

MAYORAL MINUTE**WEBCASTING OF COUNCIL MEETINGS****MEETING DATE: 13 JUNE 2017**

Purpose of Report

To consider implementing webcasting of Council meetings at Willoughby City Council in a way that acknowledges risks of defamation action, promotes public engagement, is financially sound and consistent with the guidelines for Council decision making during merger proposal periods.

Background

Council has considered a number of officers' reports on webcasting since Council unanimously adopted the Mayoral Minute of 10 October 2016, calling for a report *"by November 2016 regarding the webcasting and audio streaming of Council meetings"*.

Council considered these reports at its meetings on 28 November 2016, 27 February 2017 (including a confidential session) and 13 March 2017.

On 28 November 2016 Council resolved to:

- 1. Agree to consider broadcasting Council meetings using webcasting technology via a live stream on Council's website; and*
- 2. Request the General Manager to provide a report outlining costs and draft amendments to the Council's Code of Meeting Practice for approval.*

On 27 February 2017 Council resolved to note the officer's report. And on 13 March 2017 Council considered webcasting but did not make a decision.

The reports prepared provided extensive information on the transparency offered by webcasting, technology options, legal implications, administrative arrangements, and the necessary changes to Council's Code of Meeting Practice required before webcasting can start. Council has also been provided with confidential quotes from two suitable suppliers, with each one respectively providing current webcasting technology and services to Mosman and North Sydney Councils.

Discussion

Council makes its assessment of the pros and cons in light of what Council seeks to achieve by webcasting its meetings.

It is apparent, from the recent Council discussions on webcasting, that there is support from the public for webcasting, with the benefits of improved public participation, access to information by the public, and the transparency of local government. Participatory democracy is at the heart of local government. Public access to proceedings can increase confidence in the exercise of Council decision making. Recent enquiries with Mosman and North Sydney Councils reveal that these Councils have approximate monthly averages of 50 and 350 viewers respectively.

Two key issues apparent in the previous reports, and in Council's deliberations, have been the legal implications of webcasting and the impact of Council merger proposals on any decision Council can make on webcasting.

Legal implications

At its meeting on 27 February 2017, in the confidential portion of the meeting, Council considered legal advice and heard from Council's lawyers on potential liability of Council in defamation if it proceeds to webcast a Council meeting where defamatory statements are made by a Councillor, a staff member or a member of the public.

The following comments are not a substitute for that legal advice and seek only to highlight some possible answers. While there are risks, there are mitigation measures that could be put in place. Some potential steps or "defences" include:

- Information provided to Councillors and any speakers at the commencement of each meeting in relation to the conduct required in accordance with the Code of Conduct, Local Government Act and the Code of Meeting Practice.
- A disclaimer at Council meetings and on Council's website making it clear that the webcast is made for the purpose of providing information to the public on proceedings of Council meetings;
- Council may issue a policy that guides webcasting and that includes a provision for an aggrieved person to notify Council of their objections to the material in the webcast so that Council may consider removing the affected part of the footage. Such a policy may help in an aggrieved party not taking defamation action;
- Council may consider not archiving online footage of past meetings as a one-off showing of footage would attract lower awards of damages (if defamation action is successful) and live webcasting is more defensible. Making archival footage available does a lot to increase public access to Council meetings, and this benefit may be judged to be more important than the use of this defence; and
- The *Defamation Act 2005* provides a defence if material claimed to be defamatory was provided by the Council (in its webcast) as a "public document" issued by the Council for the information of the public.

To date there has been no legal challenge to establish the efficacy of these mitigation measures. Nevertheless, the number of Councils in Australia that have implemented webcasting suggests that these Councils have made their decision after weighing public benefits of webcasting against possible defamation risks.

Impact of Council merger proposals on any decision Council can make on webcasting.

The delayed and uncertain future of any merger has had two main aspects. The first aspect is that both Mosman and North Sydney Councils, nominated for merger with Willoughby under the current proposal, have already implemented webcasting using two different suppliers. Therefore, it could be argued that it would be unwise for Willoughby Council to proceed until the merger is decided.

The second aspect relates to permissible Council decision making during merger proposal periods, as specified by the Office of Local Government pursuant to section 23A of the *Local Government Act 1993*. The key guideline is that Councils should not make decisions that needlessly impose avoidable costs or binding commitments on a new Council.

A way of resolving the merger uncertainty and possible duplication with the webcasting proposal, can be found in a careful analysis of the costs involved, with a consequent prudent contractual negotiation with the possible suppliers of the webcasting.

If Council agreed to proceed with webcasting and if the merger does not proceed, then Willoughby City Council can enjoy the benefits of webcasting in perpetuity as its own entity. However, in the event of a future merger, the potential expenditure breach of the decision is mitigated, and

therefore largely eliminated, by consideration of the two cost components, being hardware and ongoing maintenance and service provision.

The capital cost of hardware needed (in the order of \$13,000 to \$15,000) is a one-off expenditure and the hardware could be used at Willoughby Council chambers by a merged Council. The future annual maintenance costs (broadly comparable to the initial capital cost) are the real issue, as they are contracted for a set number of years and do, on that basis, commit a future Council to what would be duplicate expenditure, given that Mosman and North Sydney already have webcasting capacities.

Enquiries and negotiation by Council officers have led to, at the time of writing, one of two potential supplying firms agreeing to void any duplicate cost obligations, in the event of a merger. This then removes the risk of future duplicate expenditure.

Timing

Webcasting can only proceed if the Code of Meeting Practice is suitably amended. Attachment 1 contains the proposed changes. Section 361 of the *Local Government Act 1993* requires that Council must prepare a draft code and give public notice of a draft code. The draft code must be exhibited for at least 28 days. Part 4 of this section states:

The public notice must also specify a period of not less than 42 days after the date on which the draft code is placed on public exhibition during which submissions may be made to the council.

If the public notice is published in the *North Shore Times* on Thursday 15 June 2017, the requisite 42 day period ends on Thursday 27 July 2017. A report will then be prepared for Council's last meeting on Monday 7 August 2017.

At that meeting, Council can then consider adopting the Code, consider the costs of the equipment and maintenance arrangements, and decide whether to implement webcasting.

Motion

That Council:

- 1. Seek the most suitable provider of webcasting equipment and services, having regard to both cost and quality criteria across capital and maintenance considerations;**
- 2. Place on public exhibition the changes required to the Code of Meeting Practice to enable webcasting as shown in Attachment 1 to this report (such changes were presented to Council on 27 February 2017 as Attachment 1 to Item 16.2 Webcasting Council Meetings);**
- 3. Publish a public notice on 15 June 2017 to notify the 42 day submission period regarding the proposed changes to the Code of Meeting Practice;**
- 4. Following public exhibition, and having regard to the submissions received, consider adopting the revised Code of Meeting Practice and implementing webcasting at its meeting on 7 August 2017; and**
- 5. Note that this motion is consistent with the guidelines on Council decision-making during merger proposal periods.**

Attachment 1 – Proposed Amendments to the Code of Meeting Practice
(new text in bold and deleted text marked by a strikethrough)

(86) ~~Tape~~ Recordings of meetings of the Council ~~or committees~~

(1) ~~Parts of formal Council meetings will be recorded.~~ **The proceedings of all Council meetings in open session, including all debate and addresses by the public, are recorded and webcast live on Council's website for the purpose of facilitating community access to meetings.** Recordings so made will be kept for not less than 12 months.

(2) Under certain circumstances such recordings may be accessed via Part 4 Access applications, Division 1 - Making an access application under the *Government Information (Public Access) Act 2009*.

(3) Where a request to listen to the recording is made, the applicant be required to cover any administrative costs in preparing the recording.

~~(34) Councillors and Council staff are not permitted to make a sound recording of informal meetings unless the permission of Council is granted on each occasion.~~

~~(45) A person may use any device ~~tape recorder~~ to record the proceedings of a meeting of the Council or a committee of a Council only with the authority of the Council or committee.~~

~~(56) The Council or committee may, by resolution, expel from the place where it is holding a meeting any person who uses any device ~~tape recorder~~ in contravention of this clause.~~

~~(67) If any such person, after being notified of such a resolution, fails to leave the place where the meeting is being held, a police officer, or any person authorised by the Council for the purpose, may remove the person from, and, if necessary, restrain the person from re-entering, that place.~~

~~(78) In this clause, ~~tape recorder~~ any device includes a video camera and any electronic device capable of recording speech or images, ~~whether a magnetic tape is used to record or not.~~~~

(9) Recordings of proceedings are not an official record of the meeting nor do they convey the official Minutes of a Council meeting or the position of Council

(10) Members of the public attending a Council meeting may have their image, voice and personal information (including name and address) recorded, publicly broadcast and archived for two years. By attending a Council meeting, whether as a proponent or objector addressing the Council or as an observer or other interested party, members of the public consent to this use of their image, voice and personal information.

(11) Speakers addressing Council do not have absolute privilege in respect of opinions expressed or comments made or material presented. Council accepts no responsibility for any defamatory comments in this regard.

(12) Notice in relation to sub-clauses 9 and 10 is given by the Chairperson at the commencement of a meeting and is provided on the Agenda and Council's website.

[END]

