

ORDINARY MEETING 8 SEPTEMBER 2015	6.2
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NOTICE OF MOTION – CR MELCHERT

AUDIO RECORDINGS AND LIVE STREAMING OF COUNCIL MEETINGS

NOTICE OF MOTION

I hereby give Notice of my intention to move the following Motion at the Council meeting scheduled for Tuesday 8th September 2015:-

- “That in accordance with Section 19 of Local Law 2 – Meetings and Clause 18.9 of the Standing Orders Council direct that Council Meetings be Audio Recorded and the recordings be utilised for validating Council minutes, and then retained as a permanent Council record available for review by Councillors and members of the Community on request.
- Clause 18.8 of the Standing Orders be deleted and removed.
- Council investigate the feasibility and cost of live streaming Council Meetings.”

BACKGROUND

Many of my constituents have recently expressed concern to me at what they perceive as Council’s intention and actions to prevent the auditable and transparent record of Council Meetings. Indeed some have asked why is it that Council is moving to be less transparent at a time when public confidence in the transparency of processes of all levels of government is at a record low.

Council Minutes only provide a record of decisions made by Council and, Part 1 of the motion seeks to create a permanent and full record of Council meetings, including a record of the discussion and debate that any person can review at any time.

As almost half of the ratepayers are absentee landowners and some live in remote locations such as Degarra the Second Part of the motion seeks to investigate the feasibility of live streaming of meetings so any interested person can view Council meetings as and when they may desire. The concept of live streaming is not new and is undertaken, for example, by the Gold Coast City Council which advises on its website - ***“With live streaming, you can view Council meetings via the Internet. This gives the community greater access to Council decisions and debate, and eliminates geographic barriers which may prevent people from attending meetings.”***

The recently inserted provision 18.8 appears to be discriminatory and affects the rights and liberties of a category of person. As the Standing Orders exist at the moment a Journalist or any other person can obtain approval to audio record a meeting however if a person nominates themselves for public office as a Councillor and is elected they are absolutely prohibited from audio recording Council meeting proceedings.

OFFICER’S COMMENT:

By way of response to Cr Melchert’s Notion of Motion, the following information is provided.

Legislative Requirements

Under section 272 of the *Local Government Regulation 2012*, the Chief Executive Officer has the responsibility to ensure each Council Meeting is minuted and the minutes of each meeting are confirmed at the following meeting. To assist Councils with interpretation of Local Government legislation, the Local Government Association of Queensland (LGAQ) engages a leading Queensland Barrister to provide a commentary on the legislation (the Commentary) and an extract relating to minutes follows:

*“The meaning of the term “minutes” in a broadly comparable context (that is, the statutory requirement for companies to keep minutes of meetings of the directors) was considered in **John J Starr (Real Estate) Pty Ltd v Robert R Andrew (Australasia) Pty Ltd (1991) 9 ACLC 1372**. The Supreme Court of New South Wales examined the meaning of the term “minutes” in a general sense. The Court made or accepted the following points:-*

- *minutes do not need to consist of a verbatim transcript of proceedings;*
- *details of attendance at a meeting, the movers and seconders for each resolution and actual resolutions which are passed should always form part of the minutes;*
- *the historical derivation of the term refers to an outline or summary of proceedings, rather than to a full record of everything which occurs;*
- *minutes should be as concise as circumstances permit: for example, there is no necessity to record the background to or reasons for a particular resolutions (though this is, of course, quite common practice in the local government context where a relevant report and recommendation from a Council officer or committee is frequently incorporated into the minutes to precede and simplify the resolution which flows from that report or recommendation);*
- *minutes are certainly not a full report of proceedings, so that speeches and arguments should not normally appear in minutes; and*
- *by convention, a person may ordinarily insist that his or her particular vote for or against a motion be specifically recorded, but meeting participants generally have no other right to have their individual views or any statement which they may make included in the minutes.”*

The process followed by this Council is consistent with the vast majority of local governments (if not all) throughout Queensland in that the preceding dot points, from the Commentary, form the basis of recording minutes.

Auditable and Transparent Record Of Council Meetings

As detailed above, the process that this Council undertakes in recording minutes complies with legislative requirements. There is no lack of transparency in the process, as draft minutes are available within 10 days of the Council Meeting and are confirmed at the next Council Ordinary Meeting. These confirmed minutes are then publicly displayed on Council’s website for any interested party to review.

In drafting this Notion of Motion, Cr Melchert has not substantiated what intention or actions are meant by *“Council’s intention and actions to prevent the auditable and transparent record of Council Meetings.”* However should this allegation refer to the recent resolution of Council to amend the Standing Orders for Council Meetings General Policy, the following information is provided:

- Any and all documents received, created or issued by a Councillor, in undertaking their duties as an elected representative, constitute a public record and is a document of Council.

- The Chief Executive Officer, pursuant to the Public Records Act 2002, has a direct responsibility to ensure that Council manages and maintains its public records in accordance with the Act.
- All of Council's records fall within the meaning of a document of an agency as defined in the *Right to Information Act 2009* and Council has a responsibility under this legislation, subject to limited exemptions, to be able to provide access upon application.
- For further definition of a document, the *Acts Interpretation Act 1954* defines a document to include—
 - (a) any paper or other material on which there is writing; and
 - (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; and
 - (c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being produced or reproduced (with or without the aid of another article or device).

The amendment to the Standing Orders For Council Meetings General Policy was in no way an “*action to prevent the auditable and transparent record of Council Meetings*”, but in fact, it was ensuring that Council continued to maintain its legislative responsibilities for the managing of public records. The management of public records and compliance with legislation is a responsibility of all Councillors and staff. Following disclosure by a Councillor that he has made electronic recordings of Council meetings, requests have been made for copies of those recordings to ensure that records are managed in accordance with the law. Despite those requests, no copies have been provided. In these circumstances, the withholding of public records could be considered to be a failure to conduct Council business openly and transparently.

Audio Recording Of Council Meetings

Since the inception of the New Douglas Shire Council following de-amalgamation from Cairns Regional Council as at 1 January 2014, there have been 44 Council Meetings. As per statutory requirements the minutes of each Council Meeting is confirmed at the next available Council Ordinary Meeting. During this time there have only been 4 instances when the minutes have not been adopted by an unanimous vote of Council.

The Minutes of each meeting are documented in “real time” enabling all Councillors to view on the screen during the meeting the information being recorded. They have the ability to seek further explanation from the Chair of the Meeting should they have a query regarding the information being recorded.

Each time the official confirmation of the minutes occurred, the majority of Councillors deemed the minutes to be an accurate reflection of the Council Meeting. This is an established democratic process of government and the approach that was also endorsed and adopted by this Councillor in his role under the former Douglas Shire Council. If this process was considered transparent then, it remains transparent today.

Considering the above information, there would not appear to be any need for this Council to commence audio recording of Council Meetings.

Maintaining Audio Recordings Of Council Meetings In Perpetuity

As explained previously, it is a widely accepted practice not to minute Council Meetings in verbatim and this is enforced by the legal precedent as referred to in the Commentary on the Local Government legislation. Other councils who undertake audio recording of their

minutes do so for the sole purpose of verifying the accuracy of the minutes. Following the confirmation of the minutes, the recording is generally destroyed as the sole purpose for which it was created has been satisfied.

Considering all pertinent information provided in this response to the purpose of Council Meeting Minutes, there is no logical reason should Council decide to audio record their Meetings to deviate from the generally accepted practice of destroying the recordings after the confirmation of the Minutes.

Deletion of Clause 18.8 Of Standing Orders For Council Meetings General Policy

The purpose and reason for the amendments to Standing Orders For Council Meetings General Policy which includes the new clause 18.8 has been detailed in a previous section of this response. In accordance with sound Governance principles it is strongly recommended to Council not to vary this clause.

Live Streaming Of Council Meetings

By way of background under previous legislation there was a requirement that local governments with a population greater than 100,000 had a regulatory requirement for the introduction of live audio/visual streaming of council meetings by 1 January 2013. This was amended with the Local Government Legislation Amendment Regulation (No. 2) 2012 and it ceased as a mandatory requirement for councils to live stream their meetings. Such a requirement was never intended for a council the size of Douglas.

From some preliminary investigations there are only two local governments in Queensland who undertake such practice and these are City of Gold Coast and Redland City Council. By way of comparison:

- City of Gold Coast
 - Budget: Approximately \$1.2 Billion. Employees: Approximately 3,500
- Redland City Council
 - Budget: Approximately \$250 Million. Employees: Approximately 1,000
- Douglas Shire Council
 - Budget: Approximately \$36 Million. Employees: Approximately 150

Whilst the ideology of live streaming has well founded intentions, there is no legislative requirement and considering budget/human resources constraints of a small Council, it is strongly recommended to Council that this initiative not be considered at this time.

As always, Council reports remain available to all on Council's website and every Council meeting, with the exception of matters considered in Closed Session as required under the Local Government Act, are open to the public to attend. Minutes are available on the website, Council provides short "briefing notes" for the media, and the CEO report every second meeting provides a level of transparency and detailed information about Council business that is generally not provided by other Councils.