

Ordinary Meeting

Meeting Date: Tuesday, 31 July, 2018

Location: Council Chambers, City Administrative Building, Bridge Road, Nowra

Time: 5.00pm

Membership (Quorum - 7)

All Councillors

Addendum Agenda

Reports

CL18.183	Adoption of Amended Code of Meeting Practice - Webcasting.....	1
CL18.182	Updates - Progress and funding - Shoalhaven River Levee Flood Damage Restoration 2017 project.....	29

CL18.183 Adoption of Amended Code of Meeting Practice - Webcasting

HPERM Ref: D18/257031

Group: Finance Corporate & Community Services Group
Section: Human Resources, Governance & Customer Service

Attachments: 1. Amended Code of Meeting Practice [□](#)

Purpose / Summary

To provide the Council with the Code of Meeting Practice for adoption following advertisement and to advise Council that alternate options are being identified for public participation in all meetings of the Council.

Recommendation

That Council

1. Adopt the amended Code of Meeting Practice as advertised and attached to the report.
2. Receive a report at the September Ordinary Meeting outlining options for webcasting meetings not held in the Nowra Administrative Centre, and alternate options for increasing ratepayer participation in decision making.
3. That the Ordinary Meeting of the Council scheduled for 28 August 2018 in Ulladulla be relocated to the Council Chambers in Nowra to allow for webcasting of this meeting to all residents

Options

1. Webcasting - Adopt the Attached Policy - Recommended

Implications: This will adopt the advertised Code of Meeting Practice. Only (1) one positive submission has been received and the wording of the Code will meet the requirements for Council with respect to webcasting

2. Webcasting - Not adopt the Attached Policy

Implications: Any further amendments to the Code will require advertisement and the requirements for Council with respect to Webcasting will not be in place

3. August Ordinary Meeting - Reschedule to Nowra - Recommended

Implications: As provisions are not in place for the Webcasting of the Council meetings in locations other than the Nowra Council Chambers, it is proposed that the meeting be moved from Ulladulla to Nowra. This will give greater access to the whole community to view the meeting via Webcasting. A report will be provided to the Council in September to address options for public participation in decision making. Should the meeting be moved, the change of location will have to be advertised.

4. August Ordinary Meeting - Leave meeting in Ulladulla

Implications: The meeting will proceed as planned without Webcasting facilities.

CL18.183

Background

Council was presented the attached Amended Code of Meeting Practice for adoption at the Ordinary Meeting of the Council held on 28 June 2018 and resolved (MIN18.512) as follows:

“That Council

- 1. Accept the report for information.*
- 2. Endorse the amendments proposed to the Code of Meeting Practice as outlined in the Report attachment for advertisement for public comment in accordance with the requirements under Section 361 of the Local Government Act, 1993.*
- 3. Adopt the amended policy should no comments be received, otherwise receive a further report for consideration.*
- 4. Consider the arrangements of Council and Core Committee Meetings outside the Council Chambers given that webcasting will only be available for meetings held in the Chambers.”*

Further, at the Meeting of the Strategy and Assets Committee held on 24 July 2018 it was resolved under delegation (MIN18.533)

“That Council

- 1. Archive the recordings of Council/Committee Meetings to facilitate viewing by the community at other time than while the Meeting is taking place*
- 2. Provide easy links on Council’s website to the archived recordings”*

The advertised Model Code of Meeting Practice amendments facilitate the archival and display of archives as outlined in the resolution of the Strategy and Assets Committee.

In accordance with the requirements of Section 361 of the Local Government Act, 1993 the amendments were publicly advertised. The submission period ended at 5pm on Friday 27 July 2018.

The following single submission was received in respect the advertised amendment:

“I fully support the proposal to provide webcasts of council meetings in the interests of transparency and accessibility to residents who can't attend meetings. Please advise residents when the webcasting will commence, future meeting dates to be recorded and details of how to access the webcasts. Thank you.”

Given the above, it is now proposed that Council adopt the amended Code of Meeting Practice as advertised and attached to this report.

Further, discussions at the Strategy and Assets Committee have confirmed that Councillors are considering the options of webcasting of the Ulladulla and centrally located Ordinary Council Meetings, currently held in April and August.

The Governance and Communications staff would like to present options to the Council for consideration with respect to those remote Council Meetings and alternate options for the Council to consider with respect to increasing ratepayer participation in decision making. A report on these options will be provided to the September Meeting of the Council. Such options would include:

- Engagement of Webcasting services for remote locations (on a fee for service basis)
- Scheduling all Council Meetings in Nowra to utilise the high definition webcasting services installed, however increasing public participation in decision making by other methods, including for example:
 - o More community information sessions (Roadshows) such as held for the 2018/2019 Strategic Plan and Budget.

- Having special public participation sessions relating to project or topics for which there is identified significant community interest - allowing several persons to make deputations or provide information to the Council before decisions are made

It is proposed that the August Ordinary Meeting of Council be held in Nowra, rather than August as advertised, to allow it to be webcast and rescheduling of another Ulladulla Meeting occur after consideration of the Report provided by staff in September.

Community Engagement

The changes to the Code of Meeting Practice were publicly advertised, with only one submission in support of webcasting proceeding.



CODE OF MEETING PRACTICE

Policy Number: TBC
Adopted: 21/5/96
Readopted: 13/4/04
Amended: 17/9/96, 28/9/99, 28/3/00, 31/7/01, 21/12/04, 25/5/05, 18/12/07,
24/6/08, 9/9/08, 26/5/09, 9/2/10, 27/4/10, 26/2/13, 24/9/13, 28/7/15,
4/10/16, 21/3/17, 15/08/17
Minute Numbers: MIN96.833, MIN96.1734, MIN99.1905, MIN00.306, MIN01.102,
MIN04.432, MIN04.1588, MIN05.597, MIN07.1771, MIN08.907, MIN09.669,
MIN10.152, MIN10.449, MIN13.134, MIN13.955, MIN15.472, MIN16.693,
MIN17.188, MIN17.709
File: 3798E
Produced By: Finance Corporate & Community Services Group
Review Date: 1/12/2020

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CONTENTS

1. PURPOSE	1
2. STATEMENT	1
2.1. Citation and Application	1
2.2. Commencement	1
2.3. Acts and Regulations	1
2.4. Code of Conduct	1
2.5. Dress Code	1
2.6. Mode of Address	2
2.7. Quorum	2
3. PROVISIONS	2
3.1. Frequency of Council Meetings	2
3.2. Notice of Council and Core Committee Meetings	2
3.3. Absent Councillors	3
3.4. Order of Business	3
3.5. Mayoral Minutes	3
3.6. What Business can be Transacted at a Meeting of the Council	4
3.7. Calling of Extra Ordinary Meetings	5
3.8. Agenda for Extra Ordinary Meeting	5
3.9. Call to Order by Chairperson	5
3.10. Precedence of Chairperson	5
3.11. Formalising Mayoral Actions	6
4. MOTIONS	6
4.1. Duty of Chairperson regarding Motions	6
4.2. Motions Generally	6
4.3. Amendments to Motions	6
4.4. Foreshadowed Motions	6
4.5. Procedural Motions	7
4.6. Recommendations from Committee Reports to Council	7
4.7. Notices of Motion	7
4.8. Rescission Motions – Council and Core Committee Meetings - when Acting Under Delegated Authority	7
4.9. Removal of a Notice of Motion from Business Paper	8
4.10. Motions of dissent	8

4.11. Limitation of Speakers at Council meetings	9
4.12. Right of Reply	10
4.13. Motions of Adjournment	10
4.14. Motions of No Confidence:.....	10
4.15. Motions of Censure.....	10
4.16. Suspension of a Delegated Authority.....	10
4.17. Certain Circumstances do not Invalidate Council Decisions	11
5. CONFLICTS OF INTEREST	11
5.1. Declaration of Interest.....	11
5.2. What is a pecuniary interest.....	11
5.3. Declaration of Pecuniary Interest.....	12
5.4. Declaration of Non-Pecuniary Interest.....	12
5.5. What is a significant Non-Pecuniary Conflict of Interest (Extracted from Code of Conduct)	12
5.6. Special Disclosure of Interest	13
6. POLITICAL DONATIONS	13
6.1. Political donations exceeding \$1,000.....	13
7. VOTING	14
7.1. Record of Voting	14
7.2. Casting Vote	14
8. DEPUTATIONS	15
8.1. Deputations to Committee Meetings	15
8.2. Deputations to Ordinary Meetings	15
9. OTHER PROCEDURAL MATTERS.....	16
9.1. Public Representation Regarding Closed Meetings.....	16
9.2. Time Limit of Meetings.....	17
9.3. Multipurpose Devices	17
9.4. Petitions.....	17
9.5. Development Approval Process.....	17
9.6. Caucusing.....	17
9.7. Acts of disorder.....	17
9.8. Use of Electronic Overhead Screen.....	18
9.9. How Disorder is Dealt with.....	18
9.10. Power to Remove Persons from Meeting after Expulsion.....	18
9.11. Points of Order.....	19
9.12. Webcasting	19

9.13. Recording of Council meeting	20
9.14. Implementation	20
9.15. Numbers Permitted in the Council Chamber.....	20
9.16. Council Advisory and Other Committees - Public Access.....	21
9.17. Committee Meeting Attendance.....	21
9.18. Council Meetings – Addendum Reports	21
10. REVIEW	21
11. APPLICATION OF ESD PRINCIPLES.....	21

1. PURPOSE

The intent of this code is to supplement the Local Government (General) Regulation 2005 (Regulations) in accordance with Section 360 (2) of the Local Government Act 1993 (LG Act).

2. STATEMENT**2.1. Citation and Application**

This code may be cited as the Shoalhaven City Council Code of Meeting Practice.

This Code shall apply to:

- Council meetings
- All Committees comprising of Councillors appointed pursuant to Clause 260 Regulations with the exception of the provisions relating to 'Rising to speak' and 'Limitation on the number of times a member may speak'.
- Other Committees comprising of Councillors and Staff or Community members (including Boards) with the exception of the provisions relating to 'Rising to speak' and 'Limitation on the number of times a member may speak'.

Committees may amend other provisions in exceptional circumstances.

2.2. Commencement

This code will come into force after its public exhibition and on its adoption by Shoalhaven City Council.

2.3. Acts and Regulations

This Code is made pursuant to Section 360(2) and supplement's the LG Act and Regulations.

In the event of any inconsistency between this Code and the *LG Act* or *Regulations*, the *LG Act* or *Regulations* shall prevail but only to the extent of any inconsistency.

It is noted that upon adoption of this Code the provisions of Section 360(3) of the *LG Act* will apply whereby "A Council and a Committee of the Council of which all the members are Councillors must conduct its meetings in accordance with the Code of Meeting Practice adopted by it."

Where at a Council or Committee meeting matters arise which are not provided for in the LG Act and Regulations or this Code, the present rules, forms and usages of the Legislative Assembly of New South Wales shall apply, so far as they are applicable to the proceedings of the Council or Committee.

2.4. Code of Conduct

Council's 'Code of Conduct' and Guidelines are to be read in conjunction with this Code and apply in all respects to the conduct at meetings.

2.5. Dress Code

In respect to Ordinary Meetings, there is no prescribed minimum dress standard. However, Councillors are expected to be dressed in appropriate business attire whilst in the Chamber.

2.6. Mode of Address

Councillors should at all times address other Councillors by their official designation (ie. Mayor or Councillor). Except for the Chairperson, Councillors shall stand when speaking at a Council Meeting unless prevented by physical infirmity.

2.7. Quorum

The quorum for Council Committee meetings is determined by resolution of Council. If no quorum is resolved then the quorum will be a third of the members.

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

Relates to Section 368 LG Act

No business can be transacted at a meeting unless a quorum is present. In the absence of a quorum, the meeting must be adjourned to a time, date and place fixed by the chairperson, the majority of Councillors present or failing that, the General Manager.

Relates to Clause 233 Regulations

If so many Councillors declare an interest in a matter that the Council is unable to form a quorum to deal with that item, the Councillors may apply to the Minister to vote on that matter which can then be adjourned pending that approval. Alternatively, Council may delegate the General Manager, or other person or group to determine any function other than those listed in Section 377 LG Act.

Note: Refer also to Part 5.6 when considering Local Environmental Plans that apply to a significant part of the Council area.

The quorum for specific purpose (or other) Committees is a majority of members unless otherwise determined by Council.

3. PROVISIONS**3.1. Frequency of Council Meetings**

The Council shall set the Ordinary and Committee meeting cycle (time, date and venue) by resolution in accordance with Section 365 of the LG Act (namely at least ten times each year, each time in a different month). The meeting cycle, including any changes of meetings, shall be advertised and published on the Council's website.

3.2. Notice of Council and Core Committee Meetings

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

Shoalhaven City Council – Code of Meeting Practice

may nominate the method they wish to receive Regular Committees and Ordinary meeting agendas and business papers. This may be electronic, hard copy (delivered to their residence, business or other nominated location) or a combination of both.

- 3) Notice of less than three days may be given of an extraordinary meeting called in an emergency.
- 4) Other Committee meeting documents will be sent electronically to all Councillors, with a hard copy placed in the pigeon hole of committee members. Councillors may notify staff if they do not require hard copies.

Relates to Section 367 LG Act

3.3. Absent Councillors

- 1) The tendering of an apology has no recognition under the LG Act or Regulations. It is recommended that any Councillor unable to attend a meeting should submit a written request for a leave of absence, including reasons for the leave of absence.
- 2) It should be noted that Section 234(1)(d) LG Act provides for a vacancy in civic office to occur if a Councillor is absent from three consecutive Ordinary meetings and Council has not granted a leave of absence.
- 3) A Councillor who intends to attend a council meeting despite having been granted leave of absence should, if practicable, give the General Manager at least two days' notice of their intention to attend.

Relates to Clause 235A Regulations

3.4. Order of Business

- 1) At a meeting of a Council (other than an extra ordinary meeting), the general order of business is (except as provided by this Regulation) as fixed by the council's code of meeting practice or (if the council does not have a code of meeting practice or its code of meeting practice does not fix the general order of business) as fixed by resolution of council.
- 2) The order of business fixed under part 1) above, may be altered if a procedural motion to that effect is passed. Such a motion can be moved without notice.
- 3) Despite clause 250 LG Act, only the mover of a motion, referred to in part (2) above, may speak to the motion before it is put.

Relates to Clause 239 Regulations

3.5. Mayoral Minutes

- 1) If the Mayor is a chairperson at a meeting of a council, the chairperson is, by minutes 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. (This is referred to as a Mayoral Minute).
- 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 and determine whether to accept any amendments to the Minute.

Shoalhaven City Council – Code of Meeting Practice

- 3) A recommendation made in a Minute of the chairperson (being the Mayor) or in a report made by a council employee is, so far as adopted by the council, a resolution of the council.
- 4) A Mayoral Minute may be also submitted to the Development Committee or Policy and Resources Committee if appropriate. (Refer MIN15.472)

Relates to Clause 243 Regulations

3.6. What Business can be Transacted at a Meeting of the Council

- 1) A Council must not transact business at a meeting of the Council:
 - a) unless a Councillor has given notice of the business in writing within such time before the meeting as is fixed by the Council's Code of Meeting Practice or (if the council does not have a code of meeting practice or its code of meeting practise does not fix that time) as is fixed by resolution of Council, and
 - b) unless notice of the business has been sent to the Councillors in accordance with section 367 of the *Act*.
- 2) Subclause (1) above, does not apply to the consideration of business at a meeting if the business:
 - a) is already before, or directly relates to a matter that is already before, the Council, or
 - b) is the election of a chairperson to preside at the meeting as provided by clause 236(1) or
 - c) is a matter or topic put to the meeting by the chairperson in accordance with clause 243, or
 - d) is a motion for the adoption of recommendations of a Committee of the Council.
- 3) Despite sub-clause (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 procedural motion is passed to have the business transacted at the meeting, and
 - b) the business proposed to be brought forward is ruled by the chairperson to be of great urgency.

Such a motion can be moved without notice.
- 4) Despite Clause 250 only the mover of a motion referred to in sub-clause 3 can speak to the motion before it is put.

When a matter is brought before a Council or Committee meeting, as a matter of urgency, the Mayor or Chairperson must clearly state the reason(s) for ruling that the matter is urgent and cannot be transacted through some other means. Such reasons will be recorded in the minutes.

Relates to Section 367 LG Act & Clauses 236, 241, 243 & 250 Regulations

3.7. Calling of Extra Ordinary Meetings

The Mayor or General Manager shall be empowered to call an Extra Ordinary meeting. If the Mayor receives a request in writing signed by at least 2 Councillors (the Mayor may be a signatory to that request), the Mayor must call an extraordinary meeting of the Council to be held as soon as practicable but in any event within 14 days after receipt of the request. Except in the case of an emergency, three days notice detailing the time and place of the meeting must be given.

Relates to Section 367 LG Act & Clause 232 Regulations

3.8. Agenda for Extra Ordinary Meeting

- 1) The General Manager must ensure that the agenda for an Extra Ordinary meeting of a Council deals only with the matters stated in the notice of the meeting.
- 2) Despite part 1) above, business may be transacted at an Extra Ordinary meeting of a Council, even though due notice of the business has not been given to the Councillors, if:
 - a) a procedural 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 and the reason for urgency be stated.Such a motion can be moved without notice but only after the business notified in the agenda for the meeting has been disposed of.
- 3) Despite clause 250, only the mover of a motion referred to in part 2) above, can speak to the motion before it is put.

Relates to Clauses 242 & 250 Regulations

3.9. Call to Order by Chairperson

- 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.

Relates to Clause 255 Regulations

3.10. Precedence of Chairperson

When the chairperson rises during the meeting of a Council:-

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

- every Councillor must be silent to enable the Chairperson to be heard without interruption.

This clause also applies to the Chairperson of Council Committees.

Relates to Clause 237 Regulations

3.11. Formalising Mayoral Actions

Should the Mayor or person acting in the capacity of Mayor, exercise the policy making function of Council between meetings, the Mayor or person acting in the capacity of Mayor shall report that action to the next Council meeting.

4. MOTIONS

4.1. Duty of Chairperson regarding 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.

Relates to Clause 238 Regulations

4.2. Motions Generally

When a motion is moved and not seconded the Chairman will allow the mover to speak for a maximum of two minutes before again calling for a seconder. If the Motion is seconded the mover shall be allowed to continue to speak for a further three minutes. If the Motion is not seconded it will lapse.

This clause does not apply to any procedural motion, motion of adjournment, or motion to amend a motion before the meeting.

4.3. Amendments to Motions

Amendments must be dealt with before voting on the original motion takes place.

If the amendment is put and declared:

- (a) carried, it then becomes the motion, and the new motion is debated or
- (b) if lost, the motion remains in its original form.

An amendment to a motion cannot be accepted if its intent is to negative the motion being debated.

4.4. Foreshadowed Motions

During debate on a motion a Councillor may indicate their intention to foreshadow a motion and its content after the motion is put. The foreshadowed motion will only be considered if the original motion is lost.

No more than one motion and one proposed amendment can be before the council at any one time

Relates to Clause 247 Regulations

4.5. Procedural Motions

When a Procedural Motion is moved, only the mover can speak to the motion before it is put.

- 1) Procedural Motions relating to the conduct of meetings may be moved by a Councillor without notice.
- 2) Procedural Motions may be moved without notice and if adopted shall take precedence over all other business.
- 3) No debate on a Procedural Motion shall occur.
- 4) If a resolution from a Procedural Motion to recommit an item is adopted, the Chair is then required to determine whether he or she considers the matter to be of great urgency and rule accordingly, and provide a reason for that ruling. The Chair shall also rule whether it is deemed consistent with the spirit of the Code of Meeting Practice, such as, for example, to declare a conflict of interest or an item in a committee report was inadvertently overlooked and then if so deemed, allow for the item to be recommitted.

4.6. Recommendations from Committee Reports to Council

If a motion is withdrawn for further consideration from a Committee report and is moved 'as printed' with no formal opposition the Chairperson should encourage the speaker to take the minimum amount of time to present their arguments.

4.7. Notices of Motion

Notices of Motion must be submitted to the General Manager at least seven days before the meeting. Councillors may use the Notice of Motion forms that are available in the drawers at the Council table.

Notices of Motion may be submitted to the Development Committee or Policy and Resources Committee if appropriate instead of the Ordinary Council Meeting.

The General Manager may provide supporting notes or comments to a Notice of Motion.

4.8. Rescission Motions – Council and Core Committee Meetings - when Acting Under Delegated Authority

This clause applies to Rescission Motions arising from an Ordinary Meeting or a Core Committee meeting when acting under delegated authority.

If a rescission motion is lodged before the close of a Council meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with. A rescission motion lodged after the closure of a Council meeting may not prevent the original decision being acted upon. Rescission motions cannot be debated or

Shoalhaven City Council – Code of Meeting Practice

considered at the same meeting as the original motion and will be referred to the next available Extra Ordinary or Ordinary meeting of Council.

- 1) A resolution passed by a Council may not be altered or rescinded except by a motion to that effect of which notice has been duly given in accordance with regulations made under section 360 and, if applicable, the Council's Code of Meeting Practice.
- 2) If notice of motion to rescind a resolution is given at the Council meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.
- 3) If a motion has been negated by a Council, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with the Council's Code of Meeting practice.
- 4) A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been negated by the Council, must be signed by 3 Councillors if less than 3 months has elapsed since the resolution was passed, or the motion was negated, as the case may be.
- 5) If a motion to alter or rescind a resolution has been negated, or if a motion which has the same effect as a previously negated motion, is negated, no similar motion may be brought forward within 3 months. This subsection may not be evaded by substituting a motion differently worded, but in principle the same.
- 6) A motion to which this section applies may be moved on the report of a committee of the Council and any such report must be recorded in the minutes of the meeting of the Council.
- 7) The provisions of this section concerning negated motions do not apply to motions of adjournment.

These provisions do not relate to Committee meetings when the decision of the Committee is only a Recommendation to Council.

Councillors may use the Rescission Motion forms that are available in the drawers at the Council table.

Relates to Section 372 LG Act

4.9. Removal of a Notice of Motion from Business Paper

This provision must not be used without the consent of the signatories of the Notice of Motion.

If a Councillor withdraws their signature to a Notice of Motion or Rescission Motion that is before Council, the Mayor shall call for another signatory. In the event of no other signatory being received, the motion is deemed to have lapsed.

4.10. Motions of dissent

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

- 2) If a motion of dissent is passed, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion 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) 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.

Relates to Clause 248 Regulations

4.11. Limitation of Speakers at Council meetings

- 1) A Councillor who, during a debate at a meeting of a Council, moves an original motion has the right of general reply to all observations that are made by another Councillor during the debate in relation to the motion and to any amendment to it, as well as the right to speak on any such amendment.
- 2) A Councillor, other than the mover of the original motion, has the right to speak once on the motion and once on each amendment to it. The mover and seconder are entitled to hold over their speaking rights until later in the debate.
- 3) A Councillor must not, without the consent of the Council, speak more than once on a motion or an amendment, or for longer than 5 minutes at any one time. This limit does not include time involved in questions or responses to questions of Councillors. 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 sub-clauses (1) and (2) a Councillor may move that a motion or an amendment be now put:
 - a) If the mover of the motion or amendment has spoken in favour of it and no Councillor expresses an intention to speak against it, or
 - b) If at least 2 Councillors have spoken in favour of the motion or amendment and at least 2 Councillors have spoken against it.
- 5) The chairperson must immediately put to the vote, without debate, a motion moved under subclause (4). A seconder is not required for such a motion.
- 6) If a motion that the original motion or an amendment be now put is passed, the chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised his or her right of reply under subclause (1).
- 7) If a motion that the original motion or an amendment be now put is rejected, the chairperson must allow the debate on the original motion or the amendment to be resumed.
- 8) Notwithstanding the above, Council may, without notice, resolve into Committee of the Whole. When this occurs, the speaking limits contained in this clause do not apply. In such a case it is necessary to resolve to move out of the Committee of the Whole before the matter is adopted by Council.

Relates to Clause 250 Regulations

4.12. Right of Reply

The mover of an original motion shall have right of reply to any amendment to the original motion without closing debate on the motion. The mover of an original motion shall have right of reply to the original motion after which debate on the motion is closed.

4.13. Motions of Adjournment

- 1) Debate shall not be permitted on any motion for adjournment of a meeting of the Council.
- 2) If a motion for adjournment is lost, the business of the meeting shall proceed, and it shall not be in order for any Councillor to again move a motion for adjournment within half an hour of the previous motion for adjournment being lost.
- 3) A motion for adjournment may specify the time, date and place of the adjourned meeting; however, if a motion for adjournment is carried but does not specify a time, date and place of the adjourned meeting, the Chairperson shall make a determination with respect to whichever of these has not been specified or in the event the Chairperson does not then the General Manager shall make the Determination.

4.14. Motions of No Confidence:

Motions of no confidence in the Mayor or Chairperson are to be deemed to be out of order and are not to be accepted.

4.15. Motions of Censure

- 1) A Notice of Censure may be introduced on a report of the Conduct Committee. A Notice of Censure must identify the disorderly act or the alleged breach of the Code of Conduct.
- 2) A Notice of Censure not complying with the above is deemed to be out of order and is not to be accepted by the Chairperson.

4.16. Suspension of a Delegated Authority

- 1) If a Councillor wishes to have any aspect of a delegation of authority to the General Manager or other staff member withdrawn in respect of a specific matter, then this shall be done by way of Notice of Motion to a Council meeting, in accordance with the requirements of this Code.
- 2) The Notice of Motion must clearly state the reasons for seeking the withdrawal of the delegated authority.
- 3) Upon receipt of a written Notice of Motion making such request, the General Manager shall take such measures as are necessary to temporarily cease consideration or action on the particular matter until the Notice of Motion has been resolved by Council at the next meeting of Council. The General Manager may take such measures as are necessary to ensure that any cessation of work is consistent with safe work practices and does not place members of staff or the public at risk.
- 4) The Notice of Motion is to be submitted to the next available Council meeting for consideration.

Shoalhaven City Council – Code of Meeting Practice

- 5) In considering the Notice of Motion, the Council must first determine whether it wishes to suspend the exercise of the delegated authority, before considering the substantive matter.
- 6) The Mayor may provide in writing to the General Manager at any time, the suspension of a delegation.
- 7) If the Mayor makes a request to the General Manager for the suspension of a delegation, the Mayor must report to the Council at the next available meeting the request and the reasons for the request.

4.17. Certain Circumstances do not Invalidate Council Decisions

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

- a) a vacancy in a civic office, or
- b) a failure to give notice of the meeting to any Councillor or committee member, or
- c) any defect in the election or appointment of a Councillor or committee member, or
- d) a failure of a Councillor or a committee member to disclose a pecuniary interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a Council or committee meeting in accordance with section 451, or
- e) a failure to comply with the Code of Meeting Practice.

Relates to Section 374 LG Act

5. CONFLICTS OF INTEREST**5.1. Declaration of Interest**

A Councillor intending to declare an interest in respect to an item in a business paper should declare their interest and fill out the appropriate form. These (green) forms will be provided with the meeting documents or upon request. They shall declare their interest at the commencement of the meeting or immediately prior to the item being debated or both.

The type (as listed below) and nature of the interest must be stated when making a declaration:

- Pecuniary
- Significant non pecuniary
- Less than significant non pecuniary

A declaration made at a Committee meeting will be retained in the committee report to Council. Councillors shall verbally reaffirm that declaration at the Ordinary meeting.

5.2. What is a pecuniary interest

A pecuniary interest is an interest in a matter because of a reasonable likelihood of appreciable gain or loss to the person. This includes interests relating to:

- a spouse or de facto partner
- a relative and / or their partner

- business / company owned
- employees

Such declarations will be recorded in the minutes.

5.3. Declaration of Pecuniary Interest

- 1) A Councillor or member following declaration of a **pecuniary** interest and the nature of the interest must not be present at, or in sight of, the meeting of the Council or committee.
 - i) At any time during which the matter is being considered or discussed by the Council or committee, or
 - ii) At any time during which the Council or committee is voting on any question in relation to the matter.

Relates to Section 451 LG Act

- 2) When a Councillor or member leaves a meeting following a declaration of a pecuniary interest in a matter before Council or a Council Committee, and remains in close proximity of the meeting room during consideration of the item, such Councillor or member is to be informed when the matter has been finalised and is are to be given the opportunity to return to the meeting before considering the next item of business.

Note: The pecuniary interest provisions should apply to all Committees subject to this Code.

5.4. Declaration of Non-Pecuniary Interest

A Councillor following a declaration of a non-pecuniary interest and the nature of the interest at a meeting may, at his/her discretion, taking into account the particular circumstances of the interest:

- 1) Take no action
- 2) Limit his/her involvement (participate in discussion but not vote on the matter) or
- 3) Leave the room.
- 3) If a Significant Non – Pecuniary Conflict of Interest - have no involvement in the matter, by absenting and not taking part in any debate or voting on the issue as if the provisions in Section 451(2) of the *LG Act* apply.

5.5. What is a significant Non-Pecuniary Conflict of Interest (Extracted from Code of Conduct)

- 1) As a general rule, a non-pecuniary conflict of interests will be **significant** where a matter does not raise a pecuniary interest but it 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 of 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 organisation, sporting body, club, corporation or association that is particularly strong.
- 2) If a Councillor determines that a non-pecuniary conflict of interests is less than significant (as described above) and does not require further action, that Councillor shall provide an explanation of why the conflict does not require further action in the circumstances.
- 3) A Councillor who has disclosed that a significant non pecuniary conflict of interest exists may participate in a decision to delegate Council's decision-making role to Council staff, or appoint another person or body to make the decision in accordance with the law. (This applies whether or not council would be deprived of a quorum if one or more Councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 7.17(b) of the Code of Conduct)

In respect to any declaration made in accordance with this Part, the reason for that declaration and the action taken by the Councillor on that particular matter will be recorded in the Minutes.

5.6. Special Disclosure of Interest

Councillors may participate in discussion and voting on Local Environmental Plans that apply to a significant part of the Council area, subject to the completion of the Special Disclosure Form being completed before the meeting and the declaration of the interest being noted in the minutes.

The Special Disclosure Form will be provided with the meeting documents when consideration of Local Environmental Plans that apply to a significant part of the Council area are included in the items of business.

6. POLITICAL DONATIONS

6.1. Political donations exceeding \$1,000

- 1) Councillors should note that matters before Council involving political or campaign donors may give rise to non-pecuniary conflict of interests.
- 2) Councillors should take all reasonable steps to ascertain the source of any political contributions that directly benefit their election campaigns. For example, Councillors should have reasonable knowledge of contributions received by them or their "official agent" (within the meaning of the Election Funding Act 1981) that directly benefit their election campaign.
- 3) Where a Councillor or the Councillor's "official agent" has received "political contributions" or "political donations", as the case may be, within the meaning of the Election Funding and Disclosures Act 1981 exceeding \$1,000 which directly benefit their campaign:
 - from a political or campaign donor or related entity in the previous four years; and

Shoalhaven City Council – Code of Meeting Practice

- where the political or campaign donor or related entity has a matter before council, then the Councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 7.17(b) of the Code of Conduct – i.e. have no involvement in the matter by not taking part in debate or voting on the matter
- 4) Councillors should note that political contributions below \$1,000, or political contributions to a registered political party or group by which a Councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.
- 5) If a Councillor has received a donation of the kind referred to in clause 7.23 of the Code of Conduct, that Councillor is not prevented from participating in a decision to delegate council's decision-making role to council staff or appointing another person or body to make the decision in accordance with the law (see clause 3.14 (c) above). When disclosing an interest under this clause, Councillors are required to identify the name of the campaign donor.

7. VOTING

Voting at all Council meetings shall be by open means, except in the case of the election of the Deputy Mayor and Assistant Deputy Mayor, where the meeting at which that item is considered shall determine the method of voting.

7.1. Record of Voting

- 1) Voting by Councillors at Ordinary Council Meetings and Core Committee meetings will be recorded if the decision is not unanimous.
- 2) Voting by Councillors on all planning decisions (eg. Development Applications, Local Environmental Plans and Development Control Plans) will also be recorded in Ordinary Council meetings and Core Committees. This information will be kept in a register and will be made publicly available.
- 3) The Minute Secretary shall record the votes after the Chairperson names or otherwise identifies each Councillor voting for and against the motion.
- 4) Where the Chairperson does not name a Councillor as having voted for or against the motion and that Councillor is in attendance at the meeting, the record of voting shall show that Councillor as having voted in the negative.

Note: This does not apply where a Councillor has declared an interest in the item.

Relates to Section 375A LG Act

7.2. Casting Vote

The Mayor, in the case of Council meetings, and the Chairperson in the case of Committees shall be entitled to a casting vote.

Should the Mayor/Chairperson fail to exercise a casting vote, the motion being voted on shall be lost.

Relates to-Section 370 LG Act

8. DEPUTATIONS

8.1. Deputations to Committee Meetings

- 1) Deputations will only be permitted to the Committees of Council and must relate to business before the Committee.
- 2) One speaker for and against each item will be permitted to address a committee except in extenuating circumstances.
- 3) An individual or representative group is only permitted to address a Committee once on an issue except where the Committee resolves otherwise on the basis that new material has been presented, and in this case the comments are limited to that new material.
- 4) The Chairperson of the committee is authorised to grant approval for deputations up until 12.00 noon on the day of the meeting.
- 5) Where requests are received for a deputation after the issue of the Notice of Meeting they will be dealt with in accordance with this Policy except such requests for deputations may be declined when it is considered time will not permit the matter to be heard.
- 6) If the Mayor, Chairperson or General Manager as the case may be approves a deputation as provided for in this clause, where practical, notification is to be given to the Governance staff who shall notify Group Directors.
- 7) Where more than one request is received to address a Committee either for or against a proposal, the individuals and/or groups involved will be encouraged to appoint one representative to present their submission.
- 8) Where more than one person is granted permission to address a committee on the same issue every endeavour will be made to ensure that the information being presented by the different people cover different aspects of the proposal and there is not an unnecessary repetition of the same argument.
- 9) Where an individual or organisation is granted permission to address a committee they be informed that: -
 - a. Maximum time permitted is five (5) minutes.
 - b. One main spokesperson is to be nominated to address the Committee.
 - c. The meeting, including their deputation will be webcast by the Council as outlined in Part 9.12 of this Code.
 - d. Comments which may cast reflection on any organisation or individual are to be avoided as these comments can be regarded as public statements.
 - e. Information from a deputation is placed on the public record and can be distributed / displayed.
- 10) The Committee may vary this Code to allow for additional speakers in the event that a resolution is carried the effect of which deems that the matter is of sufficient importance to warrant a deviation from this Code.

8.2. Deputations to Ordinary Meetings

Council may permit a deputation on any item before Council which has not been previously considered by a Committee where for reasons such as delay, it is undesirable to refer the matter back to a Core Council Committee. And further that:

Shoalhaven City Council – Code of Meeting Practice

- 1) These deputations be limited to five minutes duration with one speaker in favour and one against.
- 2) Requests for deputations must be made to the Mayor or General Manager no later than 12 noon on the day of the Ordinary meeting.
- 3) If the Mayor or General Manager as the case may be approves a deputation as provided for in this clause, where practical, notification is to be given to the Executive Support Staff who shall notify Group Directors.
- 4) Council may vary this Code to allow for additional speakers in the event that a resolution is carried to that effect which deems that the matter is of sufficient importance to warrant a deviation from this Code.
- 5) If new issues are introduced at that deputation, the matter is not to be considered by Council at that meeting unless those issues are of a minor nature and staff can clarify those issues at the meeting. If the issues are significant, and cannot be clarified, the matter may be deferred to the next available meeting to allow staff sufficient time to consider and report on the matters raised in the deputation. If the Council and responsible Director agree that no new matters are raised in the deputation, the item may be considered at that meeting

9. OTHER PROCEDURAL MATTERS

9.1. Public Representation Regarding Closed Meetings

Council is committed to conduct its activities and functions in an open and transparent manner and all meetings subject to this Code are open to the press and public to attend.

In circumstances where business is considered to be of a confidential nature as defined in Section 10A of the Local Government Act 1993, the provisions of the Act and Regulations will be strictly adhered to.

Incorporated into the resolution to consider the confidential items will be an explanation of the way in which discussion of the matter in an open meeting would be on balance, contrary to the public interest (unless the matter relates to a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret).

Where Council or a Committee decides to allow members of the public to make representation on a proposed closure of a meeting the following procedure shall apply: -

- After a motion has been moved and seconded to close part of a meeting to the public the chairperson shall ask the General Manager if there are any written representations from the public on the proposed closure.
- The General Manager shall read out any written representation.
- The Chairperson shall ask if any persons wish to make verbal representations. The time limit for receiving such representations and number of representations shall be at the discretion of the Chairperson having regard to the number of people present at the time the motion is presented and having regard to the subject matter being discussed.
- The Chairperson shall invite each person alternating on a “for” and “against” basis to speak on the motion.

- Each speaker shall be permitted to speak for one minute
- however the Chairperson shall have the discretion to extend the time by a maximum of two minutes having regard for the subject matter being discussed.

9.2. Time Limit of Meetings

- 1) The hours of Council meetings shall generally be as determined by Council at the Call meeting in September or by resolution.
- 2) Council meetings will generally commence at 5.00 pm and will be adjourned to another day if business is not concluded by 9.00 pm.
- 3) Meetings will be adjourned for a period of 10 minutes after two (2) hours of business. (Refer MIN17.188)

9.3. Multipurpose Devices

Multipurpose devices used during a meeting must be on silent mode and not disrupt the meeting. The Chairperson may rule that a device is switched off.

9.4. Petitions

The exact wording of petitions tabled at meetings of the Council shall be recorded in the minutes of that meeting. In the event a petition contains 500 or more signatures is presented to a Council meeting the subject matter of the petition shall trigger a report from the General Manager to the next Ordinary Meeting of Council.

9.5. Development Approval Process

In any circumstances where a Development Application is called-in by Council for determination the resolution shall include reasons for doing so.

Reasons will also be recorded for decisions, approval or refusal, involving Development Applications seeking approval for significant variations to Council policies, Development Control Plans or other development standards. (Refer MIN08.907)

9.6. Caucusing

Binding caucus votes on matters is inconsistent with the obligation of each Councillor to consider the merits of the matter before them. Political group meetings must not be used to decide how Councillors should vote on matters where there are specific statutory considerations for each decision maker to consider.

9.7. 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 staff member, 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 part 1) c) above and, where appropriate, to apologise without reservation, or
 - c) to retract and apologise without reservation for an act of disorder referred to in part 1) d) or e) above.
- 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 part 2) above. 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.

Relates to Clause 256 Regulations

Relates to Section 226 LG Act

9.8. Use of Electronic Overhead Screen

During Council or Committee meetings recommendations (from staff reports), motions and amendments will be shown on an overhead electronic screen prior to voting. Should a Councillor wish to move a substantial motion or amendment, a copy of the wording should be provided to the Minute Taker by email (Clminutes@shoalhaven.nsw.gov.au).

9.9. How Disorder is Dealt with

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.

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.

Relates to Clause 257 Regulations

9.10. 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:

Shoalhaven City Council – Code of Meeting Practice

- a) immediately after the Council has passed a resolution expelling the Councillor or member from the meeting, or
 - b) where the Council has authorised the person presiding at the meeting to exercise the power of expulsion—immediately after being directed by the person presiding to leave the meeting,
- a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the Councillor or member from that place and, if necessary, restrain the Councillor or member from re-entering that place.

Relates to Clause 258 Regulations

9.11. Points of Order

A Councillor may draw the attention of the Chairperson to an irregularity in the meeting procedures by raising a Point of Order.

A Point of Order does not require a seconder and must be raised immediately the irregularity occurs and the speaker at the time may be interrupted.

The Chairperson must suspend the business before the meeting to allow the Councillor raising the Point of Order to state the meeting procedure alleged to have been infringed.

The Chairperson will subsequently either uphold the Point of Order or overrule it and the business before the meeting can then continue.

9.12. Webcasting

- 1) Shoalhaven City Council will webcast the proceedings (including presentations, deputations and debate) of the Ordinary, Development Committee and Strategy and Assets Committee meetings held within the Council Chambers of the Nowra Administrative Building.
- 2) Confidential Sessions of Meetings which are closed to the public in accordance with Section 10A of the Local Government Act, 1993 will not be webcast.
- 3) At the start of each meeting that will be webcast, the Chairperson must advise those in attendance that the meeting will be webcast, and may be recorded under the provisions of this Code (as per Clause 19.13(3))
- 4) It is not the intention of live streaming, recording and publishing to capture those attending the Meeting in the gallery, however this may occur due to the camera angles and seating arrangements. By attending a public meeting, attendees are consenting to their image, voice or comments being webcast or recorded.
- 5) Notifications of webcasting will be provided via:
 - a) The inclusion of an Advisory Note on the Agenda of the meetings to be webcast
 - b) Signage in the Council Chambers
- 6) The General Manager may terminate or suspend webcasting at any point during a meeting if they are of the opinion that continued recording of the proceedings may infringe the rights or safety of an individual, be defamatory or inappropriate.

Shoalhaven City Council – Code of Meeting Practice

- 7) Council will maintain an online library of recorded webcast meetings on Council's Website, for a period of two (2) years. Recordings within that library may have adaptations, modifications or amendments authorised by the General Manager.
- 8) While Council will make every effort to ensure that live streaming is available, it cannot be held liable for technical issues that may occur. The failure to webcast the debate or decision does not invalidate a resolution of the Council
- 9) Speakers addressing the meeting do not have absolute privilege with respect to comments they make, opinions they express or material presented, and need to be aware that they may be held personally liable for defamatory statements or statements contrary to any legal obligations.
- 10) The Webcasts and recordings of the Council are protected by Copyright and owned by Shoalhaven City Council.
- 11) Written transcripts of the proceedings will not be made available

9.13. Recording of Council meeting

- 1) Council will allow the electronic recording by any person of an open session of any council meeting and open meetings of committees.
- 2) Under no circumstances shall any confidential session of a council or committee meeting be electronically recorded
- 3) A statement be made by the chairperson at the commencement of meetings subject to subclause (1) above to advise those in attendance that their image and voice whilst at the meeting may be captured and/or broadcast and their continuing attendance is acceptance of that recording."
- 4) An advisory note be placed on agendas for all meetings and signage in the council chambers advising recording is permitted.

Relates to Clause 273 Regulations, MIN08.1363 & MIN16.693

9.14. Implementation

The Chairperson of the Council meeting or the Committee meeting has responsibility for ensuring compliance with this Code.

9.15. Numbers Permitted in the Council Chamber

Numbers attending Council meetings in the Council Chambers is limited because of Work Health and Safety Requirements. The maximum number of people attending meetings in the Chamber (including Councillors and staff) shall not exceed 155. When the number of 155 is exceeded, the doors are to be secured in an unlocked and open position and remain in that position while the numbers are present. Seating may be permitted in the aisles so as to allow access of a minimum of two metres.

Where it is anticipated that the number in the chamber is likely to exceed 155 arrangements are to be made for staff to be positioned at the entrance doors to assist and regulate public entry. If possible, arrangements will be made for the installation of amplifiers to be installed outside the chamber to allow the public to hear the proceedings.

9.16. Council Advisory and Other Committees - Public Access

Agendas and Business Papers of Councils Special Interest Committees, Boards and Advisory Groups will be published on the internet prior to the meeting. Meetings will be open to the public except during confidential sessions. Minutes will also be published on the internet.

9.17. Committee Meeting Attendance

- 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 the 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

The Senior Staff Contracts Committee remains as a confidential committee but available for all Councillors to attend.

Relates to Clause 263 Regulations

9.18. Council Meetings – Addendum Reports

No addendum reports are to be submitted for consideration at a Council Meeting, except where the items contained therein are of an urgent nature at the discretion of the General Manager in consultation with Group Directors or Committee reports referred to in Part 3.6.

10. REVIEW

This code will be reviewed within one year of the election of every new Council.

11. APPLICATION OF ESD PRINCIPLES

None Applicable

CL18.182 Updates - Progress and funding - Shoalhaven River Levee Flood Damage Restoration 2017 project

HPERM Ref: D18/255487

Group: Planning Environment & Development Group
Section: Environmental Services

Attachments: 1. Council resolution to commence levee restoration project [□](#)
2. NDRA assistance offer - 2016 damages [□](#)
3. Council's Levee system and repair work locations [□](#)

Purpose / Summary

Inform Council about the updates for Shoalhaven River Levee Flood Damage Restoration 2017 project and request additional funding support of \$500,000 for non-National Disaster Recovery Assistance (NDRA) program funded levee repairs.

Recommendation

That Council

1. Allocate additional funding of \$500,000, being approximately a 30% variation on the original tender amount, to the Shoalhaven River Levee Flood Damage Restoration 2017 project, which includes \$260,000 for current project variations to carry out non-NDRA works and a contingency of \$240,000 for future project variations that may be required to complete the project.
2. Adjust the additional funding as part of the 2018 September Quarterly budget review;
3. Receive regular updates on progress and budgetary requirements on the Shoalhaven River Levee Flood Damage Restoration 2017 project.
4. Consider allocating funding in the 2019/20 budget to establish easements over high priority flood levees, through private properties to allow Council to undertake future levee maintenance work when required without the need for individual agreements with each property owner.
5. Seek to complete the repairs/defects to the levee at 111 Terara Road, Terara (wedding venue) in 2019.
6. Write to the NSW Public Works Advisory's Regional Director regarding the National Disaster Relief Assistance (NDRA) Program advising of Council's acceptance of the offer of financial assistance for restoration costs to repair flood levees damaged during the NSW 2016 east coast low storms and floods and thanking the Government for providing the funding to Council.

Options

1. As recommended.

Implications: Due to the increased costs of carrying out the flood levee restoration works, without the additional funding, the current funding will not allow for rock stabilisation of the levee to be installed at all locations where it is required. Without rock stabilisation the

repaired section of levee will be more susceptible to erosion from tidal influences, wave wash from boats, storm and flooding events. Establishing easements over high priority flood levees will allow Council to access the levees to undertake condition assessments, carry out maintenance work and repairs and carry out emergency repairs when required after storm or flood events without the need to obtain individual approvals from each property owner.

2. An alternate recommendation is adopted.

Implications: Unknown

Background

Council is carrying out a project to restore the Shoalhaven River Levee system that was damaged during the August 2015 and June 2016 flood events as well as high priority defects identified in the levee audit report (May 2015). Under this project, category 1 levees (Levee P1L1, P1L2 & P2L1) that are protecting residential properties and category 2 levees (Levee P5L1 & Levee P11L1) that are protecting primarily farmland, paddocks and a few residential developments; are being restored (attachment 3 – Council's levee system and repair work locations)

On 27 June 2017 it was resolved that (MIN17.603C - attachment 1) Council:

“Commence flood levee restoration Option 1 that is, undertake all flood levee restoration works to repair 2015 and 2016 flood damage repairs with rock protection and 2015 audit high priority defect repairs, progressing on a priority basis and commencing work at Terara levee (P1L2)” (MIN17.603C.4).

It was also resolved, *“That Council approve the necessary additional funding required to complete all works in Option 1 and that this be adjusted as part of the September’17 Quarterly budget review” (MIN17.603C.7).*

In line with the resolution the total project has been broken down into smaller packages.

NSW Soil Conservation Service was awarded the contract for the first package to repair defects for the levee P1L1, P1L2 (excluding wedding venues) and P11L1 that are expected to be finished by this year. The tender process for the levee P2L1 and P5L1 is also underway.

Council received \$1,920,207 (\$1,130,566 against NDRA 2015 and \$789,641 against NDRA 2016) under National Disaster Recovery Assistance (NDRA) program. Council also approved \$582,159 to restore non-NDRA works and resolved on 27th June 2017 to undertake all flood levee restoration (as mentioned in the first paragraph), while the NDRA funding outcome was still pending as described above (MIN17.603C).

Recently, Council submitted a revised combined claim of \$4,414,889 to the NDRA for 2015 and 2016 flood damages, considering the contractor's tender price, which included an estimation cost to treat Acid Sulphate Soils (ASS). The potential to encounter ASS was identified during preparation of the Review of Environmental Factors (REF). Of the \$4,414,889, it is estimated that \$2,374,788 will be required for ASS treatment, disposal and relevant works. At the time of writing this report the contractor has not encountered any ASS's whilst undertaking the repair works at levee P1L1, P1L2 & P11L1. Currently approximately 60% of the contracted works have been finished. However, it is impossible to predict whether ASS will be encountered during the remainder of works.

The levee restoration works are progressing well. While progressing, the contractor encountered additional defects at Comerong Island levee that will require rock protection works (non-NDRA funded works). The requirement for rock protection and stabilisation was not initially anticipated at this site. It is however not possible to avoid these rock works, as

those levee sections need to be built at the river bed and there is no remaining area left to set back the levee, due to the location of the road and fences behind the levee.

These rock protections are also required to protect the repaired defects in the longer term. Council's Floodplain Engineers have observed that the levee erosion is continuing due to high tide wave action, even though no flooding has occurred since June 2016. Accordingly, if these rock protections are not provided, the repaired defects will be eroded, and more expenditure will ultimately be required in future. It is important to note that the Comerong Island levee is protecting the only access road to the island.

Taking all these facts into account, a variation for an amount of \$500,000 (30% variation on the original tender amount), which includes \$260,000 for current known variations to carry out non-NDRA works and a \$240,000 contingency for possible similar future project variations, is required to complete this project to its fullest extent.

Update - levee repair works at wedding venues

Levee defects were identified at two existing wedding venues (111 and 135 Terara Road, Terara). The negotiated access to these wedding venues is highly restricted and is only available between June to mid of August, if there are no weddings booked during winter. The owner of 111 Terara Road has required many more limitations or restrictions on how the levee can be accessed on this property.

Council recently sought quotations from three (3) suppliers within Council's existing contractor panel to repair the levee defect at the two identified properties. Only one submission was received to repair the defects at 135 Terara Road and none were received for 111 Terara Road. Quotations were also previously sought in July 2017 from three suppliers within Council's existing tender panel. Council received only one quotation at that time as well, however, the contractor declined to do the works due to the restrictions. Unfortunately, the property owner at 111 Terara Road has not signed an 'agreement to enter' the property to allow the levee repairs to be completed. Council has continued negotiations with the owner since 2016 and this is the only property Council has not been able to obtain a signed agreement to enter.

It appears that it will be difficult to repair the levee defects at 111 Terara Road considering the access and time restrictions, the lack of interest from potential suppliers and the continuing negotiations with the property owner to gain access. However, Council will endeavour to carry out the repair works between June and mid-August 2019, provided that the property owner agrees to provide access and a potential contractor can work within the access restrictions.

Council officers have dedicated a lot of time previously to negotiate access with the private property owners, given that there are no easements along the levees. It would be prudent to pursue obtaining easements along the levee for restoration works at future. It has been estimated that \$550,000 will possibly be needed to establish easements over the category 1 levees.

Natural Disaster Relief Assistance (NDRA) Program - 2016 Claim

The NSW Government has approved Council's application for assistance under the NDRA Program for flood levee repairs resulting from the 2016 NSW east coast low storms and floods (see **attachment 2**).

Since lodging this claim Council submitted a revised claim for both the 2015 and 2016 storm and flood events to account for the revised estimated costs to carry out flood levee repair works. The NSW Government previously approved the original claim for 2015 storm and flood damages.

CL18.182

Council is currently waiting to find out the outcome of the revised claim. In the meantime, it is recommended that Council accept the current assistance offer. Council must advise of its acceptance of this financial assistance and of the conditions, in writing to NSW Public Works Advisory's Regional Director, within 45 days of receipt of the offer of financial assistance, before any payments will be made to Council.

INFORMATION ONLY

ORDINARY MEETING

27/06/2017

TO: Environmental Services Manager (Kelie Clarke)

Subject: Decline to Accept Any Tenders - Shoalhaven River Levee Flood Damage Restoration 2017 - representations to Local Members
Target Date: 27/07/2017
Notes: This item has been assigned to Mir Abdus Subhan for action. Please finalise your 'Information only' action in Infocouncil to acknowledge receipt.
HPERM Reference 53884E D17/182307

RESOLVED (Clr Wells / Clr Pakes)

MIN17.603C

That Council

1. In accordance with Section 178(1)(b) of the regulations decline to accept any Tender as failing to meet the minimum technical criteria.
2. In accordance with Clause 173(3)(e) enter into negotiations with any person or from within existing tender panels for the following reasons;
 - a. Market failure for a large package of works in open tendering; and
 - b. The project must be completed within the timeframes required by the NDRRA grant funding.
3. Break the work into smaller packages based on levee location.
4. Commence flood levee restoration Option 1 that is, undertake all flood levee restoration works to repair 2015 and 2016 flood damage repairs with rock protection and 2015 audit high priority defect repairs, progressing on a priority basis and commencing work at Terara levee (P1L2).
5. The resulting contract documents and any other associated documents be executed on behalf of the Council in accordance with CI165 of the Local Government Regulation by the General Manager (Director of Planning, Environment and Development).
6. That Council make strong representations through the Member for Kiama, Gareth Ward and Member for South Coast, Shelley Hancock requesting additional government funding for all flood damage works.
7. That council approve the necessary additional funding required to complete all works in Option 1 and that this be adjusted as part of the September'17 Quarterly budget review.
8. The recommendation remain confidential in accordance with Section 10(A)(2)(d)(i) of the Local Government Act until a successful contract is negotiated.

CARRIED

[Open Item in Minutes](#)

You have been assigned an action/decision for the above committee. To view/add notes or complete this action, go to the Action Menu in Infocouncil.



Actions

Instructions for viewing/completing an action

1. Open Word
2. Click on Actions Menu on the Infocouncil toolbar
3. View your actions
4. You have numerous options from this screen; please ensure you always add a note before completing or allocating to another officer.
5. If an action is for information only please ensure you add a note to say you have read the information and then finalise (complete) the action.

Add/Edit Notes

Finalise Action



Natural Disaster Relief Assistance Program
Level 4, 66 Harrington Street, The Rocks NSW 2000
Tel 02 9240 8885 | TTY 1300 301 181
ABN 81 913 830 179 | www.publicworksadvisory.nsw.gov.au

BN18/1559

Mr Russell Pigg
General Manager
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Dear Mr Pigg

Natural Disaster Relief Assistance to Council following the NSW Coast East Storms and Floods from 1 June 2016

I am pleased to advise that Shoalhaven City Council's application for assistance under the Natural Disaster Relief Assistance Program (NDRA Program) has been approved. The application was for the restoration costs of council's eligible assets damaged by the NSW East Coast Storms and Floods of 1 June 2016.

Under the State and Commonwealth Governments' Natural Disaster Relief and Recovery Arrangements, financial assistance is available to councils to restore council owned assets to their pre-disaster condition. The NSW Government pays for the first \$165 million of natural disaster costs in the year, the Commonwealth Government matches the state's expenditure for costs between \$165 million and \$289 million and beyond that the Commonwealth pays for three-quarters of all costs.

On behalf of the Office of Emergency Management, Public Works Advisory, has assessed the damage and eligibility of works as outlined in your application. Under the NDRA Program guidelines, Council is eligible for financial assistance of up to \$789,641.00 as detailed in the attached schedule (Tab A). As soon as council certifies that the eligible works have been completed it will be reimbursed the actual expenditure up to the approved amount.

Under NDRA Program guidelines, councils have up to two financial years plus the balance of the financial year in which the disaster event was declared to finalise the claims. However, as you may be aware, Council has applied for an additional twelve months to expend this grant. The NSW Government has supported this request and I understand that the Australian Government is currently considering the application. I will advise Council of the outcome of its application for an extension of time as soon as a decision has been made.

Council is requested to contact Mr John Anderson, North Coast Regional Director, Public Works Advisory at Level 3, Block E, 84 Crown Street Wollongong NSW 2309, within 45 days to provide written acceptance of the offers and their attached Conditions of Financial Assistance (Tab B).

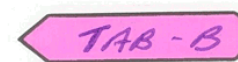
Yours sincerely

Martin Dwyer
Director, Engineering Emergency Management
Public Works Advisory
Department of Finance, Services and Innovation
on behalf of the NDRA Program 29/0/18

TAB - A

June 2016 Storm Damage - Estimate of Costs

Levee ID / Photo Reference	Location	Description	Estimate
P 1L2		Preliminaries and Environmental Controls	\$44,621.00
	Reach 002-D2 A	Tree Removal from levee and levee batter	\$3,130.00
	Reach 002-D2 A & B	Reinstate levee from waterline for 55lm. Width to match undamaged levee immediately adjacent	\$84,970.00
	Reach 002-D4	Reconstruct the levee and bank profile from waterline to top of levee. Reinstate levee 2m wide minimum 5 m long.	\$29,475.00
P 5L1		Preliminaries and Environmental Controls	\$139,400.00
	Reach 003 D1 /D6 (same location)	Reinstate rock protection at toe and backfill to 1:2 slope for a length of 15 lm	\$17,700.00
	Reach 003 D2	Reinstate levee at breach to match surrounding levee heights 20lm	\$12,500.00
	Reach 003 D5	Reinstate rock protection at toe and backfill to 1:2 slope for a length of 40 lm	\$32,606.00
	Reach 004 D4	Reinstate 40lm of rock protection and reconstruct levee bank at 1:2 slope to match existing levels	\$72,000.00
	Reach 004 D4	Reinstate levee for 40 lm. Top of levee to match levee reconstructed at Reach 004 D3.	\$64,000.00
P11L1		Preliminaries and Environmental Controls	\$13,627.00
	Reach 005 D1, D2, D3	Reconstruct levee bank at 1:2 slope to match existing levels.	\$20,000.00
	Reach 005 D4	Reconstruct levee bank at 1:2 slope to match existing levels	\$30,000.00
Summary	Sub-Total (Construction)		\$564,029.00
	Contingency (10%)		\$56,403.00
	Inspections and Design (2%)		\$11,281.00
	Design (8%)		\$45,122.00
	Project Management, Construction Phase (20%)		\$112,806.00
	Total		\$789,641.00



NATURAL DISASTER RELIEF ASSISTANCE PROGRAM

CONDITIONS OF FINANCIAL ASSISTANCE

The following conditions shall apply to all offers of financial assistance irrespective of the purpose for which the offer is made:

1. The Department of Finance, Services and Innovation's delegated representative for the purposes of these conditions is the Regional Director, Public Works Advisory, or any person acting in that capacity.
2. Council must advise of its acceptance of this financial assistance and of these conditions, in writing to Public Works Advisory's Regional Director, within 45 days of receipt of the offer of financial assistance, before any payments will be made to Council. Failure to accept the offer within the specified timeframe may result in financial assistance being withdrawn.

At the same time Council shall submit a detailed program for the work to the Public Works Advisory's Regional Director for approval. The program is to include the projected cash flow, as depicted in the attached form (Appendix A). No deviations from the approved program are to be made.

3. Council shall complete the work within the approved estimated cost. Where instances arise where the approved works program needs to be varied due to the identification of further work or amendment to the amount of work submitted under the existing approved items, the variation to the approved program shall be presented to the Regional Director for information and forwarded to the delegated authority for approval. Council should not presume additional funding is forthcoming before approval.
4. The transferring of subsidy assistance funds to other projects and/or grouping costs for similar projects running concurrently within Council is not permitted.
5. As administrator of the Natural Disaster Relief Assistance Program associated with the financial assistance to restore damaged council-owned assets, the Department of Finance, Services and Innovation, or its representative, reserves the rights to monitor and evaluate the project works and inspect Council's books and records associated with the funded project works prior to payment of all subsidy assistance payments.
6. The total subsidy assistance payments will be made on the total estimated project costs as stated in the offer to Council or actual total project costs, whichever is the lesser.
7. The works and payment of all financial assistance must be finalised within two financial years from the end of the financial year in which the disaster occurred. Where exceptional circumstances exist, applications for an extension of time may be submitted to the Regional Director. Such

applications shall detail reasons for the delay and shall be submitted immediately the situation becomes known as approval is required from the Commonwealth Government to incur expenditure beyond the two year limit. Notification of an extension of time must be forwarded to the Regional Director no later than six (6) months prior to the end of the financial year in which the grant offer will be finalised; otherwise no extension of time will be given under any circumstances.

8. Council shall maintain the works in good order and condition in accordance with asset management guidelines as set out in the Local Government Act, 1993.
9. The Department of Finance, Services and Innovation will administer the government expenditure, issue financial assistance to Council and ensure compliance with Government guidelines, legislation and these Conditions of Financial Assistance.
10. During the currency of the work, Council shall provide the Regional Director with Certificates of Expenditure on the Department of Finance Services and Innovation's Form No. NDRP 02/01 as depicted in the attached form (Appendix B). Payment of the grant will only be made in response to the lodgement of these Certificates. The Certificates shall include information showing itemised expenditures against the estimated costs as shown in the grant submission.
11. Payments will not be made until Council provides the Department of Finance, Services and Innovation with a valid Australian Business Number as shown in Appendix A – Predicted Expenditure.
12. Payments will not be made until Council provides the Department of Finance, Services and Innovation with a copy of its reconciled financial records of actual expenditure on the approved works. This must include a copy of general ledger transactions for the works and supporting invoices, approved council labour time sheets and other supporting documentation.
13. Within one month of completion of the works, Council shall provide an Interim Final Certificate of Expenditure. The Interim Final Certificate of Expenditure shall show the expenditure incurred to date together with an estimate of the value of outstanding commitments, and is expected to correspond to the Final Certificate of Expenditure.
14. Within three months of the completion of the works, Council shall provide a Final Certificate of Expenditure. The Final Certificate of Expenditure shall show the amount of the Department of Finance, Services and Innovation's financial assistance received by Council and the total expenditure appropriately dissected between the Department of Finance, Services and Innovation and Council funds. In the absence of such Certificate, and after seeking advice from Council, the Department of Finance, Services and Innovation, or its representative, may make an assessment of the final payment and finalise the financial assistance.

15. The Department of Finance, Services and Innovation in association with the New South Wales Auditor-General and the Australian National Audit Office reserves the right to audit Council's books and records associated with the funded disaster event.
16. Insurance and insurance excess are not covered under the Natural Disaster Relief Assistance Program . Council must claim on insurance any item that is damaged. The Program will cover the gap or difference between the insurance payout (including the insurance excess) and the total cost to restore the item.

NDRA Cover = Cost to restore item - (Insurance claim + Insurance excess)

17. Financial assistance under the Natural Disaster Relief Assistance Program is free of GST. Monetary amounts set out in the offer of financial assistance and these conditions are stated exclusive of GST. No GST will form part of the subsidy payment to Council or will be included in Councils request for financial assistance.

APPENDIX A

NATURAL DISASTER RELIEF ASSISTANCE PROGRAM
PREDICTED EXPENDITURE

COUNCIL FILE No. _____		FILE No. (H.O.)* _____	
		(L.O.)* _____	
COUNCIL: _____		ABN: _____	
COUNCIL CONTACT: _____			
COUNCIL PROJECT TITLE: _____			
OFFICE'S PROJECT TITLE: * _____			
W/O NAME: * _____		W/O No: * _____	
SUBSIDY ARRANGEMENTS: _____			
PROJECT DESCRIPTION: _____			

ESTIMATED TOTAL COST OF PROJECT: _____			
COMPLETION DATE: _____			
ESTIMATED MONTHLY CUMULATIVE EXPENDITURE:			
	IN 2016/2017	IN 2017/2018	IN 2018/2019
JULY	_____	_____	_____
AUGUST	_____	_____	_____
SEPTEMBER	_____	_____	_____
OCTOBER	_____	_____	_____
NOVEMBER	_____	_____	_____
DECEMBER	_____	_____	_____
JANUARY	_____	_____	_____
FEBRUARY	_____	_____	_____
MARCH	_____	_____	_____
APRIL	_____	_____	_____
MAY	_____	_____	_____
JUNE	_____	_____	_____
SUB TOTAL:	_____	_____	_____
ATTACHMENTS (If Any): _____			

GENERAL MANAGER: _____		DATE: _____	
TECHNICAL MANAGER: _____		DATE: _____	
* Items to be completed by the Department of Finance, Services and Innovation.			

CL18.182 - Attachment 2

Form No. NDRP 02 / 01

APPENDIX B

**NATURAL DISASTER RELIEF ASSISTANCE PROGRAM
CERTIFICATE OF ACTUAL EXPENDITURE FOR FINANCIAL
ASSISTANCE TO**

(enter name of council)	
Program: Natural Disaster Relief Assistance Program	Funding: Emergency (100%)**
Year:	Restoration (75%) Restoration (100%) (delete as appropriate)
Date of Offer:	Progress Cert. No. _____ (Insert No.)
Disaster Event:	Interim Final Certificate Final Certificate (delete as appropriate)

CONTRIBUTIONS		
Authorised Value of Project (maximum under grant offer)	Council / Other	\$ _____
	Department of Finance, Services and Innovation	\$ _____
	TOTAL	\$ _____
Financial Assistance Received	Total To Date	\$ _____
CURRENT CLAIM		
Disaster Event's Total Expenditure* To: _____ (Insert Date)	Council / Other	\$ _____
	Department of Finance, Services and Innovation	\$ _____
	TOTAL	\$ _____

*Payment of the grant offer will be subject presentation of Council's General Ledger transaction register and invoices and supporting documentation associated with the funded disaster event.

Council hereby certifies that: -

1. The restoration of Council's assets has been carried out in accordance with the Conditions of Financial Assistance, Natural Disaster Relief Assistance Program.
2. Council clean-up and asset restoration costs are restricted to additional operational expenditure (i.e. contractor costs, council overtime, extra shifts etc) and exclude work undertaken during normal operation times using normal labour and equipment.
3. Insurance claims and insurance excesses have been deducted from this or any other progress claim associated with this disaster and Council has not sought financial assistance for any damaged item claimable via its insurance except as provided in Item 16 of the Natural Disaster Relief Assistance Program *Conditions of Financial Assistance*.
4. Council has not claimed financial assistance from any other agency or Office with respect to these expenditure items.
5. Council has current asset management plans and maintenance plans covering the items requiring emergency restoration.
6. All actual expenditure as detailed in this claim is free of GST.
7. Council has supplied a copy of its General Ledger and supporting documentation for this expenditure.

(This signature required on Final Certificate only) General Manager

(This signature required on Progress Payment only) General Manager
/ Delegated Officer

Date

Page 5 of 6
April 2018

CL18.182 - Attachment 2

Form No. NDRP 02 / 01

APPENDIX B

NATURAL DISASTER RELIEF ASSISTANCE PROGRAM

CERTIFICATE OF ACTUAL EXPENDITURE FOR FINANCIAL ASSISTANCE TO

(Enter name of Council)

DETAILS OF EXPENDITURE

Item No.	Project Component	Amount Allocated	Actual Expenditure
E	Emergency Items		
	Completed within 21 Days		
1	Debris removal – Council property		
2	Public Buildings		
3	Stormwater drainage		
4	Retaining walls		
5	Rock protection, Flood mitigation		
6	Other items (specify below)		
R	Restoration Works		
1	Debris removal – Council property		
2	Public Buildings		
3	Stormwater drainage		
4	Retaining walls		
5	Rock protection, Flood mitigation		
6	Other items (specify below)		
	TOTAL COSTS	\$	\$

A copy of this certificate was forwarded to the Department of Finance Services and Innovation office at on.....

