

## **Citation**

1. This Code of Meeting Practice shall be known as Gwydir Shire Council Code of Meeting Practice 2009.

This Code has been prepared in conjunction with:

Division of Local Government, Department of Premier and Cabinet  
Practice Note No. 16 – August;

The Local Government Act, 1993; and

The Local Government Amendment (Planning and Reporting) Act,  
2009.

However, nothing in this Code overrides or affects these Acts or any other law.

The Code of Meeting Practice should also be read in conjunction with the following Council Policies:

Confidentiality at Council Meetings  
Council Business Papers  
Code of Conduct  
Decision Making Guidelines  
Presentation of Petitions  
Common Seal  
Gifts and Benefits

## **Commencement**

2. This Code will commence on .....

## **Definitions**

3. In this Code:

### ***The Act means***

The Local Government Act, 1993;

### ***Amendment means***

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;

**Chairperson:**

- (a) in relation to a Meeting of a Council means the person presiding at the Meeting as provided by Section 369 of the Act; and
- (b) in relation to a Meeting of a Committee of a Council means the person presiding at the Meeting as provided by Clause 34 of this Code;

**Committee**

A Committee appointed or elected by the Council in accordance with Clause 28 (1) or the Council when it has resolved itself into a Committee of the Whole;

**Councillor**

A Councillor of Gwydir Shire Council (Section 232 of the Act and Section 4 of the Local Government Amendment (Planning and Reporting) Act 2009 defines the role of a Councillor);

**Director-General**

The Director-General of the Division of Local Government;

**Division**

Is a means by which the support or objection to a motion is easily seen and is recorded;

**Minister**

Is the Minister for Local Government;

**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;

**Quorum**

Is the minimum number of Councillors necessary to conduct a meeting;

## **Record**

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

## **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'.

## **Tape Recorder is taken to include**

A video camera and any electronic device capable of recording speech, whether a magnetic tape is used to record or not.

## **Year**

The period beginning 1 July and ending the following 30 June.

Note: The Act and the Local Government Amendment (Planning and Reporting) Act, 2009 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.

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.

## **PART 1 – BEFORE THE MEETING**

4. Ordinary Council meetings are to be held on the last Thursday of each month, or otherwise as resolved by Council from time to time. Council is to meet at least ten (10) times each year.
5. Council will meet each alternate month at the Bingara Council Chambers and the Warialda Council Chambers, or otherwise determined by the General Manager in consultation with the Mayor or resolved by Council from time to time.
6. Council Meetings will commence at the time set out in the relevant Business Paper. Ordinary Meetings normally commence at 10 am and Committee Meetings 9 30am but this may change at the discretion of the General Manager in consultation with the Mayor or Committee Chair.
7. Council will give public notice of the time and place of its ordinary and committee meetings by advertising in the local newspaper a week before except in exceptional circumstances. Council will give public notice of the time and place of an extraordinary meeting by advertising in the local newspaper where practical.
8. Copies of the current agenda and associated business papers will be available to the public to look at or take away, and are free of charge pursuant of Section 9 of the Act.
9. Section 12 of the Act and the provisions of the Privacy and Personal Information Protection Act, 1998 and Copyright Act, 1968 (Cth) gives a right of access to certain Council documents to any interested person.

## **PART 2 – CONFLICTS OF INTEREST**

10. A Councillor or a member of a Council committee who has a pecuniary interest in any matter before the Council, and who is present at a meeting where the matter is being considered, must disclose and identify the nature of the interest to the meeting as soon as practical (s. 451 of the Act).
11. A Councillor must not be present at or in the sight of the meeting of Council at any time during which a matter to which they have declared a pecuniary interest is being considered (s.451(2) of the Act). This has been interpreted as excluding Councillors in both their official capacity and as a member of the public.
12. A disclosure made at a meeting of a Council or Council Committee Meeting must be recorded in the minutes of that meeting (s.453 of the Act). However, proceedings will not be invalid just because a Councillor or committee member does not identify a pecuniary interest at the meeting in accordance with section 451 of the Act.
13. Annexed is a pecuniary and non pecuniary disclosure form. This form is to be completed by a Councillor and handed to the General Manager prior to the commencement of the Council meeting. Non-Pecuniary disclosures are declared as either 'Significant' or 'Less than significant'.

## **PART 3— AT THE MEETING: GENERAL**

14. The Council can debate a motion that has been properly submitted. Whether the motion is actually debated will depend on whether another Councillor moves and seconds the motion at the meeting. If the motion does not have support at the Council meeting, then it may lapse for failure to get a mover or seconder, or be defeated in a vote.
15. A Councillor cannot participate in a Meeting of a Council unless personally present at the Meeting.
16. If a Councillor is absent from three consecutive ordinary meetings of the Council without the leave of the Council having been granted then the Councillor automatically vacates office (section 234(1) (d) of the Act). Leave can only be granted by Council prior to the meeting or at the meeting concerned.
17. This does not apply if the Councillor has been suspended from office by the Local Government Pecuniary Interest and Disciplinary Tribunal under section 482 of the Act.
18. Leave of absence may be granted to Councillors at the discretion of the Council.

19. Leave of absence may be granted by the Council prior to the meeting, or at the meeting. An application for leave does not need to be made in person and the Council may grant the leave in the Councillor's absence (s.234 (2) of the Act).
20. An application for leave of absence, though not necessary, should be lodged with the General Manager and in writing stating the reasons for the leave, and identifying the appropriate meetings so that the Council may consider it.
21. When a Councillor does intend to attend a meeting from which he or she have been granted leave he or she may still attend and though not necessary, should be encouraged to give the General Manager at least two days notice of such intention to attend.
22. The tendering of an apology is an accepted convention by which those present at a meeting are notified that the person tendering the apology will not be attending the meeting.
23. The acceptance of an apology is a positive acknowledgement of the courtesy of the person who tendered it. It does not amount to a grant of a leave of absence.
24. There is no requirement that a Councillor remain at a Council meeting while business is being conducted. However, a Councillor must comply with the Council's Code of Conduct and it is expected that a Councillor would attend and remain at Council Meetings (unless prevented by illness or pressing circumstances) in order to responsibly perform the role of a Councillor (s.232 of the Act) and to assist the Council in complying with its charter (s.8 of the Act).
25. 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.

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.

26. 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.

Note: The case of *Levenstrath Community Association Incorporated v Council of the Shire of Nymboida* [1999] NSWSC 989, confirmed that a Councillor who is not capable of voting on the business before the Council (by reason of having disclosed a pecuniary interest in a matter) is regarded as being absent from a meeting for the purpose of determining whether or not a quorum is present. In other words the Councillor is regarded as holding office but not as being present at the meeting. If so many Councillors declare a pecuniary interest in a matter that the Council is unable to form a quorum to deal with the business before it, the Councillors concerned may apply to the Minister to allow them to participate in the discussion and vote on that matter (s.458 of the Act). This recognises that Council business must sometimes proceed even though the decision is being made by Councillors with pecuniary interests declared. The Minister does not grant such exemptions lightly.

27. Without a quorum the meeting is not a meeting of the Council. Resolutions cannot be made. Any action taken will have no legal validity but matters requiring urgent attention may be actioned under delegation if required.
28. An adjourned meeting is a continuation of the earlier part of the same meeting, not a new meeting

## **PART 4— PROCEDURE FOR THE CONDUCT OF COUNCIL MEETINGS**

### **Councillor to be elected to Preside at Certain Meetings**

29. If no Chairperson is present at a Meeting of a Council at the time designated for the holding of the Meeting, the first business of the Meeting must be the election of a Chairperson to preside at the Meeting.

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

30. 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.
31. 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.
32. For the purposes of Clause 31, 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.
33. The candidate whose name is on the drawn slip is the candidate who is to be the Chairperson.

#### **Chairperson to have Precedence**

34. When the chairperson rises during a Meeting of a Council:
- (a) any Councillor then speaking or seeking to speak must, if standing, immediately resume his or her seat; and
  - (b) every Councillor present must be silent to enable the Chairperson to be heard without interruption.

#### **Chairperson's Duty with respect to Motions**

35. 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.
36. The chairperson must rule out of order any motion that is unlawful or the implementation of which would be unlawful.
37. Any motion, amendment or other matter that the Chairperson has ruled out of order is taken to have been rejected.

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## **Order of Business**

38. At a Meeting of the Council (other than an Extraordinary Meeting), the general order of business (except as provided by the Act) will be as follows:

### ***OFFICIAL OPENING AND WELCOME – MAYOR OR CHAIR;***

### ***DECLARATION OF OFFICE;***

When a newly elected Council has its first meeting following an election or at the first meeting attendance of a Councillor elected at a by-election, each Councillor has the voluntary option to state the following Declaration:

I, (Councillor's name) having been elected as a Councillor of the Gwydir Shire Council do hereby declare that I will act honestly and exercise a reasonable degree of care and diligence in carrying out the duties of my office according to the relevant legislation.

### ***APOLOGIES;***

### ***CONFIRMATION OF THE MINUTES;***

### ***PRESENTATIONS;***

Prior to addressing the meeting any person who is seeking to address the Council on a matter being discussed at the meeting or likely to be discussed at a future meeting, other than an invited speaker, must have the permission of the Mayor or Committee Chair and will be required to complete the declaration required under Council's Procedure for Addressing Meetings Policy which includes signing the following statement:

"I (name) understand that the meeting I intend to address on (date) is a public meeting. I also understand that should I say or present any material that is inappropriate, I may be subject to legal action. I also acknowledge that I have been informed to obtain my own legal advice about the appropriateness of the material that I intend to present at the above mentioned meeting".

### ***CALL FOR THE DECLARATIONS OF INTERESTS, GIFTS RECEIVED AND CONFLICTS OF INTEREST;***

A Councillor is to declare any gifts received since the last Council Meeting in accordance with Council Policy – Gifts and Benefits - C. 02.14.

### ***MAYORAL MINUTE;***

### ***COUNCILLORS' REPORTS (VERBAL OR WRITTEN);***

### ***OFFICERS' REPORTS;***

**COMMITTEE OF THE WHOLE;**  
(IF REQUIRED EITHER IN CAMERA OR OPEN TO THE PUBLIC)

**- Councillors' Reports**

All Councillors' Reports, relating to meetings attended as a delegate, workshops or forums, on behalf of the Council, must be submitted in writing for inclusion in the issued Business Paper prior to the meeting with recommendations if appropriate.

The minutes of any meetings attended by a Councillor as the Council's delegate will be taken as the written report if included in the Business Paper.

**- Confidential Matters**

**OFFICIAL CLOSURE – MAYOR OR CHAIR**

The meeting is not closed until the Chair officially closes the meeting

39. The order of business fixed under Clause 38 may be altered if a motion to that effect is carried. Such a motion can be moved without notice.
40. Despite Clauses 87 to and including 93, only the mover of a motion referred to in Clause 39 may speak to the motion before it is put.
41. If the Council resolves to open its meeting with a prayer, the following prayer is used:

We thank Thee, Lord, for the honour of being called by our fellow citizens to this office of honour and trust. Give us grace diligently and honorably, free from private interest or prejudice, to discharge the duties entrusted to us, to the common good and as in Thy sight.

Through Jesus Christ our Lord.

AMEN.

42. 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 (s.376 of the Act).
43. The chairperson decides who sits at the meeting table.

**Business Papers for Council Meetings**

44. The General Manager must ensure that the business paper 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 business paper is prepared, to put to the Meeting; and
  - (c) any business of which due notice has been given.
45. The General Manager must ensure that the business paper for a Meeting of the Council or a Committee of the Council is prepared as soon as practicable before the Meeting.
46. Council staff will, when preparing business papers which will be open to inspection by the public, follow the provisions of the Privacy and Personal Information Protection Act 1998 (PPIPA) and avoid including personal identifiers such as names and addresses unless such information is required by legislation.
47. Reports to Council may be prepared by a Council officer, however this Report must be received at least two (2) working days before the Business paper is to be finalised. The Report must also be approved by the General Manager before being included. Additional information can be provided to Councillors, however this information must be received at least two (2) working days before the Meeting and approved by the General Manager.
48. Reports to Council can include recommendations by the relevant Council officer. This officer must be available at the Council Meeting to present the report and be able to answer questions and enquiries of all Councillors before or at the said Council meeting. See also Clause 83.
49. Once the agenda for a meeting has been sent to Councillors an item of business on the agenda should not be removed from the agenda prior to the meeting unless supported by a adequate and accepted explanation.
50. If it is proposed that an item of business which is on the agenda not be dealt with at the meeting Council should resolve to defer that business to another meeting or resolve not to consider the matter, as the case may be.
51. Section 664 (1) of the Act states that “a person must not disclose any information obtained in connection with the administration or execution of the Act unless that disclosure is made:

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- (a) with the consent of the person from whom the information was obtained; or
  - (b) in connection with the administration or execution of the Act; or
  - (c) for the purposes of any legal proceedings arising out of the Act or of any report of any such proceedings; or
  - (d) in accordance with a requirement imposed under the *Ombudsman Act 1974* or the *Freedom of Information Act 1989*; or
  - (e) with other lawful excuse.”

Note: There is a maximum penalty of \$5500 for breach of this provision.

- 52. If, in the opinion of the General Manager, business to be transacted at a Meeting of the Council or of a Committee of the Council is a kind of business referred to in Section 10(2) of the Act, the business may be included in a confidential business paper. All other business to be transacted at the Meeting must be included in an ordinary business paper.
  - 53. If a confidential business paper is prepared for a kind of business referred to in Section 10(2) of the Act, the business must be referred to in the ordinary business paper prepared for the same Meeting.
  - 54. Nothing in this Clause limits the powers of the chairperson under Clauses 64 to and including 67.
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## **Giving Notice of Business**

55. The Council must not transact business at a Meeting of the Council:
- (a) unless a Councillor has been given notice of the business in writing within four business days of the Ordinary Meeting as is fixed by resolution of the Council or, three days before a Committee Meeting in accordance with the Council's Code of Meeting Practice; and
  - (b) unless notice of the business has been sent to the Councillors in accordance with Section 367 of the Act.
56. Clause 55 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 6 (1); or
  - (c) is a matter or topic put to the Meeting by the Chairperson in accordance with Clauses 64 to and including 67; or
  - (d) is a motion for the adoption of recommendations of a Committee of the Council.
57. Despite Clause 55, 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) either:
    - all the Councillors (disregarding any casual vacancies) are present at the meeting; or
    - 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.
58. Despite Clauses 87 to and including 93, only the mover of a motion referred to in Clause 57 can speak to the motion before it is put.

## **Extraordinary Meetings**

59. An extraordinary Council meeting can be requested in writing by at least two Councillors. The Mayor can be one of the two Councillors.
60. The Mayor must call the meeting which is to be held as soon as practical but must be within fourteen (14) days after the request is made.
61. The General Manager must ensure that the business paper for an Extraordinary Meeting of a Council deals only with the matters stated in the notice of the Meeting.
62. Despite Clause 61, 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) either:
    - all the Councillors (disregarding any casual vacancies) are present at the Meeting; or
    - 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 business paper for the Meeting has been disposed of.

63. Despite Clauses 87 to and including 93, only the mover of a motion referred to in Clause 62 can speak to the motion before it is put.

## **Official Mayoral Minutes**

64. 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.
65. Such a minute, when put to the Meeting, takes precedence over all business on the Council's business paper 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.

66. 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.
67. When necessary, the Mayor may exercise the policy-making functions of the Council between. However the Mayor is to report his or her actions to the next Council meeting.

#### **Report of a Departmental Representative to be tabled at Council Meeting**

68. When a report of a Departmental Representative has been presented to a Meeting of a Council in accordance with Section 433 of the Act, the Council must ensure that the report:
  - (a) is laid on the table at that Meeting; and
  - (b) is subsequently available for the information of Councillors and members of the public at all reasonable times.

#### **Notice of Motion—Absence of Mover**

69. In the absence of a Councillor who has placed a notice of motion on the business paper for a Meeting of a Council:
  - (a) any other Councillor may move the motion at the Meeting; or
  - (b) the Chairperson may defer the motion until the next Meeting of the Council at which the motion can be considered.

#### **Motions to be Seconded**

70. A motion or an amendment cannot be debated unless or until it has been seconded. This Clause is subject to Clauses 65 and 91.

#### **How Subsequent Amendments may be Moved**

71. 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.

#### **Motions of Dissent**

72. 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.

73. 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 business paper and proceed with it in due course.
74. Despite Clauses 87 to and including 93, 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.

### **Rescission Motions**

75. The Act allows an original motion to be negated (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 (s.372(4) of the Act).
76. 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 (s.372(5) of the Act). '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 referred to in section 372(5) of the Act.
77. A motion to rescind a resolution must be lodged with the General Manager before the resolution has been actioned and no later than 10 am on the next working day following the meeting that adopted the resolution that is the subject of the rescission motion.
78. Council can rescind part of a resolution.
79. 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.
80. 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.

81. 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.

Note: In *Townsend v Evans Shire Council* [2000] NSWLEC 163, it was held that there was no effective development consent until formal notice of a determination was issued to the applicant and that “... it is necessary that the communication of the consent have some formal character as being authenticated on behalf of the Council”. Verbal advice from the Mayor at the Council meeting that the consent had been given was not notice to the applicants so as to “tie the Council’s hands”. In this case, the rescission motion had been lodged with the General Manager before the time required in the planning regulations for issuing a notice of determination. Once the applicant has been formally advised of Council’s decision, there may be issues of compensation to the applicant if consent is later rescinded.

82. 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. 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.

### **Questions may be put to Councillors and Council Employees**

83. 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.

Note: However, a Council employee to whom a technical 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. See also Clause 48.

84. The Councillor must put every such question directly, succinctly and without argument.
85. The Chairperson must not permit discussion on any reply or refusal to reply to a question put to a Councillor or Council employee under Clauses 83, 84.
86. The public can not ask questions or address the Council at Council meetings without the express prior permission of the Chair. A guest

may make a presentation to Council with the permission of the Mayor or General Manager provided due notice is given to Council. (See Clause 38)

### **Limitation as to Number of Speeches**

87. 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.
88. 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.
89. A Councillor must not, without the consent of the Council, speak more than once on a motion or an amendment, or for longer than 5 minutes at any one time. However, the Chairperson may permit a Councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment and for longer than 5 minutes on that motion or amendment to enable the Councillor to make a statement limited to explaining the misrepresentation or misunderstanding.
90. Despite Clauses 87 and 88, 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.
91. The Chairperson must immediately put to the vote, without debate, a motion moved under Clause 90. A seconder is not required for such a motion.
92. 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 Clause 87.
93. 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.

### **Voting at Council Meetings**

94. Each Councillor has one (1) vote. Voting at Council meetings is to be by 'open means', for example, by voices or show of hands. The only exception is voting on the position of Mayor or Deputy Mayor.
95. There are no 'proxy' votes at Council or committee meetings.
96. Each Councillor is entitled to one vote (s.370 of the Act). If the voting on a matter is equal, the chairperson has a second or 'casting' vote (s. 370 of the Act). This is in addition to any vote the chairperson has as a Councillor.
97. With regard to committee meetings the chairperson does not automatically have a second or 'casting vote'. See also Clause 139.
98. 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 clause 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.
99. 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.
100. 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.
101. 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.
102. Section 375A of the Local Government Act 1993 – Recording of voting on planning matters – requires the general manager 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.

### **Resolutions Passed at Closed Meetings to be made Public**

103. 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.

## **PART 4— KEEPING ORDER AT MEETINGS**

### **Questions of Order**

104. 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.
105. 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.
106. 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.
107. The Chairperson's ruling must be obeyed unless a motion dissenting from the ruling is passed.

### **Acts of Disorder**

108. 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.
109. The Chairperson may require a Councillor:
  - (a) to apologise without reservation for an act of disorder referred to in Clause 107 (a) or (b); or

- (b) to withdraw a motion or an amendment referred to in Clause 107 (c) and, where appropriate, to apologise without reservation; or
  - (c) to retract and apologise without reservation for an act of disorder referred to in Clause 107 (d) or (e).
110. A Councillor may, as provided by Section 10 (4) (a) or (b) of the Act, be expelled from a Meeting of a Council for having failed to comply with a requirement under Clause 108. 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.

### **How Disorder at a Meeting may be Dealt With**

111. 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 clause applies to disorder arising from the conduct of Members of the public as well as disorder arising from the conduct of Councillors.
112. A member of the public may, as provided by Section 10 (4) (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.

### **Power to Remove Persons from Meeting after Expulsion**

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

Any member of the public who consumes an alcoholic beverage within the Council Chambers during a Council will be expelled and removed from the meeting.

114. Under section 440H of the Act, Council may request the Director General to suspend a Councillor from civic office. Suspension would only be considered where the Councillor's behaviour has been disruptive over a period of time (that is, more than one incident) and forms a pattern of misbehaviour serious enough to justify suspension or the Councillor has been involved in one incident of misbehaviour that is sufficiently serious as to justify the Councillor's suspension (s 440I and Clauses 12.27-12.31 Model Code).
115. The Local Government Pecuniary Interest and Disciplinary Tribunal also has power to conduct disciplinary proceedings for Councillor misbehaviour in accordance with chapter 14, parts 1 and 3. of the Act.

### **A Councillor can be suspended in certain circumstances**

116. Chapter 14 of the Act provides for the suspension of a Councillor in any one of three circumstances:

Section 440K authorises the Director General to suspend a Councillor for up to 1 month for misbehaviour;

Section 482A authorises, by way of alternative to section 440K, the Local Government Pecuniary Interest and Disciplinary Tribunal to suspend a Councillor for up to 6 months for misbehaviour;

Section 482 authorises the Local Government Pecuniary Interest and Disciplinary Tribunal to suspend a Councillor for up to 6 months where it finds a complaint against that Councillor proved.

### **When a Councillor is suspended from office**

117. While there is no definition of 'suspension' in the Act or the Interpretation Act 1987, the Macquarie Dictionary defines 'suspend' as "to debar, usually for a time, from the exercise of an office or function or the enjoyment of a privilege". 'Debar' is defined as "to bar out or exclude from a place or condition".

The suspension of a Councillor results in that person being excluded from civic office during the period of suspension. It also means being excluded from the rights and privileges of that office during the period of suspension. If the Councillor is also the Mayor, that person is excluded from exercising the function, rights and privileges of both 'Councillor' and 'Mayor' during the period of suspension.

118. A suspended Councillor/Mayor has no greater access to Council documents, Council information or Council facilities than any other resident or ratepayer. The suspended Councillor/Mayor can attend Council meetings, but only as a member of the public. Therefore that person cannot take part in the election of the Mayor or Deputy Mayor, either as a candidate or as a Councillor, or vote on any matter before the Council.

## **PART 5— COUNCIL COMMITTEES**

### **Committee of the Whole**

119. All the provisions of this Code 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.
120. 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.
121. 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.

### **Council may Appoint Committees**

122. As a body politic (s.220 of the Act), a Council can form committees and determine their functions, powers, membership and voting rights. Membership of a Council committee is not restricted to Councillors.
123. In regard to committees consisting entirely of Councillors, a Council can establish such a committee only by resolution (cl.260 (1) of the Regulation).
124. A Council committee could be advisory or it could have decision-making powers as delegated by the Council. A committee may exercise a Council function (s.355 (b)) of the Act) and a Council may delegate to the committee any of its functions other than those set out in section 377(1) of the Act.
125. The Council will set out the functions of each committee when the committee is established. The Council can change those functions from time to time (cl.261 of the Regulation).

126. A committee can exercise a Council's regulatory functions under Chapter 7 of the Act only if all of its members are either Councillors or Council employees (s.379 (1) of the Act).
127. Advisory committees have the power to make recommendations but not to make decisions.
128. Committees may be given power to spend Council monies on certain matters, if a resolution to that effect has been previously passed by the Council (s.377 and s.355 of the Act).
129. Upon formation Council will provide advisory committees with guidelines on how to conduct their meetings and related issues.
130. There is nothing in the Act or the Regulation to require a Councillor to be present at the Council meeting at which he or she is nominated or elected as a member, deputy chairperson or chairperson of a Council committee. Therefore a Councillor can be nominated or elected in his or her absence provided the absent Councillor has given the General Manager notice prior to the Meeting that he or she consents to being nominated for a committee before that Councillor is nominated at the meeting.
131. A Council may appoint or elect such Committees as it considers necessary including the nomination of the Chair for the Committee.
132. Such a Committee is to consist of such number of Councillors of the Council as the Council decides.
133. The quorum for a Meeting of such 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.

### **Functions of Committees**

134. Council specifies the functions of each of its Committees when the Committee is appointed or elected, and may from time to time amend those functions.

### **Notice of Committee Meetings to be Given**

135. 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.
136. However, notice of less than 3 days may be given of a Committee Meeting called in an emergency.

### **Non-members Entitled to Attend Committee Meetings**

137. A Councillor who is not a member of a Committee of a Council is entitled to attend and speak at, but is not entitled to vote at, a Meeting of the Committee.

### **Procedure in Committees**

138. Each Committee of a Council may regulate its own procedure.
139. Without limiting Clause 138, a Committee of a Council may decide upon formation of the Committee that, whenever the voting on a motion put to a Meeting of the Committee (including any advisory committee) is equal, the Chairperson of the Committee is to have a casting vote as well as an original vote. If there has been no such decision the Chairperson will not have a casting vote.

### **Committees to keep Minutes**

140. Each Committee of a Council must ensure that full and accurate Minutes of the proceedings of its Meetings are kept.
141. 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.

## **Chairperson and Deputy Chairperson of Committees**

142. 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.
143. Council may elect a member of a Committee of the Council as Deputy Chairperson of the Committee. If Council does not elect a Deputy Chairperson of such a Committee, the Committee may elect a Deputy Chairperson.
144. 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.
145. 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.
146. The Mayor is, by virtue of holding that office, a member of each Committee of the Council.

## **Absence from Committee Meetings**

147. A member ceases to be a member of a Committee if the member (other than the Mayor):
- (a) has been absent from 3 consecutive Meetings of the Committee without having given reasons acceptable to the Committee for the member's absences; or
  - (b) has been absent from at least half of the Meetings of the Committee held during the immediately preceding year without having given to the Committee acceptable reasons for the member's absences.
148. Clause 147 does not apply if all of the members of the Council are members of the Committee.

## **Reports of Committees**

149. 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.
150. The recommendations of a Committee of the Council are, so far as adopted by the Council, resolutions of the Council.
151. If a Committee of a Council passes a resolution, or makes a recommendation, during a Meeting, or a part of a Meeting, that is closed to the public, the Chairperson must:
  - (a) make the resolution or recommendation public as soon as practicable after the Meeting or part of the Meeting has ended; and
  - (b) report the resolution or recommendation to the next Meeting of the Council.
152. Clause 260 of the Regulation permits committee members to be chosen only by the Council at a formal Council meeting. A permanent vacancy on a Council committee (caused by the resignation or death of a Councillor) can be filled by the Council electing or appointing a Councillor to fill the vacancy.
153. In the case of temporary absences an alternate Councillor may act in the office of a committee member absent through illness, etc. The alternate or acting member has the authority and role of the member and will be elected or appointed under clause 260 of the Regulation from among the Councillors. When acting as a committee member, an alternative member would form part of the committee's quorum.

## **Council can remove a Councillor from membership of a committee**

154. Clause 260 of the Regulation authorises a Council to establish (by resolution) such committees as it considers necessary. A committee is to consist of the Mayor and such other Councillors as are elected by the Councillors or appointed by the Council.
155. Under its general powers as a body politic (s.220 of the Act), a Council may (by resolution) change the composition of its committees whenever it chooses. This can be done by removing a Councillor from a committee and appointing another Councillor as a member, or by changing the total number of Councillors on the committee. Changes in committee composition can come directly from the Council or be recommended by the committee to the Council.

Note: In *Yates v District Council of Penola* (1997) 68 SASR 64, the Court held that the power to remove a Councillor from a committee must

be exercised lawfully, rationally and fairly. It can't be used for an external or ulterior purpose, for example, if motivated by punishment (even if this was not the sole or main reason for the action taken).

### **Disorder in Committee Meetings**

156. The provisions of the Act and of this Code 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.

### **Certain Persons may be expelled from Council Committee Meetings**

157. If a Meeting or part of a Meeting of a Committee of a Council is closed to the public in accordance with Section 10 (2) of the Act, any person who is not a Councillor or an authorised attendee may be expelled from the Meeting as provided by Section 10 (4) (a) or (b) of the Act.
158. 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.

## **PART 6—MISCELLANEOUS**

### **General Manager's role**

#### **The General Manager is delegated the power to appoint non-Councillor members to a Council committee formed under s.355 of the Act**

159. Section 377 sets out the matters that a Council cannot delegate to the General Manager or another person or body. The Council delegates to the General Manager the power to appoint new members to a committee (that is already established and given delegated functions by the Council) if required to perform its appointed function.

Note: As a matter of good administrative practice, the Council requires the General Manager to report to the Council whenever he or she has made an appointment.

### **The General Manager's role on a Council committee**

160. If the General Manager or any other staff member 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.

## **Council decisions are not affected when Councillors change**

161. A local Council is a body politic of the State with perpetual succession and the legal capacity and powers of an individual (s.220 of the Act). This means that the Council is legally separate from the Councillors on it, and that Council decisions are not affected by changes in its Councillors.

## **Council decision making powers in a caretaking role before an ordinary election**

162. The Act does not impose such limits.

Note: While the Act does not impose such limits, like Commonwealth and State Governments, Councils are expected to assume a “caretaker” role during election periods to ensure that major decisions are not made which limit the actions of an incoming Council. It should be the Council’s practice, prior to ordinary elections, to adhere to the accepted practices expected under this caretaker convention.

## **Disclosure and Misuse of Information—Prescribed Circumstances**

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

## **Inspection of the Minutes of a Council or Committee**

164. 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.
165. The General Manager must ensure that the Minutes of the Council and any Minutes of a Committee of the Council are kept secure and in safe custody and that no unauthorised person is allowed to interfere with them.

Note. Section 12 of the Act confers a right to inspect the Minutes of a Council or Committee of a Council. See Clauses 9.

## **Access to Records**

166. The General Manager shall allow any Councillor to inspect any record of the Council that the Councillor requests to see.
167. If the General Manager refuses to allow a Councillor to inspect any such record, the Councillor may, at a Meeting of the Council, move for the production of the document. However, the Councillor must give notice of intention to move the motion.

168. If the Council passes a motion for the production of a Council record, the Council must ensure that the record
- (a) is produced immediately and laid on the table for inspection by the Councillors; and
  - (b) is made available for inspection by any Councillor on reasonable notice to the General Manager during the Council's Ordinary office hours on any day that is within 1 month after the passing of the motion.

### **Tape Recording of Meeting of Council or Committee Prohibited Without Permission**

169. 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 prior approval of the Chair.
170. A person may, as provided by Section 10 (4) (a) or (b) of the Act, be expelled from a Meeting of a Council or a Committee of a Council for using or having used a tape recorder in contravention of this Clause.
171. If any such person, after being notified of a resolution or direction expelling him or her from the Meeting, fails to leave the place where the Meeting is being held, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place.

### **Constitutional referendums**

172. 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. Council will acknowledge the decision in its minutes a resolution confirming or acknowledging the outcome of the referendum process.

# DECLARATION OF INTEREST

Cr. ....

Item Number .....

Title Heading .....

Meeting Date .....

Type of Interest being declared (see over page for more information):

\*Pecuniary Interest

\*Significant Non-Pecuniary Interest

Less than Significant Non-Pecuniary Interest

Reason and basis for the declaration (to be recorded in the Minutes of the meeting):

.....  
.....  
.....  
.....  
.....  
.....  
.....

.....  
Signature

.....  
Date

\* Further action over and above this declaration is required as outlined in the Council's adopted Code of Conduct.

### **What is a pecuniary interest?**

*A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. (section 442)*

### **What is a non-pecuniary conflict of interests?**

*Non-pecuniary interests are private or personal interests 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 and may include an interest of a financial nature.*

### **What is a significant non-pecuniary conflict of interests?**

*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.*

### **What about less than significant non-pecuniary conflict of interests?**

If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.