

The Mayor

Tweed Shire Council

PO Box 816, Murwillumbah NSW 2484

7 December, 2015

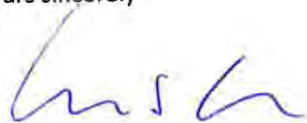
Dear Mayor Milne

I have completed my review of the expense claims you have provided to me and attach my report.

I have sent copies of the report to Councillors Longland, Byrne and Polglase , Mr T Green and the independent members of the Audit Committee.

I am happy to discuss this report with you at your convenience.

Yours sincerely



Colin Wight

Chairman – Audit Committee

Tweed Shire Council

Cc Councillor Longland
 Councillor Byrne
 Councillor Polglase
 Mr T Green
 Mr R Bell
 Mr K Blinco

TWEED SHIRE COUNCIL

Report on the Review of certain expense claims by Councillors

Background

On 23 November 2015, I was requested to review a number of expense claims by Councillors which the Mayor had declined to approve for reimbursement. Accordingly, those claims represented disputed decisions which were referred to the chair of the Audit Committee for review under clause 4.1.7 of the Councillors – Payment of Expenses and Provision of Facilities for Mayor and Councillors Policy of the Council (version 1.9) ("the Policy").

I attach as appendix 1, a schedule of the Councillors and the respective disputed decisions on their claims.

My approach to the Review

1. I sought from each of the Councillors any information they may wish to provide me for the purposes of the review. Each of the Councillors responded but not all provided a substantive response, however they all requested I consider the contents of a report on a review of the Policy by Prevention Partners NSW before completing my review of the disputed decisions
2. I sought from the Council staff member who also needed to approve the expense claims, any information he could provide me on the claims and received a full response. I note that the policy is inconsistent in prescribing who is responsible for approving Councillors claims – clause 4.1.7 specifies the Mayor and General Manager or nominee whereas clause 4.1.8 specifies the Mayor and public officer
3. I sought and received a copy of the report by Prevention Partners NSW dated 26 November 2015 and their suggested amended policy
4. I considered each of the claims comprising the disputed decisions for compliance with the Policy, the Mayors reasons for declining to approve the claims, independent third party material where I considered the Policy was inconsistent or lacked clarity (all such material is identified in my report] and the report from Prevention Partners NSW.

Final Conclusions

I have considered each disputed decision separately and reached a preliminary conclusion on whether the claims in their present form should be reimbursed or rejected. I set out my reasoning and preliminary conclusions on each matter in the following section – Preliminary Conclusions on the Disputed Decisions.

However, for reasons that I set out in the section of my report - Final conclusions on the disputed decisions and the Policy, I recommend a different final resolution of the disputed claims in some instances. I reach this final conclusion after carefully considering deficiencies in the Policy and processes leading up to the disputed decisions.

Preliminary Conclusions on the Disputed Decisions

1 Councillor Longland

Claim for reimbursement in August 2015 for \$9.95 and September 2015 for \$9.95 being for "Australian Aviation". These claims were rejected as the Policy in clause 4.1.3 only permits reimbursement of "Newspapers" and the aviation publications do not qualify as newspapers.

The Macquarie Dictionary defines "newspapers" as follows:

"noun 1. a printed publication issued at regular intervals, usually daily or weekly, and commonly containing news, comment, features, and advertisements."

I therefore conclude that "Australian Aviation" fits within the definition of newspapers and that each of the disputed decisions should be reimbursed to Councillor Longland.

I also consider this publication to be of a technical nature as opposed to a general entertainment nature and relevant to the role of a Councillor in Tweed Shire Council which has an involvement in Gold Coast Airport as well as its own airport at Murwillumbah.

2. Councillor Polglase

Claim for reimbursement in September 2015 of \$319.00 for telephone and internet and October 2015 of \$319.00 for telephone and internet which were rejected as there was not any independent third party documentation provided to support the quantum of the claims.

Both of these claims were supported by tax invoices to the Council from a private company apparently associated with Councillor Polglase.

Both claims for reimbursement comply with the Policy clause 4.1.3 as to nature and quantum.

The Policy is very clear that claims for expenses are for reimbursement of expenses incurred by the Councillors and are not in the form of an allowance. It follows therefore that the claims need to be supported by tax invoices from suppliers to justify that the cost has actually been incurred as is required by clause 4.1.8 of the Policy and after making allowance (if any) for private benefit as is required by clause 4.1.5 of the Policy.

It may be argued that provision of a tax invoice by Councillor Polglase's company is in compliance with the Policy. However, the words of the Policy "appropriate receipts and tax invoices" require a subjective judgement on what is appropriate. I consider this terminology to require documentation including invoices from the independent third party provider of the telephone and internet services.

I accept that there are legitimate business reasons for the current practice, however the documentation currently supplied to support the claims fall short of an acceptable level of evidence by a reasonable commercial standard of governance and I therefore conclude that the disputed decision not to approve reimbursement of both of these claims without adequate supporting documents is correct. I note however that Councillor Polglase remains entitled to claim for reimbursement of telephone and internet costs incurred by him on Council business in September and October 2015 subject to providing third party supplier documentation supporting the amount claimed.

3. Councillor Byrne

a) Claim for reimbursement in September 2015 of \$319.00 for telephone and internet and October 2015 of \$319.00 for telephone and internet which were rejected as there was not any independent third party documentation provided to support the quantum of the claims.

Both of these claims were supported by tax invoices to the Council from a private company associated with Councillor Byrne.

Both claims for reimbursement comply with the Policy clause 4.1.3 as to nature and quantum.

The Policy is very clear that claims for expenses are for reimbursement of expenses incurred by the Councillors and are not in the form of an allowance. It follows therefore that the claims need to be supported by tax invoices from suppliers to justify that the cost has actually been incurred as is required by clause 4.1.8 of the Policy and after making allowance (if any) for private benefit as is required by clause 4.1.5 of the Policy.

It may be argued that provision of a tax invoice by Councillor Byrne's company is in compliance with the Policy. However, the words of the Policy "appropriate receipts and tax invoices" require a subjective judgement on what is appropriate. I consider this terminology to require documentation including invoices from the independent third party provider of the telephone and internet services.

I accept that there are legitimate business reasons for the current practice, however the documentation currently supplied to support the claims fall short of an acceptable level of evidence by a reasonable commercial standard of governance and I therefore conclude that the disputed decision not to approve reimbursement of both of these claims without adequate supporting documents is correct. I note however that Councillor Byrne remains entitled to claim for reimbursement of telephone and internet costs incurred by her on Council business in September and October 2015 subject to providing third party supplier documentation supporting the amount claimed.

b) Two claims in September 2015 for \$25 and 26km travel for attendance at Tweed Chamber meeting on 8 September 2015 and \$25 for attendance at Kingscliff Chamber meeting on 15 September 2015 which were rejected as attendance at the Chamber meetings were not approved by Council as is required by clause 4.2.9 of the Policy.

Clause 4.2.9 refers to attendance at dinners and other non-council functions and is clear that reimbursement for costs incurred in attending such functions "must have it approved by Council". I note that the policy does not specify whether the Council must approve attendance at the function or only the reimbursement, nor whether such approval should be / can be before or after the event.

I note a further inconsistency in the Policy. Clause 3.6 defines "Civic duties" and requires that attendance at (and thus reimbursement of cost) be approved as follows:

- Community meetings approved by the Mayor or General Manager
- Conferences, seminars, training courses, formal and social functions **where representing Council** (my emphasis) approved by the Council, Mayor or General Manager
- Meeting and corresponding with constituents in the course of discharging duties as Mayor and Councillor [no approval required].

As a result, if the Chamber meetings fall within clause 3.6, Council approval is not mandatory. If the Chamber meetings are excluded from clause 3.6 and fall only under clause 4.2.9, then approval of the Council is mandatory. If Council approval is required, it may be given or refused after the event, thus reimbursement of costs for attendance at such meetings is still available to be considered by Council.

I cannot determine what unique characteristics of the Chamber meetings dictate that it falls under either clause to the exclusion of the other as in my opinion the meetings could be construed as falling under either clause.

I therefore fall back on the following tests to determine whether the costs should be reimbursed:

- The test set out by Prevention Partners NSW on page 6 of their report "... whether the Councillor would attend the function in her/his private capacity or whether s/he is at the event because s/he is a Councillor. Further, would the reasonable onlooker think the Councillors (sic) is attending the function as a Councillor or as an individual".
- Has attendance at the Chamber meetings been approved by at a minimum, the General Manager? I understand that the General Manager does approve of attendance at such meetings.

I therefore conclude that in view of the nominal amounts of the claims, a history of reimbursement of such costs, the results of the above tests and the inconsistency and lack of clarity in the Policy, the disputed decisions should be reimbursed to Councillor Byrne.

c. Two claims in September 2015 for 60km travel to Murwillumbah Police on 18 September 2015 and 86km travel to Murwillumbah Court House / Tweed Court House on 21 September 2015 which were rejected as they were a private matter and as Council is not responsible for Councillors legal expenses, it follows that Council is not liable for travel costs.

I understand that the circumstances necessitating Councillor Byrne undertaking such travel arose out of an alleged altercation between Councillor Byrne and another

Councillor at or near Council premises at a time when both Councillors were involved in activities within the definition of Civic Duties in clause 3.6 of the Policy. I also understand that the resultant Court action is unresolved.

I have limited knowledge of, and no view on the merits or otherwise of the legal matters but see two threshold questions for the disputed decisions. Firstly, does it follow that travel expenses are related exclusively to the legal matter they are connected with and secondly, if there is that sole connection, were the expenses incurred in connection with a legal matter which the Council may reimburse?

Clause 4.2.3 of the Policy deals with reimbursement of Councillors travel costs while undertaking civic duties. The definition of civic duties in clause 3.6 of the Policy, while arguably narrow in defining a Councillors functions, does not contemplate costs incurred in matters set out in clause 4.2.7.

I therefore accept the proposition that within the Policy and for the purposes of this claim, travel costs are connected to the matter to which they pertain – being matters which are set out in clause 4.2.7 or other clause in the Policy.

Clause 4.2.7 sets out the circumstances where the Council may reimburse Councillors for certain types of legal costs and others where it will not. The nature of the specific allegations in this matter does not appear to have been contemplated in the Policy either to permit or proscribe reimbursement.

However, I do not know whether the costs were incurred by Councillor Byrne in pursuing a legal action for which clause 4.2.7 may be relevant, or if her involvement is ancillary to the matter so that clause 4.2.7 does not apply.

I further note that the Policy in clause 4.2.8 deals with circumstances under which Councillors “receive the benefit of insurance cover” for several types of insurance matters. The Policy does not distinguish between Councillors receiving protection for actions they take compared to receiving financial benefits the Council receives from its insurers for other events for which the Council is liable and has insured against. There are some tests to determine eligibility for this protection which on the face of it appear to be satisfied.

Because of the sensitivity of this matter and the fact that it is still before the Courts, I consider it inappropriate and premature to conclude on the disputed decision at this time.

Pending the resolution of all legal matters arising from the matters alleged, I recommend a practical solution is that the travel expenses be reimbursed now on the proviso that the matter will be reviewed on conclusion of all legal matters involving this matter and if it is concluded that the costs were not available for reimbursement all such reimbursements should be refunded to the Council.

If Council has not already done so, I recommend Council’s insurers be notified of the circumstances of this matter.

Final conclusions on the disputed decisions and the Policy

As chair of the Audit Committee of the Council, I am concerned with a number of matters that have arisen during my review:

1. My limited review of the Policy arising out of the specific claims referred to me, have highlighted at least three inconsistencies in the Policy which inhibit clear, unambiguous and consistent application of the Policy. There may well be others.
2. Prevention Partners NSW have identified examples of other expense claims from Councillors which are "... contrary to Council's policy, the Guidelines or the Handbook ..." I have not been referred for review the specific examples Prevention Partners NSW disclose but am concerned that rigid application of the Policy to effect my preliminary conclusions set out above will likely result in inconsistent treatment between Councillors .
3. Prevention Partners NSW have itemised a number of matters where the Policy is silent but which need addressing.
4. One Councillor has advised me that the method of claiming and supporting claims for telephone and internet costs is as has been instructed by Council staff.

As a result of these unresolved concerns, my final conclusions on the disputed decisions referred for my review are as follows:

1. An urgent and thorough review of the Policy is required. I therefore endorse the appointment of Prevention Partners NSW to lead this review and their recommended approach providing the review is completed without delay.
2. As a result of the inconsistencies and deficiencies in the current Policy, I also endorse Prevention Partners NSW recommendation that "While this review (the Prevention Partners review) is being undertaken we recommend Council continue applying the Policy as it has been in the past". This means that all of the claims submitted for my review be reimbursed immediately in accordance with past practice including the legal matters claim of Councillor Byrne. I reach this conclusion despite the reservations I express above on reimbursing claims for reimbursement of telephone and internet on the presumption that the review of the Policy will be completed and adopted by Council promptly and full compliance with the amended policy in form and spirit will be required. I consider that the financial cost to Council of this recommendation to be small to non existent.



C S Wight

Chair, Audit Committee

7 December 2015

Appendix 1

Schedule of disputed decisions on expense claims referred for review

Councillor Longland

1. August 2015 - claim for \$9.95 for Australian Aviation
2. September 2015 - claim for \$9.95 for Australian Aviation

Councillor Polglase

1. September 2015 - claim for \$319 for telephone and internet
2. October 2015 - claim for \$319 for telephone and internet

Councillor Byrne

1. September 2015 - claim for \$220 for telephone
2. September 2015 - claim for \$90 for internet
3. September 2015 - claim for \$25 and 26km travel for Tweed Chamber meeting on 8 September 2015
4. September 2015 - claim for \$25 for Kingscliff Chamber meeting on 15 September 2015
5. September 2015 - claim for 60km travel to Murwillumbah police on 18 September 2015
6. September 2015 - claim for 86km travel to Murwillumbah Court House / Tweed Court House on 21 September 2015
7. October 2015 - claim for \$220 for telephone
8. October 2015 - claim for \$90 for internet