

## EUROBODALLA SHIRE COUNCIL

### PUBLIC FORUM

#### Extraordinary Meeting of Council on 5 December 2023

Please refer to the minutes of the [Council Meeting](#) for outcomes of the agenda items.

<b>Name</b>	<b>Subject/Comments</b>	<b>Presentation Provided</b>	<b>Hybrid</b>
Laurence Babington	NOM23/005 Rescission of Motion 23/166 - Sculpture for Clyde - Event Funding Request	Yes	Council Staff presenting on behalf of.
Charles Stuart	NOM23/005 Rescission of Motion 23/166 - Sculpture for Clyde - Event Funding Request	No	Zoom
Richard Adams	NOM23/005 Rescission of Motion 23/166 - Sculpture for Clyde - Event Funding Request	Yes	In person
Maggie Brennan	NOM23/005 Rescission of Motion 23/166 - Sculpture for Clyde - Event Funding Request	No	In person
Frances Harmey	NOM23/005 Rescission of Motion 23/166 - Sculpture for Clyde - Event Funding Request	Yes	In person
Janet Kininmonth	NOM23/005 Rescission of Motion 23/166 - Sculpture for Clyde - Event Funding Request	No	In person
Jim Bright	NOM23/005 Rescission of Motion 23/166 - Sculpture for Clyde - Event Funding Request	Yes	In person
Trish Hellier	NOM23/005 Rescission of Motion 23/166 - Sculpture for Clyde - Event Funding Request	Yes	In person
David Maclachlan	NOM23/005 Rescission of Motion 23/166 - Sculpture for Clyde - Event Funding Request	No	In person

Good afternoon

My name is Laurence Babington and I'm the owner of Mystery Bay cottages and the treasurer of the Narooma Business Chamber. I'm presenting today on behalf of the Narooma Business Chamber who represent over 70 businesses in our area. My family have lived and operated businesses in this shire for 22 years and are proud to live here and be a part of this community. I feel disappointed to be presenting to you today, but was compelled to after reading in the news last week that a rescission motion had been lodged to cancel support and funding for a major event in the Shire.

It frustrates me mainly because I believe this community voted for a new council and a new direction of council in December of 2021. Up until now I feel we have seen a very large shift in community sentiment towards council and council supporting community. We saw some councillors of the past making decisions that made the business and tourism sectors question council's support. We had some disengagement from business chambers in the entire shire and communication was at times very poor.

However, since the newly elected council has entered into the arena, there has been fresh eyes and with that comes fresh ideas. We feel this council is truly listening and communicating with community more clearly and more importantly being supportive and engaging with us. That's what council is for, you aren't there to get in the way of community and business, you are there to enable volunteer groups, community associations, business and events to shine and prosper.

As myself being a hotelier we heavily rely on events with good strategies in place spread across the year to support our business and others. We have been hit hard in this region and our own industry over the last 3 years by fires, floods and covid. Now we see several councillors hitting us hard again. Events happen in this shire with so much love, effort, sweat and tears from volunteers, you seem them pour their hearts into running these events that benefits us all. Many events often just break even or are non-profitable, but the event organisers and their volunteers keep showing up year on year because they want to see a better community.

Councillor Worthington and the other councillors who have signed this rescission motion are potentially kicking the Sculpture for the Clyde committee, their volunteers, local artists, shop owners, food and beverage outlets, hoteliers and our community when they are already down and hurting. Some people don't see or realise the flow on effect of what this event does for our Shire. The \$20,000 that you don't want this group to have is a drop in the bucket of the communities money that you get each year in rates. Yet that small investment has a huge social and financial impact that goes far greater than just marketing of this event. By your own figures this event brings in over 16,000 people to the foreshore of Batemans Bay. I will repeat that number, its 16000 people. Those visitors walk through this event on the foreshore of Batemans Bay taking photos, eating fish and chips, buying drinks, spending money and just enjoying life in our beautiful shire. They stay in our hotels, eat at our restaurants and buy goods in our shops. Last year alone you saw 2 businesses in Batemans Bay purchase sculptures which were selflessly donated and of benefit to the community. Some councillors have mentioned that the Canberra

Long weekend falls within the same time frame and the event then shouldn't be supported. The demand this time of year to experience this event is obviously popular and we can see this clearly by the previous data and by the small businesses themselves. One business in particular in Batemans Bay spent \$20,000 to buy a sculpture and then put on display.

My own accommodation business and many others see visitors staying in our rooms for this event as the flow on effect to the Shire is huge. They do not just visit Batemans Bay, they then travel further south afterwards spending money along the way, supporting other businesses. Just like we see when Bermagui puts their Sculpture event on, its fantastic, the spread of money. The same goes for the Oyster Festival and the River of Art.

To sit in this meeting right now, and debate, trying to claw back money from a proven event in the shire from an existing budget is actually costing this council probably over \$5000 or more. Just think about that for a moment, all these people are here wasting time just because some councilors and others want to cancel support for this incredible event. You are wasting the communities time and worse than that, our hard earned money, especially in this current economic environment where we must be cautious of every cent, its being very, very wasteful. With this meeting to overturn a decision, that in my opinion everyone should have been in support of it in the first place, does not make any sense to us. Councillors not supporting this event are not supporting small business, events, local artists and absolutely not supporting this community and our shire as a whole.

Certain councillors have spoken about how other events are supported such as Crank it up festival, the Red Hot Summer Tour and Tilba Festival. They all have received \$8000 plus other fee waivers, but however, they do not tick all the boxes for your so called "Hallmark" funding. They also are 1-3 day events only. The persons involved then followed it up with an amendment to offer these events \$8000. From that amendment Councillors Worthington, Diskon and Mayne decided to show support. Now some councillors are saying this successful existing event should get zero dollars and to be honest our chamber of commerce and people in the community find this all very confusing!

This is the third time some councillors have tried to cancel support for this event, the first being in February, then November and now for the third time in December. Please remove the walls some of you are using by blocking this event and please just move forward. Do not let our community and businesses suffer by having this event, Sculptures on the Clyde, potentially collapsing in front of us, because of certain excuses, potential self-interested groups, , political interests, whatever the reasons, please just think of the people being affected. We have heard multiple reasons now why you are blocking this event, but the end of the day, its success is proven by its strong economic history and hard data. The art aspect of this event and bringing so many people together in the community has a huge positive effect on peoples mental health and creative events like these must be supported and partially funded by council to be sustained.

Sculpture for Clyde is a 10 day free event that draws the biggest crowds from outside the region and that's supported by councils own data. It ticks all the boxes for

your Hallmark funding and actually it's the only event that does so. I'm not stating this to diminish any other local events, but it points out its relevance, and please pause and think about that fact. You are possibly putting a stake in the heart of this well run event that is much more than just numbers.

This community expects an agile council who responds to the needs of its community. We currently have a council who is listening, supportive and most of the times working for the good of others. Please, for the community's sake lets move forward in the right positive direction and make this event happen.

Thank you for your time.

Hello,

My name is Richard Adams, I'm the president of Mogo Village Business Chamber.

I'm here today to support small business and tourism which Mogo depends upon, and support the Sculpture for Clyde event which supports small business, tourism and our artists.

Economic times are tough now, many of us in small business are doing it tough including looking for alternative incomes or reducing staff levels. Any opportunity that Council gets to support business and tourism which has a clear return on investment, they should take. Council also should avoid sending negative messages to retailers, small business and tourism operators.

I support Council funding of the sculpture event in alignment with other major events, because the sculpture event is proven event which bring tourists at a low time of the year and improve the appeal of Batemans Bay with the donated sculptures which is good for locals and tourists.

This recession motion which is asking for money back which was publicly committed to an event is damaging to the sculpture events reputation. Withdrawing funding also sends a negative message to community ,other events, small business and tourism.

I imagine the sculpture event has probably suffered a lot from this recession motion. Retailers, Small business and Tourism operators will also suffer if the motion is passed.

Its not often council gets an opportunity to support something that has a great return on investment for the ratepayer.

Councillors please consider our community and vote for what is best for the arts, small business, tourism and events.

Thank You

Richard Adams  
MVBC

*December 4, 2023*

Dear Councillors,

I have been a member of this community for 27 years. I'm a former journalist who has observed the machinations of Council, and I'm now an educator and advocate for young people. My role with SFC is the Student Sculpture prize and exhibition.

Over the 3 years we have run the Student part of our event, we have distributed \$3,000 in prize money, exhibited about 250 artworks by local students and each year – you may not be aware – we have gifted a quality sculpture from the main exhibition to the school of the winning student. This is in addition to the sculptures we gift to Council for all members of the public to enjoy.

To be called on again, to have to defend this project again, drags me away from the work I do for this project in which I passionately believe. But I will do it.

The number of people working to make Sculpture for Clyde a success extends well beyond the committee of five. Art teachers in our local schools go above and beyond to get their students' work to the exhibition and they do that because they see the value, they recognise what an opportunity it is, and that Sculpture for Clyde is unique in providing this opportunity for young sculptors. Other shire events may have a youth component, but I've been told by local teachers that no other event has organisers who dedicate themselves solely to the youth component of the event. Chris Forsythe and I work closely with teachers and students, and sometime parents, to make the process easy, accessible and of a very high quality.

The first two student exhibitions were located along a sculpture trail in local businesses, which drew foot-traffic and promoted businesses as well as student artists. This year, as the event continues to evolve and grow, student work was exhibited in the main pavilion with all the major artists. Those major artists viewed the student work with great interest and were impressed by the quality and level of skills on display. Some visitors to the event voted for a student artwork in the People's Choice award and there were offers to buy pieces. This was so exciting for young artists.

Sponsors for the Student Prize came on board quickly this year and wanted to support the Student Prize specifically.

For the first time students were invited to the official opening and their own exhibition was officially launched alongside the main exhibition. A bus load of students came from Narooma High on a Friday night (driven by a teacher in her own time) and they were beyond excited to be there, be a part of the vibe of an opening night and hear the recognition of their work from major sculptors. The cries of glee when the winners were announced made that night special for everyone.

It was precious to see parents and grandparents coming to view their child's work throughout the 10-day event. They not only saw the work of an artist they knew, but they were also able to compare it to all the other works. This cuts to the accessibility of sculpture as an artform. Those people may not engage with art in galleries and museums but to be able to wander along our foreshore, and know one of the artists, and appreciate more the variety of forms on display makes their life a little bit bigger and better. There is no doubt that public art (situated within our stunning natural environment) fosters wellbeing, culture, community and so much more.

We hear such negative things about young people, about what is happening (and not happening) in our schools, about the death of imagination and creativity die to digital technology. I work in public

education, I hear it all the time. The Sculpture For Clyde Student Exhibition and Prize demonstrates beyond doubt that there is much to be proud of in our young people and that they need the continued support of their community. They need us to believe in them.

The majority of you voted to support once, please do it again. Please sort out your processes and procedures before you put the hard work of volunteers and the benefits of worthy project at risk.

Kind regards,

Frances Harmey

## **PUBLIC FORUM PRESENTATION**

### **ESC EXTRAORDINARY MEETING**

**5 December 2023**

My name is Jim Bright. I'm a resident of the Narooma area.

I'm here to speak in favour of the rescission motion.

Before outlining the reasons why I believe that this motion should be supported by all councillors, I wish to make it clear that I have no personal and informed opinion in relation to the question of whether the ESC should, or should not, be providing financial assistance (and, if so, how much) to the organisers of the 2024 Sculpture for Clyde event.

My strong support of the need for the earlier motion to be rescinded is motivated purely by my view about the serious procedural flaws in the way this matter was handled by the council at its meeting on 21 November and, crucially, that those procedural flaws led to an outcome that clearly was unlikely to have occurred had the correct and lawful procedures been followed.

Now to the details.

As you will recall, when the agenda item (GMR23/032) relating to the proposal for financial support for this event came on for debate and decision by councillors on 21/11, the Mayor declared a conflict of interest and left the meeting. However, immediately prior to leaving the chamber, the Mayor asked Councillor Schutz to take over chairing the meeting during his absence.

The subsequent vote, by the remaining eight councillors, was tied at four all. The acting chairperson then exercised her discretion to make a casting vote - and that vote was in favour of the motion.

However, a fundamental problem with all of this was that it was clearly and irrefutably contrary to the law.

Firstly, the Local Government Act 1993 specifically addresses this particular type of situation in section 369 of the Act. That section stipulates that, in the absence of a mayor, the deputy mayor is to preside at a council's meeting. There is, in fact, no discretion whatsoever provided under the Act for a mayor to have a role in determining who should chair the meeting in the mayor's absence.

Not surprisingly, given the requirements of s.369, part 5.1 the ESC's Code of Meeting Practice also stipulates that, in the absence of the mayor, the deputy mayor should chair such a meeting unless the deputy mayor is also unavailable.

In this context, I do note that Deputy Mayor Worthington was not in physical attendance in the chamber at the 21/11 meeting but was participating in the meeting by an audio-visual link. However, I hasten to point out that part 4.27 of the ESC's meeting code stipulates that all the provisions of that code apply to such councillors in the same way that they apply to the councillors who are attending a meeting in person. Part 4.27 also stresses that councillors attending via an audio-visual link have the same voting rights as those who are attending in person.

In this regard, during my viewing of the webcast of the 21/11 meeting, I did not observe any interaction with, or indication from, Cllr Worthington that would have suggested that she was either unwilling or unable to chair the meeting (in



accordance with stipulations of the Act and the code) following the mayor's departure.

In the light of those factors, I must conclude that the chairing of that part of the meeting by anyone other than Deputy Mayor Worthington, was almost certainly unlawful.

The second and equally serious flaw in what occurred on 21/11 was that **even if** Clr Worthington had been unable or unwilling for some reason to chair the meeting at that point, there was still no legal capacity whatsoever for the mayor to have decided who was to fill that role during his absence.

That is, both section 369 of the Act and part 5.2 of the ESC Code of Meeting Practice stipulate that the councillor, who is to chair a meeting in the absence of both the mayor and the deputy mayor, has to be elected by the councillors who are in attendance. Parts 5.3 to 5.7 of the meeting code go on to set out the details of how such a ballot is to be conducted by the General Manager in such circumstances.

So let's be quite clear about this. There was no lawful capacity or basis whatsoever for the mayor to have decided who would chair the 21/11 meeting following his departure from that meeting.

Now what were the consequences of what had inappropriately occurred in the installation of the acting chair at the 21/11 meeting?

As we know, the casting vote by the acting chair on 21/11 was in favour of the motion - resulting in the motion being declared passed by five votes to four. On the other hand, had the meeting been chaired by the deputy mayor (as actually required by both the relevant Act of the NSW Parliament and the ESC's official meeting code), then one can reasonably assume that the casting vote would most likely have been in the negative (given Clr Worthington's primary vote) and the motion would therefore have been lost 5/4.

Not only is it clear that the process that happened on 21/11 was unlawful, but we also know that the outcome of that unlawful process was almost certainly the opposite to what would have occurred had the council complied with the law.

Our system of government in Australia is, thankfully, still supposed to be premised on adherence to the rule of law - particularly by its public and elected officials. Against that background and regardless of any other reasons (either supporting or opposing this rescision motion) that have been, or will be, put to you at this meeting, the need to correct the outcome of the unlawful process that occurred on 21 November must take primacy in your consideration of how you should be voting today.

One final comment.

At the 21/11 meeting, there seemed to be clear majority support by councillors for some level of financial support for this event and, it seemed to me, for the waiving of the normal council fees. Should you rescind the earlier motion (as I believe you must in the circumstances), it would seem to me that it would be highly desirable that an appropriate funding motion be brought back to council for consideration and decision by you as soon as possible.

Thank you.

Jim Bright



## **LOCAL GOVERNMENT ACT 1993 - SECT 369**

### **Who presides at meetings of the council?**

#### **369 Who presides at meetings of the council?**

(1) The mayor or, at the request of or in the absence of the mayor, the deputy mayor (if any) presides at meetings of the council.

(2) If the mayor and the deputy mayor (if any) are absent, a councillor elected to chair the meeting by the councillors present presides at a meeting of the council.

	Full written transcriptions of proceedings are not available. Recordings are not to be used except in accordance with this Code.
	<b>Attendance of the General Manager and other staff at meetings</b>
4.37	The General Manager is entitled to attend a meeting of any other committee of the Council and may, if a member of the committee, exercise a vote. LGA Sect 376(2)
4.38	The General Manager is entitled to attend, but not to vote at, a meeting of the Council or a meeting of a committee of the Council of which all of the members are Councillors. LGA Sect 376(1)
4.39	The General Manager may be excluded from a meeting of the Council or a committee while the Council or committee deals with a matter relating to the standard of performance of the General Manager or the terms of employment of the General Manager. LGA Sect 376(3)
4.40	The attendance of other Council staff at a meeting, (other than as members of the public) shall be with the approval of the General Manager.
4.41	The General Manager and other council staff may attend meetings of the council and committees of the council by audio-visual-link. Attendance by council staff at meetings by audio-visual link (other than as members of the public) shall be with the approval of the General Manager.
5.0	<b>PART 5 - THE CHAIRPERSON</b>
	<b>The Chairperson at meetings</b>
5.1	The Mayor, or at the request of or in the absence of the Mayor, the Deputy Mayor (if any) presides at meetings of the Council. LGA Sect 369(1)
5.2	If the Mayor and the Deputy Mayor (if any) are absent, a Councillor elected to chair the meeting by the Councillors present presides at a meeting of the Council. LGA Sect 369(2)
	<b>Election of the Chairperson in the absence of the Mayor and Deputy Mayor</b>
5.3	If no Chairperson is present at a meeting of the Council at the time designated for the holding of the meeting, the first business of the meeting must be the election of a Chairperson to preside at the meeting.
5.4	The election of a Chairperson must be conducted: (a) by the General Manager or, in their absence, an employee of the Council designated by the General Manager to conduct the election, or (b) by the person who called the meeting or a person acting on their behalf if neither the General Manager nor a designated employee is present at the meeting, or if there is no General Manager or designated employee.
5.5	If, at an election of a Chairperson, two (2) or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the Chairperson is to be the candidate whose name is chosen by lot.

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5.6	For the purposes of clause 5.5, the person conducting the election must: (a) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips, and (b) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.
5.7	The candidate whose name is on the drawn slip is the candidate who is to be the Chairperson.
5.8	Any election conducted under clause 5.4, and the outcome of the vote, are to be recorded in the minutes of the meeting.
	<b><i>Chairperson to have precedence</i></b>
5.9	When the Chairperson rises or speaks during a meeting of the Council: (a) any Councillor then speaking or seeking to speak must cease speaking and, if standing, immediately resume their seat, and (b) every Councillor present must be silent to enable the Chairperson to be heard without interruption.
5.6	<b><i>Practice</i></b> 1. A Chairperson shall be heard without interruption and everyone should maintain silence while the Chairperson is speaking. 2. In addressing Council, Councillors and other persons addressing the Council shall at all times speak through the Chairperson. 3. Councillors and other persons addressing the Council shall at all times show appropriate respect and observe the ruling of the Chairperson. 4. A Councillor, despite the clauses immediately above, may, through a Motion of Dissent, challenge a ruling from the Chairperson.
6.0	<b>PART 6 - MODES OF ADDRESS</b>
6.1	If the Chairperson is the Mayor, they are to be addressed as 'Mayor'.
6.2	Where the Chairperson is not the Mayor, they are to be addressed as either 'Mr Chairperson' or 'Madam Chairperson'.
6.3	A Councillor is to be addressed as 'Councillor [surname]'.
6.4	A Council officer is to be addressed by their official designation.
6.5	Councillors must not make imputations of improper motives or personal reflections and must refrain from the use of defamatory, offensive or inappropriate words in reference to any Councillors, employees of Council and members of the public, consistent with Council's Code of Conduct.
6.6	A Councillor or officer of Council shall address all remarks or questions through to the Chairperson. This includes remarks or questions to Council employees, which the Chairperson will refer through the General Manager.
	<b><i>Practice</i></b> 1. The Chairperson is responsible for making sure that the Council carries out its meetings in accordance with the Code and any statutory requirements. One part of this is maintaining order at meetings. This would include requiring a Councillor to apologise for insults, personal comments, or

Extra Ordinary Meeting 5<sup>th</sup> December 2023

Good afternoon Councillors, General Manager, Staff, Gallery and those comfortable zooming from home my name is Patricia Hellier

I would like to address this rescission motion – This Council stood on transparency and yet today there is a Rescission Motion being put forward by Clr's Pollock, Diskin and Worthington containing NO information or reason as to why the motion is being put forward.

As a community member I have been involved with Council for a number of years and as such I was one of the people that was given the label “of usual suspect” by a previous Councillor. I can assure you I have learnt a lot. I have seen 4 Mayors, 3 General Managers and a number of Councillors come and go and witness a number of different personalities many with their own “Agendas”. My view is with this Council we have turned a corner. Presenters can now come into Council and voice their opinions without fear of having the plug pulled on their microphone should they speak against Councillors views. We've seen a tolerate Mayor who has given speakers extra seconds to finish their sentence with their 7 minutes has expired. We have seen a correction to right a wrong followed with an apology for the same. In saying this, there appears to be an element in this Council that does not want to embrace “change” despite the fact it states in the COMP Community Strategic Plan “Out engaged community with progressive leadership”.

At the last meeting on the Sculpture issue a question was asked to a staff person as to where this event sat in the “Event Strategy” the staff person answered the question and yet the debate continued and contained issues from one Councillor that I believe was an attempt to confuse the issue. The whole debate I believe “was all over the place” a relative simple issue turned into a marathon event.

There was a continual reference to “Hallmark Events” - each event is individually evaluated by the staff. For a number of years Narooma, Moruya and Batemans Bay appeared to be in a continual competition for Council funding and at times it appeared that one area was being “pitted against another”. Councillors we are ONE Eurobodalla and as one Councillor pointed out “we give Narooma \$20,000, \$20,000 to Moruya and Batemans Bay should get \$20,000.

I note in the on line media outlet “About Regional” Clr Worthington stated “she was concerned about process and adherence to the Code of Meeting Practice and things seemed to be acting outside the Events Strategy”. In relation to the COMP I am familiar with 5.2 and given the Governance Officer was sitting next to the Mayor I fail to understand why he did not draw this to the Mayors attention I also believe that the mover of this rescission motion would have been aware to 5.2 and yet he did not speak up.

The facts are in relation to the COMP there are areas that I believe comes down to an individuals interpretation I will take you to Agendas and business papers for Extraordinary meeting ‘2.41 (a) despite clauses 9.21 -9.31 only the mover of the motion under clause 2.39 (a) can speak on the Motion before it is put” therefore my interpretation is that only Clr Pollock can speak to the rescission motion as he is the mover – Clrs I will draw your attention to 9.31 as it does not even exist in the COMP.

No doubt today we will see Clr Worthington sit in the chair when the Rescission motion is addressed some will see this as a “conflict of interest” given that she is the “3rd” signature of the rescission motion it could be argued how could a person impartially chair this meeting as the 3<sup>rd</sup> signature to the rescission – this certainly would not pass the put test.

Councillors we need to attract as much tourism in this shire as possible. This Council has a far more pressing issue to deal with and that is the enormous debt that has been created by the “open ended contract” for the Aquatic Centre that rate payers and residence of this shire were not privy to. There was no transparency and yet here today we have a Councillor who voted for the Aquatic Centre and is now putting forward a rescission motion on a proven successful promotion under a cloud of “process concerns”. Well Councillors the facts are the debt of the Aquatic Centre is going to affect ALL areas of this shire Narooma, Moruya and Batemans Bay.

If this rescission motion is supported what message will it send to our community, especially to the art sector, especially the local school students that contribute art pieces. There will be further ramifications I believe it will place a dark shadow over the Sculpture event and their Committee.

Councillor in a previous life in a small town (and in a voluntary basis) I organised a most successful 3 day Jazz Festival. The venue surrounding land and we incorporated markets. We did this over an Easter weekend – you target your weekend to gain the most amount of tourism as possible, that is what a good marketer does.

I raise this as I noted Clr Pollock referred to the Sculpture event occurring on a Canberra long weekend. The facts are this event is the only event occurring in this shire that weekend. Some of you may remember a few ago Narooma had a most successful promotion Huns fest. A group targeted Huns fest to the point that the situation became untenable and the Huns fest committee walked away from this shire. The group that targeted the promotion made promises for an alternate promotion this did not occur and Narooma lost a much needed promotion for this weekend. Situations like this demoralise volunteer committees we certainly do not want to see a similar thing happen to this most successful event.

**My view is there is more to this Rescission Motion than it appears on the surface, is it about process or is it about politics!!!!**