



**Premier & Cabinet**  
Division of Local Government

5 O'Keefe Avenue NOWRA NSW 2541  
Locked Bag 3015 NOWRA NSW 2541

Our Reference: A321443  
Your Reference:  
Contact: John Davies  
Phone: 02 4428 4139

Clr Barry Longland  
Mayor  
Tweed Shire Council  
PO Box 816  
MURWILLIMBAH NSW 2484

12 APR 2013

Dear Clr Longland

The purpose of this letter is to inform you of the outcome of the Division of Local Government's assessment of the circumstances surrounding Tweed Shire Council's termination of the employment of its former General Manager and to provide guidance to assist the Council to move forward.

At the outset I would like to observe that under clause 10.3.5 of the Standard Contract of Employment for General Managers which is prescribed under the *Local Government Act 1993* (the Act), councils have a broad discretion to terminate the employment of a general manager by giving 38 weeks notice or by making a payment equivalent to 38 weeks remuneration.

A good working relationship between a council and its general manager is fundamental to the effective performance of the organisation. Where that relationship breaks down or a council loses confidence in its general manager, this can lead to serious dysfunction and will invariably impact on the capacity of the council to meet the needs of its community. In such circumstances, it is reasonably open to a council to terminate the general manager's employment.

Officers of the Division have now spoken to most of the councillors, senior staff, the former General Manager and key members of the community to gain an understanding of the circumstances that led to the termination of the former General Manager's employment. A consistent picture has emerged from these discussions.

Based on these discussions, the Division has identified no evidence to suggest that the decision was made on improper or illegitimate grounds and is satisfied that it was one that was reasonably open to the Council to make in the circumstances.

The Division is aware that some sections of the Tweed community have called for the reinstatement of the former General Manager. It seems unlikely that this would be an option available to the Council under the Act. Even if it was, the Division would question the practicality and appropriateness of doing so in circumstances where a majority of councillors have indicated that they were no longer able to



work with the General Manager by participating in a decision to terminate his contract.

I would now like to address some concerns that the Divisional officers identified during their visit to Tweed.

In the course of their discussions with councillors, it became apparent to the Divisional officers that some councillors did not appear to fully understand their roles in relation to the determination of the organisation structure and the appointment and termination of senior staff. Some councillors appeared to hold the view that they had no role in relation to these matters. This view is not correct.

Under section 332 of the Act, it is the council, not the general manager that determines the organisation structure. The council is required to determine an organisation structure, those positions within the structure that are senior staff positions and the resources to be allocated towards the employment of staff. As a key strategic activity for any council, the Division would expect councillors to have input into the development of the organisation structure and would expect general managers to seek such input.

Similarly, the suggestion that councillors are not entitled to information about senior staff or to provide input into decisions to appoint senior staff or to terminate their employment is not correct. Under section 337 of the Act, a general manager may only appoint or dismiss senior staff after consultation with the council. Under section 339, the general manager must also report at least once annually to the council on the contractual conditions of senior staff.

The Division is also concerned that confidential information in relation to outstanding code of conduct and other matters is currently being circulated in the public domain. The Division is also concerned about the potential for some of the statements being made publicly in relation to this matter to exacerbate divisions within the Tweed community and to undermine community confidence in the Council.

The Division would remind councillors to be mindful of their role as community leaders and their ethical obligations in relation to the protection of confidential information when making public statements.

The termination by a council of the employment of a general manager is invariably highly disruptive to the ongoing functioning of a council and can be traumatic to councillors and staff alike. The Division considers that it is imperative that the Council does not allow this event to cause any ongoing disruption or to impede the Council's commitment to serve its community. Ultimately, it lies within the Council's power to avoid such outcomes.

To this end, the Division would urge all councillors to put their differences aside in relation to this matter and to make a conscious effort to rebuild healthy and constructive working relationships with each other and with Council staff.

In response to some operational matters raised by the acting General Manager and to assist the Council to move forward, the Division recommends the following specific actions:

1. To address the ongoing confusion on the part of some councillors about the considerations that prompted you to recommend the termination of the former General Manager's employment that you meet with your fellow councillors in private to explain your reasons for making that recommendation.
2. That the Council engages an independent facilitator to assist with the recruitment of a new general manager and that all councillors participate in the recruitment process.
3. That pending the appointment of a new general manager the council re-determines the existing organisation structure.
4. That the acting General Manager appoints senior staff whose contracts are due to expire to new 12 month contracts as originally proposed by the former General Manager.
5. That the acting General Manager undertakes any outstanding performance reviews for senior staff and other staff directly reporting to the general manager along the lines he has proposed.
6. That pending any future restructure, the Acting General Manager undertakes interim position evaluations for those positions whose responsibilities have changed along the lines he has proposed.
7. Ultimately, it is a matter for the Council whether to proceed with a Drug and Alcohol Protocol for staff. The Division has no objections to the approach proposed by the acting General Manager. Council is under no obligation to adopt a similar protocol for councillors. Ultimately, this would be a matter for the Council to determine.
8. That the Council appoint an interim panel of conduct reviewers pending the appointment of a new panel following the completion of the expression of interest process currently being conducted by NOROC. The Division agrees with the approach proposed by the acting General Manager to adopt the WSROC panel as an interim panel, if required.
9. That the Council enter into a special complaints management arrangement with the Division of Local Government for a period of three months under the prescribed Procedures for the Administration of the Model Code of Conduct to allow all outstanding code of conduct matters about councillors to be independently assessed by the Division. The Division has already received a request from the acting General Manager in relation to this and will respond to him separately.

10. That the Council resolves to provide an assurance to the business community that economic development remains a priority for Tweed Shire Council.

11. That you table this letter at the next Council meeting.

Finally, the Division reaffirms its previous suggestion that the Council retain an appropriately skilled and experienced independent person to review the concerns raised by LEDA Developments. Such an independent review would assist in resolving the continuing relationship difficulties between Council and LEDA.

It is the Division's view that any review should seek to identify the circumstances that have caused or contributed to the breakdown in the relationship between LEDA Developments and the Council. The review should have particular regard to:

- the accuracy and balance of assessments, reports and submissions in relation to both the Cobaki and Kings Forest developments, and
- the adequacy and integrity of the investigation into the LEDA complaints by the former General Manager, Mr Rayner.

The findings of the review should inform recommendations for policy or procedural reform or the development of protocols to address any issues identified by the review.

The Division has no objections to the persons and organisations proposed by the acting General Manager to perform the review.

Finally I would like to thank you, the other councillors, the acting General Manager and his staff for the assistance you have provided to the Division in relation to this matter.

Should you have any further questions in relation to this matter or wish to discuss it further, please do not hesitate to contact John Davies, the Leader Council Governance on 4428 4139 or Lyn Brown, the Leader Investigations on 4428 4161.

Yours sincerely



**Steve Orr**  
**Acting Chief Executive, Local Government**  
**A Division of the Department of Premier and Cabinet**