

Meetings Practice Note



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INTRODUCTION

This Practice Note was made to help councils run their meetings. It is not meant to be a complete guide to meeting procedures, but it does cover frequently asked questions.

As part of their Charter, councils are to involve councillors, council staff, members of the public and others in the development, improvement and co-ordination of local government (s.8 of the Act). How meetings are managed is an important part of achieving this goal.

Meeting procedures contribute to good public decision-making and increase council's transparency and accountability to its community. Councillors are accountable to their communities for the decisions that they make. Those decisions should be based on sound and adequate information. The conduct of effective meetings is an indicator of good governance. Well run meetings reflect an effective partnership and relationship between the governing body of council and council administration. (sections 232 and 439 of the Act)

While legislation sets out certain procedures that must be followed in council and committee meetings, beyond this meetings procedures vary between councils. These differences usually reflect local cultural practices and priorities.

Rules and suggestions on holding council meetings are in the *Local Government Act 1993* (the Act); the *Local Government (General) Regulation 2005* (the Regulation); the (former) Department of Local Government's 2008 "Model Code of Conduct for Local Councils in NSW" (the Model Code) and the "Guidelines for the Model Code of Conduct for Local Councils in NSW" (the Model Code Guidelines); and the relevant council's adopted Code of Meeting Practice (Meeting Code).

While publications such as Joske's *Law and Procedures at Meetings in Australia* give general guidance on running meetings, a council's meetings procedures must follow the Act, Regulation, Model Code and council's Meeting Code. Where there are any differences in what is said or required, the Act, Regulation and Model Code must be followed.

The Meeting Code is made by the council after public consultation. The Meeting Code cannot be inconsistent with the Act, the Regulation or the Model Code, but it can 'fill in the gaps'. Under section 440 of the Act, all councils must adopt a Code of Conduct that includes the provisions of the Model Code. The Model Code sets out minimum standards of behaviour (set down in the Regulations) for council officials in carrying out their duties (Part 2, Model Code).

All councillors, staff and community members participating in council meetings must act with good intentions and behave to the standard of conduct expected by

the community. The principles upon which the Model Code is based include integrity; leadership; selflessness; impartiality, accountability; openness; honesty and respect (Section 4, Model Code). Meetings must be run fairly and the procedures used should improve decision-making, not personal or political advantage.

Local councils are largely independent bodies, mainly responsible to their residents and ratepayers (rather than to the Minister for Local Government or the Division of Local Government, Department of Premier and Cabinet), for the way in which they operate. This includes the running of meetings. It is not the role of the Minister or the Division to direct councils on the day-to-day administration of their affairs.

This Practice Note has been made as a guide for councils, councillors and members of the public. It does not give legal advice. You should seek your own legal advice on issues of concern.

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PART 1 - BEFORE THE MEETING

1.1 Holding Meetings

1.1.1 When are ordinary council meetings held?

Ordinary council meetings are held on a regular basis, as decided by the council. Each council must meet at least ten (10) times a year, with each meeting being in a different month (s.365 of the Act). It is up to the council to decide when and where to have the meeting.

1.1.2 When is an extraordinary meeting held?

At least two (2) councillors can make a written request to the mayor to hold an extraordinary council meeting. The mayor can be one of the two councillors, but the mayor cannot call extraordinary meetings by him or herself without having a written request with another councillor's signature. The mayor must then 'call' the meeting, which is to be held as soon as practical but within fourteen (14) days after the request is made (s.366 of the Act).

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).

1.1.3 Where are council meetings held?

This is not covered by the Act or Regulation. Council may determine for itself the venue for its meetings. It may wish to hold its meetings in different locations from time to time.

In selecting a venue council should ensure that it:

- is accessible for people with disabilities;
- is adequate in size;
- has adequate facilities for the convenience and comfort of councillors, staff, and members of the public;
- has suitable acoustic properties.

1.2 Notice of Meetings

1.2.1 What notice has to be given to the public of ordinary council and committee meetings?

Councils must give public notice of the time and place of ordinary council and committee meetings (s.9 of the Act). The notice must be published in a local newspaper, indicating the time and place of the meeting (cl.232 of the Regulation). Notice can also be given in other ways if it is likely to come to the public's attention — for example, by a list or poster at the council's office or the library. More than one meeting may be advertised in a public notice.

Although no time period has been set between giving public notice and holding the meeting, it is expected that enough notice would be given so that the public can find out when and where the council is meeting.

1.2.2 What notice has to be given to councillors of ordinary council and committee meetings?

At least three (3) calendar days before a council or committee meeting, council's general manager must send each councillor a notice of the time, place and business on the agenda of the meeting (s.367 of the Act; cl.262 of the Regulation).

1.2.3 What notice has to be given of extraordinary council and committee meetings?

Public notice must be given of the time and place of extraordinary council and committee meetings (s.9 of the Act), but this does not have to be by publication in a local newspaper (cl.232 of the Regulation).

If an extraordinary meeting is called in an emergency, less than the usual three (3) days notice can be given to councillors (s.367 of the Act). The Act does not define 'emergency'. It could cover things other than natural disasters, states of emergency, or urgent deadlines that must be met. Initially the general manager would decide what is an 'emergency'.

1.2.4 Is a council decision invalid if proper notice was not given for that meeting?

A council decision will still be valid even if proper notice had not been given for the meeting in which the decision was made (s.374 of the Act), provided a quorum was present. If the meeting does not follow the Act, the Regulation, the Model Code or council's Meeting Code there may be a breach of the Act (s.672), but this does not mean that the decision is invalid (s.374 of the Act).

Any person concerned about the running of a meeting can apply to the Land and Environment Court to stop or fix a breach of the Act (s.674(1) of the Act).

1.3 Times of Meetings

1.3.1 What time should council meetings start?

This is not covered in the Act or the Regulation. Council could set the time of its meetings in the council's Meeting Code, but this should be flexible enough to allow meetings to be held at other times in special circumstances.

In setting the times for its meetings council's foremost consideration should be the convenience of councillors. Matters to be taken into account may include:

- employment or business commitments;
- carer responsibilities;
- safety issues (eg long travel distances at night).

There are good arguments for daytime meetings, for example, in large rural areas where councillors may have to travel long distances to attend meetings. There are also good arguments for early evening meetings, allowing councillors and members of the public with daytime jobs to attend the meetings.

There may be occasions where council may set the time and place of a meeting to suit a particular interest group which may be expected to attend.

1.4 Agendas and Business Papers

1.4.1 What must be in a meeting agenda?

The general manager must send each councillor notice of the business to be dealt with at the upcoming meeting (the agenda) (s.367 of the Act). Copies of the agenda must be available for the public at the council's offices and at the meeting, free of charge (s.9 of the Act). In addition councils should consider placing agendas on their websites.

The agenda must indicate all business arising from a former meeting; any matter that the mayor intends to put to the meeting; and any business of which 'due notice' has been given (cl.240 of the Regulation). The amount of time that is 'due notice' should be set under council's Meeting Code.

The general manager must include in the agenda for a meeting of the council any business of which due notice has been given (eg notice of motion, question on notice) except business that is unlawful (cl.240 of the Regulation).

1.4.2 What must be in the meeting business papers?

Business papers are documents relating to business to be dealt with at a meeting, for example, correspondence and reports from staff. Business papers should be provided as early before the meeting as possible. This gives councillors time to consider the issues and prepare for debate.

Council staff should, when preparing business papers which will be open to inspection by the public, avoid including personal identifiers such as names and addresses unless such information is required by legislation. An example of when such information would be required is a development application, in which case the name and address of the applicant must be provided.

1.4.3 Can payments made by council be included in council's business papers?

These payments are often called 'cheque warrants' and will list the names of persons and amounts paid by council for various reasons.

Cheque warrants do not have to be included in council's business paper. The requirement in the *Local Government Act 1919* that cheque warrants be included in council's business paper was removed in the *Local Government Act 1993*.

Cheque warrants usually contain 'personal information' covered by the *Privacy and Personal Information Protection Act 1998* (PPIPA). As a result, the Local Government and Shires Associations of NSW and Privacy NSW (the agency that looks after the PPIPA) believe that cheque warrants should not be included in business papers. The Division agrees with this position and covers this issue in our Circular to Councils No. 01/14 "Public Access to Council Documents", available from the Division's website at www.dlg.nsw.gov.au.

Payments made by councils can be found in council's quarterly review of the management plan (s.407 of the Act). You may request access to warrants outside of council meetings, but may be refused on privacy grounds.

1.4.4 Should development plans be included in the business paper?

Applications for development consent, called 'development applications', must come with different types of plans under the *Environmental Planning and Assessment Act 1979*.

The Act does not require a council to make copies of these plans available in its business papers. Because of privacy and copyright issues, development plans should not be included in the business papers. Instead, interested members of the public should be allowed to view these plans at the council's office. The plans could also be brought to council and committee meetings by council staff.

Copyright raises some very complex issues for councils, particularly in the area of development applications. Copyright in development plans ('a work') is usually held by the person who drew them. Copyright may be breached when a document is copied and distributed, but not when it is viewed or placed on public exhibition.

The *Environmental Planning and Assessment Act 1979* and other State legislation does not allow a council to ignore copyright law when it is dealing with development plans. It would be unwise for a council to give out copies of plans unless the copyright owner has given permission to do so.

1.4.5 Can additional information to that in the business papers be provided to councillors?

Yes. A council may direct its general manager to provide its councillors with additional information. If this is done, it is suggested that the additional papers be marked separately from the business papers so as to avoid any confusion. Additional information won't be automatically available to the public like the business papers.

Any information given to a particular councillor in the performance of that councillor's duties must also be available to any other councillor who requests it in accordance with council procedures (Clause 10.4 Model Code).

1.4.6 Can Staff Reports be included in the business paper?

The only reference to staff reports in the Regulation is in clause 243(3), which states that a recommendation made in a report by a council employee is, so far as it is adopted by the council, a resolution of the council. The procedure for presenting staff reports at council meetings is not covered by the Regulation - it is a matter for council's Meeting Code. Councils might consider requiring staff reports to be prepared on each agenda item before the meeting is held.

Staff reports are expected to contain sufficient information to enable the council to reach an informed decision.

1.4.7 Can council staff change the wording of a committee recommendation when including it in the agenda?

The general manager has to make sure that certain information is in the agenda (cl.240 of the Regulation). He or she can decide how this information is to be expressed.

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). A council amendment could alter the meaning or intention of the recommendation, or simply correct its wording.

1.4.8 How should a matter be treated if its subject is confidential and the motion will probably be discussed in the closed part of a meeting?

Certain matters, because of their confidential nature, may be considered in closed meetings. Parts of council meetings may be closed to the public to discuss the types of matters referred to in section 10A(2) of the Act. Although a council decides whether the public is to be excluded from part of a meeting, the general manager must first decide whether an item of business is *likely* to be discussed in a closed part of a meeting.

Section 9(2A) of the Act directs the general manager to indicate on the agenda (without details) that an item of business is likely to be discussed in a closed part of the meeting. For example:

“Item 5: Annual tenders for goods and services”

The agenda should also indicate the reason the item will be dealt with in the closed part of the meeting. For example:

“Item 5: Annual tenders for goods and services
Reason: Information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business (section 10A(2)(c)).”

The general manager must make sure that any details of this item are put in a confidential business paper (cl.240(4) of the Regulation). A council can disagree that an item should be discussed in a closed part of the meeting. In this case, the item would be discussed during the open part of the meeting.

Sections 9, 10A and 664 of the Act and Section 10 of the Model Code deal with confidential information.

1.4.9 Can a council decide that notices of motion on its agenda will not have any supporting notes or comments from staff?

Yes. While clause 240 of the Regulation sets out what must be included in the agenda, each council can decide how its business is to be stated in the agenda and whether supporting notes or comments should come with notices of motion.

A council may wish to consider the benefits for making well-informed decisions of having extra information or expert views provided in the notes or in the comments. This additional information would be publicly available and may assist community members in understanding the reasons for, and effects of, council decisions. Council should alter its Meeting Code if it decides to change its position on what is to be included in its agendas.

(See also 5.2.3 of this Practice Note)

1.4.10 Can an agenda include provision for questions from councillors?

Yes. Council agendas could contain an item “questions on notice”. Councillors would provide questions to the general manager to be asked at the meeting and included on the agenda, in accordance with the notice provisions of the Regulation (cl 241(1)).

Questions provided in this way, and responses to those questions, would be considered council business and as such council’s Meeting Code could cover this issue. As responses to questions on notice would be considered council business, responses could form the basis for further motions on the same topic at that meeting.

Agendas and business papers (other than business papers for a confidential item) must be available for the public to look at or take away (s9 of the Act). Any non-confidential questions included in the agenda or business papers would also need to be available to the public.

For information relating to asking questions about matters on the agenda during the meeting, see 2.5 of this Practice Note.

1.4.11 Is it appropriate to have as an agenda item “Questions Without Notice”?

Having an agenda item, “questions without notice” is inconsistent with the provisions of the Regulation that require notice to be given of matters to be discussed at council meetings (cl 241).

Allowing questions without notice would avoid the notice provisions of clause 241 of the Regulation. That clause enables all councillors and the public to be aware, by reading the agenda, of matters that will be raised at each meeting. It also enables councillors to give careful thought to any pecuniary interest or conflict of interest they might have in a matter, rather than having to hastily confront an issue during the meeting.

However, questions can be proposed by giving notice to the general manager in the usual way (see 1.4.10) and can be asked during the meeting in relation to business already before council (see 2.5). If the matter is genuinely urgent, and the matter is not on the agenda, it could be dealt with under clause 241(3) of the Regulation. For information relating to asking questions about matters on the agenda during the meeting, see 2.5 of this Practice Note.

Further information on questions is contained in clause 5.2.8 of this Practice Note.

1.4.12 Can an item of business which is on the agenda be removed from the agenda prior to the meeting?

No. Once the agenda for a meeting has been sent to councillors an item of business on the agenda should not be removed from the agenda prior to the meeting.

If it is proposed that an item of business which is on the agenda not be dealt with at the meeting council should resolve to defer that business to another meeting or resolve not to consider the matter, as the case may be.

1.5 Order of Business

The order of business for meetings (except for extraordinary meetings) is generally fixed by council's Meeting Code (cl.239(1) of the Regulation). If the Council does not have a Meeting Code, then the order of business can be decided by council resolution (cl.239 (1) of the Regulation).

The order of business can be changed by the passing of a motion (with or without notice). Unlike other motions, only the mover of a motion to change the order of business can speak for or against it in the meeting (cl.239 (1) of the Regulation).

1.6 Public Access to Agendas and Business Papers

1.6.1 Who can access information that is available publicly?

Section 12(1) of the Act gives a right of access to certain documents to any interested person, not just people who are residents or ratepayers of the council area. Access does not depend upon the reasons for the request being made.

1.6.2 Which council documents can a person have access to and inspect?

Access for inspection of all council documents referred to in sections 12(1), 12(2) and 12(5) of the Act must be provided unless the particular document is exempt under section 12(1A). Some of the documents listed under section 12(1) of the Act are:

- The Code of Conduct
- The Meeting Code
- Agendas and business papers
- Minutes
- Annual reports and annual financial reports
- Policy concerning payment of expenses and the provision of facilities to councillors

Access for inspection must also be provided to all other council documents. However inspection of a particular document can be refused if the council believes that allowing the inspection would be contrary to the public interest (s.12(6) of the Act).

The requirement to allow inspection does not apply to any part of a document exempt under sections 12(1A) and 12(7) of the Act, including certain building plans; certain commercial information; personnel matters concerning particular individuals; the personal hardship of any resident or ratepayer; trade secrets; or a matter the disclosure of which would constitute an offence or give rise to an action for breach of confidence.

After determining whether the document would be generally available, the Public Officer must also consider whether restrictions under the *Privacy and Personal Information Protection Act 1998* and *Copyright Act 1968* (Cth) apply.

1.6.3 Is a person entitled to inspect the agenda and minutes of an advisory council committee that includes staff members or the public?

The agenda and minutes of an advisory council committee would come within the category of 'other council documents' (s.12(6) of the Act). These documents can be inspected unless inspection would be contrary to the public interest. Inspection can also be refused if the documents deal with personnel matters concerning particular individuals, information supplied in confidence, etc (s.12(6) to (8) of the Act).

1.6.4 Can a council charge a reasonable copying fee or postage for providing copies of its agenda and business papers?

Copies of the current agenda and associated business papers must be available to the public to look at or take away, and must be free of charge (s.9 of the Act).

However, sections 12B(3) and 608 of the Act, when read together, allow a council to charge for the copying of agendas and business papers in other circumstances, such as for papers from a previous meeting. It also allows council to charge reasonable postage

and handling fees for agendas and business papers posted either on a single occasion or regularly to persons on a mailing list. Multiple copies mailed to a person could have an additional fee. Fees may be charged in advance or afterwards, as decided by the council.

For more information see Circular to Councils No.08-15 LGMA (NSW) Governance Network – Access to Information Policies and Template Documents, accessible on the Division’s website at www.dlg.nsw.gov.au.

1.6.5 Are papers created or received by councillors classified as council documents?

Council documents include those created or received in the course of the official duties by councillors. Information generated by, in the possession of, or under the control of the councillors that concerns their civic or council duties under any Act is considered by the Division to be a document of the council. These documents may include information that does not form part of the council’s official filing system.

1.6.6 Can councillors copy information additional to the business papers (such as plans and legal opinions from council files) and give it to the public?

Section 664(1) of the Act states that “a person must not disclose any information obtained in connection with the administration or execution of the Act unless that disclosure is made:

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

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

Provided the additional information is not part of the business paper and is made publicly available, it can only be given out in accordance with section 664(1) of the Act. It is also important to remember copyright law when making copies of information.

Council should have documented procedures for public access to documents as provided under the Act (s.12) and the *Freedom of Information Act 1989*, subject to the *Privacy and Personal Information Protection Act 1998*.

Section 10 of the Model Code talks about access to and use of personal, council and confidential information. The general manager or public officer, rather than individual councillors, would be the appropriate people to assist members of the public to access documents.

PART 2 - AT THE MEETING: GENERAL

2.1 Coming Together

2.1.1 How may council open its meetings?

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

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

2.1.2 Who can sit at the meeting tables?

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

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

It is important to remember that if a councillor is anywhere in the room where the council meeting is being held, they are considered to be 'present' for the purposes of voting (cl.251(1) of the Regulation). This means that if they are in the room but do not vote on an issue (for example, by staying silent) their vote is taken as against the motion (cl.251(1) of the Regulation).

2.2 Addressing Councillors

2.2.1 How should councillors be addressed at council meetings?

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

A council could decide that a councillor's title or qualification will be included when addressing them (for example, 'Councillor Doctor X'). As this matter is not covered in the legislation, it could be covered in council's Meeting Code. If it is not covered in the Meeting Code, it would be a matter for the chairperson to decide on, remembering to treat people with respect, dignity and equality.

2.2.2 How should the chairperson be addressed at council meetings?

If the chairperson is the mayor they are usually addressed as 'Mr Mayor' or 'Madam Mayor'. When the chairperson is not the mayor, they would be addressed as 'Mr/Madam Chair' or 'Mr/Madam Chairperson'. This matter could be covered in council's Meeting Code. If it is not covered in the Meeting Code, it would be a matter for the chairperson to decide on.

2.3 Councillor Accountability - Open Decision-making

Open decision-making is an important part of local government and should be the rule rather than the exception. The ability of the public and media to attend and watch council and committee meetings — seeing the deliberations and decisions of elected representatives — is essential for councillor accountability. This is recognised by the legislation, which encourages open decision-making at council meetings.

Councillors should be prepared to state their views publicly on both controversial and routine issues. Informed voting by electors is best achieved when they can observe the speeches, debate and voting patterns of their councillors.

Council decisions should be based on fairness, impartiality, objectivity and consideration of all the issues (Sections 4 and 6 of the Model Code). Open decision-making helps achieve this, as well as preventing misunderstanding and unfounded criticisms from the public.

2.4 Business at Council Meetings

2.4.1 What business can be discussed and dealt with at council meetings?

- Business which a councillor has given written notice of within the required time before the meeting (cl.241(1)(a) of the Regulation), and of which notice has been given to councillors (s.367 of the Act);
- Business that is already before the council or directly relates to a matter that is already before the council (cl.241(2)(a) of the Regulation). For example, business that was discussed at the last council meeting, or business in a report made by council staff in response to an earlier council request for a report;

- The election of a chairperson for the meeting (cl.241(2)(b) of the Regulation);
- A matter raised in a mayoral minute (cl.241(2)(c) of the Regulation);
- A motion to adopt committee recommendations (cl.241(2)(d) of the Regulation);
- Business ruled by the chairperson to be of great urgency (cl.241(3) of the Regulation) but only after a motion is passed to allow this particular business to be dealt with. This motion can be moved without notice.

Business which does not fall within any of the above categories should not be transacted at a meeting.

2.4.2 What business can be discussed at extraordinary council meetings?

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

2.5 Questions at council meetings

Can Questions be asked of councillors or staff concerning a matter on the council agenda?

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

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

Questions must be put succinctly and without argument. The chairperson must not allow any discussion on any reply or refusal to reply to such questions (cl 249 of the Regulation). It is considered that staff refusal to reply would be in circumstances where they require further time to research the response to the question. In this case, it would be good practice for council and/or the general manager to identify a timeframe for the response so that the period to respond is not open-ended.

When further time is required to respond to a question asked during a council meeting, it would be good practice to record the question and responses in the minutes.

2.6 Committee of the Whole

2.6.1 What is the committee of the whole?

During the course of a council meeting a council may resolve itself into the 'committee of the whole' under section 373 of the Act. That part of the council meeting then becomes a committee meeting. The only advantage of a council forming a committee of the whole is that by reason of clause 259 of the Regulation the limits on the number and duration of councillor speeches referred to in clause 250 of the Regulation do not apply.

If at the time council resolves itself into the "committee of the whole" the meeting was open to the public then the meeting will remain open to the public unless council resolves to exclude the public under section 10A of the Act. (see also 7.3.3 of this Practice Note)

2.6.2 May council resolutions be made by the committee of the whole?

No. The committee of the whole may not pass a council resolution. It makes recommendations to council in the same way as any other committee of council. Once the committee has completed its business and the council meeting has resumed council considers any recommendations made by the committee of the whole.

2.7 Mayoral Minutes

2.7.1 What is a mayoral minute?

The mayor may put to a meeting (without notice) any matter which the council is allowed to deal with or which the council officially knows about (cl.243(1) of the Regulation). This would cover any council function under the Act or other legislation, or any matter that has been brought to the council's attention, for example, by letter to the mayor or the general manager.

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

Mayoral 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 would be better placed on the agenda, with the usual period of notice being given to the councillors.

2.7.2 Can mayoral minutes be introduced at council committee meetings?

A council committee consisting entirely of councillors must run its meetings as set out in the Meeting Code (s.360(3) of the Act). Each council committee can decide on its own procedure (cl.265 of the Regulation) and these could be adopted in the Meeting Code. This includes procedures on mayoral minutes.

2.7.3 Can a mayoral minute be amended?

While not addressed in the Regulation, mayoral minutes may be altered in practice. This could be covered in council's Meeting Code. Changes to mayoral minutes should avoid making changes that will introduce, without notice, matters which need research or a lot of consideration by the councillors before coming to a decision.

2.8 Voting

2.8.1 What are the voting entitlements of councillors?

Each councillor has one (1) vote (s.370 of the Act). A councillor must be present (in person) at the council or committee meeting to vote (cl.235 of the Regulation).

2.8.2 How is voting conducted?

Voting at a council meeting is to be by 'open means', for example, by voices or show of hands (cl.251(5) of the Regulation). The only exception is voting on the position of mayor or deputy mayor.

Councils may use an electronic device to record the votes cast by councillors, but the requirement that voting take place by 'open means' still applies. It will depend on the type of device used as to whether it is voting is by 'open means'. Votes in writing are not permitted.

2.8.3 Can voting be by proxy or other means?

A councillor must be present (in person) at the council or committee meeting to vote (cl.235 of the Regulation). Councillors cannot participate in a meeting by video-conferencing or tele-conference. There are no 'proxy' votes at council or committee meetings. A 'proxy' is a system where an absent councillor can cast his or her vote by giving their vote to another councillor.

2.8.4 Can a councillor choose not to vote on a motion?

Although a councillor does not have to vote, voting at council meetings is one of the responsibilities of a councillor and should be regarded seriously.

Councillors who are not present for the vote are not counted as having voted. You will be absent from voting if you have physically left the meeting room. If you are in the room, but choose not to vote or say that you abstain from voting, you are taken to have voted against the motion (cl.251(1) of the Regulation). This will be the case even if you are sitting away from the meeting table, such as in the public forum.

Councillors with a pecuniary interest in a matter cannot be present at, or in sight of, the meeting that is considering the matter or voting on it (s.451(2) of the Act). The only exception to this is where the Minister has given permission for such a councillor to be present in the meeting and to vote on the issue (s.458 of the Act).

2.8.5 Can a councillor who votes against a motion have that vote recorded?

Yes. You can request to have your name recorded in the minutes to show that you have voted against a motion (cl.251(2) of the Regulations).

2.8.6 Can a council record votes on matters in its minutes?

Yes. Council can choose to record the voting on all matters in its minutes. Where a council makes this decision, this should be provided for in its code of meeting practice. Where councils are required by the Act or Regulation to record voting by way of a division, see section 2.9 below.

It would be good practice for councils to consider the recording of voting on important matters, such as tendering.

2.9 Divisions

2.9.1 What is a Division?

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

Two councillors may rise and call for a division on a motion. The chairman must then ensure that a division takes place immediately (cl.251(3) of the Regulations).

2.9.2 Are there any other occasions when a division is required?

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

2.9.3 How is a division conducted?

There is no set procedure by which a division must be conducted. Whatever procedure is adopted at a meeting, the general manager must ensure that the names of those who voted for the motion and the names of those who voted against it are recorded in the minutes (cl.251(4) of the Regulation).

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

2.10 Casting Vote of Chairperson

2.10.1 When can the chairperson exercise a casting vote?

Each councillor is entitled to one vote (s.370 of the Act). If the voting on a matter is equal, the chairperson has a second or 'casting' vote (s.370 of the Act). This is in addition to any vote the chairperson has as a councillor.

The Act uses the word 'second' vote, which indicates that the chairperson has already voted once before using their casting vote. Usually the chairperson casts a vote, and if the votes are tied, the chairperson then uses a casting vote to decide the matter.

2.10.2 How should a casting vote be exercised?

There is nothing in the legislation saying how a casting vote is to be used. It is a matter for the chairperson as to how they will vote, after taking into consideration all relevant information. They do not need to vote the same way on their first and second vote.

Should the chairperson fail to exercise a casting vote the motion being voted upon would be lost.

2.11 Decisions of Council

2.11.1 What is a decision of a council?

Once a motion is passed by a majority of votes at a meeting at which a quorum is present, the motion becomes a decision of the council (s.371 of the Act). This is sometimes termed a 'resolution'. A quorum is the minimum number of councillors necessary to conduct a meeting.

2.11.2 Are council decisions affected when councillors change?

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

2.11.3 Are there any limits on the decisions a council can make before an ordinary election is held?

The Act does not impose such limits.

While the Act does not impose such limits, like Commonwealth and State Governments, councils are expected to assume a "caretaker" role during election periods to ensure that major decisions are not made which limit the actions of an incoming council.

It is the Division's practice, prior to ordinary elections, to issue a circular to councils reminding them of this caretaker convention. Circular to Councils No. 08-37 "*Council Decision-making Prior to Ordinary Elections*" was issued prior to the 2008 ordinary elections and is available on the Division's website at www.dlg.nsw.gov.au.

2.11.4 Are there any restrictions on a council making decisions after an ordinary election?

No. Although the decisions of a council do not lapse after an election is held, there will be some opportunities for the new council to review earlier decisions.

2.11.5 When do the councillors, including the mayor, start and finish holding office?

All councillors start holding office on the day the person is declared to be elected (s.233(2) of the Act). All councillors, other than the mayor, stop holding office on the day of the ordinary election (s.233(2) of the Act).

The mayor holds office until his or her successor is declared elected (s.230(3) of the Act). This applies to both a mayor elected by the public (popularly elected) and a mayor elected by councillors, even if the (outgoing) mayor has not been re-elected as a councillor. It is expected that the outgoing mayor would only exercise the powers that can be exercised by the mayor during such periods. For guidance on this issue, see Circular to Councils No. 08-46 Mayors Role After Ordinary Election” available on the Division’s website at www.dlg.nsw.gov.au.

It is the opinion of the Division that if the council fails to elect a mayor as required under section 290 of the Act, the office of the mayor will become vacant. In these circumstances, the deputy mayor will act as mayor until the Governor appoints a mayor (s.290(2) of the Act).

Council should treat its responsibility for electing a mayor seriously. It should make sure that annual mayoral elections will be held as required under the Act. This can be done through the early fixing (through a council resolution) of a date for mayoral elections, to ensure quorum.

An election of the mayor by councillors must be held within three (3) weeks after an ordinary election (s.290(1)(a) of the Act). The outgoing mayor would be entitled to chair the meeting until the new mayor is elected. The outgoing mayor can do this even if he or she has not been re-elected as a councillor.

The procedure for electing a new mayor is set out in schedule 7 of the Regulation (cl.394 of the Regulation)

If the outgoing mayor chooses not to chair the meeting to elect the new mayor, the chairperson should be a councillor elected by the council (cl.236 of the Regulation).

2.12 Defamatory Statements

2.12.1 Can a councillor make defamatory statements at a council meeting?

The NSW Ombudsman publication *Better Service and Communication for Councils*, available at www.ombo.nsw.gov.au , provides information about defamation. It states:

“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.

A statement made outside a council or committee meeting will not be protected by qualified privilege, but may be protected under the *Defamation Act 1974*. You should be guided by your own legal advice on defamation issues.

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

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

The chairperson may call you to order whenever he or she believes it is necessary to do so. The chairperson may ask you to take back the statement and apologise. If you refuse to do this, you may be expelled from the meeting for an act of disorder (cl.256(3) of the Regulation and s.10(2) of the Act). This does not prevent legal action from being taken against you by the council or by another councillor, a member of council staff or a member of the public under the *Defamation Act 1974* or the common law.

2.13 Formalising Mayoral Actions

When necessary, the mayor may exercise the policy-making functions of the council between meetings (s.226 of the Act). It is not necessary for the council to formalise this, but it would be good practice for the mayor to report his or her actions to the next council meeting. This could be included in council's Meeting Code.

2.14 Petitions

2.14.1 What procedure applies to petitions from members of the public?

The Act and the Regulation do not refer to the submission or tabling of petitions to a council. It is a matter for each council to decide what to do with petitions and to set this out in its Meeting Code. Procedures could cover the format of the petition, the inclusion of petition details in council business papers; the tabling of petitions; and/or petitioners addressing council meetings.

2.14.2 What details of petitions should be included in agendas and business papers?

Care should be taken to follow the *Privacy and Personal Information Protection Act 1998* (PPIPA) with respect to the use and communication of personal information contained in petitions. Section 18 of PPIPA provides that a council may not communicate personal information unless it is directly related to the reason why the information was collected, and the council has no reason to believe that the person concerned would object.

Communication of the information can also take place if a person is likely to have been aware (or has been made aware in line with section 10 of PPIPA) that this type of information is usually told to another person or organisation.

The question of whether a petition may be published in council's business papers can only be decided by reference to the subject matter and wording of the petition; how council advertises matters in its business papers; and what instructions council staff provide to people making a petition to council.

2.15 Public Questions and Addresses

2.15.1 Can the public ask questions or address the council at council meetings?

There is no automatic right under the Act or the Regulation for the public to participate in a council meeting, either by written submission or oral presentation. This includes being able to ask questions or address council meetings, or to comment on matters during meetings.

However, providing some form of public participation in council meetings is good practice. If participation is permitted, councils should consider giving basic guidance to potential speakers on meeting processes and practices. This could be done in council's Meeting Code, at the front of council's meetings business papers and on council's website.

Each council can decide whether its Meeting Code should provide for public participation and how that is to occur. This would include how and when any questions are to be tabled and discussed at the council meetings. It would also include deciding if and when members of the public are allowed to speak, and any limitation on the number of speakers or time for speeches.

Some councils have a set period during the meeting for members of the public to speak on any matter; others allow the opportunity to speak as the various items of business are debated. There is no single correct procedure and members of the public should be guided by the advice of the council.

Speakers should be asked not to make insulting or defamatory statements, and to take care when discussing other people's personal information (without their consent).

2.15.2 Can a councillor speak to the council as a resident or ratepayer in the public access section of a meeting?

Residents or ratepayers can speak to council if allowed under council's Meeting Code or by the chairperson of the meeting. Given the opportunities for a councillor to raise matters at a meeting through notices of motion and questions, it would be unusual for a Meeting Code to allow a councillor to speak to the council from the public access section.

Councillors who aren't allowed to take part in a discussion because of a pecuniary interest cannot escape this by addressing the meeting as a 'resident' or 'ratepayer'. Section 451(2) of the Act states that a councillor must not be present at or in the sight of the meeting of council at any time during which the matter (for which the councillor has declared a pecuniary interest) is being considered, discussed or voted on. This has been interpreted as excluding councillors in both their official capacity and as a member of the public.

Exclusion from speaking to a matter which is the subject of conflict goes beyond discussions on a formulated motion or resolution - see (former) Department of Local Government Circular to Councils No. 05/17 "Codes of Meeting Practice - Councillors Invited To Speak After Declaring A Pecuniary Interest In A Matter" available from www.dlg.nsw.gov.au.

2.16 Audio or Visual Recording of Meetings

A person may only use a recording device to record the meeting of a council or its committees with permission (cl.273 of the Regulation). A council could decide to record its meetings to ensure the accuracy of its minutes or for some other council function.

In coming to this decision, the council would need to consider section 8 of the *Privacy and Personal Information Protection Act 1998* (PPIPA). This section states that personal information must not be collected unless it is reasonably necessary for a lawful purpose directly related to council's function. Further, a council would need to have regard to section 18 of PPIPA, which requires:

- that personal information must not be disclosed unless it is directly related to the reason why the information was collected; and
- council has no reason to believe that the person concerned would object; or
- the person concerned is likely to have been aware or has been made aware (in line with section 10 of PPIPA) that information of that kind is usually disclosed.

Section 10 of PPIPA also requires a council, where reasonable, to make a person aware of certain matters before their information is collected or as soon as practical after collection.

As with any request to access council documents that may contain personal information, requests for access to tape recordings should be treated with caution. Guidance on the tape recording of council meetings is provided in the *Privacy NSW User Manual: The Tape Recording of Council Meetings* available at www.lawlink.nsw.gov.au/Lawlink/privacynsw/ll_pnsw.nsf/pages/PNSW_index

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

3.1 Pecuniary Conflicts of Interests

3.1.1 *What is a pecuniary conflict of interests?*

The Act, the Regulation, the Model Code and the Model Code Guidelines provide guidance on pecuniary (or money-related) conflicts of interests. These place obligations on councillors, council delegates and council staff to act honestly and responsibly in carrying out their functions. They require that the pecuniary interests of councillors, council delegates and other people involved in making decisions or giving advice on council matters be publicly recorded. They also require councillors and staff not to deal with matters in which they have a pecuniary interest.

Section 442 of the Act defines pecuniary interest as:

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

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

A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it is unlikely to influence that person’s decision-making (see s.442 of the Act), or if the interest is of a kind described in section 448 of the Act.

If a person is not aware of the relevant pecuniary interests of the other persons listed in section 443 then that person is not taken to have a pecuniary interest in the matter (s.443(3) of the Act). Similarly, just because someone is a member of, or is employed by, a council, a statutory body or the Crown, they are not considered to have a pecuniary interest (s.443(3) of the Act). This principle also applies to someone who is a member of a council, a company or other body that has or may have a pecuniary interest in the matter, so long as that person has no beneficial interest in any share of the company or body (s.443(3) of the Act).

3.1.2 What procedure must be followed if a councillor has a pecuniary interest in a matter before council?

A councillor or a member of a council committee who has a pecuniary interest in any matter before the council, and who is present at a meeting where the matter is being considered, must disclose and identify the nature of the interest to the meeting as soon as practical (s.451 of the Act).

A councillor must not be present at or in the sight of the meeting of council at any time during which a matter to which they have declared a pecuniary interest is being considered (s.451(2) of the Act). This has been interpreted as excluding councillors in both their official capacity and as a member of the public. Councillors barred from taking part in a discussion because of a pecuniary interest cannot escape this by addressing the meeting as a 'resident' or 'ratepayer'.

This exclusion is from all discussions on the matter, not just discussions on a formulated motion or a resolution on the matter — see (former) Department of Local Government Circular to Councils No. 05/17 "Codes of Meeting Practice — Councillors Invited To Speak After Declaring A Pecuniary Interest In A Matter" available from www.dlg.nsw.gov.au.

A disclosure made at a meeting of a council or council committee must be recorded in the minutes of that meeting (s.453 of the Act). However, proceedings will not be invalid just because a councillor or committee member does not identify a pecuniary interest at the meeting in accordance with section 451 of the Act.

Sometimes it is difficult to tell when you have a pecuniary interest that must be disclosed. Judgments of the Pecuniary Interest and Disciplinary Tribunal specifically dealing with this issue are available from the Division's website at www.dlg.nsw.gov.au to help you in this process.

Part 4.2 of the Model Code Guidelines also provides guidance on conflicts of pecuniary interests. Example scenarios are given in the Guidelines for issues such as club/organisation membership.

3.2 Non Pecuniary Conflict of Interests

3.2.1 What is a non-pecuniary conflict of interests?

Part 4.2 of the Model Code Guidelines also gives examples of non-pecuniary conflicts between public duty and private interest. These conflicts exist where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty (Clause 7.1 of the Model Code).

The Model Code recognises that because of your official status, councillors have the power to make decisions or act in ways that can benefit their own private interests. Areas of potential conflict include: club/organisation membership, personal relationships, sponsorship, lobbying, caucus votes, dealings with former council officials, and political donations. The Model Code Guidelines provide information and examples to assist you in identifying conflicts of interests.

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

A non-pecuniary conflict of interests is a conflict between a councillor's private interest in a matter being considered by the council, and his or her interest as a civic official. The Model Code prescribes procedures to cover such conflicts, which need to be adopted and applied by councils.

There are three types of non-pecuniary conflicts of interests. They are 'significant', 'less than significant' and 'political donations'. Clauses 7.13 - 7.25 of the Model Code describes the procedures that need to be followed in respect of each type.

If you have a non-pecuniary interest that conflicts with your public duty you must disclose that interest fully in writing even if it is not significant. You must do this as soon as practicable (clause 7.13 of the Model Code).

The disclosure of your conflict must be recorded in the minutes of the meeting and a record kept by council. The disclosure recorded in the minutes constitutes written disclosure as required by clause 7.13 of the Model Code.

If you are aware in advance of a meeting of a possible non-pecuniary conflict of interests in a matter but remain in doubt, you are encouraged to seek legal or other appropriate advice.

The Model Code and Model Code Guidelines have been developed to assist councils implement, review and enhance their Meeting Code and Code of Conduct in regard to conflicts of interests. The Model Code Guidelines provide guidance, better practice suggestions, examples and a list of relevant resources.

PART 4 - QUORUM AND ATTENDANCE

4.1 Attendance at Meetings

4.1.1 *Can a councillor participate in a council meeting by video or teleconferencing?*

No. A councillor must be personally present in order to participate in a council or committee meeting (cl.235 of the Regulation).

4.1.2 *What happens if a councillor misses too many council meetings?*

If a councillor is absent from three consecutive ordinary meetings of the council without the leave of the council having been granted then the councillor automatically vacates office (section 234(1)(d) of the Act). Leave can only be granted by council prior to the meeting or at the meeting concerned.

This does not apply if the councillor has been suspended from office by the Local Government Pecuniary Interest and Disciplinary Tribunal under section 482 of the Act.

4.1.3 *I am a councillor and I can't attend a council meeting. What should I do?*

You should seek leave of absence from the council. Leave of absence may be granted to councillors at the discretion of the council (s.234(1)(d) of the Act). It is expected that you will attend all council and relevant committee meetings. However it is acknowledged that sometimes there are good reasons why you may miss a meeting.

Leave of absence may be granted by the council prior to the meeting, or at the meeting. An application for leave does not need to be made in person and the council may grant the leave in your absence (s.234(2) of the Act).

It would be wise to make the application in writing and state the reasons for the leave so that the council may consider it. Written applications should be lodged with the general manager. You should identify (by date) the meetings from which you will be absent.

If you intend to attend a meeting from which you have been granted leave of absence you should if practicable give the general manager at least two days notice of your intention to attend (cl 235A of the Regulation). You should not assume that the council will grant you leave. The council has discretion whether or not to grant a leave of absence. It is expected that in considering such an application the council will act reasonably given that there are consequences for failing to attend council meetings. There may also be consequences in terms of the public's perception of both the council and the applicant.

4.1.4 *Is tendering an apology the same as applying for a leave of absence ?*

No. The tendering of an apology is an accepted convention by which those present at a meeting are notified that the person tendering the apology will not be attending the meeting. It is a form of courtesy to those attending the meeting. Its purpose is also to aid the efficient conduct of meetings by informing the chairperson as to who will not be attending. This avoids delaying the opening of a meeting pending the arrival of such persons.

The acceptance of an apology is a positive acknowledgement of the courtesy of the person who tendered it. It does not amount to a grant of a leave of absence.

Although the practice of tendering of apologies is recognised as a component of good meeting practice, it has no recognition in either the Act or the Regulations.

By contrast, a leave of absence is a formal permission granted by way of council resolution to a councillor excusing that councillor's attendance at a particular meeting. It is sought by way of application to the council. It is recognised in both the Act and in the Regulation.

4.1.5 *Is a councillor required to remain at a council meeting while council business is conducted?*

There is no requirement that a councillor remain at a council meeting while business is being conducted. However, it is expected that a councillor would attend and remain at council meetings (unless prevented by illness or pressing circumstances) in order to responsibly perform the role of a councillor (s.232 of the Act) and to assist the council in complying with its charter (s.8 of the Act).

Councillors must follow the council's Code of Conduct (s.440 of the Act). The Act requires councillors to act reasonably and responsibly in the performance of their duties (Section 6 Model Code). In addition, section 439 of the Act requires councillors to exercise reasonable care and diligence in carrying out their civic functions. Attending and remaining at meetings is an important part of this.

4.2 Quorum at Meetings

4.2.1 *What is a quorum?*

A quorum is the minimum number of councillors necessary to hold a meeting. This minimum is set so that decisions are made by an appropriate number of councillors. Provided a quorum of councillors is present, council business can go ahead. If a quorum is not reached and maintained, the meeting cannot be held.

4.2.2 What are the quorum requirements for council meetings?

A quorum is present if a majority of the councillors who hold office for the time being are present at the meeting (s.368 of the Act).

In determining the number of councillors for the purposes of calculating quorum any casual vacancies in councillor offices and any suspended councillors are not to be counted.

By way of example, in the case of a council with seven (7) councillors, four (4) councillors must be present to form a quorum. If one of those councillors has been suspended from office and another has resigned then five (5) councillors hold office for the time being and the quorum will be three (3).

4.2.3 How do pecuniary interests affect quorum?

The case of *Levenstrath Community Association Incorporated v Council of the Shire of Nymboida* [1999] NSWSC 989, confirmed that a councillor who is not capable of voting on the business before the council (by reason of having disclosed a pecuniary interest in a matter) is regarded as being absent from a meeting for the purpose of determining whether or not a quorum is present. In other words the councillor is regarded as holding office but not as being present at the meeting.

If so many councillors declare a pecuniary interest in a matter that the council is unable to form a quorum to deal with the business before it, the councillors concerned may apply to the Minister to allow them to participate in the discussion and vote on that matter (s.458 of the Act). This recognises that council business must sometimes proceed even though the decision is being made by councillors with pecuniary interests declared. The Minister does not grant such exemptions lightly.

4.2.4 What procedure must be followed if the meeting lacks a quorum

A meeting may lack a quorum either by an insufficient number of councillors turning up to the meeting or by a councillor or a number of councillors leaving the room during the course of the meeting.

If a quorum is not present the meeting must be adjourned to a time, date and place fixed by the chairperson, or (in the chairperson's absence) by a majority of the councillors present, or (failing that) by the general manager.

The general manager must record the absence of a quorum (including the reasons for the absence of a quorum) in the council's minutes. The names of the councillors present must also be recorded (cl.233 of the Regulation).

(See also paragraph 5.2.9 of this Practice Note)

4.2.5 What is the effect of councillors meeting without a quorum?

Without a quorum the meeting is not a meeting of the council. Resolutions cannot be made. Any action taken will have no legal validity.

4.2.6 Can a council later ratify a resolution made by councillors at a meeting without a quorum?

No. A quorum of councillors must be present before a council decision can be validly made (s.371 of the Act). If a resolution is purportedly passed when there is no quorum, it is invalid. It cannot be made valid at a later meeting. However the matter may be considered afresh at a later meeting with a quorum present.

4.2.7 What can a council do to maintain a quorum at meetings?

Sometimes councillors leave a meeting with the intention of removing the quorum so that business cannot proceed. This is a political misuse of the meeting procedure and should be avoided.

If a council is unable to maintain a quorum because of disputes between councillors, negotiating the matters in contention outside of the meeting forum is suggested. You should try to resolve your concerns (perhaps with the assistance of a mediator) and come to a position so that the business may be dealt with in the meeting.

Clause 239(2) of the Regulation allows for a procedural motion without notice to change the order of business at a meeting from that set out in the agenda. In this way, controversial issues can be dealt with last (to avoid losing quorum) and the remainder of the current business can be dealt with.

4.2.8 Can a council abandon a meeting before the time set for the meeting because of an anticipated lack of a quorum?

There is no provision in the Act or the Regulation for a council meeting to be abandoned or cancelled. If notice of a meeting has been given, it must be held or at least opened. While a meeting without a quorum can be opened, it cannot make any decisions (s.371 of the Act).

Clause 233(1)(a) of the Regulation provides that a council meeting must be adjourned if a quorum is not present within half an hour after the meeting is due to start.

4.3 Adjourning Meetings

4.3.1 What is the effect of adjourning a meeting?

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

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

An adjourned meeting is a continuation of the earlier part of the same meeting, not a new meeting.

4.3.2 What notice should be given of an adjourned meeting?

If a meeting is adjourned to a different date, time or place, each councillor and the public should be notified of the new date, time or place.

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

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

If the adjourned meeting is held on the same date as another council meeting (for example, the next ordinary meeting), the meetings should be kept separate, with separate agendas and business papers. Which meeting is held first would depend on the circumstances. For example, the earlier meeting might have been adjourned because of a lack of a quorum after councillors walked out over a certain item. Because that item is still on the agenda, it is possible that the councillors might walk out again. In this case, it would be better to hold the next ordinary meeting (without the controversial item) first so that current business can be dealt with. The adjourned meeting could then follow.

PART 5 - MOTIONS AND AMENDMENTS

5.1 Terminology

5.1.1 *What is a motion?*

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

5.1.2 *What is an amendment?*

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

5.1.3 *What is a resolution?*

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

5.2 Motions

5.2.1 *How should motions be worded?*

A motion should start with the word 'that', for example, '*That Road X be closed*'. Motions should be clear, brief and accurate. A councillor may use sub-sections, numbered paragraphs or the like to make sure that the motion is easy to understand. A councillor could submit more than one motion on the same topic.

Usually motions are written in a positive sense so that a 'yes' vote indicates support for action, and a 'no' vote indicates that no action should be taken. A motion should be full and complete, so that when the motion or resolution is read in the future, its intention is clear.

5.2.2 Can a councillor explain uncertainty in the wording of a motion before it is seconded?

There may be situations in which the person moving a motion might be given the opportunity to explain uncertainties in its wording. This is not covered by the legislation. This situation could be included in council's Meeting Code, otherwise it is a matter for the chairperson to decide.

Any explanation as to meaning should be limited to making clear the issue, not extending debate on the motion.

5.2.3 How does a councillor give notice of business for a council meeting?

A councillor gives notice of business for a council meeting by sending or giving a notice of motion to the general manager (cl.241(1) of the Regulation). The council's Meeting Code should set the timeframes for notice. The general manager must not include any business in the agenda that is, in his or her opinion, unlawful (cl.240(2) of the Regulation).

All councillors are entitled to submit notices of motion to be included on the agenda in accordance with clause 241(1).

It is good practice that a general manager only provide factual information on the motion to assist in the discussion of the motion if requested by the councillor. It is considered not appropriate for a general manager to comment on the merit of any notice of motion.

(See also 1.4.9 of this Practice Note)

5.2.4 Can the number of motions put forward by a councillor be limited?

No. As long as notice and other procedures are followed, you can put forward as many motions as you wish. When putting forward motions, you may need to balance your civic responsibility for representing the interests of your community with your obligation to use council's resources effectively and efficiently.

5.2.5 Can a councillor withdraw a notice of motion before it is put on the agenda?

Subject to any provision in council's Meeting Code, it would appear that a councillor could withdraw a notice of motion before it is placed on the agenda.

5.2.6 What is the usual order of dealing with motions?

A motion or an amendment cannot be debated unless there is a 'mover' and 'seconder' (cl.246 of the Regulation). The mover puts forward the motion and if a second person agrees with it, debate on the motion can begin.

The mover has the right to speak first, and a general 'right of reply' at the end of the debate (cl.250 of the Regulation). No new arguments or material should be argued during the 'right of reply'.

The seconder of the motion speaks after the mover, but may choose to hold over their speaking rights until later in the debate. However a procedural motion could be passed, putting an end to debate before the seconder has spoken.

Councillors are asked to speak for and against the motion, usually in the order of one speaker for the motion and one speaker against the motion. Debate may end by completing the list of speakers who want to speak for or against the motion, the time allowed for debate finishing, the (limited) number of speakers allowed to speak on the motion having been reached, or where a procedural motion 'that the question be put to the vote' has been successful.

At the end of the debate, the chairperson puts the motion to the meeting for vote. The chairperson will then declare the result of the vote. If passed by the majority, the motion becomes a formal resolution of council. The decision is final, unless it is immediately challenged by two (2) or more councillors who rise and demand a division on the motion (cl.251(3) of the Regulation). Further information on divisions is contained in section 2.9 of this practice note.

The above procedure is usual in formal meetings. However, councils may use different procedures so long as they are consistent with the Act and Regulation, and the procedure is properly adopted under council's Meeting Code.

5.2.7 Can the time a councillor has to speak to a motion be limited?

Yes. Clause 250(3) of the Regulation limits the length of speeches on each motion to five (5) minutes, unless the council gives extra time. Extra time to speak may also be granted by the chairperson of the meeting when there is a need to explain a misrepresentation or misunderstanding (cl.250(3) of the Regulation).

5.2.8 Can a motion be moved following a question on notice?

Where an answer has been provided to a question on notice and a councillor seeks to have a matter arising from that question and answer considered by the council, notice should be given to the general manager in the usual way. The general manager can include the item on the agenda for the next meeting, and make sure that the relevant

staff prepare any necessary background documents or reports. However if the matter is genuinely urgent, it could be dealt with under clause 241(3) of the Regulation.

Further information on questions is contained in paragraphs 1.4.10 and 2.5 of this Practice Note.

5.2.9 When a councillor moved a motion at a meeting, a number of councillors left the meeting and there was no longer a quorum. Should the motion be automatically placed on the agenda for the next meeting?

The Act and Regulation are silent as to the lapsing of motions. The council may debate a motion that has been properly submitted. If the lack of quorum continued and the meeting was adjourned, the motion could be debated later, when the meeting is reconvened.

If the motion was not put to the meeting, it would be dealt with at the reconvened meeting.

(See also paragraph 4.2.4 of this Practice Note.)

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

The council can debate a motion that has been properly submitted. What is important is that the motion was valid at the time it was put forward. Whether the motion is actually debated will depend on whether another councillor moves and seconds the motion at the meeting. If the motion does not have support at the council meeting, then it may lapse for failure to get a mover or seconder, or be defeated in a vote.

5.2.11 Are there any obligations on a councillor when considering a motion, amendment or resolution?

Councillors have an obligation to consider issues consistently, fairly and promptly (Clause 6.5 Model Code). All relevant facts known (or reasonably known) must be considered in terms of the merits of each issue (Clause 6.6 Model Code). Irrelevant matters or circumstances must not influence decision-making.

5.3 Amendments to Motions

5.3.1 How can a motion be amended?

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

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

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

5.3.2 How should an amendment to a motion be worded?

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

Any amendment to a motion must not alter the motion to the extent that it effectively reverses the motion.

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

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

Nevertheless, clause 248(1) of the Regulation allows a councillor, without notice, to move to disagree with the ruling of the chairperson on a point of order. Only the mover of a 'motion of dissent' and the chairperson can speak to the motion before it is put. The mover of the motion does not have a right of general reply (cl.248(3) of the Regulation). It is then a matter for the councillors to decide by majority vote whether to carry the motion of dissent.

5.4 Foreshadowing Another Motion

5.4.1 Can another motion be foreshadowed?

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

PART 6 - RESCISSION MOTIONS

6.1 Changing earlier decisions

6.1.1 How can councils change earlier decisions?

Councils are able to change their decisions by way of a later decision. A motion to rescind or alter a resolution is the usual means of changing a council resolution. These motions must be notified in accordance with the Act (s.372(1)) and council's Meeting Code. Section 372(4) of the Act requires notice of a rescission motion to have the signatures of three (3) councillors if less than three (3) months has passed since the original resolution was made.

However, the courts have held that it is not always essential that a council *expressly* alter or rescind a resolution prior to passing a later resolution which is inconsistent or in conflict with the earlier resolution. In other words, alteration or rescission can be implied - *Everall v Ku-ring-gai Municipal Council (1991) 72 LGRA 369*.

To make sure that council's intention is clear, it is considered best practice to expressly state that a later resolution is to replace an earlier one. In this way, the public, council staff and subsequent councillors can understand and act with certainty on council decisions.

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

Section 372(5) of the Act allows an original motion to be negated (that is, lost) twice before a three (3) month ban is placed on any councillor putting forward another motion to the same effect. However, to even bring the motion forward the second time will require three (3) councillors' signatures if less than three (3) months has passed since the first time the motion was defeated (s.372(4) of the Act).

A motion to 'rescind' or undo an earlier resolution can only be lost *once* before a three (3) month ban is placed on any councillor 'bringing forward' another motion to the same effect (s.372(5) of the Act). 'Brought forward' means moved at a council or committee meeting. It is possible for notice of the motion to be given (but not for the motion to be moved) before the expiry of the three (3) month period referred to in section 372(5) of the Act.

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

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

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

6.2 Lodging rescission motions

6.2.1 Can a council add extra time restrictions on the lodging of rescission motions?

No. Section 372 of the Act contains two (2) time restrictions on the lodging of rescission motions. The first, in section 372(1), requires notice of a rescission motion to be given in accordance with the council's Meeting Code. The second restriction, in section 372(5), stops a similar motion being brought within three (3) months after a rescission motion has been defeated.

Any additional restrictions within a council's Meetings Code that limit the lodging of rescission motions would be inconsistent with the Act and would have no effect.

6.2.2 Can a council require rescission motions to be lodged with, for example, five (5) supporting signatures?

Section 372(1) of the Act requires notice of a rescission motion to be given in accordance with the Act (s.360) and council's Meeting Code. Section 372(4) adds the requirement that the notice must be signed by three (3) councillors if less than three (3) months has passed since the resolution was made.

A council's Meeting Code cannot require notice of a rescission motion to be given in a manner that is inconsistent with section 372 of the Act (s.360). This would include requiring more than three (3) signatures on the notice. If a councillor moves a motion to require more than three (3) signatures on a notice of a rescission motion, the motion would be unlawful and the chairperson must rule it out of order.

However the signature requirements of section 372(4) of the Act only apply to notices of motion to rescind council resolutions. If a council wants to allow its committees to rescind their resolutions, it could put this in its Meeting Code.

While it is expected that rescission procedures for council committees would be similar to the procedures for council itself, there is nothing to stop a council from having a different rescission procedure for its committees.

For committees consisting entirely of councillors, it would be best for rescission procedures to be added to the council's Meeting Code, including consideration of any submissions received.

6.2.3 Can councillors avoid giving notice of a rescission motion by raising the motion without notice in a committee meeting and bringing it to the council meeting in a committee report?

Section 372 of the Act identifies procedures for lodging rescission motions. Its predecessor was clause 25 of former Ordinance No.1. It was generally thought, following the 1973 case of *Shanahan v Strathfield Municipal Council (1973) 2 NSWLR 740*, that clause 25(e) of the Ordinance provided an alternative to the rescission motion procedures where a recommendation was made as part of a report of a council committee.

However, section 372(6) of the Act is worded differently to clause 25(e) of the Ordinance. It is this different phrasing which throws into doubt the applicability of the reasoning used in the *Shanahan* case. The Division is of the view that section 372(6) of the Act does not provide an alternative to the rescission motion procedures. Council committees must follow the requirements in the same way as individual councillors. Until there is a court decision on this issue, all interpretation is a matter of opinion. Councils should be guided by their own legal advice.

6.3 Dealing with rescission motions at meetings

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

Section 372(1) of the Act requires notice of a rescission motion to be given in accordance with council's Meeting Code. A rescission motion could be dealt with at the same meeting at which the resolution is passed if the Meeting Code states, for example, that thirty (30) minutes notice must be given.

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

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

While not specifically covered in section 372 of the Act, it would appear that a council could rescind part of a resolution (without rescinding the whole resolution). This view would be subject to any determination of a court.

6.3.3 Can a councillor bring forward a motion and have it twice negatived (or lost) by the council so that it cannot be brought forward again within three (3) months?

The purpose of this action would be to prevent a motion being put forward again under more favourable circumstances. This procedure would be in accordance with section 372(5) of the Act, but would not be in the spirit of your obligations under the Model Code. This action would only be successful if the majority of the councillors were prepared to vote twice against the motion.

6.3.4 Can a resolution granting development consent be rescinded?

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

In *Townsend v Evans Shire Council [2000] NSWLEC 163*, it was held that there was no effective development consent until formal notice of a determination was issued to the applicant and that “... *it is necessary that the communication of the consent have some formal character as being authenticated on behalf of the council*”. Verbal advice from the mayor at the council meeting that the consent had been given was not notice to the applicants so as to “*tie the council’s hands*”. In this case, the rescission motion had been lodged with the general manager before the time required in the planning regulations for issuing a notice of determination.

Once the applicant has been formally advised of council’s decision, there may be issues of compensation to the applicant if consent is later rescinded.

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

Section 82A(9) of the *Environmental Planning and Assessment Act 1979* states that if the council changes a determination, this will replace the earlier determination from the date of the review. It is the Division’s view that a changed determination automatically replaces the earlier determination by virtue of section 82A(9) of that Act. Because of

this, there is no need for a council to also pass an alteration or rescission motion to change the earlier determination.

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

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

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

PART 7 - CLOSED PARTS OF MEETINGS

7.1 Who decides

7.1.1 Who decides that part of a council meeting is to be closed to the public?

It is up to council to decide whether a matter is to be discussed during the closed part of a meeting (s.10A(2) of the Act). In deciding this, the council would be guided by whether the item is in a confidential business paper. However, even if the item is in a confidential business paper, the council could disagree with this assessment and discuss the matter in an open part of the meeting.

Council may allow members of the public the opportunity to make a statement as to why part of a meeting should be closed (section 10A(4) of the Act and cl. 252 of the Regulation).

7.2 Subject matter of closed meetings

7.2.1 What part of a meeting may be closed to the public?

Parts of council and committee meetings may be closed to the public only in the circumstances provided under section 10A of the Act. Matters of a personal or confidential nature, which do not come within the grounds provided under section 10A, cannot be discussed in the closed part of a council or committee meeting. (This applies only to those committees that are made up of councillors only).

7.2.2 Can a council discuss confidential matters not referred to in s.10A(2) of the Act, eg nominations for Australia Day awards?

No. Such matters could be delegated to a committee made up of councillors and other persons. Such committees are not bound by section 10A of the Act.

7.2.3 Can a council close a meeting to consider whether or not to commence litigation?

Yes, provided that council has grounds for closing that part of the meeting under section 10A of the Act

In *Wykanak v Rockdale City Council and Anor* [2001] NSWLEC 65, the council closed its meeting to discuss a confidential business paper relating to the recovery of legal costs from a person, relying on the grounds of section 10A(2)(b) of the Act (the personal hardship of any ratepayer). The Court found that as the person was not a 'resident' at

the time of the council meeting, the council had gone beyond its powers in closing the meeting to the public. The Court noted “... *the public importance of councils conducting their affairs at meetings that are normally open to the public*”. It ordered the council to reconsider the matter and provide the person from whom the legal costs were sought a reasonable opportunity to address the council at an open meeting.

7.2.4 *Should the contractual conditions of senior staff be presented in an open or closed council meeting?*

The annual reporting of contractual conditions of senior staff to council is required by section 339 of the Act. In addition, section 428 of the Act requires a council to include certain senior staff details in its published annual report.

The contractual conditions of senior staff is public information and should be presented in an open meeting. Following from this, if other information that is common to all senior staff employed by council is presented to the council, then it should also be presented in an open meeting. This could include information on common contractual conditions, apart from salary.

This approach is consistent with section 10A(2) of the Act that allows a council to close part of a meeting to discuss personnel matters concerning particular individuals. If a matter concerns the senior staff as a whole, section 10A of the Act does not apply. If the council wishes to discuss, for example, the salaries of particular employees or consider the performance of the general manager, then section 10A powers would be available to close part of a meeting.

Closing part of a meeting is discretionary. A council does not have to close part of a meeting even if the matters to be discussed fall within section 10A(2) of the Act.

In keeping with the general intent of the Act, and with the public nature of certain senior staff information (s.428 of the Act), a council should consider providing as much information as possible in open session. While the general manager is responsible for senior staff employment, discipline and performance, there may be certain contractual matters that relate to individual senior staff that justify closure of part of a meeting on the grounds of privacy.

7.3 Procedure

7.3.1 *What does a motion to close a meeting look like?*

Council is required to state the grounds for closing the meeting and the reasons why it is not in the public interest to discuss the matter in an open meeting (s.10D of the Act). A motion could look like —

“Moved Clr X, seconded Clr Y, that the meeting is closed during the discussion of the matter ‘Item 1: Annual tenders for goods and services’ in accordance with section 10A(2)(c) of the Local Government Act 1993 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 the matter in open meeting.”

7.3.2 How can the public find out what has been decided at a closed part of a meeting? Can the decisions be kept confidential?

Resolutions or recommendations made at a closed part of a council or committee meeting must be made public by the chairperson of the meeting as soon as practical after the closed part of the meeting has ended (cl.253 and cl.269 of the Regulation). This would usually be done by a verbal or written statement.

If the meeting is a committee meeting, the resolutions or recommendations must also be reported to the next meeting of the council (cl.269 of the Regulation). If the meeting is a closed meeting of the committee of the whole, its recommendations must be reported to open council, usually at the same meeting. The council must ensure that a report of the proceedings (including any recommendations of the committee) is recorded in the council’s minutes.

While discussions in the closed part of a meeting remain confidential, the separate nature of a resolution or recommendation allows it to be made public immediately after the closed part of the meeting has ended.

The resolution or recommendation could be phrased in such a way as to protect a person’s identity or other confidential details (for example, stating an assessment number instead of the person’s name or giving the general locality of land to be purchased instead of the precise address). This allows the public to know what the council or committee has decided at the closed part of the meeting without revealing confidential information.

The minutes should record sufficient details of the resolution to indicate the nature of the decision. It is not sufficient, for example, to resolve to implement the committee’s recommendation or the general manager’s recommendation. More specific information is required.

The meaning of ‘as soon as practical’ will depend on the circumstances. In some cases, commercial or legal issues might effect how quickly a council makes public the details of

a resolution or recommendation. As a general rule, the public should be kept informed of closed session resolutions or recommendations in an adequate and prompt manner.

The latest time for informing the public of resolutions or recommendations made in the closed part of a meeting would be when the minutes containing the resolutions or recommendations are made available for public inspection (s.12 of the Act). Any person is entitled to inspect minutes containing resolutions or recommendations from the closed parts of meetings. While a council cannot keep its decisions or recommendations confidential, it should be possible to discuss matters in the minutes in such a way as not to reveal confidential details.

7.3.3 What is the difference between ‘closed council’ and ‘committee of the whole’?

The closed part of a council meeting could be referred to as ‘closed council’ but not as a ‘closed committee’. While the words ‘meeting in committee’ are sometimes used to refer to an organisational meeting in closed session, that is, with non-members and the public absent, this is not the case with councils.

Section 10A of the Act makes it clear that both councils and council committees (made up of councillors only) can close parts of their meetings. If a council closes part of its meeting, it still remains part of the council meeting - with the rules of debate being the same as for open meetings.

If a council resolves itself into the “committee of the whole” under section 373 of the Act the council meeting becomes a committee meeting (consisting of all the councillors). By reason of clause 259 of the Regulation this allows councillors to overcome the limits, set by clause 250 of the Regulation, on the number and duration of speeches. The meeting remains open to the public unless council closes it under section 10A(2) of the Act.

7.3.4 Do the decisions of the closed part of a council meeting need to be adopted in open council?

There is no need for the council to re-make a decision by adopting it in open council. The only matters a council would adopt are the recommendations made by the committee of the whole (cl.259 of the Regulation) or recommendations of another council committee (cl.269 of the Regulation).

7.3.5 *Can a council invite a member of the public to be present at a closed part of a meeting?*

There is nothing in the Act or Regulation to limit public attendance at closed parts of meetings if invited by the council. However, the non-disclosure provisions of section 664 of the Act would apply to a person attending a closed part of a meeting.

Similarly, there does not appear to be any direct breach of the Model Code, although such invitations may affect a council's appearance of impartiality and proper conduct in a matter. The better practice would be to invite only those people whose presence at the meeting is necessary for the provision of advice, such as council's solicitor.

7.3.6 *What happens once business in a closed meeting has been completed?*

Once council has finished business in a closed meeting it must formally resolve that the meeting be open to the public.

PART 8 - ORDER AT MEETINGS

8.1 Standards of conduct

8.1.1 How should councillors conduct themselves at meetings?

Councillors must act honestly and reasonably in carrying out council functions (s.439 of the Act). In addition, councils must adopt a Code of Conduct to provide guidance on acceptable and unacceptable conduct (s.440 of the Act). How councillors are to behave is outlined in the Model Code and Model Code Guidelines. Failure to comply with the Act, the Model Code or council's Code of Conduct forms misbehaviour under section 440F of the Act (see clause 11.2 of the Model Code).

Councillors have a responsibility to behave professionally in and out of council meetings. Councillors should maintain good working relationships with each other and act in a manner appropriate to their civic status. This would include orderly behaviour and complying with rulings from the chairperson at council meetings (Clauses 9.5 and 9.6 Model Code). The Meeting Code and council's Code of Conduct identify the standards and responsibilities imposed on councillors by the Act, the Regulation and the Model Code.

Acts of disorder committed by councillors during council or committee meetings may amount to misbehaviour, leading to censure by the council or suspension (Section 12 Model Code). Section 12 of the Model Code and part 5 of the Model Code Guidelines provide information for managing complaints about breaches of the code of conduct and how misbehaviour is to be dealt with by the council, the Division of Local Government, the Independent Commission Against Corruption and/or the NSW Ombudsman.

8.1.2 What should be the relationship between councillors and council staff?

The Act makes the general manager responsible for the efficient and effective operation of the council's organisation and for implementing decisions of the council (s.335 of the Act). The general manager is, therefore, in charge of the council's management.

Councillors are required (as a group) to direct and control the council's affairs; allocate resources; and determine and review the council's policy and performance (s.232 of the Act). Councillors should not involve themselves in the day-to-day administration of council. This is the responsibility of the general manager.

Councillors and staff have a responsibility to behave professionally and maintain constructive working associations. This is based on the principle that all public officials have a duty to act with integrity, honesty, impartiality and in the public interest.

Councillors must not make personal attacks upon staff at meetings. If a councillor has a complaint about a member of staff that complaint should be addressed in writing to the general manager. If the complaint is about the general manager it should be addressed in writing to the Mayor.

Section 9 of the Model Code and part 4.4 of the Model Code Guidelines discuss the relationships between councillors and council staff, contractors or related persons. Councillors should familiarise themselves with these provisions and use them to guide their conduct.

8.1.3 Should the Mayor use the council's Code of Conduct against a councillor who criticises the Mayor?

Subject to the provisions of the Act, council's Code of Conduct and defamation law, Mayors and councillors who operate in a political environment must expect criticism of their performance and views. Mayors are able to correct the public record without having to use Code of Conduct powers, especially where there has not been a serious breach of the Code.

8.2 Maintaining order

8.2.1 Who is responsible for maintaining order?

A council must deal with any disorder of its members. As a councillor you should take responsibility for your own behaviour and that of your colleagues.

In some situations it may be appropriate to consider counselling or mediation to determine the issues motivating a councillor's behaviour. Early attention to issues is often required to prevent problems becoming entrenched.

When disorder at a meeting occurs, the chairperson has both the responsibility and authority to bring the meeting to order, including expelling councillors and others who cause disorder. Failure to effectively exercise this authority can result in a loss of order at meetings.

8.2.2 What is the procedure for maintaining order?

The Act has a number of provisions which deal with the behaviour of councillors, including:

- requirements to adopt and comply with a Code of Conduct (s.440);
- provisions for a Meeting Code (s.360);
- obligations to disclose pecuniary interests and provisions to deal with breaches of pecuniary interest requirements (ss.441–459);

- regulation of the conduct of council meetings; and
- the ability to exclude a person, including a councillor, from a meeting for disorder (s.10).

The Act imposes a duty on councillors to act honestly and exercise a reasonable degree of care and diligence in carrying out their functions (s.439 of the Act). Councils may use other techniques such as training, counselling and mediation to address councillor behaviour. Any powers for dealing with disorder should not be used unfairly, for example, against councillors who may have a differing view.

Clause 257(1) of the Regulation authorises the chairperson to adjourn a meeting and leave the chair for up to 15 minutes if disorder occurs. This clause does not preclude council from subsequently adjourning for further 15 minute periods should the circumstances so require. A short suspension of business can be effective in dealing with disorder at meetings though this should not be over-used.

8.2.3 *In what situations may a councillor be expelled for disorder?*

Clause 256(1) of the Regulation defines acts of disorder at council and committee meetings. These include a councillor:

- contravening the Act or any Regulation in force under the Act, or
- moving or attempting to move a motion or amendment that has an unlawful purpose, or
- assaulting or threatening to assault another councillor or person present at the meeting, or
- insulting or making personal reflections on or imputing improper motives to any other councillor, or
- saying or doing anything that is inconsistent with maintaining order at the meeting or is likely to bring the council into contempt.

Clause 256(2) of the Regulation authorises the chairperson to require a councillor to take back comments or to apologise without reservation for an act of disorder (see also Clause 12.25 Model Code). If you do not act as requested by the chairperson, you may be expelled from the meeting. This can be done by the council, committee, chairperson (if authorised to do so by a resolution of the meeting), or by a person presiding at the meeting (if the council has authorised exercise of the powers of expulsion under section 10(2) of the Act).

Options available to council for breach of the Model Code or council's Code of Conduct are detailed in sections 440A–440Q of the Act and in Clauses 12.25 and 12.27 of the Model Code.

You may be expelled from a meeting for refusing to apologise for an act of disorder that occurred at that meeting, or at an earlier meeting. This has effect only for the meeting at

which the expulsion occurs. You can be expelled from a later meeting only if you again refuse to apologise for your earlier (or new) act of disorder.

Section 10(2) of the Act states that a person is not entitled to be present at a council or committee meeting if expelled. If you refuse to leave a meeting immediately after being expelled, the chairperson may request a police officer or an authorised person to remove you from the meeting. The police officer or authorised person may use necessary force to remove you and prevent your re-entry (cl.258 of the Regulation).

8.3 Sanctions

8.3.1 What sanctions are available for councillor misbehaviour in a meeting?

The Model Code provides information on sanctions available to council to address councillor breaches of the Model Code and council's Code of Conduct (Clauses 12.25 and 12.27 Model Code). These include censure, apology, counselling, making a public finding of inappropriate conduct, and prosecution for the breach of any law.

8.3.2 How can a council formally censure a councillor for misbehaviour?

Through a resolution at a meeting, council can formally censure a councillor for misbehaviour (s.440G of the Act). Consideration of all the issues and points of view should take place before a councillor is censured or sanction is sought for a significant breach of the Code of Conduct. External factors such as political or other affiliations are irrelevant and must not influence any decision. A decision to seek sanction against a councillor should reflect the concern of the overwhelming majority of councillors about the conduct of the councillor and its impact on council's operations.

Note that any censure imposed by a council must not interfere with the councillor's common law right to conduct his or her civic duties, including participating in meetings, but should send a clear message that the breach is unacceptable.

8.3.3 When may council request the Director General to suspend a councillor?

Under section 440H of the Act, council may request the Director General to suspend a councillor from civic office. Suspension would only be considered where the councillor's behaviour has been disruptive over a period of time (that is, more than one incident) and forms a pattern of misbehaviour serious enough to justify suspension or the councillor has been involved in one incident of misbehaviour that is sufficiently serious as to justify the councillor's suspension (s 440I and Clauses 12.27-12.31 Model Code).

The Local Government Pecuniary Interest and Disciplinary Tribunal also has power to conduct disciplinary proceedings for councillor misbehaviour in accordance with chapter 14, parts 1 and 3. of the Act.

PART 9 - COMMITTEES, THEIR MEMBERS AND FUNCTIONS

9.1 Forming committees

9.1.1 *How are council committees formed and what are their functions?*

As a body politic (s.220 of the Act), a council can form committees and determine their functions, powers, membership and voting rights. Membership of a council committee is not restricted to councillors.

In regard to committees consisting entirely of councillors, a council can establish such a committee only by resolution (cl.260(1) of the Regulation). This has the effect of stopping a council from delegating the *function* of establishing such committees (s.377(1) of the Act).

A council committee could be advisory or it could have decision-making powers as delegated by the council. A committee may exercise a council function (s.355(b) of the Act) and a council may delegate to the committee any of its functions other than those set out in section 377(1) of the Act, for example, the power to levy rates or borrow money. The council should set out the functions of each committee when the committee is established. The council can change those functions from time to time (cl.261 of the Regulation).

However a committee can exercise a council's regulatory functions under Chapter 7 of the Act only if all of its members are either councillors or council employees (s.379(1) of the Act). So a committee with members of the public on it cannot exercise a regulatory function under Chapter 7 of the Act.

Advisory committees or sub-committees are common and usually have the power to make recommendations but not to make decisions. Such committees often consist of experts, professional persons, government employees, community representatives, or council staff. The recommendations of advisory committees can assist a council in making informed decisions on complex matters. Alternatively, committees may be given power to spend council monies on certain matters, if a resolution to that effect has been previously passed by the council (s.377 and s.355 of the Act).

Councils should consider providing advisory committees with guidelines on how to conduct their meetings and related issues. This could form part of council's Meeting Code.

For information regarding the "committee of the whole" see paragraph 2.6 of this Practice Note.

9.1.2 *When are council committees elected or appointed?*

There is nothing in the Act or the Regulation indicating when a council is to elect or appoint its committees. The council decides when this is done. It can also postpone election or appointment. This power is subject to any meetings timetable set by the council in its Meeting Code.

9.1.3 *Does a councillor have to be present at the meeting to elect committee members in order to be nominated or elected for that committee?*

There is nothing in the Act or the Regulation to require a councillor to be present at the council meeting at which he or she is nominated or elected as a member, deputy chairperson or chairperson of a council committee. Therefore a councillor could be nominated or elected in his or her absence, unless council's Meeting Code requires them to be present. It would be wise for a council to require an absent councillor to have given their written consent to being nominated for a committee before that councillor is nominated at the meeting.

9.2 Status of committees with non-councillor members

9.2.1 *Do references to 'committees of council' in the Act and Regulation refer to advisory committees that include members of the public?*

In almost all cases, the answer is 'no'. Most references to council committees in the Act specifically state "...a committee of which all the members are councillors". These can be 'committees of the whole' (that is, all councillors, including the mayor, only) or a committee established under clause 260 of the Regulation (the mayor and some councillors only).

Sections 355(b) and 376(2) of the Act refer to committees whose members include people who are not councillors.

9.2.2 *What is the status of a local traffic committee?*

Section 355 of the Act enables the functions of a council to be exercised by the council, by a committee of the council, or partly or jointly by the council and another person or persons.

There is a difference between a committee of a council (of which all members are councillors) and other committees that have representatives from the council and/or other organisations. A local traffic committee falls into the latter category. The Roads and Traffic Authority of NSW have established these committees as a condition of the council being given certain traffic regulation functions.

While a local traffic committee is not restricted in the same way that council committees are under the Act, such committees can adopt the meetings procedures and policies of other council committees if they want to. For example, although a local traffic committee can close its meetings to the public, the committee may allow public access for reasons of openness and accountability. This is a matter for each local traffic committee to determine.

9.3 Meeting procedures

9.3.1 What procedure is followed during meetings of council committees?

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

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

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

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

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

9.3.3 What are the rights of councillors to attend committees?

Each councillor, whether a member of a committee or not, is entitled to attend and speak at a meeting of a council committee. However only councillors who are members of the committee are entitled to put business on the committee's agenda, move or second a motion at the committee meeting, or vote at the meeting (cl.263 of the Regulation). Voting at a committee meeting is to be by open means, such as by a show of hands (cl.265(3) of the Regulation).

9.3.4 What are the voting rights of committee members?

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

If a committee includes people who are not councillors, it is up to the council to decide on the voting rights of committee members. Usually all committee members have equal voting rights (other than the chairperson, who may have a casting vote as well as an original vote). There could be special circumstances under which the members of a specific committee have different voting rights. These voting rights should be granted with regard to principles in the Model Code and Model Code Guidelines.

9.3.5 When and how can a committee chairperson exercise a casting vote?

Clause 265 of the Regulation allows a committee consisting of councillors only to decide that, whenever the voting on a motion is equal, the chairperson is to have the casting vote (as well as an original vote). Without such a decision of the committee, a casting vote cannot be exercised by the chairperson (or another committee member).

Once authorised, it is for the chairperson to decide as to how to exercise their casting vote, taking all relevant information into consideration.

In regard to a council committee including persons who are not councillors (for example, an advisory committee), the council can decide, when establishing the committee, whether the chairperson is to have a casting vote as well as an original vote. Alternatively, this issue could be covered in the council's Meeting Code.

9.3.6 Can committee members fill absences on their committee so as to achieve a quorum?

Clause 260 of the Regulation permits committee members to be chosen only by the council at a formal council meeting. A permanent vacancy on a council committee (caused by the resignation or death of a councillor) can be filled by the council electing or appointing a councillor to fill the vacancy.

For temporary absences, council's Meeting Code could provide for an alternate councillor to act in the office of a committee member absent through illness, etc. The Meeting Code would need to state that an alternate or acting member has the authority and role of the member. Alternate members would be elected or appointed under clause 260 of the Regulation from among the councillors. When acting as a committee member, an alternative member would form part of the committee's quorum.

A council has various options to make sure that its committees have quorums. These include: determining or altering the number of members on a committee to ensure that it is not too large; timetabling committee meetings to take account of the regular commitments of councillors; and reducing the quorum for a committee meeting, if necessary.

9.3.7 Can a council remove a councillor from membership of a committee?

Clause 260 of the Regulation authorises a council to establish (by resolution) such committees as it considers necessary. A committee is to consist of the mayor and such other councillors as are elected by the councillors or appointed by the council.

Under its general powers as a body politic (s.220 of the Act), a council may (by resolution) change the composition of its committees whenever it chooses. This can be done by removing a councillor from a committee and appointing another councillor as a member, or by changing the total number of councillors on the committee. Changes in committee composition can come directly from the council or be recommended by the committee to the council.

In *Yates v District Council of Penola* (1997) 68 SASR 64, the Court held that the power to remove a councillor from a committee must be exercised lawfully, rationally and fairly. It can't be used for an external or ulterior purpose, for example, if motivated by punishment (even if this was not the sole or main reason for the action taken).

9.3.8 Can a council consider and adopt the recommendations of a committee before the committee's minutes are confirmed?

There is nothing in the Regulation to stop a council from considering and adopting the recommendations of a committee before the committee's minutes are confirmed. An accurate record of the recommendations made at the committee meeting will ensure that the recommendations presented to the council for adoption will be the same as those later confirmed in the committee's minutes.

9.3.9 How can a person find out information on council committees and/or complain about the operation of a committee?

Council minutes should reveal the membership, functions and powers of all council committees. A council may also have a written policy on the running of its committees. These documents should be available for inspection by the public in accordance with section 12 of the Act. A person unhappy with the way a committee is run can approach the mayor or another councillor to have the matter dealt with at a council meeting.

9.4 General manager's role

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

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

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

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

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

PART 10 - AFTER THE MEETING

10.1 Acting on council decisions

10.1.1 *Who makes and acts on council decisions?*

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

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

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

Sections 335(1) of the Act states that the general manager is generally responsible for making sure council's decisions are acted on without unnecessary delay. Only a court can decide whether a specific delay was too long.

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

If notice of a rescission motion is given during the meeting at which the resolution is carried, the resolution cannot be put into effect until the rescission motion has been dealt with (s.372(2) of the Act). Council should identify what a general manager is to do when a rescission motion is received after the meeting, but where action on a resolution is expected before that rescission motion can be decided on by the council. This could be included in council's Meetings Code.

10.2 Public availability of decisions

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

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

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

PART 11 - MINUTES

Councils are encouraged to hold open council meetings as far as practical, and must almost always vote by open means (such as by show of hands). In this way members of the public can witness the conduct of a council meeting. They can also investigate the background to council decisions by inspecting the business papers of the meeting. Through a combination of minutes, public attendance and open meetings, accountability is achieved.

11.1 Contents of Minutes

11.1.1 *Why and how should minutes be kept?*

Section 375 of the Act requires a council to keep full and accurate minutes of a council meeting. A verified copy of the minutes should be kept for public inspection purposes (s.12 of the Act); for use in any court proceedings; and as a historical record. Councils will also need to follow requirements under the *State Records Act 1998* in regard to the keeping of minutes.

Ideally minutes and agenda will be published on the council's website.

11.1.2 *What matters must be included in the minutes of council meetings?*

The Regulation provides that the following matters must be included in the minutes of council meetings —

- Details of each motion moved at a council meeting and of any amendments (cl.254(a)).
- The names of the mover and seconder of each motion and amendment (cl.254(b)).
- Whether each motion and amendment is passed or lost (cl.254(c)).
- The circumstances and reasons relating to the absence of a quorum together with the names of the councillors present (cl.233(3)).
- The dissenting vote of a councillor, if requested (cl.251(2)).
- The names of the councillors who voted for a motion in a division and those who voted against it (cl.251(4)). Note that a division is always required when a motion for a planning decision is put at a meeting of the council (Section 375A of the Act).
- A report of the proceedings of the committee of the whole, including any recommendations of the committee (cl.259(3)).

The Act provides that the following matters must be included in the minutes of council meetings:

- The grounds for closing part of a meeting to the public (s.10D).
- The report of a council committee leading to a rescission or alteration motion (s.372(6)).
- The disclosure to a meeting by a councillor of a pecuniary interest (s.453).

11.1.3 *What matters should be shown in the minutes of the closed part of a meeting?*

Minutes must include the details of all motions and amendments; the names of their movers and seconders; and whether the motions and amendments are passed or lost (cl. 254 of the Regulation)

These details are required for both the open and closed parts of council meetings. Further information regarding the content of minutes of closed meetings and their publication are contained in paragraph 7.6 of this Practice Note.

11.1.4 *What matters must be included in the minutes of committee meetings made up of councillors only?*

Clause 266 of the Regulation requires full and accurate minutes to be kept of committee meetings made up of councillors only. The minutes must include at least:

- Details of each motion moved at a committee meeting and of any amendments (cl.266(1)(a) of the Regulation)
- The names of the mover and seconder of each motion and amendment (cl.266(1)(b) of the Regulation)
- Whether each motion and amendment is passed or lost (cl.266(1)(c) of the Regulation)
- The names of the councillors who voted for a motion for a planning decision and those who voted against it. Such voting must be conducted by way of a division (Section 375A of the Act)
- The grounds for closing part of a meeting to the public (s.10D of the Act)
- The disclosure to a meeting by a councillor of a pecuniary interest (s.453 of the Act).

11.1.5 *How much detail should be shown in minutes?*

Section 375(1) of the Act requires a council to keep full and accurate minutes of council meeting proceedings. Subject to legislative provisions and any directions from the council, it is up to the general manager to decide how much detail is to be shown in the minutes.

Although the minutes should contain enough detail to make the council's decisions understood, they are not meant to be a detailed transcript of council proceedings nor a record of the behaviour of individual councillors. However, when a council makes a decision against the recommendations of their officers or council engaged experts, it is considered best practice to minute the reasons for this. Minuting the reasons for council's decisions is particularly important when determining development applications against the recommendation of council officers. This can reduce the cost to councils of Land and Environment Court litigation, as well as achieving transparency and accountability in decision-making.

11.1.6 *In what format should motions and amendments be shown in the council minutes?*

The Act and the Regulation allows each council to decide how to record matters in its minutes (so long as the minutes are a full and accurate record). The manner of recording council business in the minutes could be specified in the council's Meeting Code.

Each council can decide whether to show the names of councillors voting for or against a particular motion. However if a division on a motion occurs under clause 251(4) of the Regulation (that is, when a division on a motion is demanded and takes place), the general manager is required to record the names of those voting for or against the motion in the minutes.

Motions could be recorded as: "Moved Cllr X, seconded Cllr Y that council....".

11.1.7 *How can a council increase the accuracy of its minutes?*

Section 375 of the Act requires full and accurate minutes to be kept, but allows each council to decide how this is to be achieved. Requiring motions and amendments to be provided in writing to the chairperson and/or the minute taker before it is voted on can help make the recording of resolutions more accurate.

Councils could also consider typing the minutes on a computer during the meeting and/or taping the proceedings. Computerised minutes could be displayed on a screen during the meeting, together with notices of motion from the agenda and amendments moved at the meeting, for the information of the councillors and the public.

11.2 Signing Council Minutes

11.2 1 *Should all the pages of the minutes be signed or only the last page?*

The minutes of council and committee meetings must be signed by the person chairing the meeting at which they are confirmed (s.375 of the Act and cl.266 of the Regulation). There is no requirement in the Act or the Regulation that each page should be signed.

However it is important that there are safeguards against the pages of the minutes being substituted or tampered with. One way of achieving this is to have all the pages of the minutes signed by the chairperson. This could be done manually, by means of a rubber stamp signature, or by electronic signature.

An alternative to signing each page could be to have a long line at the top and bottom of the contents of each page (to prevent the addition of extra information), with each page having a number and identifying the meeting, for example, "Page 14 of Minutes of ... Council Meeting held on ... (date)". The final page would have a statement that the minutes, consisting of that page and the previous pages, were confirmed on a certain date. This would need to be signed by the chairperson. The electronic version of the minutes should be securely stored and could also be placed on council's website for public information.

11.2.2 *Are council minutes required to be signed by the general manager?*

There is no requirement in the Act or the Regulation for the minutes of council or committee meetings to be signed by the general manager.

11.2.3 *Can the Mayor use a stamp or electronic signature to sign the minutes?*

A rubber stamp or electronic facsimile of a person's signature, which is put on the document by that person, may be legally acceptable on the minutes, provided that the following safeguards are met:

- The rubber stamp or electronic signature should be kept under proper security to prevent its unauthorised use
- The chairperson should verify the use of the rubber stamp or electronic signature. This could be done by the chairperson signing (by pen) a certificate at the end of the minutes of a meeting stating that, following the confirmation of the minutes, he or she had authorised the use of his or her rubber stamp or electronic signature to the previous (number of) pages.

These and any other safeguards considered necessary by the council should be used to ensure that the minutes cannot be substituted or otherwise tampered with.

11.2.4 *When should minutes be signed?*

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

It is best to sign the minutes immediately after their confirmation or as soon as practical after that meeting (without delay). A council could include appropriate signing times in its Meeting Code.

PART 12 - CODE OF MEETING PRACTICE

12.1 Status of code

12.1.1 *Can a council ignore its Meeting Code?*

No. The Act and the Regulation set out the basic procedure that must be followed at council meetings. A council may choose to adopt a Meeting Code that covers the relevant provisions of the Act, the Regulation and additional provisions that are consistent with the Act or the Regulation (s.360(2) of the Act).

A council must publicly notify its draft Meeting Code and consider all submissions before adopting it (s.361 and s.362 of the Act). Once the Meeting Code is adopted, a council and a council committee consisting of councillors must run its meetings following the Meeting Code (s.360(3) of the Act).

Failure to run meetings in line with the Act and the Regulation is a breach of the Act (s.672 of the Act). Any person may bring proceedings in the Land and Environment Court to fix or stop a breach of the Act (s.674 of the Act).

Failure to follow the Meeting Code does not result in the proceedings of the council or committee meeting being invalid (s.374(e) of the Act). Although a breach, failure to follow the Act, the Regulation or the Meeting Code is not an offence under the Act and therefore no specific penalties apply.

12.2 Effect of Regulation change

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

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

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

Any amendment to the additional provisions provided by the council in its Meeting Code will require public notification.

PART 13 - WORKSHOPS

13.1 Purpose

13.1.1 *Can a council set up workshops? Are there any limitations on their use?*

A council can hold a workshop (sometimes called a briefing session) under its general powers as a body politic. Workshops are informal gatherings and can provide useful background information to councillors on issues. A workshop may involve councillors, council staff and invited participants.

Workshops should not be used for detailed or advanced discussions where agreement is reached and/or a (de-facto) decision is made. Any detailed discussion or exchange of views on an issue, and any policy decision from the options, should be left to the open forum of a formal council or committee meeting. Workshops are merely a means which enable councillors to bring an informed mind to the appropriate decision-making forum.

The Division recognises the value of workshops or information sessions in developing councillor knowledge and expertise, and in assisting their role as public officials. However, where briefing sessions are held in relation to development applications or business enterprises, council needs to remember its obligations and responsibilities under the Model Code, and community perceptions in terms of unfair advantage and transparency of process. Council may wish to introduce protocols for workshops or information sessions in its Meeting Code.

13.2 Attendance

13.2.1 *Who can attend council workshops?*

Attendance entitlements in the Act and the Regulation apply only to meetings of the council and its committees (made up of councillors only). As workshops are not meetings of the council or such committees the attendance entitlements of councillors and the public do not apply. Despite this every councillor should be invited to workshops (Clauses 10.2 – 10.4 of the Model Code of Conduct).

Clause 10.4 of the Model Code provides that members of staff who provide any information to a particular councillor in the performance of their civic duties must also make it available to any other councillor who requests it. Equity in access to information (in the form of workshops) is a matter for each council to decide in the context of its policies and resources. While it is usual for all councillors to be entitled to attend workshops, attendance is a decision for the council or, failing that, the workshop convenor.

There is no obligation on councillors to attend workshops.

13.3 Procedure

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

The meeting procedures in the Act and the Regulation apply only to meetings of the council and its committees made up of councillors only. As workshops are not meetings of the council or its committees, the meeting procedures in the Act and the Regulation do not apply. Meeting procedures for council workshops is a decision for the council or, failing that, the workshop convenor. Council may wish to introduce protocols for the conduct of workshops in its Meeting Code.

The non-disclosure provisions of sections 664(1) and 664(2) of the Act apply to workshops but, because they cannot be closed under section 10A of the Act, the confidentiality provisions of sections 664(1A) and 664(1B) do not apply.

13.3.2 *Can the public inspect workshop documents?*

Any document produced in relation to a workshop would be a document of the council. This means that these documents could be inspected and copied in accordance with sections 12 to 12B of the Act or the provisions of the *Freedom of Information Act 1989* subject to any exemptions or copyright restrictions. A person refused access to a document under the *Freedom of Information Act 1989* can apply for a review of the determination by the NSW Administrative Decisions Tribunal.

13.3.3 *What about public perception?*

When conducting workshops, a council needs to think about its obligations and responsibilities under the Model Code, and of community perceptions in terms of unfair advantage and transparency of process. There may be a belief that workshops are a means of transacting council business and coming to council decisions in secret.

Negative public views of workshops could be changed by community education on the purpose of workshops, and by ensuring that council decisions are not made at workshops. Establishing clear guidelines for workshops and information sessions in council's Meeting Code would assist this. Guidelines could include requirements that, for example, workshop briefing papers contain information but no recommendations; or directions that no recommendations are to be put to, and no agreement sought from, the councillors or other workshop participants in the course of the workshop.

13.3.4 *Can a council hold community access sessions separate from its meetings?*

Community access sessions are not discussed in the Act or the Regulation. A council can hold these sessions under conditions set by the council. Again, guidelines for running community access sessions could be included in council's Meeting Code.

PART 14 - REFERENDUMS

14.1 Constitutional referendums

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

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

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

However to acknowledge the importance of the decision, the council could include in its minutes a resolution confirming or acknowledging the outcome of the referendum process.

PART 15 - SEAL

15.1 Purpose

15.1.1 *What is the purpose of a council seal?*

A council seal is like the signature of the council. It approves the content of the document and shows what the council has done or agreed to do.

15.2 Procedure

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

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

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

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

A council might also review the types of documents that are sealed to determine whether use of the seal is always necessary.

15.2.3 *Which documents should or can be sealed?*

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

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

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

15.2.4 *How is the seal kept and used?*

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

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

Section 378(1) of the Act authorises a general manager to delegate any of his or her functions, other than the power of delegation. This section allows the general manager to delegate the function of fixing the council seal to documents.

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

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

PART 16 - SUSPENDED COUNCILLOR(S)

16.1 Circumstances

16.1.1 *In what circumstances may a councillor be suspended?*

Chapter 14 of the Act provides for the suspension of a councillor in any one of three circumstances:

- Section 440K authorises the Director General to suspend a councillor for up to 1 month for misbehaviour;
- Section 482A authorises, by way of alternative to section 440K, the Local Government Pecuniary Interest and Disciplinary Tribunal to suspend a councillor for up to 6 months for misbehaviour;
- Section 482 authorises the Local Government Pecuniary Interest and Disciplinary Tribunal to suspend a councillor for up to 6 months where it finds a complaint against that councillor proved.

16.2 Effect

16.2.1 *What happens when a councillor is suspended from office?*

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

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

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