

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 9 April 2019

Name	Subject/Comments
Public Forum – 10.00am	
Trish Hellier	4.1 Confirmation of Minutes of Previous Meeting CCS19/011 New Model Code of Conduct for Local Councils in NSW and Procedures
Lei Parker	CCS19/011 New Model Code of Conduct for Local Councils in NSW and Procedures
Jim Bright	CCS19/011 New Model Code of Conduct for Local Councils in NSW and Procedures
Don MacDonald	CCS19/011 New Model Code of Conduct for Local Councils in NSW and Procedures

Trish Hellier Public Forum

Good morning Mayor Innes, Councilors, General Manager, Staff, Gallery and those comfortable Live Streaming at home my name is Patricia Hellier from Batemans Bay

I am here today to speak on the Confirmation of the Minutes of Council Meeting 26th March 2019 these Minutes cannot be Confirmed as they are not accurate. I was in attendance at this meeting and I know that Clr. Rob Pollock moved a motion which was seconded by Clr. James Thomson, there was an ongoing debate that ensued and at one point in time I stated the words out loud to the affect "There has been a motion moved and seconded". This motion failed to be put to the Councilors and the motion is not reflected in the minutes.

There was another item I believe should have been reflected in these minutes and that is in relation to the fact that Clr. Phil Constable asked that a word be changed in the motion for the Code of Meeting Practice to go out on exhibition.

The General Manager is responsible for the accuracy of the Minutes.

The facts are the Minutes do not reflect what transpired at this meeting or for that matter are very lacking in detail in ALL of the Council Minutes in ALL meeting that I have attended.

What occurred at this meeting is a testimony for Business Arising from the Minutes to be included on the Agenda.

The facts are what in turn transpired at this meeting escalated from a Councilor who was not in attendance when a speaker was given his presentation and yet that Councilor returned to the meeting and gave his interpretation of a word from his seat without using his microphone . To the Mayors credit she honestly acknowledged that she did not hear the word I will add I did not hear the word and a number of people in the gallery expressed that they had not heard the word.

There is a view that this incident is an example for the Live Streaming of the Public Forum, I believe this is incorrect I believe this is the very reason why Live Streaming should be included in the meetings.

Trish Hellier

Good Morning Mayor Innes, Councillors, General Manager, Staff, Gallery and those comfortable Live Streaming at home my name is Patricia Hellier for Batemans Bay.

Item No. CC S 19/011 New Model Code of Local Government.

I believe this Code should not be adopted the facts are when this Code was placed in the 3 Libraries for exhibition there were not any borrowed copies available to the community. I will add at this point in time that the current Code of Meeting Practice in the Libraries there are NO borrowed copies available to the community. WHY?

The facts are I do not believe there should be the amount of controls being enforced in the document especially when it comes to Community Committee Members.

PART 3 – General Conduct Obligations

In the 2015 document there were 3.1 thru to 3.3 inclusive –

3.1 Covered “Bringing the council into disrepute “ It was proven in 2018 that this point had wriggle room for some Councillors.

In this 2019 document 3.1 there is a change of words being – “You must not conduct yourself in a manner that: a) is likely to bring the council or other council officials into disrepute”

In this 2015 document 3.3 states – “You must treat others with respect at all times”. This point has been excluded in the 2019 Document WHY?

PART 8 - Access to information and Council Resources

Councillor and administrator access to information

In the 2015 document it states “The general manager and public officer are responsible for ensuring that members of the public, councillors and administrators can gain access to the documents available under the Government Information (Public Access) Act 2009”.

In this 2019 document 8.1 has excluded the words “public officer”.

8.1 The general manager is responsible for ensuring that councillors and administrators can access information necessary for the performance of their official functions.

If the General Manager is not available or away there is NO ONE authorized to provide the Councillors to access information necessary for the performance of their official functions. WHY?

Presentation to Council meeting April 9th 2019 by Lei Parker
Model Code of Conduct CCS19/011

The 2018 Model Code of Conduct and Procedures includes changes to address the issues of **the lack of recourse** against members of the public who "inappropriately disclose information about complaints they have made under a council's code of conduct".

The OLG now wants to add:

'Where a complainant publicly discloses information on one or more occasions about a code of conduct complaint they have made or purported to make, the General Manager, or their delegate may, with the consent of the Office of Local Government (OLG) determine that the complainant is to receive no further information about their complaint and any further code of conduct complaint they make or purport to make'

In the report before you Council staff have added "**When council receives a Code of Conduct complaint the complainant will be advised of the confidentiality requirement of the Code.**"

Councillors, imagine this:

A member of the public has cause to raise a Code of Conduct under the Model Code against a councillor or member of staff possibly citing

- untoward conduct that is likely to bring the council disrepute,
- actions contrary to statutory requirements,
- breaches of the council's administrative requirements or policies
- or is improper or unethical

A Code of Conduct under the Model Code might be raised:

- out of concerns of an abuse of power,
- harassment or bullying behavior,
- is unlawfully discriminatory or causes, comprises or involves intimidation or verbal abuse.
- over misuse of a position to obtain a private benefit
- over suspicion of improper conduct.

Maybe the Code of Conduct is around a breach of pecuniary interest.

Any finding in the above, by way of a Code of Conduct, would be of considerable concern and interest to the community.

However this Council, and the OLG, wish to close down any possibility that the community is informed of any such finding.

Councilors, before you is a report advising:

“When council receives a Code of Conduct complaint the complainant will be advised of the confidentiality requirement of the Code.”

What will happen if that member of the public says, when advised, “I do not agree to such a confidentiality agreement. I wish to lodge a Code of Conduct as is my right and if it is proven I will tell whoever I wish”.

Knowing the outcome will not be confidential .. will Council proceed with the complaint and not advise the complainant?

Or will they have to abide by the direction that requires evidence **‘Where** a complainant publicly discloses information ...“

The word **Where** requires evidence and not intent.

Next *“The General Manager or their delegate may, with the consent of the Office of Local Government...”* The who? They no longer exist.

So maybe it will just be the General Manager or her delegate that determines that the complainant is to receive no further information about their complaint and any further code of conduct complaint they make, or purport to make.

Will that be an operational matter that won’t require advising councilors?

Irrespective of what the General Manager determines Clause 12.6 of the Model Code does not override any entitlement a person may have to access council information under the GIPA Act or to receive information under the Public Interest Disclosures Act.

Under GIPA, the Code of Conduct determination can be requested from Council's Freedom of Information Officer. This Officer will then need to independently determine if the request is in the Public Interest.

An Information officer dealing with such a GIPA request must consider public interest considerations, including Code of Conduct outcomes, in favour of disclosure.

The Freedom of Information Officer cannot be influenced by anyone including a supervisor, the GM or councillors. To do so is a serious breach of the Act.

The following are examples of public interest considerations **in favour** of disclosure of information:

- **It could reasonably be expected to promote open discussion of public affairs.**
- **It could reasonably be expected to inform the public.**
- **It could reasonably be expected to reveal or substantiate misconduct or negligent, improper or unlawful conduct.**

A Code of Conduct that establishes such disclosures IS in the public interest.

To intentionally bury it under confidentiality with the threat of recourse is shameful. Your endorsement to do so is equally shameful.



Eurobodalla Local Government Committee

Mayor, Councillors and community,

In the Staff Report for today's meeting relating to the new conduct codes, it has been recommended that you should reject all proposals that were received by the ESC during the community consultation process. In the table on pages 17 to 19, council staff have identified 6 suggested changes to the publicly exhibited codes (that were accepted by you for that purpose at the ESC meeting of 20 February). Those exhibited codes reflected exactly the new model codes that had been issued by OLG in December 2018.

Suggestions 3 and 4 (on page 18) relate to one of the supplementary provisions that has been proposed by the ALP's Eurobodalla Local Government Committee (the ALP LGC) to be included in the ESC's new code. In brief, the Labor LGC has proposed the addition of provisions for an arrangement in which any conduct complaints that are received by the council would be allocated in turn to each member of the ESC's panel of conduct complaint reviewers. For many years, unknown to the community until recent times, council staff have apparently referred all complaints to just one reviewer. Although this arrangement has not been technically unlawful, it is highly dubious as an appropriate and ethical long-term practice and has become a major cause of consternation within the local community. It is also one of the factors that appears to underpin a high level of mistrust of certain council officials in the shire.

In relation to the question of any proposals for a council to supplement (in its adopted codes) the provisions contained in OLG's model codes, it is very important to note that the relevant circular from OLG to all councils included the following statement.

"In adopting a new code of conduct and procedures, councils may include provisions that are supplementary to those contain in the Model Code of Conduct and Procedures. **Councils may also impose more onerous requirements under their adopted codes of conduct than those prescribed under the Model Code of Conduct.** However, councils must not dilute the standards prescribed under the Model Code of Conduct in their adopted codes of conduct." (The highlighting is mine.)

(I would point out that no mention of the above-mentioned highlighted sentence is contained in the relevant Staff Report.)

The Staff Report is a little vague and/or confusing about the exact reasons for rejecting this particular proposed arrangement for the way in which conduct complaints should be allocated, but the report seems to be implying that the terms of the proposed changes that are contained in submission from the ALP LGC (dated 19 March) would somehow weaken or remove some of the standards under the prescribed Model Code.

I do not accept that council staff had adequately made that case but, so as to take any such argument out of the equation, I have attached a revised set of changes to the prescribed procedures. This revised set of proposed changes ensures that all the relevant standards in the Model Procedures are effectively retained within the procedures that would be adopted by the ESC. The attached revised set of supplementary changes (that are designed to facilitate the complaint allocation arrangements) **now clearly do not remove or weaken** any of the prescribed standards. (If anyone attempts to challenge that assertion, you should require them to make their argument publicly available in writing.)

With the resolution of that potential impediment to the adoption of the fairer, more transparent and therefore more acceptable complaint allocation arrangement that are proposed by the ALP LGC, I trust that the approval of councillors will be forthcoming. (What possible acceptable and rational argument could there be to the contrary?)

I should also point out that there is no requirement within the time-frame presently available to the council for a final decision to be taken by you today. If you believe that further information and/or clarifications might be needed for you to be in the position of being adequately informed, there is nothing to prevent that happening before the final decision.

Jim Bright
on behalf of the ALP LGC



Eurobodalla Local Government Committee

CCS19/011 NEW MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW E13.7162 AND PROCEDURES

My Name is Donald Macdonald and I am secretary of the Eurobodalla Local Government Committee and we are a body constituted as part of NSW Labor. The committee is composed of delegates drawn from the three Labor branches within the Eurobodalla Shire and we have been active since the last council election.

We have come here to express our concerns in the manner in which amendments to the Code of Conduct for this Eurobodalla Shire Council were dismissed so summarily by the general manager of council. I note that all other submissions were dismissed

By way of explaining the weakness's in the general manager's responses it is necessary to give some background.

My first point is the failure of council to have a panel of reviewers in place for at least the last three years, as legally required under Office of Local Government's prescribed procedures.

My second point is the council's constant use for many years of the same conduct reviewer and the obvious damage this practice has done to the community's perception of the integrity of the Eurobodalla Shire Council.

It would have been in the interests of all parties if council, instead of rejecting the submissions out of hand, had worked with those submitting to come up with a workable alternative. To this end, our committee request that you view our request to delay voting on the Code of Conduct until such time as a review on the submissions can take place once more and come up with workable responses. It needs to be recognised that those submitting amendments are doing it in the best interests of community and this at least should carry some weight.

Finally, councillors, you need to have a close look at past actions by council in this matter and how the amendments we have suggested could only enhance the idea of fairness within the council and without. If these serious issues are not fixed, as they should be, then let me assure you this is not the end of the matter.

Included with this paper, we have included our original submission and the general manager's response.

Donald Macdonald 9 April 2019
Secretary, Eurobodalla Local Government Committee
NSW Labor