



KEMPSEY
Shire Council

DIRECTOR CORPORATE SERVICES REPORT

8th August 2006

**DCS7 CODE OF MEETING PRACTICE
 AMENDMENTS
 FILE: 395 PJH**

SUMMARY:

Reporting on the exhibition of Council's Draft Code of Meeting Practice.



DESCRIPTION:

Council's at its meeting of 13th June 2006 resolved to place on exhibition for 28 days its draft Code of Meeting Practice incorporating a number of amendments.

The amendments were generally inclusions stemming from the recommendations from the Department of Local Government's Promoting Better Practice report and the amendments covered the following: -

- Inclusion of guidelines for workshops
- Reviewing meeting schedules in regard to extra-ordinary meetings
- Clarifying works committee procedures

Public Exhibition and Submissions

The amended draft Code of Meeting Practice was exhibited for 28 days closing 18th July 2006.

Two (2) submissions were received being from the South West Rocks Ratepayers and Citizens Association Inc. and the Friends of South West Rocks Inc. These are shown at [\(Appendix F\)](#)

A copy of the Draft Code of Meeting Practice as exhibited is also attached at [\(Appendix G, Part 1, Part 2, Part 3\)](#).

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The submission from the South West Rocks Ratepayers makes comment that there is no reference to the Department of Local Government's Model Code of Conduct or the Department of Local Government's Meeting Practice Note 16 and seeks assurance that the Code of Meeting Practice conforms to these. While these documents are not quoted specifically in the documents the Code of Meeting Practice does comply with the Mode Code of Conduct and Meeting Practice Note 16.

The submission from the Friends of South West Rocks Inc. refers to a number of clauses from the Draft Code of Meeting Practice. The issues raised are listed on the following table with a Directors comment in relation to the matter/s raised.

Clause	Friends of SWR submission	Manager Administration Comment
2.3(1)	If an additional meeting is required to discuss "Ordinary Business" i.e. business discussed at "Ordinary Meetings" of Council, the same rules that apply to notice of meeting re time & place should apply.	The Local Government Act (section 367) provides that notice of less than 3 days (72 hours) may be given for an extra-ordinary meeting called in an emergency. Clause 2.3(1) of our Code provides for 96 hours notice for both Ordinary & Extra-ordinary meetings but allows for less than this but only when the circumstances warrant it.
2.3(2)	This has been subject to abuse in the past. It is acceptable only if the signed request from the Mayor and another Councillor is tabled at the next meeting.	Section 366 of the Act allows for an Extra-ordinary meeting to be called by 2 councillors. Having to table such requests is not required or necessary. The request could be made available to any Councillor or any other person if they wanted to see it.
2.4(1) (d)	In line with the comment about 2.3(1) above, if the meeting is to discuss "Ordinary Business" then this clause must apply to "Extraordinary Meetings".	This clause is taken from the Regulations (clause 232) which requires that notice of meeting must be published in a local newspaper but states the clause does not apply to an extra-ordinary meeting. We always try to advertise extra-ordinary meetings in the newspaper however this will not always be possible for a meeting called at short notice.
2.4(2A) (b)	This clause has been subject to abuse in the past. Firstly, the decision to close the meeting should not be at the discretion of one person ie the general manager. Secondly, with reference to the above clauses 2.3(1) and	It is the General Managers role to assess items as to whether they are "confidential" in terms of section 10 of the Act and if so to state this in the agenda and to advise that discussion will likely take place in closed session. The actual decision to

	2.4(1)(d) the business papers for "Extraordinary Meetings" must also be made available, at least to all Councillors.	close a meeting to the public is always made by Council resolution, not the General Manager. Business papers for all Council meetings are always provided to Councillors & made available to the public.
2.5(1)	When Ordinary business is conducted at Council meetings (including Extraordinary meetings), the period of notice shall be at least 96 hours ie 4 days.	Our Code states that the period of notice will be 96 hours for both Ordinary & Extra-Ordinary meetings, but allows for a lesser period for an Extra-ordinary meeting but only as circumstances warrant it. It makes sense to allow this.
2.5(2)	Is understood but should not stand unless every effort has been made to serve the business papers on the Councillor within the stipulated time prior to the meeting.	This clause is taken straight from section 374 of the Act, where proceedings at a meeting are not invalidated because of a failure to give notice to any councillor. Every effort is made at this Council as all Agendas for council meetings are delivered by staff or the councillor contacted about collection or delivery options.
2.5(4)	Is not definitive and should be amended to "Notices and Business Papers for the Ordinary Council meetings held every second Tuesday of the month <u>shall be</u> available for collection or delivery on the Wednesday evening prior to the meeting".	The word "normally" is used in our Code rather than "shall be" as it allows for the papers to be available on Thursday if circumstances occur such a photocopier breakdown. Notice of 96 hours is by 9.00am Friday before the meetings so our current service is far above what is required under the Act.
3.1(2)	Is too loose and should be amended to "In the event that clause 2.5(1) is not applicable, the general manager shall be responsible for the preparation of the agenda and its service on Councillors as soon as practicable before the meeting.	This clause is taken from the regulations (clause 240) and is merely stating the General Manager must cause the agenda to be prepared as soon as practicable. Clause 2.5(1) states that our agenda will be prepared 96 hours before the meeting.
3.2(2)	Firstly, unless the code is amended so that proper notice is given for Extraordinary Meetings, this clause should not be allowed as it provides for an unscrupulous general manager to introduce without prior notice: (i) Matters of which the public has no knowledge.	This clause is taken from the Regulations (clause 242) & allows business, not in the meeting notice, to be transacted only if a motion is passed to do so & the chairperson rules it of great urgency. This again is not the General Manager's decision. The decision to transact such business must be passed by

	(ii) Matters at inappropriate times when certain Councillors are not available. Secondly, part (b) should require a second opinion ie the signature of a second Councillor (as for example in the calling of an Extraordinary Meeting) on the "great urgency" of the matter as otherwise it may be subject to abuse.	council resolution. There are times when urgent business is required to be transacted at a meeting & cannot be delayed to the next meeting. The Regulations provide for this & it should remain in our Code.
3.2(3)	Appears to be too restrictive and should be amended to allow all Councillors to speak at least once on the motion, if desired.	Clause 242 of the Regulations clearly states that only the mover of a motion can speak to a motion to transact "urgent" business of which notice has not been given. Our Code cannot be inconsistent with the Regulations or Act.
3.3	Appears to be unworkable. When a Councillor has received his business papers only 4 days prior to the meeting, it is impossible for him/her to give 1 weeks Notice of Motion prior to the meeting.	Clause 3.3 allows a councillor to place on the agenda a matter raised by them, normally by a Notice of Motion. To be part of the Agenda these are required by 9.00am, one week prior to the meeting.
4.8(3)	This clause is not strong enough. To ensure that the review is not compromised in any way it should be amended to read "However the general manager <u>shall be</u> excluded....."	This clause states the general manager "may be excluded" when the council or a committee deals with the general manager's performance. Again it should be left to the Council to determine if they want the general manager present or excluded.
5.2(4)	Should not be allowed as they are in contravention of the Local Government Act (LGA) which calls for open means of voting at Council meetings ie "on the voices or by show of hands" : refer 5.22(5)	Clause 5.2(4) is only dealing with election of chairpersons when the open voting results in even numbers & one needs to be chosen by lot e.g. names placed hat/box & one drawn out. That person is then the Chairperson.
5.5(e)	The confining of the Public Forum to the beginning of the meeting appears to be for the convenience of Council. It does not encourage members of the public to attend Council meetings, as it is inconvenient to have to wait many hours before the subject of their speech is discussed by Council. This	Clause 5.5 relates to the order of business & the public forum is early in the meeting for the reason that persons can attend at the start of the meeting (9.00am) make their address & then the items which they have addressed council on are dealt with immediately (see 5.5(g) – reports relating to public forum matters). This procedure was introduced for the convenience

	clause should be amended to allow members of the Public to be included in the agenda to address the chair prior to discussion of their issue by Council.	of the public rather than Council and the public are always encouraged to attend our meetings.
5.5(3)	Appears to be restrictive. As above, all Councillors as well as the mover and seconder should be allowed to speak at least once on a motion.	Again this is what is in the Regulations (clause 239) & allows only the mover to speak to a motion to alter the order of business. Any such change must be carried by resolution of the council.
5.6(3) (b)	Previous comments made above under 3.2(2)(b) also apply to this clause.	Again as above a decision to transact "late business" must be made by council resolution & this is as per the Regulations (clause 241).
5.6(4)	As above this is too restrictive and should be removed.	This is in relation to urgent late business & is in the Regulations which our code must comply with.
5.7	Paragraph 3: Firstly "No discussion by Councillors is allowed on any such speech, except with the concurrence of the Mayor" is restrictive and in the past has been subject to abuse; the Mayor has used her position of privilege on a number of occasions to interrupt speakers during the Public Forum. Secondly, the fact that Councillors may only respond to a speaker via the Mayor is not encouraging of any meaningful debate between Council and the Public.	Clause 5.7 clarifies the procedure for public forum addresses to council. Discussions are dealt with later when the item, the subject of the address is debated by council & the Mayor rightly should police this. The Mayor has on occasions had to interrupt speakers to advise them to speak on the agenda item and this again is a chairperson's role. The aspect of councillors responding through the Mayor is one of meeting protocol and is in the Regulations (clause 249).
5.10(2)	This clause should be amended as it is not complied with by this Council.	Clause 5.10(2) requires the nature of any disclosure of interest to be in sufficient detail to enable the public to appreciate the connection. This is complied with by our councillors each time they declare interests and such declarations are recorded in the minutes.
5.13 (1-3)	Appear to give too much power to a Mayor (chairperson) and should be deleted.	Clause 5.13 is taken straight from the Regulations (clause 243) which allows the Mayor, by Mayoral Minute, to put any matter to the council without notice. This is part of the Mayor's role and should remain.

5.22(1) (2)	These clauses are subject to abuse by this Council.	Clause 5.22 (1-2) covers voting procedures, & states that a councillor who fails to vote is taken to have voted against the motion & allows a councillor to have their dissenting vote recorded. These clauses are complied with.
5.22(5)	This clause meets with our approval, although until quite recently it was not complied with.	Clause 5.22(5) relates to voting to be by open means unless for election of mayor or deputy mayor where it can be by secret ballot.
5.29 (1-4)	These clauses negate the principle of "Questions without Notice" and should not be allowed.	The procedure for questions without notice has been amended and clause 5.29 should be amended in accordance with council's resolution of 14 Feb 2006 that Questions without notice be included on the meeting agenda with a limit of 3 questions per councillor. This clause in the Draft Code will need to be amended.
6.3	It appears that this clause is unable to deal with a situation of disorder that arises because of the action/s of the chairperson.	Clause 6.3 is taken from the Regulations & provides for the Mayor to adjourn the meeting if disorder occurs for any reason.
6.5 (1-5)	This clause is unnecessary and should not be included. Firstly the term "misbehaviour" is not defined so it is subject to interpretation. Secondly, since there is a code of meeting practice governing the conduct of Councillors at meetings, it should not be necessary to have a clause or clauses dealing with the formal censure of a Councillor for misbehaviour.	Clause 6.5 is taken from section 440G of the Act & clarifies the procedures for a formal censure to be passed at a meeting.
7.2(2)	In practice, some committees established by Council do not include the Mayor, so this clause should be amended accordingly.	The Mayor is a member of all committees whether or not the Mayor elects to attend those committees. This clause is taken direct from the Regulations (clause 260).
8.1	This clause is open to abuse. Although it is understood that members of the Public serving on Council committees are not subject to the LGA, for the sake of consistency this clause	Clause 8.1 was included to clarify that council does have committees with community and/or staff as voting members & as such can vary some procedures e.g. the need to advertise meetings in

	should be amended to bring these committees into line with this code of meeting conduct.	newspapers. Each committee could decide to do this if they wish.
8.3	As above, this clause should be amended to allow members of the Public to attend committee meetings if they wish to do so, on the same basis that they may attend Council meetings.	Council's committees where not all members are councillors do not have to allow the public to attend but can if the committee wishes.
9.1(1) 9.2(2)	These clauses should be amended to make workshops open to members of the Public so that they may attend on the same basis as they attend Council meetings.	While workshops at council meetings will be open to the public, a workshop separate from a council meeting should be able to be held without the public if council felt it was appropriate.
10.6	The inclusion of this clause conveys the opposite perception to that which this Council aspires to: openness and transparency. This clause including all the sub-clauses should be deleted. If meetings are open to the Public, then words spoken by Councillors and Council staff are already on record, witnessed by all in attendance. This being the case, the recording of the proceedings would bring this Council into line with the practice of other local government councils and parliament, and would of course assist greatly in the taking of minutes. Also it could help to avoid much of the confusion that arises when Councillors are so often misquoted in the media.	Clause 10.6 states that tape recording of council or committee meetings is prohibited without permission of the council and is taken from the Regulations (clause 273). Those Council's that do tape their meetings have been advised to only use such tapes for accuracy of minutes. Giving access to such tapes to the public or media would potentially breach the Privacy & Personal Information Protection Act if any persons are identified in comments.
10.7	This clause should be deleted because under no circumstances should the amendments to this code of meeting practice be adopted without public exhibition.	The clause is taken from the Regulations (clauses 361,362) and just allows a Code of Meeting Practice to be amended without exhibition where council is of the opinion the amendment is not substantial. Council often is required to amend clauses following a minor change to Regulations.

Amendments recommended to Code of Meeting Practice

The following is a summary of the amendments that are recommended for inclusion in the new Code of Meeting Practice.

- 1 Guidelines for workshops
(as per clauses 9.1 & 9.2 of the advertised draft code)
- 2 Extra-ordinary meetings
(as per clause 2.3 of the advertised draft code)
- 3 Works committee procedures
(as per clause 7.3 of the advertised draft code)
- 4 Questions Without Notice

Clause 5.29 of the advertised draft code should be replaced with the following: -

Questions Without Notice shall be included in the order of business on the council meeting agenda and shall be limited to three (3) questions per councillor.

- 5 Procedure when addressing the Chairperson

In relation to clause 5.19 in the Draft Code, it states "Council's practice is for all members to stand when they address the Chair", Council at its meetings of 20th June 2006 and 18th July 2006 remained seated when addressing the Chair so as to improve the use and quality of the public address system in the Chambers. It is recommended that clause 5.19 (5) be deleted.

- 6 Leave of Absence

At its meeting of 18th July 2006 the General Manager reported to Council that the Act had been amended in relation to leave of absence for Councillors from meetings. These new leave of absence provisions will be included in the new Code of Meeting Practice.

While the submission from the Friends of South West Rocks raised a number of matters, it is not felt that any further amendments are necessary for the reasons as shown in the comments against each of their issues raised.

REPORT IMPLICATIONS:

- ***Environmental***

Nil.

- ***Social***

Council needs to consider the public in its review of meeting practices as the public should have an opportunity to be

present at the decision making deliberations of the council and have an understanding of Council's meeting procedures.

- *Economic (Financial)*

Nil.

- *Policy or Statutory*

Council's Code of Meeting Practice includes all relevant provisions of the Act and Regulations in regard to the conduct of meetings and has additional clauses related to local provisions. Where amendments are made to the Code of Meeting Practice a Council is required to place the amended Code on public exhibition for 28 days unless it deems the amendments are not substantial, and consider any submissions.

- *Directors Review*

The recommendation is supported.

RECOMMENDATION:

1. That the Draft Code of Meeting Practice as exhibited be adopted with the following amendments:-
 - (a) That Clause 5.29 of the advertised draft code be replaced with the following:-

Questions Without Notice shall be included in the order of business on the council meeting agenda and shall be limited to three (3) questions per councillor.
 - (b) That Clause 5.19(5) requiring that councillors to stand when addressing the chair be deleted.
 - (c) That Clause 4.10 be amended in accordance with the new leave of absence provisions in the Act.
2. That the South West Rocks Ratepayers and the Friends of South West Rocks be advised of Council's decision and thanked for their contribution.

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G B Snape
DIRECTOR CORPORATE SERVICES