

# **TWEED SHIRE COUNCIL**

**Report and Findings  
of the  
Sole Reviewer  
into  
complaints against the Cr Katie Milne**

**23 September 2009**

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### **Report and Findings of the Sole Reviewer into complaints against Cr Katie Milne**

#### **The Complaint**

1. On 28 July 2009 Councillors P Youngblutt, D Holdom, B Longland, W Polglase, K Skinner and J van Lieshout lodged a complaint against Cr K Milne alleging that she released a report prepared by Council officers on the Repco Rally that was not publicly available and in so doing breached sections 10.8(d) and 10.22 of the Code of Conduct and the Media Policy.
2. The complaint also alleged that Cr Milne had stated that “she would not adhere to this (media) policy and bring on the conduct review panel” in the Council Meeting of 21 July 2009 when amendments to the Media Policy were being discussed by Council.
3. At that Council Meeting the Council resolved to amend the Media Policy as follows:  
“Before making any public comments on matters where Council is involved in current legal proceedings with third parties the Mayor and Councillors must seek prior advice from the General Manager as any public comment could have significant implications and repercussions including financial and legal consequences for Council.  
“The Mayor and Councillors will not disclose to the media information from within Council that is not otherwise publicly available. Examples of this would include conversations held between Mayor/Councillors, Mayor/Councillors and staff be it verbal, email, letters, memos, reports or in any Workshops conducted by Council and/or in conjunction with any Government Departments and/or Agencies and/or any Community Groups.”

#### **Code of Conduct**

4. Section 10 of the Code of Conduct deals with access to information and council resources.

5. Section 10.1 states:

*"The general manager and public officer are responsible for ensuring that members of the public, councillors and administrators can gain access to the documents available under section 12 of the Local Government Act 1993."*

6. Section 10.8 deals with use of certain council information and states:

*"In regard to information obtained in your capacity as a council official, you must:*

- a) only access council information needed for council business*
- b) not use that council information for private purposes*
- c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with council*
- d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation."*

7. Sections 10.9 and 10.10 deal with the use and security of confidential information and specifically in 10.10(b) you must *"only release confidential information if you have authority to do so"*.

8. 10.22 states:

*"Councillors and staff must ensure that they fully understand the requirements/delegations under which they are permitted to make public comments prescribed in Council's Media Policy.*

*"If staff are in any doubt authorisation should be obtained from the General Manager.*

*"Public comments refer to:*

- Speaking engagements, and*
- Expressing either council or personal views verbally (including on radio and television) and in writing in the public domain."*

### **Appointment of Sole Reviewer**

9. Initially Dr Roslyn Cameron was appointed as the Sole Reviewer to enquire into this matter. Dr Cameron withdrew from the Conduct Review Panel and consequently this matter on 24 August 2009.

10. I was appointed as the Sole Reviewer by way of email from Mr Troy Green, Council's Director, Technology & Corporate Services, dated 27 August 2009.

### Proceedings

11. On 1 September 2009 the complaint was assessed against the Complaint Assessment Criteria in section 13.1 of the Code of Conduct:

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 10.8 and 10.22 of the code of conduct, section 12 of the Local Government Act and Council's Media Policy.

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"*

Yes – the information was provided to a Council workshop on 7 July 2009.

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"*

Yes – the complaint could reasonably constitute a breach of the code of conduct.

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"*

Appropriate training in code of conduct and media policy covering issues such as what information is publicly available, how to obtain information under section 12 of the Local Government Act could be beneficial.

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

The resignation of the Sole Reviewer initially given the responsibility to enquire into this matter has resulted in two months having elapsed since the complaints were lodged.

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

The complaint is serious enough for all other councillors to sign the complaint.

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

Comments Cr Milne is alleged to have made at the time would indicate this may indicate an ongoing pattern of behaviour.

12. On 10 September 2009 the Sole Reviewer conducted a series of interviews at Tweed Shire Council with Councillors W Polglase, B Long, K Skinner, P Youngblutt, D Holdom, J van Lieshout and K Milne, and Mr N Baldwin (Manager, Corporate Governance), Mr P Brack (Corporate Compliance Officer), Mr D Malone (Statutory Compliance Officer) and Mr V Connell (Director Planning and Regulation).

### **Material examined**

13. Material examined by the Sole Reviewer included:

- Tweed Shire Council’s Code of Conduct, Conduct Review Committee/ Sole Reviewer Policy, Media Policy, Access to Information Policy
- the *Local Government Act 1993*, specifically sections 12, 232, 343, 440 and 664.
- various press clippings
- relevant reports to Council and minutes
- various emails provided by council officials.

### **Analysis of Evidence**

14. On 1 June 2009 Rally Australia wrote to Council seeking feedback on a number of reports it had sent Council and requesting a workshop with staff and councillors to discuss these reports.

15. The *Motor Sports (World Rally Championships) Act 2009* came into effect on 1 July 2009 to facilitate the conduct of the World Rally Championship to be held in the Tweed and Kyogle Shires from 3 to 6 September 2009.

16. Council staff undertook an assessment and prepared a report on the World Rally Championship's planning and environmental assessment reports as background to the workshop with councillors that was held on 7 July 2009.
17. On 21 July 2009 the Council resolved to amend the Media Policy as follows:

“Before making any public comments on matters where Council is involved in current legal proceedings with third parties the Mayor and Councillors must seek prior advice from the General Manager as any public comment could have significant implications and repercussions including financial and legal consequences for Council.

“The Mayor and Councillors will not disclose to the media information from within Council that is not otherwise publicly available. Examples of this would include conversations held between Mayor/Councillors, Mayor/Councillors and staff be it verbal, email, letters, memos, reports or in any Workshops conducted by Council and/or in conjunction with any Government Departments and/or Agencies and/or any Community Groups.”
18. All of the complainants recall Cr Milne saying words to the effect that she would not adhere to the amended Media Policy and bring on the conduct review panel.
19. When questioned about this Cr Milne denied having said that she would break the policy but she might have challenged the Conduct Review Committee. She found the amended Media Policy “quite draconian”.
20. The report prepared by the Council staff on the World Rally Championship was not included on the Business Paper or discussed by Council at its meeting on 21 July 2009.
21. Cr Milne admitted that she released the report to the media and no rally group “a couple of days after the Council meeting – I am thinking I released it about 23 July 2009”.
22. Cr Milne defended the release of the report by her as:
  - it was in the public interest (she said the report disputed the rally organiser's ecological report in particular)

- it is her role under section 232 of the *Local Government Act 1993* to facilitate community consultation - Cr Milne stated that "section 232 is my lawful excuse"
- there was some urgency in its release – Cr Milne thought it was "negligent of Council not to put it on the agenda" (for the Council meeting on 21 July 2009).

23. A report on the World Rally Championship was prepared for the Council meeting on 18 August 2009. That report contained a number of attachments including the report prepared by Council staff that was released by Cr Milne. The Council resolved that: "At this late stage that Council takes a cohesive stand in support of the upcoming Repco Rally event in order to show respect to the many officials and volunteers in both the State and Local Community who have been involved in the extensive process which has shown a high degree of professionalism in various areas of staging this event."

### **Findings**

24. A number of the complainants argued that information given at the Workshop on 7 July 2009 was confidential. The report by Council staff to the workshop on 7 July 2009 was not marked as "confidential" nor did any Council staff member state that the information was confidential. I find that the report was not confidential.
25. Any report to a Council workshop is a Council document so the provisions of section 12 of the *Local Government Act 1993* (LGA) or the provisions of the *Freedom of Information Act 1989* apply.
26. Section 12 of the LGA sets out documents that are available to the public. Reports to Council workshops are not amongst the list of publicly available documents. Applications can be made to the General Manager or Public Officer under section 12(6) to inspect other Council documents and this can only be denied if it is contrary to the public interest. No such application was made. Cr Milne is not the judge of whether the release of information is in the public interest.

27. Section 664 of the LGA provides that a person must “...not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

(a) with the consent of the person from whom the information was obtained, or

(b) ...

(c) ...

(d) ...

(e) with other lawful excuse”.

Consent was not sought from the Council officer concerned.

28. Reliance on a councillor’s role under section 232 of the LGA to “...facilitate communication between the community and council” as a “lawful excuse” is taking this provision too far. It would mean that a councillor could rely on section 232 to disclose any information that was not confidential. The protection offered by section 664(e) can only be used in limited circumstances.

29. I find that Cr Milne has breached section 10.8(d) of the Code of Conduct which states that:

*“In relation to information obtained in your capacity as a councillor, you must:*

*a) ...*

*b) ...*

*c) ...*

*d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation”.*

Council’s Media Policy states that “the Mayor and Councillors will not disclose to the Media information that is not publicly available. Examples of this would include information obtained in “ ... reports or in any Workshops ...”. The report was not publicly available when it was released by Cr Milne. It became public when it was included in the business paper for Council’s meeting on 18 August 2009.

30. Cr Milne should have enquired from Council why the report was not on the Business Paper for the Council meeting of 21 July 2009. Alternatively, Cr Milne should have sought permission to release the report as required by section 664 of the LGA or made application for it under section 12(6) of the LGA or under the *Freedom of Information Act 1989*.



31. I find that Cr Milne has not breached section 10.8(b) of the Code which states:

*"In relation to information obtained in your capacity as a councillor, you must:*

*a) ...*

*b) not use that information for private purposes*

*c) ...*

*d) ...".*

Although Cr Milne was the applicant in the no rally court case she claimed not to be actively involved in the no rally campaign at the time of the release of the report. When asked what she hoped to gain by the release of the information, she replied "The truth, that there were concerns and that a legitimate organisation such as Council had concerns and the community should be aware of these things".

### **Recommendations**

32. Whilst I have found that Cr Milne has breached section 10.8(d) of the Code of Conduct, I do not find the breach to be of such seriousness to warrant disciplinary action.

33. Section 10.22 of the Code states the *"Councillors and staff must ensure that they fully understand the requirements/delegations under which they are required to make public comments prescribed in Council's Media Policy"*. I recommend that appropriate training be given on the Media Policy and Code of Conduct and such training to encompass:

- what information is publicly available
- how to obtain information that is not publicly available
- how to differentiate personal views from adopted position of Council in any media statement.



David Gibson

Sole Reviewer

23 September 2009