

To the Review Panel Dr Roseth and Ms Sussex

My name is Helen Mabbutt and I am a resident of Gymea Bay, located in the Sutherland Shire. I took the opportunity to address a public hearing on the 4<sup>th</sup> February 2014. My written submission will elaborate on the oral submission and include further observations, comments and requests.

I attended the meeting of Sutherland Shire Council on 29<sup>th</sup> July 2013 with my 17year old son where I was given a copy of Mayoral Minute 6/13-14. It is my submission that the issue of the Mayoral Minute, the conduct of the then Mayor Councillor Kent Johns along with the Liberal and Independent councillors present, were in breach of the following requirements:

- 1. Council's Code of Conduct 31-1-13**
- 2. The Division of Local Government-Department of Premier and Cabinets Model Code of Conduct for Local Council in NSW 2013**
- 3. The Model Codes 'Practice Note', issued under the Department of Local Government 2008, both for the purposes of section 440 of the Local Government Act 1993.**

The Council's Code states, for the purposes of section 440 of the *Local Government Act 1993*, " *the Model Code comprises all parts of this document*". In the Model Code Part 3 General Conduct Obligations 3.1 states:

*"Specifically, you must not act in a way that:*

*a) contravenes the Act, associated regulations, councils relevant administrative requirements and policies*

*b) is detrimental to the pursuit of the charter of a council"*

Section 3.2 states:

*"You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act (section 439)".*

Part 7, Access to Information and Council Resources states at point 7.6

*"Councillors and administrators must properly examine and consider all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with the council's charter".*

The Council's charter is set out in *Local Government Act 1993 No 30 Chapter 3, section 8.*

The Mayor did not comply with the *Model Code* Part 3.1 a) and b) 3.2 and 7.6. Nor did he comply with the council charter.

In the Department of Local Government's 2008 *Practice Note* the use of Mayoral Minutes at regular and special council meetings is outlined. Whilst the Practice allows Mayors to put Mayoral Minutes to a meeting without notice:

*"Mayoral Minutes should not be used to introduce, without notice, matters that are routine, not urgent, or need research or a lot of consideration by the councillors before coming to a decision. These types of matters would be better placed on the agenda, with the usual period of notice being given the councillors."*

Mayor Johns also did not comply with the Practice Note. The Mayoral Minute was given to councillors with an hour's notice. It was 25 pages long and contained 75 amendments additional to the detailed report produced by council staff. The council staff report is 722 pages long, summarizes the 2131 submissions made by residents and interested parties into the draft LEP and includes staff recommendations supported by expertise, analysis and documentation.

The Mayoral Minute notes *"Submissions were received which specifically objected to the draft plan as many considered that the plan does not preserve the Shire's amenity, the lifestyle of residents, or sufficiently protect the natural environment. Many were concerned that the draft plan promotes overdevelopment."*

However the Mayoral Minute has no explanation or analysis for the proposed amendments other than the statement *"I support further significant changes being made to the draft LEP before Council requests the Minister for Planning and Infrastructure makes the draft plan."* The Minute has no explanation or justification for its existence.

The Liberal and Independent councillors did not raise the lack of notice, or insufficient time to read the Mayoral minute and cross reference it to the existing draft and to the council staff report. Some of the amendments in the Mayoral Minute have significant and far reaching effects on environmental planning in Sutherland Shire such as re-zonings, changes to building heights and floor space ratios within re-zonings and existing zones and changes to the landscaping requirements in existing zones.

The Labor and Shire Watch Independent councillors applied to have the meeting deferred for a week so they could properly consider the amendments proposed in the Mayoral Minute. This application was refused. The meeting proceeded to consider the amendments in the Minute. The Labor and Shire watch councillors proposed a refusal or amendment to parts of the Mayor's amendments. The Liberal and Independent councillors spoke in support of the Mayor's motions and approved every one that was considered.

Councillor Provan went beyond the all the changes to the LEP being considered by the meeting and proposed further re-zonings at Kurnell and increases to building heights in the vicinity of the Mall at Cronulla. The Mayor said he would not support these, citing NSW noise level controls as his reason for not supporting the re-zoning at Kurnell.

My son and I listened to the meeting shocked, alarmed and appalled at the lack of due process or regard by the majority of councillors to the representative positions they hold. The Liberal and Independent councillors supported the larger part of the exhibited changes that residents and staff expressed opposition to as well as the amendments proposed in the minute.

It was clear to my teenaged son, and myself, we were hearing an abuse of proper procedure. To address the terms of reference for the review, I have looked at the *Act*, *Council Code of Conduct*, *Model Code of Conduct*, *Charter and Practice Note* that govern the responsibilities of Councillors at meetings and the use of Mayoral Minutes at meetings.

Given the inappropriate use of Mayoral Minute 6/13-14 and lack of integrity in the decision making process at the meeting of 29-7-2013 it is essential the LEP at least revert to the original draft version. Further, given the failure of the Liberal and Independent councillors at the meeting to “exercise a reasonable degree of care and diligence in carrying out your functions under the Act” or “properly examine and consider all information provided to them”, I do not have confidence in the decision making process associated with this LEP and submit that the process should begin again with the council properly considering what it exhibits to the public. Unfortunately this would necessitate costs and delay. The responsibility of any costs or delays lies with the councillors who have not followed due process.

I will outline a few of the significant motions passed at the meeting which were poorly debated or justified. The only consideration was more housing, more development and an assumed increase in jobs.

- The rezoning of the Sutherland Entertainment Centre to operational land. This proposal received the most submissions which objected. Councillors Blight and Steinwall tried to postpone or modify the motion. The motion was summarily passed without properly considering whether this is in the public interest. The change to zoning could see the Entertainment Centre or parts of the Entertainment Centre Precinct sold off to commercial interests in the future.
- A significant increase in building heights in central Cronulla, and the added population this will bring, will impact the already gridlocked traffic experienced on weekends and during special events. Traffic management, especially for emergency vehicles, to the peninsula, possible shadowing of the iconic Mall area and the amenity of existing residents, were largely ignored by the meeting.

- A significant increase in the building heights in areas adjoining Sutherland Public School and Miranda Public School and Minerva Special Purposes School was passed. Minerva Special Purposes School in Sutherland is solely for student with Special Needs ranging in ages from 8-18. Miranda Public School includes a purpose built playground for children with special needs which would be overlooked. The best interests of Primary school children and vulnerable school students was not considered.
- The new minimum landscape area ratios have not been justified as a positive planning initiative. Potential negative impacts on human wellbeing and the natural environment were ignored. Defining hard surfaces and recreational structures as landscaping was not explained as a quality planning control.
- The relaxation in planning controls on foreshore properties, which could lead to the degradation of remaining natural vegetation and wildlife was not a considered amendment. The new planning controls are so open to interpretation as to potentially allow a great new variety of types of development.

Whilst the Panel is considering the plan-making process that has gone into the draft LEP it may be also open to the Panel to recommend referring some Councillors to the Minister and the Division of Local Government for breaches in two categories of the Model Code. These breaches would relate to the Code of Conduct and a governance issue regarding conduct of a Council Meeting.

This concludes my submission to the panel. Thank you for your attention.

Yours sincerely, Helen Mabbutt