

EUROBODALLA SHIRE COUNCIL

PUBLIC FORUM

All members of the community who have registered have been advised that they have a **maximum of five minutes** to put their case.

Ordinary Meeting of Council on 28 March 2017

Name	Subject/Comments
10.00am –Agenda items	
Peter Cormick	MR17/002 General Manager's Performance Review Committee NOM17/004 Licence Applications and Selective Tendering Process
Jim Bright	NOM17/004 Licence Applications and Selective Tendering Process
John Wakelin	PSR17/012 Development Application 363/17 Community Facility (Muddy Puddles) - Melaleuca Reserve - Catalina
Ross Hayward	PSR17/011 Eurobodalla Local Environmental Plan 2012 Amendment No 10 - Broulee
Peter Bernard	FBD17/018 Policy Review - Fraud Control FBD17/019 Investments made as at 28 February 2017 – Emergency Funding

PUBLIC FORUM 28 MARCH 2017 – Peter Cormick

Item MR17/002 GENERAL MANAGER'S PERFORMANCE REVIEW COMMITTEE

The first thing to say is that I'm very pleased to see that this matter has finally returned to the chamber, after 5 long months.

It is clear to anyone with even a basic appreciation of local government matters that the position of General Manager is of fundamental importance to the effective functioning of a council. So too, then, is the importance of the monitoring of a General Manager's performance.

Sections 223 and 226 of the recently amended Local Government Act, which define the roles of the governing body and the mayor, respectively, make clear that it is the governing body, being all councillors, lead by the mayor, that is charged with the responsibility of evaluating the performance of a general manager. There is no mention in the legislation of the general manager being involved in the performance appraisal process other than being the subject of it.

Of course, there must be discussions between the governing body and the general manager about when and how a performance appraisal will occur. It would be very odd indeed if that did not take place. However, ever since the 11 October 2016 meeting when the composition of the performance review panel, as recommended by the general manager, was questioned and a decision deferred, the general manager's role in the process to this point appears to me to have been beyond that which might be considered appropriate - as measured against the provisions of the relevant legislation, which clearly state that the process is to be conducted according to the requirements of the governing body alone.

We are told in this mayoral report that during the past 5 months the composition of the review panel has been discussed with the general manager and that now "it is considered appropriate to include all councillors on the review". I can't help but interpret that statement to mean that the general manager's agreement to all councillors being involved, was required.

In addition, we are told that the "independent facilitator" will need to have been agreed to by the general manager.

There is no question that an experienced and able facilitator is needed for the appraisal process to be properly undertaken but why must the general manager's agreement to the engagement of a particular facilitator be required? Certainly it is far preferable that there is agreement but it should surely not be made a requirement. Councillors must have the final say in the event of a disagreement.

And the report tells us that "In the past, Council has established a Review Panel comprising the Mayor, Deputy Mayor and one other Councillor [and that this] structure

has proved effective as it provides a better forum for constructive comment and feedback.”

At least two questions arise from that statement:

- How can it be said to be better than what is proposed when what is proposed has not yet been tried? And, secondly
- If the mayor considers the old way of doing things was better why has she put forward this motion to enable all nine councillors to form the review panel?

And there are further questions, concerning the proposed “independent facilitator”: What exactly does “independent” mean in this context? Does it mean that the facilitator will be unknown to the general manager? And who will nominate the list of candidates for the job?

As to the first recommendation, of course all nine councillors should be directly involved in the performance review process. In my view, the legislation requires it. I object to the second recommendation and expect councillors to have the final say should there be disagreement about who should facilitate the process. And on the third recommendation, I advise against locking into 12-monthly reviews and suggest that the wording be amended to allow for a review every six months or as otherwise determined by the governing body. The frequency is entirely a matter for councillors. In any event, I understand that the General Manager’s contract has about 12 months remaining.

Item NOM17/004 LICENCE APPLICATIONS AND SELECTIVE TENDERING PROCESS

On this matter, given the seconds remaining, I ask that you please take on board what Jim bright has had to say.

Cutting to the chase, the fact is that on 8 December 2015, when this Code of Practice had its highly contentious beginning, council simply “received and noted” it – because that is how it was presented to councillors: to be “received and noted”. It was not approved. Staff incorrectly, in my view, insisted that it was an operational matter and not one of policy. It could hardly be more a matter of policy – and one that required councillors’ approval. Where the label “operational” is used, councillors will be denied involvement beyond “receiving and noting”. Take note.

The word “transparent” was used throughout the 8 December 2015 report which presented the code. But a tendering process is confidential; so what sense can possibly be made of the claim of transparency?

The current Code of Practice for the Licensing of Public Reserves is at best deeply flawed and must be replaced.

hockey v football

SUBMISSION IN SUPPORT OF MOTION
NOM17/004

My name is Jim Bright and I am a resident of Narooma.

I'm here today to speak in support of Clr Mcginlay's motion that proposes certain changes to the Council's current Code of Practice for the hire of council venues.

Specifically, Clr Mcginlay's motion focusses on the particular arrangements in the Code that are activated when there is more than one applicant seeking to hire the same venue on the same date.

Now, before going into some of the details and issues around the current scheme, it's important that we all appreciate some of the fundamental public sector principles that are relevant to how a council in NSW is supposed to go about its decision-making processes in this day and age - these principles relate to issues around transparency and public accountability.

There is an abundance of such references to what is expected and required of elected councillors and council staff, but I'll just briefly refer to a few quotes from some of these.

1. The Office of Local Government's 'Meetings Practice Note', clause 2.3 -

“Open decision-making is an important part of local government and should be the rule rather than the exception. The ability of the public to attend and watch council 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.”

“Council decisions should be based on fairness, impartiality, objectivity and consideration of all the issues. Open decision-making helps achieve this, as well as preventing misunderstanding and unfounded criticisms from the public.”

2. The 'second reading' speech by the NSW Premier in connection with the *Government Information (Public Access) Bill 2009* -

“Members of the public should be able to have access to the widest possible range of information to give them confidence in Government decision making.”

“These bills constitute a fundamental freedom of information revolution.”

“The public's right to know must come first.”

“Our public sector must embrace openness and transparency and governments must forever relinquish their habitual instinct to control information.”

2. Local Government Act 1993, section 8A – Guiding principles for councils -

“Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.”

So what this effectively means is that, in the State of NSW, wherever it is possible to do so, decisions and decision-making processes by government bodies are expected and required to be fully transparent.

Obviously, from time to time in council decision-making, there will be situations which will unavoidably and appropriately require some degree of confidentiality. The Local Government Act recognises this and provides a mechanism in Chapter 4 of the Act for this to happen on a case-by-case basis.

Now, against that background of the necessity for transparency, let's go back to the second half of 2015 when the council's staff produced the code in question.

For some inexplicable and unexplained reason, late in 2015, council staff decided that, from the range of options available to them, to introduce into their new venue hiring process, the arrangements that are attached to the NSW local government tendering scheme.

As many of you would know, this tendering scheme is a detailed, highly prescriptive and confidential process for the management of situations involving entities bidding for contracts to supply goods and services to councils or for the purchase of council property and assets.

The types of situations that are intended to be covered by this tendering scheme are spelt out in the legislation and in the Office of Local Government's detailed tendering guidelines. And those situations are - unsurprisingly - **not** situations such as sporting clubs, community groups and various not-for-profit groups seeking to hire council's facilities for the purpose of conducting their sporting activities or their particular annual events, etc.

So why did the staff decide to choose the tendering option? I don't know.

An examination of the relevant discussion papers that went to the Council's Executive Leadership Team in October and November of that year and an examination of the overheads from the staff's presentation to councillors on 15 November 2015 provide **no** explanation **whatever** for the staff's decision to utilise the tendering scheme. Those same documents also provide **no** explanation or justification for the particular set of selection criteria and percentage weightings that were adopted.

The other important issue that I will briefly comment on today is the assertion contained in the relevant Staff Report to the Council's December 2015 meeting that claimed (and I quote)

“Crown Lands confirmed in July 2015 that Council's proposed process as outlined in this report is acceptable to them.”

Well - subsequent 'freedom of information' processes have irrefutably established that the details of the staff's *“proposed process”* had never been provided to, or seen by, Crown Lands officials. All that Crown Lands officials had ever indicated to the Council was that they expected that any process that was adopted by this Council would be “open, competitive and transparent”. Crown Lands **never** indicated that they required or preferred a confidential tender arrangement to be used.

To briefly sum up – in a public sector policy environment in which council staff are expected to adopt decision-making processes involving the greatest possible degree of transparency, they have instead chosen to adopt an option involving almost total secrecy.

This situation needs to be fixed. Thank you.

Jim Bright
28 March 2017

Submission for public forum Council meeting 28 March 2017

ELEP 2012 – Broulee planning proposal.

- Council's demonstrated engagement with the community is acknowledged and welcomed.
e.g. Citizens Jury, extended consultation period for Broulee planning proposal.
- The amount of information available during the consultation period touched on the main items (road layout, reserves, water, stormwater, sewerage etc) although as reported to Council any detail consideration will need to await future development applications to resolve.
- Many community members find it difficult to understand why some indigenous vegetation isn't left on some of the residential zone. This is evident in the number of submissions expressing this concern.
- The Broulee Mossy Point Community Association will work with Council to resolve items of concern when development applications are submitted.

Ross Hayward
President,
Broulee Mossy Point Community Association

Council Address Policy reviews

FDB/018 28/3/2017

It is noted that a number of policies are up for review and a person would not have the time nor would the council code of practice allow a person to address all those policies or even a few in the time available. I have selected one of those presented tonight and have a few questions that may help me to understand the contents of that policy. I assume that all councillors have been made aware of the content of the previous policies.

This policy review is FDB/018 -Fraud control

For example. It states that the existing policy has been reviewed with only minor referencing updates required. Madam General Manager

1. What does that mean ?
2. Will the public be made aware changes from the old to the new and the reason for those changes ?
3. For complete transparency will the old policy be on display with the new policy?
- 4 . It states in the report “ The Audit , Risk and Improvement Committee has been provided with a

draft copy for review .Will they be of advised as in 1, 2, and 3 above ?

5.0 Who is on this committe ?

6.0 What qualifications ,if any, are they required to have regarding the detection and prevention of fraud against the Eurobodalla Council ?

7.0 Will they investigate fraud or fraudulent behaviour by the council against its own citizens ?

8.0 Will councillors be liable for making decisions reported to them on information found to be fraudulent ?