



New South Wales

The Hon. Kerry Hickey MP Admin Manu  
Minister for Local Government

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The Administrators  
Tweed Shire Council  
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TWEED SHIRE COUNCIL	
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8 SEP 2005

Dear Administrators

I am writing in relation to the Second Report of the Tweed Shire Council Public Inquiry.

As you would be aware, the Report contains 24 recommendations, three of which are directed to the Tweed Shire Council for consideration (Recommendations 14, 17 and 21).

I would appreciate if you could advise me, as soon as practicable, of any actions Council proposes to take in relation to these recommendations.

If you require further information, please contact Ms Genevieve Slattery, Chief of Staff, in my office on (02) 9228 3333

Yours sincerely

Kerry Hickey MP  
Minister

**TITLE [AM] Tweed Shire Council Public Inquiry - Second Report**

**Submitted by Administrator Turnbull**

Council has been requested to provide the Minister for Local Government with a report on its response to the findings of the Second Report of the Tweed Shire Council Public Inquiry insofar as it concerns the recommendations that apply to the Council, in particular recommendations 14, 17 and 21

**Recommendation 14**

***That an urgent and widespread review be made of the council's planning regime including its strategic planning, the Local Environment Plan and the various Development Control Plans to ensure:***

- ***that future development occurs in areas that are appropriate to the nature of that development***
- ***that council's planning regime presents a clear and understandable picture of council's vision for the future development of the area***
- ***that council's planning regime is both coherent, equitable and resilient***
- ***that conditions of consent are able to give effect to councils intentions and are enforceable***

**Response**

Council retained the services of the NSW Government Architect and John Kass to undertake a review of the planning controls. A copy of that report is attached to this Minute.

The recommendations in that report are being reviewed by council officers, and a work plan for implementing the recommendations, as adopted by Council, will be undertaken as a matter of priority this calendar year.

We believe that after the principal recommendations in the Government Architect/ John Kass report have been adopted; any remaining weakness in the resiliency of the planning controls will have been addressed.

In addition to this, several key areas of concern in the report have already been acted upon.

Foremost is the concern in the report about the impact on planning outcomes of the preferential planning regime granted to the development of tourist accommodation. There is no longer a preferential system of s. 94 contributions for the development of tourist accommodation, and the amount of payment to be made in lieu of providing car spaces has been greatly increased. Furthermore, payment in lieu of the provision of public car parking has not been accepted for a recent development application in Kingscliff (the Azura development) where there is no proposed or imminently available nearby car parking capacity or publicly available car parking

In addition, there is now a strong sense of vigilance about the impact of s. 96 applications which have the effect of weakening the design quality, residential and / or local amenity of developments.

**Recommendation 17**

***The Council must urgently undergo a process of implementing identified and enforceable controls on the SALT development, probably through the adoption of a master plan supported by DCP.***

**Response**

1. There is a master plan for the Salt development which is in full force and effect. DIPNR ( as the DOP then was) was the consent authority for this masterplan. Much of the Salt development has already been constructed. There is no need for a new Master Plan or planning controls, and requiring council planning officers to spend time on drafting a new DCP for Salt would not be productive as there is a great deal of other far greater priorities.
2. Administrators believe that some of the comments made in relation to the Salt development about the conduct of planning officers and others were based on a mistaken view of the facts.

For example, the integrity of Lindsay McGavin, a senior planner of great ability who is a long term employee of the Tweed Shire Council was brought into question, on the basis of a mistaken understanding of what his actual recommendation in a council report actually was in relation to the proposal to increase the density of the Salt development. The Daly Report states that he was in support of increased density and also of using s.96 as a mechanism of changing the density of the Salt development by 37% when in fact he was not.

This finding has caused Mr McGavin a great deal of grief, which is quite unwarranted and unfair. If the digital record cannot be corrected by making reference in the digital copy of the report to replies or responses by aggrieved parties, this is most unfortunate. We recommend that this occur via hyperlink reference in the digital report which is available over the Internet. It would also be advisable if in future the findings of any similar Inquiry made provision for the digital record to be corrected, or for replies to adverse findings to be attached or hyperlinked to the report itself, and made available online.

There are other parties who feel similarly aggrieved by some of the findings or references to their conduct in the report, and a right of reply would redress the sense of having been treated unjustly, and the public can make up its own mind about where the truth lies. In the digital age, with search engines like Google, these references have an eternal existence, and unfairness arising from this is a significant issue.

**Recommendation 21**

1. ***That Council's Administrators give consideration whether Stacks/Northern Rivers has carried out its retainer to represent council's interests at the Public Inquiry.***
2. ***That the Council's Administrators give consideration whether Stacks/Northern Rivers has breached its retainer to represent council's interests at the Public Inquiry and, if so, whether it should seek tenders for the provision of legal services from another or other legal firms.***

## **Response**

The Administrators have made enquiries in relation to this recommendation, and have concluded that Stacks at all times took instructions from either the General Manager or the Mayor and thus acted reasonably and within the scope of their retainer.

There is no evidence available which indicates that they have breached the terms of their retainer or otherwise acted improperly. Council will review its retainer with Stacks when the time arises in the ordinary course in accordance with the requirement to issue tenders from time to time for legal services.

## **RECOMMENDATION:**

**That the Tweed Shire Council Public Inquiry - Second Report - Administrators Minute be received and noted and a copy be forwarded to the Minister for Local Government, indicating appropriate actions to Recommendations 14, 17 and 21 from the Tweed Shire Council Public Inquiry Second Report.**

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