

Meeting Date: Wednesday 27 March 2013
Location: Council Chambers, Level 6, Civic Centre, 1 Devlin Street, Ryde
Time: 7.30pm

The Acting General Manager, Danielle Dickson opened the meeting at 7.30pm and adjourned the meeting as no Councillors were present.

ADJOURNMENT

In accordance with Clause 4.2.4 of the Code of Meeting Practice, The Acting General Manager, Danielle Dickson adjourned the Extraordinary Council Meeting as a quorum was not present, the time being 7.33pm. The Extraordinary Council Meeting was adjourned to:

Wednesday, 3 April 2013 at 7.30pm in the Council Chambers, Level 6 of the Civic Centre, 1 Devlin Street, Ryde.

Apologies: Councillors Etmekdjian, Laxale and Simon.

Leave of Absence: The Mayor, Councillor Petch and Councillors Li and Perram.

Absent: Councillors Chung, Maggio, Pendleton, Pickering, Salvestro-Martin and Yedelian OAM.

Staff Present: Acting General Manager, Group Manager - Corporate Services, General Counsel and Section Manager - Governance.

MEETING RECONVENED

The Acting General Manager reconvened the meeting at 7.30pm on Wednesday, 3 April 2013 in the Council Chambers, Level 6 of the Civic Centre, 1 Devlin Street, Ryde.

The following Councillors were present:

Councillors Chung, Etmekdjian, Maggio, Pendleton, Pickering and Yedelian OAM.

Apologies: Councillors Laxale, Li and Simon.

Leave of Absence: The Mayor, Councillor Petch and Councillor Perram.

Absent: Councillor Salvestro-Martin.

Staff Present: Acting General Manager, Group Manager - Corporate Services, General Counsel and Section Manager - Governance.

As no quorum was present, the Acting General Manager, Danielle Dickson adjourned the meeting.

ADJOURNMENT

In accordance with Clause 4.2.4 of the Code of Meeting Practice, The Acting General Manager, Danielle Dickson adjourned the Extraordinary Council Meeting as a quorum was not present, the time being 7.30pm. The Extraordinary Council Meeting was adjourned to:

Wednesday, 3 April 2013 at 7.45pm in the Council Chambers, Level 6 of the Civic Centre, 1 Devlin Street, Ryde.

The following Councillors were present:

Councillors Chung, Etmekdjian, Maggio, Pendleton, Pickering and Yedelian OAM.

Apologies: Councillors Laxale, Li and Simon.

Leave of Absence: The Mayor, Councillor Petch and Councillor Perram.

Absent: Councillor Salvestro-Martin.

Staff Present: Acting General Manager, Group Manager - Corporate Services, General Counsel and Section Manager - Governance.

Note: The Group Manager – Corporate Services left the meeting to contact Councillor Salvestro-Martin to see if he would be attending the Extraordinary Meeting. After speaking with Councillor Salvestro-Martin, the Group Manager – Corporate Services returned to the meeting and advised that Councillor Salvestro-Martin would not be attending the meeting.

MEETING RECONVENED

The Acting General Manager reconvened the meeting at 7.38pm on Wednesday, 3 April 2013 in the Council Chambers, Level 6 of the Civic Centre, 1 Devlin Street, Ryde.

The following Councillors were present:

Councillors Chung, Etmekdjian, Maggio, Pendleton, Pickering and Yedelian OAM.

Apologies: Councillors Laxale, Li and Simon.

Leave of Absence: The Mayor, Councillor Petch and Councillor Perram.

Absent: Councillor Salvestro-Martin.

Staff Present: Acting General Manager, Group Manager - Corporate Services, General Counsel and Section Manager - Governance.

As no quorum was present, the Acting General Manager, Danielle Dickson adjourned the meeting.

ADJOURNMENT

In accordance with Clause 4.2.4 of the Code of Meeting Practice, The Acting General Manager, Danielle Dickson adjourned the Extraordinary Council Meeting as a quorum was not present, the time being 7.38pm. The Extraordinary Council Meeting was adjourned to:

Tuesday, 9 April 2013 in the Council Chambers, Level 6 of the Civic Centre, 1 Devlin Street, Ryde to commence following the conclusion of the Reconvened Council Meeting of 26 March 2013 and the Ordinary Council Meeting of 9 April 2013.

The following Councillors were present:

Councillors Chung, Etmekdjian, Maggio, Pendleton, Pickering and Yedelian OAM.

Apologies: Councillors Laxale, Li and Simon.

Leave of Absence: The Mayor, Councillor Petch and Councillor Perram.

Absent: Councillor Salvestro-Martin.

MEETING RECONVENED

The meeting reconvened at 10.26 pm on Tuesday, 9 April 2013 in the Council Chambers, Level 6 of the Civic Centre, 1 Devlin Street, Ryde.

The following Councillors were present:

The Mayor, Councillor Petch and Councillors Chung, Etmekdjian, Laxale, Li, Maggio, Pendleton, Perram, Pickering, Salvestro-Martin, Simon and Yedelian OAM.

Apologies: Nil.

Staff Present: Acting General Manager, Acting Group Manager – Community Life, Group Manager - Corporate Services, Group Manager – Environment and Planning, Acting Group Manager – Public Works, General Counsel, Manager – Communications and Media, Section Manager – Governance and Councillor Support Coordinator.

DISCLOSURES OF INTEREST

The Mayor, Councillor Petch disclosed a Pecuniary Interest in Confidential Item 1 - Supreme Court Proceedings - Legal Advice for the reason that he is a defendant in a court case actions.

Councillor Laxale disclosed a Significant Non-Pecuniary Interest in Confidential Item 1 - Supreme Court Proceedings - Legal Advice for the reason that he has a relationship with former Councillor Butterworth.

Councillor Simon disclosed a Significant Non-Pecuniary Interest in Confidential Item 1 - Supreme Court Proceedings - Legal Advice for the reason that he is friends with people subject to the proceedings.

Councillor Perram disclosed a Pecuniary Interest in Confidential Item 1 - Supreme Court Proceedings - Legal Advice for the reason that he is a defendant in Supreme Court Proceedings for which costs have yet to be determined.

Councillor Salvestro-Martin disclosed a Significant Non-Pecuniary Interest in Confidential Item 1 - Supreme Court Proceedings - Legal Advice for the reason that he is a listed person.

Councillor Li disclosed a Pecuniary Interest in Confidential Item 1 - Supreme Court Proceedings - Legal Advice for the reason that he is a defendant in these proceedings

PUBLIC PARTICIPATION ON ITEMS LISTED ON THE AGENDA

Note: Alan Patrick was called to address Council, however was not present in the Chamber.

PUBLIC PARTICIPATION ON ITEMS NOT LISTED ON THE AGENDA

No addresses were made to Council.

LEAVE OF ABSENCE

Councillor Yedelian OAM requested a Leave of Absence for Tuesday, 23 April 2013.

RESOLUTION: (Moved by Councillors Yedelian OAM and Etmekdjian)

That Councillor Yedelian OAM's Leave of Absence for Tuesday, 23 April 2013 be approved.

Record of Voting:

For the Motion: The Mayor, Councillor Petch and Councillors Chung, Etmekdjian, Laxale, Li, Pendleton, Perram, Pickering, Salvestro-Martin, Simon and Yedelian OAM

Against the Motion: Councillor Maggio

NOTICES OF MOTION

1 DEFERRED NOTICE OF MOTION: LEGAL COSTS FOR THE SUPREME COURT INJUNCTION - Councillor Bill Pickering

Note: This Notice of Motion was formally **WITHDRAWN** by Councillor Pickering.

1 SUPREME COURT PROCEEDINGS – LEGAL ADVICE

Note: The General Counsel had provided written advice to Councillors on Tuesday 2 April 2013 in respect of this matter and the ability of all Councillors to participate in considering and voting on this matter, to delegate this matter to the Acting General Manager. The Division of Local Government also provided advice on this matter, dated 28 March 2013. Copies of both advices are attached to the Minutes.

Note: The General Counsel at the meeting, verbally confirmed his advice to Councillors that all Councillors could participate in the discussion and voting on the matter on the basis that Council delegates this matter to the Acting General Manager.

Note: The Mayor, Councillor Petch disclosed a Pecuniary Interest in this Item for the reason that he is a defendant in a court case actions.

Note: Councillor Laxale disclosed a Significant Non-Pecuniary Interest in this Item for the reason that he has a relationship with former Councillor Butterworth.

Note: Councillor Simon disclosed a Significant Non-Pecuniary Interest in this Item for the reason that he is friends with people subject to the proceedings.

Note: Councillor Perram disclosed a Pecuniary Interest in this Item for the reason that he is a defendant in Supreme Court Proceedings for which costs have yet to be determined.

Note: Councillor Salvestro-Martin disclosed a Significant Non-Pecuniary Interest in this Item for the reason that he is a listed person.

Note: Councillor Li disclosed a Pecuniary Interest in this Item for the reason that he is a defendant in these proceedings.

RESOLUTION: (Moved by Councillors Simon and Pickering)

- (a) That Council delegate the Supreme Court Proceedings matter to Council's Acting General Manager, Danielle Dickson.
- (b) That the Acting General Manager provide updates at appropriate milestones of the process that only cover progress of the matter.

Record of Voting:

For the Motion: Unanimous

NATIONAL ANTHEM

The National Anthem was sung at the conclusion of the meeting.

The meeting closed at 10.32pm on 9 April 2013.

CONFIRMED THIS 23RD DAY OF APRIL 2013

Chairperson

Note: In Council's consideration of the Supreme Court Proceedings Matter, the advice to Councillors from Council's General Counsel, Bruce McCann and the Division of Local Government, is attached to these Minutes.

From: Carol Mikaelian **On Behalf Of** Desk Help (Councillors Helpdesk)
Sent: Tuesday, 2 April 2013 4:01 PM
To: DL Councillors
Cc: Roy Newsome
Subject: Supreme Court proceedings and Payment of Expenses and Provision of Facilities for the Mayor and Other Councillors Policy
Importance: High

Dear Councillors

On 26 March 2013 I provided Council's Group Manager-Corporate Services, Roy Newsome with written advice on how Council could overcome a potential loss of quorum at meetings where a number of Councillors might declare either a **pecuniary or significant non-pecuniary** interest with respect to the costs issue in the Supreme Court Proceedings. A copy of that advice is attached for the information of Councillors.

Advice was also sought from the Division of Local Government about the operation of the new Model Code of Conduct where Council faced a possible loss of quorum as a result of compliance with the requirements for the management of **significant non-pecuniary** conflicts of interest.

The Division's response also deals with the ability of "conflicted" Councillors to participate in a decision to approve a policy on the Payment of Expenses and Provision of Facilities for the Mayor and Other Councillors. A copy of the Division's letter dated 28 March 2013 is attached for the information of Councillors.

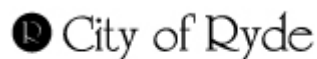
Sincerely

Bruce McCann | General Counsel | Public Officer
P: (02) 9952 8080 | **F:** (02) 9952 8088
E: bmccann@ryde.nsw.gov.au | www.ryde.nsw.gov.au

Sent via,

COUNCILLORS' HELP DESK

P: 9952 8200 | **E:** helpdesk@ryde.nsw.gov.au | www.ryde.nsw.gov.au



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MEMORANDUM

To: Roy Newsome – Group Manager Corporate Services
From: Bruce McCann – General Counsel / Public Officer
Date: 26 March 2013
Subject: Supreme Court Proceedings – Costs Issue and Conflicts of Interest

Roy

I note from the Mayor's email to you of 25 March 2013 that there are now six (6) Councillors who propose to declare a pecuniary interest that would disqualify them from participating in any meeting of Council to discuss the issue of costs in the Supreme Court Proceedings.

The inability of the six (6) Councillors to participate in the scheduled Extra Ordinary Meeting of Council on Wednesday 27 March 2013 would have the effect of rendering that meeting inquorate. I note the Mayor's advice that four (4) Councillors, including himself, have a direct pecuniary interest. These would be the defendant Councillors. The Mayor indicates there are another two (2) Councillors who have declared a pecuniary interest. If in fact those two (2) other Councillors who were not directly involved in the Supreme Court Proceedings have or will declare a pecuniary interest, then it would be in order for the Acting General Manager to write to the Minister of Local Government seeking the Minister's Consent under Section 458 of the Local Government Act for them to participate in and vote on the matter.

If at the Extra Ordinary meeting the two (2) non defendant Councillors declare a non pecuniary interest then Section 458 of the Act cannot be relied upon as the section only relates to "pecuniary" interests.

Councils Code of Conduct specifically caters for this scenario where there is a loss of quorum as a result of compliance with the Conflict of Interest provisions of the Code. The relevant extract of the Code, states:-

Part 4 Conflict of Interests

Loss of Quorum as a result of compliance with this Part

- 4.25 Where a majority of councillors are precluded under this Part from consideration of a matter the Council or committee must resolve to delegate consideration of the matter in question to another person.
- 4.26 Where a majority of Councillors are precluded under this Part from consideration of a matter and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part relating to the management of a non –pecuniary conflict of Interests.

- 4.27 The Chief Executive will only exempt a Councillor from complying with a requirement under this Part where:
- a) compliance by Councillors with a requirement under the Part in relation to a matter will result in the loss of a quorum, and
 - b) the matter relates to the exercise of a function of the Council that may not be delegated under Section 377 of the Act.

The function of instructing Maddocks can be delegated to the Acting General Manger under Section 377 of the Act and for this reason the Chief Executive would not grant an exemption under Clause 4.26.

My advice therefore in all the circumstances is that the full Council at the Extraordinary Meeting scheduled for 27 March 2013 could and should resolve to delegate the function of instructing Maddocks Lawyers on behalf of Council, to the Acting General Manger. Clause 4.25 of the Code provides for the matter to be delegated.

Further, it is my view that all Councillors could participate in an appropriately worded resolution delegating authority to the Acting General Manager for the reason that the Council would not be resolving how the Acting General Manger should instruct Maddocks lawyers, but rather that she should instruct them.

I trust the foregoing is of assistance and I invite further inquiry if deemed necessary.

Yours sincerely,



Bruce McCann
General Counsel / Public Officer

PART 4 CONFLICT OF INTERESTS

- 4.1 A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
- 4.2 You must avoid or appropriately manage any conflict of interests. The onus is on you to identify a conflict of interests and take the appropriate action to manage the conflict in favour of your public duty.
- 4.3 Any conflict of interests must be managed to uphold the probity of council decision-making. When considering whether or not you have a conflict of interests, it is always important to think about how others would view your situation.
- 4.4 Private interests can be of two types: pecuniary or non-pecuniary.

What is a pecuniary interest?

- 4.5 A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. (section 442)
- 4.6 A person will also be taken to have a pecuniary interest in a matter if that person's spouse or de facto partner or a relative of the person or a partner or employer of the person, or a company or other body of which the person, or a nominee, partner or employer of the person is a member, has a pecuniary interest in the matter. (section 443)
- 4.7 Pecuniary interests are regulated by Chapter 14, Part 2 of the Act. The Act requires that:
 - a) councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (section 449)
 - b) councillors and members of council committees disclose an interest and the nature of that interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (section 451)
 - c) designated persons immediately declare, in writing, any pecuniary interest. (section 459)
- 4.8 Designated persons are defined at section 441 of the Act, and include, but are not limited to, the general manager and other senior staff of the council.
- 4.9 Where you are a member of staff of council, other than a designated person (as defined by section 441), you must disclose in writing to your supervisor or the general manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

Code of Conduct 2013 – City of Ryde – Standards of Conduct		
Owner: Governance Service Unit	Accountability: Manager, Governance	Policy Number: # <i>Provided by Governance</i>
Trim Reference: D13/7214	Review date: 1 March 2014	Endorsed: Council – 19 February 2013

What are non-pecuniary interests?

4.10 Non-pecuniary interests are private or personal interests the council official has that do not amount to a pecuniary interest as defined in the Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.

4.11 The political views of a councillor do not constitute a private interest.

Managing non-pecuniary conflict of interests

4.12 Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.

4.13 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purposes of clause 4.12.

4.14 How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.

4.15 As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:

- a) a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household
- b) other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
- c) an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.

4.16 If you are a council official, other than a member of staff of council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:

- a) remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official
- b) have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply

4.17 If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.

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- 4.18 If you are a member of staff of council, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.
- 4.19 Despite clause 4.16(b), a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council's decision-making role to council staff through the general manager, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 4.16(b) above.

Reportable political donations

- 4.20 Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 4.21 Where a councillor has received or knowingly benefitted from a reportable political donation:
- a) made by a major political donor in the previous four years, and
 - b) where the major political donor has a matter before council,
- then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 4.16(b).
- 4.22 For the purposes of this Part:
- a) a "reportable political donation" is a "reportable political donation" for the purposes of section 86 of the *Election Funding, Expenditure and Disclosures Act 1981*,
 - b) a "major political donor" is a "major political donor" for the purposes of section 84 of the *Election Funding, Expenditure and Disclosures Act 1981*.
- 4.23 Councillors should note that political donations below \$1,000, or political donations to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.
- 4.24 If a councillor has received or knowingly benefitted from a reportable political donation of the kind referred to in clause 4.21, that councillor is not prevented from participating in a decision to delegate council's decision-making role to council staff through the general manager or appointing another person or body to make the decision in accordance with the law (see clause 4.19 above).

Loss of quorum as a result of compliance with this Part

- 4.25 Where a majority of councillors are precluded under this Part from consideration of a matter the council or committee must resolve to delegate consideration of the matter in question to another person.

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- 4.26 Where a majority of councillors are precluded under this Part from consideration of a matter and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part relating to the management of a non-pecuniary conflict of interests.
- 4.27 The Chief Executive will only exempt a councillor from complying with a requirement under this Part where:
- a) compliance by councillors with a requirement under the Part in relation to a matter will result in the loss of a quorum, and
 - b) the matter relates to the exercise of a function of the council that may not be delegated under section 377 of the Act.
- 4.28 Where the Chief Executive exempts a councillor from complying with a requirement under this Part, the councillor must still disclose any interests they have in the matter the exemption applies to in accordance with the requirements of this Part.
- 4.29 A councillor, who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interests in the matter, is permitted to participate in consideration of the matter, if:
- a) the matter is a proposal relating to
 - i) the making of a principal environmental planning instrument applying to the whole or a significant part of the council's area, or
 - ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the council's area, and
 - b) the councillor declares any interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part.

Other business or employment

- 4.30 If you are a member of staff of council considering outside employment or contract work that relates to the business of the council or that might conflict with your council duties, you must notify and seek the approval of the general manager in writing. (section 353)
- 4.31 As a member of staff, you must ensure that any outside employment or business you engage in will not:
- a) conflict with your official duties
 - b) involve using confidential information or council resources obtained through your work with the council
 - c) require you to work while on council duty
 - d) discredit or disadvantage the council.

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Premier & Cabinet
Division of Local Government

5 O'Keefe Avenue NOWRA NSW 2541
Locked Bag 3015 NOWRA NSW 2541

Our Reference: A320052
Your Reference:
Contact: John Davies
Phone: 02 4428 4139

Ms Danielle Dickson
Acting General Manager
Ryde City Council
Locked Bag 2069
NORTH RYDE NSW 1670

28 MAR 2013

Dear Ms Dickson

I am writing in relation to questions that have been raised about the operation of the new *Model Code of Conduct for Local Councils in NSW* in cases where councils face a possible loss of quorum as a result of compliance with the requirements for the management of significant non-pecuniary conflicts of interests.

Under clause 4.25 of the Model Code, where a majority of councillors are precluded from consideration of a matter because of significant non-pecuniary conflicts of interests, the council must resolve to delegate consideration of the matter to another person where the function in question is a delegable one.

It should be noted that clause 4.19 clearly states that a councillor who has disclosed a significant non-pecuniary conflict of interests in a matter may still participate in a decision to delegate the matter.

Where the function is one that cannot be delegated by the Council under section 377 of the *Local Government Act 1993*, councillors may apply to the Chief Executive of the Division of Local Government for an exemption from compliance with requirements for the management of a significant non-pecuniary conflict of interests. However such an exemption will only be granted where compliance with the requirement will result in the loss of a quorum and the matter relates to a function of the council that cannot be delegated under section 377.

I understand questions have also been raised about whether councillors can participate in a decision to approve a policy on the payment of expenses and provision of facilities for the Mayor and other councillors where they may have a pecuniary interest in the matter.



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Section 448(k) and (l) exempts councillors from a requirement to disclose a pecuniary interest in relation to the payment of fees and expenses to councillors (including the Mayor and Deputy Mayor) and the provision of facilities.

I hope that this information will serve to clarify the situation and will address the concerns expressed by councillors in relation to these matters.

Yours sincerely



Steve Orr
Acting Chief Executive, Local Government
A Division of the Department of Premier and Cabinet