

3.2. Remote Attendance by Councillors at Council Meetings

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ENDORSED BY: Ken Gouldthorp, General Manager

ATTACHMENTS:

1. OLG Circular 21-02 Temporary Exemption from the Requirement of Councillors to Attend Meetings in Person [3.2.1 - 5 pages]

PURPOSE:

To advise Councillors on the current provisions by the Office of Local Government (OLG) for remote attendance by councillors at Council meetings.

EXECUTIVE SUMMARY:

At the 22 March Ordinary Council meeting, Councillors were advised that the “Prescribed Period” in which Councillors could temporarily attend Council Meetings remotely rather than in person would expire on 25 March 2021.

OLG has now issued a further Circular “21-02 Temporary Exemption from the Requirement of Councillors to Attend Meetings in Person” (see attached).

In essence, this Circular advises that the Local Government Regulation has now been amended to enable councils to permit Councillors to attend meetings remotely through to 31 December 2021. The procedures attached to the Circular advise that:

1. Approval to attend meetings remotely must be requested by the relevant Councillor;
2. It must be approved by resolution, either for a single or multiple meetings, for approval to be given; and
3. The grounds for which the Councillor is being permitted to attend remotely must be stated, but not where those grounds relate to illness, disability or caring responsibilities.

Requests have been received from Councillors Baker, Beregi and Carr to attend meetings remotely.

FINANCIAL IMPLICATIONS:

Council was advised on 22 March 2021 that, if continued remote access by Councillors to Council meetings proceeds, 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 note the revised provisions for remote attendance at Council meetings.
- 2. THAT** Council consider the requests received from Councillors Baker, Beregi and Carr to attend meetings remotely.

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.

In its Circular 21-01 on 9 March 2021, OLG had advised that 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 were to be temporary and expire on 31 December 2021.

Council considered this matter at its meeting on 22 March 2021 and resolved:

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.

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

OLG has now issued a further Circular “21-02 Temporary Exemption from the Requirement of Councillors to Attend Meetings in Person” (see attached).

In essence, this Circular advises that the Local Government Regulation has been amended to enable councils to permit Councillors to attend meetings remotely through to 31 December 2021. The procedures attached to the Circular advise that:

1. Approval to attend meetings remotely must be requested by the relevant Councillor;
2. It must be approved by resolution, either for a single or multiple meetings, for approval to be given; and
3. The grounds for which the Councillor is being permitted to attend remotely must be stated, but not where those grounds relate to illness, disability or caring responsibilities.

Councillors were advised of the revised provisions for remote access to Council Meetings or Council Committee Meetings by memo on 7 April. Councillors were asked to identify which of these meetings they would like to attend remotely, with brief reasons being provided. In accordance with the advice from OLG, the privacy of Councillors in submitting these requests will be maintained and where the reason relates to illness, disability, or caring responsibilities; it will not be publicly disclosed.

Requests have been received from the following Councillors to attend meetings remotely:

Councillor	Meeting dates	Reason
Zoe Baker	All or part of Council Meetings, Public Forums, Briefings , Committee meetings from 15 April to 15 July 2021.	Not for public disclosure
MaryAnn Beregi	All meetings of Council (Council meetings, briefings, reference groups etc) for the next 6 months	Not for public disclosure
Tony Carr	All or part of Council Meetings, Public Forums, Briefings , Committee meetings	As I do not permanently reside in the electorate my ability to attend any physical meeting will be severely limited as I have commitments that will affect my ability to travel during peak hour periods.

It should be noted that ultimately the decision as to whether to grant approval to attend remotely rests with Council and will therefore not be certain until this report is

considered at the commencement of the 26 April Ordinary Meeting. Councillors who wish to attend the April Council Meeting remotely will be enabled to do so at the commencement of the meeting while the decision is made and their continued remote attendance thereafter will be subject to approval being granted.

Arrangements are being made so that members of the public will be able to attend future Council Meetings, but only in numbers that can be catered for with social distancing. Remote attendance by Councillors may also impact on this as either the public will not be able to see remote attendees or further equipment will be required thereby potentially reducing available gallery space.

Circular Details	21-02 / 1 April 2021 / A765862
Previous Circular	21-01 <i>Transitioning back to in-person council and committee meetings and consultation on proposed changes allowing remote attendance at meetings</i>
Who should read this	Councillors / General Managers / All council staff
Contact	Council Governance / 02 4428 4100 / olg@olg.nsw.gov.au
Action required	Information / Council to Implement

Temporary exemption from the requirement for councillors to attend meetings in person

What's new or changing

- The Office of Local Government (OLG) is currently consulting with councils and others on proposed amendments to the *Model Code of Meeting Practice for Local Councils in NSW* (Model Meeting Code) allowing councillors to attend meetings remotely using audio-visual links. A [discussion paper](#) has been issued and submissions are due on **3 May 2021**.
- The *Local Government (General) Regulation 2005* (the Regulation) has been amended to temporarily exempt councils from complying with the requirement under their codes of meeting practice for councillors to be personally present at meetings to participate in them. The exemption expires on **31 December 2021**.
- The Regulation amendment will operate to allow councils to permit councillors to attend meetings remotely by audio-visual link while OLG consults on the new provisions of the Model Meeting Code and until such time as councils are able to adopt them.

What this will mean for your council

- As of **26 March 2021**, councils are now required under section 10 of the *Local Government Act 1993* to hold meetings of the council and committees comprising only of councillors in physical venues and 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.
- The Regulation amendment operates to exempt councils from the requirement under clause 5.2 of the Model Meeting Code for councillors to be personally present at a meeting in order to participate in it.
- For the period in which the Regulation amendment is in force, councils have the option to permit councillors to attend and participate in meetings remotely by audio-visual link should councils choose to do so.
- Councils are not required to amend their codes of meeting practice to allow councillors to attend meetings remotely by audio-visual link while the Regulation amendment is in force but should adopt procedures governing attendance by councillors at meetings by audio-visual link to supplement their codes of meeting practice. Suggested procedures are attached to this circular.

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- The Regulation amendment does not apply to joint organisations of councils or county councils. The regulation making power under which the Regulation has been amended only allows exemptions to be made for “areas” constituted under Part 1 of Chapter 9 of the Act. These provisions do not apply to joint organisations of councils or county councils.
- Joint organisations are already permitted to meet by telephone or other electronic means under clause 397G of the Regulation and the Model Meeting Code. However, it is not possible to exempt county councils by regulation and members of county councils will need to continue to attend meetings in person to participate in them until amendments are made to the Model Meeting Code permitting attendance at meetings by audio-visual link.
- In dealing with requests by councillors to attend meetings by audio-visual link on grounds of illness, disability or caring responsibilities, councils must ensure they comply with the Health Privacy Principles prescribed under the *Health Records and Information Privacy Act 2002*.

Where to go for further information

- Suggested procedures for attendance by councillors at meetings using audio-visual link are attached to this circular.
- The *Remote Attendance by Councillors at Council Meetings* consultation paper is available on OLG’s website [here](#).
- Guidance on the Health Privacy Principles is available [here](#).
- 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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ATTACHMENT

Procedures for attendance by councillors at meetings by audio-visual link

What is an “audio visual link”

- For the purposes of these procedures, an audio-visual link is a facility that enables audio and visual communication between persons at different places.

Approval for councillors to attend meetings by audio visual link

- The council and committees of the council comprising wholly of councillors may, in response to a request made by a councillor, resolve to permit the councillor to attend one or more meetings of the council or committee remotely by audio visual link where it is satisfied that the councillor will be prevented from attending the meeting/s in person because of illness, disability, caring responsibilities, or such other reason that is acceptable to the council or committee.
- Requests by councillors to attend meetings remotely by audio-visual link must be made in writing to the General Manager at least *[council to specify a timeframe that is consistent with the timeframe for lodging notices of motion]* business days before a meeting, and must provide information about the meetings the councillor will be prevented from attending in person and the reason why the councillor will be prevented from attending the meeting/s in person.
- A resolution by the council or a committee of the council permitting a councillor to attend one or more meetings by audio-visual link must provide the following information:
 - the grounds on which the councillor is being permitted to attend meetings remotely by audio visual link, but not where those grounds relate to illness, disability or caring responsibilities, and
 - details of the meetings the resolution applies to.
- The council or committee of the council may permit more than one councillor to attend a meeting by audio-visual link but must not permit all councillors to attend a meeting by audio-visual link.
- A decision to permit a councillor to attend a meeting remotely by audio-visual link is at the council's or the committee's discretion. The council and its committees must act reasonably when considering requests by councillors to attend meetings remotely by audio-visual link.
- The council and its committees are under no obligation to permit a councillor to attend a meeting remotely by audio-visual link where the technical capacity does not exist to allow the councillor to attend a meeting by these means.
- The council and its committees may refuse a councillor's request to attend a meeting remotely 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 of the council or its committees by audio-visual link.

Attendance by councillors at meetings by audio visual link

- Where a councillor attends a meeting by audio-visual link with the approval of the council or a committee of the council they are to be taken as attending the meeting in person for the purposes of the council's code of meeting practice and will have the same voting rights as if they were attending the meeting in person.
- The council's code of meeting practice will apply to a councillor attending a meeting remotely by audio-visual link, in the same way it would if the councillor was attending the meeting in person.
- Councillors must give their full attention to the business and proceedings of the meeting when attending a meeting by audio-visual link.
- Councillors must 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 attends a meeting of the council or a committee of the council by audio-visual link, the minutes of the meeting must record that they attended the meeting by audio-visual link.

Conflicts of interest

- Councillors attending a meeting by audio-visual link must 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 a 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.

Confidentiality

- Councillors attending a meeting by audio-visual link must 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 *Local Government Act 1993*.

Maintenance of order

- Where a councillor is attending a meeting by audio-visual link, the chairperson or a person authorised by the chairperson may 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, may terminate the councillor's audio-visual link to the meeting.

Compliance with the Health Privacy Principles

- The council must comply with the Health Privacy Principles prescribed under the *Health Records and Information Privacy Act 2002* when collecting, holding, using and disclosing health information in connection with a request by a councillor to attend a meeting remotely by audio-visual link.