

TWEED SHIRE COUNCIL

Report and Findings

of the

Conduct Review Committee

into

complaints against the former Mayor, Cr Joan van Lieshout

30 September 2009

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The Complaints

1. On 8 July 2009 a complaint was lodged with the General manager by Cr D Holdom against the (former) Mayor alleging breaches of sections 9.7(e), (f) and (g) of the Code of Conduct arising out of statements made by the Cr van Lieshout in the media.
2. In two emails to Council's Public Officer on 17 July 2009, Cr Holdom provided further press reports, alleging the (former) Mayor also breached section 11.9 of the Code.
3. On 10 July 2009 Cr P Youngblutt lodged a complaint with the Public Officer over the conduct of the (former) Mayor for "... failing to acknowledge and comply with the resolution passed by Council to have the General Manager, Michael Rayner, elected to the Board of the Repco World Rally" and "the (former) Mayor's use of the local media to publically attack the General Manager, Council staff and councillors...".
4. On 15 July 2009 a complaint was made to the General Manager by a resident, Ms B Fitzgibbon, against the (former) Mayor alleging breaches of sections 4.2, 6.1, 6.1(e) and (f), 6.3, 6.5, 6.7, 9.2(a) and (b), 9.7(e), (f) and (g), and 11.9 of the Code.
5. The complaints against the former Mayor were summarised in our Interim Report as alleged breaches of the Code of Conduct by Cr van Lieshout in:
 - failing to accept a resolution of Council authorising the General Manager to accept a directorship on the Board of World Rally Australia Pty Ltd,
 - using the press to call for his resignation from the Board, and
 - other comments attributed to the former Mayor in the press alleging , amongst other things, that the General Manager had a conflict of interest.

Code of Conduct

6. Section 440 of the *Local Government Act 1993* requires every council to adopt a Code of Conduct which incorporates the provisions of Model Code of Conduct promulgated by the NSW Department of Local Government.

7. *"The Code is made in three Parts: Context, Standards of Conduct and Procedures.*
- *Part 1: Context, establishes the purpose and principles that are used to interpret the standards in the Code. This Part does not constitute separate enforceable standards of conduct.*
 - *Part 2: Standards of Conduct, set out the conduct obligations required of council officials. These are the enforceable standards of conduct.*
 - *Part 3: Procedures, contains the complaint handling procedures, complaint assessment criteria and the operating guidelines for the conduct review committee/reviewer. This Part should be used to guide the management of complaints about breaches of the Code."* (Section 1 of the Code).
8. *"Councillors have two distinct roles under the Local Government Act 1993: as a member of the governing body of the council; and as an elected person. Councillors, as members of the governing body, should work as part of a team to make decisions and policies that guide the activities of the council. The role as an elected person requires councillors to represent the interests of the community and provide leadership. The Model Code sets the standard of conduct that is expected when council officials exercise these roles."* (Section 1).
9. The purpose of the Code of Conduct is to assist councillors and other council officials to:
- *"understand the standards of conduct that are expected of them*
 - *"enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence ...*
 - *"act in a way that enhances public confidence in the integrity of local government."* (Section 3).
10. The Code is based on the seven key principles – integrity, leadership, selflessness, impartiality, accountability, openness, honesty and respect. (See Section 4)

Appointment of Conduct Review Committee

11. Council, through the Public Officer, appointed a Conduct Review Committee consisting of David Gibson, Maryann Andersen and Glen Ratjens to enquire into the alleged breaches of the Code. The Conduct Review Committee elected David Gibson as Chairperson.

Proceedings

12. The Conduct review Committee met on Thursday 23 July 2009 and completed its initial assessment in accordance with s13.1 of the Code as follows:
 - a) *“whether there is any prima facie evidence of a breach of the code of conduct”*

There is prima facie evidence of breaches of sections 6.1.(a) and (e), 9.7 (e), (f) and (g), and 11.9 of the code of conduct.
 - b) *“whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as general manager”*

The subject matter of the complaint relates to conduct associated with the carrying out of the functions of civic office.
 - c) *“whether the complaint is trivial, frivolous, vexatious or not made in good faith”*

To be determined.
 - d) *“whether the conduct the subject of the complaint could reasonably constitute a breach of the code of conduct”*

To be determined.
 - e) *“whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police”*

The complaint does not raise issues that require investigation by another person or body.
 - f) *“whether there is an alternative and satisfactory means of redress”*

To be determined.

- g) *“how much time has elapsed since the events the subject of the complaint took place”*

The events are ongoing.

- h) *“how serious the complaint is and the significance it has for council”*

The complaint is serious enough to create divisions in council and staff.

- i) *“whether the complaint is one of a series indicating a pattern of conduct.”*

The complaint does not appear to indicate a pattern as yet.

13. Interviews with Cr D Holdom, Cr P Youngblutt, Mr M Rayner (General Manager) and Cr J van Lieshout followed. After further deliberations the proceedings were adjourned to Friday 28 July 2009.

14. An Interim Report dated 27 July 2009 was forwarded to Council, complainants and respondent.

15. Cr van Lieshout phoned the Chairperson on Friday 7 August and requested that the Interim Report be withheld from Council and not made public. Cr van Lieshout also commented that she did not have appropriate notice to respond to the complaints. After consideration by the Committee it was decided that the Interim Report was not confidential and should be presented to the next Council meeting. Cr van Lieshout was advised accordingly and invited to submit anything further she wished the conduct Review Committee to consider by 28 August. Nothing further has been received from Cr van Lieshout.

16. The Conduct Review Committee reconvened via a telephone conference call on 28 August 2009 and met again on 9 September 2009 to consider the events since the presentation of the Interim Report, any further developments in relation to the issues at hand and its Report and Findings.

Material examined

17. Material examined by the Conduct Review Committee included:

- Tweed Shire Council's Code of Conduct, Conduct Review Committee/ Sole Reviewer Policy and Media Policy

- Various press clippings and broadcast transcripts
- Relevant reports to Council and minutes
- Various emails provided by the Cr van Lieshout and other Council officials.

Analysis of Evidence

18. On 18 November 2008 the Council resolved to "...authorise the General Manager to accept the offer from the Confederation of Australian Motor Sports to be a Director of World Rally Australia Pty Ltd" by six votes to one.
19. Following a workshop on 7 April 2009 Cr van Lieshout canvassed councillors and approached the General Manager suggesting that there was consensus amongst the councillors that he should resign from the Board of World Rally Australia. The General Manager considered this overnight and the next day sent an email to all councillors seeking their input and comments. The result was five votes to two in favour of him remaining on the Board.
20. The *Motor Sports (World Rally Championship) Act 2009* came into effect on 1 July 2009 to facilitate the conduct of the World Rally Championship to be held in Northern NSW, thus circumventing Council as the approving body.
21. It was not until beginning of July that this became a major news story with headlines such as "RESIGN Mayor tells GM and he replies NO", "Rayner breached Code of Conduct", "Mayor 'under siege' for GM stand".
22. Cr van Lieshout claims her press statements (that the General Manager had a conflict of interest and so should resign from the Board of World Rally Australia) represented Council's view of 7 April. However, that view was shortlived, lasting only until the results of the General Manager's email were known a week later.
23. On 14 July 2009 Cr van Lieshout sent an email to the President of No Rally Inc stating:

"As you are well aware I have been monitoring this situation and have been stifled by the Code of Conduct in regard to Councillors and my weight as Mayor without the consent of the other Councillors.

- “There is a current process and I have been steadily following that process to achieve the right outcome”. That process was exerting pressure on the General Manager through the media to resign and on councillors to change their views.
24. At the Council meeting on 21 July 2009, Cr van Lieshout introduced a Mayoral Minute to rescind Council’s November 2008 decision authorising the General Manager to accept the offer to be a Director of World Rally Australia. In the Mayoral Minute Cr van Lieshout states, “As councillors would be aware I have presented these misgivings and concerns through various media opportunities and I feel it would now be prudent of Council to rescind that previous authorisation of the General Manager serving as a Board Member to World Rally Australia”. Cr van Lieshout’s recommendation to rescind the earlier motion was defeated 5 votes to 2.
25. Council considered the Interim Report at its meeting on 18 August and resolved that “Council officers organise extensive workshops to further Councillors’ understanding of the Code of conduct, the Media Policy, The Conduct Review Committee/Sole Reviewer Policy and the Code of Meeting Practice, as soon as possible”.

Findings

26. Section 12.20 of the Code states *“where the conduct review committee/reviewer conducts enquiries or causes enquiries to be conducted, the conduct review committee/reviewer must make findings on whether, in its view, the conduct referred to it comprises a breach of the code of conduct”*. Notwithstanding our Interim Report, we are required to make findings.
27. We find that Cr van Lieshout’s actions did not breach sections 4.2, 6.1(f), 6.5, 6.7, 9.2(a), 9.7(e), or 9.7(f).
28. Section 4.2 is one of the key principles of the Code and is not enforceable. Standards of conduct are set out in Part 2 of the Code and are enforceable.
29. Cr van Lieshout’s campaign in the media did not, in our view, *“cause, comprise or involve discrimination, disadvantage or adverse treatment in relation to employment”* as required by section 6.1(f) nor did it breach section 6.5 which provides that *“you must consider issues consistently, promptly and fairly. You must*

deal with matters in accordance with established procedures, in a non-discriminatory manner". In this particular matter Cr van Lieshout's personal views were at odds with the Council's view and she expressed those views in the media. The Media Policy in force at the time was silent on how councillors were to respond in such circumstances.

30. Section 6.7 states that *"you must not harass, discriminate against, or support others who harass, discriminate against colleagues or members of the public"*. This section relates to colleagues (other councillors) and members of the public. Whilst the Cr van Lieshout was certainly attempting to influence her fellow councillors through the press campaign so that they would support her position, her actions do not amount to harassment or discrimination in our view.
31. Section 9.2(a) councillors *"must not direct council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor ... exercising their power under section 226 of the Act"*. Whilst Cr van Lieshout engaged in a robust campaign to influence the General Manager to resign from the Board of World Rally Australia she stopped short of issuing a direction. Such a direction if issued would have run foul of Council's resolution authorising the General Manager to accept the position on the Board.
32. Section 9.7 (e) provides that councillors must not be *"..overbearing or threatening to council staff"*. We determine that Cr van Lieshout's conduct did not reach that level. There was no evidence presented of any threats made by the (former) Mayor against the General Manager.
33. Section 9.7(f) provides that councillors must not make *"...personal attacks on council staff in a public forum"*. Cr van Lieshout's campaign for the General Manager to resign from the Board was based on her belief that he had a conflict of interest. This does not amount to a personal attack on the General Manager.
34. We have found that Cr van Lieshout has breached sections 6.1(e), 6.3, 9.2(b), 9.7(g) and 11.9 of the Code.
35. We find Cr Lieshout has breached section 6.1(e) which states that *"you must not conduct yourself in carrying out your functions in a manner that is likely to bring the*

council or holders of civic office into disrepute. Specifically. You must not act in a way that: ... (e) causes, comprises or involves intimidation, harassment or verbal abuse".

Conducting a campaign in the media that the General Manager has a conflict of interest and thus should resign from the Board of World Rally Australia involves intimidation and harassment likely to bring the General Manager into disrepute. It also brings the Council into disrepute as the General Manager was acting with the authority of the Council.

36. Such a campaign shows little respect for the General Manager or his judgement so we are of the view that Cr van Lieshout's conduct has also breached section 6.3 of the Code which states *"you must treat others with respect"*.
37. Cr van Lieshout through her campaign in the media was attempting to influence the General Manager to resign from the Board of World Rally Australia and has breached 9.2(b) of the Code which states that councillors must not *"... in any public forum, direct or influence or attempt to direct or influence, any other member of staff of the council ... in the exercise of (their) functions ..."*. In this case there is a Council resolution authorising the General Manager to be on the Board of World Rally Australia. Cr van Lieshout campaigned in the most public of forums, the media. Cr van Lieshout's claim that she had the backing of Council after a workshop on 7 April was only arguable for a week after the workshop when the results of the General Manager's email to councillors was to hand, if at all. It certainly does not hold any weight with the campaign in July.
38. We find that Cr van Lieshout has breached 9.7(g) of the Code which provides that councillors must not direct or pressure council staff in the performance of their work. The public campaign calling for his resignation from the Board, placed pressure on the General Manager to resign from that position. Indeed, that was the aim of the campaign.
39. We also find that Cr van Lieshout has breached section 11.9 of the Code which states *"councillors should not make allegations of suspected breaches of the code at council meetings or in public forums"*. Cr van Lieshout, in her press statements that the GM had a conflict of interest because of his position as Director of World Rally Australia and should resign, has implied that the General Manager has breached the Code of

Conduct by not declaring or managing the alleged conflict of interest appropriately. Indeed, one of the headlines in the local press was "Rayner breached Code of Conduct". Clause 7.2 of the Code places the onus of identifying any conflict of interest on the person concerned, in this case the General Manager. Complaints about possible breaches of the Code of Conduct should be made in the appropriate manner in accordance with the Code and not aired in a public forum or through the media. The Conduct Review Committee was not asked to determine whether there existed a conflict of interest. The appropriate response was for a complaint to be made under the Code of Conduct. In not doing so and advocating her complaint in the media, Cr van Lieshout has breached section 11.9 of the Code.

Recommendations

40. In our Interim Report we made recommendations that councillors receive Code of Conduct training and media training and it is heartening that the Council has resolved to carry these through. The Code of Conduct sets out examples of the conduct required by council officials to fulfil their statutory duties and to "*...act in a way that enhances public confidence in the integrity of local government*" (Section 3). A better understanding of the Code may avoid similar complaints in the future.
41. The Conduct Review Committee found that Cr van Lieshout has breached certain sections of the Code of Conduct. However, the Committee does not believe that the breaches are sufficiently serious to warrant any disciplinary action.



David Gibson
Chairperson
Conduct Review Committee
30 September 2009