



# **COFFS HARBOUR CITY COUNCIL**

**SUPPLEMENTARY AGENDA**

**(CORPORATE BUSINESS COMMITTEE)**

**COUNCIL CHAMBERS**

**COUNCIL ADMINISTRATION BUILDING**

**COFF AND CASTLE STREETS, COFFS HARBOUR**

**16 AUGUST 2007**

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# COFFS HARBOUR CITY COUNCIL

## SUPPLEMENTARY AGENDA

### (CORPORATE BUSINESS COMMITTEE)

16 AUGUST 2007

Mayor and Councillors

#### GENERAL MANAGERS REPORT

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#### 15 CODE OF MEETING PRACTICE

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##### **Purpose:**

To propose a strengthening of Council's Code of Meeting Practice to formalise community participation at meetings.

##### **Description of Item:**

Council's Code of Meeting Practice currently provides for public participation in either the Public Forum or Public Addresses during Council's ordinary meetings.

It should be noted that there is no automatic right under the *Local Government Act 1993* or Regulation for the public to participate in Council meetings, either by written submission or oral presentation. This includes being able to ask questions or address Council meetings, or to make comment on matters during those meetings. The Department of Local Government has indicated that Council can decide whether its Code of Meeting Practice should provide for public participation or not, and if permitted, define how this is to occur.

At present, the Council Chamber is set up to provide public occupation in a Public Gallery. The Public Gallery is not physically segregated from the Chamber, that is, the space reserved for Councillors. This lack of separation can make it difficult for Council to manage its business, particularly in terms of regulating when members of the public are permitted to enter the Chamber and when they are not.

Council's Code of Meeting Practice provides powers and procedures for keeping order at meetings, but does not currently define "acts of disorder" so that the public can know what conduct is acceptable, and what is not.

It is proposed that the Code of Meeting Practice be amended to better provide guidance on conduct matters for Council and the public.

## 15 Code Of Meeting Practice ...(Cont'd)

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### **Sustainability Assessment:**

- **Environment**

There are no environmental issues evident in the proposal.

- **Social**

The proposal provides for a more orderly and appropriate way for Council to deal with community contact at Council meetings and within the Chamber.

- **Economic**

#### **Broader Economic Implications**

There are no perceived economic impacts on the community.

#### **Management Plan Implications**

There will be some minor works within the Chamber to define the separation of the Chamber from the public gallery. The cost of these works will be funded from existing budgets.

### **Consultation:**

The proposals have been discussed with Council's solicitors and the Mayor.

### **Related Policy and / or Precedents:**

Council's Code of Meeting Practice was last reviewed and adopted on 15 December 2005.

### **Statutory Requirements:**

The *Local Government Act 1993* (Part 2) ('the Act'), requires Council to adopt a Code of Meeting Practice and stipulates how Council will undertake its decision making process.

The *Local Government (General) Regulation 2005* (Division 3; Part 10) ('the Regulation') makes further provisions for the way Council will conduct its meetings.

### **Issues:**

#### **1. Disorderly Conduct**

In accordance with s.10 of the Act, everyone is entitled to attend (open) meetings of Council and Council Committees which are comprised entirely of councillors. Council has the power to close its meetings, but only in the circumstances prescribed under the Act and Regulation.

Section 10 of the Act states that a councillor or a member of the public will not be entitled to attend a meeting of Council if expelled from that meeting. This can be done either by:

- Council (in the meeting) resolving that the person can not be present (s.10(2)(a)); or
- The person presiding at the meeting expelling that person from the meeting (s.10(2)(b))

## 15 Code Of Meeting Practice ...(Cont'd)

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The “person presiding at the meeting” usually means the “chairperson” or person acting as chairperson or meeting convener. For convenience, this report will refer to that person as the “chairperson”.

Note that the power of the chairperson to expel a person from the meeting can only be exercised if that power has first been granted to the chairperson (at that meeting or at a prior meeting) by Council.

A person may be expelled from a meeting only on the grounds specified and prescribed by the Regulations. In regard to the expulsion of persons from meetings, clause 257 (2) of the Regulations provides:

*“A member of the public may, as provided by section 10(2) (a) or (b) of the Act, be expelled from a meeting of a council for engaging in or having engaged in disorderly conduct at the meeting”.*

Disorderly conduct is not defined in the Act or Regulations, leaving Council to decide what conduct will be considered “disorderly”.

At common law “disorderly conduct” means behavior which causes disturbance or annoyance to others present (*E. (a child) v R* (1994) 13 WAR 176) or any substantial breach of decorum which tends to disturb the peace or interfere with the comfort of the people (*Barrington v Austin* [1939] SASR 130).

As disorderly conduct comes in many forms, it is worth remembering assault can constitute either:

- Assault – putting the victim in fear of imminent physical harm, or
- Battery – applying physical harm to the person of the victim.

The *Crimes Act* 1900 contains provisions which are, or could be relevant to some Council meetings. These include (s.545B) “intimidation or annoyance by violence or otherwise” and (s.545AB) “stalking or intimidation with intent to cause fear of physical or mental harm”.

At a recent Council meeting, members of the public entered the space reserved for Councillors, the General Manager and invitees. This action constituted a substantial breach of decorum and, therefore disorderly conduct, rendering those persons liable to expulsion.

Notwithstanding the right to expel persons engaged in disorderly conduct, Council should afford greater protection to those persons rightfully within the reserved or non-public space.

It is recommended that Council physically divide the Councillor’s meeting space in the Chamber from the Public Gallery area by erecting an appropriate barrier and installing a “No Public Access” sign on that barrier. If this is done, the *Inclosed Lands Protection Act* 1901 would apply (providing penalties against persons entering that area without permission).

It is also recommended that security cameras be installed in the Council Chambers to enable disorderly conduct to be appropriately dealt with, or responded to, by Councillors, Council staff or other appropriate persons. Appropriate signage indicating that the presence of the security cameras may also be necessary as part of their installation.

## 15 Code Of Meeting Practice ...(Cont'd)

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### 2. Tape Recording of Meetings

Council notes the recent (unauthorised) use of tape and other recording devices in Council meetings. In regard to tape and other recording at meetings, clause 273 of the Regulations provide:

- “(1) A person may use a tape recorder to record the proceedings of a meeting of a council or a committee of a council only with the authority of the council or committee.*
- (2) A person may, as provided by section 10 (2)(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.*
- (3) If any such person, after being notified of a resolution of 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.*
- (4) In this clause, tape recording, includes a video camera and any electronic device capable of recording speech, whether a magnetic tape is used to record or not.”*

Where a recording device is used in the Council meeting without the express prior approval of Council, the person making the recording will be in breach of clause 273 of the Regulation. This breach entitles Council to expel that person from the meeting (in accordance with cl.273(3)).

Note that the definition of recording device would include mobile phones with voice recording capabilities.

It is recommended that a sign also be installed at the Council Chambers prohibiting unauthorised recording of Council meetings in accordance with clause 273 of the Regulation.

### 3. Powers of Expulsion

A member of the public can be expelled from the relevant meeting if:

- The person is or has been engaged in disorderly conduct, or
- The person uses or has used a recording device in breach of cl.273 of the Regulation.

Therefore, in a relevant circumstance, a person may be expelled from a Council meeting either by resolution of that meeting or by a person duly authorised (such as a Ranger, private security guard, General Manager or their delegate etc) by Council or the chairperson (subject to the chairperson having been previously empowered by Council to exercise this power of expulsion).

The circumstances in which it would be appropriate that a member of the public be expelled from a meeting often arises suddenly and should be dealt with speedily. Given this, it is recommended that Council provide or delegate the general power of expulsion as a function of all persons presiding at Council meetings or meetings of Council Committees comprising only of Councillors.

## 15 Code Of Meeting Practice ...(Cont'd)

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It is also recommended that persons "duly authorised" to enforce a decision of expulsion be resolved by Council to mean "the Rangers, private security guards, General Manager or their delegate". These persons will be authorised to remove any person subject to an expulsion decision from any meeting, without prior consultation or delegation at that meeting.

### **Implementation Date / Priority:**

The recommendations should be implemented immediately. It is recommended that a further report be brought back to Council on a revised Code of Meeting Practice.

### **Recommendation:**

1. That the power of expulsion from a meeting of Council, or from a meeting of a Committee of Council of which all members are Councillors, may be exercised by any person presiding at that meeting.
2. That Council resolve that the definition of "disorder" or "disorderly conduct" for the purpose of the Act and Regulation will be that of "behaviour which causes disturbance or annoyance to others present or any breach of decorum which tends to disturb the peace or interfere with the comfort of the people".
3. That persons "duly authorised" to enforce a decision of expulsion will mean "the Rangers, private security guards, General Manager or their delegate" and that all of these persons will be authorised to remove a person subject to an expulsion decision from the meeting, without prior consultation or delegation by Council or the person presiding at that meeting.
4. That, to assist in the enforcement of expulsion powers as may be exercised by duly authorised persons, professional security personnel will attend Council meetings as deemed necessary by, and at the discretion of, the General Manager.
5. That the meeting space of the Council Chamber be physically divided from the Public Gallery by the erection of an appropriate barrier and the installation of a "No Public Access" sign on the barrier.
6. That security cameras and any necessary signage be installed in the Council Chamber and activated as deemed necessary by the General Manager.
7. That a sign be installed at the Council Chambers prohibiting unauthorised recording of Council meetings in accordance with clause 273 of the Regulation.
8. That a report be provided to Council on a revised Draft Code of Meeting Practice.

Stephen Sawtell  
**General Manager**