



W A V E R L E Y
COUNCIL

COUNCIL MEETING

URGENT BUSINESS

7.00 PM, TUESDAY 16 MARCH 2021

Waverley Council
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URGENT BUSINESS

10. Urgent Business

CM/10.1/21.03 Remote Attendance by Councillors at Council Meetings3

REPORT
CM/10.1/21.03

Subject: Remote Attendance by Councillors at Council Meetings

TRIM No: SF20/3852

Author: Evan Hutchings, Executive Manager, Governance and Risk

Director: Karen Mobbs, General Counsel

RECOMMENDATION:

That Council:

1. Permits Councillors to attend meetings of Council and Committees of Council remotely by audio-visual link in exceptional circumstances.
2. Notes that clause 1 above will apply from the date upon which the Regulation is amended to amend the Model Code of Meeting Practice until 31 December 2021.
3. Notes that members of the public will be permitted to physically attend the gallery (Tamarama Room) at meetings of Council and Committees of Council, with the number of attendees to be up to 25.
4. Makes a submission in response to the Office of Local Government consultation paper titled 'Remote Attendance by Councillors at Council Meetings' in support of continuing the ability of Councillors to attend meetings of Council and Committees of Council remotely by audio-visual link in exceptional circumstances.

1. Introduction/Background

In response to COVID-19, amendments were made to the *Local Government (General) Regulation 2005* (the Regulation) relating to the Model Code of Meeting Practice, to permit Councillors to attend meetings of Council and Committees of Council remotely by audio-visual link. These provisions expire on 25 March 2021, meaning that from 26 March 2021 attendance by Councillors at meetings reverts to 'in-person' only.

The Office of Local Government (OLG), in Circular 21-01 (Attachment 1), has advised that the Regulation is to be amended again to permit Councillors to attend and participate in meetings remotely but only in 'exceptional circumstances'. The expiry of the Regulation on 25 March 2021 also results in the return of the physical attendance of members of the public at meetings of Council and Committees of Council, subject to compliance with relevant Public Health Orders.

OLG has also issued a consultation paper to seek views on proposed amendments to the Model Code of Meeting Practice for councils in NSW to allow councillors to attend meetings remotely by audio-visual link in certain circumstances (Attachment 2).

2. Relevant Council Resolutions

Nil.

3. Discussion

Following amendments to the *Local Government (General) Regulation 2005* that became effective in March 2020, Council conducted its inaugural Council meeting (an extraordinary meeting) by video conference on 3 April 2020. From that meeting, and up to and including the Council meeting of 15 September 2020, all meetings of Council and Committees of Council were conducted through that medium. From the Council meeting of 20 October 2020, all subsequent meetings of Council and Committees of Council have been conducted through a hybrid medium, whereby Councillors have the option to either physically attend the meetings at the Council Chambers or attend remotely by audio-visual link. While there have been some technical and practical issues, particularly initially, the meetings have generally operated effectively through this medium.

The relevant Regulation expires on 25 March 2021, the result of which is that Council must revert to the provisions of the Code of Meeting Practice (clause 5.2) which specifies that a Councillor cannot participate in a meeting of the Council or of a Committee of the Council unless personally present at the meeting.

However, OLG, in Circular 21-01, has advised that the Regulation is to be amended again to permit Councillors to attend and participate in meetings remotely but only in 'exceptional circumstances'. Examples cited of exceptional circumstances where a Councillor is prevented from attending the meeting are illness, disability, carer responsibility, a natural disaster or being away from the local area on Council related business. The amendments to the regulation have yet to be made; however, based on the advice of OLG, Council should make a decision on whether it is going to permit Councillors to attend meetings remotely in exceptional circumstances in anticipation of the foreshadowed amendments.

Should Council resolve to permit such attendance, it would become effective from the date of the commencement of the amended Regulation. The next meetings (Committees of Council) are scheduled for 13 April 2021, with a Council Meeting scheduled for 20 April 2021. Representatives of OLG have advised that they are confident that the amended Regulation will be in effect prior to those dates. However, in the event that does not occur, there would be no option for Councillors to attend remotely in extenuating circumstances until the Regulation is amended. It should be noted that the amendments will be temporary and will expire on 31 December 2021.

Further, should Council resolve to permit remote attendance under the terms outlined above, this medium would be available for every meeting of Council and Committee of Council. This would therefore provide the option for staff, particularly non-Executive staff, to attend the meetings remotely. Should Council choose not to permit attendance by Councillors remotely, the use of that medium would be discontinued, also removing that option for staff.

Notwithstanding Council's decision regarding Councillors attending meetings remotely, the expiry of the current amended Regulation means that the public will once again be able to physically attend meetings at the Council Chambers from 26 March 2021. The advice from OLG is that up to 25 people will be able to be present in the gallery, with greater than 25 permitted provided the size of the meeting venue is sufficient to ensure there is at least two square metres of space (or whatever the prevailing Public Health Order prescribes) for each person (not including Councillors and staff) at the meeting venue. In view of the current configuration of the Council Chambers, the gallery will be located in the Tamarama Room. The area of the Tamarama Room, based on the current one person per square metre rule, aligns exactly with the permitted attendance of up to 25 people.

OLG has also issued a consultation paper titled 'Remote Attendance by Councillors at Council Meetings' (Attachment 2) to seek views on proposed amendments to the Model Code of Meeting Practice to permit Councillors to attend meetings of Council and Committees of Council remotely under similar terms to that proposed in the temporary arrangements detailed above. It is noted that such amendments, should they be enacted, would not be mandatory for application by Council. Should Council wish to make a submission on this matter, it is recommended that it should resolve accordingly. Submissions close of 3 May 2021.

4. Financial impact statement/Time frame/Consultation

There are no significant financial implications relating to this report.

Should Council resolve to permit Councillor attendance at meetings of Council and Committees of Council it would become effective from the date of amendment of the Regulation through to 31 December 2021, following which the arrangements may or may not continue, depending upon outcomes of the consultation process, and any subsequent amendments to the Regulation/Model Code of Meeting Practice, and related Council resolution.

Submissions in response to OLG's consultation paper titled 'Remote Attendance by Councillors at Council Meetings' close on 3 May 2021.

5. Conclusion

Meetings of Council and Committees of Council have been generally operating effectively through the hybrid model and technology since the Council Meeting of 20 October 2020. Should Council wish for this medium to be available to Councillors to attend meetings remotely in exceptional circumstances, it is required to resolve accordingly. In the event that Council resolves in those terms, it would apply from the date of the amendment to the relevant regulation through to 31 December 2021. Should Council not resolve in those terms, Councillors will only be able to participate in a meeting of the Council or of a Committee of the Council by being personally present at the meeting.

6. Attachments

1. OLG Circular 21-01 [↓](#)
2. OLG - Remote Attendance by Councillors at Council Meetings - Consultation Paper - March 2021 [↓](#)

Circular Details	21-01 / 9 March 2021 / A754070
Previous Circular	20-37 <i>Status of special COVID-19 measures</i>
Who should read this	Councillors / General Managers / All council staff
Contact	Council Governance / 02 4428 4100 / olg@olg.nsw.gov.au
Action required	Council to Implement / Response to OLG

Transitioning back to in-person council and committee meetings and consultation on proposed changes allowing remote attendance at meetings

What's new or changing

- The "prescribed period" for the purposes of section 747A of the *Local Government Act 1993* (the Act) during which the requirement for councillors and members of the public to attend meetings is satisfied if the meeting is held in whole or in part remotely using audio visual links, expires on **25 March 2021**.
- The Government recognises that most councils have successfully implemented remote attendance by councillors at meetings by audio-visual link during the COVID-19 pandemic and that some councils have called for the option of remote attendance to be made available to them on an ongoing basis to encourage greater diversity of representation.
- The Office of Local Government (OLG) has issued a consultation paper, *Remote Attendance by Councillors at Council Meetings*, to seek the views of councils and others on proposed amendments to the *Model Code of Meeting Practice for Local Councils in NSW* (Model Meeting Code) to allow councils to permit **individual** councillors to attend meetings remotely by audio-visual link in certain circumstances. The proposed new provisions will not be mandatory, and councils will be able to choose whether to include them in their adopted codes of meeting practice.
- The consultation paper is available on OLG's website at www.olg.nsw.gov.au. Submissions are due by COB **3 May 2021**.
- While OLG is consulting on the proposed amendments to the Model Meeting Code, amendments will be made to the *Local Government (General) Regulation 2005* (the Regulation) to allow councils to permit individual (but not all) councillors to attend meetings by audio-visual link. The amendments will be temporary and will expire on **31 December 2021**. Further guidance will be provided on the interim arrangements when the Regulation amendment is made.

What this will mean for your council

- The Regulation will be amended while OLG consults on the proposed amendments to the Model Meeting Code to allow councils to give approval for individual (but not all) councillors to attend meetings remotely. The amendments will be temporary and will expire on **31 December 2021**. The Regulation amendments will not allow whole councils to meet remotely by audio-visual link.
- Under the Regulation amendments, the decision to permit councillors to attend and participate in meetings remotely by audio-visual link will be one that is at

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each council's discretion. Councils should only give approval for councillors to attend meetings by audio-visual link in exceptional circumstances, for example, because the councillor is prevented from attending the meeting due to illness, disability, carer responsibilities, a natural disaster or because the councillor is away from the local area on council related business.

- From **26 March 2021**, councils will once again be required under section 10 of the Act to permit members of the public to attend meetings in person, subject to the requirements of any Public Health Order in force at the time and social distancing requirements. Councils can limit the number of members of the public attending meetings to comply with the Public Health Order and to ensure appropriate social distancing.
- As of **12 February 2021**, the number of persons permitted to attend council and committee meetings in addition to councillors and staff under the *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2021* (the Public Health Order) has been increased. Up to 25 persons may attend meetings. Councils can permit more than 25 persons to attend meetings provided the size of the meeting venue is sufficient to ensure there is at least 2 square metres of space for each person at the meeting venue. Councillors and council staff are not to be counted when calculating the space available for each person at the meeting venue and the number of persons who are attending a meeting.
- The number of persons permitted to attend meeting venues under the Public Health Order is the **maximum permissible**. Councils should continue to ensure appropriate social distancing is practiced at meetings and should undertake their own risk assessment of meeting venues and apply whatever COVID mitigation strategies may be necessary to ensure appropriate social distancing is practiced at meetings.
- Where councils are required to limit the number of members of the public attending meetings, they should consider livestreaming their meetings to ensure excluded members of the public can view them in real time.

Key points

- OLG is seeking the views of councils and others on the proposed amendments to the Model Meeting Code.
- If adopted by councils, under the proposed new provisions, councils will be able to give approval for individual councillors to attend a meeting remotely by audio-visual link where the councillor is prevented from attending the meeting because of ill health, disability, carer responsibilities, natural disaster or, on a limited number of occasions in each year, because they are absent from the local area due to a prior work commitment.
- The proposed new provisions will not be mandatory, and councils can choose whether to include them in their adopted codes of meeting practice.
- Submissions may be made to olg@olg.nsw.gov.au, labelled 'Remote attendance at council and committee meetings' and marked to the attention of OLG's Council Governance Team.
- Submissions should be made before COB **3 May 2021**.

Where to go for further information

- More information on the current Public Health Order is available [here](#).
- The *Remote Attendance by Councillors at Council Meetings* consultation paper is available on OLG's website at www.olg.nsw.gov.au.

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- Further guidance will be provided on the interim Regulations allowing councillors to attend meetings remotely once they are made.
- For further information please contact the Council Governance Team on 02 4428 4100 or by email at olg@olg.nsw.gov.au.



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Remote Attendance by Councillors at Council Meetings

March
2021

Consultation Paper



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Overview

Temporary amendments were made to the *Local Government Act 1993* (the Act) in March 2020 in response to the COVID-19 pandemic allowing councillors to participate in meetings remotely by audio-visual link. The amendments allowing remote attendance are time limited and will automatically expire on 25 March 2021.

Most councils have successfully implemented remote attendance by councillors at meetings by audio-visual link during the pandemic. Some councils have called for the option of remote attendance to be made available to them on an ongoing basis to encourage greater diversity of representation.

The Government agrees that allowing remote attendance by councillors at meetings may serve to remove some of the impediments that currently prevent underrepresented groups from serving on their local councils.

The Government is therefore proposing to amend the *Model Code of Meeting Practice for Local Councils in NSW* (Model Meeting Code) to include non-mandatory provisions that allow councils to permit councillors to attend council and committee meetings remotely by audio-visual link in certain circumstances.

While councils will be required to resume meeting in person from 26 March 2021, as an interim measure, the *Local Government (General) Regulation 2005* will be amended to allow councils to permit individual (but not all) councillors to attend meetings remotely until 31 December 2021 pending the changes to the Model Meeting Code.

While the Government strongly supports the objective of encouraging greater diversity of representation on councils, this should be counterbalanced by the need to ensure communities are effectively represented by

their elected councillors. The Government believes that to be effective local elected representatives, councillors need to live or work in the area and should exercise their duties diligently. Councillors should not, for example, be permitted to move interstate or overseas and attend every third meeting remotely to collect their fees. Councillors should also not be permitted to attend meetings while at work where their attention may be focussed on matters other than council business.

To ensure this does not occur, the grounds on which councillors will be permitted to attend meetings by audio-visual link will be limited. Under the proposed new provisions, councils will only be able to give approval for individual councillors to attend a meeting remotely by audio-visual link where the councillor is prevented from attending the meeting because of ill health, disability, carer responsibilities, natural disaster or, on a limited number of occasions in each year, because they are absent from the local area due to a prior work commitment.

The Government recognises that remote attendance by councillors at meetings by audio-visual link may not be supported by all councils or may pose insurmountable logistical and technological challenges for some councils. For this reason, the proposed new provisions will not be mandatory, and councils can choose whether to include them in their adopted codes of meeting practice.

What is being proposed?

✔ **The proposed amendments will allow councillors to attend meetings by audio-visual link with the approval of the council in certain circumstances.**

“Audio-visual” link will be defined as “a facility that enables audio and visual communication between persons at different places”.

Under the proposed amendments, a councillor will be permitted to attend a meeting of the council or a committee of the council by audio-visual link with the prior approval of the council or the committee, or approval granted by the council or committee at the meeting concerned, where they are prevented from attending the meeting in person because of ill health, disability, carer responsibilities or natural disaster.

A councillor will also be permitted to attend a meeting of the council or a committee of the council by audio-visual link with the prior approval of the council or committee, or approval granted by the council or committee at the meeting concerned, where they are prevented from attending the meeting because they are absent from the local area due to a prior work commitment. However, a councillor will not be permitted to attend an ordinary or extraordinary meeting of the council or a meeting of a committee of the council by audio-visual link on these grounds on any more than three occasions in each year (inclusive of all ordinary, extraordinary and committee meetings attended by the councillor by these means).

Where a councillor is proposing to seek the council’s or a committee’s approval to attend a meeting by audio-visual link at the meeting concerned, they must first give the general manager at least 5 working days’ notice that they will be seeking the council’s or committee’s approval, to allow sufficient time for the necessary arrangements to be made for them to attend the meeting remotely, should the council or committee give its approval.

Where attending a meeting by audio-visual link, councillors will be required to do so from a location within NSW or within 100km of the NSW border.

✔ **As with decisions to grant a leave of absence under the existing provisions of the Model Meeting Code, the decision to permit a councillor to attend a meeting by audio-visual link is one that will be at the council’s or committee’s discretion.**

The council or committee will be required to act reasonably when considering whether to grant a councillor’s request to attend a meeting by audio-visual link.

However, the council or committee will be permitted to refuse a councillor’s request to attend a meeting by audio-visual link, where the councillor has failed to appropriately declare and manage conflicts of interest, observe confidentiality or comply with the council’s code of meeting practice on one or more previous occasions when they have attended a meeting by audio-visual link.

✔ **When attending meetings by audio-visual link, meeting rules and standards will apply to councillors in the same way they would if the councillor was attending the meeting in person.**

The council's adopted code of meeting practice will apply to a councillor attending a meeting of the council or a committee of the council by audio-visual link in the same way it would if they attended the meeting in person.

Councillors will be required to give their full attention to the business and proceedings of the meeting when attending a meeting by audio-visual link.

Councillors will also be required to be appropriately dressed when attending meetings by audio-visual link and must ensure that no items are within sight of the meeting that are inconsistent with the maintenance of order at the meeting or that are likely to bring the council or the committee into disrepute.

Where a councillor has attended a meeting by audio-visual link, the minutes of the meeting must record the fact that the councillor attended the meeting by audio-visual link.

✔ **Councillors attending meetings by audio-visual link will be required to disclose and appropriately manage conflicts of interest.**

Councillors attending a meeting by audio-visual link will be required to declare and manage any conflicts of interest they may have in matters being considered at the meeting in accordance with the council's code of conduct.

Where the councillor has declared a pecuniary or significant non-pecuniary conflict of interest in a matter being discussed at the meeting, the

councillor's audio-visual link to the meeting must be terminated and the councillor must not be in sight or hearing of the meeting at any time during which the matter is being considered or discussed by the council or committee, or at any time during which the council or committee is voting on the matter.

✔ **Councillors attending meetings by audio-visual link will be required to protect the confidentiality of information considered while the meeting is closed to members of the public.**

Councillors attending a meeting by audio-visual link will be required to ensure that no other person is within sight or hearing of the meeting at any time that the meeting has been closed to the public under section 10A of the Act.

✔ **The proposed amendments will contain provisions that allow the chair to enforce compliance with meeting rules by councillors attending meetings by audio-visual link.**

Where a councillor is attending a meeting by audio-visual link, the chairperson or a person authorised by the chairperson will be permitted to mute the councillor's audio link to the meeting for the purposes of enforcing compliance with the council's code of meeting practice.

If a councillor attending a meeting by audio-visual link is expelled from a meeting for an act of disorder, the chairperson of the meeting or a person authorised by the chairperson will be permitted terminate the councillor's audio-visual link to the meeting.

Have your say

We now want to hear from you.



Key questions to consider

✔ Do you support the proposed changes to the Model Meeting Code to allow councillors to attend meetings remotely by audio-visual link?

✔ Do you have any concerns about the proposed changes? What are your concerns?

✔ Do you have any suggestions for how the proposed new provisions could be improved?

Submissions may be made in writing by **COB 3 May 2021** to the following addresses.

POST:

Locked Bag 3015
NOWRA NSW 2541



EMAIL:

olg@olg.nsw.gov.au

Further information

For more information, please contact Office of Local Government's Council Governance Team on **(02) 4428 4100** or via email at olg@olg.nsw.gov.au.

Submissions should be labelled 'Remote attendance at council and committee meetings' and marked to the attention of Office of Local Government's Council Governance Team.



