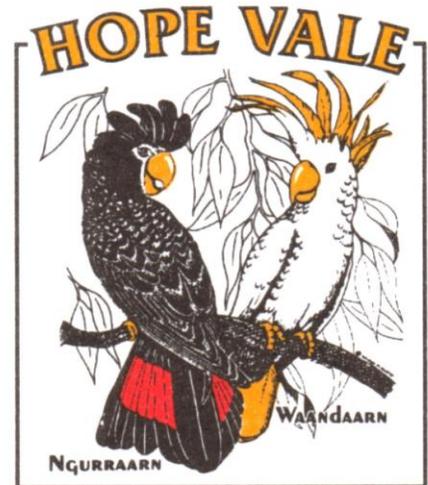


HOPE VALE ABORIGINAL SHIRE COUNCIL



Council Model Meeting Procedures

Document Control

Document Details:

Document Reference Number: 0003/30
Version Number: 2
Business Unit: Governance
Scheduled Review Date: Remain in force until otherwise determined by Council

Version History

Version Number	Date	Signature	Reason / Comments
1	28 November 2018		Council Resolution
2	14 October 2020		Council Resolution

COUNCIL MODEL MEETING PROCEDURES

ORIGIN/AUTHORITY

Local Government Act 2009
Chapter 5A, Division 5
Sections 150F, 150EW, 150ET, 257
Local Government Regulation 2012
Sections 254J

OBJECTIVES

The purpose of the model meeting procedures is to set out certain procedures to ensure the local government principles are reflected in the conduct of council meetings, standing and advisory committee meetings as defined in the Local Government Regulation 2012 (LGR). However, model meeting procedures do not apply to meetings of the council's audit committee.

It is not intended that the model meeting procedures would deal with all aspects of meeting conduct but only those required to strengthen public confidence in council to deal with the conduct of councillors in meetings.

As required under section 150F of the Local Government Act 2009 (the LGA) this document sets out:

- the process for how a chairperson of a council meeting may deal with instances of unsuitable meeting conduct by councillors, and
- the process for how suspected inappropriate conduct of a councillor referred to the local government by the Independent Assessor (IA) is to be dealt with at a council meeting.

PROCESSES

Process for dealing with unsuitable meeting conduct by a Councillor in a meeting

The conduct of a councillor is unsuitable meeting conduct if the conduct happens during a council meeting and contravenes a behavioural standard of the code of conduct for councillors. When dealing with an instance of unsuitable conduct by a councillor in a meeting, the following procedures must be followed:

- 1.1 The chairperson must reasonably believe that unsuitable meeting conduct has been displayed by a councillor at a meeting.
- 1.2 If the Chairperson decides the unsuitable meeting conduct has occurred, the Chairperson must consider the severity of the conduct and whether the Councillor has had any previous warnings for unsuitable meeting conduct issued. If the Chairperson decides the conduct is of a serious nature or another warning is unwarranted, proceed to step 1.7.

- 1.3 If the Chairperson decides unsuitable meeting conduct has occurred but is of a less serious nature, the Chairperson may request the Councillor take remedial actions such as:
 - 1.3.1 Ceasing the unsuitable meeting conduct and refraining from exhibiting the conduct
 - 1.3.2 Apologising for their conduct
 - 1.3.3 Withdrawing their comments.
 - 1.4 If the Councillor complies with the Chairperson's request for remedial action, no further action is required.
 - 1.5 If the Councillor fails to comply with the Chairperson's request for remedial action, the Chairperson may warn the Councillor that failing to comply with the request may result in an order being issued.
 - 1.6 If the Councillor complies with the Chairperson's warning and request for remedial action, no further action is required.
 - 1.7 If the councillor continues to fail to comply with the chairperson's request for remedial action or the chairperson decided a warning was not appropriate under 1.3, the chairperson may make one or more of the orders below:
 - 1.7.1 an order reprimanding the Councillor for the conduct
 - 1.7.2 an order requiring the Councillor to leave the meeting, including any area set aside for the public and stay out for the duration of the meeting.
 - 1.8 If the Councillor fails to comply with an order to leave and stay away from the meeting, the Chairperson can issue an order that the Councillor be removed from the meeting.
 - 1.9 Following the completion of the meeting, the Chairperson must ensure:
 - 1.9.1 details of any order issued is recorded in the minutes of the meeting
 - 1.9.2 if it is the third or more order within a 12-month period made against a Councillor or the Councillor has refused to comply with an order issued to leave the meeting, these matters are to be dealt with at the next meeting of council and treated as inappropriate conduct
 - 1.9.3 the council's chief executive officer (CEO) is advised to ensure details of any order made must be updated in the council's councillor conduct register.
 - 1.10 Any councillor aggrieved with an order issued by the Chairperson can move a motion of dissent for parts 1.1, 1.7 and 1.8 above.
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Meeting process for dealing with suspected Inappropriate Conduct which has been referred to a Local Government by the IA

Pursuant to Chapter 5A, Division 5 of the LGA (Referral of conduct to local government) a referral from the IA of inappropriate conduct or an instance of suspected inappropriate conduct may arise from circumstances under paragraph 1.9.2 of this document.

In either case, the council must complete an investigation into the alleged conduct:

- consistent with any recommendations from the IA; and
- consistent with the council's investigation policy; or
- in another way decided by resolution of the council.

After the completion of the investigation, the council must decide in a council meeting, whether the councillor has engaged in inappropriate conduct, unless it has delegated responsibility for this decision under section 257 of the LGA.

When dealing with an instance of suspected inappropriate conduct which has been referred to a council by the IA:

- 2.1 The council must be consistent with the local government principle of transparent and accountable decision making in the public interest by dealing with suspected inappropriate conduct in an open meeting of the council. However, where the matter may directly affect the health and safety of the complainant due to the nature of the complaint, the council may resolve to go into closed session under section 254J of the LGR to discuss the allegation.
- 2.2 The subject councillor has a declarable conflict of interest in the matter and is permitted by the council to remain in the meeting during the debate about whether the councillor engaged in the inappropriate conduct and answer questions put to the subject councillor through the chairperson to assist the other councillors in making a decision. The permission to remain in the meeting for the debate is on the condition that the subject councillor must leave the place where the meeting is being held, including any area set aside for the public, during the vote on whether they have committed inappropriate conduct and what, if any, penalty to impose if the councillor is found to have committed inappropriate conduct.
- 2.3 Should the complainant be a councillor, that councillor may have a declarable conflict of interest in the matter and if so, must follow the declarable conflict of interest procedures in section 4. If the complainant councillor who has a conflict of interest, wishes to remain in the meeting during the debate and vote on the matter, the other councillors must decide how to deal with the conflict of interest under section 4. The complainant councillor can be ordered to leave the meeting place or conditions may be applied to allow that councillor to participate in either the debate, the vote or the decision on any disciplinary action to be applied.
- 2.4 The council must debate the issue and decide whether the subject councillor engaged in inappropriate conduct. If the council has lost quorum due to the number of conflicted councillors or another reason, the matter must be delegated consistent with section 257 of the LGA or deferred to another date when a quorum will be present.
- 2.5 If a decision is reached that the subject councillor has engaged in inappropriate conduct, then the councillors must decide what penalty or penalties from the orders detailed in 2.6, if any, to impose on the councillor. In deciding what penalty to impose, the council may consider any previous inappropriate conduct of the councillor and any allegation made in the investigation that was admitted, or not challenged, and that the council is reasonably satisfied is true
- 2.6 The council may order that no action be taken against the councillor or make one or more of the following:
 - 2.6.1 an order that the councillor make a public admission that the councillor has engaged in inappropriate conduct
 - 2.6.2 an order reprimanding the councillor for the conduct
 - 2.6.3 an order that the councillor attend training or counselling to address the councillor's conduct, including at the councillor's expense
 - 2.6.4 an order that the councillor be excluded from a stated council meeting

- 2.6.5 an order that the councillor is removed, or must resign, from a position representing the local government, other than the office of councillor, for example that the councillor is ordered to resign from an appointment representing the local government on a state board or committee
- 2.6.6 an order that if the councillor engages in the same type of conduct again, it will be treated as misconduct
- 2.6.7 an order that the councillor reimburse the council for all or some of the costs arising from the councillor's inappropriate conduct.
- 2.7 A local government may not make an order under 2.6.3; 2.6.4; 2.6.5; 2.6.6 in relation to a person who is no longer a councillor.
- 2.8 The subject councillor, and where relevant, the complainant councillor, must be invited back into the place where the meeting is being held once a decision has been made, and the chairperson must advise them of the details of the decision.
- 2.9 The chairperson must ensure the meeting minutes reflect the resolution made.

Prescribed Conflict of Interest

Councillors are ultimately responsible for informing of any prescribed conflict of interest on matters to be discussed at a council meeting, standing or advisory committee meeting (other than ordinary business matters). When dealing with a prescribed conflict of interest, councillors must abide by the following procedures:

- 3.1 A councillor who has notified the chief executive officer of a prescribed conflict of interest in a matter to be discussed in a council meeting must also give notice during the meeting.
- 3.2 A councillor who first becomes aware of a prescribed conflict of interest in a matter during a council meeting must immediately inform the meeting of the conflict of interest.
- 3.3 When notifying the meeting of a prescribed conflict of interest, the following details must, at a minimum, be provided:
 - 3.3.1 if it arises because of a gift, loan or contract, the value of the gift, loan or contract
 - 3.3.2 if it arises because of an application or submission, the subject of the application or submission
 - 3.3.3 the name of any entity, other than the councillor, that has an interest in the matter
 - 3.3.4 the nature of the councillor's relationship with the entity that has an interest in a matter
 - 3.3.5 details of the councillor's and any other entity's interest in the matter.
- 3.4 The councillor must then leave the place of the meeting, including any area set aside for the public, and stay away while the matter is being discussed and voted on, unless the subject councillor has written notice from the Minister to participate in the matter.
- 3.5 Once the councillor has left the area where the meeting is being conducted, the council can continue discussing and deciding on the matter at hand.

Declarable Conflict of Interest

Councillors are ultimately responsible for informing of any declarable conflict of interest on matters to be discussed at council meetings, standing or advisory committee meetings that might lead to a decision that is contrary to the public interest (other than ordinary business matters).

A councillor may raise their personal interests in a matter at the meeting to canvas the view of the other councillors prior to deciding to declare a conflict of interest. If the other councillors suspect the personal interest might be a conflict of interest, the councillor may disclose their suspicion and the processes under section 150EW of the LGA applies.

When dealing with a declarable conflict of interest, councillors must abide by the following procedures:

- 4.1 A councillor who has notified the chief executive officer of a declarable conflict of interest in a matter to be discussed at a council meeting must also give notice during the meeting.
- 4.2 A councillor who first becomes aware of a declarable conflict of interest in a matter during a council meeting must inform the meeting of the conflict of interest.
- 4.3 When notifying the meeting of a declarable conflict of interest, councillors should provide sufficient detail to allow the other councillors to make an informed decision about how best to manage the declarable conflict of interest in the public interest. The following minimum details must be provided:
 - 4.3.1 the nature of the declarable conflict of interest
 - 4.3.2 if it arises because of the councillor's relationship with a related party:
 - i. the name of the related party to the councillor
 - ii. the nature of the relationship of the related party to the councillor
 - iii. the nature of the related party's interest in the matter
 - 4.3.3 if it arises because of a gift or loan from another person to the councillor or a related party:
 - i. the name of the other person
 - ii. the nature of the relationship of the other person to the councillor or related party
 - iii. the nature of the other person's interest in the matter
 - iv. the value of the gift or loan and the date the gift or loan was made.
- 4.4 After a councillor has declared a conflict of interest, the councillor should consider leaving the meeting while the matter is discussed unless they have reasons why their participation would improve making the decision in the public interest.
- 4.5 If the councillor chooses not to leave the meeting, the councillor may advise the other councillors of their reasons for seeking permission to participate in making the decision.
- 4.6 The other councillors at the meeting must then decide, by resolution, whether the councillor can participate in the decision making in relation to the matter, including voting on the matter, or whether they should not participate in the decision and leave the place of the meeting while the matter is decided by the non-conflicted councillors. The non-conflicted councillors may impose conditions on the councillor under a decision to either participate or leave the meeting e.g. may stay for the debate but must leave for the vote. The councillor must comply with any decision or condition imposed by the non-conflicted councillors
- 4.7 In deciding on whether a councillor may participate in a decision about a matter in which the councillor has a declarable conflict of interest, only councillors who do not themselves have a prescribed or declarable conflict of interest in the matter are eligible to participate in the decision making. The decision may be made even if the number of those councillors is less than a majority or less than a quorum for the meeting consistent with section 150ET of the LGA.

- 4.8 The councillor who is the subject of the decision may remain in the meeting while the debate is occurring and can participate by answering questions from the chairperson to assist the other councillors in making their decision. The subject councillor must not vote or otherwise participate in making the decision but may remain in the meeting while the vote on the matter takes place and the decision is declared by the chairperson, on whether the councillor may remain in the meeting and participate in deciding the matter in which the councillor has a declarable conflict of interest.
- 4.9 When deciding whether a councillor may participate in the decision making on a matter in which they have a declarable conflict of interest, the other councillors should consider the circumstances of the matter including, but not limited to:
- 4.9.1 how does the inclusion of the councillor in the deliberation affect the public trust
 - 4.9.2 how close or remote is the councillor's relationship to the related party
 - 4.9.3 if the declarable conflict of interest relates to a gift or other benefit, how long ago was the gift or benefit received
 - 4.9.4 will the benefit or detriment the subject councillor or their related party stands to receive from the decision have major or minor impact on them
 - 4.9.5 how does the benefit or detriment the subject councillor stands to receive compare to others in the community
 - 4.9.6 how does this compare with similar matters that council has decided and have other councillors with the same or similar interests decided to leave the meeting
 - 4.9.7 whether the subject councillor has unique skills, knowledge or expertise that might help make the best decision in the public interest.
- 4.10 If the non-conflicted councillors cannot decide about the declarable conflict of interest of a councillor, they are taken to have decided that the councillor must leave and stay away from the meeting while the non-conflicted councillors discuss and vote on the matter.
- 4.11 A decision about a councillor who has a declarable conflict of interest in a matter applies in relation to the councillor for participating in the decision, and subsequent decisions, about the same matter unless there is a change to the councillor's personal interests and/or the nature of the matter being discussed. If the non-conflicted councillors decide that the councillor can act in the public interest on the matter, then the councillor may participate in the meeting and be involved in processes occurring outside of a council meeting about the same matter e.g. briefing sessions or workshops.
- 4.12 In making the decision under 4.6 and 4.9, it is irrelevant how the subject councillor intended to vote on the issue or any other issue (if known or suspected).
- 4.13 A councillor does not contravene the above procedures if the councillor participates in a decision under written approval from the Minister.

Reporting a suspected conflict of interest

- 5.1 If a councillor at a meeting reasonably believes or suspects that another councillor has a personal interest in a matter that may be a prescribed or declarable conflict of interest, and that councillor is participating in a decision on that matter, the councillor must immediately inform the chairperson of the meeting of their belief or suspicion, and the facts and circumstances that led to their belief or suspicion.
- 5.2 The chairperson should ask the relevant councillor with the suspected personal interest whether they have any prescribed or declarable conflict of interest in the matter. If the councillor agrees they have a conflict of interest, the councillor must follow the relevant

- procedures above. 5.3 If the councillor believes they do not have a conflict of interest, they must inform the meeting of that belief and their reasons for that belief.
- 5.4 The non-conflicted councillors must then decide whether the councillor has a prescribed conflict of interest, a declarable conflict of interest or that the councillor does not have a prescribed or declarable conflict of interest in the matter. If the meeting decides the councillor has a conflict of interest, the councillor must follow the relevant procedures above.
- 5.5 If the councillors cannot reach a majority decision then they are taken to have determined that the councillor has a declarable conflict of interest.

Loss of quorum

- 6.1 In the event where one or more councillors leave a meeting due to a prescribed or declarable conflict of interest in a matter that results in a loss of a quorum for deciding the matter, the council must resolve to:
- delegate the consideration and decision on the matter, pursuant to section 257 of the LGA; or
 - defer the matter to a later meeting
 - not to decide the matter and take no further action in relation to the matter.

All councillors including the conflicted councillors, may participate in deciding to delegate or defer a matter.

- 6.2 The council must not delegate a decision to an entity if the entity, or a majority being at least half of its members, has a prescribed or declarable conflict of interest in the matter.
- 6.3 If the matter cannot be delegated under an Act, the council should seek ministerial approval for the councillors to be able to consider and vote on the matter, subject to any conditions the Minister for Local Government may impose.

Recording prescribed and declarable conflicts of interest

When a councillor informs a meeting that they or another councillor have a prescribed or declarable conflict of interest in a matter, the minutes of the meeting must record all of the relevant details of how the conflict of interest was dealt with, being:

- the name of any councillor and any other councillor who may have a prescribed or declarable conflict of interest
- the particulars of the prescribed or declarable conflict of interest provided by the councillor
- the actions taken by a councillor after informing the meeting that they have, or they reasonably suspect another councillor has a prescribed or declarable conflict of interest
- any decision then made by the eligible councillors
- whether the councillor with a prescribed or declarable conflict of interest participated in or was present for the decision under ministerial approval
- the council's decision on what actions the councillor with a declarable conflict of interest must take and the reasons for the decision
- the name of each councillor who voted on the matter and how each voted
- If the councillor has a declarable conflict of interest the following additional information must be recorded in the minutes of the meeting when the meeting is informed of a councillor's personal interest by someone other than the councillor, the name of each

councillor who voted in relation to whether the councillor has a declarable conflict of interest, and how each of the councillors voted

- where a decision has been made under section 4.6 above – the minutes must include the decision and reasons for the decision, and the name of each eligible councillor who voted and how each eligible councillor voted.

Closed meetings

Council meetings, standing and advisory committee meetings may resolve that a meeting be closed to the public if its councillors consider it necessary to discuss any of the following matters:

- appointment, dismissal or discipline of the CEO or, in the case of Brisbane City Council only, for senior executive employees
- industrial matters affecting employees
- the council's budget
- rating concessions
- legal advice obtained by the council, including legal proceedings that may be taken by or against the council
- matters that may directly affect the health and safety of an individual or a group of individuals
- negotiations relating to a commercial matter involving the council for which a public discussion could prejudice the interests of the council
- negotiations relating to the taking of land by the council under the Acquisition of Land Act 1967
- a matter that the council is required to keep confidential under a law of, or a formal agreement with, the Commonwealth or state.

A council meeting, standing and advisory committee meeting cannot resolve that a meeting be closed where the meeting is informed of a councillor's personal interest in the matter by another person and the eligible councillors at the meeting must decide whether the councillor has a declarable conflict of interest in the matter.

Further, the meeting must not be closed if a quorum is lost due to the number of conflicted councillors who leave the meeting and the council must;

- delegate the matter
- decide by resolution to defer to a later meeting
- decide by resolution to take no further action on the matter.

None of the above will be considered, discussed, voted on or made during a closed session.

If a closed session includes attendance by teleconference, the councillor/s attending by teleconference must maintain confidentiality by ensuring no other person can hear their conversation while in the closed meeting.

To take a matter into a closed session the council must abide by the following:

- 8.1 Pass a resolution to close the meeting.
- 8.2 The resolution must state the matter to be discussed, an overview of what is to be discussed and why the meeting should be closed while the matter is considered.

- 8.3 If the matter is known in advance, the agenda should clearly identify that the matter will be considered in closed session, and an explanation of why it is deemed necessary to take the issue into closed session must be stated.
- 8.4 Not make a resolution while in a closed meeting (other than a procedural resolution).

Teleconferencing meetings

- 9.1 If a councillor wishes to be absent from a council meeting place during a meeting, the councillor must apply to the chairperson to participate by teleconference, at least three business days prior to the meeting or as soon as practicable once the councillor becomes aware of their intended absence. The chairperson may allow a councillor to participate in a council meeting, standing or advisory committee meeting by teleconference.
- 9.2 A councillor taking part by teleconference is taken to be present at the meeting if the councillor was simultaneously in audio contact with each other person at the meeting. The attendance of the councillor must be recorded in the minutes as present at the meeting.

Note: Teleconferencing includes the use of a telephone, video conferencing equipment or other means of instant communication that allows a person to take part in a discussion as it happens.

- 9.3 In order for councils to manage the safety rules during the COVID-19 pandemic, changes have been added to the LGR that will expire in June 2021. These provisions allow the council:
 - the option to conduct the entire council meeting via phone, teleconference or video conference
 - where possible, that they must provide streaming or other facilities so that the public can observe or hear the meeting as it is happening, at one of the council's public offices or on the council's website
 - chairperson the option to close the meeting on health and safety grounds to protect participants or observers from risk of exposure to COVID-19.

For Consideration by Council on the 14 October 2020

Mark Kelleher
Chief Executive Officer

12/10/2020