



Council Ref: 25/38169
Your Ref:

27 February 2025

Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

Via email: olg@olg.nsw.gov.au

Model Meeting Code Amendments

In response to the release of the consultation draft paper titled 'A new model code of meeting practice' released by the Office of Local Government (OLG) on 17 December 2024, at the Council meeting held on Monday 24 February 2025, Council resolved the following:

THAT Council:

- A. *Endorse the draft submission to the Office of Local Government on proposed amendments to the NSW Code of Meeting Practice, as included in this report, subject to amending pages 2 and 4 of the submission to support the proposed amendments discussed at the Council Meeting of 24 February 2025 to clauses 5.19, 10.20 and 10.21.*
- B. *Authorise the General Manager (or his delegate) to lodge the submission referred to in Part A above, on behalf of Council by 28 February 2025.*

In light of the above Council resolution, please find following the Woollahra Council submission on the consultation draft paper and the proposed new Model Code.

The commentary below follows the numbering that is included in the new Model Code as released by the OLG, with the four (4) questions specifically asked in the consultation draft paper included at the end of this submission.

3.10: Notice of Motion (NoM) (pg. 6)

All the provisions in the current Code of Meeting Practice (CoMP) around ensuring that any NoM's tabled by Councillors give consideration to the financial impacts of what is being proposed, are being removed from the Model Code. This effectively means that a Councillor can table a NoM with there being no requirement to consider the financial implications for the Council. In light of the ongoing financial sustainability struggles nearly all Council's face, this appears to be a backward step.

It is fully acknowledged that Councillors have every right to put forward requests for Council consideration via the NoM process, however much time and effort goes into drafting annual budgets and the Long-Term Financial Plan (LTFP) and having no checks and balances on additional expenditure requests will not necessarily assist nor promote, prudent financial management.

These changes are not supported.

3.13: Questions with Notice (QwN) (pg. 7)

Restrictions around what cannot be asked in a QwN are being excluded from the new Model Code, with no detail provided as to why this change is being made. The risk with this is that a Councillor may seek action from staff (or expenditure) via a QwN as opposed to through a formal resolution of Council via a report to Council or through a NoM. It is our understanding that this was never the intention of a QwN.

For noting is that in the consultation draft paper on the new Model Code (pg. 8), reference is made to giving power to the Mayor to determine whether the GM / staff should respond to a QwN, however that does not seem to have translated into a change to the actual new Model Code.

Further information is required on the above-mentioned changes in order to understand the intent of the changes better.

3.23: Statement of ethical obligations (pg. 8)

The requirement for all business papers / agendas to remind Councillors of their ethical obligations is being deleted from the new Model Code. This seems at odds with the intent of these reforms as stated by the Minister for Local Government i.e. to restore dignity to the Council Chamber.

This change is not supported.

3.33: Pre-Meeting Briefing Sessions (pg.10)

The revised Model Code bans pre-meeting briefing sessions. It has not been the practice in recent years at Woollahra Council for there to be pre-Council or Committee meeting briefings. However, a Council should be able to choose whether it requires pre-meeting briefings, noting there should clearly be no caucusing taking place or any decisions being made behind closed doors in the pre-meeting briefings.

According to the consultation draft paper on the new Model Code (pg. 9), Councils will still be able to hold workshops that provide information to Councillors on the functions and service delivery of Council.

This change is not supported.

4: Public Forums (pg. 10)

What were known as clauses 4.2 to 4.24 under the section on public forums are being deleted from the new Model Code. This effectively means that the rules around public forums are to be determined by each Council.

This change is supported.

5.19: Attendance by Councillors at meetings by audio-visual link (pg. 15)

Some substantial changes are being made to the circumstances around when a Councillor can join a meeting via audio-visual link. Councillors will only be able to join the meeting via audio-visual link due to ill-health or caring responsibilities. Plus, a Councillor will no longer be able to join a meeting via audio-visual link at which a Mayoral election is to take place. It should be noted that no explanation has been provided as to why this change is being made.

Not allowing Councillors to join a meeting via audio-visual link, other than for caring responsibilities or ill-health, will potentially limit the involvement of a range of Councillors in Council meetings and may in fact deter some people from running for Council in the first place. This change raises the question of who will determine whether a Councillor is in ill-health or not? Will a Councillor be required to provide a Doctor's Certificate to the Mayor, as Council staff are required to do to their Manager?

This change could also potentially see political motivations coming in to play with matters before Council being timed to ensure that some Councillors are not present for the vote, due to these attendance restrictions being put in place.

If the key concern around making this change to the Model Code is around Councillors now being able to participate in the meeting in a quiet and professional location, then a clause such as the one directly below could be included in the Model Code. The following clause is currently included in the Woollahra Council adopted Code of Meeting Practice and is shown at Clause 5:34:

A Councillor must give their full attention to the business and proceedings of the meeting when attending a meeting by audio-visual link. A Councillor must be able to participate in the meeting in a quiet and professional location and will not be allowed to participate in the meeting via audio-visual link if they are driving, walking, shopping, on public transport or are receiving medical attention. The Councillor's camera must be on at all times during the meeting except as may be otherwise provided for under this code.

This change is not supported.

5.44: Attendance by the GM and other staff at Council meetings (pg. 18-19)

To date it has been the call of the General Manager (GM) as to which staff would attend Council / Committee meetings, however a change is being made whereby the Council will determine attendance at Council meetings from time to time. There is no indication as to why this change is being made or how often 'time to time' actually is.

The new Model Code also bans the GM and staff from attending meetings of the Council and Committee via audio-visual link. There is no explanation given as to why this change is being made. Whilst the majority of required Woollahra Council staff do attend Council and Committee meetings in person, it could disadvantage Councillors not having a staff member be able to attend the meeting via audio-visual link, particularly if the staff member is ill or are caring for another person. This is an odd addition to the new Model Code considering that under the Model Code, Councillors will be able to attend meetings via audio-visual link if ill or if they have caring responsibilities.

This change could also see a loss of efficiency for Council staff and Council overall, with staff being required to be on site during Council and Committee meetings, rather than being able to be at another workplace or at home and then joining the meeting only when their matter is before the Council.

This change is not supported.

9.7: Mayoral Minutes (pg. 22)

Mayoral Minutes will now be able to be made about any matter that the Mayor determines should be considered i.e. it is no longer restricted to matters 'within the jurisdiction of Council'. Hand-in-hand with this change is the deletion of clauses around Mayoral Minutes only dealing with urgent matters, meaning a Mayoral Minute can deal with any matter. Plus, the clause around Mayoral Minutes taking into account financial implications has also been deleted, in line with NoM's, as detailed above.

The lack of financial accountability relating to Mayoral Minutes is the same as discussed in relation to Clause 3.10 above. Also, removing the limits on what a Mayoral Minute is to include could be abused by the Mayor of the day for personal and or political purposes.

These changes are not supported.

10.9: Motions requiring the expenditure of funds (pg. 24)

The existing clause around requiring a Councillor to identify the source of funds for a motion put forward is being deleted from the Model Code. Please refer to the comments made earlier in this paper in relation to Clause 3.10.

This appears to be a backward step when you take into consideration the ongoing financial sustainability struggles many Councils are facing. This is also not considered to be an appropriate change in the context of cost shifting, where successive State governments continue to shift costs to Councils, putting further financial strain on each Council.

This change is not supported.

10.17: Foreshadowed motions / amendments (pg. 25)

Clause 10.17 which deals with how foreshadowed motions are to be dealt with is being deleted from the Model Code. According to advice received from the OLG, the proposed amendments aim to simplify the rules of debate and even though this clause is being deleted, Councillors will still have the option of moving amendments and foreshadowing further amendments.

This change is supported.

10.20 & 10.21: Limitations on the number and duration of speeches (pg. 25)

The new Model Code is mandating the time a Councillor can speak on a matter, being 5 minutes and the existing clause that allows Council (by resolution) to shorten the duration of speeches to expedite matters, is being deleted. This means that all Councillors will be able to address the Council for up to 5 minutes.

Making a 5-minute maximum speaking limit mandatory could see an increase in the number of extended and / or adjourned Council and Committee meetings, particularly when there are 15 Councillors in place.

Woollahra Council would support a change where Councillors would be able to speak for up to 4 minutes, but not 5 minutes as currently proposed in the new Model Code.

This change is not supported.

14.19 & 14.20: Resolutions passed at closed meetings to be made public (pg. 33)

These new clauses deal with confidential business papers that have been the subject of a closed session of Council. Clause 14.19 states that a Council must make public the confidential business papers when they cease to be confidential. This is very subjective and raises the questions of when something is no longer deemed to be confidential.

By way of example, if a Council is considering an offer of a Public Private Partnership (PPP) in a closed session (under the relevant sections of the LG Act), it is most likely that the details of the offer will be commercial in confidence, so at what point is this information not deemed commercial in confidence?

Advice received from the OLG is that each matter would need to be determined on a case-by-case basis.

This change is not supported.

Clause 14.19 is also in conflict with existing rules around General Manager performance reviews. Currently General Manager performance reviews and related documents are required to be considered confidential and are therefore considered in a closed session of Council. This clause of the Model Code breaches a clause in General Manager contracts across NSW. No guidance or advice has been received from the OLG in relation to this conflict.

This change is not supported.

Clause 14.20 states that the General Manager must consult with the Council before publishing the information that is now no longer confidential. This is a confusing clause in that the word 'consultation' is not defined i.e. does it simply mean the General Manager is informing Councillors of the intention to make certain information public, without the need for a formal report to Council? What should the General Manager do if there are differing views amongst Councillors on this matter? No further advice has been forthcoming from the OLG on this matter, at the time of writing this submission.

This change is not supported.

15.2: Points of Order (pg. 34)

Clause 15.2 is being deleted from the new Model Code, being the clause that has previously prevented a Councillor from raising a point of order with respect to adherence to the principles contained in clause 2.1 of the Code.

With the deletion of this clause, it will allow Councillors to raise a point of order if they believe someone is not adhering to the principles as included in clause 2.1 of the Code.

This change is supported.

15.10 to 15.13: Acts of disorder (pg. 35)

Part (d) of clause 15.10 has had some other actions added to it that would be considered an act of disorder i.e. '...language, words or gestures that would be regarded as disorderly in the NSW Legislative Assembly'.

To link acts of disorder to something as subjective as what might or might not be considered acceptable to the Legislative Assembly, seems nonsensical. This firstly assumes that the behaviours witnessed in the Legislative Assembly are appropriate and secondly, these behaviours are not defined.

Whilst additions to other actions that may be considered acts of disorder is supported, linking some behaviours to those deemed acceptable by the Legislative Assembly is not supported, without further information on what these behaviours are.

These changes are not supported.

20.8 & 20.9: Attendance at Committee meetings (pg. 42)

The above-mentioned clauses are being deleted from the revised Model Code, noting that these clauses deal with the issue of non-attendance by Councillors at a Committee meeting. It appears that the deletion of these clauses effectively means that once you are a Councillor member of a Committee, you remain a member, regardless of whether you are in attendance at Committee meetings on a regular basis or not.

There is no explanation provided as to why the requirement for attendance at Committee meetings is now different to that of a Council meeting.

This change is not supported.

Key Questions to Consider as included in the Consultation Draft Paper:

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

It is the view of Council that the proposed amendments to the Model Code alone will not necessarily meet the policy objectives as included in the consultation draft paper.

A number of the matters that the public across NSW see take place from time to time across some Councils, are definitely behaviour related, however, many of those poor behavioural examples do not take place in the Council Chamber, but outside of the formal setting of Council. Amending the Model Code may go some way to addressing behaviours in the

Council Chamber but will likely do little to guide the behaviours of some Councillors outside the Council Chamber.

It is considered that the proposed changes to the Councillor Conduct framework that were the subject of a discussion paper in late 2024, may go some way to addressing some of the above-mentioned behaviours.

Woollahra Council meetings are already conducted with an appropriate level of dignity and reverence and with civility. Debate is encouraged and generally those debates are fair and respectful, guided by the Mayor of the day.

Conferring additional powers on the Mayor to be able to expel a Councillor for acts of disorder and the subsequent potential for the Mayor to be able to impose a penalty on a Councillor of not receiving their Councillor fee, is problematic. This additional power has the potential to become politicised and it is hard to see how conferring this additional power on the Mayor will in fact bring dignity and reverence to the Council Chamber, with it potentially having the opposite effect if implemented.

Expanding the grounds for the Mayor to expel members of the public, has some merit. However, there is no detail provided as to how a Mayor can or will issue a Penalty Infringement Notice (PIN) to a member of the public. The processes and procedures around this will need to be very clearly detailed so that members of the public and Councillors, understand how this will work in practice, including what recourse a member of the public has to appeal a PIN.

The banning of briefing sessions is seen as a backward step, with any number of matters requiring general discussion with Councillors prior to them even being considered for inclusion on a Committee or Council meeting agenda. Briefings also act as a professional development tool for many Councillors, which is being taken away under the new Model Code.

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

There are no specific additional amendments being suggested by Council; instead, we draw your attention to the commentary included throughout this submission. It also considered that the changes being made to the Councillor Conduct framework need to be implemented at the same time as any changes to the new Model Code, simply to ensure that the greater focus on the conduct of Councillors is aligned across the two Codes.

- Will the proposed amendments have any unintended consequences?

There are a number of proposed changes to the Model Code that may have unintended consequences as detailed below, noting that the clause numbering within the new Model Code has been used below for ease of reference:

Clause 3.3:

The Mayor being able to call extraordinary Council meetings without requiring two other Councillor signatures could potentially be abused for political purposes, with no check being in place on the use of this authority.

Clause 3.10:

The removal of the need for Councillors to consider the financial impacts of any Notice of Motion, is financially irresponsible. This flies in the face of the financial sustainability issues that Councils across NSW are facing and the role of Councillors in ensuring prudent financial management of their Council. If a Councillor has the numbers in the Chamber to succeed with a Notice of Motion that includes the expenditure of substantial funds, then management has little opportunity to discuss how the initiative will be funded and or what other priorities will not need to be put on hold in order to implement the Notice of Motion.

Clause 5.19:

Not allowing Councillors to join a meeting via audio-visual link, other than for caring responsibilities or ill-health, will limit the involvement of a range of Councillors in Council meetings and may in fact deter some people from running for Council in the first place.

With the role of Councillors in NSW being part time, many Councillors need to supplement the low Councillor fees they are paid, with paid employment. A number of Councillors travel for their work and / or are unable to physically attend each Council meeting due to work commitments. The limiting of the reasons why a Councillor can join a meeting via audio-visual link is a retrograde action, not in line with a modern working world.

Clause 5.44:

There is no explanation offered as to why the clauses allowing staff to join Council meetings via audio-visual link are being deleted.

Clause 5.19 deals with the reasons a Councillor may join a meeting via audio-visual link. Whilst not discounting the comments directly preceding these comments around Clause 5.19; if it is satisfactory for a Councillor to join a meeting via audio-visual link if they are suffering from ill health or are undertaking caring responsibilities, then this should be extended to the staff who are required to attend a Council meeting.

Only allowing staff to attend Council meetings in person, may contribute to limiting the number of people wishing to take on senior roles within Council. Succession planning is a major issue for many Councils and removing flexibility of attendance for staff required at Council meetings, takes away an important piece of flexibility.

Clause 7.1:

There is no explanation as to why Council staff will now be required to stand when addressing Council. This could become difficult when you consider the amount of paperwork that Council staff are often juggling when responding to questions from Councillors. Plus, there are many occasions when each Councillor may have a question/s for the same staff member and with this change to the Code, that particular staff members will need to be up and down on their feet continually during that particular discussion. This seems an impractical and ill-informed inclusion.

Clause 9.7:

Removing the limits on what the subject matter of a Mayoral Minute can be, may be abused by the Mayor of the day for personal and or political purposes.

Clause 10.9:

This clause is being deleted from the Model Code and deals with the expenditure of funds. Please see our comments above in relation to Clause 3.10.

Clause 10.20 & 10.21:

Making a 5-minute maximum speaking limit mandatory could see extended and / or adjourned Council and Committee meetings. This is particularly likely when there are 15 Councillors in place and when all may want to speak on a matter and / or ask questions, hence why Woollahra Council would support a change of up to 4 minutes maximum, but not 5 minutes.

Clause 14.19 & 14.20:

Please refer to the comments made earlier in this submission about these specific clauses. The likely key unintended consequence of these changes is that a clause such as this is in conflict with a clause in the Standard Contract of Employment for General Managers (clause 7.12), where all reports dealing with the performance of the General Manager are required to be confidential and are therefore considered in a closed session of Council.

The revised Model Code as currently written in relation to confidentiality, risks breaching the General Manager's contract of employment.

Clause 20.8 & 20.9:

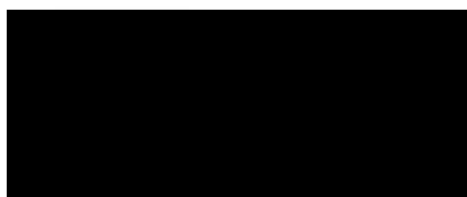
With the deletion of these clauses from the new Model Code, the unintended consequence of these changes is that a Councillor could choose to rarely or never attend a Committee meeting (membership of which was granted via a resolution of Council), with no consequences whatsoever.

Council requests that the same attendance requirements for Committees by Councillors, are reinstated to be in line with those of Council meetings.

- Are there any other amendments the Government should consider?

The current review of the Model Code and the recent review of the Councillor Conduct framework points to a system and framework of local government that is not fit for purpose in 2025. In light of this, we encourage the NSW government to undertake a wholesale review of the NSW Local Government Act 1993 (the Act), since it is now over 30 years old, with a view to modernising the Act to allow Councils the ability to be able to operate in a modern and agile environment.

Yours sincerely



General Manager