



Hawkesbury City Council

Attachment 1
to
item 123

Draft Code of Meeting Practice

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Hawkesbury City Council

Draft
Code of Meeting
Practice

Revised on 30 June 2009
for Public Exhibition and Comment
Amendments generally in **Bold** and *Italic* Font



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1. INTRODUCTION

The Local Government Act 1993, provides that a Council may adopt a code of meeting practice incorporating requirements of the Act and Regulations concerning the conduct of meetings. The Council and all Committees of the Council, of which all members are Councillors, must conduct their meetings including Council Extraordinary Meetings in accordance with this Code (Section 360).

In adopting a Code of Meeting Practice, Hawkesbury City Council commits itself to the following principles;

- 1) Meetings should be orderly, efficient and earn the respect of the City's ratepayers, residents and visitors;
- 2) Meetings shall be conducted consistent with the Council's commitment to supporting the involvement and participation of local residents in issues which affect the City;
- 3) Councillors and staff have an obligation to conduct themselves at meetings to accepted standards of behaviour and make positive contributions to the issues being considered. Importantly, Councillors and staff should not reflect adversely on their peers or each other publicly;
- 4) Meetings should be held in an environment which facilitates respect shown for the views of others and regard for due process of law, reasonableness and fairness;
- 5) Council meetings should comply with the basic organisational principle of Councillors not involving themselves in the day-to-day administration of Council matters. Meetings should address matters of policy, direction, resource allocation, statutory decisions and other appropriate Council issues;
- 6) Meetings of Council and its Committees shall be open to the public in all circumstances except by resolution of Council or its Committee in extraordinary circumstances as provided for in Section 10 (see 2.1.2) of the Act; and
- 7) Adopt the charter as prescribed in the Local Government Act, as annexed (see ANNEXURE A) and as amended from time to time.

The Code has been prepared in a format reflecting statutory provisions i.e. Act and Regulations and the Council's policies relating to the conduct of meetings. This version of the Code was adopted by Council on **[Insert Date]**.



2. NOTICE OF MEETINGS AND AGENDAS

2.1 LOCAL GOVERNMENT ACT 1993 AND SUBSEQUENT AMENDMENTS - PROVISIONS

2.1.1 Public Notice of Meetings (Section 9)

- 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.
- 3) 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) above with respect to the availability of business papers do not apply to the business papers for that item of business.
- 4) The copies are to be available to the public as nearly as possible to the time they are available to Councillors.
- 5) The copies are to be available free of charge and access to information is adopted as per Section 12 (see 8.1.1) of the Local Government Act, as annexed (see ANNEXURE B) and as amended from time to time.
- 6) A notice given under this section or a copy of an agenda or business paper made available under this section may be given or made available in electronic form.

2.1.2 Who is Entitled to Attend Meetings? (Section 10)

- 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.

2.1.3 How Often Does the Council Meet (Section 365)

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



2.1.4 Calling of Extraordinary Meeting on Request by Councillors (Section 366)

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

2.1.5 Notice of Meetings (Section 367)

- 1) The General Manager of Council must send to each Councillor, at least three (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 three (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 paper relating to, the meeting may be given to a Councillor in electronic form but only if all Councillors have facilities to access the notice, agendas and business papers in that form.

2.2 LOCAL GOVERNMENT (GENERAL) REGULATION 2005 - PROVISIONS

2.2.1 Order of Business (Clause 239)

- 1) At a meeting of 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.
- 2) The order of business fixed under subclause (1) may be altered if a motion to that effect is carried. Such a motion can be moved without notice.
- 3) Despite clause 250 (see 3.2.8), only the mover of a motion referred to in subclause (2) may speak to the motion before it is put.

2.2.2 Agenda and Business Papers for Council Meetings (Clause 240)

- 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) (see 2.1.1) of the Act applies are included in a business paper for the meeting concerned.
- 5) Nothing in this clause limits the power of the chairperson under clause 243 (see 3.2.1).



2.2.3 Giving Notice of Business (Clause 241)

- 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 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 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 (see 2.1.5) 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 236 (see 3.1.2 (2)); or
 - c) is a matter or topic put to the meeting by the chairperson in accordance with clause 243 (see 3.2.1); 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 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.
- 4) Despite clause 250 (see 3.2.8), only the mover of a motion referred to in subclause (3) can speak to the motion before it is put.
- 5) ***Councillors may put forward Notices of Motion for discussion in the Council on issues. However in respect of the matters listed below it is preferable for Councillors to put the Notice of Motion in a form which calls for a report to the Council having regard to impact, materiality and urgency of each particular case:***
 - ***commit the Council to expenditure;***
 - ***change an existing policy;***
 - ***create new policy; and***
 - ***create a precedent.***

2.2.4 Agenda for Extraordinary Meeting (Clause 242)

- 1) The General Manager must ensure that the agenda for an extraordinary meeting of 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 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 250 (see 3.2.8), only the mover of a motion referred to in subclause (2) can speak to the motion before it is put.

2.3 POLICY - PROVISIONS

2.3.1 When Are Meetings Held

Hawkesbury City Council shall hold Ordinary Meetings on the second Tuesday of every month except January and on the last Tuesday of every month except December at the Council Chambers, George Street, Windsor, except that where a meeting would normally be held on a Tuesday directly following a public holiday (based on this scheduling) a meeting shall not be held on that day. Ordinary Meetings shall commence at **6:30pm** and finishing at 11:00 pm, unless otherwise resolved by Council and ***the Chairperson may adjourn the meeting for a short break where a meeting has been in session for sometime.***

Public notice will be given as to the time of the meeting. However, the meeting schedule may be amended by the Mayor, General Manager or resolution of Council if circumstances necessitate.

Such circumstances would include Public Holidays, the Local Government Conference, or decisions to revise meeting times, etc. Prior public notification must be given prior to altering the meeting schedule, time or venue.

The Mayor may call an Extraordinary Meeting within the provisions of Section 366 of the Act, and such meetings where possible are to be held at **6.30pm** at the Council Chambers.

2.3.2 Notices of Motion

Notices of Motion from Councillors must be lodged with the General Manager 7 days prior to the meeting at which they are to be discussed.

2.3.3 Notices of Rescission

A notice of motion to rescind a resolution of Council must be signed by 3 councillors if less than 3 months has elapsed since the resolution was passed. If the notice of motion to rescind a resolution is received by the General Manager by 5pm on the day following the day the meeting of Council started, the resolution will not be carried into effect until the motion of rescission has been dealt with. No consents relating to applications determined at a meeting of Council will be issued before 5pm on the day following the day the meeting of Council started.

2.3.4 Tabled documents

- 1) Documents are not to be tabled during a meeting, either by a Councillor or a member of the public, in relation to a matter before that meeting except in exceptional circumstances and then only with the leave of the Chairperson whose decision will be final on the matter;
- 2) In the event that a Councillor wishes to table a document not covered by 1) above, that document must be given to the General Manager ***by 3:00pm of the day of the meeting;***
- 3) Any other documents that a Councillor or a member of the public wishes to submit to Council should be forwarded to the General Manager in the normal manner.
- 4) Correspondence from Councillors during Councillors' Questions Without Notice may be referred to management for further report where that correspondence does not relate to business on the Business Paper. Correspondence referred to in this manner will not be deemed "tabled" and therefore not form part of Council's recorded Minutes.



2.3.5 Agendas

Business is dealt with in four general sections being;

- General Manager
- City Planning
- Infrastructure Services
- Support Services

Business papers for each meeting shall be conveyed to Councillors at least 3 working days prior to the Meeting. Business papers will also be available for the public in the reception of the Council offices from the Monday or as soon as practical prior to the meeting and in the Gallery of the Council Chambers just prior to the meeting commencing. Copies of the individual reports will be available from the Enquiries Counter from the Friday prior to the meeting or as soon as practical.

2.3.6 Order of Business

The order of business for Ordinary Meetings shall be as follows:

- 1) Welcome
 - a) Prayer
 - b) Acknowledgement of Indigenous Heritage
- 2) Apologies
- 3) Declaration of Interests
- 4) Confirmation of Minutes
- 5) Agenda Items subject to public address (see also clause 3.3.8 of this Code).
- 6) Mayoral Minutes
- 7) Questions with Notice
- 8) Notice of Motion
- 9) Exception Report - Identification of Items for Discussion and Decision
- 10) Reports for Determination
 - General Manager
 - City Planning
 - Infrastructure Services
 - Support Services
- 11) Receipt of Minutes of Other Committees
- 12) Councillors' Questions without Notice
- 13) ***Reports Proposed to be discussed in Confidential Session***

2.3.7 Late Reports

As circumstances necessitate, reports not listed for consideration on a business paper may be tabled at an Ordinary Meeting. In such circumstances, prior to discussion or determination of the matter, a period of time (to be determined by the chairman) shall be allowed for Councillors to read the report. The aforementioned late reports are to be forwarded to Councillors via email as well as facsimile.



3. CONDUCT OF MEETINGS

3.1 LOCAL GOVERNMENT ACT 1993 AND SUBSEQUENT AMENDMENTS - PROVISIONS

3.1.1 What is the Quorum for A Meeting? (Section 368)

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.

3.1.2 Who Presides At Meetings of the Council? (Section 369)

- 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.

3.1.3 What Are the Voting Entitlements of Councillors? (Section 370)

- 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.

3.1.4 What Constitutes A Decision of the Council? (Section 371)

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.

3.1.5 Rescinding Or Altering Resolutions (Section 372)

- 1) A resolution passed by Council may not be altered or rescinded except by a motion to that effect of which notice has been duly given in accordance with 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 is not carried, 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 negated 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 negated, as the case may be.
- 5) If a motion to alter or rescind a resolution has been negated, or if a motion which has the same effect as a previously negated motion, is negated, 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.
- 7) The provisions of this section concerning negated motions do not apply to motions of adjournment.



3.1.6 Certain Circumstances Do Not Invalidate Council Decisions (Section 374)

Proceedings at a meeting of Council or 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 at a Council or committee meeting in accordance with section 451 (see 3.1.8); or
- e) a failure to comply with the code of meeting practice.

3.1.7 Attendance of General Manager At Meetings (Section 376)

- 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.

3.1.8 Disclosure and Participation in Meetings (Section 451)

Pecuniary Interests

- 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 interest to the meeting as soon as practicable. The disclosure must be in writing and describe the nature and extent of the pecuniary interest.

(The definition of what a pecuniary interest is, who has a pecuniary interest and what interests do not have to be disclosed are outlined in Sections 442, 443 and 448 respectively of the Act. These sections of the Act are reproduced in full in Annexure C to this document - (See Annexure C - PECUNIARY INTERESTS).

- 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) The Councillor or member must not take part in the consideration or discussion of the matter.
- 4) The Councillor or member must not vote on any question relating to the matter.
- 5) ***A Councillor who has a non-pecuniary conflict of interest (as defined by Council's Code of Conduct) in any matter in which the council is concerned is required to disclose the nature of the interest to the meeting of the Council or Committee of the Council as soon as practicable. The disclosure must be in writing and describe the nature and extent of the pecuniary interest.***
- 6) ***Non-pecuniary conflicts of interest must be managed in accordance with Council's Code of Conduct.***
- 7) ***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 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.

- 8) *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.***

3.1.9 Non Attendance At Council Meetings (Section 234(d))

A civic office becomes vacant if the holder is absent without prior leave of the Council from three consecutive ordinary meetings of the Council. .

3.1.10 Which Parts Of A Meeting Can Be Closed To The Public (Section 10A)

- 1) 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;
 - 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; and
 - h) information concerning the nature and location of a place or an item of Aboriginal significance on community land.
- 3) 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) Council, or a Committee of 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.

3.1.11 Further Limitations Relating To Closure Of Parts Of Meetings To Public (Section 10B)

- 1) A meeting is not to remain closed during the discussion of anything referred to in Section 10A (2) (see 3.1.10):-
 - 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) (see 3.1.10) 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)) (see 3.1.10), 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)) (see 3.1.10).
- 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.
- 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.

3.1.12 Notice Of Likelihood Of Closure Not Required In Urgent Cases (Section 10C)

Part of a meeting of Council, or of a committee of 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) (see 3.1.10); and
- b) the Council or committee, after considering any representations made under Section 10A(4) (see 3.1.10), 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.

3.1.13 Grounds For Closing Part Of Meeting To Be Specified (Section 10D)

- 1) The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting must be recorded in the minutes of the meeting.
- 2) The grounds must specify the following:-
 - a) the relevant provision of Section 10A(2) (see 3.1.10);
 - b) the matter that is to be discussed during the closed part of the meeting; and



- 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.

3.2 LOCAL GOVERNMENT (GENERAL) REGULATION 2005 - PROVISIONS

3.2.1 Official Minutes (Clause 243)

- 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.

3.2.2 Report of a Departmental Representative to be Tabled at Council Meeting (Clause 244)

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

3.2.3 Notice of Motion - Absence of Mover (Clause 245)

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.

3.2.4 Motions to Be Seconded (Clause 246)

A motion or an amendment cannot be debated unless or until it has been seconded. This clause is subject to clauses 243 (2) (see 3.2.1) and 250 (5) (see 3.2.8).

3.2.5 How Subsequent Amendments May Be Moved (Clause 247)

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.

3.2.6 Motions of Dissent (Clause 248)

- 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 carried, 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 or 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 250 (see 3.2.8), 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.

3.2.7 Questions May Be Put to Councillors and Council Employees (Clause 249)

- 1) A Councillor:
 - a) may, through the chairperson, put a question to another Councillor; and
 - b) may, through the General Manager, put a question to a Council employee.
- 2) 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.
- 3) The Councillor must put every such question directly, succinctly and without argument.
- 4) The chairperson must not permit discussion on any reply or refusal to reply to a question put to a Councillor or Council employee under this clause.

3.2.8 Limitation As To Number of Speeches (Clause 250)

- 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 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.
- 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.



3.2.9 Voting at council meetings (Clause 251)

- 1) 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.
- 2) 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.
- 3) The decision of the chairperson as to the result of a vote is final, unless the decision is immediately challenged and not fewer than two Councillors rise and demand a division.
- 4) 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.
- 5) 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 2005 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 394 and clause 3 of Schedule 7). Clause 3 of Schedule 7 also makes it clear that "ballot" has its normal meaning of secret ballot.)

3.2.10 Recording of voting on planning matters (Section 375A)

- 1) ***In this section, planning decision means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:***
 - (a) ***including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but***
 - (b) ***not including the making of an order under Division 2A of Part 6 of that Act.***
- 2) ***The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.***
- 3) ***For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.***
- 4) ***Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.***
- 5) ***This section extends to a meeting that is closed to the public.***

3.2.11 Representations By Members Of The Public closure Of Part Of Meeting (Clause 252)

- 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 of five minutes, 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.



3.2.12 Resolutions passed at closed meetings to be made public (Clause 253)

If a Council passes a resolution during a meeting, or 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.

3.2.13 Matters to be included in Minutes of Council Meeting (Clause 254)

The General Manager must ensure that the following matters are recorded in the Council's minutes:

- a) *details of each motion moved at a Council Meeting and of any amendments moved to it;*
- b) *the names of the mover and seconder of the motion or amendment;*
- c) *whether the motion or amendment is passed or lost.*

3.3 POLICY - PROVISIONS

3.3.1 Conduct of Business by Exception

In order to facilitate efficient, effective and comprehensive discussion on agenda items, Council will deal with those items by way of "Exception Reporting". The "Exception Reporting" procedure will be as follows:

1. Following discussion by Council of Item 8) "Notice of Motion" in the Ordinary Business of the meeting, the Chairperson will introduce the item "Exception Reports".
2. Councillors shall advise the General Manager of those items for discussion **by 3:00pm on the day of the meeting.**
3. The General Manager will cause a list of those agenda items to be displayed during the meeting for reference by elected members and members of the public present.
4. Those agenda items not raised for discussion by the elected members will be moved by the Chairperson for adoption as presented in the business papers. Upon resolution by Council, those matters moved by the Chairman will be adopted as decisions by Council.
5. Those agenda items identified by Councillors for discussion and listed by the General Manager will be determined in the following manner:
 - a) The Chairperson will identify each item for discussion by Council.
 - b) The Chairperson will call for a motion on the item.
 - c) The Chairperson will call for speakers against the motion. Should no Councillor elect to speak against the item, the Chairperson will then put the motion; or
 - d) The Chairperson will invite the mover of the motion to speak followed by a speaker in opposition. The Chairperson will then invite a speaker in favour and then a speaker in opposition. The mover will be given the right of reply. At the completion of the right of reply the motion will be put.
 - e) The same process will be repeated for an amending motion.

3.3.2 Voting at meetings

Voting at Ordinary meeting must be by open means.

An electronic voting system has been installed in the Council Chambers and the chairperson at his or her discretion, may elect to request Councillors to vote using this system if a division is likely.

Otherwise, Councillors shall vote by voice or by a show of hands. Any Councillor present in the Council Chamber room but not expressing a voting preference shall be deemed to have voted in the negative.



3.3.3 Voting In An Election

Voting in an election at a Council meeting, must be by open means. However, there is an exception that Councillors can elect the mayor or deputy mayor by secret ballot.

3.3.4 Mode of addressing Council

Councillors shall seek the call to speak by using the electronic light system, raising their hand or rising in their place. Councillors may address the meeting while remaining seated or standing and address their remarks through the chair.

3.3.5 Presence of Councillors

A Councillor shall not be deemed to be present at any meeting of the Council, unless they are within the Council Chamber. For the purposes of this requirement, the Council Chambers foyer is not regarded as being in the Council Chamber.

However, for the sake of clarity, a Councillor declaring an interest in a matter and leaving the chamber shall not remain in either the public gallery or any part of the foyer within view of the meeting.

3.3.6 Questions

All questions from Councillors to Councillors or Council staff, should be put categorically and without any argument. Discussion is not permitted in respect of any reply or refusal to reply to any questions. Councillors should keep the number of questions to a minimum.

3.3.7 Questions with notice

Councillors may submit questions to the General Manager 7 days prior to the meeting at which they request the question to be answered.

These questions are not subject to discussion, debate or public address.

3.3.8 Mode of Addressing Council by the Public

Hawkesbury City Council actively encourages participation of residents in the decision making process and is happy to hear from people regarding matters raised in the Business Paper ***subject to the provisions of Clause 3.3.7 in respect of Questions With Notice.*** The provisions of this clause shall apply to Ordinary and, subject to resolution of Council as referred to in (7) below, to Extraordinary Meetings of the Council.

The procedure for addressing Council is as follows:

1. All proponents and respondents wishing to speak must make application on the relevant form indicating whether they are for or against the item prior to the commencement of the meeting. The application form will include a detailed explanation of the provisions of this code relating to maintaining order at meetings. The application form will include an undertaking, to be signed by the person wishing to speak, to comply with these provisions and to refrain from any insult, allegation or personal reflection against any person, present or not, during the course of their address to Council and any answers they give to questions from councillors. Persons intending to apply for approval to address Council must contact the Council by telephone, email, facsimile or in person to indicate their intention prior to 3pm on the day of the meeting to enable appropriate scheduling of items. Where possible persons wishing to address Council are requested to lodge their completed application form with the General Manager by this time.
2. The proponent or applicant, supporters or other interested parties to a maximum of three are given five minutes to address Council to support their position. At meetings where applications for fewer than 20 addresses to Council have been received, the Chairperson may, with the consent of the members, grant a two minute extension.



3. Respondents are given the opportunity to address Council and are allowed a maximum of three speakers are given up to a maximum of five minutes speaking time each. At meetings where applications for fewer than 20 addresses to Council have been received, the Chairperson may, with the consent of the members, grant a two minute extension.
4. The proponent or applicant is given the right to respond to any new material raised only, for a period of two minutes.
5. At meetings where applications for more than 20 addresses to Council have been received, **a person should speak only on one item unless granted permission by the Chairperson who will have regard to the circumstances of each case taking into account such factors as the nature of the interest in the matter eg applicant, neighbour, and the number of speakers on the item or collectively on the agenda.**
6. At the conclusion of an address by a member or members of the public on an item on the agenda, the Council will then proceed to discuss and determine that item and this procedure shall be repeated for each of these items that are subject to an address by a member or members of the public, unless determined otherwise by Council
7. In the case of Extraordinary Meetings, Council may resolve to increase the number of speakers permitted to address Council and to amend the normal five minute maximum speaking time, provided that the total amount of time allocated for speakers does not exceed 30 minutes for speakers in favour and 30 minutes for speakers against, in addition to no more than 10 minutes provided for speakers on each side to answer questions from Councillors and no more than five minutes for a right of reply from each side.
8. **The Chairperson may deal with issues concerning the relevance in debate in accordance with 4.3.2**
9. **Councillors may ask questions of members of the public who address Council in order to clarify their understanding of the speaker's view or to seek specific additional information. Similar to 3.2.7, Councillors should have the same regard for members of the public and put all such questions to speakers directly, succinctly and without argument**

Council may wish to deal with the matters that involve speakers prior to dealing with other matters on the agenda for the convenience of interested parties.

3.3.9 Inspections

Councillors are at liberty to carry out inspections of items listed for consideration on business papers.

Whenever specifically resolved by the Council, on-site inspections of properties or other matters relevant to an item on the business paper, will be arranged by the General Manager for during or after the meeting (unless otherwise resolved).

3.3.10 Conferences

The Council may from time to time resolve to hold conferences or public meetings with members of the public involved in the matter, in order to assist with the determination of a particular matter. Those members of the public involved in the matter are to be notified in writing, by facsimile, telephone as appropriate or by public notice of the meeting not less than three working days prior to the conference.

3.3.11 Open Meetings

ANNEXURE D - OPEN MEETINGS GUIDELINES' prepared by the Department of Local Government are adopted as the policy in terms of open meetings.



4. MAINTAINING ORDER AT MEETINGS

4.1 LOCAL GOVERNMENT ACT 1993 - PROVISIONS

4.1.1 Conduct of Meetings of Councils and Committees (Section 360)

- 1) The regulations may make provisions with respect to the conduct of meetings of Councils and committees of Councils of which all the members are Councillors.
- 2) Council may adopt a code of meeting practice that incorporates the regulations made for the purposes of this section and supplements those regulations with provisions that are not inconsistent with them.
- 3) 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.

4.2 LOCAL GOVERNMENT (GENERAL) REGULATION 2005 - PROVISIONS

4.2.1 Questions of Order (Clause 255)

- 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.

4.2.2 Acts of Disorder (Clause 256)

- 1) A Councillor commits an act of disorder if the Councillor, at a meeting of Council or a committee of 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 or makes personal reflections on or imputes improper motives to any other Councillor; 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 for an act of disorder referred to in a 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 (see 3.1.10), 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.

4.2.3 How Disorder At A Meeting May Be Dealt With (Clause 257)

- 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 (see 3.1.10), be expelled from a meeting of the Council for engaging in or having engaged in disorderly conduct at the meeting.
- 3) The Chairperson shall have the authority to expel a member of the public for disorderly conduct.

4.2.4 Power to Remove Persons From Meeting After Expulsion (Clause 258)

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.

4.3 POLICY - PROCEDURES

4.3.1 Order At Meetings

Councillors and staff shall be out of order if they:

- 1) move any motion or amendment which is beyond the legal jurisdiction of the Council;
- 2) act contrary to the provisions of the Local Government Act, the Local Government (Meetings) Regulation, this Code of Meeting Practice or Code of Conduct;
- 3) make insults or personal reflections or impute improper motives to any other Councillor, or staff member;
- 4) continually take frivolous or vexatious points of order;
- 5) repeatedly interject during the course of debate;
- 6) use rude or offensive language or gestures;
- 7) dispute a ruling of the Chair without first moving a motion of dissent.



4.3.2 Relevance in Debate

- 1) Councillors, in the course of debate, should not introduce material that is irrelevant to the item under discussion. If a Councillor is called to order for a second time in a single speech for introducing irrelevant material, he or she shall immediately cease speaking and resume his or her seat.
- 2) ***Members of the public who address Council also have an obligation to ensure relevance to the item under discussion. The Chairperson has the discretion, including action similar to (1) above, to deal with members of the public who introduce irrelevant material.***



5. COMMITTEES

5.1 LOCAL GOVERNMENT ACT 1993 - PROVISIONS

5.1.1 Committee of Council (Section 373)

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

5.2 LOCAL GOVERNMENT (GENERAL) REGULATION 2005 - PROVISIONS

5.2.1 Committee of the Whole (Clause 259)

- 1) All the provisions of this Regulation relating to meetings of 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, 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 a 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.

5.2.2 Council May Establish Committees (Clause 260)

- 1) 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.

5.2.3 Functions of Committees (Clause 261)

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

5.2.4 Notice of Committee Meetings to be Given (Clause 262)

- 1) The General Manager of a Council must send to each Councillor, at least three (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 three (3) days may be given of a Committee meeting called in an emergency.



5.2.5 Non-Members Entitled To Attend Committee Meetings (Clause 263)

- 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 for the meeting; or
 - b) to move or second a motion at the meeting; or
 - c) to vote at the meeting.

5.2.6 Representations By Members Of The Public Closure Of Part Of Meeting Clause 264)

- 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 of five minutes 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.

5.2.7 Procedure in Committees (Clause 265)

- 1) Subject to subclause (3), each committee of Council may regulate its own procedure.
- 2) Without limiting subclause (1), a committee of 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.
- 3) Voting at a committee meeting is to be by open means (such as by voices or by show of hands).

5.2.8 Committees To Keep Minutes (Clause 266)

- 1) Each committee of Council must ensure that full and accurate minutes of the proceedings of its meetings are kept. In particular, a committee must ensure that the following matters are recorded in the committee's minutes:
 - a) details of each motion moved at a meeting and of any amendments moved to it,
 - b) the names of the mover and seconder of the motion or amendment,
 - c) whether the motion or amendment is passed or lost.
- 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.

5.2.9 Chairperson and Deputy Chairperson of Committees (Clause 267)

- 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) 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 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 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.

5.2.10 Absence From Committee Meetings (Clause 268)

- 1) A member ceases to be a member of a committee if the member (other than the mayor):
 - a) has been absent from three 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.)

5.2.11 Reports of Committees (Clause 269)

- 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 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.

5.2.12 Disorder in Committee Meetings (Clause 270)

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, and advisory committees of Council, in the same way as they apply to meetings of the Council.

5.2.13 Certain Persons May Be Expelled from Council Committee Meetings (Clause 271)

- 1) ***If a meeting or part of a meeting of a Committee of a Council is closed to the public in accordance with Section 10A 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 the place and, if necessary, restrain that person from re-entering that place.

5.3 POLICY PROVISIONS

5.3.1 Establishment of Committees and Appointment of Members

The Council may establish committees for any specific purposes or functions as it considers necessary. The committee structure is to be reviewed annually in conjunction with the Special Meeting to elect the Mayor and Deputy Mayor for the ensuing year. Committee members are to be appointed at the same meeting or at any other Ordinary Meeting of Council in the case of vacancies arising or the establishment of a new committee.

5.3.2 Committee Of The Whole - Closed Meeting

- 1) When Council passes a resolution during a closed meeting or part of a meeting, the chairperson must make public the resolution as soon as practicable after the meeting or part has ended. This is to ensure that all Council decisions are disclosed to the public.
- 2) The resolution or recommendation must be reported to the next Council meeting. This is to ensure the public are aware of the committee's recommendations or decisions.
- 3) In some circumstances commercial or legal issues will determine when it is practicable to release details. However, as a general rule the public should be kept informed of Committee or closed session resolutions in an adequate and timely manner.

5.3.3 Committee of the Whole - Declaration of Interest

Whenever a matter comes before Council that is determined by Committee of the Whole any Councillor declaring an interest in the matter, must vacate the Chamber while that issue is being determined.



6. RECORD OF MEETINGS

6.1 LOCAL GOVERNMENT ACT 1993 AND SUBSEQUENT AMENDMENTS - PROVISIONS

6.1.1 Public Access to Correspondence and Reports (Section 11)

- 1) 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) (see 3.1.10), are to be treated as confidential.

6.1.2 Minutes (Section 375)

- 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.

6.2 LOCAL GOVERNMENT (GENERAL) REGULATION 2005- PROVISIONS

6.2.1 Disclosure and Misuse of Information-Prescribed Circumstances (Clause 412)

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.

6.2.2 Inspection of the Minutes of a Council or Committee (Clause 272)

- 1) An inspection of the minutes of Council or committee of 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 (see 8.1.1) of the Act confers a right (restricted in the case of closed part of meetings) to inspect the minutes of a Council or committee of a Council.)



6.2.3 Recording of Meeting of Council or Committee Prohibited Without Permission (Clause 273)

- 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 authority of the Council or committee.
- 2) A person may, as proved by section 10 (2) (a) or (b) of the Act (see 3.1.10), be expelled from a meeting of a Council or a committee for using or having used a tape recorder in contravention of this clause. The Chairperson shall have the authority to determine if a member of the public shall be expelled.
- 3) If any such person, after being notified of such 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 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 video camera and any electronic device capable of recording speech, whether a magnetic tape is used to record or not.
- 5) ***All mobile phones in the Chamber and Public Gallery are to be turned off or switched to silent/vibrate. Failure to do so may be treated as an act of disorder.***

6.3 POLICY PROVISIONS

6.3.1 Minutes of Meetings

For the purpose of compiling the minutes of Ordinary Meetings, each meeting, except for "Confidential Matters" will be recorded. The recordings will be destroyed after the adoption of the minutes by Council or three (3) months after they were created(which ever is the later). Appropriate signs will be displayed in the Council Chambers and at the entry of the Chambers. The Chairperson will inform the public that the meeting is being recorded at the commencement of the meeting

The minutes of meetings can be viewed by the public under supervision of an employee designated by the General Manager.

6.3.2 Communication of Council Decisions

Details of Council resolutions shall be made available to the public on the day following the meeting.

6.4 OTHER MATTERS

Any other ruling or interpretation not covered by this Code of Meeting Practice or the Local Government Act shall be determined by the meeting chairperson or by resolution of Council or rules of Standing Order of the NSW Parliament.

Changes to the Local Government Act and Regulations automatically change the Code. Automatic amendment of the Code by the Act and/or Regulation does not require public notification under Sections 361 to 363 of the Local Government Act 1993.



7. ANNEXURE A

7.1 THE COUNCIL'S CHARTER (SECTION 8)

The Council has the following charter:

- 1) to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- 2) to exercise community leadership;
- 3) to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism;
- 4) to promote and to provide and plan for the needs of children;
- 5) to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- 6) to have regard to the long term and cumulative effects of its decisions;
- 7) to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible;
- 8) to facilitate the involvement of Councillors, members of the public, users of facilities and services and Council staff in the development, improvement and co-ordination of local government;
- 9) to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants;
- 10) to keep the local community and the State Government (and through it, the wider community) informed about its activities;
- 11) to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the Council is affected; and
- 12) to be a responsible employer.



8. ANNEXURE B

8.1 ACCESS TO INFORMATION

8.1.1 What Information Is Publicly Available? (Section 12)

1. Everyone is entitled to inspect the current version of the following documents free of charge:
 - the Council's code of conduct;
 - the Council's code of meeting practice;
 - annual report;
 - annual financial reports;
 - auditor's report;
 - management plan;
 - EEO management plan;
 - the Council's policy concerning the payment of expenses incurred by, and the provision of facilities to, Councillors;
 - the Council's land register;
 - register of investments;
 - returns of the interests of Councillors, designated persons and delegates;
 - agendas and business papers for Council and Committee Meetings (but not including business papers for matters considered when part of a meeting is closed to the public);
 - minutes of Council and Committee Meetings, but restricted (in the case of any part of a meeting that is closed to the public), to the resolutions and recommendations of the meeting;
 - ***the register of current declarations of disclosures of political donations to councillors kept in accordance with section 328A;***
 - ***the register of councillor voting on planning matters kept in accordance with section 375A;***
 - any codes referred to in the Local Government Act;
 - register of delegations;
 - annual reports of bodies exercising delegated Council functions;
 - applications under Part 1 of Chapter 7 for approval to erect a building, and associated documents;
 - development applications (within the meaning of the *Environmental Planning and Assessment Act 1979*) and associated documents;
 - local policies adopted by the Council concerning approvals and orders;



- records of approvals granted, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals;
- records of building certificates;
- plans of land proposed to be compulsorily acquired by the Council;
- leases and licences for use of public land classified as community land;
- plans of management for community land;
- environmental planning instruments, development control plans and plans made under Section 94AB of the *Environmental Planning and Assessment Act 1979* applying to land within the Council's area;
- the statement of affairs, the summary of affairs and the register of policy documents required under the *Freedom of Information Act 1989*;
- departmental representatives' reports presented at a meeting of the Council in accordance with Section 433; and
- ***the register of graffiti removal work kept in accordance with section 13 of the Graffiti Control Act 2008.***

- 1A. Despite subsection (1) and the other provisions of this Act, a person does not have the right to inspect so much of a development application, or an application under Part 1 of Chapter 7 for approval to erect a building, as consists of:-
- a the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected; or
 - b commercial information, if the information would be likely to:
 - i) prejudice the commercial position of the person who supplied it; or
 - ii) reveal a trade secret.
2. Everyone is entitled to inspect free of charge:
- a. a document that was replaced by a current document referred to in subsection (1); and
 - b. if a document referred to in subsection (1) is produced annually - the corresponding document produced for the previous year.
3. The documents may be inspected at the office of the Council during ordinary office hours.
4. Repealed
5. The Council must allow inspection of versions of the documents other than the current and immediately preceding versions if those other versions are reasonably accessible.
6. The Council must allow inspection of its other documents free of charge unless, in the case of a particular document, it is satisfied that allowing inspection of the document would, on balance, be contrary to the public interest.
7. However, subsection (6) does not apply to the part (if any) of a document that deals with any of the following:-
- a. personnel matters concerning particular individuals;



- b. the personal hardship of any resident or ratepayer;
- c. trade secrets;
- d. a matter the disclosure of which would:-
 - i. constitute an offence against an Act; or
 - ii. found an action for breach of confidence.
- e. ***that part of a draft or adopted plan of management that is the subject of a resolution of confidentiality under section 36DA.***

8. For the purpose of determining whether allowing inspection of a document would be contrary to the public interest, it is irrelevant that the inspection of the document may:-
- a. cause embarrassment to the Council or to Councillors or to employees of the Council; or
 - b. cause a loss of confidence in the Council; or
 - c. cause a person to misinterpret or misunderstand the information contained in the document because of an omission from the document or for any other reason.

Note, Subsection (8) is in similar terms to Section 59A (Public Interest) of the Freedom of Information Act 1989.

Note, A Council could also make copies of the documents available at other places, for example, at libraries.

A Council may have other information available for inspection free of charge: for example, the rate record, the valuation list and the register of dog registrations.

8.1.2 Restriction Of Access To Information (Section 12A)

- 1) If the General Manager or any other member of the staff of a Council decides that access to a document or other information held by the Council should not be given to the public or a Councillor, the person concerned must provide the Council with written reasons for the restriction.
- 2) The reasons must be publicly available.
- 3) The Council must review any such restriction no later than 3 months after it is imposed.
- 4) The Council must, at the request of any person made after the expiry of a period of 3 months after that review (or of a period of 3 months after the most recent of any subsequent reviews), carry out a further review of the restriction.
- 5) The Council must remove the restriction if, at any time:-
 - a) it finds that there are no grounds for the restriction; or
 - b) access to the relevant document or other information is obtained under the *Freedom of Information Act 1989*.
- 6) A review is not required under this section if the restriction concerned has been removed.



8.1.3 Copies Of Documents (Section 12B)

- 1) A right under this Act to inspect a document includes the right to take away a copy of the document.
- 2) Accordingly, a Council must have a copy of all relevant documents available for copying by, or on behalf of, any person who asks for one.
- 3) The copies may be taken away either free of charge or on payment of reasonable copying charges, as the Council chooses (except as otherwise specifically provided by or under this Act).
- 4) This section does not apply to the following:-
 - a) the residential roll of electors referred to in Section 302(1);
 - b) the resumes of candidates for election referred to in Section 308; and
 - c) building certificates.

Note, Section 174(3) provides that a person may obtain a copy of a building certificate from the Council's record with the consent of the owner of the building (and on payment of the approved fee).

8.1.4 Retention and preservation of records (Section 13)

The Council must retain, preserve and destroy its records in accordance with any approved standards.



9. ANNEXURE C - PECUNIARY INTERESTS

9.1 WHO ARE "DESIGNATED PERSONS"? (SECTION 441)

The purposes of this Chapter, *designated persons* are:-

- 1) the General Manager;
- 2) other senior staff of the Council;
- 3) 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 and 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; and
- 4) 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.

9.2 WHAT IS A "PECUNIARY INTEREST"? (SECTION 442)

- 1) For the purposes of the 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 or another person with whom the person is associated as provided in Section 443 (see 9.3).
- 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 or if the interest is a kind specified in Section 448 (see 9.8).

9.3 WHO HAS A PECUNIARY INTEREST? (SECTION 443)

- 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.
- 2) A person is taken to have a pecuniary interest in a matter if:
 - a) the person's spouse or de facto partner or a relative of the person has a pecuniary interest in the matter; or
 - b) the person, or a nominee, partner or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.
- 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 or company or other body;



- 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.

9.4 WHAT DISCLOSURES MUST BE MADE BY A COUNCILLOR? (SECTION 444)

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 (see 3.1.8).

9.5 WHAT DISCLOSURES MUST BE MADE BY A DESIGNATED PERSON? (SECTION 445)

A designated person:-

- a) must prepare and submit written returns of interest in accordance with Section 449; and
- b) must disclose pecuniary interests in accordance with Section 459.

9.6 WHAT DISCLOSURES MUST BE MADE BY A MEMBER OF A COUNCIL COMMITTEE? (SECTION 446)

A member of a Council committee, other than a committee that is wholly advisory, must disclose pecuniary interests in accordance with Section 451 (see 3.1.8).

9.7 WHAT DISCLOSURES MUST BE MADE BY COUNCIL ADVISERS? (SECTION 447)

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

9.8 WHAT INTERESTS DO NOT HAVE TO BE DISCLOSED? (SECTION 448)

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 of which the provision of a service or the supply of goods or commodities is offered to the public or 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 provisions 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 another person with whom the person is associated as provided in Section 443 (see 9.3) 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, or adjacent to, or in proximity to land referred to in paragraph (a),
if the person or the other person with whom the person is associated 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) or 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 agreement 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 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.



10. ANNEXURE D - OPEN MEETINGS GUIDELINES

DEPARTMENT OF LOCAL GOVERNMENT

JULY 1998

(with updates due to statutory changes)

10.1 INTRODUCTION

The Local Government Act 1993 has been amended by the Local Government Amendment (Open Meetings) Act 1997 to highlight public access to Council meetings and provide the public and Councillors with greater and more convenient access to Council-held information. These reforms are intended to enhance the transparency of the local government decision making process and increase the openness of local government generally. They seek to increase the accountability of Councils to their communities and assist them in understanding and fulfilling the needs and expectations of their primary clients, the public.

The reforms were the product of a comprehensive consultation process. In October 1996, the Hon Ernie Page MP, Minister for Local Government, released a Discussion Paper containing Options to Reform Those Provisions of the Local Government Act 1993 Regulating Open Council Meetings and Public Access to Council Information. The comments contained in the many responses to the Discussion Paper were considered in the development of the legislative changes. Additional representations were received and considered during debate on the Amendment Bill.

The Department of Local Government has prepared these guidelines, after consultation with the Local Government and Shires Association of NSW, to provide assistance to Councils in the conduct of their meetings and the provision of information in an open manner.

In these guidelines, a reference to a committee is a reference to a Council committee of which all the members are Councillors.



10.2 THE IMPORTANCE OF OPEN MEETINGS

10.2.1 Social justice - the public's right to participation

The Government's Social Justice Strategy is based on the four principles of equity, access, participation and rights. These principles are fundamental for enabling communities to have effective control over their lives and their environment.

The NSW Social Justice Directions Statement commits the Government to ensuring that people have better opportunities for genuine participation and consultation about decisions affecting their lives. To achieve this in the context of local government, it is important that Council's decision-making processes be as open, responsive and effective as possible. The Council's Charter under the Local Government Act 1993 requires Councils to keep the local community informed about its activities.

There is an expectation within communities that Councils will live up to the claim that local government is the level of government "closest to the people" by encouraging more public participation in carrying out their decision making responsibilities. It is important that a Council's decision making process be as open, responsive and effective as possible.

10.2.2 Accountability of local government to the community

The potential of local government is best realised when its decision-making is open and accountable to the local community. However, for accountability to be effective, there need to be mechanisms for citizen knowledge and participation in decision-making processes. The ability of the public and media to attend Council meetings and observe the deliberations and decisions of elected representatives plays a crucial role in achieving better standards of accountability.

Councillors are expected to make their decisions honestly and impartially. They should be prepared to have their views aired publicly, on both controversial and routine issues. This is an integral element in ensuring accountability of Councillors to their constituents. The capacity of electors to vote in an informed manner is best achieved when they can clearly see the actions, including the speeches and voting patterns of their Councillors.

Council have the benefit of qualified privilege during Council and committee meetings. This means that comment by Councillors is protected from defamation proceedings provided the comment is not motivated by bad faith or malice.

Meetings to consider controversial building and development applications should not be closed to the public in order to avoid public opposition to the proposal or to protect the applicant from potential competition. The accountability of the Council for its decision on such a proposal can only be fully achieved if the decision making process is transparent to the public.

In all Council decisions it is essential to openly demonstrate fairness, impartially. They should be prepared to have their views aired publicly, on both controversial and routine issues. This is an integral element in ensuring accountability of Councillors to their constituents. The capacity of electors to vote in an informed manner is best achieved when they can clearly see the actions, including the speeches and voting patterns, of their Councillors.

Councillors have the benefit of qualified privilege during Council and committee meetings. This means that comment by Councillors is protected from defamation proceedings provided the comment is not motivated by bad faith or malice.

Meetings to consider controversial building and development applications should not be closed to the public in order to avoid public opposition to the proposal or to protect the applicant from potential competition. The accountability of the Council for its decision on such a proposal can only be fully achieved if the decision making process is transparent to the public.

In all Council decisions it is essential to openly demonstrate fairness, impartiality, objectivity and due consideration of all issues. Open decision making also provides some assurance of probity and integrity as well as preventing misunderstanding or even unfounded allegations.



Councils are now required to ensure that all Council and committee meetings are open to the public except in the circumstances for closing parts of meetings set out in the Act.

10.3 STEPS TO ACHIEVE OPEN MEETINGS

10.3.1 Public to be advised that part of a meeting is likely to be closed to public

Only parts of a Council or committee meeting can be closed the public.

Councils must continue to give prior public notice in the agenda of the intention to debate a matter in closed session. The decision on how to arrange items of business in the agenda would best be made by the General Manager as an operational issue, and this could be confirmed in Council's Code of Meeting Practice.

Advance notice of items of business to be considered in closed parts of meetings gives the community the ability to make known its views about such closure, and such views assist the Council or the committee in deciding whether or not (and why) parts of the meeting will be closed for the specified items.

If the Council or committee decides to disagree with the General Manager's recommendation that an item be discussed in closed session (as shown on the agenda), the Council or committee should announce that public representation on the item will not be needed.

The agenda should provide sufficient general information for an item of business of a closed part of a meeting to be identified, e.g. "Auction of land at 25 Civic Street, Hometown" or "Personnel matter - outdoor staff", but should not give details involving confidentiality, privilege or security, e.g. the reserve price of land to be auctioned by Council or the name of the person the subject of a personnel item of business.

Details of items of business involving confidentiality, privilege or security, including notices of motion relating to such matters, should be included in a confidential business paper. Such a business paper need not be included among the papers made available to the public prior to or at a meeting. Where such items are included in a confidential business paper, the claim that such items involve confidentiality, privilege or security must be sustainable.

10.3.2 Public may address Council on whether part of at a meeting should be closed

Members of the public may be allowed to make representations to or at a Council or committee meeting, before a part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

Where the Council or committee decides to allow members of the public to make representations on a proposed closure, immediately after at a motion to close part of a meeting to the public has been moved and seconded, debate on the motion should be suspended to allow the public to make such representations.

The period of time during which a member of the public is allowed to make such verbal representations is to be fixed by the Council's Code of Meeting Practice or, if the Council does not have a Code or its Code does not fix the period, it is to be fixed by Council resolution. Different periods can be fixed for the different types of matters. The insertion of a period or periods in the Code will require the Code to be amended in accordance with section 363 of the Act.

For example, a Code might adopt the following procedure:

- 1) After a motion to close part of a meeting to the public has been moved and seconded, the chairperson would ask the General Manager if there are any written representations from the public on the proposed closure;
- 2) The General Manager would read out any written representations;
- 3) The chairperson would ask if any persons wish to make verbal representations;
- 4) The opportunity to speak would be given to:



- i) each person who wishes to comment, chosen in random order; OR
 - ii) each person alternating on a "for" and "against" basis; OR
 - iii) representative persons chosen by the public gallery, speaking for or against the motion;
 - iv) depending on whatever option or options are adopted in the Council's Code;
- 5) Each person addressing the Council may be allowed to speak for the maximum period, eg. 2 minutes per person, fixed by the Council in the Code or by resolution;
- 6) The Council or committee could then close the meeting under section 10A(3) to consider whether part of the meeting should be closed to the public to consider the subject item.

The residents' debate need not be uninformed because they will be aware of the item by seeing it in the agenda and may have sufficient background information to comment usefully on the item.

Where the Council or committee decides to allow members of the public to make representations on a proposed closure, it should allow such number of members of the public to make representations on the proposed closure as is sufficient to enable the Council or committee to gauge the views of the members of the public present. All views, including those received before the meeting, should be taken into account by the Council or committee when deciding whether to close that part of the meeting to the public.

Alternatively the Code could specify that the Council or committee can decide whether to allow representations at the relevant meeting or that the public is not entitled to make such representations at any meeting.

The Council's Code of Meeting Practice could specify that the public may make representations to or at a meeting concerning the closure of part of the meeting to the public for all types of business. Alternatively, the Code could specify that the Council or Committee can decide whether to allow representations at the relevant meeting or that the public is not entitled to make such representations.

10.3.3 Closing Parts of Meetings in Urgent Cases

A Council or committee may close a part of a meeting to the public without prior notice where it becomes apparent during the course of debate that a matter should be considered in a closed meeting, and the matter is decided, by a resolution of the Council or committee, to be too urgent to be deferred. The resolution to close the meeting should not be put to the vote until the public has been allowed to make verbal representations, where allowing representations is the Council's policy (see 3.2.11).

10.3.4 Meetings should be closed only to consider confidential parts of items

A Council or a committee may close part of a meeting only for such portion of the debate on an item as is necessary to preserve confidentiality, privilege or security.

10.3.5 Specifying reasons for closing part of at a meeting

The Council or committee must specify the grounds for closing part of a meeting and this must be recorded in the minutes. In particular, it must specify:

- 1) the relevant provision of section 10A(2) (see 10.4.2) of the Act under which the part is being closed;
- 2) the matter to be discussed during the closed part of the meeting; and
- 3) the reasons why it is being closed, including an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

It is important that Councils ensure that the members of the public have sufficient information to understand why they have been excluded from the meeting. Where the details of the matter to be discussed are generalised to



preserve confidentiality, privilege or security, the degree of generalisation must be such that members of the public have sufficient information to clearly understand why they have been excluded.

Some Councils have relied on more than one of the relevant provisions to justify the exclusion of the public. This suggests that there might have been insufficient grounds under one particular provision to justify the Council's action. Meetings should not be closed on such a basis and Councils should ensure that the circumstances for the closure are justified under section 10A(2) (see 10.4.2) of the Act.

10.4 REASONS FOR CLOSING MEETINGS

10.4.1 Introduction

Parts of Council and committee meetings should be closed to the public only in the circumstances provided by the legislation.

Councils and committees should not close part of a meeting to discuss non-confidential issues. The only exception will be if any of these issues have features (eg personal hardship) which come under section 10A(2) of the Local Government Act.

The test for closure must always be "Is it in the public interest?" and closure can only occur in the circumstances provided by the legislation as set out below.

10.4.2 Reasons for closing parts of meeting

10.4.2.1 Personnel matters concerning particular individuals (Section 10A(2)(a))

Parts of meetings can be closed to the public to consider personnel matters concerning particular individuals such as their income, health and work performance but the name of the individual should not be shown in the agenda. As personnel matters are generally a management responsibility, it is unlikely that many matters of this nature would come before Councils. They would be more appropriately dealt with under delegation by the Council to the General Manager or under sub-delegation by the General Manager to staff.

Personnel matters of a more general nature, involving a section of staff or all staff, are not matters for which parts of a meeting can be closed.

10.4.2.2 Personal hardship of any resident or ratepayer (Section 10A(2)(b))

Parts of meetings can be closed to consider personal hardship, particularly circumstances preventing a resident or ratepayer paying rates or charges, or requesting financial assistance. Hardship for residents and ratepayers can also relate to circumstances such as child care concessions, building permit fees after bushfires, car parking offences, recreation ground fees for people with disabilities and library fines. Note in particular the waiving or reduction of fees under section 610A.

Again such matters could be handled under delegation to prevent the agenda and the meeting time being overloaded with ratepayers' personal affairs.

10.4.2.3 Information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting business or proposes to conduct business (Section 10A (2)(c))

This provision replaces the former provisions covering proposals for Council selling or purchasing land or other property.

A Council or committee may close part of a meeting to consider confidential matters such as a reserve price for the auction of Council land or surplus equipment, or the price it would be prepared to pay to purchase an article or property.



10.4.2.4 Commercial information of a confidential nature (Section 10A(2)(d))

A Council or committee may close part of a meeting to prevent the disclosure of commercial information of a confidential nature that would, if disclosed:

- 1) prejudice the commercial position of the person who supplied it, or
- 2) confer a commercial advantage on a competitor of the Council; or
- 3) reveal a trade secret.

It is stressed that this provision applies only **commercial** information that is of a **confidential** nature. This provision does not apply to information that is not commercial or is not confidential. For example, it cannot be used to prevent the consideration of a development application at an open meeting solely on the basis that it is a controversial matter. Nor does it prevent the open consideration of tenders/contracts.

Where a Council is considering entering into a contract, it should consider the inclusion in tender documentation for potential tenderers advice to the effect that commercial confidential detail provided by the tenderer will be included in a confidential business paper and not be made available to the public until after the tendering process has concluded. This would not preclude all other aspects and details of a tender/contract from being discussed openly.

Council's have the same protection for their confidential commercial activities as that applying to other persons.

10.4.2.5 Information that would, if disclosed, prejudice the maintenance of law (Section 10A(2)(e))

This provision covers circumstances such as the discussion of any confidential information passed to the Council by the Police Service.

10.4.2.6 Matters affecting the security of the Council, Councillors, Council staff or Council property (Section 10A(2)(f))

This provision covers circumstances such as the discussion of matters affecting the safety of Councillors or the protection of Council property.

10.4.2.7i Advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege (Section 10A(2)(g))

Councils and committees may close parts of meetings to receive and consider advice concerning litigation or any advice which would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

This power does not permit a part of a meeting to be closed to the public merely because the legal advice relates to a matter that may go to court. A meeting is not to be closed to receive and consider legal advice, unless the advice concerns legal matters that:

- (a) are substantial issues relating to a matter in which the Council or committees is involved; and
- (b) are clearly identified in the advice; and
- (c) are fully discussed in that advice.

Legal advice providing less than these 3 minimum requirements would not provide an adequate basis for a Council or committee to consider the legal ramifications of an issue in which it is involved and therefore would not justify the closure of part of the meeting to the public.



Councils should inform their various legal advisers of the new requirements so that the drafting of legal advice can conform to these requirements.

10.4.2.7ii Information concerning the nature and location of a place or an item of Aboriginal significance on community land (Section 10A(2)(h)).

This provision covers discussions concerning the nature and location of a place or an item of Aboriginal significance on community land.

10.4.2.8 Closed meeting to discuss a motion to close part of a meeting

A Council or committee has the discretion to close part of a meeting to the public to consider a motion to close another part of the meeting. However, consideration should be limited to the motion to close the other part of the meeting and should not be used for discussion of the substantive matter.

10.4.2.9 Other information sought to be kept confidential by applicants etc.

Councils may be requested by applicants to keep confidential certain information that would not come within section 10A(2) of the Act. In these cases the Council would still be required to comply with the legislation and not agree to such requests. To avoid these potentially embarrassing situations occurring, Councils should forewarn applicants that the contents of any documents, such as tenders, submitted to them could become public knowledge unless covered under section 10A(2) of the Act and that documentation should be prepared accordingly.

If confidential information is necessary to support an application, it should be possible for an applicant to satisfy the Council that a proposal is appropriate, possibly through reports by independent consultants, without having to reveal the details of confidential matters.

10.4.2.10 Performance reviews of General Managers

The types of matters listed in section 10A(2) in respect of which a Council can close a meeting, provide scope for Councils to close a meeting for the purpose of considering a General Manager's performance agreement where Council considers it appropriate to do so. The performance review ought to be a time of full and frank discussions and review of performance between parties, endeavouring to build a continuing harmonious relationship between the General Manager and Councillors.

While experience has shown that such full and frank discussions are best achieved in closed parts of meetings, Councils are encouraged to hold them in open meetings where practicable. The outcome of the performance review should be announced in an open part of the meeting.

10.4.2.11 Reasons for closing meetings - public interest

Any proposal to close part of a meeting should be subjected by the Council or committee to an overriding public interest test. The Council or committee must be convinced that disclosure of the information to be considered at a closed part of a meeting would, on balance, be contrary to the public interest before it closes the part of the meeting. However, the public interest test is not necessary where the matter being considered is one of personal hardship, personnel matters concerning particular individuals or a trade secret. The confidentiality aspect of these matters overrides any public interest considerations.

The criteria for the public interest test provided in section 10B(4) of the Local Government Act is in similar terms to the qualification contained in section 59A of the Freedom of Information Act 1989 (FOI Act), ie that 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 person may misinterpret or misunderstand the discussion or that the discussion may cause embarrassment or a loss of confidence in the Council, the committee, Councillors or Council employees.



10.5 PUBLIC ACCESS TO COUNCIL INFORMATION

10.5.1 Right to inspect documents - public interest criteria apply

The right to inspect documents under section 12(1) of the Act has been extended to include development and building applications. However, the right to inspect does not apply to:

- 1) plans and specifications contained in building and development applications for any residential parts of a proposed building, other than plans that show the height and external configuration of the building in relation to the site on which it is proposed to be erected; and
- 2) commercial information contained in building and development applications, which would be likely to prejudice the commercial position of the person who supplied it, or reveal a trade secret.

The Council must allow inspection of its documents not covered by section 12(1) free of charge, unless it is satisfied that allowing inspection of a particular document would, on balance, be contrary to the public interest. However, this requirement to allow inspection does not apply to any part of a document dealing with personnel matters concerning particular individuals, the personal hardship of any resident or ratepayer, trade secrets or a matter the disclosure of which would constitute an offence against an Act or found an action for breach of confidence.

The provision of information to the public by Councils is subject to the same public interest criteria as apply to the State Government under section 59A of the FOI Act. For the purpose of determining whether allowing inspection of a document would be contrary to the public interest, it is irrelevant that the inspection of the document may cause embarrassment to the Council, the Councillors or employees of the Council; or cause a loss of confidence in the Council; or cause a person to misinterpret or misunderstand the information contained in the document because of an omission from the document or for any other reason.

While section 12(1) gives entitlement to inspect some documents, persons might choose to inspect or access other documents under the FOI Act, where there is protection for defamation. Reference might also be made to section 664 of the Local Government Act, concerning disclosure and misuse of information.

The public officer has the responsibility of assisting people to gain access to the Council's public documents.

10.5.2 Right to inspect documents - associated documents

Documents associated with development and building applications under section 12(1) of the Act include development consents, building approvals or any other decisions or documents issued by the Council in relation to those applications. These associated documents must be available for inspection.

10.5.3 Right to inspect documents - legal documents

Section 12(6), allowing inspection of documents not referred to in section 12(1), does not override the common law right of Councils to refuse public access to documents that contain advice concerning litigation or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.

10.5.4 Right to take away copies of documents

Where a right to inspect documents is conferred or granted by or under the Local Government Act, that right includes a right to take away copies, either free of charge or on payment of reasonable copying charges, as the Council chooses. The right to take away copies or set a charge is subject to any contrary provision of the Act. For example, section 174 refers to an approved fee for a copy of building certificate and a person can obtain such a copy only with the consent of the building owner.

In addition, the right to take away copies under section 12B does **NOT** apply to copies of the residential roll of electors (referred to in s.302(1)) or the resumes of candidates for election (referred to in s.308).



10.5.5 Right to take away copies of documents - plans

The Copyright Act 1968 overrides the provisions of the Local Government Act. Material which is eligible for copyright protection includes plans of buildings and developments. These are protected automatically as soon as they are drawn or recorded in some way. A plan may be subject to copyright irrespective of whether it has a copyright notice, ie the © symbol, placed on it.

A Council should only allow a copy of a plan to be taken away if the approval of the copyright owner has been obtained.

Plans of a proposed building as merely show its height and its external configuration in relation to the site on which it is proposed to be erected, referred to in section 12(1A) of the Act, are not subject to copyright. Copies of such plans may be taken away.

10.5.6 Review of decisions restricting access to information

If the General Manager or other staff member of a Council denies access to information held by the Council to the public or a Councillor, the person concerned must provide the Council with written reasons for the restriction. The reasons must be publicly available.

A Council must review any restriction no later than 3 (three) months after it is imposed. If requested by any person, the Council must carry out a further review of the restriction 3 months after the first review or 3 (three) months after any subsequent review. If the Council finds that there are no grounds for the restriction, or if access to the information is obtained under the FOI Act, the Council must remove the restriction.

A Councillor or member of the public dissatisfied with the General Manager's or Council's decision on access to documents also has the right to seek access to the Council records through the FOI Act and, if access is not granted, to lodge a complaint with the Ombudsman or to appeal to the District Court.

A Councillor also retains the right to request the inspection of any Council record under clause 268 of the Local Government (General) Regulation 2005.