Manager in managing staff and the efficient and effective operation of the organisation. Council is of the view that this proposed amendment crosses the line between strategic and operational responsibilities and is likely to have unintended consequences.

Removal of Foreshadowed Motions

The proposed removal of foreshadowed motions concerns council. In accordance with current Code clause 10.11, amendments cannot be a direct negative of the original motion. The ability to foreshadow a motion means that should an opposite determination be required on a motion being debated; a foreshadowed motion is the only mechanism whereby this can be achieved. Otherwise, there is a risk that the motion may lapse with no determination being made. Council is of the view that foreshadowed motions should be retained in the Code.

