

SHELLHARBOUR CITY COUNCIL

Extraordinary Council Meeting - Thursday 19 April 2007

**Minutes of the Extraordinary Meeting
of Shellharbour City Council
held at the Council Chambers, Warilla
on Thursday 19 April 2007 commencing at 6.05 pm**

Present

His Worship the Mayor	Councillor D Hamilton
A Ward	Councillor M Greig Councillor T Hawker
B Ward	Councillor H Stewart Councillor C Jeffreys
C Ward	Councillor J Bailey Councillor D Briggs
D Ward	Councillor J Leedham Councillor T Hore
E Ward	Councillor C Mifsud Councillor G Rose
F Ward	Councillor B Bird Councillor H Gillett

In attendance

General Manager	B A Weir
Director of Operations & Services	A Webster
Director of Community Planning & Strategies	P O'Rourke
Director Shell Cove Business Unit	P Woodcock
Manager Executive Offices/Executive Assistant	F MastroDomenico
Manager Media & Communications	B Parker
Executive Assistant	J Frasca
Mr David Baird	Maddocks Lawyers
Ms Genevieve Wallace	Maddocks Lawyers
Mr Robin Tarr	KPMG
Mr Stan Gallo	KPMG

Acknowledgement to Country

Shellharbour City Council acknowledges the Traditional Owners and Custodians of the Land on which we are meeting.

1. Apologies / Leave of Absence

Ordinary Council Meeting

Nil

Committee of the Whole Council Meeting

Nil

2. Pecuniary Interest

The Mayor formally asked the Council whether any Councillor had any pecuniary interest to declare at this point in the meeting.

No Councillors declared any pecuniary interest at this point of the meeting.

Councillor Mifsud asked a question of the Mayor and stated that given the importance of the matter to be considered tonight in confidential he wanted to know whether Labor caucused on this issue.

The Mayor responded by stating that as ALP Leader he could advise Councillor Mifsud that Labor does caucus, however what goes on in caucus stays in caucus.

Councillor Rose quoted sections of the Local Government Act, in particular Section 10 of the Local Government Act.

Councillor Rose stated that he wanted it on record that in the past Council has resolved to go into closed session illegally. He stated that the Mayor just says "clear the gallery we are going into confidential", we don't tell the public what we are going into confidential for. He also stated that section 37 of the Act states that members of the public can make representations to Council on whether to close a meeting and we have never done this. Councillor Rose also criticised the General Manager, by name, in regard to Council's meeting practices.

The Mayor replied that Council business papers and minutes indicate the reasons for discussing matters in confidential.

Councillor Rose stated that he was just saying what happened in the past.

The General Manager replied that the Department of Local Government had closely scrutinised Council's Meeting procedures over the last 12 months and had found them to be satisfactory.

Councillor Stewart quoted section 10(a)(2)(g) of the Act and asked whether Council was going into confidential because of that section. She stated that Council can only discuss present court action under that section and nothing about Councillors.

The General Manager advised that he was quite confident to state that given the close scrutiny of the business papers by legal representatives he was satisfied that Council's business papers and minutes are satisfactory.

Mr Baird advised that the advice that Council will be receiving tonight by both Maddocks and KPMG will canvas a wide range of information regarding current litigation and other information relating to legal professional privilege. Council is entitled to hear advice on current litigation, past history, the current status of the investigation and receive advice on the process from here, in a closed Council meeting.

Councillor Stewart again stated that she was making a point of the way Council goes into confidential session.

3. Confidential Business (Committee of the Whole)

In accordance with the *Local Government Act 1993*, and the *Local Government (General) Regulation 2005*, in the opinion of the General Manager, the following business is of a kind as referred to in Section 10A(2) of the Act, and should be dealt with in a Confidential Session of the Council meeting closed to the press and public.

Set out below is Section 10A(2) of the Local Government Act 1993, in relation to Confidential Business:

10A(2) Which parts of a meeting can be closed to the public? The matters and information are the following:

- (a) personnel matters concerning particular individuals;
- (b) the personal hardship of any resident or ratepayer;
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business;
- (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret,
- (e) information that would, if disclosed, prejudice the maintenance of law;
- (f) matters affecting the security of the council, councillors, council staff or council property;
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.

CONFIDENTIAL ITEMS

3.1 Investigation into leaking of Confidential Council Information (8716432)

Reason for Confidentiality

This item is classified CONFIDENTIAL under the provisions of Section 10A(2)(g) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following:

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(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

This report may not be considered in open Council and would on balance be contrary to the public interest in that it details matters which concern individuals and could result in further investigative action and legal action in relation to persons alleged to have breached the *Local Government Act 1993*. Council therefore must be mindful of procedural fairness.

159 RESOLVED: Hore/Jeffreys

1. That Council resolve into Committee of the Whole to consider the above business as listed, together with any late reports tabled at the meeting.
2. That pursuant to Section 10A(1-3) of the *Local Government Act 1993*, the press and public be excluded from the proceedings on the basis that the business to be considered is classified confidential under the provisions of Section 10A(2)(g) of the Act on the basis outlined above.
3. That the correspondence and reports relevant to the subject business be withheld from access to the press and public in accordance with Section 11(2) of the *Local Government Act 1993*.

CARRIED with four dissenting votes (Councillors Bailey, Mifsud, Stewart & Rose)

Meeting adjourned at 6.20pm

Meeting resumed at 9.28pm

4. Recommendations from Committee of the Whole

The following Recommendation to Council from the Committee of the Whole Council was read to the Meeting by the General Manager.

COMMITTEE RECOMMENDATION:

1. That the General Manager's actions in relation to the investigation, referral to appropriate agencies and legal proceedings to date be endorsed.
2. That the General Manager be authorised to, at his discretion, issue a press release which informs the media and the public of the outcome of the investigation to date, while not waiving legal professional privilege.

160 RESOLVED: Bird/Gillett. That the Recommendation to Council from the Committee of the Whole Meeting held earlier today be adopted.

CARRIED

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Meeting closed 9.32pm

CONFIRMED as a correct record of proceedings at the Ordinary Meeting of the Council of the City of Shellharbour held 1 May 2007

General Manager

Chairperson