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26th February and March , 2025

Dear OLG

Submission – Consultation draft **MODEL CODE OF MEETING PRACTICE FOR LOCAL COUNCILS IN NSW 2024**

Thank you for the opportunity to comment on this important issue.

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I've been participating in the activities of local government for over three decades and specifically in Byron Shire Council. I've seen many changes in that time in the operation and the delivery of information relating to decision making. The relationship that council has with the community is very much affected by the decisions it makes and how they are made. If the processes are seen to be secretive it can affect the level of community trust in local democracy.

I'm a strong advocate for the role of Local Government as the most relevant level of government in the delivery of outcomes in a day to day manner but also in relation to defining the future.

Byron Shire has an involved community, active in local issues and participation in local government deliberations since the 1980's. However, the collaboration can be impacted by a lack of transparency and or a lack of respectful engagement. There needs to be recognition that trust can be eroded if information and engagement is not undertaken in a meaningful and respectful manner.

If council fails to commit to genuine open and transparent democracy it can lead to a lack of understanding by the community of the rationale for decisions of council and the outcomes that arise. There is an opportunity for greater transparency with the operation of local government and the Minister's commitment to ensure that *"all material given to a councillor to make a decision in a council meeting is provided in a public fashion"* is welcome.

I will also be writing to the Minister to raise other areas for reform. I hope that the Office of Local Government will continue to provide updates and reforms for councils that include a recognition of the vital role community has in ensuring that democracy is delivered at a local level and focus on the need for open and transparent processes.

Regards

[REDACTED]

Comments on Discussion Paper - A new model code of meeting practice

Objectives

I applaud the objectives presented in the Consultation Draft for the new Model Code of Meeting Practice and look forward to further reforms being presented. I support the outcomes of

- 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.

However, whilst I support some of the draft changes proposed, I disagree with others and provide some suggestions.

Unfortunately, I wasn't aware of the opportunity to make a submission to the previous discussion paper on this topic in November 2024.

1. Promoting Transparency, integrity and public participation

1.1 Briefings - I fully support the banning of regular councillor briefing sessions. However, I do accept that sometimes an informal session to provide background/ update on key issues may be appropriate and may be reasonable.

Suggestion 1.— if briefings are held for a specific purpose, it should be reported, perhaps a quarterly report on special briefings by the GM in a council agenda , which at least informs the community post briefing with some information.

Note – *In the past, there were briefing sessions on the preparation of a Management Plan (as it used to be) or the budget – these were useful and contributed to overall knowledge of the operation of council – they were however often reported in a final report to council on those items.*

Example - Meetings of Byron Shire Council – Workshops / pre-meeting sessions

Currently in Byron Shire, there are regular 'Workshops' for councillors where current matters are addressed. It's my understanding that they have an agenda and are provided briefings, but are not made public but sometimes referred to in agenda reports. I'm not aware if there are documents presented or if notes are taken at these sessions. My understanding is that these workshops ARE meetings of council and therefore should be public and conform to the Code of Meeting Practice.

There's great concern by some in the community as it appears to have resulted in councillors receiving info that's not in the public arena and sometimes verbal briefings without evidence or substantiation of views presented. This can influence councillors and it's been said on a number of occasions by councillors to community members that their views were formed via that process.

Note – *during my time on council we held Strategic Planning meetings with agendas and in full public view. These were opportunities for information to be presented in relation to future planning documents and often in committee to allow for discussion and sometimes with presentations from external experts. Most often these meetings provided background, legal requirements and examples to provide early identification of councillor and community response to the development of a draft document. The*

important aspect being that the community was informed and engaged and the information provided was able to be scrutinised.

- 1.2 Closed meeting confidentiality – it needs to be considered how the decision is made that information ceases to be confidential and or will council consider making information available with redactions for any parts that identify a person or commercial in confidence matters.

Suggestion 2. – this issue could be defined in a resolution made by the council in relation to a closed meeting and defines the reason for confidentiality with a defined list of options to indicate the specific reason for closure

- 1.3 Recordings – agree they should be available for the full term
- 1.4 Planning decision without a staff report – I'm unsure how this would happen other than with a Notice of Motion but have never seen this and would imagine that the GM wouldn't allow it to be listed on an agenda
- 1.5 Planning decisions - Planning decisions contrary to staff recommendation – I support this but it may be useful to provide some guidance to councillors as to the reasons that represent a justifiable reason. Sometimes new information is made available in public access that identifies a differing view. In times past, this may have justified a deferral to receive further information but these days, the time pressure on planning decisions is tight and the legality of a deemed refusal or government oversight regarding delays in processing may influence decision making.

2. Promoting the dignity of the council chamber

- 2.1 Mayoral authority - agree
- 2.2 Standing - I agree that it's important to promote community confidence in the forum but don't agree with the approach to make it mandatory for people to stand for the mayor, or to stand when speaking will achieve this. I believe it's more important that the level of conduct is more effective way to achieve this. In a rural area, it's more relaxed and important for to recognise that the elected representatives are part of the community. The formality of the meeting process itself is intimidating for some people and increased elevation of the mayoral role might further intimidate some community members.
- 2.3 Removing the option to reduce duration of speeches – agree
- 2.4 No private briefing sessions - agree
- 2.5 Disorder definitions – agree
- 2.6 In person attendance – agree, except for special circumstances
- 2.7 Leave of absence - agree
- 2.8 Staff by audio visual link – unsure, some circumstances could require, so should also allow for special circumstances eg. infectious illness, caring role as defined for councillors
- 2.9 Disorder - the most effective way to enhance community respect for the role is to ensure the community witnesses respectful and fair behaviour in the chamber and that they, the community are also treated fairly and respectfully and see the elected representatives treat each other respectfully. I have witnessed behaviour by councillors that is disrespectful and not acted on by mayors. Sometimes this has occurred when community views are expressed that differ from the majority of elected representatives or a mayor.

3. Depoliticising the role of the general manager

- 3.1 GM / staff comments on Notices of Motion – I agree that there can be persuasive arguments presented in staff responses to NoMs, however, it may sometimes be important to be informed of legal or financial implications and without that information being provided prior to the meeting it

could lead to excessive questioning in a meeting and / or affect a vote due to a lack of information. Also it can be valuable as the information is public and if there are any political or misinformation comments in the GM /staff comments, they can be refuted or clarification sought.

Suggestion 3. – it could be valuable to provide councillors with a template form of words where they could choose to request the advice from the GM for the NoM and request this information for inclusion in the agenda. Sometimes it may involve reprioritising current budgetary objectives.

Receiving information from staff could be seen as important in some circumstances as it could affect the vote of some councillors. It's not unreasonable that in some cases it might be that councillors are made aware of GM or staff opposition to something and be told that it may be for legal or financial reasons. In this case, it would be valuable to have that in writing so it can be scrutinised and considered in a motion and resolution.

Also an option for councillors could be that a NoM / resolution could include a standard part that refers to a further report be received at the next meeting on the implementation of the resolution see **Suggestion 18.**

Also for new councillors it may be that the impact of a motion may not be considered in light of legal or financial implications, particularly in the early period of a new term. The provision of information can provide a valuable learning on how the organisation operates and enhance their knowledge.

Note – *I have suggested that a vital mandated agenda item be a implementation of resolutions report to the next meeting of council to inform of action taken on the resolutions from the previous meeting. See **Suggestion 18.** There are too many examples of delays with resolution implementation and it needs a clear process. Quarterly reviews of outstanding resolutions are often missed due to large agendas and the detail contained in attachments or presented without current updates.*

I also query what direction is provided to General Managers to ensure that resolutions are implemented and what responsibilities they have to ensure that updates on progress of resolutions are reported accurately and efficiently. I have examples of where resolutions have not been progressed and or are misreported as being completed and then removed from the outstanding list, sometimes due to only parts of the resolution being implemented and leaving other parts unimplemented.

3.2 Questions with notice – I'm unclear with this point but offer a view that if you are referring to councillor and public questions, then they MUST be answered. If notice has been given and in Byron Shire public questions must be submitted the day before a meeting, therefore an answer should be provided. If a submitted question by a councillor is determined to breach disorder provisions, it's excluded from the agenda. If it's a public question, it's pre-determined that it is unable to be put and reasons given.

3.3 Staff issues – I have mixed views on this issue, as I feel it's can be a valuable opportunity for staff to hear the views of councillors and to also be exposed to public access. In our shire many of the staff either don't in the shire and/ or are new arrivals to the area and a meeting discussion can provide them with background and context that is valuable. However, if staff are present in a meeting, they should be organised so they can work remotely with staff or respond to email requests in the chamber. Time should not be wasted.

The other option is for them to be called in when the items in their area are being discussed.

4. Simplifying the Code – I agree that the draft does simplify some of the sections but am aware that for many in the community it still presents as a complex legal document and therefore make a suggestion for a plain speak version for community purposes with a focus on the community role

Suggestion 4.- Community version of Code– I think it would be useful to create a plain speak version of the Code of Meeting Practice for the community use, specifically relating to their role and clarifying the opportunities and restrictions. I'm often contacted by community members to explain how a meeting works, as many people have not had the experience and if advised of the Code of Meeting Practice, find it daunting, especially if it's their first engagement.

5. Restricting councils from holding briefing sessions

I'm strongly supportive of this move and provide comment above in section 2. Promoting Transparency regarding briefing sessions

5.1 Decision making – agree

5.2

- 5.2.1 councillor requests are a right but without transparency it can also lead to the forming of a view on advice that isn't public or able to be scrutinised, especially if it involves a verbal response.
- 5.2.2 general information should be provided in an agenda report so that the community is also informed. Legislative changes and other sources of information that impact on local governments role and responsibilities should be a regular agenda reporting item to inform councillors and community of changes to the operation of council and or additional responsibilities.
- 5.2.3 Training or induction is a key issue – for new councillors it can be a daunting task to take on the role and be confronted with the complexity

Suggestion 5. – that OLG produce a standard induction document that provides an overview of how local government operates and where to find relevant information, including external sources.

I appreciate that OLG provide a lot of information to assist councillors but an overview document that serves as a guide for new councillors would be valuable. Some new councillors may have little experience with meetings, legislation and other sources of information that are able to assist them.

Note – *in my time on council our induction training included those offered by LGSA and also from external legal professionals*

- 5.2.4 the reference to periodic workshops to explain function, service delivery etc, should also be a public meeting so that community members are also able to be informed and updated
- 5.2.5 Reports provided by the GM – agree but it would be valuable for a template to be developed – I have concerns about inconsistencies, including the title of reports and whether there is enough information to identify the substance to indicate in a review of the agenda index the substance of a report.

Suggestion 6. - This could be an annual Extraordinary Meeting to inform councillors and community on council operations and particularly if there have been changes to legislation or procedures

5.3 Distribution of information – does this exclude email queries and responses?

5.4 Mayoral information – if info is received by the mayor that is not available to councillors but is in relation to their role, it might also be that the mayor is encouraged to consider if this information could be shared with councillors to enhance their understanding of the mayoral role and or if it is of interest to the public and could be made publicly available.

6. Other Comments specific to Draft Model Code of Meeting Practice for Local Councils in NSW

Comment – a general view is that the draft and prior versions of the code are complex and in some sections there may be the need for identification of cross referencing or a re-writing / re-ordering to align sections that are related or consequential.

Also some form of notation with the a model code that identifies which sections are mandatory – this could be done with a colour coding.

The other option for where it refers to legislative sections, would hyperlinks be possible? so that it is made easier to check.

Also see my **Suggestion 4**. that a **plain speak version** of the code is produced for the community to identify the opportunities for community engagement and awareness of some issues eg. public forum, closed meetings and confidentiality. My view is that an informed and engaged community is an essential requirement for ensuring that democracy is delivered and unfortunately complex and legalistic documents can deter community involvement or confidence to engage.

I often receive requests from members of the community for clarification of their rights to engage with council in meetings and this allows me to extract the specific sections that apply and inform them to provide them the confidence to engage.

SPECIFIC POINTS IN RELATION TO THE DRAFT

Giving notice of business to be considered at council meetings

3.13 – the MAY should be replaced with **MUST**. If councillors have submitted a question that is accepted then it is vital that a written response is included in the agenda. I support the removal of the option for an oral response, unless at the meeting the GM has additional information to follow up from the response provided in the agenda.

***Note** - an ongoing problem with answers to questions with notice, is that the 'answer' is often a response, not a direct answer to the question put. I have numerous examples if there needs to be clarification but the ability of the GM or staff to fail to answer a direct question is an ongoing frustration for many in the community and also some councillors, past and present who are dissatisfied with the responses to their questions with notice. Seeking a thorough answer to a specific question can then become a drawn out process.*

3.19 – Closed meetings and use of confidential provisions is a concern. I believe it's important that matters being considered for decisions are made known to the public with as much information as possible. I note that there are issues of personal details, legal and commercial in confidence but they can be redacted to not divulge those specifics. I support greater direction being provided to councils about utilising redaction as means to exclude confidential matters but allow the substance of a report to be made public.

Also the title of a report needs to be clear about the nature of the matter being considered for a decision to provide full disclosure of the matter being determined.

4. Public Forums

Suggestion 7. – in relation to Public Forums- **Section 4** – there should be direction regarding the potential for a situation where councillors question or remark in a manner that is disrespectful to a member of the public and a requirement for an apology. If this occurs there should be a process where this is recorded in the minutes of the meeting.

Note – this is repeated below in Section 15 Keeping Order at Meetings, Clause 15.10 Act of disorder

Suggestion 8.- I think there should be a process whereby a member of the public is able at a meeting to call a point of order or some process to seek an apology if they feel they have been disrespected or some other form of disorder against them.

GM vote

5.42 – I don't support the GM exercising a vote in any circumstance. Also I'm unaware of what circumstances a GM would have a vote.

Modes of Address

7.2 & 7.3 – I personally strongly oppose the use of the term 'Madam Mayor' – please consider the general term 'Mayor'. It is unnecessary to make a gender definition, it's about the role. I note that there is reference to 'Chair' and the same principle should be applied to the Mayor.

Order of Business

8.1 – I disagree in part and would support prior 8.2 being the template with allowance for variation, for consistency and transparency there should be a defined order of business. This would still allow for some flexibility for councils to resolve changes or inclusions. I believe it's important for all communities across the state to know that there is a standard format for council meetings that should be adhered to. I'm particularly concerned that the order of business include early in the meeting the disclosure of interests, to ensure that it is done prior to the business of the meeting.

Suggestion 9. That a mandated template if provided in the Code of essential agenda items

Reports of committees of council

9.142 – consider amending MAY to **MUST** in relation to separate decisions on each recommendation to ensure transparency and the ability to follow up on implementation

Motions requiring the expenditure of funds re 10.9 deletion

I think there needs to be some form of recognition of the potential for a motion to require expenditure of funds or the re-allocation of funds to accommodate the implementation.

Suggestion 10. – if a resolution has unexpected financial implications, the GM should be required to submit a report at the next meeting to provide follow up and clarification if any decision is required to allocate funds.

NB – see my **suggestion 18.** that proposes that the GM should be required to deliver a report to each meeting following up on resolution implementation from the prior meeting.

Voting at council meetings

11.11 – I strongly support that this is mandatory for all councillors. This is an essential component of an open and transparent democracy. The community must be able to see how individual councillors vote on

issues. In supporting 11.11 it then excludes the need for clauses 11.6 – 11.9 and 11.15. I also think it excludes 11.4

12. Committee of the whole

Suggestion 11. - this requires an explanation either following the heading or in the Definitions.

12.4 - perhaps further clarify that the adoption of the report happens when the council moves out of Committee of the whole.

14. Closure of Council meeting to the public

14.2 – I find this section unclear and perhaps some additional wording or an example would be helpful (also relating to 14.5)

14.3 – this needs some direction from OLG as there are circumstances where a whole report will be conducted in closed meeting when it becomes clear at a later date that it was unnecessary due to limited issues that require confidentiality

14.4 – this also needs direction as some legal advice, especially in relation to council activities or responsibilities should be public

14.7 – clarity needed regarding the OLG guidelines – the title of the document should be included or a hyperlink to the document

<https://www.olg.nsw.gov.au/wp-content/uploads/Closure-of-Council-Meetings-to-the-Public-2013.pdf>

Suggestion 12. – there needs to be direction given to councils regarding the manner in which closed meeting occur and it must also be clearly available to the public – see above and I note that the document is 2013 and perhaps it could be updated but I couldn't locate a later version.

Often it's possible that a matter is able to be discussed in open council and then move to closed to consider specific legal, financial or personal aspects.

Without direction, it's too easy for an issue to be dealt with completely in a closed session, in some cases unnecessarily. This also reflects on the report and that it may be possible for a report to be presented with some redaction in relation to the matters that require confidentiality but to keep the majority of the report public so the community understand what the item relates to.

Note – the Information and Privacy Commission provides guidance on how to redact and manage confidentiality and the Public Interest Test and I understand that it applies to GIPA requests but if there were clearer guidelines in relation to what and how information is provided for meetings and agendas, there would be greater transparency and potentially fewer requests for GIPA access

<https://www.ipc.nsw.gov.au/sites/default/files/2022-09/Fact Sheet What is the public interest test August 2022.pdf>

Representations by members of the public

14.9 – MAY should be a **MUST** – in the case of a matter being poorly described in a report title or lack of clarity / reasons for why a matter is dealt with in a closed meeting, the public MUST have a right to raise concerns in an open session

14.11 – I'm unsure about this clause, does it mean that a member of the public who wishes to make a representation would then be allowed to stay in the chamber when the meeting is closed

Suggestion 13. – the mayor /chair should be required to make it known to the public that when the item is considered that the right exists for a representation to be made regarding the closing of the meeting, despite the fact that registration to do is required prior to the meeting, it informs other members of the public that this is an option available to the community

14.12 – need to clarify what the manner for making a representation is, if that is, as per the council's registration process for public access at a meeting – **clarification required for the option for the public** (this also relates to my prior suggestion 4. regarding the need for a plain speak form of the Code specifically to inform the public of their rights and roles in council meetings.

14.13 – query – this addresses the point regarding 14.11 – how does a member of the public stay in a closed meeting? I think there needs to be clarification on this issue.

Resolutions passed at closed meetings to be made public

14.17 – this is somewhat confusing in that the resolution may include matters deemed confidential and therefore is able to remain confidential. However, direction may be required to advise councils on the need to perhaps make multiple resolutions in separate parts so that some information is able to be made public and retain as confidential those parts that includes matters as defined in 3.18 and 14.1 14.3, 14.4 until such time as the confidentiality is no longer relevant.

Note – would this also require an amendment / notation made later on minutes that provides public access? It's unclear to me how this operates.

Acts of disorder

15.10 d) – the reference to LA disorderly provisions should be provided

Suggestion 14. - 15.11 – a new clause to require that the apology is included in the minutes

Note – *There could be a form of words that guides the apology requirement and direction to the Ombudsman Guidelines on Apologies*

<https://www.ombo.nsw.gov.au/guidance-for-organisations/resources/apologies-guide>

Suggestion 15. – in relation to Public Forums- **Section 4** – there should be direction regarding the potential for a situation where councillors question or remark in a manner that is disrespectful to a member of the public and a requirement for an apology. If this occurs there should be a process where this is recorded in the minutes of the meeting.

Expulsion from meetings

15.20 – the reason for expulsion should also be recorded in the minutes

Suggestion 16. – a list of reasons should be available so it can be defined in the minutes

Conflicts of Interest

16.1 – see **suggestion 9.** regarding the agenda index that I propose should have some mandatory requirements and this is one that should at the beginning of the meeting to ensure that the declaration is recorded and identified the report it relates to

Council decisions

17.2 – this should be strengthened for the recording of the voting of each councillor for and against and a requirement for the mayor / chair to define the vote as an audio record – with the names of for and against

17.4 – clarification required about doing a rescission in the same meeting – check 17.12

17.8 – unsure about a motion of adjournment ?? – needs clarity or definition

Recommitting resolutions to correct an error

17.16 – the recommitment of a resolution for a new vote can occur at a meeting when there may have been a misunderstanding by one or more councillors at the time of the original vote.

Note – I've seen this happen and it's more efficient to have the vote re-committed at the same meeting rather than have it dealt with as a rescission at another meeting

ALSO a recommitment of a vote should NOT require alternative wording

Minutes of meetings

19.2 b) – add to include the vote of all councillors on each motion

And include a point on Declaration of Interest

19.6 – correcting minutes – I've seen examples of a vote being mis recorded and it should be clarified that if a councillor believes their vote wasn't correctly recorded then it should be checked against audio and visual recording of the meeting

Suggestion 17. – a new clause to require the publishing of minutes on the website to be within one day of meeting.

Note - In Byron, council meetings are on Thursday and sometimes the minutes aren't available until Monday afternoon on the website.

Implementation of decisions of the council

Suggestion 18. –19.12 – expand or a new clause that requires the GM at the next meeting to submit a report on the implementation of the substantive resolutions from the previous meeting

Functions of committees

Suggestion 19. - 20.5 – amend to define that each committee must define a Terms of Reference for the operation of each committee and must be publicly available on the website

Suggestion 20. Re 20.6 – a new clause that provides for the business proposed should also be publicly available

Procedure in committee meetings

20.16 – include that the voting at a council committee, each councillors vote for and against, must be recorded in the minutes – see 20.24 – appears to be duplication

Closure of committee meetings to the public

20.20 – clarification required in relation to confidentiality – see other suggestions and comments

22. Definitions

Suggestion 21. – include additional terms in definitions – Committee of the whole and perhaps some additional definitions should be considered, especially to enhance information for the community

ENDS