



GLAMORGAN SPRING BAY
COUNCIL

Special Meeting Minutes

For the Special
Meeting of Council
held at the
Triabunna
Council Offices

20 February, 2018

NOTICE OF SPECIAL MEETING

Notice is hereby given that the Mayor has called a Special Meeting of the Glamorgan Spring Bay Council to be held at the Triabunna Council Offices on Tuesday the 20th February at 5pm.



Dated this Friday 16th February, 2018

**David Metcalf
GENERAL MANAGER**

"I certify that with respect to all advice, information and recommendations provided to Council with this agenda:

- 1. The advice, information or recommendation is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation, and**
- 2. Where any advice is given directly to the Council by a person who does not have the required qualifications or experience, that person has obtained and taken into account in that person's general advice the advice from any appropriately qualified or experienced person. "**

Note: Section 65 of The Local Government Act 1993 states:

- (1) A general manager must ensure that any advice, information or recommendation given to the council or a council committee is given by a person who has the qualifications or experience necessary to give such advice, information or recommendation.**
- (2) A council or council committee is not to decide on any matter which requires the advice of a qualified person without considering such advice unless the general manager certifies in writing that such advice was obtained and taken into account in providing general advice to the council or council committee.**



**David Metcalf
GENERAL MANAGER**

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Live Streaming and Audio/Video Recording of Ordinary Meetings of Council

As determined by Glamorgan Spring Bay Council in April 2017 all Ordinary and Special Meetings of Council are to be audio/visually recorded and streamed live. A link is available on the Glamorgan Spring Bay Council website to the YouTube platform, where the public can view the meeting live and watch recordings of previous Council meetings.

In accordance with the Local Government Act 1993 and Regulation 33, these video/audio files will be retained by Council for at least 6 months and made available for viewing live, as well as online within 5 days of the scheduled meeting. The written minutes of a meeting, once confirmed, prevail over the video/audio recording of the meeting.

1. Opening

The Mayor welcomed Councillors and staff and declared the meeting open at 5.00pm.

1.1 Present and Apologies

Present: Mayor Michael Kent, Deputy Mayor Cheryl Arnol, Cllr Jenifer Crawford, Cllr Britt Steiner, Cllr Debbie Wisby.

Apologies: Cllr Mick Fama, Cllr Richard Parker, Cllr Jenny Woods

1.2 In Attendance

David Metcalf (General Manager), Angela Turvey (Executive Officer) and approximately 20 members of the public.

1.3 Declaration of Pecuniary Interests

In accordance with Regulation 8 of the Local Government (Meeting Procedures) Regulations 2005, the Mayor requests Elected Members to indicate whether they or a close associate have, or likely to have, a pecuniary interest in any item included in the Agenda.

2. Notice of Motions – Request for the Mayor to relinquish the mayoral position whilst campaigning for State parliament and loss of confidence in Mayor Kent

Please note:

- Mayor Kent left the meeting at 5.05pm due to a conflict of interest with Item 2, given these motions were both related to his position as Mayor.
- The Deputy Mayor, Cllr Cheryl Arnol became the Chair of the meeting.
- The meeting no longer had a quorum.
- Based on legal advice it has been confirmed that the meeting was incorrectly abandoned under r. 12 (2) of the *Local Government (Meeting Procedures) Regulations 2015* rather than adjourned as per r.11 (6). Please find attached Council's legal advice on the matter.
- The meeting was “abandoned” at 5.15pm.

Responsible Officer – General Manager

Author: Cllr. Jenifer Crawford

Date: 10th February 2018

Request to the Mayor to relinquish the mayoral position whilst campaigning for State parliament seat

Background

Since the media announcement that Mayor Kent was standing for a seat in the Tasmanian House of Assembly in the current election, I have received emails and am continually being approached by ratepayers and residents regarding the concern that Cllr. Kent is still in the position of Mayor whilst campaigning for a seat in the Tasmanian House of Assembly and they believe this is not in the best interest of Council or the municipal area.

The Local Government Act states that in my capacity as an individual councillor two of my roles are to represent the community as well as to act in the best interests of the community. I believe that Cllr. Kent remaining in the position of Mayor while campaigning to be elected as a State politician is not in the best interests of the community. Whilst I acknowledge that the Local Government Act 1993 allows for this to occur I nonetheless ask Council to support the request to Cllr. Kent to step down from his position as Mayor immediately until such time as the results of the election are declared.

Local Government Act 1993

Section 28 - Functions of councillors

(1) A councillor, in the capacity of an individual councillor, has the following functions:

- (a) to represent the community;
- (b) to act in the best interests of the community;

Loss of Confidence in Mayor Kent

Background

Mayor Kent has failed to act as a leader of the community of the municipal area; to comply with meeting regulations; to act as the spokesperson of the council and to appropriately oversee the councillors in the performance of their functions and in the exercise of their powers.

Mayor Kent refused to adhere to *The Local Government (Meeting Procedures) Regulations 2005 Section 23 Point of order 1 (b), (2) and (3).*

GENERAL MANAGER COMMENTS

Section 23 of the act reads as follows:

23. Point of order at meeting

- (1) A councillor at a meeting may raise a point of order if –*
(a) a councillor speaking raises an issue that is irrelevant to the motion being discussed;
or
(b) a councillor speaking is being interrupted or distracted; or
(c) the councillor is of the opinion that a meeting procedure is contrary to the Act or these regulations; or
(d) the councillor has been misrepresented during the debate; or
(e) a statement is made by a councillor speaking that the councillor raising the point of order believes is, or is likely to be, offensive to a councillor or to another individual.
(2) A councillor who is interrupted by the taking of a point of order is to cease speaking.
(3) The chairperson is to deal with a point of order as soon as it is raised and before the meeting resumes to deal with other business.
(4) The chairperson's ruling on a point of order –
(a) is not to be questioned; and
(b) is binding on the meeting.

Mayor Kent has failed to comply with meeting regulations and by doing so treats Council with a lack of respect and damages Council's reputation.

An example:

At the January 2018 Ordinary Meeting of Glamorgan Spring Bay Council, Mayor Kent refused to adhere to *The Local Government (Meeting Procedures) Regulations 2005 Section 23 Point of order 1 (b), (2) and (3)* re points of order called by Councillors on at least three occasions.

Mayor Kent has failed to adhere to *The Local Government Act 1993 Section 27 (1) (aa), (1) (b) and (c); Section 27 (1A).*

Mayor Kent is not being a leader; instead he is causing division within our communities and negatively impacting on Council's reputation.

Examples:

- The Mayor's public attack last year on non-permanent ratepayers, whom he disparagingly referred to as "shackies", is not consistent with the roles and responsibilities of a Mayor.
- Letter to the Bicheno Community Development Association as presented in the Glamorgan Spring Bay Council January 2018 Ordinary meeting agenda where Mayor Kent puts his own personal view forward but on Office of the Mayor letterhead.

- Interview with Leon Compton, ABC radio, on the 31st January 2018 regarding Council's decision to not continue with the Council merger Board of Review process. Mayor Kent publicly, as Mayor and spokesperson of the Council, questioned Council's decision, misreported and misrepresented Council's decision on the Feasibility Study and Council's decision not to continue to a Board of Enquiry for the voluntary merger process.

Mayor Kent publicly questioned seven Councillors integrity in respect to a questionnaire on voluntary amalgamation process. Mayor Kent was invited to all councillor discussions regarding the questionnaire and provided with a copy of the questionnaire for comment prior to printing. Mayor Kent attended no meetings and made no comment to any Councillor involved.

If Mayor Kent had a problem with the Councillors performance to carry out their functions and to exercise their powers, he had ample opportunity to raise his concerns at the appropriate time and in a professional manner.

GENERAL MANAGER COMMENTS

There is no section of the act Section 27(1) (aa)

Section 27 of the act reads as follows:

27. Functions of mayors and deputy mayors

- (1) The functions of a mayor are—
 - (a) to act as a leader of the community of the municipal area; and
 - (b) to carry out the civic and ceremonial functions of the mayoral office; and
 - (c) to promote good governance by, and within, the council; and
 - (d) to act as chairperson of the council and to chair meetings of the council in a manner that supports decision-making processes; and
 - (e) to act as the spokesperson of the council; and
 - (f) to represent the council on regional organisations and at intergovernmental forums at regional, state and federal levels; and
 - (g) to lead and participate in the appointment, and the monitoring of the performance, of the general manager; and
 - (h) to liaise with the general manager on –
 - (i) the activities of the council and the performance and exercise of its functions and powers; and
 - (ii) the activities of the general manager and the performance and exercise of his or her functions and powers in supporting the council; and
 - (i) any function imposed by an order under section 27A ; and
 - (j) any other function imposed by this or any other Act.
 - (aa)
 - (ba)
- (1A) The mayor or deputy mayor is to represent accurately the policies and decisions of the council in performing the functions of mayor or deputy mayor.
- (2) The deputy mayor is to act in the position of mayor and exercise the powers and perform the functions of mayor if—
 - (a) the mayor is absent from duty as Mayor or from the State, otherwise unavailable for duty as mayor or unable to perform the functions of mayor; and
 - (b) the mayor or the council, by notice in writing, appoints the deputy mayor to act in the position.
- (2A) The mayor, by notice in writing, may delegate for a specified period –
 - (a) either or both of the functions referred to in subsection (1)(e) and (f) to the deputy mayor, a councillor or the general manager; and
 - (b) any other power or function of the mayor, other than the function referred to in subsection (1)(d) , to the deputy mayor.
- (3) An appointment under subsection (2) remains in force –
 - (a) for the period specified in the notice; or
 - (b) until sooner revoked.

Motion 1.

Moved: Cllr. Jenifer Crawford

Seconded: Cllr. Britt Steiner

That the Glamorgan Spring Bay Council requests Cllr. Kent to relinquish his mayoral position to take effect immediately until such time as the result of the March 2018 Tasmanian House of Assembly election is declared.

GENERAL MANAGER COMMENTS

It is noted that there are no provisions under the Act to comply with a motion such as this.

Decision: 16/18

Moved Cllr Crawford, seconded Cllr Steiner, that the Glamorgan Spring Bay Council requests Cllr. Kent to relinquish his mayoral position to take effect immediately until such time as the result of the March 2018 Tasmanian House of Assembly election is declared.

**The motion was put and carried unanimously
(8 Votes to 0)**

For: Mayor Michael Kent, Deputy Mayor Cheryl Arnol, Cllr Jenifer Crawford, Cllr Mick Fama, Cllr Richard Parker, Cllr Britt Steiner, Cllr Jenny Woods, Cllr Debbie Wisby.

Against:

Motion 2.

Moved: Cllr Jenifer Crawford

Seconded:

That the Glamorgan Spring Bay Council declares they have lost confidence in Mayor Kent due to his inability to carry out his functions. Mayor Kent has failed to act as a leader of the community of the municipal area; to comply with meeting regulations; to act as the spokesperson of the council and to appropriately oversee the councillors in the performance of their functions and in the exercise of their powers.

GENERAL MANAGER COMMENTS

It is noted that there are no provisions under the Act to comply with a motion such as this.

Decision: 17/18

Moved Cllr Crawford, seconded Cllr , that the Glamorgan Spring Bay Council declares they have lost confidence in Mayor Kent due to his inability to carry out his functions. Mayor Kent has failed to act as a leader of the community of the municipal area; to comply with meeting regulations; to act as the spokesperson of the council and to appropriately oversee the councillors in the performance of their functions and in the exercise of their powers.

**The motion was put and carried unanimously
(8 Votes to 0)**

For: Mayor Michael Kent, Deputy Mayor Cheryl Arnol, Cllr Jenifer Crawford, Cllr Mick Fama, Cllr Richard Parker, Cllr Britt Steiner, Cllr Jenny Woods, Cllr Debbie Wisby.

Against:

Attachment Item 2: Legal Advice on Local Government (Meeting Procedures) Regulations 2015 as related to Special Meeting of Council, February 20th, 2018



Having now reviewed the recording of the meeting and the relevant legislation, my advice is set out below.

ADVICE

*At the point during the special meeting when a quorum was no longer present, the correct procedure for the Chairperson to adopt is the one set out in r.11(6) of the Local Government (Meeting Procedures) Regulations 2015 (**Regulations**).*

*The procedure in r.11(6) is intended to apply when a quorum is lost **after** a meeting has already commenced with a quorum present. It requires the Chairperson to do no more than adjourn the meeting:*

- (a) until a quorum is again present – i.e. until the relevant elected member (or members) return to the meeting; or*
- (b) until a “later date” if it is apparent that the relevant elected member (or members) will not be returning to the meeting.*

In this case the special meeting ought to have been adjourned until a later date, it being clear that the Mayor had no intention of returning to the special meeting.

*Turning to r.12 of the Regulations (Abandoned meetings), in my opinion these provisions are intended to apply in the event that a meeting **never commences** due to the lack of a quorum. Support for this position is found in the following:*

- 1. by reading r.12 as a whole which in my opinion leads to the conclusion that the reference to an abandoned meeting in r.12(2), (3) and (4) means an abandonment resulting from the operation of r.12(1); and*
- 2. were r.12(2) to apply in circumstances where a quorum is lost during the course of a lawfully commenced meeting then r.11(6) would have ‘no work to do’ so to speak – this cannot have been the intention of the legislature.*

DISCUSSION

Despite the fact that the Chairperson relied upon the wrong provision, the outcome remains the same in effect – i.e. the meeting could not continue to transact business due to the lack of a quorum (see r.11(1)) and had to cease.

In this sense, neither the Councillors nor any members of the public could be said to have suffered any prejudice as a result of the mistaken use of r.12(2).

From a practical perspective the only relevant difference between the operation of r.11(6) and r.12(2) under the circumstances is whether or not:

- 1. the matter is brought back to Council within 14 days of 21 February 2018 in the form of a newly convened meeting (r.12(3)) and the General Manager takes the steps set out in r.12(2); or*
- 2. the meeting is now treated as not having been abandoned, but rather adjourned to a "later date."*

The issue attaching to the first approach is that the special meeting was not lawfully abandoned using r.12(2), therefore it is arguable that r.12(4) has no application under the circumstances (as noted by the Director).

The issue attaching to the second approach is that, as a matter of fact, the special meeting was not adjourned.

Ultimately, Council should convene again to address the relevant agenda items, this being the critical consideration.

RECOMMENDATIONS

Under the circumstances I suggest the following 'middle ground' approach: that the GM email the Councillors who made the initial request for a special meeting, provide a summary of the procedural issue that has arisen and ask that they re-lodge their original request for a special meeting on that basis that such meeting would be called within 14 days of the last special meeting.

This is not a perfect solution (dare I say that there are no 'perfect' solutions here), but under the circumstances it:

- 1. is a practical and fast way of bringing the matter back before Council;*
- 2. avoids the question of whether or not Council can, under the circumstances, lawfully convene another meeting using r.12(3)(a); and*
- 3. avoids proceeding as though the special meeting was 'adjourned' until a later date.*

3. CLOSE

The Mayor will declare the Special Meeting closed at (Time).

***The live streaming and recording of meetings will now be switched off.
Mayor to check that the streaming has been terminated.***

CONFIRMED as a true and correct record.

Date:

Mayor Michael Kent AM