

## **8.12. Remote Attendance by Councillors at Council Meetings - OLG Consultation**

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**ENDORSED BY:** Ken Gouldthorp, General Manager

### **ATTACHMENTS:**

1. OLG Circular 21-01 Status of special COVID-19 measures [8.12.1 - 3 pages]
2. Remote Attendance by Councillors Consultation Paper March 2021 [8.12.2 - 8 pages]

### **PURPOSE:**

To advise councillors of the proposed changes 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.

### **EXECUTIVE SUMMARY:**

In response to the COVID-19 Pandemic in March 2020, the State Government made a series of changes to the *Local Government (General) Regulation 2005* (the Regulation) so that, during the “prescribed period”, the requirement for councillors or others to attend a meeting is satisfied if the meeting is held in whole or in part remotely using audio visual links. 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 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 limited 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 report also addresses changes to the Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2021 (the Public Health Order), which potentially allows an increase in the number of people who can attend meetings, subject to the size of the meeting venue being sufficient to ensure there is at least 2 square metres of space and 1.5 metres of separation for each person at the meeting venue.

### **FINANCIAL IMPLICATIONS:**

If the proposal to allow continued remote access by Councilors to Council meetings proceeds and North Sydney Council avails itself of this option, it will be necessary to upgrade the audio

visual arrangements in the Council Chambers. Doing this in a manner that provides a professional outcome for Councillors and the public like on a permanent basis may require expenditure in the order of \$10,000-\$50,000.

**RECOMMENDATION:**

**1. THAT** Council advise OLG that it supports the proposed amendments to 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.

## LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

### 5. Our Civic Leadership

#### 5.2 Council is well governed and customer focused

## BACKGROUND

The measures prescribed on 17 April 2020 under section 747B of the Act in response to the COVID-19 pandemic notified in OLG Local Circular 20-12. The prescribed period was initially due to expire on 18 October 2020 and were extended to 25 March 2021 (section 413M of the Regulation, Circular 20-37).

The temporary amendments permitted members of the public to attend meetings but only if the size of the meeting venue was sufficient to ensure there was 4 square metres of space for each person attending the meeting and due to space limitations in the public gallery attendance was reserved for those registered to attend the Public Forum held prior to Council meetings. This practice has been similar in neighbouring and other Sydney Area Councils.

## CONSULTATION REQUIREMENTS

Community engagement is not required.

OLG has issued a *Remote Attendance by Councillors Consultation Paper*, which is attached to this report. Submissions close on 3 May 2021.

## DETAIL

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.

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 each council's discretion. OLG has advised that, under the proposed arrangements, 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.

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. Subject to social distancing measures, 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 (ie, the 2 square metre rule and at least 1.5 metres between each person) 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. In practice, the 1.5m rule continues to be the limiting factor for North Sydney Council.

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.

While the number of persons permitted to attend meetings has been increased, care still has to be given to providing 1.5 metres of separation for each person attending. The public gallery area in the Council Chambers is limited and, using the 2 square metre rule, would theoretically allow a maximum of 18 people in the gallery at any one time. The actual number however is subject to seating layout and separation

The current arrangements for public attendance at Council and Committee meetings will be reassessed under the provisions of the Public Health Order current after 26 March 2021.

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. Currently Council livestreams its Public Forum (and allows people to attend in person, by application) and Council meetings and arrangements can be made to livestream Committee meetings by holding them in the Council Chambers.

The proposed amendments to the Regulation will give limited flexibility to councillors to attend meetings under certain circumstances. Allowing remote attendance by councillors at meetings may also serve to remove some of the impediments that currently prevent underrepresented groups from serving on their local councils.

Should Council resolve to support the proposed amendments to the Model Code, there are a number of provisions that apply:

- a Councillor must obtain prior approval from the Council to attend a meeting remotely by audio-visual link on the grounds of prior work commitments on no 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.
- when 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
- 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.
- 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.
- Councillors attending meetings by audio-visual link will be required to disclose and appropriately manage conflicts of interest. Councillors declaring such interests will have their audio visual link terminated and must not be within sight or hearing of the meeting during discussion of the item.
- 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.
- the proposed amendments will contain provisions that allow the chair to enforce compliance with meeting rules by councillors attending meetings by audio-visual link. the chairperson or a person authorised by the chairperson will be

permitted to mute the councillor's audio-visual link to the meeting for the purposes of enforcing compliance with the council's code of meeting practice or expel them for an act of disorder by terminating the link.

Should Council decide to permit remote attendance of Councillors at meetings and allow members of the public to attend meetings after 25 March 2021:

- the requirement for a councillor to give the General Manager at least 5 working days' notice that they will be seeking the council's or committee's approval to attend remotely effectively means that the councillor would have to make an application at the previous meeting so that suitable arrangements can be made by both parties;
- enabling public attendees to view and hear both the Councillors in attendance and those participating remotely is likely to be problematic and, at least until the audio visual arrangements can be permanently altered, will limit the ability for attendees to fully follow the meeting.

In considering the proposed amendments, OLG is asking Councils to consider the following questions:

- *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?*

Given that arrangements after 26 March remain uncertain, all Councillors should plan on attending the April Ordinary Meeting in person. Further advice will be provided as the situation is clarified.

<b>Circular Details</b>	21-01 / 9 March 2021 / A754070
<b>Previous Circular</b>	20-37 <i>Status of special COVID-19 measures</i>
<b>Who should read this</b>	Councillors / General Managers / All council staff
<b>Contact</b>	Council Governance / 02 4428 4100 / <a href="mailto:olg@olg.nsw.gov.au">olg@olg.nsw.gov.au</a>
<b>Action required</b>	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](http://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](mailto: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](http://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](mailto:olg@olg.nsw.gov.au).



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# Remote Attendance by Councillors at Council Meetings

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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 to terminate the councillor's audio-visual link to the meeting.

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# 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.

## 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](mailto:olg@olg.nsw.gov.au).

### POST:

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### EMAIL:

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