
Code of Conduct, Code of Conduct Procedures and Code of Meeting Practice

Responsible Officer: Group Manager People and Performance (Helen McNeil)

Recommendation

That Council:

1. Revoke the following:
 - (a) Code of Conduct dated 17 April 2019; and
 - (b) Code of Conduct Procedures dated 17 April 2019.
2. Adopt the following as **attached**:
 - (a) Revised Code of Conduct; and
 - (b) Revised Code of Conduct Procedures.
3. Publicly exhibit the revised Code of Meeting Practice as **attached** for a period of 28 days and invite submissions on the same for a period of 42 days, concurrently, and:
 - (a) Should no submissions be received, the existing Code of Meeting Practice is revoked and the revised Code of Meeting Practice is adopted; or
 - (b) Should any submission be received, those submissions be considered by Council at its next meeting prior to revoking the existing Code of Meeting Practice and adopting the revised Code of Meeting Practice.

Background

It is a legislative requirement that Council have in place a Code of Conduct, Code of Conduct Procedures and a Code of Meeting Practice (collectively 'Codes') that incorporate the mandatory terms of the corresponding model codes issued by the Office of Local Government ('OLG').¹

Council is also required by legislation to review its Codes within 12 months of the local government elections to make any adjustments it considers appropriate and to ensure they are consistent with the model codes as amended from time to time and legislative requirements.²

Council's existing Codes are now due for review and revised Codes required to be adopted prior to 4 December 2022. All amendments in the revised Codes attached to this report have been made as a 'tracked change' for ease of reference.

Summary of key changes

1. Code of Conduct - Attachment 3

OLG Model Code changes –

Amendments made to the model code of conduct in 2020 by the OLG have been incorporated into the revised Code of Conduct. These amendments include:

- Updated descriptions of various types of discrimination to reflect contemporary standards – clause 3.7.

¹ Refer to [Division 1, Part 1, Chapter 14](#) and [Division 1, Part 2, Chapter 12](#) *Local Government Act 1993*

² Sections 360(3) and 440(7) *Ibid.*

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- Token gift now considered to be a gift with a value ≤ \$100 (previously ≤ \$50) – clauses 6.8 – 6.12, inclusive.
 - Definition of gift or benefit amended to exclude items ≤ \$10, facilities provided by Council (as opposed to third parties), and meals/beverages provided at a work function/conference etc – clause 6.2.
 - Audit, Risk and Improvement Committee included in the definition of ‘council committee’ and ‘council committee members’ – Part 2 Definitions.

Additional county council specific changes –

Additional clauses aimed at managing the conflicts that may arise for councillors when the interests of a constituent council do not align with the interests of the county council have also been included in the revised Code of Conduct – clauses 5.30 – 5.36, inclusive.

Scenarios such as these were discussed in the recent councillor induction session hosted by Lindsay Taylor Lawyers for all Rous councillors in May 2022.

Another additional provision has been included in the revised Code of Conduct to address a gap in the legislation that would allow an employee of a county council to be elected as a councillor member on the county council’s board – clauses 4.6(o) and 4.20A.

Councils are permitted to include additional provisions in their Code of Conduct that supplement the Model Code, even if those additional provisions are more onerous to observe, provided they do not contradict the Model Code.³

The additional provisions outlined above have been drafted by external legal providers and are recommended for inclusion in Council’s revised Code of Conduct as complementary to the Model Code and to address the unique characteristics and challenges of a county council.

2. Code of Conduct Procedures – Attachment 4

All amendments made to the revised Code of Conduct Procedures reflect changes made by the OLG to the Model Code of Conduct Procedures in 2020.

The primary changes are to the provisions regulating the taking of disciplinary action against councillors, particularly the option to formally censure a councillor and the process to be followed to ensure public accountability of misconduct is maintained and transparency of decision-making is preserved - clauses 6.22 – 6.23, 8.19 and Part 7.

These changes reflect a 2019 decision of the Supreme Court of NSW⁴ and the misconduct provisions of the *Local Government Act 1993* (NSW) (‘LG Act’).⁵

Part 3 of the revised Code of Conduct Procedures – the establishment of a panel of conduct reviewers – has also been amended to no longer require the resolution of council for the appointment of the panel.

3. Code of Meeting Practice – Attachment 6

OLG Model Code changes –

At the end of 2021, the OLG released a new Model Code of Meeting Practice containing new provisions:

³ [Section 440](#) *Ibid.*

⁴ *Cornish v Secretary, Department of Planning, Industry and Environment* [2019] NSWSC 1134.

⁵ [Section 440G](#) *Local Government Act 1993* (NSW)

- permitting attendance by councillors at meetings via audio-visual link – clauses 3.35, 4.2, 5.16 – 5.30, 5.44, 14.20, 15.21 - 15.22, and 16.2; and
- requiring the inclusion of a reminder of councillors’ oath or affirmation of office and conflict of interest disclosure obligations in the council business paper(s) – this amendment was made to implement recommendation 6 of the NSW Independent Commission Against Corruption (‘ICAC’) report on the former Canterbury City Council (Operation Dasha) – clause 3.23.

Additional changes –

The Model Code of Meeting Practice contains mandatory and non-mandatory provisions and Councils are permitted to amend the non-mandatory provisions and/or adopt supplementary ‘local rules’ provided they are not inconsistent with the mandatory provisions.⁶

Amendments to the non-mandatory provisions and local rules within the revised Code of Meeting Practice include:

- Mandatory clause 3.2 – timing of ordinary meetings to be set by resolution - to be adopted with a qualifier that in the absence of a resolution, ordinary council meetings will commence at 10am and occur on a bi-monthly basis – clauses 3.1 - 3.2A, inclusive.
- Business papers to be provided to councillors a week prior to the next meeting – clause 3.17.
- Option to hold a public forum as part of a council meeting, rather than prior to a meeting as was the previous practice, and parameters on duration, prior notice, questioning of speakers by councillors – Part 4.
- Matters of urgency and Notices of Motion/Questions with notice have been brought forward in the general order of business for an ordinary council meeting – clause 8.2
- Further guidance has been provided on the circumstances in which the Chairperson may rule a motion or amendment out of order – clauses 10.6A – 10.6C.

Comments

Mandatory, non-mandatory, amended non-mandatory, supplementary and omitted provisions of the revised Code of Meeting Practice are identified throughout the document in accordance with the following key:

Various provisions found throughout Council’s Code are outlined below:

Provision	Explanation	Identified by:
Mandatory	Provisions which must be included in the Code	No symbol
Non-mandatory	Provisions suggested by OLG which may be included in the Code	◆
Non-mandatory (amended)	Utilises or replaces non-mandatory provisions suggested by OLG, to meet organisational needs	♣
Supplementary	Additional provisions drafted by Council to meet organisational needs.	♠

⁶ [Section 360](#)(3) and (4) Ibid.

Governance

Finance

It is unlikely that there will be any significant or unexpected financial implications as a result of implementing the revised Codes. Any training related costs will fall within current budget allocations.

Legal

Section [361](#) of the LG Act provides that, before adopting a new Code of Meeting Practice, Council is required to exhibit the document for at least 28 days and provide members of the public at least 42 days in which to comment on it.

Consultation

The revised Code of Conduct and Code of Meeting Practice were circulated to Councillors via email and any feedback received incorporated into the documents attached to this report.

Conclusion

The revised Codes have been reviewed and drafted to meet legislative requirements, including the adoption of the mandatory provisions of the Model Codes, and supplementary provisions to meet specific organisational needs. Subject to the public notice/exhibit requirements for the Code of Meeting Practice, it is recommended that Council adopt the revised Codes.

Attachments

1. [Code of Conduct dated 17 April 2019](#) (for **revocation**)
2. [Code of Conduct Procedures dated 17 April 2019](#) (for **revocation**)
3. Revised Code of Conduct (for **approval**) ([D21/29764](#))
4. Revised Code of Conduct Procedures (for **approval**) ([D21/29763](#))
5. [Code of Meeting Practice dated 19 June 2019](#) (for **revocation**)
6. Revised Code of Meeting Practice (for **adoption**) ([D21/29762](#))