

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 11 June 2019

Name	Subject/Comments
Public Forum – 10.00am	
Lei Parker	GMR19/010 Code of Meeting Practice
Owen Cartledge	GMR19/010 Code of Meeting Practice
Trish Hellier	GMR19/010 Code of Meeting Practice
Peter Cormick	GMR19/010 Code of Meeting Practice
Chris Kowal	GMR19/010 Code of Meeting Practice
Donald McDonald	GMR19/010 Code of Meeting Practice
Jeff de Jager	GMR19/010 Code of Meeting Practice
Jim Bright	GMR19/010 Code of Meeting Practice

Councillors,

The General Managers report before you today recommends that you cease Public Access all together and that you remove the webcasting and video recording of Public Forum.

I have witnessed first hand, for more than thirty years, the many initiatives and innovations of Eurobodalla Council that has seen it gain accolades and win awards across the country.

On many occasions Eurobodalla has been considered a leader in Local Government in the fields of engineering, community services and environment.

The Eurobodalla Council I know has never set out to be mediocre.

The staff of Eurobodalla Council are exceptional. They are dedicated, committed, professional and strive to serve ours, and their, community well.

Councillors, the good citizens in the gallery and those watching at home voted you into the Council so that you might best represent them.

In 2016 you electioneered on a range of promises that included openness and transparency.

The *Chance for Change* ticket said the council was an “intimidating, unapproachable bureaucracy” and they wanted to “restore faith; providing a council that is approachable and transparent.

Community Voice Eurobodalla formed saying “it’s time to be heard. Our community needs a council prepared to listen, engage and act transparently”

Those on the *Your Team Your Future* ticket said they stood for council to be accountable, have a high level of integrity and be fully transparent

while the *Community Action Alliance* group offered a mandate "To build a Council you can rely on. A Council you can trust. A Council which is your friend not your enemy."

Sadly the open inclusive transparent Eurobodalla Council you all promised has become anything but.

The community, and yourselves, have in fact been progressively left in the dark. Open transparent community engagement has been dismantled under your watch. Now you will decide on removing one more layer.

The Business Advisory Committee and the Tourism Advisory Committee have been disbanded with Council instead seeking inputs of external consultants.

New community committees such as the Foreshore Committee and the Mackay Park Sunset Committee were formed however these came with confidentiality agreements.

A veil of secrecy now spreads over this Council. Removing webcasting of Public Forum will only add to that divide.

The HuntFest issue has long been a topic in these chambers during Public Access and Public Forum with much revealed that Council would prefer not to have on video.

Revealed this weekend was the 'breaking news' that *"the owners of the licence to conduct the Huntfest event have handed back their licence for this and future years and it is now open for other parties to apply to run events in future years at the venue in question, should they seek a licence to do so by the usual process"*.

This in fact is not breaking news as it happened six weeks ago and this Council has kept it a secret from the community and only now has reluctantly released it under pressure.

Without Public Forum and Public Access the community would be none the wiser of the ongoing details around this issue.

The General Manager today offers that the Public Access session can be justifiably removed because Councillors now have phones and emails should the public wish to engage with them on an issue. Such a statement is both laughable and insulting to the many community members who still await return calls or emails.

The GM also offers a justification of removing webcasting and video archiving Public Forum, as has been the norm since 2015, by saying that the OLG does not require it.

Councillors, there is much that this Council does not have to do however Eurobodalla has prided itself on stepping up to the bar and then lifting it.

Are you aware that the General Manager's recommendation before you today will see Eurobodalla become the only Council in South East NSW not to video record Public Forum.

It is interesting to consider that the General Managers, the Councillors, the Mayors and the communities of Wollongong, Shoalhaven, Bega, Snowy Cooma and Queanbeyan Pallerang have got it so wrong.

Councillors, with the exception of just a few of you, your general contempt of Public Access and Public Forum presentations and speakers has been more than evident these last two years.

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Your leaving the chambers, your turning your back on presenters you do not care for, your distraction to your devices as speakers present, your unwillingness to allow extension of time to those who speak against Council and your granting extensions to those favoured are more than evident in the video archives.

If there is any justifiable reason to cease videoing Public Forum it should be because you, as councillors, have so disrespected the institution by your own actions that it has become an embarrassment to this Council.

Coming before you today will be a host of speakers that you most likely have already discounted.

Might I suggest that you listen to them and consider their argument and wisdom.

Lei Parker
shire resident

Public Forum ESC 11 June, 2019
Code of ~~Conduct~~ ^{Meeting Practice} Owen Cartledge

Good morning everybody. I am Owen Cartledge, a resident of Malua Bay.

About 6 weeks ago, two others and I presented on this topic. Councillor Constable summed up some of these presentations as ~~over~~passionate. — Surprise?

I usually sit here trying to present from the head, today I'm afraid it will be coming more from the heart.

The response of ESC staff to submissions takes a narrow view of democracy, and is bureaucratic in nature.

In the context of democracy and information flow this agenda item is very timely.

Ita Buttrose responded to current events — "An untrammelled media is important to public discourse and to democracy. It is the way in which Australian citizens are kept informed about the world, and

its importance on their daily lives. 2

Observance of this basic tenet of the community's right to know has driven my involvement in public life for five decades "

In a recent edition of The Beagle, a local resident Mr Jim Bright states —

" There's much in the NSW Ombudsman's, Good Conduct and Administrative Practice — Guidelines for State and Local Govt — subquote from this document, " Experience has shown that a climate of secrecy is conducive to corruption, incompetence, inefficiency + maladministration "

I went googling, & quickly found this document + quote.

I really don't know how your grey matter is ticking, but if you Senior staff and Councillors are not up to being Beagled you should not be here. Under these proposals here today you will face far more uninformed discussion than under the current arrangements.

Councillors, today show us ~~sto~~ some maturity, throw this proposal out, and show some respect for your community. So far we are very disappointed.

The damage you have done so far can not be measured.

Today I hope you, vote with your head and not your heart.

Good morning everyone, my name is Patricia Hellier from Batemans Bay and I am here today to speak on Item No. GMR 19/010 Code of Meeting Practice.

In reviewing the submissions on the Council web site there appears a similarity in the majority of the submissions without going into each and every detail and I am not privy to the others presenting here today hopefully some of the presenter might touch on things that I have not.

I recognised and acknowledge the fact that a some of people presenting here today are far more knowledgeable than I and have either sat in the Council Chamber or spoken in Public Forum many more times than I have.

One of the most significant changes I have seen since my involvement with Council late 2011 which I believe has contributed to what I see as a “them and us” attitude was when Ferg Thomson was Mayor we then had the opportunity in the break to have “a cuppa” with the Councillors this practice ceased when Lindsay Brown became Mayor I believe a division was created .

The main aspects of concerns and not necessarily in the order that they have appeared in the draft COMP are as follows -

1. The removal of the 9.30am Public Access which I believe has been in place since the 1980's and is Custom and Practice – this is the only face to face opportunity the community have to speak with the Councillors as a group at any one time “in the same space”. I do not support one of the Submissions suggestion that it be held on a separate day to the Council meeting as this does not give other residents the opportunity to listen to what others have raised and there would be further costs associated with bringing the staff in for this. I do not support the explanatory statement on this issue – a. As who has the time to ring 9 Councillors? And b. In my experience Councillors do not respond to emails.
2. Public Forum not on the Agenda and not Live Streamed – I am familiar with some of the views in relation to why certain individuals want this changed, the facts are most of the Councillors sitting in this Chamber today ran in 2016 on “transparency” where is the “transparency” in shutting down the “the Public Forum from being an Agenda item” and where is the “transparency” stopping those speakers in Public Forum being Live Streamed”. A delayed provision in broadcasting is available this would take out the concerns about defamatory statements being broadcast ed.

Councillors I draw your attention to Page 18 4.21 of the Draft “All meetings of Council and Committees of the Council are to be webcast on the Council website. This is in Black.

3. Speakers having to send their presentations in 24hrs prior to the meeting is not required by the Model Code, and the provision for limiting the number of Public Forum speakers by the GM is not justified.
4. To ask a presenter to indicate if they are “for or against” an item prior to the meeting is total “censorship”
5. I firmly believe “Urgent Business on the Agenda ” should be “General Business” as the majority of Councils have a similar provision.

Councillors now the ball is in your court “who are you actually representing” and if it “ain’t broke why change it”.

Trish Hellier

PUBLIC FORUM – 11 JUNE 2019. PETER CORMICK
AGENDA ITEM GMR19/010: CODE OF MEETING PRACTICE

1. Clearly, it will not be possible in this presentation to address all the points I have sought to make in the submission and addendum I have already provided to you – and which are to be included as part of my written presentation - but I will endeavour to address some of the issues I regard as the most important, within the time available; starting with the unconscionable proposal to cease the live-streaming of public forum, followed by the Meeting Principle requiring councillors to be fully informed in their decision-making.
2. Dr Cartledge, who is well known to council, declared in a post to the much lauded online *Beagle* that the proposal to cease live streaming of public forum is bigger than any other matter that this council has had to deal with to date, including the McKay Park development, a claim which most of you will no doubt regard as outrageous. And therein lies the essential problem. The nature and enormity of the proposal, in its undermining affects on what remaining democratic processes we have, clearly does not register in the minds of those who no doubt thought it a very clever manoeuvre in assuming yet more control over the information made available to the community. It is a proposal that reveals, or confirms, an attitude, or dare I say, a culture, within council, that does not recognise, other than by words, the central importance of increasing and maintaining open and accountable government, if we are to hold onto a democratic society.
3. In **all** the decisions that each of you make as councillors, you are, for those of you who need reminding, obliged to act in the **best interests** of the public. If a recommendation put before you is not in the public's best interests, you are obliged to vote **against** it. That is the legally binding commitment each of you made when you took office, that you would "undertake your duties of the office of councillor in the best interests of the people of the Eurobodalla Shire". There are no ifs or buts about it. There is no discretion available. You are obliged to comply.
4. So, in deciding on how you will vote in this matter, in order to keep to your word and comply with the Act, the fundamental question for each of you is: Is it in the public's best interests that it be **denied access** to the live-streaming of public forum? If, as rationality demands, you conclude that it is not in the public's best interests and that it is in fact diametrically opposed to those interests, then you will be obliged to vote against the proposal. If, on the other hand, you *somehow* form the view that it *is* in the public's best interests, and you feel compelled to support the General Manager's recommendation without qualification, then you must at least do the community the courtesy of explaining your reasoning, in detail, prior to the vote. Please do take us through it.
5. I remind you of the OLG's statement that "Public forums **should** operate as **an input into council decision-making at meetings**". The OLG also states, as you know, that meetings of council "should be webcast to increase the transparency of **council decision-making** and allow access to those who may not be physically able to attend meetings." It is therefore a matter of simple logic that public forum sessions, being **part of council's decision-making process**, must acquire the same status as the meeting itself - as far as the need for webcasting of council decision-making processes is concerned. It could not be clearer.

6. If, in spite of the oath you swore or affirmation you made, you steadfastly go with the recommendation to cease webcasting of public forum, for what can only be described as fatuous, desperate reasons, you might care to think about your own legacy as a councillor. If you do support the proposal, you will certainly be the talking point at the pub, barbecues and dinner parties, all the way up to the next council election and beyond. And, of course, if you are part of a majority, your legacy in this matter will be given a new life when the time comes, as it certainly will, when a future council overturns a decision that can only be described as a blatant act of political censorship. No liberally-minded person could possibly support this proposal.
7. There is a need for council to address the **causes** of the dissent it experiences, rather than the symptoms. It needs to move forward, not backwards; to become much, much more open – and proactively so.
8. Please vote as your oath and affirmation requires of you, in the best interests of the people of this shire.

[5 mins ?]

9. Moving onto other contentious elements of the draft code, in my submission I requested that the **Meeting Principle** requiring that councillors be provided with “relevant, quality information” be **enhanced** to read “all relevant, quality information”. The importance of this enhancement has been strikingly and ironically demonstrated by the absence of highly relevant information from this very report to you. The report contains nothing on the fact that this shire is surrounded by councils which will continue with webcasting their public forums: at least five councils, including Wollongong, and counting.
10. Either it didn’t occur to staff to investigate just what other councils are doing on this matter and were therefore unaware of this information, or *were* aware but formed the view, on your behalf, that that information is not relevant to your considerations and chose to withhold that information from you. In either case, staff have clearly failed in their duty to properly inform you in your considerations prior to voting. It may well be that the Eurobodalla Shire is the *only* shire intending to remove the live streaming of public forum. You would surely want to know if that is the case.
11. And so, I ask that you please enhance the code by amending it to require that in providing you with information in any of the reports presented to you, staff provide you with all relevant, quality information, not just that which supports the staff’s preferred position.
12. Turning now to Public Access, I refer to the excellent presentations given on 28 May, by Dr Sue McKenzie, . What possible grounds can there be for denying the community live access to those presentations, except to close down critical comment.
13. Appendix F ... section 10 D public interest test a requirement of the LGA that has not been recognised by this council

SUBMISSION

To

Eurobodalla Shire Council

On the

DRAFT CODE OF MEETING PRACTICE

By

Peter Cormick

15 May 2019

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1. Following is my response to the draft Code of Meeting Practice. It is presented on a clause-by-clause basis, for those clauses which I believe warrant a response.

Clause 1.1

2. I request that the requirement that meetings be “Informed” by decisions being based on “relevant, quality information” be enhanced to read “**all** relevant, quality information”, to ensure that councillors are provided with not just information relevant to staff’s preferred position, but *all* relevant information. As we all know, none of us ‘knows what we don’t know’. One example comes to mind, in which a highly relevant geotechnical report held by council, which conflicted with staff’s recommendation, was withheld from councillors, by staff. Councillors didn’t ask for it, because they didn’t know of its existence. And relevant information should always include all relevant legislation, with meaningful references, with explanatory notes, especially when it might conflict with the recommendation being made to councillors.

Clause 2.14. Practice 4.

3. I request that “Reports determined by the General Manager to be confidential ...” be amended to read “Reports **recommended** by the General Manager ...”. This Practice note refers to confidentiality in the context of s 10A of the LGA, which is clear in placing the authority with the governing body, not the general manager, on whether to close a meeting (ie in order to consider confidential matters).

Clause 2.17.

4. I request that it be the mayor and not the general manger who determines what an “emergency” is. Certainly, the mayor can and should consult with the general manger in such instances but should be the person who, as the elected leader of the council, is responsible for such a declaration.

Clause 2.23

5. I request that “... will not be accepted” be amended to read “will not be accepted **unless resolved otherwise by Council, ...**”

Clause 2.28

6. These conditions appear to remove any chance of contentious matters being the subject of questions asked. I suggest that councillors give careful attention to this clause.

Clause 2.40

7. Typo: “Clause 2.41 reflects ...” should read “Clause 2.40 reflects ...”.

Clause 2.41. Practice note 4.

8. I refer to my comments on clause 2.14: with reference to s 10A, it is only the governing body, not the general manager, which has the authority to determine when a matter should be treated as confidential and considered in a closed meeting. s10A (1) reads: “**A council, or a committee of the council** of which all the members are councillors, may close to the public so much of its meeting as comprises ...”.

Clause 2.52

9. I object to this clause and request that it be amended to read **"Members of the public may attend pre-meeting briefing sessions, except for that part of the briefing sessions which deals with confidential matters."** There is no justification provided for this 'closed meetings approach' in the report to council dated 26 March 2019, except for the statement that "Staff support this optional rule". There is surely nothing to hide from the public during these pre-meeting briefings – since that would make it confidential. As the clause reads, it would appear that every pre-briefing session deals with confidential information. These sessions involve the community's representatives being briefed by staff. It is therefore not only appropriate that the public be able to be present but it is necessary, if council is to adopt best practice when it comes to communicating with the community it is answerable to.

Part 3 – Public Forums

10. I recommend that clauses 3.1 to 3.26 be removed from the Code of Meeting Practice and that, following adoption by council, they be placed in a stand-alone code of practice document, titled Public Forum. The rationale for this recommendation is that, as the OLG has recommended, public forum should not form part of the meeting. I agree with this. It makes perfect sense. It also makes perfect sense to exclude it from the Code of Meeting Practice, since it does not form part of the meeting. A Public Forum Code of Practice can very easily include a code of conduct, just as happens when council engages contractors: if one wants to take part, then one is obliged to comply with the set code of conduct. In fact, it might be best to have public forum presenters sign such a code prior to their first presentation, to apply for all subsequent presentations.

Clause 3.1

11. I request that the wording be amended to read "The Council **will schedule** a public forum prior to each meeting of the council ... Public forum **will** also be **scheduled** prior to extraordinary meetings ...of the Council and meetings of committees of the Council." The OLG advises that public forum is best practice and so it *should* be held prior to each meeting, including extraordinary meetings.
12. Also, the removal of public forum on non-agenda items (public access) from current practice cannot be allowed to stand. There are many council matters that concern community members which fall outside those listed on meeting agendas and which should and must be allowed to be presented to councillors, within the chamber. To deny this forum is to deny the community its right to plead its case on a wide range of important matters to those who are meant to be representing them. I therefore recommend that councillors consider allowing such a session, but on a different day to the day of the meeting. The most suitable day, or the least inconvenient for councillors, would very likely be the Tuesday on which standard staff briefings take place, presently held a week before the scheduled meetings. And, of course, these public access sessions should be webcast, for the same reasons provided in support of webcasting public forum on agenda items, as detailed in my response to clause 3.12, below.

Clause 3.3

13. It may well be that a presenter does not wish to speak either "for" or "against" an agenda item but to simply make comment and ask councillors to consider those comments, which may be in the form of expert opinion. And so, I request that this requirement of "for" or "against" be deleted.

Clause 3.4

14. I strongly object to this requirement for presenters to provide a copy of their presentation the day before the meeting. It is a clear departure from the current practice of it being provided on the day of the meeting, either before or after the meeting. The reason given (in the 26 March 2019 report to council) seems to be that this earlier availability of the presentation will allow councillors to read it well before the meeting. I think that this possible if not questionable advantage for either, or both, the presenter and councillors of this prior notice, is one that ought to be left up to the presenter. There should be a choice available. Presentations 'without notice' most certainly have their place. They can grab the attention of the listener in a way that 'familiar' material cannot. The prior availability could very likely result in those councillors who do read the presentations before the meeting, switching off during the oral presentation, after having 'heard it all before'!

Clause 3.7

15. I request that this clause be amended to read: "The General Manager or their delegate may refuse an application to speak at a public forum. The General Manager or their delegate must give reasons in writing for a decision to refuse an application **and must make those reasons public. By resolution, councillors may overturn a decision made by the General Manager or their delegate under this clause.**"
16. My reasoning for this requested amendment should be clear but in case it is not, it is that as the clause currently reads, a poor or unjustified decision, based on misinformation or even a bias against a prospective speaker, is a real possibility, especially given the glaring omission of criteria against which a decision to refuse an application might be made. As well, there is no appeal process.

Clause 3.8

17. I request that this clause be amended to read "If there are more speakers registered than time permits, **Council may resolve to extend the Public Forum session.**" The current wording is totally inflexible and seeks to deny the autonomy that should always be available to councillors to resolve to do whatever is (lawfully) necessary to facilitate the functions of council, and that of course includes providing the community with every opportunity to be heard by their representatives.

Clause 3.9

18. Even given that the OLG has an equivalent suggested, non-mandatory provision, this clause really does take Public Forum to a new level of unjustifiable control. Some years ago, there were many tens of presenters on the subject of the then newly proposed LEP: the 'like-for-like war'. While there were many presenters who did effectively repeat what had been said by those before them, their numbers alone provided hard evidence to councillors of just how important the LEP issue was to many people within the shire. In other words, by seeking to limit numbers in the ways being proposed, councillors will be effectively denying the community a full expression, by way of numbers, of those issues that are of great importance to them. A false picture will very likely result in these circumstances. I suggest therefore that council allow itself the flexibility to decide whether extended public forum sessions are warranted in unusual circumstances – for significant, shire-wide issues.

Clause 3.10

19. Again, we have a clause that seeks to remove any scope for flexibility – and that is never desirable, given that there will always be unforeseen circumstances that will need to be accommodated at the time they occur. Therefore, I request that the wording be amended to read “Each speaker will be allowed five minutes to address the Council, **except if resolved otherwise by Council.**”

Clause 3.12: The proposal to cease webcasting of Public Forum

20. To say the least, Council’s proposal to cease webcasting of the public forum session is most contentious. Being astounded at the proposal, and at a loss to understand what justification could possibly be made, I sought the views of several councillors, including the mayor. Those views vary from complete opposition to the proposal to complete support for it.

21. Reasons given to me in support of the proposal to cease webcasting include the following:

- a. There is no need for webcasting; presenters can still make their presentations to councillors, just as it was done well before webcasting was introduced, and their written presentations will be available on council’s website;
- b. When disrespectful, even libellous behaviour is displayed by a presenter, it is instantly disseminated to ‘the world’. There is no control over such a situation and it is unacceptable that this should be allowed to occur;
- c. There are members of the community who would like to address council at public forum on various matters but who do not want their presentation to be live streamed and are therefore effectively denied the opportunity to present;
- d. The community’s best interests are not being served by the approach taken by a number of the presenters, who are not genuinely seeking to influence councillors’ thinking on a subject but, rather, to spring surprise questions and associated information; and
- e. It has become little more than a ‘soap box’ for those who might be looking to stand for council next year - and that this is a misuse of the forum.

22. Addressing each reason given, in turn:

- a. The ‘no need’ argument has (at least) the obvious flaw that it adopts the position previously long held by council that there was no need for webcasting of council meetings. As we all know, for the ESC that attitude has been overtaken by a hard-fought-for resolution of council and now the state-wide mandated requirement to webcast meetings. Sure, public forum is not part of the meeting (and really should never have been included in the agenda) but it currently shares with the meeting a public display of ‘councillors at work’ – to be witnessed by those who put them there, to see for themselves just what their representatives do and how they respond or do not respond to public presentations.

If one were to disregard the interests of the wider community in council's affairs, then, yes, there is no practical need to make public forum available outside the chamber. If, however, councillors are to meet their legislative obligations and not only have a proper regard for the wider community's interests in council's affairs but actually facilitate and encourage such engagement, then there is a most definite need for the webcasting.

- b. Certainly, there have been, and will no doubt continue to be, presenters who do not comply with the simple and necessary requirement to treat others with respect. But so too, there have been and are councillors who behave similarly, either actively, with words, or passively, by overt, determined inattention to a presenter (to the point of leaving the chamber and hovering outside until the presentation is completed), which goes beyond rudeness and becomes a display of contempt for the presenter in question. I find that form of behaviour particularly galling. Control of such unacceptable behaviour is in the hands of the mayor or whoever might be chairing the meeting. There are means for controlling unacceptable behaviour, whether from presenters or councillors.

On the matter of the 'dangers' of 'instantaneous transmission' of possibly libellous material, well, that can just as easily happen with a shouted interjection from the gallery, during a presentation or a meeting. It is but a small price to pay for our open, democratic process – which must be held onto no matter what. In any event, if a truly libellous accusation or remark is made, legal action is available which can and often does include a public apology.

- c. Members of the community who want to make a presentation but who do not wish to be 'live streamed', can very easily be accommodated by the public forum session being divided into two sections: those who do and those who don't wish to be live streamed, with a suitable announcement beforehand so that those viewing on the net are made aware that there will be presentations – with the subject matters described - that will not be transmitted or recorded.
- d. I agree that if one wishes to influence councillors' presumed or declared position then the more notice that is given to them, of the arguments in support of the presenter's position, the better. At the same time, questions or points made, without notice, have their place. They are a means by which council's knowledge of a given matter can be tested in a way that questions or points made on notice cannot achieve. Such questions are a staple of the federal and state parliaments and are very much a necessary ingredient of our democratic processes. Whether such surprises are in the best interests of the community or whether they are an ineffective means by which to influence councillors' thoughts, is entirely irrelevant to the question of their legitimacy. If the presenter has taken an ineffective approach, it is a matter that concerns only the presenter.
- e. It may well be that some presenters make use of public forum to bolster support for next year's council election. I don't hold that view. Certainly, those of the presenters who are intending to run for council will do themselves no harm in appearing and presenting in the chamber, but so what?! A presenter's motive in appearing in the chamber is utterly irrelevant to the question of whether public forum should or should not be live streamed. It could equally be argued that those current councillors who want

to reduce any exposure of potential competitors come the council elections, want to remove that exposure and thereby the competition. Such a tactic would be reprehensible.

23. Public presentations to councillors, whether through the currently available Public Access or Public Forum sessions, provide community members with their ONLY opportunity to engage directly with their representatives, collectively. While there is no legal requirement that the public be given this opportunity, best practice demands it – as the OLG itself has stated¹. Therefore, such forums *are* in fact *required* of council if it is to conduct itself according to best practice. And, I submit, it also best practice to have such forums webcast and archived, so that this form of engagement between community members and those who represent them, can be made available for viewing to the wider community, without the need to attend the chamber.
24. The OLG goes further on the importance of public forum, advising that **“Public forums should operate as an input into council decision-making at meetings”**². In giving reasons for mandating webcasting of meetings, the OLG has said that they **“should be webcast to increase the transparency of council decision making and allow access to those who may not be physically able to attend meetings”**³. So, given OLG’s view that public forums should operate as an input into council decision-making and that it wants increased transparency (by way of webcasting) of council decision making, then, by simple logic, the public forum session must acquire the same status as the meeting itself, as far as the need for webcasting is concerned. It therefore could not be clearer that, in the public interest, public forum must be webcast, in order that the viewing community is able to witness the extent to which it (through the presenters) has provided such input into council’s decision-making. If the reasoning given to this point is not sufficiently persuasive, then the case is pressed further, below.
25. As those who sought and obtained public office will well appreciate, councillors hold their office as a matter of privilege as well as duty. In dealing with council business they each, individually and collectively, have the demanding responsibility of standing in the place of every member of the community. And for such privileged representation to be undertaken conscientiously and diligently, each councillor must necessarily apply him or herself to facilitating and fostering this special relationship in every way possible. As a reminder to councillors, section 232(1)(e) of the LGA, which prescribes the role of a councillor, in fact **requires each councillor, to “facilitate communication between the local community and the governing body”**. This directive is an unequivocal legislative requirement of each councillor; and is not a task that can be delegated to staff. Again, best practice will require more than simply satisfying the bare, mandatory minimum, of facilitation. It requires councillors to facilitate their communication with those whom they represent, and thereby *foster* the *relationship* itself. The inverse follows: without (meaningful) communication, there can be no relationship; certainly not a harmonious one. The need for and importance of communication between councillors and the community they represent, is central to the importance of public forum being communicated to as many of the community as possible – through webcasting. Again, it’s a matter of simple logic.

¹ FAQ to OLG circular 18-45, page 4, dated 18 December 2018.

² *ibid*

³ *ibid*

26. And councillors might also care to recall the oath (or affirmation) they took on assuming office: that they will each act **"in the best interests of the people of the Eurobodalla Shire"** and that they "will faithfully and impartially carry out the functions, powers, authorities and discretions vested in [them] **under the Local Government Act 1993** or any other Act to the best of [their] ability and judgment." Clearly, it is absurd for anyone to even suggest that denying the people of the Eurobodalla shire the opportunity to view a webcast of Public Forum is in their best interests. It is in fact entirely contrary to their best interests, which are most effectively served in this matter by having full access to hearing and viewing presentations and the responses of their representatives, not only when they meet to conduct business during a meeting but also when they engage with members of the community during public forum.

27. Finally, given the unique nature of public forum, and the importance assigned to it by the OLG, it is a forum that could hardly be more worthy of sharing with the wider community. Such engagement is at the heart of what local government is about, and to prevent its dissemination can fairly be described as a form of political censorship; which in conjunction with political propaganda, of constantly delivering a rosy picture in the face of dissent, has no place in our democratic society. There is a need to address the *causes* of the dissent rather than seek to quash it. Council needs to move forward, not backwards; to become much more open; and proactively so.

Clause 3.17

28. I request that this clause be amended to read: **"Speakers at public forums may ask questions of the governing body."**

29. The clause, as it currently reads, that speakers "cannot ask questions of ... Councillors", is an affront to the community that council is there to serve. It is no less than the nonsense of seeking to deny an employer the right to question an employee. Surely, councillors, individually and collectively, as the governing body, *want* to be asked questions by those who have put their faith in them and elected them to office. After all, councillors are accountable to the community and even if questions are not able to be answered during public forum, through the mayor, they can be taken on notice and answered later, in writing, publicly.

Clause 3.22

30. I request that this clause be amended to read: **"Where a speaker engages in conduct of the type referred to in clause 3.19 ... for such period as the General Manager or their delegate considers appropriate. Reasons for refusal of further applications must be given in writing and made public. By resolution, councillors may overturn a decision made by the General Manager or their delegate under this clause."** My reasons for this requested amendment are those given with respect to clause 3.7.

Clause 4.10. Practice 5

31. I request that the wording be extended as follows: **"The seating arrangements ... by the Chairperson of the meeting, if councillors cannot agree"**.

Clause 4.24

32. In this age of digital information storage, there is absolutely no justification for the destruction of public records – none whatsoever. And a period of 7 years is ridiculously brief, not even covering two terms of council. I strongly object to this provision, on the grounds that there is a complete absence of any justification for it and because it is in the community's best interests

and councillors', to be able to research earlier meetings and resolutions, as far back in time as possible.

Clause 9.9. Practice

33. This Practice note is open to misuse – whether intentional or not. I request that it be amended to read: "The Chairperson has the authority to rule out of order any Motion ... involve a contravention of the law, **according to supporting legal advice provided to council**".

Clause 13.11

34. There have been problems in the past (for example, at the time of the general manager's contract renewal), when there has been insufficient detail provided in the agenda, of the proposed confidential subject, thus preventing an informed decision by a potential speaker on whether to speak against the proposed closure of the meeting to the public. Certainly, s 9 (2A) (a) of the LGA requires that in the case of "likely" closed meetings that "the agenda for the meeting must indicate that the relevant item of business is of such a [confidential] nature (but **must not give details of that item**)". However, section 10D requires that, at the open meeting, at the time that council decides to close part of the meeting, the grounds on which it is [intended to be] closed must be stated in the decision **and the grounds must specify** not only the relevant provision(s) of s 10A (2) being relied on but also **"the matter that is to be discussed during the closed part of the meeting"**. That is to say, the chairperson must "specify the matter". This requirement is somewhat at odds with the "must not give details" requirement. Perhaps councillors could obtain an expert opinion on how these two apparently conflicting requirements can be reconciled. My own opinion is that council must not provide 'confidential details' but must provide (specify) enough detail to enable a member of the public to know, specifically, what the subject matter is. So, in the case of the general manager's contract renewal, it would be insufficient to describe the confidential matter as "Personnel matter". It would need to be described as "Renewal of the General Manager's contract", which does not reveal a skerrick of confidential information, but will provide sufficient detail for a person to decide whether to speak against closure.

35. I therefore request that clause 13.11 be extended, as follows: "Where the matter has been identified in the agenda of the meeting under clause 2.37 as a matter that is likely to be considered when the meeting is closed to the public, **and the matter has been specified in accordance with s 10A(2)**, in order to make representations under clause 13.9, members of the public ... by 12 noon ... to be considered."

Clause 13.17

36. Two minutes in which to make a case against closing the meeting to the public is blatantly inadequate. I strongly object to this unjustifiable limitation and request that the time permitted be set at 5 minutes.

Clause 17.1

37. I suggest that this clause be amended to read: "Meetings of the Council ...no later than 2.00 pm, **subject to clause 17.2.**"

Clause 17.7

38. This clause needs to be extended, according to the wording provided in the Model Code of Meeting Practice: "Where a meeting is adjourned under clause 17.3 or 17.6, the General Manger

must individually notify each Councillor of the time, date and place at which the meeting will reconvene and must publish the time, date and place at which the meeting will reconvene on the council's website and in such other manner that the general manager is satisfied is likely to bring notice of the time, date and place of the reconvened meeting to the attention of as many people as possible."Without this additional requirement, the public would almost certainly never know where and when the reconvened meeting would occur. Clearly, the OLG expects council to publicise this information.

Clause 18.15

39. I request that this clause be extended to read: "In the interests of privacy protection ... containing personal information, unless the petitioners request otherwise".

Clause ?

40. Non-mandatory clause 20.24 of the Model Code of Meeting Practice has been omitted (or excluded) from council's draft code. Given that its purpose is to provide the community with highly relevant information on councillors' voting, including at closed council committee meetings, it is very concerning that this omission has occurred. I request that this clause be included in the draft code. The wording is as follows:

"All voting at meetings of committees of the council (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of councillors who voted for and against each motion or amendment,(including the use of the casting vote), being recorded."

ADDENDUM

TO SUBMISSION ON EUROBODALLA SHIRE COUNCIL'S

DRAFT CODE OF MEETING PRACTICE

PETER CORMICK, 29 MAY 2019.

1. Further to my submission on the draft Code of Meeting Practice, made on 15 May 2019, I have the following further comments and requests to make. I am well aware that receipt of formal submissions ceased beyond 15 May but I nevertheless respectfully ask for consideration of this addendum to my submission, whatever form that consideration might take.
2. My further comments and requests concern the Appendices to the draft, and while I am aware that the Appendices have been declared in the Introduction to the Code to "not form part of the Code and should [therefore] not be used to construe a particular provision of the Code", I believe that some aspects of the Appendices warrant a response, for the obvious reason that they are intended to guide and advise councillors in the conduct of their meetings. Given this obvious purpose I cannot see why they have been declared to "not form part of the Code". If any interpretation or intended use of the guidelines within these Appendices were to conflict with the Model Code, then, as we know, they would necessarily be ignored. That is to say, there would be no 'danger' in having the Appendices form part of the Code.

Appendix A: Ordinary Meetings of Council

3. **Public Participation.** I request that the wording be amended to read "**Is to take place** in accordance with Council's Code of Meeting Practice, which allows a maximum of 5 minutes per person, **unless otherwise resolved by council**, and also allows Councillors to ask questions of presenters and staff."
4. I request that the wording of the 12th listed entry in column 1 be amended to read, "Matters determined by Ordinary meetings will include all those non-delegable functions identified in Section 377 of the Local Government Act 1993 **and matters relating to any functions which have not been delegated to the General Manager**". The current wording assumes that all delegable functions have been delegated to the general manager. I understand that that is presently the case but it may not be so for future councils. Future councils may decide to withhold or impose qualifications to certain delegations.

Appendix B: Guidelines for public address to Council

5. The third item under the heading "What can I speak about?" states that presenters are not to be permitted to address council on an issue they have previously presented to council. This statement is unambiguous yet the Introduction to the Code states that the Appendices are "advisory" only: so what is to be made of the direction "are not to be re-canvassed". That is not advisory. If it is indeed no more than advisory, is it enforceable? If it is, what is the source of the authority to do so, given that it does not form part of any council policy or code?
6. Never minding the confusion over the status of this 'advice', or 'direction', it is clearly nonsense to disallow a member of the community to present multiple times on the one issue IF that issue

is raised multiple times by council in its agenda. The issue could well be raised a second time a year or two after being initially raised, within a different context or with significant variations to its first appearance.

7. The rule ought to be that if a matter is listed in the agenda then it is available for comment in the public forum, regardless of who the presenter might be. I can only suspect that this 'advice' of 'not more than once', has been inserted in response to the 50 m pool issue.

Appendix F: Closure of meetings

8. I request that section 10D of the LGA be included in this appendix. You will see below that it is a requirement of s10D that in the process of deciding to close (part of) a meeting, council must provide grounds for the closure, which includes *specific* grounds in relation to **public interest**. A general statement such as "It would be contrary to the public interest to leave the meeting open." would not be sufficient in meeting this requirement of s10D.

10D GROUNDS FOR CLOSING PART OF MEETING TO BE SPECIFIED

- (1) The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting.
 - (2) The grounds must specify the following:
 - (a) the relevant provision of section 10A (2),
 - (b) the matter that is to be discussed during the closed part of the meeting,
 - (c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.
 9. When, by way of resolution by councillors themselves (and *only* by resolution), council decides to close (part of) a meeting to the public, **that decision must include a specific explanation of why it would be contrary to the public interest to leave the meeting open**. In providing this explanation council will, naturally, need to be cognisant of just what is meant by "public interest". As councillors, representing the local community, in considering the question of what is in the public interest and what is not, you will not be faced with, for example, matters of national security! At the local government level there is very little information that can justifiably be withheld from the public.
 10. I am unaware of the public interest requirement of s10D having ever been met by council; certainly not in recent years. It is therefore especially important that Appendix F includes a copy of s10D, along with ss 10A and 10B, so that councillors are reminded of their obligations in justifying closure of a part of a meeting on the ground that it would, in their view, be contrary to the public interest to have it opened to the public.
-

Priority	Task	Due	✓
	New York The Times New York last week wrote		
	"Australia is the world's most secretive democracy" Let this provide inspiration to demonstrate that governance in the Eurobodalla Shire Council is OPEN and TRANSPARENT and ACCOUNTABLE. That ESC strives to maximises ccl's ability to be open, non-judgemental and understanding.		
	This chamber is our town square, its one of our important meeting places. It's where we can engage with our elected councillors and share knowledge and understandings, a place of NO SEC so that our decision makers Councillors make decision that genuinely are in the best interest of the whole community.		
	Fully opening all aspects of decision making processes, ^{such as meeting & working} even if that attendance is via live streaming, will strengthen and improve the quality of those decisions and strength local democracy.		

Priority	Task	Due	✓
	The live streaming of non-agenda items must happen. These presentations can flag issues needing the attention of the community.		
	There are few items that need to be confidential, I would encourage Councillors to adopt a code of meeting practise that supports and promotes greater access and openness to the business of council & cllrs. This will enhanced and informed decision making thats in the best interests of the whole community.		
	DLG wants to promote more accessibility, "Members of the public have many avenues to raise issues with Cllrs". In the Eurobodalla lets create the Most OPEN, THE ACCESSIBLE and TRANSPARENT governance in AUSTRALIA.		

Some of u may remember that it wasn't that long ago that in respect to non-agenda public forum members of the community could walk in off the street and speak in PF without giving notice or needing to provide a written submissions.

In fact, ~~in~~ in respect to public forum many in the community have said "back in the good old days."

In closing, hope up access to all levels of open & transparent decision making processes. ~~Web~~ Live stream more meetings not less.



Eurobodalla Local Government Committee

Acting Secretary, Donald Macdonald
Contact 0428313500, donmac48@gmail.com

Good Morning,

My name is Donald Macdonald. I am the acting secretary of Eurobodalla Local Government Committee of the Australian Labor Party. I wish to speak on the Code of Meeting Practice GMR19/010.

For the benefit of councillors, I have had to amend my original presentation when becoming aware of recent occurrences relating to this submission.

There are several areas I would like to have addressed in the general manager's responses to submissions but, since time is against me, I would like to speak specifically to live streaming and webcasting of the Peoples' Forum and the general manager's response to submissions.

The general manager's reasons are wordier than you would think necessary and I am sure she would have taken much longer to put in print than the five minutes I am permitted so I will try and separate the chatter from what is really important.

First item. The general manager says the OLG has stated public forums should not be held during council meetings. Given that the word 'should' and not 'must or will' is used implies this is not a directive but a suggestion. I am sure Councillor Nathan would appreciate the difference. In fact, if council so wished, the public forum could be included during council meeting as happens with Queanbeyan Palerang Council. This council commences its meeting and during the process is adjourned to conduct the Public Forum. Once the public Forum is completed the meeting is recommenced. I have included a link for reference.

<https://www.qprc.nsw.gov.au/Council/Council-business/Public-involvement-at-Council-meetings>

Second Item. The GM talks about potential liability and disorderly conduct as motivators to discontinue live streaming and webcasting. I find these reasons disingenuous given that in all the time webcasting Public Forums has been used I can only recall one incident which occurred recently and resulted in a deletion of part of a webcast, purportedly for legal reasons. Still waiting for that to be explained. In any case, council can remove disruptive individuals and certainly have the ability to block unruly members of the public from speaking at public forums.

In any case why is this council so determined to go against the status quo and why would the council wish to stop webcasting the Public forum when Shoalhaven Council, Wollongong Council, and Queanbeyan Palerang Council have decided to go with webcasting Public Forums? Why are we the odd one out?

I would like it noted that it appears Bega council is also supportive of web casting peoples' forums. Have these developments been brought to councillors' attention that we are now surrounded by four shire councils who would web cast peoples' forums?

Councillors should also reflect on this and other amendments and additions that will be discussed and voted on today in this chamber.

Labor holds dear what few freedoms we have and freedom of speech is one element you cannot bargain away in this chamber.

There was a time back in 1980 when this council determined to keep information from the general view, and we know that didn't end well for councillors or council. Is that the track you want to go down?

Donald Macdonald

Public Forum Submission – 11 June 2019

GMR19/010 Draft Code of Meeting Practice

Public Access and Public Forum sessions allow members of the community to make submissions face-to-face with council. Such opportunities are not otherwise available and are not as frequent or convenient as in past years - the number of council meetings open to the public this year will be 18, in 2010 it was 32.

It is important too that the content of these submissions made in Public Access and Public Forum sessions, and the responses of council if any, be known to those who cannot attend meetings and be on the public record for future reference.

Rather than eliminating Public Access, removing livestreaming or video recording from Public Forum or any part of meetings other than confidential sections, rather than in any way limiting the time or access to make submissions, the proactive and responsible thing for council to be doing is to actually extend meetings to include Public Access and to provide the same livestreaming and video recording as for the rest of the meeting and even allowing for Questions on Notice to be submitted by members of the community as is done in some other shires.

There are times when there might be many submissions on a particular issue but these are rare and they do, by the very numbers, indicate the level of concern in the community and therefore something that council should be most inclined to consider and to provide the means to be available to the broader community. In the past, some such issues were the subject of extraordinary meetings with in-depth debates - this avenue is open to you still at appropriate times.

It is suggested in the agenda that issues can be raised directly with councillors by phone or email but please reflect on how many times you actually respond to such approaches and if you had been on the other end, how satisfied would you have been with your response?

While it could be accepted that some matters can be time wasters or even embarrassing, wise leaders know that there is no such thing as a dumb idea and that it would be a dumb thing to be dismissive of any submission without acknowledgement and without offering advice to correct any misapprehensions. There are adequate means available to "censor" tracts on video tapes that are legally unacceptable but the occasions where this might be necessary are extremely rare.

Importantly, if you believe everything you do here is as pure as the driven snow, then please be mindful that any restriction people perceive to be designed to exclude them, will only exacerbate any inclination to doubt or suspicion.

Think back to your own motivations to stand for election to Council: I'm sure it was not to make members of the community feel they are excluded wherever possible from expressing an opinion or offering a suggestion or some constructive criticism.

Following are some extracts from the Local Government Act highlighting the importance placed on representation, transparency, engagement, consultation, accountability and responsibility. Please read them and think about why they were written into the Act and most importantly, please make amendments to the draft Code of Meeting Conduct to ensure members of the community are, and feel, welcome, included and engaged.

Jeff de Jager, 52 Coila Creek Road, Coila. H 4473 9963, M 0491 332 791

Public Forum Submission

By Jeff de Jager on 11 June 2109

Extracts from the Local Government Act 1993

(as at 6 June 2019)

7. Purposes of the Act

- (d) to facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government,
- (e) to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.

8A Guiding principles for councils

(1) Exercise of functions generally

- (a) Councils should provide strong and effective representation, leadership, planning and decision-making.

(2) Decision-making The following principles apply to decision-making by councils (subject to any other applicable law):

- (a) Councils should recognise diverse local community needs and interests.
- (b) Councils should consider social justice principles.
- (c) Councils should consider the long term and cumulative effects of actions on future generations.
- (e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) Community participation

Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.**222 Who comprise the governing body?**

The elected representatives, called "councillors", comprise the governing body of the council.

223 Role of governing body

(1) The role of the governing body is as follows:

- (b) to provide effective civic leadership to the local community,
- (k) to consult regularly with community organisations and other key stakeholders and keep them informed of the council's decisions and activities,
- (l) to be responsible for ensuring that the council acts honestly, efficiently and appropriately.

226 Role of mayor

The role of the mayor is as follows:

- (b) to advance community cohesion and promote civic awareness,
- (k) in conjunction with the general manager, to ensure adequate opportunities and mechanisms for engagement between the council and the local community,

232 The role of a councillor

(1) The role of a councillor is as follows:

- (a) to be an active and contributing member of the governing body,
 - (b) to make considered and well informed decisions as a member of the governing body,
 - (d) to represent the collective interests of residents, ratepayers and the local community,
 - (e) to facilitate communication between the local community and the governing body,
- (2) A councillor is accountable to the local community for the performance of the council.

233A Oath and affirmation for councillors

Oath

I [*name of councillor*] swear that I will undertake the duties of the office of councillor in the best interests of the people of [*name of council area*] and the [*name of council*] and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the *Local Government Act 1993* or any other Act to the best of my ability and judgment.

EUROBODALLA SHIRE COUNCIL

11 JUNE 2019

PUBLIC FORUM PRESENTATION BY JIM BRIGHT

ITEM – CODE OF MEETING PRACTICE

My name is Jim Bright. I'm a resident of Narooma. I'm here to speak about the proposed new 'Code of Meeting Practice'.

I'll confine my particular comments primarily to two issues – (i) the validity of the use by OLG of the expression “best practice” and (ii) the inadequacy of some important aspects of the information that is contained in the relevant Staff Report.

“Best Practice”

As even a quick perusal of the Staff Report and of the staff's responses to the public submissions (Appendix A) will reveal, the bulk of our council staff's positions on various aspects of their recommendations is based upon the apparently ready acceptance by them that OLG's non-mandatory suggestions actually do represent some type of “best practice”.

The “best practice” concept has largely been introduced into various parts of the Australian public sector from the private sector over the last thirty years or so. In the public sector environment, the classification of a particular management practice as being “best practice” would generally result from a process involving an initial survey within a particular area of activity (say the local government area) to identify those organisations that are achieving the best outcomes for the communities that they serve and are responsible for in certain areas of their activities. After identifying the top performers, the next step is to carefully analyse and 'drill down' into the operations of those organisations in order to reach an understanding of the internal practices that produce the desirable outcomes. This information on “best practice” would then be made available to other relevant organisations for their consideration.

My assessment of the available facts and information would suggest to me that OLG has not made the case for its claims that its views on non-mandatory meeting practices justify its adoption of the term “best practice”. My observation and analysis, over the last few years, of OLG's propensity to frequently and conveniently label its particular views as representing “best practice” is probably nothing other than a way of 'tarting up' those views in order to induce acceptance of them and to discourage challenges to them.

There is no evidence that I can find on the OLG website to suggest that any reasonable type of “best practice” identification process has in fact been undertaken by OLG in recent years. The 'stakeholder' consultation process that it undertook during 2018 in the lead up to the issuing of its new model code last December was not a “best practice” identification process. I expect that what is claimed by OLG to be “best practice” is probably little more than the views of some officers in the Council Governance Unit of OLG.

The adequacy of the Staff Report

Upon reading the Staff Report last Thursday, I was immediately struck by the obvious lack of any advice to our councillors on what other councils in NSW might have decided to do on the question of the locally very contentious issue of the proposed cessation of the webcast of the Public Forum.

Without a great deal of effort, I was quickly able to establish that, in the case of the councils that surround us, the Shoalhaven and Queanbeyan Palerang councils have already adopted their new codes including the continuation of the live streaming of their public forums. Tomorrow, the Bega Valley Shire Council will decide on its new code and the recommendation in the relevant report is that it should also continue the live streaming of its public forum.

I then looked a little further afield to the Wollongong City Council – the council that was the model that this council used in 2014 when it first decided to live-stream our meetings and public forums. Sure enough, that council has also approved the continuation of the live-streaming of its public forum.

It is also worth noting that the majority (possibly all) of these councils will also be conducting their public forums on the same day as their council meetings.

Now if I was a councillor being confronted with the clearly controversial and unpopular proposition that I should approve the cessation of live-streaming of public forum and move it to a non meeting day, I would very much expect to have been provided with this type of information. The GM's failure to have done this is remarkable and you should be demanding an explanation and assurances about future practices.

Thank you.