Attachment Booklet

COUNCIL MEETING

22 November 2011

ITEM 9.2

Adoption of GOV-PL 130 – Code of Meeting Practice

Warringah Council

Code of Meeting Practice

GOV-PL 130

22 November 2011

2011/01

WARRINGAH COUNCIL
CODE OF MEETING PRACTICE
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WARRINGAH COUNCIL
CODE OF MEETING PRACTICE
2010/3

INTRODUCTION

This Code of Meeting Practice is made under the Local Government Act 1993, (as amended) and incorporates and supplements the Local Government (General) Regulation 2005, which commenced on 24 November 2005. Amendments to the Regulations will be automatically incorporated into this Code.

The object of this Code is to provide for the convening and conduct of meetings of the Warringah Council and of Standing Committees of the Council.

Council and any Committees of Council of which all members are Councillors **MUST** conduct their meetings in accordance with the Code (Section 360, LGA)

MEETING DATES

The meeting days and times of meetings of Council are:

Ordinary Meetings of Council will be held monthly on the fourth Tuesday of each month commencing at 6.00 pm, with the exception of

a) January;
b) February, where a meeting will be held on the second and fourth Tuesday of the month and
c) December, where the meeting will be held on the second Tuesday of the month.

Where scheduled meetings of Council fall on a Public Holiday, that meeting will be held on an alternate date determined by resolution of Council.

Extraordinary Meetings of Council and for Committees – Such meetings will be held from time to time on days and times as determined by Council, the Committee, the Mayor or General Manager.

Note: Regular meeting days and times may be altered from time to time by the procedure set out in this Code.

PART 1 PRELIMINARY

1. Citation

This Code may be cited as the Warringah Council "Code of Meeting Practice".

2. Commencement

This Code was adopted by Council on 14 March 2006 and amended on 10 June 2008, 10 February 2009, 9 February 2010 and 23 March 2010.

3. Definitions

In this Code -

***Amendment**, in relation to an original motion, means a motion moving an amendment to that motion;*

Chairperson:

(a) in relation to a meeting of a Council - means the person presiding at the meeting as provided by section 369 of the Act (see clause 9 and 10 of this Code); and

(b) in relation to a meeting of a Committee of a Council - means the person presiding at the meeting as provided by clause 40 of this Code (see clause 9 of this Code);

***Committee,** in relation to a Council, means a Committee established under Clause 33 or the Council when it has resolved itself into a Committee of the whole;*

Confidential Session is a meeting of a Council or Committee from which the media and public has been excluded by a resolution carried in accordance with Section 10(A) of the Act.

***Councillor** means a person elected or appointed to civic office and includes a Mayor.*

Council Chamber shall mean that area comprising the formal meeting floor

a) A Councillor expelled, in accordance with Section 10(2) of the Act, from a meeting, Council Chamber shall mean that area comprising the formal meeting floor, the public gallery area, and the Banksia Room and Warringah Foyer area when those areas are open to the public for use during the conduct of any Council or Committee meeting.

b) Another person expelled; in accordance with section 10(2) of the Act, from a meeting Council Chamber shall mean that area comprising the formal meeting floor, the public gallery area, and the Banksia Room and Warringah Foyer area when those areas are open to the public for use during the conduct of any Council or Committee meeting.

c) For the purpose of sound or vision recording or televising, Council Chamber shall mean the formal meeting floor, the public gallery area, and the Banksia Room and Warringah Foyer area when those areas are open to the public for use during the conduct of any Council or Committee meeting.

d) For the purpose of Council to the Community Council Meetings, Council Chamber shall mean the formal meeting floor of the facility being used for the meeting, the public gallery area and any area that is open to the public for use as part of the meeting during the conduct of any Council or Committee Meeting.

e) For the purpose of Council undertaking business in Closed Session to consider matters of a confidential nature, Council Chamber shall include at the Chair's discretion, the Guringai Room in the Council's Civic Centre.

General Manager shall include any person properly acting in that role during the absence for any reason of the General Manager.

Misbehaviour for the purposes of Clause 440(G) means any of the following:

a) a contravention by the Councillor of this Act or Regulations

b) a failure by the Councillor to comply with an applicable requirement of the Code of Conduct as required by Section 444(5) of the Act

c) an act of disorder committed by the Councillor at a meeting of the Council or a Committee of the Council but does not include a contravention of the disclosure requirements.

Quorum *– As defined by section 368 of the Act means i 'the quorum for the meeting of the Council is a majority of the Councillors of the Council who hold office for the time being and are not suspended from office.*

Note: *Refer to Levenstroth Community Association Inc. -V- Council of the shire of Nymboida (1999) NSW S.C 989. Decision: Declaration that Councillors who are disqualified from participating and voting at a Council meeting cannot be counted towards a quorum. (i.e. the number required to form a quorum is not reduced, but those with a declared pecuniary interest cannot be counted in that number)*

Reckoning of time *– As defined by* ***Section 36*** *of the Interpretation Act 1987*

(1) If in any Act or instrument a period of time, dating from a given day, act or event, is prescribed or allowed for any purpose, the time shall be reckoned exclusive of that day or of the day of that act or event

(2) If the last day of a period of time prescribed or allowed by an Act or instrument for the doing of any thing falls:

(a) on a Saturday or Sunday; or

(b) on a day that is a public holiday or bank holiday in the place in which the thing is to be or may be done,

the thing may be done on the first day following that is not a Saturday or Sunday or a public holiday or bank holiday in that place, as the case may be.

(3) If any Act or instrument a period of time is prescribed or allowed for the doing of any thing and a power is conferred on any person or body to extend the period of time:

(a) that power may be exercised; and

(b) if the exercise of that power depends on the making of an application for an extension of the period of time – such an application may be made, after the period of time has expired.

Record *means a document (including any written or printed material) or object (including a sound recording, coded storage device, magnetic tape or disc, microfilm, photograph, film, map, plan or model or a painting or other pictorial or graphic work) that is or has been made or received in the course of official duties by a Councillor or an employee of the Council and, in particular, includes the Minutes of meetings of a Council or of a Committee of a Council;*

Standing Committee shall mean a Committee appointed by the Council of which all Councillors are members, and the only members are Councillors.

The Act *means the Local Government Act 1993*

4. Notes

(1) Notes in the text of this Code are explanatory notes and do not form part of this Code. They are provided to assist understanding.

(2) The Provisions of the Local Government (General) Regulation are shown in purple type and are mandatory upon the Council.

(3) Text shown in **normal** type is this Council's specific Meeting Standing Orders and rules and supplements the provisions of the Regulation.

(4) **Annexure I** - Extract of sections of the Local Government Act are shown in this Code to assist understanding but do not form part of the Code.

(5) **Annexure II** – Notes on some case discussions on rescission motions provided for guidance.

PART 2 CONVENING OF, AND ATTENDANCE AT, COUNCIL MEETINGS

5. Notice of Meetings

(1) This clause prescribes the manner in which the requirements outlined in section 9 (1) of the Act are to be complied with.

(2) A notice of a meeting of a Council or of a Committee must be published in a newspaper circulating in the area before the meeting takes place.

(3) The notice must specify the time and place of the meeting

(4) Notice of more than one meeting may be given in the same notice.

(5) This clause does not apply to an extraordinary meeting of a Council or Committee.

(6) Notice of meetings will be advertised in the local press on the Saturday prior to the meeting detailing the location, starting time of the meeting and availability of the Agenda containing the business to be considered by the meeting.

(7) Every endeavour is to be made to inform persons, who have a direct involvement in a matter, when the matter is to be considered by the Council. These persons will also be advised of their right to peruse the meeting Agenda, attend the meeting and apply to address the Council in accordance with clause 12.1 of this Code.

(8) Meetings of the Council and standing Committees shall be held in accordance with a resolution of the Council made pursuant to clause 49 of this code.

5.1 Due Notice for Council or Committee Meetings

A meeting of Council or a Committee cannot be held unless due notice has been given to all members in accordance with this clause of this Code and a quorum is present

5.2 Calling of Extraordinary Meetings (see also Clause 14.1 (ii))

That the request to hold an Extraordinary Council Meeting needs to be in writing and signed by two councillors, one of whom can be the Mayor. The Mayor then has to call a meeting as soon as practicable, but within 14 days after the request is lodged.

6. What happens when a quorum is not present?

(1) A meeting of a Council must be adjourned if a quorum is not present:

(a) within half an hour after the time designated for the holding of the meeting; or

(b) at any time during the meeting.

(2) In either case, the meeting must be adjourned to a time, date and place fixed:

(a) by the Chairperson; or

(b) in his or her absence - by the majority of the Councillors present; or

(c) failing that, by the General Manager.

(3) The General Manager must record in the Council's Minutes of that meeting the circumstances relating to the absence of a quorum (including

the reasons for the absence of a quorum) at or arising during a meeting of the Council, together with the names of the Councillors present.

7. Minister to convene meetings in certain cases

(1) Whenever an area is constituted or reconstituted, the Minister is required:

(a) to convene the first meeting of the Council of the area; and

(b) to nominate the business to be transacted at the meeting; and

(c) to give the Councillors notice of the meeting.

(2) If there is no quorum at that meeting, the Minister may convene meetings in the same manner until a quorum is present.

(3) The Council must transact the business nominated by the Minister for a meeting convened under this clause.

8. Presence at Council meetings

(1) A Councillor cannot participate in a meeting of a Council unless personally present at the meeting (Local Government General Regs. clause 235).

(2) For the purpose of sub-clause (1), 'personally present at the meeting' shall mean being within the area comprising the formal meeting floor of the Council Chambers.

(3) A Councillor who is present at a meeting, who declares a pecuniary interest in a matter with which the Council is concerned, shall upon such declaration, absent themselves from the Council Chamber until that matter is concluded.

PART 3 PROCEDURE FOR THE CONDUCT OF COUNCIL MEETINGS

9. Councillor to be elected to preside at certain meetings

(1) If no Chairperson is present at a meeting of a Council at the time designated for the holding of the meeting, the first business of the meeting must be the election of a Chairperson to preside at the meeting.

Note: Section 369 (2) of the Act provides for a Councillor to be elected to chair a meeting of a Council when the Mayor and Deputy Mayor are absent.

(2) The election must be conducted:

(a) by the General Manager or, in his or her absence, an employee of the Council designated by the General Manager to conduct the election; or

(b) if neither of them is present at the meeting or there is no General Manager or designated employee - by the person who called the meeting or a person acting on his or her behalf.

(3) If, at an election of a Chairperson, 2 or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the Chairperson is to be the candidate whose name is chosen by lot.

(4) For the purposes of subclause (3), the person conducting the election must:

(a) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips; and

(b) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.

(5) The candidate whose name is on the drawn slip is the candidate who is to be the Chairperson.

(6) 1. The Mayor or, at the request of or in the absence of the Mayor, the Deputy Mayor, presides at meetings of Council. The Mayor is “first among equals” charged with carrying on the meeting so that business before the meeting is conducted in accordance with this Code.

2. If the Mayor or the Deputy Mayor are absent, a Councillor elected to chair the meeting by the Councillors present presides at a meeting of the Council (section 369 LGA)

3. The Chairperson of each Committee meeting must be:

a) the Mayor; or

b) if the Mayor does not wish to be the Chairperson of that Committee - a member of the Committee elected by Council; or

c) if Council does not elect such a member - a member of the Committee elected by the Committee.

10. Chairperson to have precedence

When the Chairperson rises during a meeting of a Council:

(a) any Councillor then speaking or seeking to speak must, if standing, immediately resume his or her seat; and

(b) every Councillor present must be silent to enable the Chairperson to be heard without interruption.

11. Chairperson's duty with respect to motions

(1) It is the duty of the Chairperson at a meeting of a Council to receive and put to the meeting any lawful motion or amendment that is brought before the meeting.

(2) The Chairperson must rule out of order any motion or amendment that is unlawful or the implementation of which would be unlawful.

(3) Any motion, amendment or other matter that the Chairperson has ruled out of order is taken to have been rejected.

12. Order of Business

At a meeting of a Council (other than an extraordinary meeting), the general order of business is (except as provided by this Regulation) as fixed by the Council's Code of Meeting Practice or (if the Council does not have a Code of Meeting Practice or its Code of Meeting Practice does not fix the general order of business) as fixed by resolution of the Council.

(1) The order of business fixed under subclause (3) may be altered if a motion to that effect is passed. Such a motion can be moved without notice.

(2) Despite clause 23, only the mover of a motion referred to in subclause (1) may speak to the motion before it is put.

(3) The general order of business at Council meetings shall be as follows: -

(i) Apologies

(ii) Confirmation of Minutes of Previous Meetings

(iii) Declaration of Pecuniary Interest

(iv) Public Forum

(v) Notice of Intention to deal with matters in Confidential Session

(vi) Censure Motions

(vii) Mayoral Minutes

(viii) Reports to Council Meeting

(ix) Reports to Council Committee

(x) Adoption of Committee Recommendations

(xi) Notices of Rescission

(xii) Notices of Motion

(xiii) Questions On Notice

(xiv) Responses to Questions On Notice

(xv) Confidential Matters – closed session

(xvi) Report of resolutions passed in closed session.

(5) The Council meetings shall commence in accordance with a resolution passed pursuant to Clause 49 of this Code. Inspections shall be held prior to the meeting.

(6) Each Council meeting shall commence with a short prayer/ statement of reflection by the Chairperson.

(7) Minutes of Council and Council Standing Committee meetings will be listed for confirmation no later than the second Council meeting following the subject meeting.

(8) Any business not dealt with at the close of a Council and/or Council Standing Committee shall be listed as the first items of business following Mayoral Minutes at the next ordinary or extraordinary meeting of Council.

12.1 Public address at Council meetings

(i) A Public Forum will be conducted at each Ordinary Meeting of Council, as provided for in Clause 12(3) of this Code.

(ii) Public Forum will be for a period of no more than thirty (30) minutes, unless otherwise determined by Council.

(iii) A member of the public may be granted permission to address Council during Public Forum where such a request is received by the General Manager (or his delegate) no later than 3.00pm on the day preceding the Council Meeting. Where the day preceding is a public holiday a request must be received no later than 9.30am on the day of the Council Meeting. This provision is subject to:

(a) Each speaker being permitted to address Public Forum for up to three (3) minutes

(b) Each speaker being limited to one (1) question or statement on any one item on the Agenda or otherwise related to Council business.

(c) Speakers complying with the Guidelines for Requests to Address Council, as attached to this Code.

(d) No member of the public being entitled to address Public Forum on a rescission motion, except where Council resolves that such speaker be allowed on the basis of exceptional circumstances.

Note: Exceptional circumstances would include where such member of the public did not have adequate notice or opportunity to speak at the meeting when the motion was first moved or where such rescission motion is of wide and exceptional public interest.

(iv) A list of all requests to speak at Public Forum will be made available to all Councillors at the commencement of the Council Meeting.

(v) Council may, at its discretion, resolve to extend the time provided to any one speaker by up to three (3) minutes and/ or otherwise resolve to extend the total period allocated to Public Forum at any Council Meeting.

(vi) Not withstanding sub clause 12.1(iii) Council may, by resolution, determine that any other person may address the Council Meeting.

(vii) The circulation of documents or notes by speakers or members of the public during Council or Committee Meetings shall be allowed only upon determination by the Chairperson.

12.2 Invited Speakers

At the discretion of the Chairperson, other parties may be permitted to address an Ordinary Meeting of Council subject to:

(i) Notice of that person's attendance at the meeting being included by the General Manager on the relevant Business Paper.

(ii) Public Forum not being considered the most appropriate forum in which to hear that person(s)

(iii) Not more than ten (10) minutes in total being provided at any Ordinary Council Meeting to hear such person(s), with the option of an extension being granted by resolution of Council.

13. Agenda and business papers for Council meetings

(1) The General Manager must ensure that the Agenda for a meeting of the Council states:

(a) all matters to be dealt with arising out of the proceedings of former meetings of the Council; and

(b) if the Mayor is the Chairperson - any matter or topic that the Chairperson proposes, at the time when the Agenda is prepared, to put to the meeting; and

(c) subject to subclause (2), any business of which due notice has been given.

(2) The General Manager must not include in the Agenda for a meeting of the Council any business of which due notice has been given if, in the opinion of the General Manager, the business is (or the implementation of the business would be) unlawful. The General Manager must report (without giving details of the item of business) any such exclusion to the next meeting of the Council.

(3) The General Manager must cause the Agenda for a meeting of the Council or a Committee of the Council to be prepared as soon as practicable before the meeting.

(4) The General Manager must ensure that the details of any item of business to which section 9 (2A) of the Act applies are included in a business paper for the meeting concerned.

(5) Nothing in this clause limits the powers of the Chairperson under clause 16.

13.1 Agenda availability

For each Ordinary Council Meeting and Each Council Standing Committee meeting:

(i) Meeting Agenda, including Business Reports, Notice of Motions and Confidential Sections are to be distributed to all Councillors, Council's Solicitor and such Senior Staff as determined by the General Manager, by the close of business on the Wednesday, six (6) days before the meeting of Council that would be considering the matter, by email and by hard copy, unless a Councillor elects to receive no hard copy.

(ii) Meeting Agenda, with Confidential Sections excluded, are to be made available: -

(a) to the public for perusal or taking away (free of charge) on or before the Thursday preceding the meeting at the civic centre, as well as the libraries at Belrose, Dee Why, Warringah Mall, Forestville and Terrey Hills;

(b) to the press on or before the Thursday preceding the meeting;

(c) on the Councils' internet site before the Friday preceding such ordinary meeting.

13.2 Closing time of meetings

(i) That all Ordinary or Extraordinary Council Meetings or Standing Committee Meetings shall conclude no later than the item being discussed at 10pm is finalised or if that is not possible by 10.15pm.

(ii) A short break of not less than 5 minutes be taken after the first two (2) hours at each Ordinary and Extraordinary Meeting of Council.

13.3 Correspondence

(i) Any correspondence relevant to an item under the Council's or the Committee's consideration may be tabled at the meeting, or distributed by separate memo, but as a general rule, correspondence shall not be included on the business paper.

(ii) No defamatory correspondence, whether protected or otherwise, is to be included on a business paper, published or discussed in any meeting open to the public.

(iii) Any notice of motion or question submitted by a Councillor in relation to correspondence received by the Councillor must only detail the person from whom the correspondence was received, the subject matter of the correspondence and the date of the correspondence. The correspondence can only be dealt with in accordance with Clause 13.3(i) above.

(iv) Requests for correspondence/information to be distributed to all Councillors will only occur where copies are provided. If copies are not provided by the correspondent, no copies shall be distributed.

13.4 Inspections by Council and Councillors

(i) Whenever specifically determined or requested by the Council, on-site inspections of properties or other matters relevant to an item on an Agenda will be arranged by the General Manager immediately prior to that meeting. A video presentation may be arranged instead of an inspection where circumstances (such as an early sunset) would hinder an inspection.

(ii) A Councillor may notify the General Manager (or delegate) by the Friday preceding a Council Meeting of any sites they wish to have inspected by the Council. Such requests will be referred to the Chairperson for consideration and determination. The Chairperson’s decision will be communicated to all Councillors.

(iii) The provisions of clause 13.4 shall not apply to any item listed on the agenda of a Warringah Development Assessment Panel (WDAP) or a Warringah Development Review Panel (WDRP) Meeting.

13.5 Deferred Items

(i) A report, Notice of Motion or other item deferred from a Meeting for the purposes of a Councillor briefing will be put on the Agenda of the next possible Ordinary Meeting of Council unless resolved otherwise.

ii) Any matter included on an Agenda as a result of a previous resolution for deferral, shall be taken as a new item and subject to challenge, motion, amendment and debate etc at that meeting and any prior undetermined motions or amendments shall be deemed to have lapsed, upon adoption of the procedural motion of deferral.

14. Giving notice of business

(1) A Council must not transact business at a meeting of the Council:

(a) unless a Councillor has given notice of the business in writing within such time before the meeting as is fixed by Council's code of meeting practice or, (if the Council does not have a code of meeting practice or its code of meeting practice does not fix that time) as is fixed by resolution of the Council

and

(b) unless notice of the business has been sent to the Councillors in accordance with section 367 of the Act.

(2) Subclause (1) does not apply to the consideration of business at a meeting if the business:

(a) is already before, or directly relates to a matter that is already before, the Council; or

(b) is the election of a Chairperson to preside at the meeting as provided by clause 9 (1); or

(c) is a matter or topic put to the meeting by the Chairperson in accordance with clause 16; or

(d) is a motion for the adoption of recommendations of a Committee of the Council.

(3) Despite subclause (1), business may be transacted at a Meeting of a Council even though due notice of the business has not been given to Councillors. This can only happen if:

(a) a motion is passed to have the business transacted at the Meeting; and

(b) the business proposed to be brought forward is ruled by the Chairperson to be of great urgency.

A motion of urgency may be moved at any time during a meeting and without notice, provided that the councillor bringing such matter under the notice of the meeting shall specify the nature of the business in writing to the Chairperson.

Only the mover of the motion referred to in this subclause can speak to the motion before it is put.

If the motion is ruled by the Chairperson as being of great urgency, the matter will be included on the Agenda as the first item of business under Item 12.0 unless the mover chooses to have the matter dealt with at a later time.

(4) Despite clause 23, only the mover of a motion referred to in subclause (3) can speak to the motion before it is put.

14.1 Notice of Business

(i) Ordinary Council, WDAP, WDRP and Standing Committee Meetings

The General Manager must send to each Councillor, at least 3 days before each meeting of the Council and Standing Committee, a notice specifying the time and place at which, and the date on which, the meeting is to be held and the business proposed to be transacted at the meeting.

(ii) Extraordinary Meetings of Council (see also Clause 5.2)

(a) Subject to clause (b), at least 3 days notice shall be given of an Extraordinary Meeting.

(b) Notice of such shorter time as determined by the Mayor may be given of an extraordinary meeting called in an emergency.

(c) If for any reason, after having received a request in accordance with Section 366, the Mayor fails or refuses to call an Extraordinary Meeting within the prescribed time, the General Manager is delegated authority to, and shall thereupon, call such meeting.

(d) An Extraordinary meeting may be convened by a specific resolution of the Council to that effect.

14.2 Notice of Motion

(i) (a) Except as provided in (b) below every Notice of Motion relating to any new subject or matter not already before Council, distinctly stating the precise object proposed and all supporting information, shall be submitted to the General Manager duly signed by the Councillor giving the notice no later than 12 noon on the Tuesday seven (7) days before the meeting of Council at which the matter is to be considered. (That is one week prior to the meeting.)

When submitting Notices of Motion, Councillors shall identify an equivalent funding source, from additional revenue generation, cuts or savings in the proposed expenditure on projects or programs.

Late Items

As circumstances necessitate, reports not listed for consideration on the Business Paper may be tabled at an Ordinary Meeting. The General Manager is authorised to submit late agenda items.

Late reports should only be brought forward in the case of necessity and are to be forwarded to Councillors via email no later than midday on the day prior to the meeting at which the item is to be considered.

For matters not listed on the Agenda of meetings and where less than three (3) days notice has been provided in accordance with Clause 14.1 of this code, a motion of

urgency will need to be passed by Council prior to the matter being considered.

The motion of urgency is to include the reason why the matter is considered to be urgent.

(b) Despite clause 14.2 (i) (a) such closing time for lodgement of a notice of motion shall not apply in respect of a notice of motion which becomes the subject of an Extraordinary Meeting called by the Mayor, or convened by Council resolution, and is included as an item of business in an Agenda of that meeting.

(ii) (a) The General Manager must not include in the business paper for a Meeting or Committee of Council any business of which due notice has been given if, in the opinion of the General Manager, the business is (or the implementation of the business would be) unlawful or outside the jurisdiction of the Council or Committee of Council. The General Manager may on his or her own initiative make such alterations, corrections or amendments as will put such notice of motion into appropriate form (without changing its substance). In either such event, the General Manager will, as soon as practicable, inform the author of the notice of motion of the action which the General Manager has taken and the reasons for that action. Further, if requested by the author of a Notice of Motion, the General Manager may include a comment on the Notice of Motion in order to provide additional context, background or other relevant information.

(b) The General Manager must report without giving details of the items of business any such exclusion to the next meeting of Council (without disclosing the details of the item of business)

(ii) All notices of motion shall be dated and numbered as received and shall be entered by the General Manager upon the Agenda in the order in which they are received, and except by the resolution of the Council, all such notices of motion shall be taken and considered in the order in which they appear on the Agenda.

(iii) A notice of motion may be withdrawn by a Councillor or a Councillor may withdraw their signature to a notice of motion, by signed written correspondence to the General Manager, prior to the matter being moved for debate at the Council Meeting.

(iv) A notice of motion (not being a notice of motion of rescission) may be submitted in the following manner:-

(a) By written notice signed personally by the Councillor(s).

(b) By facsimile or e-mail transmission provided the original signed notice is in the hands of the General Manager prior to commencement of the meeting at which it is to be considered.

(c) Should the original notice duly signed by the Councillor(s), not be in the hands of the General Manager by the commencement time of the meeting as required in (b) or (c) above, such proposed notice of motion shall be ruled out of order by the Chairperson.

14.3 Rescission Motions

Note: See also Section 372 of the Act - Annexure 1 Notes on Rescission Motions - Annexure II

(i) (a) A notice of motion to rescind or alter a resolution of the Council shall be submitted in writing and delivered to the General Manager before or not later than 12 noon on the Tuesday seven (7) days before the meeting of Council at which the matter is to be considered.

(b) Despite clause 14.3 (i) (a) such closing time for lodgement of a motion of rescission shall not apply in respect of a motion of rescission which becomes the subject of an item of business in an Agenda of an extraordinary meeting called by the Mayor or convened by Council resolution.

(ii) In submitting a notice of motion of rescission the Councillors must (if applicable) also give written notice of any consequential motion to be considered if the rescission motion is adopted.

(iii) (a) A notice of motion of rescission/alteration can only be withdrawn, and a Councillor who is a signatory to such a motion can only withdraw that signature, by signed written correspondence to the General Manager, prior to the matter being moved for debate at the Council meeting.

(b) Where total withdrawal, or withdrawal of signatures (leaving less than three signatures) occurs, such motion shall then be deemed not to be in order and it shall be the duty of the General Manager to thereupon carry into effect the decision of the Council.

(iv) A notice of motion of rescission/alteration of a resolution shall not be brought forward for consideration, as a matter of which notice has not been given under Clause 14 or 15, at the same meeting at which the resolution is carried unless:-

(a) it is imperative that a decision be made by the Council to meet or comply with any deadline.

(b) such delay would place the Council in a position of breach of some statutory function, duty or obligation for which a penalty is in force.

(c) it is necessary to review or reconsider a matter in the light of further or new information, which may render the earlier decision wrong, void or invalid.

(v) A notice of motion of rescission/alteration may be submitted in the following manners:-

(a) any single written notice signed personally by three (3) or more Councillors

(b) electronically or by facsimile transmission of a duly signed notice provided the original notice bearing the three or more original signatures is in the hands of the General Manager by noon on the sixth day (i.e. Wednesday) prior to the meeting of Council (i.e. following Tuesday) (refer to Clause 14.3 (i)).

(vi) All notices of motion of rescission/alteration shall be dated and numbered as received and shall be entered upon the Agenda in the order in which they are received.

(vii) A notice of motion of rescission/alteration shall be given the same priority for consideration as applies to notices of motion. The motion shall be put after the mover and seconder have spoken and an equal number of speakers have spoken against.

(viii) If a notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, or up to 12 noon on the working day following the meeting, the resolution must not be carried into effect until the motion of rescission has been dealt with.

Unless resolved otherwise, it is Council's practice not to implement decisions of the Council until 12 noon on the working day following the Council and/ or committee meeting.

14.4 Moving of notices of motions and rescission motions

(i) The Councillor(s) who has submitted a notice of motion, and the first named Councillor on a rescission motion, shall have the first call to move such motion as submitted.

(ii) A notice of motion and a notice of rescission, and any consequential notice of motion included in an Agenda must, if moved, be moved in the form as submitted.

(iii) In considering a rescission motion and any consequential notice of motion,

(a) The meeting shall first consider and determine the motion of rescission.

(b) If the motion of rescission is adopted, then the consequential notice of motion must be moved and seconded and may be the subject of amendment in accordance with this Code.

(c) If the motion of rescission is defeated, the consequential notice of motion shall be ruled out of order.

(iv) Not withstanding clause 14.4 (i), (ii) and (iii), the Chairperson may call over any notice of motion given by two or more Councillors, or motion of rescission and consequential notice of motion given by three or more Councillors included in the Agenda, as formal motions before the meeting without the need for such to be moved and seconded, and may put such motion to debate and the vote.

14.5 Disclosure of Interests

Pecuniary Interests/Conflicts of Interest

i) The first item on the agenda of all council or Committee meeting, other than that held annually for election of the Deputy Mayor (after apologies/adoption of minutes) shall be the declaring of pecuniary interests/conflicts of interest

ii) A Councillor who has a pecuniary interest or conflict of interest in any matter with which Council is concerned and who is present at a meeting of Council or a Committee at which the matter is being considered must disclose the interest and the nature of the interest to the meeting as soon as practicable

iii) (a) Where a pecuniary interest has been declared by a Councillor in a matter at a Council or Committee Meeting, that Councillor must leave the meeting, be out of sight of the meeting and not participate in discussions or voting on the matter (section 451)

(b) Where a non-pecuniary interest has been declared by a Councillor in a matter at a Council or Committee Meeting and that non-pecuniary conflict of interest is considered by the Councillor to be significant, the Councillor must leave the meeting, be out of sight of the meeting and not participate in discussions or voting on the matter.

(c) Where a non-pecuniary conflict of interest has been declared by a Councillor in a matter at a Council or Committee meeting and that non pecuniary interest is considered by the Councillor to be less than significant and not requiring further action, the Councillor should provide an explanation of why he/ she believes the conflict requires no further action in the circumstances. The Councillor is therefore not required to leave the meeting and may participate in discussions and voting on the item.

iv) Though a conflict of interest is not covered by the provisions of the Act, the Councillor must not be in the meeting room at the time the vote is taken as the Councillor's presence and not voting is taken to be a vote in the negative.

Disclosure to be Recorded

A disclosure made at a meeting of Council or a Committee must be recorded in the Minutes of the meeting (section 453)

14.6 Notices of Censure

1) All Notices of Censure intended for consideration at any meeting are to be lodged no later than 12 noon on the Tuesday seven (7) days before the meeting of Council at which the matter is to be considered.

2) In the absence of a Councillor who has placed a notice of censure on the business paper for a meeting of Council or a Committee:

(i) Any other Councillor may move the motion at the meeting; or

(ii) The chairperson may defer the motion until the next meeting of Council or Committee at which the motion can be considered

(3) Council may by resolution at the meeting formally censure a Councillor for misbehaviour

(4) A formal censure resolution may not be passed except by a motion to that effect of which notice has been duly given in accordance with regulations made under section 360 of the Local Government Act and the Council's Code of Meeting Practice

(5) Council may pass a formal censure resolution only if it is satisfied that the Councillor has misbehaved as defined in this Code (see Definitions) on one or more occasion

(6) Council must specify in the formal censure resolution the grounds on which it is satisfied that the Councillor should be censured

(7) A motion for a formal censure resolution may, without limitation, be moved on the report of a Committee of the Council and any such report must be recorded in the Minutes of the meeting of the Council

14.7 Notations in Council Minutes

Notations in Council Minutes requested by individual Councillors will be included only following a resolution of Council approving their inclusion.

15. Agenda for extraordinary meeting

(1) The General Manager must ensure that the Agenda for an extraordinary meeting of a Council deals only with the matters stated in the notice of the meeting.

(2) Despite subclause (1), business may be transacted at an extraordinary meeting of a Council even though due notice of the business has not been given to the Councillors. However, this can happen only if:

(a) a motion is passed to have the business transacted at the meeting; and

(b) the business proposed to be brought forward is ruled by the Chairperson to be of great urgency.

Such a motion can be moved without notice but only after the business notified in the Agenda for the meeting has been disposed of.

(3) Despite clause 23, only the mover of a motion referred to in subclause (2) can speak to the motion before it is put.

16. Official (Mayoral) Minutes

(1) If the Mayor is the Chairperson at a meeting of a Council, the Chairperson is, by minute signed by the Chairperson, entitled to put to the meeting without notice any matter or topic that is within the jurisdiction of the Council or of which the Council has official knowledge.

(2) Such a minute, when put to the meeting, takes precedence over all business on the Council's Agenda for the meeting. The Chairperson (but only if the Chairperson is the Mayor) may move the adoption of the minute without the motion being seconded.

(3) A recommendation made in a minute of the Chairperson (being the Mayor) or in a report made by a Council employee is, so far as adopted by the Council, a resolution of the Council.

(4) The provisions of this clause shall also apply to an extraordinary meeting.

17. Report of a departmental representative to be tabled at Council meeting

When a report of a Departmental representative has been presented to a meeting of a Council in accordance with section 433 of the Act, the Council must ensure that the report:

(a) is laid on the table at that meeting; and

(b) is subsequently available for the information of Councillors and members of the public at all reasonable times.

18. Notice of motion - absence of mover

In the absence of a Councillor who has placed a notice of motion on the Agenda for a meeting of a Council:

(a) any other Councillor may move the motion at the meeting; or

(b) the Chairperson may defer the motion until the next meeting of the Council at which the motion can be considered.

19. Motions to be seconded

A motion or an amendment cannot be debated unless or until it has been seconded. This clause is subject to clauses 16(2) and 23(5).

19.1 Motions and amendments

(i) Every motion must relate to one subject matter only and distinctly state the precise nature of that subject matter and be solely related to the subject matter under consideration.

(ii) A motion, and an amendment, once moved and seconded can only be withdrawn with the consent of the meeting. A motion which is subject to an amendment cannot be withdrawn until the amendment has been dealt with.

(iii) An amendment must relate solely to the subject matter of the motion and not to something else. The Chairperson shall reject an amendment if the proposed amendment:

- Is a direct negative, or contradiction, of the motion or has that effect; or
- Is beyond the scope of the motion; or
- Does not relate to the motion; or
- It is irrelevant; or
- It is offered in a spirit of mockery; or
- It appears designed to prevent the meeting coming to a decision on the matter; or
- It is inconsistent with a resolution passed earlier at the meeting; or
- Is of such nature that the original motion loses its identity.

(v) Where a Councillor proposes an amendment which is rejected on the grounds in (iv) above, the Councillor, before a vote on the motion is taken, should indicate to the meeting that if the motion is defeated, they will be submitting their rejected amendment as a motion.

(vi) If an amendment is carried it shall become the substantive motion before the meeting and the original motion (or prior motion) shall be deemed to be subsumed by the substantive motion, and recorded in the Minutes as such.

(vii) Upon a motion being moved and seconded, the Chairperson shall put to the meeting the question “Is there opposition to this motion”. If no opposition or amendment is indicated by a Councillor, the Chairperson shall put the motion to the vote without debate. (but after the mover has spoken in favour of it if they wish to do so.) (Clause 250(4)(a) LG Reg.)

(viii) To assist Councillors and the public in following the Meeting and being aware of matters before the Meeting, a Councillor shall provide copies of any motions of urgency or lengthy motions/amendments proposed to be put to the meeting for distribution to all Councillors and the Minute Secretary before the commencement of the Meeting. Such motion/amendment will then be entered into the computer system for display in the Chamber.

(ix) That at a Council meeting, where the Council takes a decision contrary to a staff recommendation, or in relation to a development application contrary to a WDAP or WDRP recommendation, the Council shall give detailed reasons in the minutes of a Council meeting for that decision and in the covering letter attached to the notice of DA determination, and such decision shall be communicated to all stakeholders.

19.2 Procedural motion

(i) Procedural motions are moved with one of a number of objectives, viz:

(a) to affect the way in which proceedings are conducted

(b) to bring about an immediate vote to achieve a prompt decision on an issue

(c) to prevent a vote being taken and thereby shelve a matter

(d) to postpone or defer a decision for the time being.

Examples of procedural motions under the Act and Regulation are shown on the following table:-

Motion	Moved without Notice	Requires a Seconder	Speakers/ Debate Permitted	Right of Reply
(i) Change the Order of Business (clause 12) (1)	Yes	Yes	Mover of motion only	No
(ii) Business without Notice (matter of urgency) (clause 14 (3) & clause 15(2))	Yes	Yes	Mover of motion only	No
(iii) Dissent from Chairperson's ruling on Point of Order (clause 21)	Yes	Yes	Only mover & Chairperson may speak.	No
(iv) Adjournment of Meeting (clause 19.3)	Yes	Yes	No debate permitted	No
(v) Limitation to number of speakers (questions be now put) (Clause 23)	Yes – after at least 2 speakers have spoken in favour of motion or amendment and at least 2 against motion or amendment.	No	No debate permitted. Question must be put immediately	No
(vi) Deferment of a Matter	Yes	Yes	Yes	Yes

(ii) A procedural motion, once moved and seconded where required, shall take precedence over all other questions before the chair.

19.3 Adjournment of Council Meetings

(i) Independent of, and separate to, the following provisions of this Code:

- Clause 6, adjournment due to lack of a quorum
- Clauses 34 & 43, adjournment by Chairperson due to disorderly conduct for up to 15 minutes

the Council may, subject to the provisions of this clause, adjourn any meeting of the Council by adoption of a motion of adjournment, which may be moved without notice.

(ii) A motion for adjournment shall state the reason for the adjournment and specify the time, being not more than 72hours from the proposed adjournment time, and the date and place for that meeting to resume.

(iii) A motion for an adjournment shall require a seconder and only the mover and seconder may speak to the motion. Where this happens the Chairperson must immediately suspend the business before the meeting and, after debate by the mover and seconder, put the motion to the vote.

(iv) A motion which proposes to adjourn any meeting for more than 72 hours shall not be in order. Where such action is proposed, the motion shall be moved to terminate and close that meeting. If such motion is adopted, any items on the agenda still to be dealt with shall thereupon be deferred to be considered at the next ordinary Council Meeting or at an Extraordinary Council Meeting convened for that purpose in accordance with this Code.

(v) Any items on the agenda that have not been dealt with where a meeting has been adjourned at 10.pm(the closing time of the meeting) shall be dealt with at the next Council or Extraordinary Meeting

20. How subsequent amendments may be moved

(1) If an amendment has been rejected, a further amendment can be moved to the motion to which the rejected amendment was moved, and so on, but no more than one motion and one proposed amendment can be before the Council at any one time.

(2) A Councillor may indicate at any time during debate their intention to move a further amendment (i.e. foreshadowed amendment) after an amendment already before the meeting, is determined. Such indication must be given prior to the substantive motion being put to the vote.

21. Motions of dissent

(1) A Councillor can, without notice, move to dissent from the ruling of the Chairperson on a point of order. If that happens, the Chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.

(2) If a motion of dissent is passed, the Chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion of business has been discharged as out of order, the Chairperson must restore the motion or business to the Agenda and proceed with it in due course.

(3) Despite clause 23, only the mover of a motion of dissent and the Chairperson can speak to the motion before it is put. The mover of the motion does not have a right of general reply.

22. Councillor Questions

(1) At all Council meetings, each Councillor may ask up to three Questions On Notice under the segment of the Business paper designated for that purpose.

(2) Questions On Notice, as referred to in clause 22 (1) above, shall be submitted to the General Manager by the Councillor proposing the question(s) no later than 12 noon on the Tuesday seven (7) days before the meeting of Council at which the matter is to be considered:

(a) by written notice signed personally by the Councillor;

(b) by electronic or by facsimile transmission provided the original signed question is in the hands of the General Manager prior to the commencement of the meeting at which it is to be asked.

(3) All Questions On Notice shall be dated and numbered as received and shall be entered by the General Manager upon the Agenda in the order in which they are received, and except by resolution of the Council, all such Questions On Notice shall be considered in the order in which they appear on the Agenda.

(4) A Question On Notice may be withdrawn by a Councillor by signed correspondence to the General Manager prior to the question being asked at the relevant Council meeting.

(5) Where a Question On Notice purports to expend Council funds, is likely to divert significant time and resources of staff, is either vague, trivial, overly detailed, offensive, or does not relate to the responsibilities of Council, the question may be ruled out of order by the Chair.

(6) Responses to Questions On Notice are to be included, as soon as practicable, under the Agenda item, 'Responses to Questions On Notice', in a subsequent business paper for an Ordinary Meeting of Council.

(7) Notwithstanding the clauses 22(1) – 22(6) above, a Councillor may:

(a) through the Chairperson, put a question to another Councillor; and

(b) through the General Manager, put a question to a Council employee in relation to any other matter on the Council Agenda.

(8) However, a Councillor or Council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents.

(9) The Councillor must put every such question directly, succinctly and without argument.

(10) The Chairperson must not permit discussion on any reply or refusal to reply to a Councillor or Council employee under this clause.

(11) Councillors may ask questions of (but not engage in debate with) speakers at Public Forum or other invited speakers at Council meetings only by resolution of Council or otherwise at the discretion of the Chairperson. Such questions must be put directly, succinctly and without argument.

(12) Unless otherwise specified, answers to questions taken on notice should be provided prior to the next Council Meeting and the question and

response is to be recorded in the minutes of the meeting following the provision of the answer.

23. Limitation as to number of speeches

(1) A Councillor who, during a debate at a meeting of a Council, moves an original motion has the right of general reply to all observations that are made by another Councillor during the debate in relation to the motion and to any amendment to it, as well as the right to speak on any such amendment.

(2) A Councillor, other than the mover of an original motion, has the right to speak once on the motion and once on each amendment to it.

(3) (a) A Councillor must not, without the consent of the Council, speak more than once on a motion or an amendment, or for longer than 5 minutes at any one time. However, the Chairperson may permit a Councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment, and for longer than 5 minutes on that motion or amendment to enable the Councillor to make a statement limited to explaining the misrepresentation or misunderstanding.

(b) An extension of the time allowed in sub-clause (3)(a) above, of three (3) minutes may be granted by resolution.

(c) A Councillor, in addressing the right of general reply as allowed in sub-clause (3)(a) above, shall not speak for longer than 3 minutes.

(4) Despite subclauses (1) and (2), a Councillor may move that a motion or an amendment be now put:

(a) if the mover of the motion or amendment has spoken in favour of it and no Councillor expresses an intention to speak against it; or

(b) if at least 2 Councillors have spoken in favour of the motion or amendment and at least 2 Councillors have spoken against it.

(5) The Chairperson must immediately put to the vote, without debate, a motion moved under subclause (4). A seconder is not required for such a motion.

(6) If a motion that the original motion or an amendment be now put is passed, the Chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised his or her right of reply under subclause (1).

(7) If a motion that the original motion or an amendment be now put is rejected, the Chairperson must allow the debate on the original motion or the amendment to be resumed

(8) **Mode of Addressing Council or Committee**

A Councillor will, on all occasions when in a Council or Committee Meeting:

address and refer to other Councillors by their official designations (i.e. Mayor, Chairperson or Councillor, as the case may be)

(9) **Interruption of Speaker**

i) Subject to clause 19, a speaker will not be interrupted except on a point of order

ii) A speaker interrupted on a point of order shall resume their seat until the Chairperson has ruled on the point of order whereupon the speaker shall proceed with the debate,

24. Voting at Council meetings

(1) A decision supported by a majority of the votes at a meeting of Council at which a quorum is present is a decision of Council

(2) A Councillor who is present at a meeting of a Council but who fails to vote on a motion put to the meeting is taken to have voted against the motion. A Councillor who is not present at the meeting when a vote is taken is not taken into account in the voting on a matter.

(3) If a Councillor who has voted against a motion put at a Council meeting so requests, the General Manager must ensure that the Councillor's dissenting vote is recorded in the Council's Minutes.

(4) The decision of the Chairperson as to the result of a vote is final, unless the decision is immediately challenged and not fewer than 2 Councillors rise and demand a division.

(5) When a division on a motion is demanded, the Chairperson must ensure that the division takes place immediately. The General Manager must ensure that the names of those who vote for the motion and those who vote against it are respectively recorded in the Council's Minutes.

(6) Voting at a Council meeting, including voting in an election at such a meeting, is to be by open means (such as on the voices or by show of hands). However, the Council may resolve that the voting in any election by Councillors for Mayor or Deputy Mayor is to be by secret ballot.

> Note: The Local Government (General) Regulation provides that a Council is to resolve whether an election by the Councillors for Mayor or Deputy Mayor is to be by preferential ballot, ordinary ballot or open voting (Clause 124 and Clause 3 of Schedule 3). Clause 3 of Schedule 3 also makes it clear that "ballot" has its normal meaning of secret ballot.

(7) The names of all Councillors present, voting for and against each resolution carried by the Council, shall be recorded in the minutes of the meeting.

25. Representations by members of the public - closure of part of meeting

(1) A representation at a Council meeting by a member of the public as to whether a part of the meeting should be closed to the public can only be made for a fixed period immediately after the motion to close the part of the meeting is moved and seconded.

(2) That period is as fixed by the Council's code of meeting practice or (if the Council does not have a code of meeting practice or its code of meeting practice does not fix that period) as fixed by resolution of the Council. Different periods can be fixed according to the different types of matters to be discussed or received and discussed at closed part of meetings.

(3) Representations by members of the public as to whether part of the meeting should be closed to the public, to consider any item, shall be allowed only upon a specific resolution of Council relating to any specified item.

(4) The period under this clause if granted by resolution shall be three (3) minutes.

25.1 Closed Confidential Section

Pursuant to Section 10A Subsections 2 & 3 of the Local Government Act 1993 (as amended), the Council may close to the press and public that much of its meeting as comprises the receipt and/or discussion of the matters listed below and the press and public shall be excluded from the proceedings of the Council in Closed Session:

(1) The items to be considered are of a confidential nature, which includes:-

(a) personnel matters concerning particular individuals (other than Councillors),

(b) the personal hardship of any resident or ratepayer,

(c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposed to conduct) business,

(d) commercial information of a confidential nature that would, if disclosed:

(i) prejudice the commercial position of the person who supplied it, or

(ii) confer a commercial advantage on a competitor of the Council, or

(iii) reveal a trade secret,

(e) information that would, if disclosed, prejudice the maintenance of law,

(f) matters affecting the security of the Council, Councillors, Council staff or Council property,

(g) legal advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege;

(h) information concerning the nature and location of a place or an item of Aboriginal significance on community land

(2) A motion to close another part of the meeting to the public may be debated in confidential session provided the consideration of the motion must not include any consideration of the matter or information to be discussed in that other (closed) part of the meeting. Debate must only involve consideration of whether the matter is a matter referred to in clause 25.1(1) above.

(3) The closure of that part of the meeting for the receipt or discussion of any of the matters or information detailed in clause 25.1 (1) and (2):-

(a) is necessary to preserve the relevant confidentiality, privilege or security, and

(b) that discussion of the matter in open meeting would, on balance, be contrary to the public interest.

(4) The Minutes and business papers including any reports, correspondence, documentation or information relating to matters considered by Council in Closed Session shall be treated as Confidential and be withheld from access by the press and public, until such time as the reason for confidentiality has passed or become irrelevant.

26. Resolutions passed at closed meetings to be made public

(1) If a Council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the Chairperson must make the resolution public as soon as practicable after the meeting or part of the meeting has ended.

(2) The resolutions made by the Council in Closed Session shall be made public after the conclusion of the Closed Session and such resolutions, including the details of voting, shall be recorded in the Minutes of that Council Meeting.

27. Minutes

(1) Council and each Committee must ensure that full and accurate minutes are kept of the proceedings of each meeting of Council and of each Committee.

(2) The minutes must, when they have been confirmed at a subsequent meeting of Council or a Committee of which all its members are Councillors, be signed by the Chairperson of that subsequent meeting (section 375 of the LGA)

(3) The General Manager must ensure that the minutes of Council meetings record:

(a) all successful and unsuccessful motions and resolutions (including the grounds on which a meeting is closed to the public); (clause 24).

(b) successful and unsuccessful amendments; (clause 24).

(c) attendance of Councillors;

(d) declarations of pecuniary interest and conflicts of interest by Councillors;

(e) votes on divisions, and dissenting votes when requested by a Councillor;

and

(f) circumstances relating to the absence of a quorum at or arising during a meeting, together with the names of the Councillors present.

(g) the names of the mover and the seconder of a motion and/or amendment. (clause 24).

(h) the names of all Councillors who voted in favour or against a motion or an amendment.

(4) The reports of Committee Meetings of which all its members are Councillors, will record:

(a) all successful and unsuccessful motions and resolutions (including the grounds on which a meeting was closed to the public) relating to adjournments of the meeting; (clause 39)

(b) staff recommendations;

(c) recommendations that are to be submitted to the Council;

(d) resolutions of the Committee made under delegated authority;

(e) attendance of members of the Committee;

(f) declarations of pecuniary interests and conflict of interests by Councillors and Committee members appointed;

(g) votes on divisions, and dissenting votes when requested by a Councillor or Committee member appointed;

(h) circumstances relating to the absence of a quorum at or arising during a meeting, together with the names of the Councillors and appointed Committee members present; and

(i) the names of the mover and seconder of a motion or amendment. (clause 39)

(j) the names of Councillors and appointed Committee members who voted in favour of/or against the motion or amendment.

(5) Any entries in the minute book found to be incorrect, must not be altered or erased. Any mistake or omission will be the subject of a resolution at, and recorded in the minutes of, a subsequent meeting.

(6) Any business arising from consideration of the Minutes of a previous meeting does not permit a matter to be the subject of further resolutions at that meeting.

(7) On each sheet of the Council or Committee minute book there will be placed a heading setting out:

(a) the nature of the meeting;

(b) the date of the meeting; and

(c) the page number.

(8) Immediately after the conclusion of the last minute of a meeting of Council there will be placed a certificate to be signed by the Chairperson of the meeting at which the minutes are confirmed in or to the following effect:

"This is the final page of the Minutes comprising ..... pages numbered ..... to ..... of the ..... meeting of the (insert Council/.....Committee as appropriate) held on ..... and confirmed on .....

.....
Chairperson"

(This signature must be an original signature).

Note: Section 375(1) of the Act requires a Council to ensure that full and accurate Minutes are kept of the proceedings of a meeting of the Council (other provisions of this Regulation and of the Act require particular matters to be recorded in a Council's Minutes).

PART 4 KEEPING ORDER AT MEETINGS

28. Questions of order

(1) The Chairperson, without the intervention of any other Councillor, may call any Councillor to order whenever, in the opinion of the Chairperson, it is necessary to do so.

(2) A Councillor, who claims that another Councillor has committed an act of disorder, or is out of order, may call the attention of the Chairperson to the matter.

(3) The Chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the Council.

(4) The Chairperson's ruling must be obeyed unless a motion dissenting from the ruling is passed.

29. Acts of disorder

(1) A Councillor commits an act of disorder if the Councillor, at a meeting of a Council or a Committee of a Council:

(a) contravenes the Act or any regulation in force under the Act; or

(b) assaults or threatens to assault another Councillor or person present at the meeting; or

(c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the Council or Committee, or addresses or attempts to address the Council or Committee on such a motion, amendment or matter; or

(d) insults, denigrates or makes personal reflections on or imputes improper motives to any other Councillor, any member of staff or the general public; or

(e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council or Committee into contempt.

(2) The Chairperson may require a Councillor:

(a) to apologise without reservation for an act of disorder referred to in subclause (1)(a) or (b); or

(b) to withdraw a motion or an amendment referred to in subclause (1)(c) and, where appropriate, to apologise without reservation; or

(c) to retract and apologise without reservation for an act of disorder referred to in subclause (1)(d) or (e).

(3) A Councillor may, as provided by section 10(2) (a) or (b) of the Act, be expelled from a meeting of a Council for having failed to comply with a requirement under subclause (2). The expulsion of a Councillor from the meeting for that reason does not prevent any other action from being taken against the Councillor for the act of disorder concerned.

(4) A Councillor commits an act of disorder if the Councillor, at a meeting of Council or a Committee displays:

(a) Conduct that contravenes all or specified provisions of the Act or the regulations in all or specified circumstances; or

(b) Conduct that is detrimental to the pursuit of the charter of the Council; or

(c) Improper or unethical conduct; or

(d) Abuse of power and other misconduct; or

(e) Action causing, compromising or involving any of the following:

i. Intimidation, harassment or verbal abuse

ii. Discrimination, disadvantage or adverse treatment in relation to employment

iii. Prejudice in the provision of a service to the community

(f) Conduct of a Councillor causing, compromising or involving any of the following:

i. Directing or influencing, or attempting to direct or influence, a member of the staff of the Council or a delegate of the Council in the exercise of the functions of the member or delegate

ii. An act of disorder committed by the Councillor at a meeting of the Council or a Committee of the Council may lead to a motion of censure

30. How disorder at a meeting may be dealt with

(1) If disorder occurs at a meeting of a Council, the Chairperson may adjourn the meeting for a period of not more than 15 minutes and leave the chair. The Council, on reassembling, must, on a question put from the chair, decide without debate whether the business is to be proceeded with or not. This subclause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of Councillors.

(2) A member of the public may, as provided by section 10(2) (a) or (b) of the Act, be expelled from a meeting of a Council for engaging in or having engaged in disorderly conduct at the meeting.

(3) Council by resolution No.123 of 6 March 2001 authorises the Chairperson at a meeting of the Council to exercise the power to expel a member of the public from the meeting for engaging in or having engaged in disorderly conduct at the meeting.

(4) For the purposes of this code the question of disorderly conduct is at the discretion of the Chairperson and includes, but is not limited to, conduct where a person, without the consent of the Chairperson, or in the opinion of the Chairperson, conducts themself or behaves in such a way as to interrupt or impede debate by Councillors or the conduct of the meeting. Examples only of disorderly conduct could include the following, but the ultimate determination is at the Chairperson's discretion:

- audibly interrupts the conduct of the meeting,
- holds up, waves or displays a placard, banner or sign, or document, in a manner which disrupts the conduct of the meeting, or that is inconsistent with maintaining order at the meeting,
- uses any video recorder, camera (including hand held mobile phone with camera and video capability), filming device, voice recorder, or any electronic recording device without permission of the Council,

- distributes in the Council Chamber or its precincts Federal, State or Local Government 'how to vote' material or other election material without permission of the Council, or
- behaves or acts in a manner which disrupts the conduct of the meeting or that is inconsistent with maintaining order at the meeting
- Uses any video recorder, camera including hand held mobile phone with camera and video capability

31. Power to remove persons from meeting after expulsion

If a Councillor or a member of the public fails to leave the place where a meeting of a Council is being held:

(a) immediately after the Council has passed a resolution expelling the Councillor or member from the meeting; or

(b) where the Council has authorised the person presiding at the meeting to exercise the power of expulsion, immediately after being directed by the person presiding to leave the meeting,

a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the Councillor or member from that place and, if necessary, restrain the Councillor or member from re-entering that place.

31.1 Authority of staff to remove persons from meeting after Expulsion

Council by resolution No 123 of 6 March 2001 authorises each of the following Council officers and the persons for the time being occupying or acting in those positions to remove a Councillor or a person from a meeting of Council after expulsion pursuant to clauses 30 and 31:
The General Manager, the Director of Corporate Services and any person appointed by Council as a Ranger.

PART 5 COUNCIL COMMITTEES

32. Committee of the whole

(1) All the provisions of this Regulation relating to meetings of a Council, so far as they are applicable, extend to and govern the proceedings of the Council when in Committee of the whole, except the provision limiting the number and duration of speeches.

(2) The General Manager or a person authorised by the General Manager or, in the absence of the General Manager, an employee of the Council designated by the General Manager, is responsible for reporting to the Council proceedings in Committee of the whole. It is not necessary to report the proceedings in full but any recommendations of the Committee must be reported.

(3) The Council must ensure that the report of the proceedings including any recommendations of the Committee is recorded in the Council's Minutes. However, the Council is not taken to have adopted the report until a motion for adoption has been made and passed.

33. Council may appoint Committees

(1) A Council may, by resolution, establish such Committees as it considers necessary.

(2) A Committee is to consist of the Mayor and such other Councillors as are elected by the Councillors or appointed by the Council.

(3) The quorum for a meeting of a Committee is to be:

(a) such number of members as the Council decides, or

(b) if the Council has not decided a number - a majority of the members of the Committee.

34. Functions of Committees

A Council must specify the functions of each of its Committees when the Committee is established, but may from time to time amend those functions.

A Committee cannot act outside the extent of the functions granted by Council as specified in the adopted Charter for that Committee.

If Council, by resolution, delegates authority to the Committee to make decisions, then any decision made by the Committee under such authority will be decisions of Council (Section 49(6) – Interpretation Act 1987)

35. Notice of Committee meetings to be given

(1) The General Manager of a Council must send to each Councillor, at least 3 days before each meeting of the Committee, a notice specifying:

(a) the time and place at which and the date on which the meeting is to be held; and

(b) the business proposed to be transacted at the meeting.

(2) However, notice of less than 3 days may be given of a Committee meeting called in an emergency. For the purpose of this clause “emergency” shall have the same meaning as described in clause 14.1(ii)(d).

36. Non-members entitled to attend Committee meetings

(1) A Councillor who is not a member of a Committee of a Council is entitled to attend, and to speak at, a meeting of the Committee.

(2) However, the Councillor is not entitled:

(a) to give notice of business for inclusion in the Agenda of the meeting, or

(b) to move or second a motion at the meeting, or

(c) to vote at the meeting.

(3) Where the Council or a Committee of Council resolves that a Councillor with a disclosed pecuniary interest or conflict of interest will retire from the meeting and will not be present during discussion of that matter the Councillor will be excluded from being present in the area defined as Council Chamber in the definitions in the Code (Section 455)

(4) **General Manager**

The General Manager is entitled to attend, but not vote at, any meeting of Council or any meeting of a Committee of which all the members are Councillors.

The General Manager is entitled to attend a meeting of any Committee of Council and may, if a member of the Committee, exercise a vote. (Section 376)

37. Representations by members of the public - closure of part of meeting

(1) A representation at a Committee meeting by a member of the public as to whether a part of the meeting should be closed to the public can only be made for a fixed period immediately after the motion to close the part of the meeting is moved and seconded.

(2) That period is as fixed by the Council's code of meeting practice or (if the Council does not have a code of meeting practice or its code of meeting practice does not fix that period) as fixed by resolution of the Council. Different periods can be fixed according to the different types of matters to be discussed or received and discussed at closed parts of meetings.

(3) Representations by members of the public as to whether part of a Committee meeting should be closed to the public to consider any item, shall be allowed only upon a specific decision of the Committee relating to any specified item.

(4) That period under this clause if granted, shall be three (3) minutes.

(5) The Council's policy relating to confidential items as detailed in clause 25.1 shall apply to items to be considered by any Committee.

38. Procedure in Committees

(1) Subject to subclause (3) each Committee of a Council may regulate its own procedure where such are not covered under this Code or by a resolution of Council adopting a charter for the Committee.

(2) Without limiting subclause (1), a Committee of a Council may decide that, whenever the voting on a motion put to a meeting of the Committee is equal, the Chairperson of the Committee is to have a casting vote as well as an original vote. [Refer clause 40(5)].

(3) Voting at a Committee meeting is to be by open means (such as on the voices or by show of hands).

(4) A decision under delegated authority supported by a majority of the votes at a Committee meeting at which a quorum is present is a decision of Council

39. Committees to keep Minutes

(a) Each Committee of a Council must ensure that full and accurate Minutes of the proceedings of its meetings are kept in accordance with Clause 27 of this Code and to the same detail as prescribed for Meetings of Council as prescribed therein.

(2) As soon as the Minutes of an earlier meeting of a Committee of the Council have been confirmed at a later meeting of the Committee, the person presiding at the later meeting must sign the Minutes of the earlier meeting.

Note: Section 375(1) of the Act requires a Council to ensure that full and accurate Minutes are kept of the proceedings of a meeting of the Council (other provisions of this Regulation and of the Act require particular matters to be recorded in a Council's Minutes).

40. Chairperson and Deputy Chairperson of Committees

(1) The Chairperson of each Committee of the Council, must be:

(a) the Mayor; or

(b) if the Mayor does not wish to be the Chairperson of a Committee - a member of the Committee elected by the Council; or

(c) if the Council does not elect such a member - a member of the Committee elected by the Committee

(2) A Council may elect a member of a Committee of the Council as Deputy Chairperson of the Committee. If the Council does not elect a Deputy Chairperson of such a Committee, the Committee may elect a Deputy Chairperson.

(3) If neither the Chairperson nor the Deputy Chairperson of a Committee of a Council is able or willing to preside at a meeting of the Committee, the Committee must elect a member of the Committee to be acting Chairperson of the Committee.

(4) The Chairperson is to preside at a meeting of a Committee of a Council. If the Chairperson is unable or unwilling to preside, the Deputy Chairperson (if any) is to preside at the meeting, but if neither the Chairperson nor the Deputy Chairperson is able or willing to preside, the acting Chairperson is to preside at the meeting.

(5) The Chairperson of each of the Council's Committees shall not have, in the event of an equality of voting at a meeting of the Committee, a casting vote in addition to an original vote. Items with an equality of voting are to be referred to the Council meeting for determination.

(6) Only the Councillors, who are members of that Committee, are entitled to vote in the election of a Chairperson or Deputy Chairperson.

41. Absence from Committee meetings

(1) A member ceases to be a member of a Committee if the member (other than the Mayor):

(a) has been absent from 3 consecutive meetings of the Committee without having given reasons acceptable to the Committee for the member's absences; or

(b) has been absent from at least half of the meetings of the Committee held during the immediately preceding year without having given to the Committee acceptable reasons for the member's absences.

(2) Subclause (1) does not apply if all of the members of the Council are members of the Committee.

Note: The expression "year" means the period beginning 1 July and ending the following 30 June. See the dictionary to the Act.

42. Reports of Committees

(1) If in a report of a Committee of the Council distinct recommendations are made, the decision of the Council may be made separately on each recommendation.

(2) The recommendations of a Committee of the Council are, so far as adopted by the Council, resolutions of the Council.

(3) If a Committee of a Council passes a resolution, or makes a recommendation, during a meeting, or a part of a meeting, that is closed to the public, the Chairperson must:

(a) make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended; and

(b) report the resolution or recommendation to the next meeting of the Council.

(4) Reports and/or Minutes of Advisory Committees, panels and bodies will from time to time be included on the appropriate Council or Committee meeting Agenda for notation or to determine recommendations.

42.1 Reports to Standing Committees - method of consideration and determination

(i) Business listed on the business paper of a Standing Committee may be dealt with on an exception basis and the method of dealing with the business should be as provided below:-

(a) The Chairperson shall invite Councillors to challenge, "call," the number of any report and recommendation they require excluded from the single general recommendation to adopt the remainder of the report and recommendation "in toto." The order of invitation should be at the Chairperson's discretion with Councillors "calling" one (1) item at a time and in turn.

(b) The Chairperson shall then call for a mover and seconder to a recommendation in the following manner:-

"That the balance of the reports and recommendations contained therein, with the exception of those challenged reports, be adopted."

(c) The excluded items are then called in agenda sequence , the Chairperson calling on the Councillor who requested the exclusion to move a motion. The Councillor then either:-

- moves a motion in conflict with or at variance with the report recommendation, or
- moves adoption of the report recommendation. Prior to moving a motion the Councillor may seek further information from the Mayor or officers for the purpose of clarification.

(ii) A motion or an amendment cannot be debated unless or until it has been seconded. This clause is subject to clauses 16(2) and 23(5).

43. Disorder in Committee meetings

(1) The provisions of the Act and of this Regulation relating to the maintenance of order in Council meetings apply to meetings of Committees of the Council in the same way as they apply to meetings of the Council.

(2) For the purposes of clause 43(1) the question of disorderly conduct is at the discretion of the Chairperson and includes, but is not limited to, conduct where a person, without the consent of the Chairperson or in the opinion of the Chairperson, conducts themselves or behaves in such a way as to interrupt or impede debate by Councillors or the conduct of the meeting. Examples only of disorderly conduct could include the following, but the ultimate determination is at the Chairperson's discretion:

- audibly interrupts the conduct of the meeting,
- holds up, waves or displays a placard, banner or sign, or document, in a manner which disrupts the conduct of the meeting or that is inconsistent with maintaining order at the meeting,
- uses any video recorder, camera, filming device, voice recorder, or any electronic recording device without permission of the Council,
- distributes in the Council Chamber or its precincts Federal, State or Local Government 'how to vote' material or other election material without permission of the Council, or
- behaves or acts in a manner which disrupts the conduct of the meeting or that is inconsistent with maintaining order at the meeting.

(3) Where the Chairperson of a Standing Committee is of the opinion that, or deems, disorderly conduct has occurred, the Chairperson shall immediately request the Mayor to resume the chair of the meeting. The Mayor shall then deal with the matter of disorderly conduct in accordance with clause 31 of this code.

44. Certain persons may be expelled from Council Committee meetings

(1) If a meeting or part of a meeting of a Committee of a Council is closed to the public in accordance with section 10(A) of the Act, any person who is not a Councillor may be expelled from the meeting as provided by section 10(2) (a) or (b) of the Act.

(2) If any such person, after being notified of a resolution or direction expelling him or her from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the Council, Committee or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place.

(3) Council by resolution No.123 of 6 March 2001 authorises each of the following Council officers including the person for the time being occupying or acting in that position to remove a person from a meeting of a Committee of which all the Councillors are members after expulsion pursuant to clauses 31 and/or 43:

The General Manager, the Director of Corporate Services and any person appointed by Council as a Ranger.

PART 6 MISCELLANEOUS

45. Disclosure and misuse of information - prescribed circumstances

For the purposes of section 664 (1B) (c) of the Act, any disclosure made with the intention of enabling the Minister or the Director-General to properly exercise the functions conferred or imposed on them by or under the Act is a prescribed circumstance.

46. Inspection of the Minutes of a Council or Committee

(1) An inspection of the Minutes of a Council or Committee of a Council is to be carried out under the supervision of the General Manager or an employee of the Council designated by the General Manager to supervise inspections of those Minutes.

(2) The General Manager must ensure that the Minutes of the Council and any Minutes of a Committee of the Council are kept secure and in safe custody and that no unauthorised person is allowed to interfere with them.

> Note: Section 12 of the Act confers a right to inspect the Minutes of a Council or Committee of a Council.

47. Tape recording of meeting of Council or Committee prohibited without permission

(1) A person may use a tape recorder to record the proceedings of a meeting of a Council or a Committee of a Council only with the permission of the Council or Committee.

(2) A person may, as provided by section 10(2) (a) or (b)) of the Act, be expelled from a meeting of a Council or a Committee of a Council for using or having used a tape recorder in contravention of this clause.

(3) If any such person, after being notified of a resolution or direction expelling him or her from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place.

(4) In this clause**, tape recorder** includes a video camera and any electronic device capable of recording speech, whether a magnetic tape is used to record or not.

47.1 Recording of Meetings by the Council

(i) The proceedings, including all debate, of all Council and Standing Committee Meetings in Open Session shall be suitably tape recorded.

(ii) Reproductions of the proceedings in Open Session shall be placed on Council's website.

(iii) Written transcriptions of such proceedings shall not be available.

(iv) Reproductions of Meetings shall be stored in accordance with the State Records General Disposal Authority – Local Government Records – GDA10 may be destroyed two (2) years after the date of the Meeting.

48. Council Seal

(1) The seal of a Council must be kept by the Mayor or the General Manager, as the Council determines.

(2) The seal of a Council may be affixed to a document only in the presence of:

(a) the Mayor and the General Manager; or

(b) at least 1 Councillor (other than the Mayor) and the General Manager; or

(c) the Mayor and at least 1 other Councillor; or

(d) at least 2 Councillors other than the Mayor.

(3) The affixing of a Council seal to a document has no effect unless the persons who were present when the seal was affixed (being persons referred to in subclause (2)) attest by their signatures that the seal was affixed in their presence.

(4) The seal of a Council must not be affixed to a document unless the document relates to the business of the Council and the Council has resolved (by resolution specifically referring to the document) that the seal be so affixed.

(5) For the purposes of subclause (4), a document in the nature of a reference or certificate of service for an employee of the Council does not relate to the business of the Council.

49. Council and Standing Committee structure and meeting cycle

(1) Ordinary meetings of the Council and meetings of Council Committees of which all Councillors are members are, subject to sub-Clause (2) below, to be held on a calendar monthly cycle as determined by Council resolution.

(2) A scheduled meeting of the Council and Council Standing Committees may be cancelled or rescheduled to a different time and/or day by resolution of the Council passed at a previous meeting of the Council or in emergent situations by the Mayor.

(3) A Council meeting is to be convened before the Standing Committees The Council meetings will be adjourned to enable a meeting of the scheduled Council Committee to be held and be reconvened immediately following the Committee meeting in order to determine those matters upon which the Committee has made a recommendation, or upon which the Committee is unable to reach a majority decision.

(4) Matters relating to specialised or Advisory Committee meetings are, apart from exceptional circumstances, to be listed on the relevant Standing Committee business paper to which they relate.

50. Committee Meetings other than Standing Committee Cancellation / Postponement

(1) A scheduled meeting of any Committee of the Council, other than a Standing Committee, cannot be cancelled or postponed to another time and or date, except where a quorum is not, or will not be, present or at the discretion of the Chairperson.

(2) The business paper for a Committee meeting cancelled or postponed shall carryover to the rescheduled or next Committee meeting but maybe

amended by a subsequence notice and business paper issued under clause 35 of this code.

51. Declaration of "Nature" of Pecuniary Interest or Conflict of Interest

In declaring the nature of a Pecuniary or Conflict of Interest at a meeting, the Councillor, designated person, adviser or delegate must ensure that:-

- The details are sufficient to enable other Councillors/Committee members and the public to appreciate in general terms the connection of the person with this matter under consideration.
- The disclosure does not reveal sensitive information which is not relevant to the matter before Council/the Committee.
- The disclosure does not reveal information which may be unnecessarily damaging to the reputation of some person(s) with whom the person disclosing is associated.
- The disclosure will not unnecessarily prejudice a sensitive commercial or legal situation.

52. Mayor/Councillor/Staff Discussion

(1) Gatherings convened, by the Mayor and/or the General Manager, of the Mayor, any number of Councillors and staff, for the purposes of discussion and information exchange relating to Council operational issues, which do not have any decision making authority, shall not be deemed to be "meetings" or "Committee Meetings" under this Code.

(2) Lists of matters for discussion may be circulated to attendees, but shall not be deemed an Agenda.

53. Matters Not Covered by the Code

Where at a Council meeting matters arise which are not provided for in this code, resort will be had to the rules, forms, and usage of the Legislative Assembly of New South Wales in force for the time being, so far as the same are applicable to the proceedings of the Council.

54 Information Relating to Proceedings at Closed Meetings Not to be Disclosed

(i) If a meeting or part of a meeting of Council or a Committee is closed to the public in accordance with section 10(2) of the Act (see clause 17(8) of this code) persons must not, without the authority of Council or the Committee, disclose, otherwise than to Council or to a Councillor information with respect to the discussion at, or the business of, the meeting.

(ii) This clause does not apply:

a. To the report of a Committee when presented to Council; or

b. For the purposes of Section 664(1B0© of the Act, any disclosure made with the intention of enabling the Minister or the Director General to properly exercise the functions conferred or imposed on them by or under the Act (clause 45)

(iii) A person must not disclose any information outlined in connection with the administration or execution of the Local Government Act 1993 unless the disclosure is made:

(a) With the consent of the person from whom the information was obtained; or

(b) In connection with the administration or execution of the Act; or

(c) For the purposes of any legal proceedings arising out of the Act or of any report of any such proceedings; or

(d) In accordance with a requirement imposed under the Ombudsman Act 1974 or the Freedom of Information Act 1989; or

(e) With other lawful excuse

55 Public Access to Correspondence and Reports

(i) Council and a Committee of which all the members are Councillors must, during or at the close of a meeting, or during the business day following the meeting' give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting

(ii) This section does not apply if the correspondence or reports:

(a) Relate to a matter which was received or discussed; or

(b) Where laid on the table at, or submitted to, the meeting when the meeting was closed to the public (Section 11)

56 Alcohol will not be served prior to or during a meeting of Council.

57 Amendments to the Code

This Code may only be amended by the adoption of a new code adopted under procedures contained in Division 1, Part 2, Chapter 12 of the Local Government Act 1993 except where an amendment is proposed that reflects a change to the Local Government Act or the Local Government (Meetings) Regulation and such change will be made automatically and a report on the changes submitted to the Council accompanied by an updated Code.

58 The use of Electronic Equipment during Meetings

The use of Personal Digital Assistants, such as Blackberries and iPhones, mobile phones, laptop computers or other electronic devices be kept to a minimum during Council Meetings and at all times these devices be operated only in silent mode.

ANNEXURE 1

LOCAL GOVERNMENT ACT 1993

EXTRACT OF

Provisions relating to the conduct of meetings

CHAPTER 4 - PART 1 – OPEN MEETINGS

9. Public notice of meetings

(1) A Council must give notice to the public of the times and places of its meetings and meetings of those of its Committees of which all the members are Councillors.

(2) A Council and each such Committee must have available for the public at its offices and at each meeting copies (for inspection or taking away by any person) of the Agenda and the associated business papers (such as correspondence and reports) for the meeting.

(2A) In the case of a meeting whose Agenda includes the receipt of information or discussion of other matters that, in the opinion of the General Manager, is likely to take place when the meeting is closed to the public:

(a) the Agenda for the meeting must indicate that the relevant item of business is of such a nature (but must not give details of that item), and

(b) the requirements of subsection (2) with respect to the availability of business papers do not apply to the business papers for that item of business.

(3) The copies are to be available to the public as nearly as possible to the time they are available to Councillors.

(4) The copies are to be available free of charge.

(5) A notice given under this section or a copy of an Agenda or of a business paper made available under this section may in addition be given or made available in electronic form.

10. Who is entitled to attend meetings?

(1) Except as provided by this Part:

(a) Everyone is entitled to attend a meeting of the Council and those of its Committees of which all the members are Councillors, and

(b) A Council must ensure that all meetings of the Council and of such Committees are open to the public.

(2) However, a person (whether a Councillor or another person) is not entitled to be present at a meeting of the Council or of such a Committee if expelled from the meeting:

(a) By a resolution of the meeting, or

(b) By the person presiding at the meeting if the Council has, by resolution, authorised the person presiding to exercise the power of expulsion.

(3) A person may be expelled from a meeting only on the grounds specified in, or in the circumstances prescribed by, the regulations.

10A Which parts of a meeting can be closed to the public?

(1) A Council, or a Committee of the Council of which all the members are Councillors, may close to the public so much of its meeting as comprises:

(a) The discussion of any of the matters listed in subclause (2), or

(b) The receipt or discussion of any of the information so listed.

(2) The matters and information are the following:

(a) Personnel matters concerning particular individuals (other than councillors),

(b) The personal hardship of any resident or ratepayer,

(c) Information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business,

(d) Commercial information of a confidential nature that would, if disclosed:

(i) Prejudice the commercial position of the person who supplied it, or

(ii) Confer a commercial advantage on a competitor of the Council, or

(iii) Reveal a trade secret,

(e) Information that would, if disclosed, prejudice the maintenance of law,

(f) Matters affecting the security of the Council, Councillors, Council staff or Council property,

(g) Advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,

(h) Information concerning the nature and location of a place or an item of Aboriginal significance on community land.

(3) A Council, or a Committee of the Council of which all the members are Councillors, may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.

(4) A Council, or a Committee of a Council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

10B Further limitations relating to closure of parts of meetings to public

(1) A meeting is not to remain closed during the discussion of anything referred to in section 10A (2):

(a) Except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and

(b) If the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret unless the Council or

Committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

(2) A meeting is not to be closed during the receipt and consideration of information or advice referred to in section 10A (2) (g) unless the advice concerns legal matters that:

(a) Are substantial issues relating to a matter in which the Council or Committee is involved, and

(b) Are clearly identified in the advice, and

(c) Are fully discussed in that advice.

(3) If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in section 10A (3)), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting (other than consideration of whether the matter concerned is a matter referred to in section 10A (2)).

(4) For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:

(a) A person may misinterpret or misunderstand the discussion, or

(b) The discussion of the matter may:

(i) Cause embarrassment to the Council or Committee concerned, or to Councillors or to employees of the Council, or

(ii) Cause a loss of confidence in the Council or Committee.

Note. Subsection (4) is in similar terms to section 59A (Public interest) of the Freedom of Information Act 1989.

(5) In deciding whether part of a meeting is to be closed to the public, the Council or Committee concerned must have regard to any relevant guidelines issued by the Director-General.

10C Notice of likelihood of closure not required in urgent cases

Part of a meeting of a Council, or of a Committee of the Council of which all the members are Councillors, may be closed to the public while the Council or Committee considers a matter that has not been identified in the Agenda for the meeting as a matter that is likely to be considered when the meeting is closed, but only if:

(a) It becomes apparent during the discussion of a particular matter that the matter is a matter referred to in section 10A (2), and

(b) The Council or Committee, after considering any representations made under section 10A (4), resolves that further discussion of the matter:

(i) Should not be deferred (because of the urgency of the matter), and

(ii) Should take place in a part of the meeting that is closed to the public.

10D Grounds for closing part of meeting to be specified

(1) The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the Minutes of the meeting.

(2) The grounds must specify the following:

(a) The relevant provision of section 10A (2),

(b) The matter that is to be discussed during the closed part of the meeting,

(c) The reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

11. Public access to correspondence and reports

(1) A Council and a Committee of which all the members are Councillors must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.

(2) This section does not apply if the correspondence or reports:

(a) relate to a matter that was received or discussed; or

(b) were laid on the table at, or submitted to, the meeting, when the meeting was closed to the public.

(3) This section does not apply if the Council or Committee resolves at the meeting, when open to the public, that the correspondence or reports, because they relate to a matter specified in section 10A(2), are to be treated as confidential.

CHAPTER 12 - PART 2 –ACCESS TO INFORMATION

Division 1 - Code of Meeting Practice

360. Conduct of Meetings of Councils and Committees

(1) The regulations may make provision with respect to the conduct of meetings of Councils and Committees of Councils of which all the members are Councillors.

(2) A Council may adopt a code of meeting practice that incorporates the regulations made for the purposes of the Section and supplements those regulations with provisions that are not inconsistent with them.

(3) A Council and a Committee of the Council of which all the members are Councillors must conduct its meetings in accordance with the code of meeting practice adopted by it.

361. Preparation, public notice and exhibition of draft code

(1) Before adopting a code of meeting practice, a Council must prepare a draft code.

(2) The Council must give public notice of the draft code after it is prepared.

(3) The period of public exhibition must not be less than 28 days.

(4) The public notice must also specify a period of not less than 42 days after the date on which the draft code is placed on public exhibition during which submissions may be made to the Council.

(5) The Council must publicly exhibit the draft code in accordance with its notice.

362. Adoption of draft code

(1) After considering all submissions received by it concerning the draft code, the Council may decide:

(a) to amend those provisions of its draft code that supplement the regulations made for the purposes of Section 360; or

(b) to adopt the draft code as its code of meeting practice.

(2) If the Council decides to amend its draft code, it may publicly exhibit the amended draft in accordance with this Division or, if the Council is of the opinion that the amendments are not substantial, it may adopt the amended draft code without public exhibition as its code of meeting practice.

363. Amendment of the code

A Council may amend a code adopted under this Part by means only of a code so adopted.

364. Public availability of the code

(1) The code of meeting practice adopted under this Division by a Council must be available for public inspection free of charge at the office of the Council during ordinary office hours.

(2) Copies of the code must be available free of charge or, if the Council determines, on payment of the approved fee.

Division 2 - Other Provisions Concerning Council Meetings

365. How often does the Council meet?

The Council is required to meet at least 10 times each year, each time in a different month.

366. Calling of extraordinary meeting on request by Councillors

If the Mayor receives a request in writing signed by at least 2 Councillors, the Mayor must call an extraordinary meeting of the Council to be held as soon as practicable but in any event within 14 days after receipt of the request.

367. Notice of meetings

(1) The General Manager of a Council must send to each Councillor, at least 3 days before each meeting of the Council, a notice specifying the time and place at which and the date on which the meeting is to be held and the business proposed to be transacted at the meeting.

(2) Notice of less than 3 days may be given of an extraordinary meeting called in an emergency.

(3) A notice under this section and the Agenda for, and the business papers relating to, the meeting may be given to a Councillor in electronic form but only if all Councillors have facilities to access the notice, Agenda and business papers in that form.

368. What is the quorum for a meeting?

The quorum for a meeting of the Council is a majority of the Councillors of the Council who hold office for the time being and are not suspended from office.

369. Who presides at meetings of the Council?

(1) The Mayor or, at the request of or in the absence of the Mayor, the Deputy Mayor (if any) presides at meetings of the Council.

(2) If the Mayor and the Deputy Mayor (if any) are absent, a Councillor elected to chair the meeting by the Councillors present presides at a meeting of the Council.

370. What are the voting entitlements of Councillors?

(1) Each Councillor is entitled to one vote.

(2) However, the person presiding at a meeting of the Council has, in the event of an equality of votes, a second or casting vote.

371. What constitutes a decision of the Council?

A decision supported by a majority of the votes at a meeting of the Council at which a quorum is present is a decision of the Council.

372. Rescinding or altering resolutions

(1) resolution passed by a council may not be altered or rescinded except by a motion to that effect of which notice has been duly given in accordance with regulations made under section 360 and, if applicable, the council's code of meeting practice.

(2) If notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.

(3) If a motion has been negatived by a Council, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with the Council's Code of Meeting Practice.

(4) A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been negatived by the Council, must be signed by 3 Councillors if less than 3 months has elapsed since the resolution was passed, or the motion was negatived, as the case may be.

(5) If a motion to alter or rescind a resolution has been negatived, or if a motion which has the same effect as a previously negatived motion, is negatived, no similar motion may be brought forward within 3 months. This subsection may not be evaded by substituting a motion differently worded, but in principle the same.

(6) A motion to which this section applies may be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.

(7) The provisions of this section concerning negatived motions do not apply to motions of adjournment.

373. Committee of Council

A Council may resolve itself into a Committee to consider any matter before the Council.

374. Certain circumstances do not invalidate Council decisions

Proceedings at a meeting of a council or a council committee are not invalidated because of:

(a) a vacancy in a civic office; or

(b) a failure to give notice of the meeting to any Councillor or Committee member; or

(c) any defect in the election or appointment of a Councillor or Committee member; or

(d) a failure of a councillor or a committee member to disclose a pecuniary interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a council or committee meeting in accordance with section 451, or

(e) a failure to comply with the code of meeting practice.

375. Minutes

(1) The Council must ensure that full and accurate Minutes are kept of the proceedings of a meeting of the Council.

(2) the Minutes must, when they have been confirmed at a subsequent meeting of the Council, be signed by the person presiding at that subsequent meeting.

376. Attendance of General Manager at meetings

(1) The General Manager is entitled to attend, but not to vote at, a meeting of the Council or a meeting of a Committee of the Council of which all the members are Councillors.

(2) The General Manager is entitled to attend a meeting of any other Committee of the Council and may, if a member of the Committee, exercise a vote.

(3) However, the General Manager may be excluded from a meeting of the Council or a Committee while the Council or Committee deals with a matter relating to the standard of performance of the General Manager or the terms of the employment of the General Manager.

CHAPTER 14 - PART 2 - DUTIES OF DISCLOSURE

Division 1 - Preliminary

441. Who are "designated persons?"

For the purposes of this Chapter, designated persons are:

- the General Manager
- other senior staff of the Council
- a person (other than a member of the senior staff of the Council) who is a member of staff of the Council or a delegate of the Council who holds a position identified by the Council as the position of a designated person because it involves the exercise of functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest.
- a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.

442. What is a "pecuniary interest?"

(1) For the purposes of this Chapter, a "pecuniary interest" is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

(2) A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter of if the interest is of a kind specified in section 448.

443. Who has a pecuniary interest?

(1) For the purposes of this Chapter, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:

(a) the person; or

(b) another person with whom the person is associated as provided in this section.

(c) a company or other body of which the person, or a nominee, partner or employer of the person, is a member.

(3) However, a person is not taken to have a pecuniary interest in a matter as referred to in subsection (2):

(a) if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body; or

(b) just because the person is a member of, or employed by, a council or a statutory body or is employed by the Crown, or

(c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the

matter, so long as the person has no beneficial interest in any shares of the company or body.

444. What disclosures must be made by a Councillor?

A Councillor:

(a) must prepare and submit written returns of interests in accordance with section 449; and

(b) must disclose pecuniary interests in accordance with section 451.

445. What disclosures must be made by a designated person?

A designated person:

(a) must prepare and submit written returns of interests in accordance with section 449; and

(b) must disclose pecuniary interests in accordance with section 459.

446. What disclosures must be made by a member of a Council Committee?

A member of a Council Committee, other than a committee that is wholly advisory, must disclose pecuniary interests in accordance with section 451.

447. What disclosures must be made by council advisers?

A person giving advice to the Council at a Council or Council Committee meeting must disclose pecuniary interests in accordance with section 456.

448. What interests do not have to be disclosed?

The following interests do not have to be disclosed for the purposes of this Chapter:

(a) an interest as an elector,

(b) an interest as a ratepayer or person liable to pay a charge,

(c) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this Part,

(d) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to a relative of the person by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this Part,

(e) an interest as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not)

(f) an interest of a member of a Council Committee as a person chosen to represent the community or as a member of a non-profit organisation or other community or special interest group if the Committee member has been appointed to represent the organisation or group on the Committee,

(g) an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument, other than an instrument that effects a change of the permissible uses of:

(i) land in which the person or a person, company or body referred to in section 443 (1) (b) or (c) has a proprietary interest (which, for the purposes of this paragraph, includes any entitlement to the land at

law or in equity and any other interest or potential interest in the land arising out of any mortgage, lease, trust, option or contract, or otherwise), or

(ii) land adjoining, adjacent to or in proximity to land referred to in subparagraph (i),

if the person or the person, company or body referred to in section 443 (1) (b) or (c) would by reason of the proprietary interest have a pecuniary interest in the proposal,

(h) an interest relating to a contract, proposed contract or other matter if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company,

(i) an interest of a person arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because a relative of the person is a shareholder (but not a director) of the corporation or is a member (but not a member of the committee) of the association or is a partner of the partnership,

(j) an interest of a person arising from the making by the council of a contract or agreement with a relative of the person for or in relation to any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:

(i) the performance by the council at the expense of the relative of any work or service in connection with roads or sanitation,

(ii) security for damage to footpaths or roads,

(iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council or by or under any contract,

(k) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor),

(l) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252,

(m) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor,

(n) an interest of a person arising from the passing for payment of a regular account for wages or salary of an employee who is a relative of the person,

(o) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or member of a council committee,

(p) an interest arising from appointment of a councillor to a body as representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.

DISCLOSURE OF INTERESTS						
How and when disclosed and nature of interests disclosed	Councillor	Member of council committee	Council advisor	General manager	Senior staff member	Staff member, delegate or committee member, holding "designated person" position (s 441)
• At meetings: Pecuniary interests (ss 451, 456)	□	□	□	×	×	×
• In dealings with council matters: Pecuniary interests (s 459)	×	×	×	□	□	□

PENALTIES FOR BREACH OF DISCLOSURE REQUIREMENTS (S 482)			
Councillor	Committee member	Council adviser	Council employee
• Counselling • Reprimand • Suspension from civic office for up to 2 months • Disqualification from civic office for up to 5 years	• Counselling • Reprimand • Suspension from the committee for up to 2 months • Disqualification from membership of any council committee for up to 5 years	• Counselling • Reprimand • Suspension as council advisor for up to 2 months • Disqualification as council advisor for up to 5 years	• Counselling • Reprimand • Recommend taking of disciplinary action by the council • Recommend dismissal

Division 2 - Disclosure of Interests in Written Returns

449. Returns disclosing interests of Councillors and designated persons

(1) A councillor or designated person must complete and lodge with the General Manager, within 3 months after becoming a councillor or designated person, a return in the form prescribed by the regulations.

(1A) A person must not lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.

(2) A person need not lodge a return within the 3-month period after becoming a Councillor or designated person if the person lodged a return in the previous year or if the person ceases to be a Councillor or designated person within the 3-month period.

(3) A Councillor or designated person holding that position at 30 June in any year must complete and lodge with the General Manager within 3 months after that date a return in the form prescribed by the Regulations.

(4) A person need not lodge a return within the 3-month period after 30 June in a year if the person lodged a return under subsection (1) within 3 months of 30 June in that year.

(5) Nothing in this section prevents a Councillor or designated person from lodging more than one return in any year.

(6) Nothing in this section or the regulations requires a person to disclose in a return lodged under this section an interest of the person's spouse or de facto partner or a relative of the person.

450. Returns disclosing interests of Councillors and designated persons

Repealed

450A. Register and tabling of returns

(1) The general manager must keep a register of returns required to be lodged with the general manager under section 449.

(2) Returns required to be lodged with the General Manager under section 449 must be tabled at a meeting of the council, being:

(a) in the case of a return lodged in accordance with section 449 (1)—the first meeting held after the last day for lodgement under that subsection, or

(b) in the case of a return lodged in accordance with section 449 (3)—the first meeting held after the last day for lodgement under that subsection, or

(c) in the case of a return otherwise lodged with the general manager—the first meeting after lodgement.

Division 3 - Disclosure of Pecuniary Interests at Meetings

451. Disclosure and presence in meetings

(1) A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.

(2) The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:

(a) at any time during which the matter is being considered or discussed by the Council or Committee, or

(b) at any time during which the Council or Committee is voting on any question in relation to the matter.

(3) For the removal of doubt, a councillor or a member of a council committee is not prevented by this section from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or member has an interest in the matter of a kind referred to in section 448.

Note: The Code of Conduct adopted by a council for the purposes of section 440 may also impose obligations on councillors, members of staff of councils and delegates of councils.

452. Participation in meetings despite pecuniary interests

Repealed
(rep Act No 112, 2000)

453. Disclosures to be recorded

A disclosure made at a meeting of a Council or Council Committee must be recorded in the Minutes of the meeting.

454. General disclosure

A general notice given to the General Manager in writing by a Councillor or a member of a Council Committee to the effect that the Councillor or member, or the Councillor's or member's spouse, de facto partner or relative, is:

(a) a member, or in the employment, of a specified company or other body; or

(b) a partner, or in the employment of a specified person,

is, unless and until the notice is withdrawn, sufficient disclosure of the Councillor's or member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the Council or Council Committee after the date of the notice.

455. Powers of Council in relation to meetings

Repealed
(rep Act No 112, 2000)

456. Disclosure by adviser

(1) A person who, at the request or with the consent of the Council or a Council Committee, gives advice on any matter at any meeting of the Council or Committee must disclose any pecuniary interest the person has in the matter to the meeting at the time the advice is given.

(2) The person is not required to disclose the person's interest as an adviser.

457. Circumstances in which Secs.451 and 456 are not breached

A person does not breach section 451 or 456 if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

458. Powers of Minister in relation to meetings

The Minister may, conditionally or unconditionally, allow a Councillor or a member of a Council Committee who has a pecuniary interest in a matter with which the Council is concerned and who is present at a meeting of the Council or Committee to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

(a) that the number of Councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or

(b) that it is in the interests of the electors for the area to do so.

Division 4 - Disclosure of pecuniary interests in Council dealings

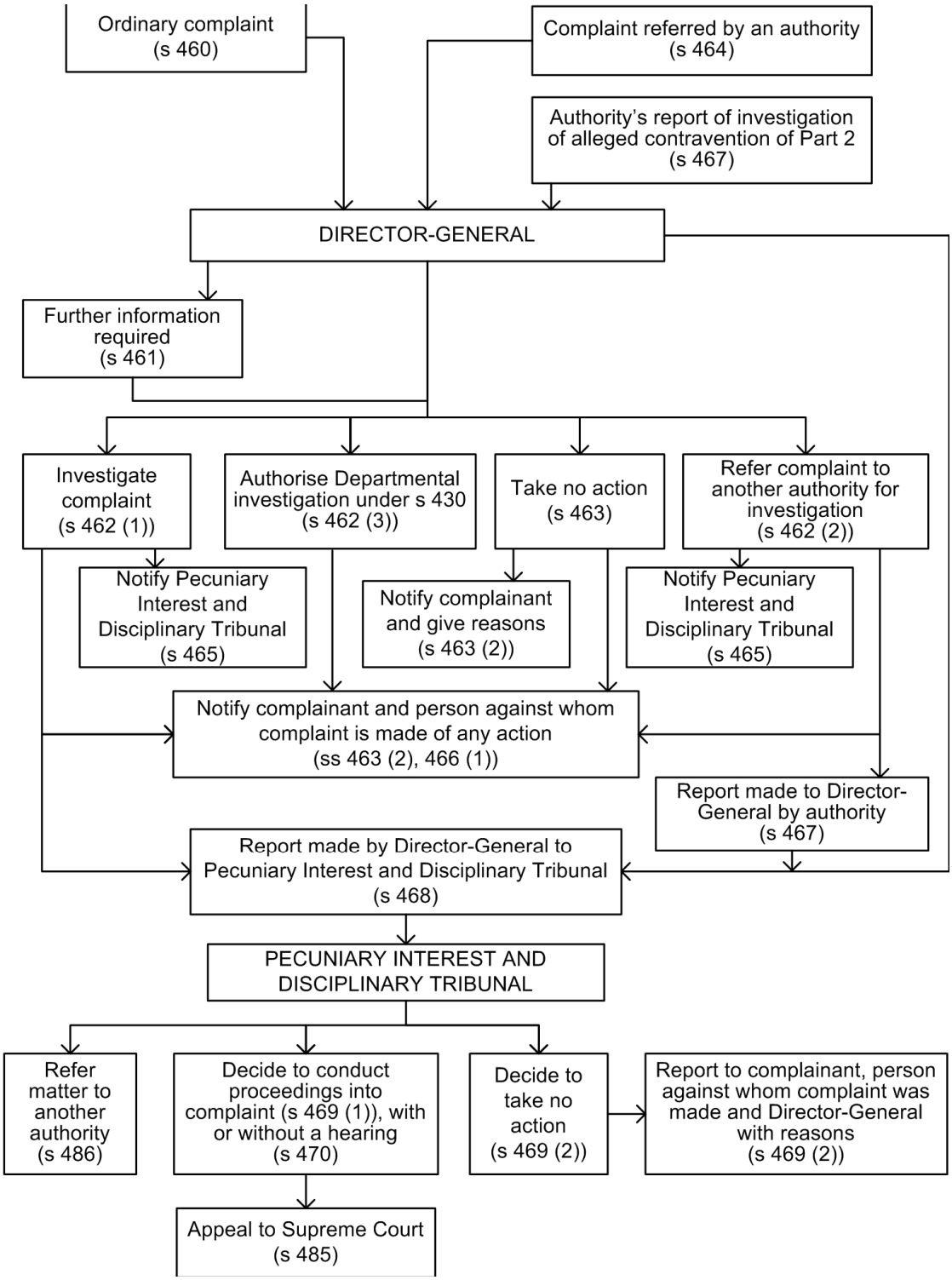
459. Disclosure of pecuniary interests when dealing with Council matters

(1) A designated person must disclose in writing to the general manager (or if the person is the general manager, to the council) the nature of any pecuniary interest the person has in any council matter with which the person is dealing.

(1A) However, subsection (1) does not require a designated person who is a member of staff of the Council to disclose such a pecuniary interest if the interest relates only to the person's salary as such a member of staff or to his or her other conditions of employment or the like.

(2) The General Manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with.

(3) A disclosure by the General Manager must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the Council and the Council must deal with the matter to which the disclosure relates or refer it to another person to deal with.


Ordinary complaint
(s 460)
Complaint referred by an authority
(s 464)
Authority's report of investigation of alleged contravention of Part 2
(s 467)
DIRECTOR-GENERAL
Further information required
(s 461)
Investigate complaint
(s 462 (1))
Authorise Departmental investigation under s 430
(s 462 (3))
Take no action
(s 463)
Refer complaint to another authority for investigation
(s 462 (2))
Notify Pecuniary Interest and Disciplinary Tribunal
(s 465)
Notify complainant and give reasons
(s 463 (2))
Notify Pecuniary Interest and Disciplinary Tribunal
(s 465)
Notify complainant and person against whom complaint is made of any action
(ss 463 (2), 466 (1))
Report made to Director-General by authority
(s 467)
Report made by Director-General to Pecuniary Interest and Disciplinary Tribunal
(s 468)
PECUNIARY INTEREST AND DISCIPLINARY TRIBUNAL
Refer matter to another authority
(s 486)
Decide to conduct proceedings into complaint (s 469 (1)), with or without a hearing
(s 470)
Decide to take no action
(s 469 (2))
Report to complainant, person against whom complaint was made and Director-General with reasons
(s 469 (2))
Appeal to Supreme Court
(s 485)

ANNEXURE II

Rescinding/Alteration Notes of a Council Resolution

The following notes are provided to assist Councillors and staff who have to respond to public enquires with the 'rules' which relate to rescission motions.

Court Decisions

Several court decisions have been handed down which establish some principles concerning a Council's ability to rescind or alter a previous resolution. Several of these decisions, relate mainly to town planning issues, however they have been applied in other situations, as can be seen from the cases quoted below.

1. Ex parte Renouf, re Waverley Municipal Council (1924) 24 S.R 463

This involved an application for subdivision approval, but for present purposes there is an analogy to be drawn between an application for subdivision approval and an application for building approval. In the course of his judgement Street, ACJ said,

> "Before a decision on an application has been communicated to the applicant and, therefore, before it can have been acted on in any way, I can see no reason why the Council should not reconsider any determination it may have come to."
>
> "… as long as the Council keeps within the period of 40 days mentioned in s. 341, I see nothing in the language of the Act to prevent it from reconsidering an uncommunicated determination, which may have been ill-considered or too hastily formed. Whether there is any power to recall or reconsider a decision arrived at in good faith, after an applicant has been notified of it, is a matter which is not before us for consideration, and which we need not consider."

2. Ex parte Wright, re Concord Municipal Council (1925) (LGLR Vol 7; page *79)*

That was again an application for subdivision approval. The applicant there had in fact commenced to build on the land on the basis of a valid subdivision having been approved prior to the purported intervention of the Council to rescind its approval. It was held on the facts of that case that, the applicant having been informed by the Council of its resolution and having acted upon the faith of the information conveyed to him by Council, he was immune from subsequent interference by the Council with his continuing the building work.

3. Ex parte Forssberg, re Council of the Shire of Warringah (1927) (LGR Vol 8 Page 74)

The Full Court was concerned with a subdivision application. In that particular case the applicants had been in correspondence with the Shire Clerk, and, in reliance upon an intimation in that correspondence that the application had been approved they commenced to carry out work consequent upon their belief that the subdivision had been approved. In the course of his judgement Ferguson J, with whom the other two judges concurred, said:

> " I have not doubt he would have the right to compel the Council to affix the seal, but the Council, where it has in fact approved of a plan and notified its approval cannot disavow the approval by reason of its own neglect to comply with the ordinance by affixing the seal."

4. Little v. Fairfield Municipal Council (1962) (LCRA Vol 8, page 64)

Again subdivision case. The Council had duly notified the owner of its approval of the subdivision, but it subsequently refused to seal the plan and purported to impose additions. Richardson J referred to the reliance placed by the respondent company upon Ex parte Renouf, and his Honour said:

> "… the Full Court held that a Council acted within power in rescinding approval and in refusing the application, but that case is clearly distinguishable since the approval which was rescinded had not been notified. In my opinion, the principle in Forssberg's case did not rest upon the matter of expense involved in preparing a new plan and specifications or inconvenience in undertaking additional construction work, but upon the principal that a Council, having accepted a plan of subdivision and communicated that acceptance, cannot afterwards reject it."

5. Mosman Municipal Council v. Bosnich (1969) (L.G.R.A Vol 17 page 74)

Hardie J considered an application by Mosman Council for an injunction to prevent constructor of building and a resolution of the Council to rescind a building approval. His Honour said:

> "It is reasonably clear from the language of the legislation and from the principles established by decisions on approvals and consents under the Act that an approval when communicated and acted upon by the applicant is no longer capable of being rescinded by the Council."
>
> Although his Honour did not cite authority for that statement, he clearly had in mind the cases referred to in this annexure.

6. Ku-ring-gai Municipal Council v. Little (1970)
(L.G.R.A Vol 18; page 380)

In this instance the application was for development consent under the relevant part of the Local Government Act when a subsequent building application was lodged it was refused by the Council and the Council also purported to revoke and recall the development consent. His Honour Hardie J mentioned the cases of Little v. Fairfield Municipal Council and Mosman Municipal Council v. Bosnich as being of interest, but as not necessarily providing the answer to the issue before the Court in that case. His Honour held:

> "Having regard to the relevant provision of Pt. XIIA of the Act and of the Ordinance it is reasonably clear in my view that a valid consent decided upon by a responsible authority and communicated to the applicant cannot be revoked or recall by the responsible authority. The decision so made and communicated is irrevocable."

7. Shanahan v. Others v. Strathfield Council (1973)
(L.G.R.A Vol 18; page 380)

Concerned a building approval granted but then rescinded by the Council. It is common ground that no formal notification was given to the plaintiffs of the terms either of the resolution of the Council at its meeting on 11th September 1973 or of the resolution at the meeting of 25th September 1973. In fact the second plaintiff is an alderman of the Council, and, although he properly absented himself both from the Council meeting and the Committee as a whole when the business concerning himself was under consideration, he became aware informally immediately upon rejoining the meeting of what had taken place during his absence.

Held: (1) That formal communication, as distinct from informal knowledge, was necessary before a Council is prevented from revoking or modifying a building approval. (2)…(3)…(4) That, in consequence, no valid and presently operative building approval was held by the plaintiffs and the summons should be dismissed.

8. Hall v. Ku-ring-gai Council (1990)
(L.G.R.A Vol 70, page 385)

The Council resolved on 30 January 1990 to grant Cr Hall "leave of absence until such time as the Council's legal action (against Cr Hall) and all matters pertaining thereto, had been concluded". On 6 March 1990 the Council sought to rescind the 30 January 1990 resolution and resolved that leave of absence granted to Cr Hall be confirmed to the period 31 January 1990 to 6 March 1990 only, noting that the legal action was contemplated to commence on 18 and 19 April 1990.

Held: The resolution of 6 March 1990 was also invalid as the Council's power to grant leave of absence is to be exercised once in relation to any particular request and once exercised is beyond the power of recall of any rescission motion under clause 25 of Ordinance 1.

9. Panagopoulos v. Willoughby City Council (1992) (78 L.G.E.R.A 270, page 270)

Communication of the Council's determination of the application was complete upon the oral notification thereof to the applicant at the Council meeting of 2 December 1991 and accordingly the Council's purported later incorporation of additional conditions therein was null and void.

Warringah Council

REQUEST TO ADDRESS COUNCIL

DATE OF COUNCIL MEETING:.....

NAME:.....

ADDRESS:.....

TELEPHONE NO: .....

GROUP REPRESENTED:.....

(if applicable) .....

.....

DO YOU WISH TO:

☐ Make a statement at Public Forum ☐ Ask a question at Public Forum

☐ Address agenda item no.

please provide details of matter to be discussed:.....

.....

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.....

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NOTE:

The proceedings of all Council Meetings in open session are webcast live and recorded for public record and are available for listening by members of the public. Speakers do not have absolute privilege (parliamentary privilege) in respect of anything said or any material presented to the Meeting.

All requests are to be made to the Co-ordinator Governance by 3 pm on the Monday prior to the meeting. Where the day preceding is a public holiday a request must be received no later than 9.30am on the day of the Council Meeting.

Please phone 9942 2737 or email councilmeetings@warringah.nsw.gov.au to register.

Council Meetings commence at 6.00pm. *Please refer to guidelines*

GUIDELINES – REQUEST TO ADDRESS COUNCIL

Applications to Address Council

- A member of the public may be granted permission to address Council during Public Forum where such a request is received by the General Manager (or his delegate) no later than 3.00pm on the day preceding the Council meeting. Where the day preceding is a public holiday a request must be received no later than 9.30am on the day of the Council Meeting. This provision is subject to: -
    - Public Forum will be for a period of no more than thirty (30) minutes, unless otherwise determined by Council.
    - Each speaker being permitted to address Public Forum for up to three (3) minutes.
    - Each speaker being limited to one (1) question or statement on any one item on the Agenda or otherwise related to Council business.
    - No member of the public being entitled to address Public Forum on a rescission motion, except where Council resolves that such speaker be allowed on the basis of exceptional circumstances.
- Applications to address Council are subject to the following qualifications:
    - There will be no speakers heard on agenda items that have been or are likely to be considered at the Warringah Development Assessment Panel (WDAP) and the Warringah Development Review Panel (WDRP) or Category 3 Public Hearings as those items have, or will be made open to comment at a public meeting and members of the public have, or will have the opportunity to express their views.
    - Requests to address the Public Forum at Council to the Community Meetings will be limited to local issues.
    - Each address shall be limited to three (3) minutes, and the Council may resolve to extend the address by one further three (3) minutes if considered appropriate.
    - Speakers shall conduct themselves with due respect to the Council and observe the Code of Conduct and Code of Meeting Practice, ie not to disrupt the conduct of the meeting and to treat all people with respect, courtesy, compassion and sensitivity and not insult, denigrate or make defamatory or personal reflections on or impute improper motives to the Council, staff or other members of the public.
- The proceedings of all Council Meetings in open session are recorded and webcast live for public record.
- Webcast archives are available to the public on Council's website.
- Council accepts no responsibility for any defamatory comments made by the speaker in respect of anything said or any material presented to the Meeting.

Addressing Council – Application Process

- All requests are to be made to the Co-ordinator Council and Executive Support by 3 pm on the Monday prior to the meeting. Where the day preceding is a public holiday a request must be received no later than 9.30am on the day of the Council Meeting. Please phone 9942 2737 or email councilmeetings@warringah.nsw.gov.au to register.
- Applicants shall state:
    - Their name, address and contact telephone number;
    - Organisation or group they are representing (if applicable);
    - Details of the issue to be addressed and the item number of the report in the Business Paper (if applicable) or the question to be presented to the meeting;
    - Whether they are opposing or supporting the issue or matter (if applicable).

Previous Applications and Agenda Items

- Where the applicant has previously addressed Council further applications to address Council will only be accepted if new issues are to be introduced. Issues previously raised are not to be re-canvassed.

- This will not preclude residents addressing Council for the first time on a matter that has previously been the subject of a public forum presentation, question or statement albeit that they intend to raise issues that were previously raised in the public forum.
- Where an address relates to an item on the Council meeting Agenda, Council staff are not obliged to provide an answer to the speaker's question or statement.
- There will be no speakers heard on agenda items that have been or are likely to be considered at the WDAP and the WDRP or Category 3 Public Hearings as they have already had or will have the opportunity to express their views.

Replies to Speakers

- Where an address relates to an issue of general interest, the Mayor or General Manager may provide a reply to the speaker at the conclusion of the address.
- If a formal reply or research is required, the General Manager shall respond in writing to the speaker.

Conduct of Speakers

Speakers should conduct themselves with due respect to the Council and observe the Code of Conduct and Code of Meeting Practice, ie not disrupt the conduct of the meeting and to treat all people with respect, and courtesy, and not make defamatory comments. In the event that a speaker does not conduct themselves accordingly, the Chairperson may request the speaker to apologise, desist from the inappropriate behaviour, return to the public gallery and/ or otherwise enact provisions of Council's Code of Meeting Practice.