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	TITLE: <b>COUNCIL POLICY CODE OF MEETING PRACTICE</b>	

# CODE OF MEETING PRACTICE

## KEMPSEY SHIRE COUNCIL

This Code of Meeting Practice is made under the Local Government Act 1993 and in accordance with the Local Government (General) Regulation 2005.

The object of this code is to provide for the convening and conduct of meetings of Kempsey Shire Council and of Committees of Council, where all members are Councillors. The provisions of this Code are based on the provisions of The Local Government Act; The Local Government (General) Regulation 2005, the Division of Local Government Meetings Practice Note 16 and Council Policy.

Council and all Committees of Council where all members are Councillors must conduct their meetings in accordance with this code (*Section 360*).

FOOTNOTE references:

***"section"*** refers to sections of the Local Government Act 1993

***"clause"*** refers to clauses of The Local Government (General) Regulation 2005

***"DLG practice note"*** refers to Division of Local Government Practice Note 16

***"local"*** refers to a Kempsey Shire Council local provision

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## **PART 1 – BEFORE THE MEETING**

### **1.1 Holding Meetings**

#### **1.1.1 Ordinary Meetings of Council**

- (1) The council is required to meet at least 10 times each year, each time in a different month.  
*(Section 365)*
- (2) The ordinary meetings of Council shall be held on the third Tuesday of each month at 9.00am and/or as determined by Council from time to time. *(Local)*

#### **1.1.2 Convening a Meeting**

A meeting cannot be held unless due notice in writing has been given to all members and a quorum is present.

#### **1.1.3 Extraordinary Meetings of Council**

- (1) Council may hold extraordinary meetings to deal with special business or where there is so much business to be dealt with that an additional meeting is required *(Clause 242)*.
- (2) An Extraordinary meeting may be called by a resolution of the Council or when at least two (2) councillors make a written request to the Mayor to hold an extraordinary meeting. The Mayor can be one of the two councillors, but the Mayor cannot call an extraordinary by himself or herself without having a written request from another councillor.
- (3) If an Extraordinary meeting is called for by two (2) councillors, the Mayor must call an extraordinary meeting as soon as practicable but in any event within 14 days after receipt of the request. *(Section 366)*
- (4) Extraordinary meetings will be included in Council's schedule of meetings where it is known they will be required e.g. budget meetings. *(Local)*

### **1.2 Notice of Meetings**

#### **1.2.1 Notice of Meetings**

- (1) The period of notice to be given in respect of ordinary and extraordinary meetings shall be at least 96 hours, and in respect of Estimates Meetings, seven (7) days. If however, an extraordinary meeting needs to be held at short notice, the notice shall be given by the General Manager as the circumstances warrant and the period of notice shall be entirely at the discretion of the Mayor. *(Local)*
- (2) Proceedings at a meeting of council or a committee are not invalidated because of a failure to give notice of the meeting to any Councillor or committee member.  
*(Section 374)*
- (3) A notice under this section and the agenda for, and the business papers relating to, the meeting may be given to a councillor in electronic form but only if all councillors have facilities to access the notice, agenda and business papers in that form.

*(Section 367)*

- (4) Notices and Business Papers for the Ordinary Council meetings held on the second Tuesday of the month are normally available for collection or delivery on the Wednesday evening prior to the meeting. *(Local)*

### **1.2.2 Giving notice of business**

- (1) A council must not transact business at a meeting of the council:
- (a) unless a councillor has given notice of the business in writing in accordance with clause 1.4.4, and
  - (b) unless notice of the business has been sent to the councillors in accordance with section 367 of the Act.
- (2) Subclause (1) does not apply to the consideration of business at a meeting if the business:
- (a) is already before, or directly relates to a matter that is already before, the council;
  - or
  - (b) is the election of a chairperson to preside at the meeting; or
  - (c) is a matter or topic put to the meeting by the chairperson; or
  - (d) is a motion for the adoption of recommendations of a committee of the council.
- (3) Despite subclause (1), business may be transacted at a meeting of a council even though due notice of the business has not been given to 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) Only the mover of a motion referred to in subclause (3) can speak to the motion before it is put.  
*(Clause 241)*

## **1.3 Times of meetings**

### **1.3.1 Public notice of meetings**

- (1) **[Notice of time and place]** 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.
- (a) A notice of a meeting of a council or of a committee must be published in a newspaper circulating in the area before the meeting takes place.
  - (b) The notice must specify the time and place of the meeting.
  - (c) Notice of more than one meeting may be given in the same notice.
  - (d) This clause does not apply to an extraordinary meeting of a council or committee

### **1.3.2 Council Meeting Adjournment**

Council's practice is to adopt the following adjournment times during Council meetings: -

- 10.30 am to 10.50 am Morning Tea adjournment
- 12.45 pm to 1:30 pm Luncheon adjournment (*Local*)

## **1.4 Agendas and business papers**

### **1.4.1 Agendas and business papers**

- (1) **[Copies of agenda and business papers]** 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 subject to the adopted fee in Council's annual Operational Plan) of the agenda and the associated business papers (such as correspondence and reports) for the meeting.
- (2A) **[Agendas for closed meetings]** In the case of a meeting whose agenda includes the receipt of information or discussion of other matters that, in the opinion of the General Manager, is likely to take place when the meeting is closed to the public:
  - (a) the agenda for the meeting must indicate that the relevant item of business is of such a nature (but must not give details of that item), and
  - (b) the requirements of subsection (2) with respect to the availability of business papers do not apply to the business papers for that item of business.
- (2) **[Time of availability]** The copies are to be available to the public as nearly as possible to the time they are available to councillors.
- (3) A notice given under this section or a copy of an agenda or of a business paper made available under this section may in addition be given or made available in electronic form.  
*(Section 9 - Clause 232)*

### **1.4.2 Agenda and business papers for council meetings**

- (1) The General Manager must ensure that the agenda for a meeting of the council states:
  - (a) all matters to be dealt with arising out of the proceedings of former meetings of the council; and
  - (b) if the Mayor is the chairperson – any matter or topic that the chairperson proposes, at the time when the agenda is prepared, to put to the meeting; and
  - (c) any business of which due notice has been given.
- (2) 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.
- (3) The General Manager must ensure that the details of any item of business to which section 9 (2A) of the Act applies are included in a business paper for the meeting concerned.

- (4) 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.
- (5) Nothing in this clause limits the powers of the chairperson under paragraph 11.1.2 (Official Minutes)  
(*Clause 240*)

#### **1.4.3 Agenda for extraordinary meeting**

- (1) The General Manager must ensure that the agenda for an extraordinary meeting of a council deals only with the matters stated in the notice of the meeting.
- (2) Despite sub-clause (1), business may be transacted at an extraordinary meeting of a council even though due notice of the business has not been given to the councillors. However, this can happen only if:
  - (a) a motion is passed to have the business transacted at the meeting; and
  - (b) the business proposed to be brought forward is ruled by the chairperson to be of great urgency.

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

- (3) Only the mover of a motion referred to in sub-clause (2) can speak to the motion before it is put.  
(*Clause 242*)

#### **1.4.4 Closing Time for Notices of Motion, Rescission Motions and Delegates Reports by Councillors**

Should a Councillor wish to place a notice of motion, rescission motion or delegates report before the council meeting these must be submitted to the General Manager by 9am one week prior to the meeting. (*Local*)

Any such agenda items submitted by councillors are to be completed in the correct format in accordance with council's report pro-forma. (*Local*)

#### **1.4.5 Submission of Supplementary or Late Reports**

- (1) Supplementary or late reports for a council meeting that are submitted to councillors after the business paper agenda has been delivered to councillors will not be dealt with at the council meeting unless a resolution is passed by the council to deal with the supplementary or late reports at that meeting.  
(*Local*)
- (2) No supplementary or late reports shall be presented to councillors after close of business on the Friday afternoon preceding a council meeting, unless deemed urgent by the Mayor. (*Local*)

#### **1.4.6 Report of a Departmental representative to be tabled at council meeting**

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

- (1) is laid on the table at that meeting; and
- (2) is subsequently available for the information of councillors and members of the public at all reasonable times.  
(*Clause 244*)

## 1.5 Order of business

### 1.5.1 Order of Business

- (1) At a meeting of a council (other than an extraordinary meeting), the general order of business is:
  - (a) Opening Prayer
  - (b) Acknowledgement of Country
  - (c) Apologies
  - (d) Declarations of Interest
  - (e) Assessment of items listed for confidential consideration
  - (f) Confirmation of Minutes
  - (g) Public Forum / Presentations
  - (h) Consideration of Motions for Changes to the Order of Business and Consideration of Supplementary or Late Reports
  - (i) Consideration of Reports Relating to Public Forum Matters
  - (j) Mayoral Minutes
  - (k) Notices of Motion
  - (l) Rescission Motions
  - (m) Delegates Reports
  - (n) Committee Reports
  - (o) Questions on Notice
  - (p) Officer's Reports
  - (q) Questions for next meeting
  - (r) Confidential items
  - (s) Conclusion
- (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. (*Local*)
- (3) Only the mover of a motion referred to in subclause (2) may speak to the motion before it is put.  
(*Clause 239*)

## 1.6 Public access to agendas and business papers

### 1.6.1 Public access to correspondence and reports

- (1) **[Reasonable access]** A council and a committee of which all the members are councillors must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.
- (2) **[Exceptions to access]** 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) **[Section does not apply]** This section does not apply if the council or committee resolves at the meeting, when open to the public, that the correspondence or reports, because they relate to a matter specified in section 10A(2), are to be treated as confidential.  
(Section 11)

### 1.6.2 Restriction of access to information

- (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.  
(Section 12A)

## PART 2 – AT THE MEETING: GENERAL

### 2.1 Coming together

#### 2.1.1 Who presides at meetings of the council?

- (1) **[Mayor or Deputy]** 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) **[Absence]** 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.  
(Section 369)

#### 2.1.2 How may council open its meetings?

A council may open its meetings with a prayer if it chooses. This decision should be made after considering the religious beliefs and views of the councillors and the community. This issue could be included in council's Meeting Code.

A council may also choose to include an Acknowledgement of Country. Acknowledgement of Country is where people acknowledge and show respect for the Aboriginal Traditional Custodians of the land upon which the event is taking place. It is a sign of respect. *(DLG practice note)*

Kempsey Shire Council meetings commence with an opening prayer and acknowledgement of traditional Aboriginal land owners. *(Local)*

### **2.1.3 Who can sit at the meeting tables?**

The general manager can attend, but not vote at, council meetings. The only exception to this is when the meeting is dealing with the general manager's employment or standard of performance – then the council may resolve to exclude the general manager from the meeting *(section 376)*

There are no rules on who can sit at a meeting table during a council meeting, or where people should sit. These issues could be covered in council's Meeting Code. If it is not stated in the Meeting Code, the chairperson can decide who sits at the meeting table and where. Examples of the other people who might sit at the meeting table are the directors of the relevant council departments or council's solicitor (if required at the meeting to provide advice).

It is important to remember that if a councillor is anywhere in the room where the council meeting is being held, they are considered to be 'present' for the purposes of voting. This means that if they are in the room but do not vote on an issue (for example, by staying silent) their vote is taken as against the motion. *(clause 251)(DLG practice note)*

## **2.2 Addressing councillors and Council Meetings**

### **2.2.1 How should the Mayor and Councillors be addressed at Council Meetings?**

If the chairperson is the mayor they are usually addressed as 'Mr Mayor' or 'Madam Mayor'. When the chairperson is not the mayor, they would be addressed as 'Mr/Madam Chair' or 'Mr/Madam Chairperson'.

Councillors are usually addressed as 'Councillor [surname]', whether the councillor is male or female; whether or not the councillor has a title (for example the Honourable or the Reverend); and whether or not the councillor has a qualification (for example, Doctor of Philosophy). *(DLG practice note)*.

When councillors are speaking at a council meeting they have the option of either standing or sitting, but councillors only speak after being acknowledged by the chairperson. *(Local)*

### **2.2.2 Addressing of Council meetings by Members of the Public**

Council's practice has been to allow the public to participate to the fullest extent within legal limitations and meeting procedure, at all Council meetings. The exception is with regard to confidential matters.

The Mayor may grant permission for individuals to address Council meetings on specific topics contained in the business paper at the Public Forum session of the Council meeting.

Council will allow members of the public to address Council during the Public Forum on matters not on the meeting agenda subject to the following:

- priority shall be given to speakers addressing matters on the agenda.
- a précis of the address will be provided in writing to the General Manager at least two working days prior to the meeting.
- Council has the right to refuse permission if the matter is one which will be the subject of a report to a subsequent Council meeting or a matter where a speaker has addressed a previous Council meeting in the public forum.

People wishing to address Council need to contact the Mayor prior to the meeting. The period for such addresses has been fixed at a maximum of five (5) minutes per person. The mayor may restrict the number of individuals speaking on the same topic to one for the proposal and to one against the proposal.

Members of the community shall be treated impartially and equitably when applying to speak in the public forum. If members of the public comply with council's guidelines in relation to speaking in the public forum at council meetings, then the mayor must allow them to speak, subject to the limitation in the Code of Meeting Practice on the number of speakers to be heard.

No discussion by Councillors is allowed on any such speech, except with the concurrence of the Mayor. Questions of the addressee by Councillors should be directed through the Mayor.

Where a member of the public addresses Council on an item on the agenda, the Director responsible for the report is to be given the right to respond to issues raised prior to the report being dealt with by Council.

*(Local)*

## **2.3 Business at Council Meetings**

### **2.3.1 What business can be discussed and dealt with at council meetings?**

- Business which a councillor has given written notice of within the required time before the meeting, and of which notice has been given to councillors *(section 376) (clause 241)*;
- Business that is already before the council or directly relates to a matter that is already before the council. For example, business that was discussed at the last council meeting, or business in a report made by council staff in response to an earlier council request for a report; *(clause 241)*
- The election of a chairperson for the meeting *(clause 241)*;
- A matter raised in a mayoral minute *(clause 241)*;
- Business ruled by the chairperson to be of great urgency but only after a motion is passed to allow this particular business to be dealt with. This motion can be moved without notice. *(clause 241)*
- Officers reports where the matter is deemed by the General Manager necessary to be reported to a council meeting for information and/or decision. *(Local)*

### **2.3.2 What business can be discussed an extraordinary council meetings?**

In general, only matters stated in the meeting agenda may be dealt with at an extraordinary council meeting. Other business ruled by the chairperson to be of great urgency may also be dealt with at the meeting, but only after the business in the agenda is finished *(clause 242)*

## **2.4 Questions at council meetings**

### **2.4.1 Questions on Notice**

Questions on Notice shall be included in the order of business on the council meeting agenda and shall be provided to the general manager by 9.00am one week prior to the meeting for inclusion in the meeting agenda. *(Local)*

### **2.4.2 Questions concerning a matter on the council agenda**

A councillor may ask a question of another councillor or a staff member. A question to a councillor must be put through the chairperson. A question to a staff member must be put through the general manager.

Any person to whom a question is put is entitled to be given reasonable notice of the question so as to allow that person time to research the matter, for example by referring to documents or making enquiries of other persons.

Questions must be put succinctly and without argument. The chairperson must not allow any discussion on any reply or refusal to reply to such questions (cl 249 of the Regulation). It is considered that staff refusal to reply would be in circumstances where they require further time to research the response to the question.

### **2.4.3 Questions for next meeting**

- (1) Councillors, just prior to the end of a council meeting, may raise questions on the understanding that the answers will be provided at the following meeting. Each councillor will be allowed a maximum of three questions.
- (2) Such questions will be recorded in the minutes of the meeting.
- (3) When such questions are listed, there is nothing preventing an answer being given straight away if it makes sense to do so. *(Local)*

## **2.5 Committee of the whole**

- (1) All the provisions of this Regulation relating to meetings of a council, so far as they are applicable, extend to and govern the proceedings of the council when in committee of the whole, except the provision limiting the number and duration of speeches.
- (2) The General Manager or, 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.  
*(Clause 259)*

## **2.6 Mayoral minutes**

### **2.6.1 What is a mayoral minute?**

The mayor may put to a meeting (without notice) any matter which the council is allowed to deal with or which the council officially knows about. This would cover any council function under the Act or other legislation, or any matter that has been brought to the council's attention, for example, by letter to the mayor or the general manager. (*clause 241*)

This power to make mayoral minutes recognizes the special role of the mayor. A mayoral minute overrides all business on the agenda for the meeting, and the mayor may move that the minute be adopted without the motion being seconded. (*DLG practice note*)

## **2.7 Voting**

### **2.7.1 What are the voting entitlements of councillors?**

- (1) **[Councillors]** Each councillor is entitled to one vote.
- (2) **[Person presiding]** However, the person presiding at a meeting of the council has, in the event of an equality of votes, a second or casting vote.  
(*Section 370*)

### **2.7.2 Voting at council meetings**

- (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. This subclause does not apply to a councillor who does not vote because he or she has a pecuniary interest in the subject matter of the motion and has left the meeting room.
- (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 2 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) Irrespective of clauses (3) and (4) above, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or council committee. The General Manager must ensure the names of the councillors who supported the decision and the names of the any councillors who opposed (or are taken to have opposed) the decision are recorded in the minutes.
- (6) 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.  
(*Section 375A*)
- (7) 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.

*(Clause 251)*

- (8) Voting on an election of committee members at council shall be by open voting and each councillor's vote shall be recorded in the minutes of the meeting. *(Local)*

## **2.8 Divisions**

### **2.8.1 What is a division?**

A 'division' is a means by which the support or objection to a motion is easily seen and is recorded.

Two councillors may rise and call for a division on a motion. The chairman must then ensure that a division takes place immediately *(clause 251)*.

### **2.8.2 Are there any other occasions when a division is required?**

Yes. A division is always required whenever a motion for a planning decision is put to the vote at a meeting of council or a meeting of a council committee *(section 375A)*.

### **2.8.3 How is a division conducted?**

There is no set procedure by which a division must be conducted. Whatever procedure is adopted at a meeting, the general manager must ensure that the names of those who voted for the motion and the names of those who voted against it are recorded in the minutes *(clause 251)*.

A common method of conducting a division is for the Chairperson to declare that a division is called and then to ask for a show of hands of those voting in favour of the motion and call the names. The Chairperson would then ask for a show of hands for those voting against the motion and call the names. In this way, the meeting can both see and hear how councillors are voting on the matter. This also enables the general manager to ensure that all councillors who are present at the meeting have their vote recorded. *(DLG practice note)*

## **2.9 Casting vote of chairperson**

### **2.9.1 Chairperson to have precedence**

When the chairperson rises during a meeting of a council:

- (1) any councillor then speaking or seeking to speak must, if standing, immediately resume his or her seat; and
- (2) every councillor present must be silent to enable the chairperson to be heard without interruption.

*(Clause 237)*

### **2.9.2 Chairperson's duty with respect to motions**

- (1) It is the duty of the chairperson at a meeting of a council to receive and put to the meeting any lawful motion that is brought before the meeting.
- (2) The chairperson must rule out of order any motion that is unlawful or the implementation of which would be unlawful.

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

### **2.9.3 Councillor to be elected to preside at certain meetings**

- (1) If no chairperson is present at a meeting at the time designated for the holding of the meeting, the first business of the meeting must be the election of a chairperson to preside at the meeting.
- (2) The election must be conducted:
  - (a) by the General Manager or, in his or her absence, an employee of the council designated by the General Manager to conduct the election; or
  - (b) if neither of them is present at the meeting or there is no General Manager or designated employee – by the person who called the meeting or a person acting on his or her behalf.
- (3) If, at an election of a chairperson, 2 or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the chairperson is to be the candidate whose name is chosen by lot.
- (4) For the purpose of subclause (3), the person conducting the election must:
  - (a) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips; and
  - (b) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.
- (5) The candidate whose name is on the drawn slip is the candidate who is to be the chairperson.  
*(Clause 236)*  
*(Clause 238)*

## **2.10 Decisions of council**

### **2.10.1 What constitutes a decision of the council?**

A decision supported by a majority of the votes at a meeting of the council at which a quorum is present is a decision of the council  
*(Section 371)*

### **2.10.2 Certain circumstances do not invalidate council decisions**

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

- (a) a vacancy in a civic office; or
- (b) a failure to give notice of the meeting to any councillor or committee member; or
- (c) any defect in the election or appointment of a councillor or committee member; or
- (d) a failure of a councillor or a committee member to disclose a pecuniary interest at a council or committee meeting in accordance with section 451; or
- (e) a failure to comply with the code of meeting practice.  
*(Section 374)*

## 2.11 Defamatory statements

### 2.11.1 What happens if a councillor makes a possibly defamatory statement at a council meeting?

The chairperson of a council meeting is responsible for making sure that the council carries out its meetings in line with its Meeting Code and any relevant legislation. One part of this is maintaining order at meetings. This would include requiring a councillor to apologise for insults, personal comments, or implying improper motives with respect to another councillor.

The chairperson may call a councillor to order whenever he or she believes it is necessary to do so. The chairperson may ask the councillor to take back the statement and apologise. If the councillor refuses to do this, they may be expelled from the meeting for an act of disorder. *(clause 256) (section 10)(DLG practice note)*

## 2.12 Audio or visual recording of meetings

### 2.12.1 Tape recording of meeting of council or committee prohibited without permission

- (1) A person may use a tape recorder to record the proceedings of a meeting of a council or a committee of a council only with the authority of the council or committee.
- (2) If one member at a meeting of council or a committee of council objects to tape recording or video recording it will not be allowed. *(local)*
- (3) A person may, as provided by section, be expelled from a meeting of a council or a committee of a council for using or having used a tape recorder in contravention of this clause. *(section 10)*
- (4) If any such person, after being notified of a resolution or direction expelling him or her from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council, committee or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place.
- (5) In this clause, tape recorder includes a video camera and any electronic device capable of recording speech, whether a magnetic tape is used to record or not. *(Clause 273)*

## PART 3 – CONFLICTS OF INTERESTS (PECUNIARY AND NON-PECUNIARY)

### 3.1 Pecuniary conflicts of interests

#### 3.1.1 What is a pecuniary conflict of interest?

The Act, the Regulation, and Code of Conduct provide guidance on pecuniary (or money-related) conflicts of interests. These place obligations on councillors, council delegates and council staff to act honestly and responsibly in carrying out their functions. They require that the pecuniary interests of councillors, council delegates and other people involved in making decisions or giving advice on council matters be publicly recorded.

They also require councillors and staff not to deal with matters in which they have a pecuniary interest.

Section 442 of the Act defines pecuniary interest as:

*“... an interest that a person has in a matter because of the reasonable likelihood or expectation of appreciable financial gain or loss to the person.”*

Section 443 of the Act provides that a person has a pecuniary interest in a matter if the pecuniary interest is that of any of the persons listed in that section. Those persons include spouses, de facto partners, relatives, partners and employers.

*(DLG practice note)*

### **3.1.2 Disclosure and participation in meetings**

- (1) **[Disclosure]** 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 Councillor or the member of a Council Committee must also disclose the nature of that interest.
- (2) **[Cannot take part]** the councillor or member must not take part in the consideration or discussion of the matter, and must leave the meeting room (and must not be in sight of the other Councillors / members when the matter is being considered).
- (3) **[Cannot vote]** the councillor or member must not vote on any question relating to the matter.  
*(Section 451)*
- (4) **[Disclosure by Advisor]** A person giving advice at a Council or Council's Committee meeting must also disclose the existence of any pecuniary interest and the nature of that interest, in the matter the subject of the advice.  
*(Section 456)*

### **3.1.3 Disclosures to be recorded**

- (1) A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.  
*(Section 453)*
- (2) The nature of the interest should be disclosed in sufficient detail to enable other councillors / committee members, and the public, to appreciate in general terms the connection of the person with the matter under consideration.

## **3.2 Non pecuniary conflict of interests**

### **3.2.1 What is a non-pecuniary conflict of interest?**

Non-pecuniary interests are private or personal interest the council official has that do not amount to a pecuniary interest as defined in the Act. These commonly arise out of family or personal relationships, or involvement in sporting, social or other cultural groups and associations.

There are two forms of non-pecuniary conflict of interests:

- significant
- non-significant

How a non-pecuniary conflict of interest is managed will depend on whether or not it is significant or non-significant.

As a general rule, a non-pecuniary conflict of interest will be significant where a matter does not raise a pecuniary interest but involves:

- a) a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or the person's spouse, current or former spouse or partner, de facto or other person living in the same household
- b) other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
- c) an affiliation between the council official and an organization, sporting body, club, corporation or association that is particularly strong. *(DLG practice note)*

### **3.2.2 What procedure should be followed if a councillor has a non-pecuniary conflict of interest?**

Where a councillor or member of a council committee has a non-pecuniary interest that conflicts with their public duty, it must be disclosed as soon as practicable. At a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes.

If a non-pecuniary conflict of interest is significant, the council official will need to either remove the source of the conflict or have no involvement in the matter, including not taking any part in a debate or a vote on the matter. At a council meeting the councillor will need to leave the meeting room when the matter is considered.

If a non-pecuniary conflict of interest is non-significant a councillor, after disclosing the interest, may choose to remain in the meeting room and participate in the debate and voting on the matter. *(DLG practice note)*

## **PART 4 – QUORUM AND ATTENDANCE**

### **4.1 Attendance at meetings**

#### **4.1.1 Presence at council meetings**

- (1) A councillor cannot participate in a meeting of a council unless personally present at the meeting.  
*(Clause 235)*

(Present at the meeting is classified as being within the Council Chamber while the meeting is in progress)

- (2) If a councillor in attendance at a meeting wishes to leave the chamber before the conclusion of the meeting he / she should seek permission to do so from the Mayor or Chairperson. *(local)*

#### 4.1.2 Who is entitled to attend meetings?

- (1) **[General public]** 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) **[Result of expulsion]** 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.
- (3) **[Grounds specified in regulations]** A person may be expelled from a meeting only on the grounds specified in, or in the circumstances prescribed by, the regulations.  
*(Section 10)*

#### 4.1.3 Apologies for non-attendance

- (1) Whenever possible a Councillor should submit an apology for non-attendance at any meeting. It is a thoughtful gesture as the Chairperson is left in doubt as to whether to delay the commencement of a meeting pending the arrival of late Councillors who, in fact, will not be attending at all.
- (2) Apologies may be communicated verbally to the Mayor, Chairperson of the meeting or the Council administrative staff.
- (3) A civic office becomes vacant if the holder is absent from 3 consecutive ordinary meetings of the council without:
  - (i) prior leave of the council, or
  - (ii) leave granted by the council at any of the meetings concerned.*(Section 234(1))*

#### 4.1.4 Leave of absence

- (1) Should a Councillor know of a period of pending absence from meetings due to ill health, business, annual leave or the like, a request for leave of absence stating the period of absence should be submitted to Council for approval.
- (2) Failure to apply for leave of absence and submission of apologies could render a Councillor liable to forfeit his / her position on Council.
- (3) A councillor applying for a leave of absence from a meeting of a council does not need to make the application in person and the council may grant such leave in the absence of that councillor.  
*(Section 234(2))*
- (4) A councillor's application for leave of absence from council meetings, should if practicable, identify (by date) the meetings in which the councillor intends to be absent. *(Clause 235A)*.

- (5) If the councillor attends a council meeting (whether or not an ordinary meeting) despite having been granted leave of absence, the leave of absence is taken to have been rescinded in regard to any future council meeting.  
(*Section 234(3)*).
- (6) A councillor who wishes to attend a council meeting while on leave, is to provide the General Manager with a minimum of two (2) days notice of the intention to attend and participate in a meeting of council, however failure to give such notice does not prevent a councillor from attending the meeting or voting at it.  
(*Clause 235A*).

## **4.2 Quorum at meetings**

### **4.2.1 What is the quorum for a meeting?**

The quorum for a meeting of the council is a majority of the councillors of the council who hold office for the time being and are not suspended from office.  
(*Section 368*)

### **4.2.2 What happens when a quorum is not present?**

- (1) A meeting of a council must be adjourned if a quorum is not present:
  - (a) within half an hour after the time designated for the holding of the meeting;  
or
  - (b) at any time during the meeting
- (2) In either case, the meeting must be adjourned to a time, date and place fixed:
  - (a) by the chairperson; or
  - (b) in his or her absence – by the majority of the councillors present; or
  - (c) failing that, by the General Manager
- (3) The General Manager must record in the council's minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the council, together with the names of the councillors present.  
(*Clause 233*)

### **4.2.3 How do pecuniary interests affect quorums?**

If so many councilors declare a pecuniary interest in a matter that the council is unable to form a quorum to deal with the business before it, the councilors concerned may apply to the Minister to allow them to participate in the discussion and vote on that matter. This recognizes that council business must sometimes proceed even though the decision is being made by councilors with pecuniary interests declared. (*section 458*)

## **4.3 Adjourning meetings**

### **4.3.1 What is the effect of adjourning a meeting?**

If a meeting is adjourned because it cannot be held, for example because of a lack of a quorum, it is postponed to a later time or date and, possibly, to a different place.

If, part way through a meeting, the meeting is adjourned (for example because a quorum ceases to be present or because of time constraints) the meeting will recommence at the time and place that it is adjourned to.

An adjourned meeting is a continuation of the earlier part of the same meeting, not a new meeting. *(DLG practice note)*

#### **4.3.2 What notice should be given of an adjourned meeting?**

If a meeting is adjourned to a different date, time or place, each councillor and the public should be notified of the new date, time or place. *(DLG practice note)*

#### **4.3.3 What business can be conducted at a meeting that has been adjourned?**

As an adjourned meeting is a continuation of the same meeting (not a new meeting), council does not need to issue a new agenda and business papers for the adjourned meeting. The agenda and business papers already issued would be the proper documents from which you are to work. Business not already on the agenda could be dealt with only if the urgency procedure in clause 241(3) of the Regulation is followed. *(DLG practice note)*

## **PART 5 – MOTIONS AND AMENDMENTS**

### **5.1 Terminology**

#### **5.1.1 What is a motion?**

A motion is a proposal to be considered by council at a meeting. It is a request to do something or to express an opinion about something. A motion formally puts the subject of the motion as an item of business for the council.

#### **5.1.2 What is an amendment?**

An amendment is a change to the motion before the council, and takes place while that motion is being debated. An amendment to a motion must be put forward in a motion itself.

#### **5.1.3 What is a resolution?**

A resolution is a motion that has been passed by a majority of councillors at the meeting. While in practice it means the 'council decision', the word 'resolution' also indicates the process by which the decision was made.

*(DLG practice note)*

### **5.2 Motions**

#### **5.2.1 Procedural Motion**

A procedural motion having been moved and seconded shall take precedence over the question before the chair which shall be suspended pending decision on the Procedural Motion

Where the Procedural Motion is lost the suspended business shall then proceed.

(NOTE: A Procedural Motion is not an amendment to the question before the chair. As its description implies, it is directed towards the way or manner in which the Council will deal with the matter before it, and does not contain or imply a decision on the matter) *(Local)*

### **5.2.2 Notice of motion – absence of mover**

In the absence of a councillor who has placed a notice of motion on the agenda for a meeting of a council:

- (1) any other councillor may move the motion at the meeting; or
- (2) the chairperson may defer the motion until the next meeting of the council at which the motion can be considered.  
*(Clause 245)*

### **5.2.3 Motions to be seconded**

A motion or an amendment cannot be debated unless or until it has been seconded. This clause is subject to clauses 5.13 (2) and 5.20 (5) of this code.

*(Clause 246)*

### **5.2.4 How subsequent amendments may be moved**

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.

*(Clause 247)*

### **5.2.5 Motions of dissent**

- (1) A councillor can, without notice, move to dissent from the ruling of the chairperson on a "point of order". If that happens, the chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.
- (2) If a motion of dissent is 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 5.20 of this code, 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.  
*(Clause 248)*

### **5.2.6 Questions may be put to councillors and council employees**

- (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.
  - (c) A councillor shall on all occasions when speaking of other councillors and staff use official designations such as Mayor, Councillor, General Manager, Director etc
- (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.  
(*Clause 249*)

### **5.2.7 Limitation as to number of speeches**

- (1) A councillor who, during a debate at a meeting of a council, moves an original motion has the right to speak to the motion and 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, but must not introduce any new material 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 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.

(*Clause 250*)

## **5.3 Amendments to motions**

### **5.3.1 How can a motion be amended?**

An amendment to a motion requires a mover and a seconder to put it forward. The amendment must be dealt with before voting on the main motion takes place. Debate is allowed only in relation to the amendment and not the main motion – which is suspended while the amendment is considered. (*clause 246,247*)

If the amendment is passed, the motion is changed to include the amendment and this new motion is debated. If the amendment is not supported, the main motion stays in its original form and debate resumes.

There should only be one amendment to a motion before the council at any time. If several amendments are proposed, each should be moved, seconded, debated and voted upon before the next. The amendments should be put forward and debated in the order in which they affect the original motion, not in the order in which they were put to the meeting. *(clause 247)(DLG practice note)*

### **5.3.2 How should an amendment to a motion be worded?**

Amendments may be in the form of additional words to a motion and/or the removal of words from the motion. If the amendment is supported, the original motion is automatically changed by the addition and/or removal of words. This becomes the amended motion. If no further amendments are put forward, the amended motion is then put to the meeting. If passed, the amended motion becomes the resolution.

Any amendment to a motion must not alter the motion to the extent that it effectively reverses the motion. *(DLG practice note)*

### **5.3.3 Can the chairperson rule an amendment to be new business and therefore out of order when discussing the current motion?**

Yes. While clause 238(1) of the Regulation requires a chairperson to put to a council meeting any lawful motion brought before the meeting, there is no requirement covering an amendment to a motion. The chairperson can therefore rule an amendment to be new business and out of order.

Nevertheless, clause 248(1) of the Regulation allows a councillor, without notice, to move to disagree with the ruling of the chairperson on a point of order. 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. It is then a matter for the councillors to decide by majority vote whether to carry the motion of dissent. *(DLG practice note)*

## **5.4 Foreshadowing another motion**

### **5.4.1 Can another motion be foreshadowed?**

It is possible to advise the council of an intention to put forward a motion that relates to a motion currently before the council. However, the chairperson cannot accept the new motion until the first motion is decided. *(DLG practice note)*

## **PART 6 – RESCISSION MOTIONS**

### **6.1 Changing earlier decisions**

#### **6.1.1 How can councils change earlier decisions?**

Councils are able to change their decisions by way of a later decision. A motion to rescind or alter a resolution is the usual means of changing a council resolution. These motions must be notified in accordance with the Act and council's Meeting Code. The Act requires notice of a rescission motion to have the signatures of three (3) councillors if less than three (3) months has passed since the original resolution was made. *(section 372)*

NOTE:

“month” means a calendar month.

“calendar month” means a period commencing at the beginning of a day of one of the 12 named months and ending:

- (a) Immediately before the beginning of the corresponding day of the next named month, or
- (b) If there is no such corresponding day, at the end of the next named month.

### **6.1.2 Are there limits on when or how often decisions can be revisited?**

The Act allows an original motion to be negatived (that is, lost) twice before a three (3) month ban is placed on any councillor putting forward another motion to the same effect. However, to even bring the motion forward the second time will require three (3) councillors’ signatures if less than three (3) months has passed since the first time the motion was defeated. (*section 372*).

A motion to ‘rescind’ or undo an earlier resolution can only be lost *once* before a three (3) month ban is placed on any councillor ‘bringing forward’ another motion to the same effect. ‘Brought forward’ means moved at a council or committee meeting. It is possible for notice of the motion to be given (but not for the motion to be moved) before the expiry of the three (3) month period. (*section 372*)

### **6.1.3 Can a council rescind its decision not to pass a motion at an earlier meeting?**

When a motion is not passed, this will result in no decision being made or no opinion being expressed by the council. It does not mean that the council takes the opposite view or position to that expressed in the motion.

A second motion to the same effect as the original motion may, however, be debated (subject to due notice being given and the signature requirements of section 372(4) of the Act being met). A third attempt cannot be made within three (3) months. (*section 372*)

## **6.2 Lodging rescission motions**

### **6.2.1 Rescission motions to be lodged as soon as possible**

- (1) Should a councillor wish to lodge a rescission motion it should be lodged with the General Manager (with three councillor’s signatures) at the meeting on which the decision has been passed.
- (2) If the rescission motion is lodged after the meeting at which the decision was made the rescission motion may be ruled out of order if the action from the earlier decision has substantially being carried out.  
(*Local*)

## **6.3 Dealing with rescission motions at meetings**

### **6.3.1 If council passes a resolution and a rescission motion is lodged at the same meeting, can the rescission motion be dealt with at that meeting?**

Section 372(1) of the Act requires notice of a rescission motion to be given in accordance with council’s Meeting Code.

However, clause 241(2)(a) and clause 241(3) of the Regulation allow business to be transacted when due notice has not been given. Some authorities believe that this clause should not be used for rescission motions. Clause 241(3) should be used only when a matter is genuinely urgent.

Kempsey Shire Council's practice is for rescission motions to be subject to the notice provisions and dealt with at a subsequent meeting. (*Local*)

### **6.3.2 Can a council rescind a part of a resolution if the part is discrete from other parts of the resolution?**

While not specifically covered in section 372 of the Act, it would appear that a council could rescind part of a resolution (without rescinding the whole resolution). (*DLG practice note*)

### **6.3.3 Can a resolution granting development consent be rescinded?**

Under section 83 of the Environmental Planning and Assessment Act 1979 development consent has effect from the date endorsed on the written notification (subject to any appeal action). It would be possible for a council to rescind a resolution giving consent if the applicant has not been formally advised of the consent. (*DLG practice note*)

### **6.3.4 Does a review of a development application (DA) determination under s.82A of the Environmental Planning and Assessment Act have to be accompanied by a rescission or variation motion?**

Section 82A(9) of the *Environmental Planning and Assessment Act 1979* states that if the council changes a determination, this will replace the earlier determination from the date of the review. It is the Division's view that a changed determination automatically replaces the earlier determination by virtue of section 82A(9) of that Act. Because of this, there is no need for a council to also pass an alteration or rescission motion to change the earlier determination. (*DLG practice note*)

### **6.3.5 If a notice of a rescission motion is given before a council election and the proposed mover is not re-elected to the council, can or must the council consider the motion?**

A rescission motion that has been correctly submitted under section 372 of the Act may be debated by the council, regardless of the current status of the signatories of the motion. What is important is that the motion was valid at the time of its submission.

Whether the motion is actually debated will depend on whether other councillors move and second the motion at the meeting (cl.245 and cl.246 of the Regulation). If the motion does not have support at the meeting, it may lapse for the want of a mover or seconder, or be defeated in a vote. (*DLG practice note*)

## **PART 7 – CLOSED PARTS OF MEETINGS**

### **7.1 Who decides**

It is the responsibility of the General Manager to determine what items should be included in the Confidential Business Paper, however the first item of business at each

meeting (after apologies) is for Council to assess the desirability or necessity for such items to be so included. *(DLG practice note)*

## **7.2 Subject matter of closed meetings**

### **7.2.1 Which parts of a meeting can be closed to the public?**

- (1) **[Meetings may be closed]** A council, or a committee of the council of which all the members are councillors, may close to the public so much of its meeting as comprises:
  - (a) the discussion of any matters listed in sub-clause (2), or
  - (b) the receipt or discussion of any of the information so listed.
- (2) **[Grounds for closure]** 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.
- (3) **[Closure of resolution to close]** A council, or a committee of the council of which all the members are councillors, may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.
- (4) **[Public's right to make representations]** A council, or a committee of a council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.  
*(Section 10A)*

### **7.2.2 Representations by members of the public – closure of part of meeting**

- (1) A representation at a council meeting by a member of the public as to whether part of the meeting should be closed to the public can only be made for a fixed period immediately after the motion to close the part of the meeting is moved and seconded.  
*(Clause 252)*
- (2) The period for such representations has been fixed by resolution of Council at two (2) minutes per person. *(Local)*

## **7.3 Procedure**

### **7.3.1 Resolutions passed at closed meetings to be made public**

If a council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the chairperson must make the resolution public as soon as practicable after the meeting or part of the meeting has ended.

*(Clause 253)*

### **7.3.2 Confidential papers – distribution**

The confidential papers are distributed to councillors as part of the business papers.

The following words shall be included in the motion to move into the confidential (committee of the whole) “and councillors are again reminded of their statutory obligations in relation to the non-disclosure to any outside person of matters included in this section”.

The confidential papers provided to councillors in the meeting agenda shall be returned to Administration staff to be destroyed at the end of the Council meeting. *(Local)*

## **PART 8 – ORDER AT MEETINGS**

### **8.1 Standards of conduct**

#### **8.1.1 Questions of order**

- (1) The chairperson, without the intervention of any other councillor, may call any councillor to order whenever, in the opinion of the chairperson, it is necessary to do so.
- (2) A councillor who claims that another councillor has committed an act of disorder, or is out of order, may call the attention of the chairperson to the matter.
- (3) The chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the council.
- (4) The chairperson’s ruling must be obeyed unless a motion dissenting from the ruling is passed.  
*(Clause 255)*

#### **8.1.2 Acts of disorder**

- (1) A councillor commits an act of disorder if the councillor, at a meeting of a council or a committee of a council:
  - (a) contravenes the Act or any regulation in force under the Act; or
  - (b) assaults or threatens to assault another councillor or person present at the meeting; or
  - (c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the council or committee, or addresses or attempts to address the council or committee on such a motion, amendment or matter; or
  - (d) insults 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 without reservation for an act of disorder referred to in subclause(1)(a) or (b); or
  - (b) to withdraw a motion or an amendment referred to in subclause (1)(c) and, where appropriate, to apologise without reservation; or
  - (c) to retract and apologise without reservation for an act of disorder referred to in subclause (1)(d) or (e).
- (3) A councillor may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of a council for having failed to comply with a requirement under subclause (2). The expulsion of a councillor from the meeting for that reason does not prevent any other action from being taken against the councillor for the act of disorder concerned.
- (Clause 256)*

### **8.1.3 How disorder at a meeting may be dealt with**

- (1) If disorder occurs at a meeting of a council, the chairperson may adjourn the meeting for a period of not more than 15 minutes and leave the chair. The council, on reassembling, must, on a question put from the chair, decide without debate whether the business is to be proceeded with or not. This subclause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of councillors.
- (2) A member of the public may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of a council for engaging in or having engaged in disorderly conduct at the meeting.
- (Clause 257)*

### **8.1.4 Power to remove persons from meeting after expulsion**

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

- (1) immediately after the council has passed a resolution expelling the councillor or member from the meeting; or
- (2) 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.

*(Clause 258)*

### **8.1.5 Formal censure of Councillor for misbehaviour**

- (1) A council may by resolution at a meeting formally censure a councillor for misbehaviour.
- (2) A formal censure resolution may not be passed except by a motion to that effect of which notice has been duly given in accordance with regulations made under section 360 and, if applicable, the council's code of meeting practice.
- (3) A council may pass a formal censure resolution only if it is satisfied that the councillor has misbehaved on one or more occasions.

- (4) The council must specify in the formal censure resolution the grounds on which it is satisfied that the councillor should be censured.
- (5) A motion for a formal censure resolution may, without limitation, be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.  
(*Section 440G*)

## **PART 9 – COMMITTEES, THEIR MEMBERS AND FUNCTIONS**

### **9.1 Forming committees**

COUNCIL COMMITTEES (where all members are councillors)

#### **9.1.1 Council may establish committees**

- (1) A council may, by resolution, establish such committees as it considers necessary.
- (2) A committee is to consist of the Mayor and such other councillors as are elected by the councillors or appointed by the council.
- (3) The quorum for a meeting of a committee is to be:
  - (a) such number of members as the council decides, or
  - (b) if the council has not decided a number – a majority of the members of the committee.  
(*Clause 260*)

#### **9.1.2 General and Special committees of Council**

##### **Works Committee**

- (1) Council's Works Committee consists of all councillors and meets as required when determined by council or the Mayor with the purpose of carrying out site inspections of any matters affecting the functions of council.
- (2) The Works Committee shall have delegated authority to determine matters provided a quorum of five (5) members is present.
- (3) The Works Committee shall commence from the Civic Centre at times nominated in the agenda and following site inspections shall reconvene at the council chambers for committee deliberations and the time for committee deliberations shall be listed in the agenda. (*Local*)
- (4) Council shall give notice to the public of the times and places of meetings of the Works Committee (*section 9*).

#### **9.1.3 Functions of committees**

A council must specify the functions of each of its committees when the committee is established, but may from time to time amend those functions.  
(*Clause 261*)

#### **9.1.4 Notice of committee meetings to be given**

- (1) The General Manager of a council must send to each councillor, at least 3 days before each meeting of the committee, a notice specifying:
  - (a) the time and place at which and the date on which the meeting is to be held; and
  - (b) the business proposed to be transacted at the meeting.
- (2) However, notice of less than 3 days may be given of a committee meeting called in an emergency.  
*(Clause 262)*

#### **9.1.5 Non-members entitled to attend committee meetings**

- (1) A councillor who is not a member of a committee of a council is entitled to attend and to speak at, a meeting of the committee.
- (2) However, the councillor is not entitled:
  - (a) to give notice of business for inclusion in the agenda for the meeting, or
  - (b) to move or second a motion at the meeting, or
  - (c) to vote at the meeting.*(Clause 263)*

#### **9.1.6 Representations by members of the public – closure of part of meeting**

- (1) A representation at a council meeting by a member of the public as to whether a part of the committee meeting should be closed to the public can only be made for a fixed period immediately after the motion to close the part of the meeting is moved and seconded.  
*(Clause 264)*
- (2) The period for such representations has been fixed by Council resolution at two (2) minutes per person.

#### **9.1.7 Procedure in committees**

- (1) Subject to subclause (3), each committee of a council may regulate its own procedure.
- (2) 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 is to be by open means (such as on the voices or by show of hands).  
*(Clause 265)*

#### **9.1.8 Committees to keep minutes**

- (1) Each committee of a council must ensure that full and accurate minutes of the proceedings of its meetings are kept.
- (2) The minutes of a Meeting of the Committee must include: -
  - (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.

- (3) 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.  
(*Clause 266*)

#### **9.1.9 Chairperson and Deputy Chairperson of committees**

- (1) The chairperson of each committee of the council, must be:
  - (a) the Mayor ; or
  - (b) if the Mayor does not wish to be the chairperson of a committee – a member of the committee elected by the council; or
  - (c) if the council does not elect such a member – a member of the committee elected by the committee.
  - (d) The chairperson of a Committee is to be elected for a twelve month period at the first meeting following the appointment of Councillors to Committees.
- (2) A council may elect a member of a committee of the council as Deputy Chairperson of the committee. If the council does not elect a Deputy chairperson of such a committee, the committee may elect a Deputy chairperson
- (3) If neither the chairperson nor the Deputy Chairperson of a committee of a council is able or willing to preside at a meeting of the committee, the committee must elect a member of the committee to be acting chairperson of the committee.
- (4) The chairperson is to preside at a meeting of a committee of a council. If the chairperson is unable or unwilling to preside, the Deputy Chairperson (if any) is to preside at the meeting, but if neither the chairperson nor the Deputy Chairperson is able or willing to preside, the acting chairperson is to preside at the meeting.  
(*Clause 267*)

#### **9.1.10 What is the Quorum of a committee**

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

#### **9.1.11 Absence from committee meetings**

- (1) A member (other than the Mayor) ceases to be a member:
  - (a) has been absent from 3 consecutive meetings of the committee without having given reasons acceptable to the committee for the member's absences; or
  - (b) has been absent from at least half of the meetings of the committee held during the immediately preceding year without having given to the committee acceptable reasons for the member's absences.

NOTE: The expression "year" means the period beginning 1 July and ending the following 30 June. See the dictionary to the Act.  
(*Clause 268*)

#### **9.1.12 Reports of committees**

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

- (2) The recommendations of a committee of the council are, so far as adopted by the council, resolutions of the council.
- (3) If a committee of a council passes a resolution, or makes a recommendation, during a meeting, or 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.  
(*Clause 269*)

#### **9.1.13 Disorder in committee meetings**

The provisions of the Act and of this Regulation relating to the maintenance of order in council meetings apply to meetings of committees of the council in the same way as they apply to meetings of the council.

(*Clause 270*)

#### **9.1.14 Certain persons may be expelled from council committee meetings**

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.

(*Clause 271*)

#### **9.1.15 Disclosure of Interest**

Paragraphs 3.1 and 3.2 of this Code also apply to meetings of Committees.

### **9.2 Status of committees with non-councillor members**

PART 8 – COUNCIL COMMITTEES (where not all members are councillors)

#### **9.2.1 Committees with community and staff members**

Council has a number of Committees where not all members are councillors. These Council committees have other members being community members or staff. Such committees shall be bound by all conditions as are committees where all members are councillors. (*Local*)

#### **9.2.2 Standing Orders for Committees**

For Council Committees where not all members are Councillors “sample” standing orders have been prepared for each of its committees to adopt either as is, or as amended, and then use. A copy of these standing orders is shown as an attachment to the Code of Meeting Practice document. (*Local*)

#### **9.2.3 Who is to attend meetings**

For Council committees where not all members are Councillors, members of the public are not entitled to attend unless invited by the relative committee or the committee has decided to hold open meetings. These committees shall have the power to invite specific persons to attend or members of the public may be invited as observers in accordance with each committees adopted standing orders. (*Local*)

#### **9.2.4 Reports of Committees and Delegates**

Also submitted to Council for consideration and resolution are the recommendations of the Standing Committees and the various sub-committees of Council and reports from Councillors who represent Council on outside organisations as delegates. Usually reports from delegates are for information only. *(Local)*

#### **9.2.5 The Committee System**

When the report of a committee comes before Council it is open for any member to challenge the recommendations or to move that the matter be reconsidered. In no sense does the committee system take the business out of the hands of the full Council nor does it deprive individual members of their rights to fully participate in any or all matters which come before it. Councillors are encouraged to attend any committee meetings and may participate in discussion, but cannot vote at committees where they are not members. *(Local)*

### **9.3 Meeting procedures**

#### **9.3.1 What procedure is followed during meetings of council committees?**

If a council committee consists of councillors only, the relevant meeting provisions of the Act, the Regulation and council's Meeting Code govern its procedure. These include notifying councillors and making agendas and business papers available. The quorum for a committee made up entirely by councillors is to be a majority of the members of the committee, or such other number as the council decides (cl.260(3) of the Regulation).

If a committee includes people who are not councillors (that is, council staff and/or community representatives), the committee's meeting procedure (including any notifications and agendas) is determined by the council. It may, but does not have to, follow the procedure outlined in the Act and Regulation. *(DLG practice note)*

#### **9.3.2 What is the position of the Mayor on council committees?**

Clause 260(2) of the Regulation states that a committee comprising only of councillors is to consist of the Mayor and such other councillors as elected or appointed by the council. While the Mayor (however elected) is automatically a member of each council committee consisting of councillors only, the Mayor has discretion as to whether he or she will attend the meetings of each committee (cl.268(1) of the Regulation).

The Mayor is automatically the chairperson of each council committee consisting only of councillors unless he or she does not wish to be (cl.267(1) of the Regulation). In such a case, the council or committee will elect a chairperson. If the chairperson is unable or unwilling to chair a committee meeting, the deputy chairperson or acting chairperson is to run it (cl.267(4) of the Regulation). *(DLG practice note)*

#### **9.3.3 What are the rights of Councillors to attend committees?**

Each councillor, whether a member of a committee or not, is entitled to attend and speak at a meeting of a council committee. However only councillors who are members of a committee are entitled to put business on the committee's agenda, move or second a motion at the committee meeting, or vote at the meeting (cl.263 of the Regulation). Voting at a committee meeting is to be by open means, such as by a show of hands. *(DLG practice note)*

### 9.3.4 What are the voting rights of committee members?

If a council committee is made up of councillors only, all the members have equal voting rights. The committee can decide that, when voting is equal, the chairperson has a casting vote as well as an original vote (cl.265 of the Regulation). Councillors who are not members of a particular committee are entitled to attend and speak at meetings of the committee, but cannot vote at those meetings (cl.263 of the Regulation).

If a committee includes people who are not councillors, it is up to the council to decide on the voting rights of committee members. Usually all committee members have equal voting rights (other than the chairperson, who may have a casting vote as well as an original vote). *(DLG practice note)*

## 9.4 General Manager's role

### 9.4.1 Can the general manager be delegated the power to appoint non-councillor members to a council committee formed under s.355 of the Act?

Section 377 sets out the matters that a council cannot delegate to the general manager or another person or body. There appears to be nothing in section 377 to prevent a council delegating to the general manager the power to appoint new members to a committee (that is already established and given delegated functions by the council).

As a matter of good administrative practice, the council may require the general manager to report to the council whenever he or she has made an appointment. The delegation to the general manager may be with other conditions, such as requiring the general manager to report proposed appointments to the council, or to appoint new members only from certain groups. *(DLG practice note)*

### 9.4.2 If the general manager is on a council committee, what is the general manager's role?

If the general manager is a member of a council committee, he or she will not have a special function just because of their position. Like all committee members, the general manager must accept the majority decision of the committee. The council may, however, grant certain responsibilities to the general manager in relation to the committee. *(DLG practice note)*

### 9.4.3 Attendance of General Manager at meetings

- (1) **[Cannot vote]** 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.  
*(Section 376)*
- (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.

## **PART 10 – AFTER THE MEETING**

### **10.1 Acting on council decisions**

#### **10.1.1 Who makes and acts on council decisions?**

The Act requires councillors as a group to direct and control the council's affairs; allocate council resources; determine council policies and objectives; and monitor the council's performance (*section 223 section 232*).

The general manager is responsible for the efficient and effective operation of council's organisation and for acting on council decisions. The general manager, not councillors, is responsible for the day-to-day management of the council and for the employment of council staff (*section 335*).

#### **10.1.2 When is the general manager required to act on council decisions?**

The Act states that the general manager is generally responsible for making sure council's decisions are acted on without unnecessary delay. (*section 335*)

#### **10.1.3 When is a general manager required to act on council decisions that are subject to a motion for rescission?**

If a notice of a rescission motion is given during the meeting at which the resolution is carried, the resolution cannot be put into effect until the rescission motion has been dealt with. (*section 372*)

### **10.2 Public availability of decisions**

#### **10.2.1 How can the public find out about council decisions?**

Councils usually make decisions at open council meetings following the issuing of agendas and business papers to councillors and members of the public. Usually each item of business to be dealt with at the meeting is on the agenda. However, in cases of great urgency, business can be dealt with at a meeting without it being recorded on the agenda.

The public has the opportunity to review all council decisions, even those made at closed meetings, through the inspection of council's meeting minutes. The right of the public to inspect council's meeting agendas, business papers, minutes of council and committee meetings, and the resolutions of any closed parts of those meetings, is expressly provided for under section 12 of the Act. (*DLG practice note*)

## **PART 11 – MINUTES**

### **11.1 Contents of minutes**

#### **11.1.1 Confirmation of Minutes**

As one of the first items of business at each ordinary meeting of council will confirm the minutes of the previous meeting and subsequent extraordinary meetings, the correctness of the minutes is the only issue under consideration and a motion of discussion shall be ruled out of order except if such refers to the accuracy of the minutes as a true record of the proceedings of the meeting. (*DLG practice note*)

### 11.1.2 Official minutes

- (1) If the Mayor is the chairperson at a meeting of a council, the chairperson is, by minute signed by the chairperson, entitled to put to the meeting without notice any matter or topic that is within the jurisdiction of the council or of which the council has official knowledge.
- (2) Such a minute, when put to the meeting, takes precedence over all business on the council's agenda for the meeting. The chairperson (but only if the chairperson is the Mayor) may move the adoption of the minute without the motion being seconded.
- (3) A recommendation made in a minute of the chairperson (being the Mayor) or in a report made by a council employee is, so far as adopted by the council, a resolution of the council.  
*(Clause 243)*

### 11.1.3 Matters to be included in minutes of Council meeting

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

- (1) details of each motion moved at a Council meeting and of any amendments moved to it.
- (2) the names of the mover and the seconder of the motion or amendment.
- (3) whether the motion or amendment is passed or lost.  
*(clause 254)*
- (4) Officers recommendations will not be recorded in the minutes where they are not adopted as part of the resolution of the Council. *(Local)*

### 11.1.4 Disclosure and misuse of information

#### (1) [Confidential Information]

The confidential business paper for the Committee of the whole is distributed with the open business paper to Councillors and staff only. Confidential Council business should not be conveyed by a Councillor or staff member to either the press or public.

Disclosure of information or details of discussion relating to reports of the Committee of the Whole is prohibited by Section 664(1A) of the Local Government Act 1993.

In particular, if part of a meeting of a Council or a Committee of a Council is closed to the public in accordance with Section 10A(1) a person must not, without the authority of the Council or the Committee, disclose (otherwise than to the Council or a Councillor of the Council) information with respect to the discussion at, or the business of, the meeting.

When a 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 will ensure that all Council decisions are disclosed to the public.  
*(Section 664)*

### 11.1.5 Inspection of the minutes of a council or committee

- (1) An inspection of the minutes of a council or committee of a council is to be carried out under the supervision of the General Manager or an employee of the council designated by the General Manager to supervise inspections of those minutes.
- (2) The General Manager must ensure that the minutes of the council and any minutes of a committee of the council are kept secure and in safe custody and that no unauthorised person is allowed to interfere with them.

NOTE: [Section 12](#) of the Act confers a right (restricted in the case of closed parts of meetings) to inspect the minutes of a council or committee of a council.  
([Clause 272](#))

## 11.2 Signing council minutes

**[Signature]** 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.  
([Section 375](#))

### 11.2.1 When should minutes be signed?

Once they have been confirmed at a subsequent meeting of the council, the minutes must be signed by the person chairing that later meeting (s.375(2) of the Act). It would be usual for the 'subsequent' or 'later' meeting to be the next ordinary meeting of the council or committee.

It is best to sign the minutes immediately after their confirmation or as soon as practical after that meeting (without delay). (*DLG practice note*)

## PART 12 – CODE OF MEETING PRACTICE

### 12.1 Status of code

#### 12.1.1 Can a council ignore its Meeting Code?

No. The Act and the Regulation set out the basic procedure that must be followed at council meetings. A council may choose to adopt a Meeting Code that covers the relevant provisions of the Act, the Regulation and additional provisions that are consistent with the Act or the Regulation ([section 360](#)).

A council must publicly notify its draft Meeting Code and consider all submissions before adopting it. Once the Meeting Code is adopted, a council and a council committee consisting of councillors must run its meetings following the Meeting Code ([section 360, 361, 362](#)).

Failure to follow the Meeting Code does not result in the proceedings of the council or committee meeting being invalid ([section 374](#)).

### 12.2 Effect of Regulation change

#### 12.2.1 Does a council have to change its Meeting Code each time the Regulation is changed?

Changes to the Act or Regulation will automatically impact council's Meeting Code. Each council should include any legislative changes in its Meeting Code and/or update the Code to ensure that its provisions are in line with those changes. If inconsistent,

the provisions of the Meeting Code must be changed or removed to match the Act and the Regulation.

The Meeting Code is automatically amended as a result of changes to the Act or Regulation. These changes do not require public notification under sections 361 to 363 of the Act.

Any amendment to the additional provisions provided by the council in its Meeting Code will require public notification. *(DLG practice note)*

## **PART 13 – WORKSHOPS**

### **13.1 Purpose**

#### **13.1.1 Conducting Workshops at Council Meetings**

- (1) Council may hold workshops as part of Council meetings to allow for wider debate and discussions on certain issues. The procedure for holding such workshops is that Council shall form itself into a Committee of Whole (refer to clause 7.1 of the Code of Meeting Practice). A workshop may involve councillors, council staff and invited participants.
- (2) These Council meeting workshops shall be open to the public unless grounds exist for closing the workshop to the public under section 10A of the Local Government Act.
- (3) The decision to hold a workshop at a Council meeting shall be made by a resolution of the Council.

*(Local)*

#### **13.1.2 Conducting Workshops separate from Council Meetings**

- (1) Council may hold workshops separate from Council meetings where such workshops are for sharing and discussing of information only and no decisions or recommendations shall be made from these information workshops.
- (2) Workshops held separate from Council meetings may involve councillors, council staff and invited participants. As the workshops are not meetings of the council or a formal committee of council, the attendance entitlements of the public do not apply and these workshops shall not be open to the public unless Council has resolved to make the workshop open.
- (3) The decision to hold a workshop separate from a Council meeting shall be made by the Mayor or a resolution of the Council.
- (4) The meeting procedure for the conduct of Workshops separate from Council meetings shall be determined by the Mayor or Chairperson of the Workshop.

*(Local)*

### **13.2 Attendance**

#### **13.2.1 Who can attend council workshops?**

Attendance entitlements in the Act and the Regulation apply only to meetings of the council and its committees (made up of councillors only). As workshops are not meetings of the council or such committees the attendance entitlements of councillors and the public do not apply. *(DLG practice note)*

### **13.3 Procedure**

#### **13.3.1 What are the meeting procedures for council workshops?**

The meeting procedures in the Act and the Regulation apply only to meetings of the council and its committees made up of councillors only. As workshops are not meetings of the council or its committees, the meeting procedures in the Act and the Regulation do not apply. Meeting procedures for council workshops is a decision for the council or, failing that, the workshop conveyer. *(DLG practice note)*

## **PART 14 – REFERENDUMS**

### **14.1 constitutional referendums**

#### **14.1.1 Is a council resolution required to give effect to the voters' decision at a constitutional referendum?**

Certain matters require a constitutional referendum – they cannot be decided by a council (s.16 of the Act).

Section 17(1) of the Act provides that a decision made at a constitutional referendum binds the council until it is changed by a later constitutional referendum. As the council is bound by the decision, there is no requirement for a resolution to be carried to give effect to the decision. Any change has already occurred by the operation of law. The council has no choice as to whether it will put in place the change or not – by resolving to conduct the referendum, the council agreed to be bound by the result.

*(DLG practice note)*

## **PART 15 – SEAL**

### **15.1 Purpose**

#### **15.1.1 Affixing council seal to documents**

- (1) The seal of a council must be kept by the Mayor or the General Manager, as the council determines.
- (2) The seal of a council may be affixed to a document only in the presence of:
  - (a) the Mayor and the General Manager, or
  - (b) at least one councillor (other than the Mayor) and the General Manager, or
  - (c) the Mayor and at least one other councillor, or
  - (d) at least 2 councillors other than the Mayor .
- (3) The affixing of a council seal to a document has no effect unless the persons who were present when the seal was affixed (being persons referred to in subclause (2)) attest by their signatures that the seal was affixed in their presence.
- (4) The seal of a council must not be affixed to a document unless the document relates to the business of the council and the council has resolved (by resolution specifically referring to the document) that the seal be so affixed.

- (5) For the purposes of subclause (4), a document in the nature of a reference or certificate of service for an employee of the council does not relate to the business of the council.  
(*clause 400*)

## 15.2 Procedure

### 15.2.1 Why is a council resolution required before the seal is used?

Clause 400(4) of the Regulation requires a council resolution before each use of the seal. The resolution must specifically refer to the document to be sealed. This procedure reflects the important legal status of the seal. Requiring a resolution before the seal is used brings the document to the attention of the councillors and makes sure that they are aware of which documents are being sealed. (*DLG practice note*)

### 15.2.2 How can a council avoid delay when it needs to use the seal?

Council can resolve to approve a specific activity that requires the use of the seal on several occasions. For example, a resolution that authorizes the transfer of certain council land could also authorize the use of the seal for any contracts that are part of that transfer. As there are only a limited number of documents in a land transaction that need to be executed under seal, each one of these could be identified in the resolution authorizing the purchase or sale of the land. Clause 400 of the Regulation does not require a separate resolution as each document is prepared. (*DLG practice note*)

### 15.2.3 Which documents should or can be sealed?

In deciding whether the council seal should be used on a particular document, council needs to consider any legislative requirements. For example, the Conveyancing Act 1919 (which requires that the seal be placed on certain documents) and cl.400(4) of the Regulation (which prohibits the seal being placed on a document unless the document relates to council business). It is a matter for the council to decide which documents relate to the business of the council.

A document in the nature of a reference or certificate of service for a council employee does not relate to the business of the council for the purpose of fixing the seal (cl.400(5) of the Regulation).

Council seals should not be used for certificates and statements of merit, or letters of congratulations. Service to the community or council can be recognized by special text printed on council letterhead or by distinctive certificates specially designed for employee references, certificates of service, Australia Day honours and the like. (*DLG practice note*)

### 15.2.4 How is the seal kept and used?

Clause 400(2) of the Regulation details how the seal is to be kept and used.

### 15.2.5 Can the general manager delegate to the public officer the power to use the council seal?

The Act authorizes the general manager to delegate any of his or her functions, other than the power of delegation. This section allows the general manager to delegate the function of fixing the council seal to documents. (*section 378*)

### 15.2.6 How can a government department ensure that a document is executed by the council itself and not delegated to the general manager?

A department could ensure that a document is made or approved by the council itself by requiring that the document be under seal, or by requesting evidence of the council resolution agreeing to make or accept the document. *(DLG practice note)*

## PART 16 – AMENDMENTS TO CODE OF MEETING PRACTICE

- (1) If the Council decides to amend its Code of Meeting Practice, it may publicly exhibit the amended draft in accordance with section 361 of the Local Government Act or, if the council is of the opinion that the amendments are not substantial, it may adopt the amended draft code without public exhibition as its Code of Meeting Practice.  
*(Section 361, 362)*
- (2) Changes to the Local Government Act or Local Government (General) Regulation as they relate to meetings will automatically impact council's Code of Meeting Practice. The Code of Meeting Practice is automatically amended as a result of changes to the Act or Regulation and these changes do not require public notification under sections 361 to 363 of the Act. *(DLG practice note)*.

### Resources

*Local Government Act 1993*

*Local Government (General) Regulation 2005*

*Department of Local Government Meetings Practice Note 16 August 2009*

## ATTACHMENT 1 - COMMITTEE DRAFT STANDING ORDERS

- 1 The Committee shall abide by the provisions of the Local Government Act 1993, the Local Government (General) Regulation 2005 and Kempsey Shire Council's Code of Meeting Practice as they refer to each committee. Specific reference should be made to Council's Code of Meeting Practice parts 7 & 8 (Council Committees).
- 2 The elected representative from Kempsey Shire Council shall be the Chairperson.
- 3 Quorum – such number of members as the council decides or a majority of the members of the committee.
- 4 The Council appointed Secretary shall be able to participate in discussion and debate but may **NOT** vote.
- 5 Each member of the Committee shall have one (1) vote. In the event of equality of voting the Chairperson (or acting Chairperson) shall have a casting vote as well as a deliberative vote.
- 6 Any member of the Committee who has a personal, direct or indirect, interest (whether pecuniary or otherwise) in any matter, shall declare such interest at the meeting and depart from the meeting while such matter is under consideration.
- 7 An agenda will be issued at least three (3) days prior to each meeting. If a member wishes to have any matter specifically dealt with at a meeting, written notice (and a report if necessary) should be sent to the Secretary so that the agenda can be prepared and all members advised. Closing time – seven (7) working days prior to the meeting.
- 8 Minutes of each meeting shall be taken and distributed as soon as possible following the meeting.
- 9 Meeting procedure:
  - (a) The Chairperson shall ensure matters are fully discussed, but if a procedural motion is put to close a debate, the motion is to be put.
  - (b) Motions will not be discussed unless seconded.
  - (c) Questions may be asked off the floor to a speaker during discussion with the consent of the Chairperson.
  - (d) Debate "discussion" will close with the mover speaking on the motion a second time, except upon the direction of the Chairperson.
- 10 If a motion is passed and a member wishes to rescind the motion, notice of rescission is to be given at the meeting when the motion is put. Rescission motions must have two seconders (three signatures) before being placed on the agenda.
- 11 Motions of a similar nature contrary to an existing motion shall not be made within three (3) months of the original motion.
- 12 Representatives are to keep the groups they represent advised of Committee decisions.
- 13 All requests made to Council by the Committee shall be in writing.
- 14 The Committee shall have the power to invite persons to attend meetings to discuss or be involved in specific matters.

- 15 Members of the public may be invited to attend meetings as observers by advising the time and place of meetings in Council's advertising space in the Macleay Argus and in the Happynings.
- 16 The meeting may form itself into "camera" to discuss confidential matters at the discretion of the Committee.
- 17 That in the event of a member being absent for three (3) consecutive meetings without a reason acceptable to the Committee, then the position be declared vacant.
- 18 That Committee meetings start at \*                      and end at \*                      on the \*