

**CODE OF MEETING PRACTICE**

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| <b>RESPONSIBLE OFFICER</b>   |                   | General Manager |                      |

Riverina Water County Council

**CODE OF MEETING  
PRACTICE**

# Review / Amendment Dates

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# **SCHEDULE A**

General order of Business

## PART 1 PRELIMINARY

### 1) Citation

This Code may be cited as the Riverina Water County Council Code of Meeting Practice

### 2) Definitions

a) In this Code:

**Amendment**, is a change to the motion before the Council and takes place while the motion is been debated. An amendment to a motion must be put forward in the form of a motion itself;

**Chairperson**,

- i) in relation to a meeting of the Council - means the person presiding at the meeting as Provided by clause 12 of this Code; and
- ii) in relation to a meeting of a committee - means the person presiding at the meeting as provided by clause 48 of this Code;

**Committee** means a committee appointed or elected by the Council in accordance with clause 42(a) or the Council when it has resolved itself into a committee of the whole;

**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;

**Procedural motion** is a motion directed at controlling the conduct of a meeting rather than at requiring or acknowledging the need for action.

**Point of Order** means where a person formally draws the attention of the Chairperson of a meeting to an alleged irregularity in the proceedings of the meeting which the Councillor considers places another Councillor out of order or an act that a Councillor considers to be an act of disorder.

**Substantive motion** is a proposition that requires or acknowledges action that has to be done or has been done. It can also state a view or a preferred position on a particular issue;

**Record** means 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 the Council or of a committee of the Council;

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

**Councillor** means a person elected or appointed to civic office and includes the Chairperson;

**Tabled** means a document or material physically presented to a meeting for it to be added to the records of the Council and for it to be accessible to the Councillors , press and public;

**General Manager** shall include any person properly acting in that role during the absence for any reason of the General Manager.

**Relative**, in relation to a person, means any of the following:

- a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, direct descendant or adopted child of the person or of the person's spouse;
- b) the spouse or the de facto partner of the person or of a person referred to in paragraph (a).

**The Act** means the Local Government Act 1993, as amended;

**The Regulation** means the Local Government (*General*) Regulation **2005**;

**The Code** means the Riverina Water County Council Code of Meeting Practice;

- a) Except as otherwise provided, expressions used in this Code which are defined in the dictionary at the end of the Act have the meanings set out in the dictionary.
- b) The Code of Meeting Practice applies to all meetings of Council and to all Committee meetings of Council without exception;
- c) Any matters regarding procedure of meetings are to be determined by the Code of Meeting Practice;
- d) In the absence of a specific matter being contained in the Code of Meeting Practice the meeting shall abide by the ruling of the Chairperson.

### **3) Act, Regulation, Circular, Guidelines and Practice Note**

- a) This Code is made pursuant to section 360(2) of the Act, and amended pursuant to section 363.
- b) It incorporates relevant provisions of the Regulation and the Act.
- c) In the event of any inconsistency between the Code and the Act or the Regulation, the Act or the Regulation (as the case may be) prevails to the extent of the inconsistency.
- d) Guidelines – Division of Local Government Model Code of Conduct Guidelines – June 2008.
- e) Practice Note – Division of Local Government Meetings Practice Note No 16 – August 2009.
- f) DLG Circular 10-10 – Division of Local Government Circular 10-21 May 2010.

### **4) Notes to Text**

- a) Notes in the text of this Code are explanatory notes and do not form part of this Code. They are provided to assist understanding.
- b) Legislative references are shown in the following manner:
  - i) S345 – Section 345 Local Government Act 1993
  - ii) The Regulation 233(1) Local Government (General) Regulations 2005

## **PART 2 CONVENING OF ,AND ATTENDANCE AT, COUNCIL MEETINGS**

### **5) Frequency of Meetings of the Council**

- a) Council shall meet at least 6 times each year, on a bi-monthly basis (**S396 of the Act**). Ordinary Meetings shall be held on the 4th Wednesday of the month commencing at 1.30 pm. All Council Meetings unless otherwise advised are to be held in the Council Meeting Room – 91 Hammond Avenue, Wagga Wagga. Council meetings are open to the public. Confidential items are considered in closed session, which excludes press and public.
- b) The Council shall, by resolution, set the time, date and place of ordinary meetings of the Council.
- c) he Council may, by resolution, vary the time, date and place of ordinary meetings for flexibility on given circumstances.

### **6) Extraordinary Meeting**

At least two (2) councillors can make a written request to the Chairman to call an extraordinary meeting of the council, which must be called to be held “as soon as practicable” but in any event within 14 days

after receiving the request (s 366 of the Act) If the Chairperson fails to call an extraordinary meeting to be held within 14 days after receiving the request from the Councillors, those Councillors may, in writing, request the General Manager to call the extraordinary meeting. The General Manager must call the meeting to be held as soon as practicable.

Where the Chairperson is of the opinion that an emergency exists which warrants an extraordinary meeting of the Council being called to deal with that emergency, the Chairperson may call an extraordinary meeting of the Council being called to deal with that emergency. The Chairperson, in consultation with the General Manager, shall determine the date and time of the extraordinary meeting. Any request submitted in accordance with this clause must clearly state the business proposed to be transacted at the meeting.

Extraordinary meetings are not only held in “extraordinary” circumstances. These meetings are usually held to deal with special business or where there is so much business to be dealt with that an additional meeting is required **(cl. 242 of the Regulation)**.

## 7) Notice of Meetings

- a) the General Manager of the Council must give to each Councillor, at least three (3) clear working days before each meeting of the Council, a notice specifying the time and place at which and the date on which the meeting is to be held and the business proposed to be transacted at the meeting. **(S367(1) of the Act and 262 (1) of the Regulation)**

Note: The three day period shall be reckoned exclusive of both the day on which the notice is given to each Councillor, and the day of the meeting.

- b) Notice of less than three (3) clear working days may be given of an extraordinary meeting called in an emergency, but in no case shall notice of less than 24 hours be given. **(S367(2) of the Act and 262 (2) of the Regulation)**
- c) 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. **(S367(3) of the Act)**
- d) A notice of a meeting of Council or of a committee must be published in a newspaper circulating in the local area before a meeting takes place. The notice should specify the time and place of the meeting.(Reg-CI.232(2). This provision does not apply to an extraordinary meeting of Council or committee.(Reg-CI.232(5) (Refer Part 7 Press and Public for details)

## 8) Quorum

The quorum for a meeting of the Council is a majority of the Councillors of the Council who hold office for the time being and are not suspended from office. **(S368 of the Act)**

Note: Councillors who have declared a pecuniary interest, and are therefore precluded from voting, should still be counted for the purpose of calculating the quorum, because they continue to hold office and are not suspended from office.

## 9) What Happens When a Quorum is not Present

- a) A meeting of the Council must be adjourned if a quorum is not present:
- i) within half an hour after the time designated for the holding of the meeting or
  - ii) at any time during the meeting. **(The Regulation 233 (1))**

Note: Any member of Council can as a point of order draw attention to the lack of a quorum. A call for a check on the quorum should be addressed to the Chair. As it is not possible to continue a meeting without a quorum, the call for a quorum check takes precedence over any other business before Council.

- b) In either case, the meeting must be adjourned to a time, date and place fixed: **(The Regulation 233(2))**
  - i) by the chairperson, or
  - ii) in his or her absence - by the majority of the Councillors present, or
- c) failing that, by the General Manager. **(The Regulation 233(3))**
- d) 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.

## 10) Attendance at Council Meetings

- a) A Councillor cannot participate in a meeting of the Council unless personally present at the meeting. **(The Regulation 235)**
- b) A civic office becomes vacant if the holder is absent without prior leave of the Council from three consecutive Ordinary Meetings of Council (unless the holder is absent because he or she has been suspended from office under Section 482 of the Act\_1993) without prior leave of the Council, or leave granted by Council at any of the meetings concerned. **(S.234(d) of the Act).**
- c) For the purpose of clause 10(b), a Councillor applying for leave of absence from a meeting of a Council does not need to make the application in person and the Council may grant such leave in the absence of that Councillor. However, the absence must be granted through a formal resolution of Council and the absence is rescinded upon the first attendance of the Councillor at a meeting of the Council.

(Note: To be present a Councillor must be within the room in which the meeting is being held).

## 11) Circumstances in which annual fees may be withheld

- a) The Council may resolve that an annual fee will not be paid to a Councillor or that a Councillor will be paid a reduced annual fee determined by the Council for any period of not more than three meetings for which the Councillor is absent with or without leave from an Ordinary Meeting or Ordinary Meetings of the Council.
- b) If a Councillor is absent, with or without leave of the Council, from Ordinary Meetings of the Council for any period of more than six (6) months, the Council must not pay any annual fee, or part of an annual fee, to that Councillor that relates to the period of absence that is in excess of six months. **(Section 254A (a) of the Act)**

## PART 3 PROCEDURE FOR THE CONDUCT OF COUNCIL MEETINGS

### 12) Chairperson of Council Meetings

- a) Chairperson, or in the absence of the Chairperson, the Deputy Chairperson presides at meetings of the Council. **(S369(1) of the Act)**
- b) If the Chairperson and the Deputy Chairperson are absent, a Councillor elected to chair the meeting by the Councillors present presides at a meeting of the Council. **(S369(2) of the Act)**

- c) If no chairperson is present at a meeting of the 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. **(Reg-CI. 236(1))**
- d) The election must be conducted:
  - i) by the General Manager or, in his or her absence, an employee of the Council designated by the General Manager or;
  - ii) 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. **The Regulation 236(2)**
- e) 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. **The Regulation 236(3)**
- f) For the purposes of subclause (e), the person conducting the election must:
  - i) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips. **(The Regulation 236 (4)(a))**; and
  - ii) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random. **(The Regulation 236 (4)(b))**
- g) The candidate whose name is on the drawn slip is the candidate who is to be the chairperson. **(The Regulation 236(5))**
- h) In the event the Chairperson should find it necessary to vacate the chair during the course of a meeting the Chairperson should seek leave of the Council and invite the Deputy Chairperson to take the chair, or in the absence of the Deputy Chairperson, whomever a quorum of the Council may elect.

### **13) Conduct of Debate**

- a) Any person wishing to move a motion or amendment or to take part in any discussion or debate should rise and address the chairperson, resuming his/her seat at the close of the remarks.
- b) When the chairperson rises or speaks during a meeting of the Council:
  - i) any Councillor then speaking or seeking to speak must immediately resume his or her seat and
  - ii) every Councillor present must be silent to enable the chairperson to be heard without interruption. **(The Regulation 237)**
- c) If two or more persons rise to speak at the same time, the chairperson decides which of them is entitled to priority. The other persons who have risen should then resume their seats.
- d) Speakers must keep to the particular matter then before the meeting, whether it be a motion, an amendment, a point of order or a personal explanation.

### **14) Chairperson's Duty with Respect to Motions**

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

- c) Any motion, amendment or other matter that the chairperson has ruled out of order is taken to have been rejected. **(The Regulation 238)**
- d) The Chairperson is to ensure that motions and amendments are clearly stated for the benefit of all present and may request a Councillor to repeat the motion or amendment if unclear or inaudible.

Note: Reasons for ruling a motion out of order include the following:

- That it is vague and equivocal in its language
- That it is the direct negative of a resolution just passed by the meeting
- That it proposes an action that is unlawful
- That it is ultra vires in that it is outside the scope of the meeting
- That it is defamatory
- That it is inconsistent with a resolution just adopted
- That it is unnecessary in that it proposes a course of action or policy already resolved upon by the meeting;
- That it is vexatious and proposed only as a way to impede the orderly transaction of business.

The guiding rule is that no motion should be put and no resolution can be effectively passed unless it is within the scope of the notice convening the meeting and within the competence of the meeting itself.

## 15) Minutes

- a) The Council must ensure that full and accurate minutes are kept of proceedings of the Council. **(S375(1) of Act)** The minutes should record the following:
  - i) Details of each motion moved at a council meeting and of any amendments moved to it **(The Regulation 254)**
  - ii) the names of the mover and seconder of motions or amendments **(The Regulation 254)**
  - iii) attendance of Councillors
  - iv) declarations of interest
  - v) votes on divisions
  - vi) dissenting votes when requested by a Councillor
  - vii) circumstances relating to the absence of a quorum at or arising during a meeting, together with the names of the Councillors present
  - viii) any instances where the Chair's Casting Vote was used
  - ix) whether the motion or amendment is passed or lost
  - x) a report of the proceedings of the committee of the whole, including any recommendations of the committee **(The Regulation-259(3))**
- xi) **the Act** also provides that the following matters must be included in the minutes of council meetings:
  - The grounds for closing part of the meeting to the public **(S10D of the Act)**
  - The report of a Council committee leading to a rescission or alteration motion **(S372(6) of the Act)**

Note Minutes are intended to be a record of the decisions of Council, not the opinions or demands of individual members.

- b) The correctness of the minutes of every preceding meeting, including extraordinary meetings, not previously confirmed must be dealt with at every ordinary meeting of the Council, in order that such minutes may be confirmed.

- c) A motion or discussion with respect to such minutes shall not be in order except with regard to their accuracy as a true record of the proceedings.

Note: Confirmation is a formal declaration of the correctness of the facts recorded in the minutes; it is not the ratification of any decisions made. A person cannot use the confirmation motion as an attempt to re-open any question previously decided.

- d) Minutes may be confirmed at an extraordinary meeting of the Council.
- e) The minutes must, when they have been confirmed at a subsequent meeting of the Council, be signed by the person presiding at that subsequent meeting. **(S375 (2) of the Act)**
- f) When motions are amended in the process of confirming the minutes of a previous meeting the amendment should be put by the movers in the form the motion should read. For example:

*“That the minutes of the meeting held on.....be confirmed subject to motion....being corrected to read:.....”*

## 16) Order of Business

- a) At a meeting of the Council (other than an extraordinary meeting), the general order of business is (except as provided by this Code) such as the Council has fixed by resolution passed at any previous meeting or, if no such resolution has been passed, in accordance with the Schedule. **(Reg.239(1))**
- b) The order of business fixed under subclause (1) may be altered if a motion to that effect is passed. Such a motion can be moved without notice. **(Reg. 239(2))**
- c) Despite clause 30 of this code, only the mover of a motion referred to in subclause (2) may speak to the motion before it is put. **(The Regulation 239(3))**

## 17) Agenda for Council Meetings

- a) The General Manager must ensure that the agenda for a meeting of the Council states:
- i) all matters to be dealt with arising out of the proceedings of former meetings of the Council or Committees; and
  - ii) if the Chairperson (or the Deputy Chairperson if acting for the Chairperson) is the chairperson - any business that the chairperson may decide to put before the meeting without notice; and
  - iii) any business of which due notice has been given. **(The Regulation 240(1))**
- b) The General Manager must ensure the agenda for a meeting of the Council or a committee of the Council is prepared as soon as practicable before the meeting and is prepared so as to comply with the prescribed Notice of Meeting (Refer Clause 7).**(The Regulation 240 (3)).**
- c) If, in the opinion of the General Manager, business to be transacted at a meeting of the Council is a kind of business referred to in Section 10A of the Act, the business may be included in a confidential agenda. All other business to be transacted at the meeting must be included in an ordinary agenda.
- d) All reports to Council, which in the opinion of the General Manager are likely to be considered when the meeting is closed to the public or contain an attachment(s) which is (are) likely to be considered when the meeting is closed to the public, must contain a statement at the beginning of the report identifying:
- i) that the report, or attachment(s) to the report should be dealt with in confidential session;

- ii) the reason under section 10A of the Local Government Act why the matter is confidential including, where necessary, an explanation of why it would be contrary to the public interest to deal with the matter in open session;
  - iii) any business of which due notice has been given; **(The Regulation 240 (4))**
- e) The General Manager must not include in the Agenda for a meeting of the Council any business of which due notice has been given if, in the opinion of the General Manager, the business is (or the implementation of the business would be) unlawful. The General Manager must report (without giving details of the item of business) any such exclusion to the next meeting of the Council. **(The Regulation 240 (2))**
- f) Nothing in this clause limits the powers of the Chairperson under clause 20. **(The Regulation 240 (5))**

## 18) Giving Notice of Business

- a) The Council must not transact business at a meeting of the Council:
- i) unless a Councillor has given notice of the business in writing four (4) clear working days before the meeting and any correspondence six (6) clear working days before the meeting; and
  - ii) unless notice of business has been given to the Councillors at least three (3) clear working days before the meeting, or, in the event of an extraordinary meeting called in an emergency, at least 24 hours before the meeting. **(S367 and Regulation 241(1))**
- b) subclause (a) does not apply to the consideration of business at a meeting if the business:
- i) is already before, or directly relates to a matter that is already before, the council **(The Regulation 241 2(a))**,or
  - ii) reports of committees of the Council;
  - iii) reports from officers which in the opinion of the chairperson or the General Manager are urgent; and
  - iv) reports from officers placed on the business pursuant to a decision of a committee that additional information be provided to the Council in relation to a matter before the committee.
  - v) the election of a Chairperson to preside at the meeting as provided by Clause 12(c) **(The Regulation 241 (2)(b))**; or
  - vi) a matter or topic put to the meeting by the Chairperson in accordance with Clause 20 **(The Regulation 241(2)(c))**; or
- c) Despite subclause (a), business may be transacted at a meeting of the Council when due notice of the business has not been given to Councillors, however, this can happen only if:
- i) a motion is passed to have the business transacted at the meeting; and
  - ii) 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. **(The Regulation 241(1)(3))**
- d) Despite clause 30, only the mover of a motion referred to in subclause (c) can speak to the motion before it is put. **(The Regulation 241(1)(4))**.
- e) In determining whether a matter is of great urgency, the Chairperson must consider:
- i) The principal requirement that a meeting deal with matters before it on the business paper for which notice has been given; and
  - ii) Any potential costs which will be incurred ,or irrevocable actions which might occur if the matter is considered at the next ordinary meeting of Council rather than forthwith.

## 19) Agenda for Extraordinary Meeting

- a) The General Manager must ensure that the agenda for an extraordinary meeting of a Council deals only with the matters stated in the notice of the meeting.
- b) Despite subclause (a), 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 only happen if:
  - i) A motion is passed to have the business transacted at the meeting; and
  - ii) the business proposed to be brought forward is ruled by the Chairperson to be of great urgency.
- c) Such a motion can be moved without notice but only after the business notified in the agenda for the meeting has been disposed of. **(The Regulation 242)**
- d) Only the mover of a motion referred to in subclause (b) can speak to the motion before it is put. **(The Regulation 242(3))**

## 20) Chairperson Minutes

- a) If the Chairperson (or the Deputy Chairperson, if acting for the Chairperson) is the chairperson at a meeting of a Council, the chairperson is, by minute signed by the chairperson, entitled to put to the meeting any matter or topic that is within the jurisdiction of the Council or of which the Council has official knowledge. **(The Regulation 243(1))**
- b) Such a minute, when put to the meeting, takes precedence over all business on the Council's agenda for the meeting. The chairperson ( or the Deputy Chairperson, if acting for the Chairperson) may move the adoption of the minute without the motion being seconded. **(The Regulation 243(2))**

Note: **Can a Chairperson Minute be amended?** – *Changes to Chairperson minutes should be avoided where such changes will introduce, without notice, matters which need research or a lot of consideration by the Councillors before coming to a decision.*

- c) A recommendation made in a minute of the chairperson (or Deputy Chairperson, if acting for the Chairperson) or in a report made by a Council employee is, so far as adopted by the Council, a resolution of the Council. **(The Regulation 243 (3))**
- d) The Chairperson Minutes should not be used to introduce, without notice, matters that are routine, not urgent, or need research or a lot of consideration by the Councillors before coming to a decision. These types of matters are better placed on the Agenda with the usual period of notice given to the Councillors. **(DLG Practice Note 16/2009)**

## 21) Report of a Departmental Representative to be Tabled at Council Meeting

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

- a) is laid on the table at that meeting **(The Regulation 244(a))**; and
- b) is subsequently available for the information of Councillors and members of the public at all reasonable times. **(The Regulation 244 (b))**

## 22) Notice of Motion - Absence of Mover

In the absence of a Councillor who has placed a notice of motion on the agenda for a meeting of the Council:

- a) any other Councillor may move the motion at the meeting (**Regulation 245(a)**); or
- b) The Chairperson may defer the motion until the next meeting of the Council at which the motion can be considered. (**The Regulation 245 (b)**)

## 23) Formulation of Motions

- a) A motion is a proposal put forward by a Councillor or member of a Committee calling for a specific action to be taken or a decision to be made on a particular matter before the meeting;
- b) A Motion should be simple, easy to understand and very specific in its intention.
- c) Motions should be well structured and if it involves a number of different aspects, there should be different parts to the motion.
- d) If a Motion is complex in its wording and intent, the motion is to be submitted in writing and made available to other Councillors, the General Manager and Minute taker.
- e) In submitting a Notice of Motion, Councillors must balance their civic responsibility for representing the interests of their community with their obligation to use Council's resources effectively and efficiently. (**DLG Practice Note 16/2009**)

## 24) Motions

- a) A motion or an amendment cannot be debated unless or until it has been seconded. However, the mover of a motion may be allowed by the chairperson to speak to the motion before calling for the motion to be seconded. This clause is subject to clauses 20(b) and 30(e). (**The Regulation 246**).
- b) The seconder of a motion may reserve the right to speak later in the debate.

Note: If the seconder of a motion reserves the right to speak later this should be stated at the time that the motion is seconded. Before deferring the right to speak to a later stage of the debate, the seconder needs to be aware that:

- a procedural motion can cut off debate before the right is exercised;
- it is not possible to withdraw support for the motion, and
- Councillors cannot move amendments to motions they have seconded

- c) A seconder may second "pro forma" in order to ensure discussion. In this way, the seconder reserves the right to withdraw support if swayed by the contrary argument.
- d) Once a motion has been moved and seconded, it becomes the property of the meeting and it cannot be withdrawn without the consent of the meeting.

Note: The mover of a motion may withdraw it only if he/she gets the leave of the meeting to do so and if it has not already been amended. Permission of the seconder is not sufficient, and a vote of Council should be taken.

- e) Any Councillor may move a procedural motion that a motion be withdrawn. However, a motion cannot be withdrawn while an amendment is under consideration. However, the amendment can first be withdrawn in the usual manner. A procedural motion is a motion that refers to the conduct of a meeting. Procedural motions are not subject to the notice of motion requirements referred in this clause. A procedural motion requires a seconder and has precedence over substantive motions and must be put to the meeting without debate

- f) At any one time there can be only one substantive motion before the meeting.

Note: In the course of debating one motion it is possible to foreshadow another motion. However, the expressed act to foreshadow a motion is to provide information and does not constitute a formally proposed motion. In due course it can be proposed, and if seconded, considered by the meeting.

- g) The Chair may rule that a Motion or an amendment is out of order if, in the view of the Chair, the proposed motion:
- i) is vague and equivocal in its language;
  - ii) is the direct negative of or is inconsistent with a resolution just passed by the meeting;
  - iii) is an amendment which is a direct negative of the motion which it proposes to amend;
  - iv) proposes an action that is unlawful;
  - v) is ultra vires in that it is outside the scope of the meeting;
  - vi) has defamatory statements contained in the resolution;
  - vii) is unnecessary in that it proposes a course of action or policy already resolved upon by the meeting; and
  - viii) is vexatious and is proposed solely as a way to impede the orderly transaction or business.

## 25) Amendments to a Motion or Foreshadowed motions

- a) To be accepted, an amendment must clearly relate to the substantive motion, without contradicting it, and must be proposed before the debate on the substantive motion has been concluded. An amendment may propose that some words be omitted from the motion or added to the motion but it should not contradict the motion. Amendments that create a direct negative are not permissible. The proper means of opposing a motion is to vote against it.
- b) The amendment must be moved and seconded but this cannot occur until the original motion has been moved and seconded.
- i) The mover of an amendment however, has no right of reply and can only speak once to the amendment.
- c) If an amendment is substantially the same as an earlier rejected amendment on the motion, it is not in order to accept it.
- d) While amendments are under discussion debate on the substantive motion is excluded. The meeting must view each amendment in its relation to the substantive motion; but the merits of that motion as first moved cannot be fully debated at that time.
- e) 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. **(The Regulation 247)**

Note: If the amendment is carried, the terms of the original motion are varied accordingly. The motion in its new form now becomes the substantive motion, and it can be further debated. In the event of another amendment being moved, the same procedure is repeated.

- f) It is permissible during the debate on an amendment for a further amendment to be foreshadowed. However, any such foreshadowed amendment shall not be moved and debated until the amendment is dealt with.

## 26) Motions of Dissent

- a) A Councillor can, without notice, move to dissent from the ruling of the chairperson on a point of order. A point of order is some irregularity in the meeting proceedings. (No seconder is required for the motion). If that happens, the chairperson must suspend the business before the meeting until a decision is made on the motion of dissent. **(The Regulation 248(1))**.

Note the motion is stated in the following terms: *'That the Chair's ruling be dissented from'*. The Chairperson should vacate the Chair, and the Deputy takes the Chair for so long as the motion of dissent is before the meeting. By convention the question is actually asked in the form *'that the Chair's ruling be upheld'*.

- b) If a motion of dissent is carried, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been discharged as out of order, the chairperson must restore the motion or business to the agenda and proceed with it in due course. **(The Regulation 248 (2))**
- c) Despite clause 30, 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. **(The Regulation 248 (3))**

Note A dissent motion is not a motion of no confidence. It is used either to correct a bona fide mistake on the chairperson's part or to give legitimate effect to the will of the meeting. A Motion of dissent cannot be moved from the ruling of the chairperson under clause 241(3) of the L G Reg as to whether business is of "great urgency."

## 27) Petitions May be Presented to the Council

- a) A Councillor may present a petition to the Council.
- b) The chairperson must not permit discussion on the petition.
- c) The petition will be referred to the General Manager for appropriate action or referred to a future meeting of the Council.

## 28) Questions May be Put to Councillors and Council Employees

- a) A Councillor:
- i) may, through the chairperson, put a question to another Councillor **(The Regulation 249 (1)(a))**; and
  - ii) may, through the chairperson and the General Manager, put a question to a Council employee. **(The Regulation 249 (1)(b))**
- b) However, a Councillor or Council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents. **(The Regulation 249 (2))**
- c) Any such question must be put directly, succinctly, and without argument. **(The Regulation 249 (3))**
- d) The chairperson must not permit discussion on any reply or refusal to reply to a question put to a Councillor or Council employee under this clause. **(The Regulation 249 (4))**
- e) Nothing in this clause affects questions being asked, with the leave of the chairperson, relevant to any matter under discussion at a meeting.

- f) Wherever possible Councillors should, prior to Meetings, seek answers from the General Manager to questions which would otherwise arise at meetings.

### **29) Mode of Address**

Councillors, staff and the public shall at all times address other Councillors by their official designation, as Chairperson or Councillor, as the case may be; and with the exception of the chairperson, or any Councillor prevented by physical infirmity, shall stand when speaking.

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

- a) A Councillor who, during a debate at a meeting of the 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. **(The Regulation 250 (1))**
- b) 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. **(The Regulation 250 (2))**
- c) 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 **.(The Regulation 250 (3))**
- d) Despite subclauses (a) and (b), if at least 2 Councillors have spoken in favour of a motion or an amendment and at least 2 Councillors have spoken against the motion or amendment, or if the mover of the motion or amendment has spoken in favour of it and no Councillor expresses an intention to speak against it, any Councillor may move that the question be now put. **(The Regulation 250 (4))**
- e) The chairperson must immediately put to the vote a motion, moved under subclause d), that the question be now put without the motion being seconded and without debate. **(The Regulation 250(5) )**
- f) If a motion that the question be now put is passed, the chairperson must, after the mover of the motion has exercised his or her right of reply under subclause (a), immediately put the question to the vote without further debate. **(The Regulation 250 (6))**
- g) If a motion that the question be now put is rejected, the chairperson must resume the debate on the original motion or amendment. **(The Regulation 250 (7))**
- h) ***Once a mover of a motion or an amendment has exercised their right of reply the debate on the motion or amendment is closed and no further debate may occur on that motion or amendment***

### **31) Motions Put Without Debate**

Provided there is no objection from any Councillor present, any motion or recommendation before the Council may be put to the vote without discussion or debate.

### **32) Voting at Council Meetings**

- a) Each Councillor is entitled to one vote. **(S370 (1) The Act)** Voting is by open means and would usually be on the voices or by show of hands. However, Council could use other open means such as a display of voting on an electronic board.

- b) However, the chairperson has, in the event of an equality of votes, a second or casting vote. **(S370 (2) The Act )**

*Should the Chairperson fail to exercise a casting vote the motion being voted upon will be lost as it will be deemed that the Chairperson by failing to cast his or her vote has voted in the negative*

- c) A Councillor who is present at a meeting of the Council but who fails to vote on a motion put to the meeting is taken to have voted against the motion. This subclause does not apply to a Councillor who does not vote because he or she has a pecuniary interest in the motion being moved. **(The Regulation 251 (1))**
- d) 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. **(The Regulation 251 (2))**
- e) The decision of the chairperson as to the result of a vote is final, unless:
- i) in the case where a vote has been declared on the voices, a Councillor immediately requests a show of hands; or
  - ii) the decision is immediately challenged and not fewer than 2 Councillors rise and demand a division. **(The Regulation 251 (3))**
- f) 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. **(The Regulation 251 (4))**
- g) Voting in an election at a Council meeting (eg for committee ) is to be by open means. However, there is an exception that Councillors can elect a Chairman or deputy Chairman by secret ballot. **(The Regulation 251 (5))**

### **33)Decisions of the Council**

A decision supported by a majority of the votes at a meeting of the Council at which a quorum is present is a decision of the Council. **(S371 the Act)**

### **34)Resolutions passed at closed meetings to be made public**

- a) If the Council passes a resolution during a meeting, or part of a meeting, that is closed to the public the Chairperson must make the resolution public as soon as practicable after the meeting or part of the meeting has ended. **(Section 253 of the Regulation)**
- b) The General Manager will, as soon as practicable, make available for public inspection a resolution passed during a meeting, or part of a meeting, that is closed to the public.
- c) A copy of a resolution passed during a meeting, or part of a meeting, that is closed to the public will be available (free or upon payment of a photocopy charge) by anyone who asks for a copy.
- d) Where it is proposed in a business paper for a Council or committee meeting to consider a matter in a meeting, or part of a meeting, that is closed to the public and the grounds for doing so are specified in accordance with **Section 10A(2)(a-h)** inclusive of the Act and in the event that the Council subsequently decides to consider and determine the matter in a meeting, or part of a meeting, that is open to the public, a copy or copies of reports and accompanying annexure relating to the matter will, as soon as practicable, be made available to the public.

### 35) Rescinding or Altering Resolutions

- a) A resolution passed by the Council may not be altered or rescinded except by a motion to that effect of which notice has been duly given in accordance with clause 18. **(S372(1) The Act)**
- b) If it is proposed to move a further motion in the event that a rescission motion is carried, the required notice must also be given of the proposed further motion.
- c) If a notice of motion to rescind or alter a resolution is given:
  - i) at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission or alteration has been dealt with **(S372(2) The Act)**; or
  - ii) at any time after the meeting at which the resolution is carried, no further action to carry the resolution into effect may be taken after receipt of the notice of motion until the motion of rescission or alteration has been dealt with. It is important to note that any delay in lodging a rescission motion, may result in the partial or total completion of the said resolution.
- d) In the case of a motion of alteration, subclause (c) applies only to the extent that the resolution of Council would be affected by the motion of alteration, if it is carried.
- e) If a motion has been negated by the Council, a motion having the same effect must not be considered unless notice of it has duly been given in accordance with clause 18. **(S372(3) The Act)**
- f) 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 at least 3 Councillors if less than 3 months has elapsed since the resolution was passed, or the motion was negated, as the case may be. **(S372(4) The Act)**
- g) 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 subclause may not be evaded by substituting a motion differently worded, but in principle the same. **(S372(5) The Act)**
- h) A motion to which this clause applies may be moved on the report of a committee of the Council and any such report must be recorded in the minutes. **(S372(6) The Act)**
- i) The provisions of this clause concerning negated motions do not apply to motions of adjournment. **(S372(7) The Act)**

### 36) Motions of Adjournment

- a) Debate shall not be permitted on any motion for adjournment of a meeting of the Council.
- b) If a motion for adjournment is negated, 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 negated.
- c) 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 the time, date and place of the adjourned meeting, the chairperson shall make a determination with respect to whichever of these has not been specified.
- d) If the meeting is adjourned to another day any decisions of Council prior to the adjournment to the meeting are to be acted upon by Council Officers. The outstanding matters are to be resubmitted to the adjourned meeting for determination.

## PART 4 KEEPING ORDER AT MEETINGS

### 37) Questions of Order

- a) 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. **(The Regulation 255 (1))**
- b) 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. **(The Regulation 255 (2))**
- c) 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. **(The Regulation 255 (3))**
- d) The chairperson's ruling must be obeyed unless a motion dissenting from the ruling is passed. **(The Regulation 255 (4))**

### 38) Acts of Disorder

- a) A Councillor commits an act of disorder if the Councillor, at a meeting of the Council or a committee of the Council:
  - i) contravenes the Act, any regulation in force under the Act or this Code; or
  - ii) assaults or threatens to assault another Councillor or person present at the meeting; or
  - iii) 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
  - iv) insults or makes personal reflections on or imputes improper motives to any other Councillor; or
  - v) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council or committee into contempt **(The Regulation 256 (1) (a-e))**; or
  - vi) reads at length from any correspondence, report or other document, without the leave of the Council.
  - vii) leaves the meeting without the permission of the chairman before all the business has been concluded.
- b) The chairperson may require a Councillor:
  - i) to apologise for an act of disorder referred to in subclause (a) (i) or (ii); or
  - ii) to withdraw a motion or an amendment referred to in subclause (a) (iii) and, where appropriate, to apologise without reservation; or
  - iii) to retract and apologise for an act of disorder referred to in subclause (a) (iv), (v) or (vi). **(The Regulation 256 (2) (a-c))**
- c) The Council or committee of the Council may, by resolution, expel from a meeting a Councillor who fails to comply with a requirement made under subclause (b). The expulsion of a Councillor under this subclause does not prevent any other action from being taken against the Councillor for the act of disorder concerned. **(The Regulation 256 (3))**

### 39) How Disorder at a Meeting May be Dealt With

- a) If disorder occurs at a meeting of the Council or committee of the 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 a disorder arising from the conduct of Councillors. **(The Regulation 257 (1))**

- b) The Council or committee may, by resolution, expel a member of the public from a Council or committee meeting on the grounds that the member is engaging in, or has engaged in, disorderly conduct at the meeting. **(The Regulation 257 (2))**

#### **40) Power to Remove Persons from Meeting after Expulsion Resolution**

If a meeting of the Council or committee of the Council resolves to expel from the meeting a Councillor for failing to comply with a requirement made under clause **35** or a member of the public for disorderly conduct and the Councillor or member of the public fails to leave the meeting immediately after the resolution is passed, a police officer, or any person authorised by the Council or committee for the purpose, may remove the person *by using only such force as necessary* from the meeting and, if necessary, restrain the person from re-entering the place where the meeting is being held. **(The Regulation 258)**

### **PART 5 COUNCIL COMMITTEES**

#### **41) Committee of the Whole**

- a) The Council may resolve itself into a committee of the whole to consider any matter before the Council. **(S373 The Act)**
- b) All the provisions of this Code relating to meetings of the Council, so far as they are applicable, extend to and govern the proceedings of a committee of the whole, except the provisions. **(The Regulation 259 (1)):**
  - i) limiting the number and duration of speeches; and
  - ii) requiring Councillors to stand when speaking.
- c) The General Manager is responsible for reporting to the Council proceedings in a committee of the whole. It is not necessary to report the proceedings in full but any recommendations of the committee must be reported. **(The Regulation 259 (2))**
- d) The Council must ensure that a report of the proceedings 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. **(The Regulation 259 (3))**
- e) Unless Council resolves itself into Committee of the Whole, confidential items will be dealt with in the confidential session of the Ordinary meeting.

#### **42) Council May Appoint Committees**

- a) The Council may by resolution establish such committees as it considers necessary. **(The Regulation 260 (1))**

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|------|--|
| Note | Provision for this is provided by Section 355 (b) of the Act and Clause <b>260</b> of the Regulations. |
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- b) Such a committee is to consist of the Chairperson and such other Councillors as elected by the Councillors or appointed by the Council. **(The Regulation 260 (2))**
- c) The quorum for a meeting of such a committee is to be:
  - i) such number of members as the Council decides; or
  - ii) if the Council has not decided a number - a majority of the members of the committee. **(The Regulation 260 (3))**

Note: Section 355 (c) of the Act provides for citizen based committees. . These committees are reviewed each September in conjunction with the Chairperson election.

#### **43) Functions of Committees**

The Council must specify the functions of each of its committees when the committee is appointed or elected, but may from time to time amend those functions. **(The Regulation 261)**

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

- a) The General Manager of the Council must give to each Councillor, at least three (3) clear working days before each meeting of the committee, a notice specifying:
  - i) the time and place at which and the date on which the meeting is to be held; and
  - ii) the business proposed to be transacted at the meeting. **(The Regulation 262 (1) (a-b))**
- b) However, notice of less than three (3) clear working days may be given of a committee meeting called in an emergency. **(MR CI 35(2) The Regulation 262 (2))**
- c) The provisions of clause 17(b)-(d) apply to the agenda of committee meetings in the same manner as they apply to the agenda of meetings of the Council.

#### **45) Non-Members Entitled to Attend Committee Meetings**

- a) Councillors who are not members of a Council committee are entitled to attend and speak at meetings of the committee. However they are not entitled to give notice of business for inclusion in the agenda for the meeting. In addition they are not entitled to move or second a motion at the meeting or to vote at the meeting. **(The Regulation 263 (1) and (2) (a-c))**

Note: Councillors, whether or not they are members of a particular Council Committee, shall be advised of forthcoming meetings in the calendar of meetings issued with the Ordinary Meeting Business Paper.

#### **46) Procedure in Committees**

- a) Each committee of the Council may regulate its own procedure. **(The Regulation 265 (1))**
- b) Without limiting subclause (a), a committee of the Council may decide that, whenever the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote. **(The Regulation 265 (2))**
- c) Voting at committee meetings must be by open means. **(The Regulation 265 (3))** This would usually be on the voices or by show of hands. However a Council could use other open means such as a display of voting on an electronic board.

#### **47) Committees to Keep Minutes**

- a) Each Committee of a Council must ensure that full and accurate minutes of the proceedings of its meetings are kept. In particular a Committee must ensure that the following matters are recorded in the Committee Minutes:

- i) details of each motion moved at a meeting and of any amendments to it.
- ii) the names of the mover and seconder of the motion or amendment.
- i) whether the motion or amendment is passed or lost **(The Regulation 266(1))**

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. **(The Regulation 266(2))**

#### **48) Chairperson and Deputy Chairperson of Committees**

- a) The chairperson of each committee of the Council, must be:
  - i) The Chairperson; or
  - ii) if the Chairperson does not wish to be the chairperson of a committee - a member of the committee elected by the Council; or
  - iii) if the Council does not elect such a member - a member of the committee elected by the committee. **(The Regulation 267 (1) (a-c))**
- b) The Council may elect a member of a committee of the Council as deputy chairperson of the committee. If the Council does not elect a deputy chairperson of such a committee, the committee may elect a deputy chairperson. **(The Regulation 267 (2))**
- c) If neither the chairperson nor the deputy chairperson of a committee of the 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. **(The Regulation 267 (3))**
- d) The chairperson is to preside at a meeting of a committee of the 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. **(The Regulation 267 (4))**
- e) The Chairperson is, by virtue of holding that office, a member of each committee of the Council.

Note Clause 44 only applies to Committees of Council. Citizen based committees established under Section 355 (c) of the Act have the power to elect their own Chairpersons.

#### **49) Absence from Committee Meetings**

- a) A member ceases to be a member of a committee if the member (other than the Chairperson):
  - i) has been absent from 3 consecutive meetings of the committee without having given reasons acceptable to the committee for the member's absences; or
  - ii) has been absent from at least half of the meetings of the committee held during the immediately preceding year [ie: the period from 1 July to the following 30 June], without having given to the committee acceptable reasons for the member's absences.

Subclause (a) does not apply if all of the members of the Council are members of the committee. **(The Regulation 268)**

#### **50) Reports of Committees**

- a) 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. **(The Regulation 269(1))**

- b) The recommendations of a committee of the Council are, so far as adopted by the Council, resolutions of the Council. **(The Regulation 269 (2))**

*Note: Committee recommendations to the Council are usually in the form of –*

*“The Committee recommends to the Council that .....”*

*The recommendation shown in the agenda should be the same as the one decided by the Committee. When the Council discusses the recommendation at the Council Meeting, it can adopt; amend and adopt; or reject the recommendation (Cl 269 of the Regulation)*

- c) 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: make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended; and report the resolution or recommendation to the next meeting of the Council.

### **51) Disorder in Committee Meetings**

The provisions of the Act, the Regulation and 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. **(The Regulation 270)**

### **52) Committee May Expel Certain Persons from its Meetings**

- a) If a meeting or part of a meeting of a committee of the Council is closed to the public in accordance with 10(2) of the Act, the committee may, by resolution, expel from the place where the meeting is being held any person who is not a Councillor. **(The Regulation 271(1))**
- b) If any such person, after being notified of such a resolution, fails to leave the place where the meeting is being held, a police officer, or any person authorised by the Council for the purpose, may remove the person only using such force as is necessary and if necessary, restrain the person from re-entering, that place. **(The Regulation 271(2))**

## **PART 6 PECUNIARY INTEREST**

### **53) Pecuniary Interest**

- a) For the purposes of this Part, a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as provided in clause 54. **(S442(1) of the Act)**
- b) A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in clause 54. **(S442(2) of the Act)**

### **54) Persons Who Have a Pecuniary Interest**

- a) For the purposes of this Part, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:
- i) the person **(S 443(1)(a) of the Act)**; or
  - ii) another person with whom the person is associated. **(S 443(1)(b) of the Act)**

- b) A person is taken to have a pecuniary interest in a matter if:
  - i) the person's spouse or de facto partner or a relative of the person has a pecuniary interest in the matter **(S 443(2)(a) of the Act)**; or
  - ii) the person, or a nominee, partner or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter. **(S 443(2)(b) of the Act)**
- c) However, a person is not taken to have a pecuniary interest in a matter as referred to in subsection (b):
  - i) if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body; or
  - ii) just because the person is a member of, or employed by a council or a statutory body or is employed by the Crown **(S 443(3)(b) of the Act)**; or
  - iii) just because the person is member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter so long as the person has no beneficial interest in any shares of the company or body. **(S 443(3)(c) of the Act)**

### **55) Interests that do not have to be Declared (S 448 of the Act)**

The following interests do not need to be disclosed for the purposes of this Part:

- a) an interest as an elector
- b) an interest as a ratepayer or a person liable to pay a charge
- c) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public or a section of the public that includes persons who are not subject to this Part
- d) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to a relative of the person by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this Part. **(S.448 of the Act)**
- e) an interest as a member of a club or other organisation or association, unless the interest is as a holder of an office in the club or organisation (whether remunerated or not)
- f) an interest of a member of a Council committee as a person chosen to represent the community or as a member of a non-profit organisation or other community or special interest group if the committee member has been appointed to represent the organisation or group on the committee
- g) an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument, other than an instrument that effects a change of permissible uses of
  - i) land in which the person has a pecuniary interest; or
  - ii) land adjoining, or adjacent to, land referred to in paragraph (i); or
  - iii) other land in proximity to land referred to in paragraph (i), if the change would affect the value of the land referred to in paragraph (i).
- h) an interest relating to a contract, proposed contract or other matter if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company; **(S448 of the Act)**
- i) an interest of a person arising from the proposed making by the Council of an agreement between the Council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because a

relative of the person is a shareholder (but not a director) of the corporation or is a member (but not a member of the committee) of the association or is a partner of the partnership; **(S448 of the Act)**

- j) an interest of a person arising from the making by the Council of a contract or agreement with a relative of the person for or in relation to any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts, and agreements as have been made, or as are proposed to be made, by the Council in respect of similar matters with other residents of the area;
  - i) the performance by the Council at the expense of the relative of any work or service in connection with roads or sanitation
  - ii) security for damage to footpaths or roads
  - iii) any other service to be rendered, or act to be done, by the Council by or under any Act conferring functions on the Council or by or under any contract
- k) an interest relating to the payment of fees to councillors (including the Chairman and Deputy Chairman) **(S448 of the Act)**
- l) an interest relating to the payment of expenses and the provision of facilities to councillors (including the Chairperson and Deputy Chairperson) in accordance with a policy under **Section 252 (S448 of the Act)**
- m) an interest relating to the election to the office of Chairperson arising from the fact that a fee for the following 12 months has been determined for the office of Chairperson; **(S448 of the Act)**
- n) an interest of a person arising from the passing for payment of a regular account for wages or salary of an employee who is a relative of the person, **(S448 of the Act)**
- o) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or member of a Council committees. **(S448 of the Act)**
- p) an interest arising from appointment of a councillor to a body as representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate. **(S448 of the Act)**

## **56) Disclosure and Participation in Meetings**

- a) A Councillor or a member of a Council committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. (on the form titled "Disclosure of Interest")
- b) The councillor or member of a Council committee 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 **(S.451(2) of the Act)**
  - ii) at any time during which the Council or committee is voting on any question in relation to the matter. **(S.451(2) of the Act)**
- c) A person who, at the request or with the consent of the Council or a Council committee, gives advice on any matter at any meeting of the Council or committee must disclose the nature of any pecuniary interest the person has in the matter (on the form titled "Disclosure of Interest") to the meeting at the time the advice is given. **(S456 of the Act)**

- d) A person does not breach this clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest. **(S457 of the Act)**

## **57) Non Pecuniary Interest**

### **What are non-pecuniary 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.

### **Managing non-pecuniary conflict of interests**

Part 4 “Conflict of Interests” of Council’s Code of Conduct provide information on managing of non-pecuniary conflict of interests. Where such an interest is disclosed the person making the disclosure should complete the form titled “Disclosure of Interest” as soon as practicable.

## **58) Disclosures to be Recorded**

A disclosure made at a meeting of the Council or Council committee must be recorded in the minutes of the meeting. **(S453 of the Act)**

## **59) Powers of the Minister in Relation to Meetings**

The Minister may, conditionally or unconditionally, allow a Councillor or a member of a Council Committee who has a pecuniary interest in a matter with which the Council is concerned to be present at a meeting of the Council or Committee to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

- i) that the number of Councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business; or
- ii) that it is in the interest of the electors of the area to do so.

## **PART 7 PRESS AND PUBLIC**

### **60) Public Notice of Meetings (S9 of the Act)**

- a) The Council must give notice to the press and public of the times, dates and places of its meetings and meetings of those of its committees of which all the members are Councillors (except for extraordinary meetings). A notice of meetings is published bi-monthly, in the Daily Advertiser and Border Mail as well as councils website.
- b) The Council and each such committee must have available for the press and public at its offices and at each meeting copies (for inspection and taking away by persons) of the agenda for the meeting. This requirement does not apply to an agenda for a matter that, in the opinion of the General Manager, is likely to be considered when the meeting is closed to the press and public.
- c) The copies are to be available to the press and public as nearly as possible to the time they are available to Councillors.
- d) The copies of the Business Paper are to be available free of charge.

## 61) Who is entitled to Attend Council or Committee Meetings (S10 of the Act)

- a) Except as provided in this clause:
  - i) everyone is entitled to attend a meeting of the Council and those of its Committees of which all the members are Councillors, and
  - ii) a Council must ensure that all meetings of the Council and of such Committees are open to the public.
- b) A person (whether a Councillor or another person) is not entitled to be present at a meeting of the Council or of a Committee if expelled from the meeting:
  - i) by a resolution of the meeting, or
  - ii) By the person presiding at the meeting if the Council has, by resolution, authorised the person presiding to exercise the power of expulsion.
- c) A person may be expelled from a meeting only on the grounds specified in, or in the circumstances prescribed by the Regulations.
- d) Attendance of General Manager – The General Manager is entitled to attend, but not vote at, a meeting of the Council or at a meeting of a Committee of the Council of which all the members are Councillors.
- e) The General Manager is entitled to attend a meeting of any other Committee of the Council and may, if a member of the Committee, exercise a vote.
- f) However, the General Manager may be excluded from a meeting of the Council or a Committee while the Council or Committee deals with a matter relating to the standard of performance of the General Manager or the terms of the employment of the General Manager.

## 62) Closed Meetings

- a) A Council or a committee of Council of which all the members are Councillors, may close to the public so much of its meeting as comprises the receipt and discussion of any of the matters listed in this Clause as follows:
  - i) personnel matters concerning particular individuals (*other than Councillors*);
  - ii) the personal hardship of any resident or ratepayer;
  - iii) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting business or proposes to conduct business;
  - iv) commercial information of a confidential nature that would, if disclosed:
    - (1) prejudice the commercial position of the person who supplied it, or
    - (2) confer a commercial advantage on a competitor of the Council, or
    - (3) reveal a trade secret;
  - v) information that would, if disclosed, prejudice the maintenance of law;
  - vi) matters affecting the security of the Council, Councillors, Council staff or Council property;
  - vii) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.
  - viii) Information concerning the nature and location of a place or an item of Aboriginal significance on community land.
- b) Council, or a Committee of the Council of which all the members are Councillors, may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public. **(S10A (2)-(3) of the Act).**
- c) Limitations to closing meetings – A meeting is not to remain closed during the discussion of anything referred to in clause **62(a)**:

- i) Except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and
  - ii) If the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret – unless the Council or Committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest. **(S10B(1) of the Act)**.
- d) Discussion of legal matters – A meeting is not closed during the receipt and consideration of information or advice referred to in Clause 62(a)(vii) of this Code unless the advice concerns legal matters that:
  - i) Are substantial issues relating to a matter in which the Council or Committee is involved, and
  - ii) are clearly identified in the advice, and
  - iii) are fully discussed in that advice. **(S10B(2) of the Act)**
- e) Motion to close other parts of a meeting – If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in Clause 62(a) of this Code), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting (other than consideration of whether the matter concerned is a matter referred to in Clause 62(b) of this Code). **(S10B(3) of the Act)**
- f) Matters of Public Interest – For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:
  - i) A person may misinterpret or misunderstand the discussion, or
  - ii) The discussion of the matter may cause embarrassment to the Council or Committee concerned, or to Councillors or to employees of the Council, or cause a loss of confidence in the Council or Committee. **(S10B (4) of the Act)**
- g) Departmental Guidelines – In deciding whether part of a meeting is to be closed to the public, the Council or Committee concerned must have regard to any relevant guidelines issued by the Director General. **(S10B (5) of the Act)**
- h) Notice of closure not required in urgent cases – Part of a meeting of Council or of a Committee of the Council of which all the members are Councillors may be closed to the public while the Council or Committee considers a matter that has not been identified in the agenda for the meeting as a matter that is likely to be considered when the meeting is closed, but only if:
  - i) It becomes apparent during the discussion of a particular matter that the matter is a matter referred to in Clause 62(a) of this Code, and
  - ii) The Council or Committee resolves that further discussion of the matter:
    - (1) Should not be deferred (because of the urgency of the matter), and
    - (2) Should take place in a part of the meeting that is closed to the public. **(S10C of the Act)**
- i) Minutes to specify grounds for closing meetings – The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. The grounds must specify the following:
  - i) The relevant provision within this code (62(a) and as stated in Section 10A(2) of the Local Government Act;
  - ii) The matter that is to be discussed during the closed part of the meeting;
  - iii) The reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest. **(S10D of the Act)**

As an example a Motion could look like:

*“Moved Cr X seconded Cr Y, that the meeting is closed during the discussion of the matter “Item Annual tenders for goods and services” in accordance with 10A(2)(c) of the Local Government Act on the basis that:*

*The discussion of the matter in an open meeting could prejudice the commercial position of tenderers; and*

*On balance, the public interest in preserving the confidentiality of commercial information supplied by tenderers outweighs the public interest in openness and transparency in Council decision making by discussing this matter in open meeting”. (DLG Practice Note No 16)*

- j) Public attendance at Closed Council Meeting – Council is able to invite members of the public to address Closed Council meetings on specific matters where it is necessary for the provision of advice. Invited members would be required to leave the meeting prior to voting being undertaken on the matter. In undertaking such action Council needs to be mindful that invitations may affect its appearance of impartiality and improper conduct in a matter. All persons invited to a Closed Council meeting in accordance with this Clause are subject to the non- disclosure provisions of Section 664 of the Local Government Act. **(DLG Practice Note No 16)**
- k) Conclusion of Closed Meeting – At the conclusion of business in Closed Council, Council must resolve that the meeting be open to the public. **(DLG Practice Note No 16)**
- l) Resolutions to be made public – If a Council passes a resolution during a meeting, or part of a meeting, that is closed to the public, the Chairperson must make the resolution public as soon as practicable after the meeting or part of the meeting has ended. **(The Regulation 253)**
- m) Adoption of Closed Council Resolutions in Open Council – Council is not required to remake the resolutions made in Closed Council when reverting back to Open Council. The only matters a Council would adopt are the recommendations made during a Committee of the Whole situation or recommendations of another Council Committee. **(DLG Practice Note No 16)**

### **63)Public Access to Correspondence and Reports**

- a) The Council and a committee of which all the members are Councillors must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting. **(S11(1) of the Act)**
- b) Subclause (a) of this clause does not apply if the correspondence or reports:
  - i) relate to a matter that was received or discussed; or
  - ii) were laid on the table at, or submitted to, the meeting, when the meeting was closed to the public. **(S 11(2) of the Act)**
- c) If Council, or a committee of Council of which all the members are Councillors, closes any part of a meeting it must, at the meeting, determine by resolution the dates on and from which access to the business papers and the minutes is to be given.

## **PART 8 MISCELLANEOUS**

### **64)Disclosure and Misuse of Information**

- a) Disclosure of Information) A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

- i) With the consent of the person from whom the information was obtained; or
  - ii) In connection with the administration or execution of this Act; or
  - iii) For the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
  - iv) In accordance with a requirement imposed under the Ombudsman Act 1974 or the Government Information (Public Access) Act 2009; or
  - v) With other lawful excuse.
- b) (Meeting closed to the public) In particular, if part of a meeting of a Council or a Committee of Council is closed to the public in accordance with section 10A (1), a person must not, without the authority of the Council or the Committee, disclose (otherwise than to the Council or a Councillor of the Council) information with respect to the discussion at, or the business of, the meeting.
- c) Subsection b does not apply to:
- i) The report of a Committee of a Council after it has been presented to the Council; or
  - ii) Disclosure made in any of the circumstances referred to in subsection (a) (i) – (v); or
  - iii) Disclosure made in circumstances prescribed by the regulations, or
  - iv) Any agenda, resolution or recommendation of a meeting that a person is entitled to inspect under the provisions of the Government Information (Public Access ) Act 2009.
- d) (Use of Information) A person acting in the administration or execution of this Act must not use, either directly or indirectly, information acquired by the person in that capacity, being information that is not generally known but if generally known might reasonably be expected to affect materially the market value or price of any land, for the purpose of gaining either directly or indirectly an advantage for the person, the persons spouse or de-facto partner or a relative of the person.
- e) (Influencing decisions) A person acting in the administration or execution of this Act, and being in a position to do so, must not, for the purpose of gaining either directly or indirectly and advantage for the person, the person’s spouse or de-facto partner or a relative of the person, influence;
- i) The determination of an application for an approval; or
  - ii) The giving of an order (Maximum penalty: 50 penalty units (Section 664 of the Act))

## **65) Disclosure and Misuse of Information – Prescribed Circumstances**

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.

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

- a) An inspection of the minutes of the Council or committee of the 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. **(The Regulation 272(1))**
- b) 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. **(The Regulation 272(2))**

## **67) Access to Records**

- a) The Chairman or General Manager may allow or refuse to allow any Councillor to inspect any record of the Council that the Councillor requests to see.

- b) If the Chairman or 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.
- c) If the Council passes a motion for the production of a Council record, the Council must ensure that the record:
  - i) is produced immediately and laid on the table for inspection by the Councillors; and
  - ii) 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.
- d) Nothing in this clause derogates from the common law right of Councillors to inspect any record of the Council relating to any business before the Council, except where the Councillor requesting inspection has a pecuniary interest in the matter.

**68) Tape Recording of Meeting of the Council or a Committee Prohibited Without Permission  
(The Regulation 273)**

- a) A person may use a tape recorder to record the proceedings of a meeting of the Council or a committee of a Council only with the authority of the Council or committee.
- b) The Council or committee may, by resolution, expel from the place where it is holding a meeting any person who uses a tape recorder in contravention of this clause.
- c) If any such person, after being notified of such a resolution, fails to leave the place where the meeting is being held, a police officer, or any person authorised by the Council for the purpose, may remove the person from, and, if necessary, restrain the person from re-entering, that place.
- d) In this clause, tape recorder includes a video camera and any electronic device capable of recording speech, whether a magnetic tape is used to record or not.

**69) Certain Circumstances do not Invalidate Council Decisions (S 374 of the Act)**

- a) Proceedings at a meeting of the Council or a Council committee are not invalidated because of:
  - i) a vacancy in a civic office; or
  - ii) a failure to give notice of the meeting to any Councillor or a committee member; or
  - iii) any defect in the election or appointment of a Councillor or a committee member; or
  - iv) a failure of a Councillor or a committee member to disclose a pecuniary interest at a Council or a committee meeting; or
  - v) a failure to comply with this Code.

**70) Misuse of Confidential Information**

Councillors, staff and delegates must always respect the confidentiality of items which are properly considered confidential pursuant to **Clause 10(2) of the Local Government Act**.

**71) Councillors, Staff or Delegates must not bring Council into Disrepute**

That Councillors, staff or delegates must make every effort to ensure the reputation of Council is maintained and enhanced subject to their duty to act at all times in the public interest.

## **72) Council Seal**

- a) Council's seal can be affixed to a document only after the Council has resolved that the seal be affixed. The resolution must specifically refer to the document and document must relate to Council business.
- b) The power to authorise the affixing of the seal can only be exercised by the Council. It cannot be delegated to a committee or employee.
- c) The seal of Council may be affixed to a document only in the presence of:
  - i) The Chairman and the General Manager, or
  - ii) At least one Councillor (other than the Chairman) and the General Manager, or
  - iii) the Chairperson and at least one other Councillor, or
  - iv) at least 2 Councillors other than the Chairperson
- d) A Council wishing to provide references or certificates of service to employees or congratulatory letters to members of the community can do so by using its letterhead paper or enhanced formats for these purposes. The Council seal cannot be used for these documents

## **73) Amendment of Code**

- a) This Code may be amended only in accordance with the provisions of Division 1 of Part 2 of Chapter 12 of the Act.
- b) In the event of any legislative change, those changes are to be incorporated into this Code without further public exhibition.

## **74) Public Availability of the Code**

This Code of Meeting Practice is a publically available document and can be obtained at the Council Administration during normal Office Hours and can also be viewed on councils website. The photocopying of this document will be subject to the photo copy charges as listed in Councils fees and charges.

## **75) Defamatory Statements**

The NSW Ombudsman publication "Better Service and Communication for Councils" provides the following information about defamation:

"A statement may be defamatory of a person if it is likely to cause an ordinary reasonable member of the community to think less of a person or to shun or avoid the person".

Councillors, staff and members of the public can seek legal compensation, apology etc if they are defamed.

Councillors acting within their official capacity at meetings of Council or Council Committees have a defence of "qualified privilege" to actions in defamation. This recognises that you may need to speak freely and publicly in carrying out your duties. However qualified privilege needs to be treated with great caution. It only covers statements made at a Council or Committee meeting when you are carrying out your duties and on business relevant to the Council. Statements also need to be made with good intentions, not malice.

## **76) Formalising Chairpersons Actions**

A role of the Chairperson is to exercise, in cases of necessity, the policy-making functions of the governing body of the Council between meetings of the Council (**Section 226 of the Act**). Such actions, if they occur, to be conveyed to the next Council Meeting.

## **77) Workshops**

A Council can hold a workshop (sometime called a briefing session) under its general powers as a body corporate. Workshops are informal committees and can provide useful background information to Councillors on issues. A workshop may involve Councillors, council staff and invited participants.

## **SCHEDULE A**

### **General Order of Business**

1. Apologies.
3. Declarations of Pecuniary & Non Pecuniary Interest.
4. Confirmation of minutes from previous meetings.
5. Correspondence
6. General Managers Report to Council
7. Director of Engineering's Reports to Council
8. Questions and Statements
9. Closure of Meeting to the Public (Confidential Reports)
10. Return to public Meeting.
11. Close.