

# SHELLHARBOUR CITY COUNCIL

## PUBLIC INQUIRY

### INFORMATION PAPER

#### **WRITTEN SUBMISSIONS**

The Commissioner has published notices in local and other newspapers calling for submissions to the Inquiry. The Commissioner wishes to encourage those persons who would like to make submissions on matters falling within the Terms of Reference of the Inquiry to do so, in writing, as soon as possible.

#### Date for receipt

**Submissions should be in writing and be provided by 5 pm on 28 April 2008.**

The Commissioner may accept late submissions and/or call for further written submissions.

No written acknowledgement of submissions will be issued.

#### Anonymous submissions

The Commissioner asks that persons making written submissions identify themselves.

The provision of anonymous submissions may limit the Commissioner's ability to obtain a fuller understanding of the issues raised or to test the evidence. While the Commissioner may take any material into account for the purposes of the Inquiry, the provision of anonymous submissions may carry less weight than other submissions.

#### Requests for anonymity

In exceptional circumstances, the Commissioner will consider a request by a person making a submission for his or her name to be suppressed or otherwise protected from publication or disclosure. The Commissioner will consider such requests on a case-by-case basis and may, in his discretion, agree to the request. This may assist Council staff as the *Protected Disclosures Act 1994* does not apply to submissions/disclosures made to the Inquiry.

#### Protection from defamation

There are protections available to persons making a submission to the Inquiry against potential liability for defamation in respect of matters contained in the submission provided the material is **relevant to the Terms of Reference**.

Persons wishing to make written submissions should feel free to put to the Commissioner all matters that are relevant to the Terms of Reference.

## *Shellharbour City Council Public Inquiry*

### Public availability and inspection of written submissions

Subject to the restrictions noted later, the Commissioner proposes that submissions made to the Inquiry will be available for public inspection. Additionally, they may be published on the Inquiry website.

### Submissions from the Council, Councillors and Council Staff

The Commissioner encourages the governing body of Council, individual Councillors, Council's General Manager, Council's senior staff and other Council employees to make submissions relevant to the Terms of Reference.

Councillors and Council employees have no additional privileges or protections over and above other persons generally in respect of any submissions they may choose to make. Attention is drawn to earlier comments in this paper regarding the inapplicability of the *Protected Disclosures Act 1994*.

### Restriction on public availability and inspection of written submissions

The Commissioner may exercise his discretion to publicise or make publicly available written submissions made to the Inquiry. When deciding whether to do so, the Commissioner may weigh the likely public benefit gained from publication against any damage that may arise from publication.

The Commissioner may also withhold from public display any part of a submission considered by him to be potentially defamatory in nature or irrelevant to the Terms of Reference.

The overriding concern of the Commissioner is to encourage persons who have information relevant to the Terms of Reference of the Inquiry to come forward and give that information to the Inquiry.

## **THE HEARINGS**

The processes of the Inquiry will include a series of public hearings. Details of the venue and times of these public hearings will be announced shortly and will be advertised by public notice.

### Form of public hearings

The Commissioner may regulate or determine the procedures to apply to the conduct of the Inquiry, subject to the provisions of section 740 of the *Local Government Act 1993* and the applicable parts of the *Royal Commissions Act 1923*. The Commissioner therefore proposes to avoid undue formality in the public hearings.

The Commissioner intends to give all persons appearing during the public hearings a fair hearing. There is no requirement or expectation that persons giving evidence will be legally represented. See, however, under the heading "Legal representation", below.

## *Shellharbour City Council Public Inquiry*

### Persons making written submissions wishing to appear at the public hearings

The Commissioner requests that interested parties lodge a written submission even if their submission is intended to be supported by an oral presentation at the public hearings.

The Notice of Public Inquiry invites persons making written submissions to indicate, at the same time, whether they wish to appear in person at the public hearings. This is for the purpose of assisting the Commissioner to identify the likely number of persons who wish to give oral evidence at the hearings, and to thereby assist the orderly functioning of the public hearings phase of the Inquiry.

The Commissioner will determine who he wishes to hear evidence from during the public hearings and will make arrangements for their attendance.

### Persons seeking to make oral submissions only

As noted above, the Commissioner encourages persons making submissions to the Inquiry to do so in writing.

Persons wishing to make oral submissions at the public hearings should contact the Office of the Inquiry by 28 April 2008 and provide a short outline of the matters that they wish to address. Such requests can be included in a written submission or made separately in writing to the Office of the Commissioner. A failure to give such notice alone will not, however, mean that such a person would on that account alone be denied the opportunity to appear at the public hearings.

At the commencement of the hearings, the Commissioner will hear submissions from those wishing to give oral evidence only, provided that they can satisfy the Commissioner that they are substantially and directly interested in the subject matter of the Inquiry, or that their conduct in relation to any such matter has been challenged to their detriment.

### Voluntary attendance at the public hearings

Persons having information relevant to the terms of the Inquiry are encouraged to come forward voluntarily.

### Compulsory attendance at the public hearings and compulsory production of relevant documents

In case of need, the Commissioner may summons any person to attend the Inquiry to give evidence and/or to produce any documents or other things in the person's custody or control.

### Legal representation

While the Commissioner wishes to avoid undue formality in the proceedings (see under the heading "Form of public hearings", above), the Commissioner recognises that some parties may be directly and personally affected by the Inquiry.

Any request by persons appearing or proposing to appear at the public hearings that they be legally represented (i.e. that their legal representatives be allowed to be present at, question persons appearing and make submissions to the Commissioner) will be considered in that light. This may be allowed for example, where persons are

## *Shellharbour City Council Public Inquiry*

substantially and/or directly interested in the subject matter of the Inquiry, or where a person's conduct in relation to any such matter has been challenged to the person's detriment.

The Commissioner has no power to make orders providing financial assistance to persons appearing or wishing to appear at the hearing to meet the cost and expense of legal representation.

### Witness expenses

The Commissioner has no power to make orders providing financial assistance or for the payment of allowances to any witness summoned to appear or voluntarily appearing at the public hearings. This applies also, for example, to travelling and accommodation expenses.

### Private hearings

The Commissioner has been appointed to conduct a public inquiry in this matter. On the other hand, in exceptional circumstances, the Commissioner may exercise his discretion to hear oral submissions from a person wishing to make such submissions in confidence. If any such hearing is conducted, members of the public, including the media, will not be permitted to attend.

A person wishing to make an oral submission in confidence will be expected to submit a strong argument supporting the claim. An alternative to appearing at a public hearing is to make a written submission.

### Protection from defamation at hearings

Persons appearing at and making oral submissions to the Commissioner at the public hearings are protected from potential liability for defamation in respect of any submissions given to the Inquiry. This is the case whether the appearance of the person is voluntary or made under compulsion. Persons wishing to make submissions should, however, confine their submissions or evidence to matters within the Terms of Reference of the Inquiry and avoid making malicious statements.

### Sworn evidence

Persons making oral submissions to the Inquiry at the public hearings will be required to give evidence on oath or under an affirmation. Witnesses will be required to take an oath or provide an affirmation. Persons are reminded that an affirmation carries the same consequences as an oath.

### Continued attendance – persons who have been summoned to attend

Any witness who has been summoned to appear during the public hearings must appear on the day required, and thereafter until the Commissioner excuses the witness from further attendance.

### Cross examination of witnesses

Persons who have been given a right of appearance by the Commissioner, and any barrister or solicitor which the Commissioner authorises to represent them, may, **with the leave of the Commissioner**, cross examine any witness on any matter which the Commissioner deems relevant to the Inquiry.

## **APPOINTMENT OF ASSISTANTS**

The Commissioner may appoint persons to assist in carrying out any inquiry or investigation that may need to be made as part of the Inquiry. For example, the Commissioner may, in writing, authorise any person engaged by him to assist in the conduct of the Inquiry to inspect and report to him upon any documents or other things, such as submissions, relevant to the subject matter of the Inquiry.

## **COMMISSIONER'S RIGHTS IN RESPECT OF DOCUMENTS PRODUCED**

The Commissioner or his delegate and assistants may inspect (and copy or take extracts from) any documents produced to the Inquiry and keep them for such reasonable period as the Commissioner thinks fit.

## **REPORT OF COMMISSIONER'S FINDINGS**

At the conclusion of the Inquiry, the Commissioner will make a written report to the Minister for Local Government and may make recommendations, including whether all civic offices in relation to the Council should be declared vacant, and/or on any other matter as the Commissioner sees fit.

The Minister will lay the report before both Houses of the NSW Parliament. If neither House is sitting, the report is presented to the Clerks of both Houses.

The Commissioner may also, in appropriate circumstances, pass on information or evidence or material given to the Inquiry to any law enforcement agency, such as the Director of Public Prosecutions, the Commissioner of Police, or the Independent Commission Against Corruption if the information or material relates or may relate to a breach of the law.

## **FURTHER ASSISTANCE**

Persons requiring further assistance or information in relation to the Inquiry may contact the Office of the Commissioner on telephone 02 4428 4200, fax 02 4428 4199 or email to [shellharbourinquiry@dlg.nsw.gov.au](mailto:shellharbourinquiry@dlg.nsw.gov.au). Information on the Inquiry is also available on the Public Inquiry website on the Internet at [www.dlg.nsw.gov.au/shellharbour](http://www.dlg.nsw.gov.au/shellharbour).