

Good morning, ladies and gentlemen. My name is Maurice Daly. I was appointed by the Minister for Local Government, the Honourable Tony Kelly, on 10 November 2004 to hold a Public Inquiry under Section 740 of the *Local Government Act 1993* into Tweed Shire Council. Public notice of the Inquiry was published in the Tweed Border Mail, the Tweed Daily News and the Tweed Sun. I'll now read the instrument of appointment:

I, the Honourable Tony Kelly MLC, Minister for Local Government in pursuance of the powers granted to me in Section 740 of the *Local Government Act 1993* hereby appoint Emeritus Professor Maurice Daly to hold a Public Inquiry to inquire, report and provide recommendations to me on the efficiency and effectiveness of the governance of Tweed Shire Council. The terms of reference of the Inquiry are that the Inquiry will have particular regard to:

- 1 Whether the elected representatives have adequately, appropriately and reasonably carried out their responsibilities in the best interests of all ratepayers and residents in an environment free from conflicts of interest.
- 2 The appropriateness of the procedures and processes adopted by council in relation to its environmental planning responsibilities including the processing of applications for development particularly those of a significant nature.
- 3 The appropriateness of the relationship between elected representatives and proponents of development in the council area.
- 4 Whether the elected representatives are in a position to adequately direct and control the affairs of council in accordance with the *Local Government Act 1993* so that the council may fulfil the charter provisions and intent of the *Local Government Act 1993* and otherwise fulfil its statutory functions.
- 5 Any other matter that warrants mention particularly where it may impact on the effective administration of the area and/or the working relationships between the council, councillors and its administration.

The Commissioner, it goes on to say, may make other recommendations as he sees fit including whether all civic officers in relation to the council should be declared vacant.

A copy of the instrument is on display at the notice board, which I believe is just outside the entry door. I might add that through the hearings we will be placing a number of notices on that notice board to keep you abreast of various matters related to the Inquiry. I now declare the public hearings of the Inquiry open. The Inquiry will be conducted in terms of section 740 of the *Local Government Act 1993*, which provides for a number of things. It confers the powers, authorities, protections and immunities, which are conferred on a Commissioner by Division 1 Part 2 of the *Royal Commissions Act 1923*.

It also invokes the provisions of Sections 27A and 27B of the *Local Courts Act 1982* in relation to contempt. And it brings into play other provisions of the *Royal Commissions Act 1923* about the conduct of the Inquiry.

The Commissioner is given wide discretion as to the procedures to be adopted in managing an Inquiry of this nature. I propose to spend a few minutes outlining the procedures that I intend to adopt. First, I have authorised Ms Katrina Annis-Brown to assist in the conduct of the Inquiry under Section 12 of the *Royal Commissions Act 1923*. Ms Annis-Brown is sitting on my left.

Should there be any issues which people need to raise you should see Ms Annis-Brown either at an adjournment or leave a message with the usher who is located I think near the door. I've also authorised Mr Angus Broad and Ms Sally Sanders to assist me during the Inquiry. Ms Sanders is attending the hearings today.

I'd now like to move on to some points about the way in which I intend to manage the Inquiry. The first thing, I propose to manage the Inquiry on as informal a basis as possible. Procedures will be presented and replied to in as simple and expeditious way as possible while at the same time recognising the rights of all those people who are involved.

Beyond today and through to 28 January 2005, the emphasis of the Inquiry will be on written submissions that have been and will be forwarded to the Inquiry. I would stress the importance of the written submissions and would invite people to put those into the Inquiry between now and 28 January. As well as the written submissions, we have the public hearings. Some persons may seek leave to appear at the public hearings today, but the opportunity to seek such leave will be open until 28 January 2005. At the public hearings, evidence will be taken orally on oath or affirmation and importantly there is a protection against defamation.

The Inquiry has already received a number of submissions. Copies of most of the written submissions will be made available for inspection at the council's administration centre at Tumbulgum Road, Murwillumbah and at the Tweed Shire Council's office in Tweed Heads. The written submissions will be made available progressively leading up to the resumption of the public hearings. I would now like to make some comments on the terms of reference of the Inquiry.

In conducting this Inquiry I've been called upon to form an opinion regarding governance issues affecting Tweed Shire Council.

It is my view that the terms of reference extend both to the role of councillors forming an elected body but also to the conduct of the corporate body principally represented by the staff. The terms of reference for other section 740 inquiries often focus on issues that tend to be very precise. There is a certain something that has happened that is built around a particular issue and the terms of reference relate to that something. Certain aspects of the terms of reference of this Inquiry might be seen as possessing this form. Importantly, however, the terms of reference of this Inquiry are not confined to just one or few happenings.

The context concerns a broader domain: the governance of Tweed Shire Council, with some emphasis on conflicts of interest, environmental planning responsibilities, the relationships of elected representatives and proponents of development, and finally, it is focused on the charter of the *Local Government Act*. These issues are specifically related to the first four terms of reference. It is important to note item five of the terms of reference in this context. I will just repeat item five for those who might not have heard it the first time. Item five says:

Any other matter that warrants mention, particularly where it may impact on the effective administration of the area and/or working relationships between the Council, councillors and its administration.

It will therefore be my duty to make determinations on what other matters might be relevant to the effective administration of the area and/or working relationships between the Council, councillors and the administration.

During the hearings I will not allow persons to make statements or to enter into questioning about matters that they determine to represent the broad intentions of item five of the terms of reference. If a person wishes to make such statements, they should do so by a written submission, which will then be evaluated. In some cases such persons may then be invited to make an oral submission on the issues they raise.

I will now move on to talk about appearances at the public hearings. I have indicated previously a number of written submissions have already been received. Generally, I have decided that where submissions do not fall within the terms of reference they will be excluded from display and, necessarily, excluded from providing evidence to the Inquiry. I have received indications that certain persons or entities may wish to appear at these public hearings. Appearances at the Inquiry will either be by way of application for and the granting of leave to appear; or by my invitation to appear.

I should note that under the powers bestowed on me I may summons persons or representatives of entities to appear at the hearings. I ask that persons or bodies seeking leave today to appear at the public hearings approach Ms Annis-Brown immediately after my introduction. After Ms Annis-Brown has gathered any such requests to appear or to seek to have legal representation at the hearings I will convene later to deal with the applications. So at the end of my introductory remarks I will call and adjournment during which Ms Annis-Brown will receive any of these requests. We will consider them.

We will reassemble and we will give our decision. Persons who want to appear at the public hearings, as I have said, may seek leave subsequent to today. Today is not the only opportunity to seek leave for either of these things. However, people seeking leave to appear subsequently to today must do so in writing. The closing date for receipt of such requests is 28 January 2005. Anyone making such a request should provide a short summary of the issues that they would seek to raise, when they make their application. I anticipate that some of the evidence that may be given

during the course of this Inquiry will be contentious and that the Council and individuals who are part of that process may want the right of reply.

I have decided to put aside some time towards the end of the hearings to allow some people to make oral replies. I emphasise, however, that it is my strong preference for people who wish to make replies to certain evidence that may come forward during the inquiries that they do so by means of a written reply rather than an oral reply. Such written submissions in reply may be forwarded to me care of my office within a period of up to 14 days after the conclusion of the final day of the public hearings. The schedule of persons called to address the Inquiry each day will be advertised on the noticeboard at the entrance to the hearing rooms.

It is proposed that the list for each day will also appear early every morning and for the next day. They will also be posted on the Inquiry's web site every morning. Whilst every effort will be made to keep to the scheduled timetable and order of speakers, it is possible that in some instances unforeseen events may lead to some changes. In advance, I would seek your co-operation and patience if this happens. People who are scheduled as speakers will be provided with an abbreviated form of the information paper outlining the general procedures of the Inquiry, together with a letter confirming the time and date of their attendance.

Anyone who has questions about those issues or who will require a copy should see the usher at one of the adjournments, that is, Ms Sanders. I would stress that evidence before this Inquiry can only be given in accordance with the terms of reference. It is my responsibility as Commissioner not to admit evidence that goes beyond the terms of reference. In the light of the issues raised by the terms of reference I have agreed to allow a number of people to make submissions and appear before the Inquiry to talk about specific issues.

I emphasise, however, that this Inquiry is not called upon to reassess an individual's case in relation, for example, to a development application or any other matter that pertains to the individual rather than the specific terms of reference. I do not and I stress this, I do not have the power to overturn or change any approval granted by the Council. Accordingly, I will consider submissions and evidence solely from the point of view of the terms of reference. I am, however, keen to receive a broad range of submissions provided that they are relevant to the terms of reference.

I do not wish to exclude people from having their submissions published where they appear to fall within the terms of reference; or to refuse to allow them to appear. If I were to do so, there would be justifiable concern that the Inquiry may be less than open. At this point I should correct some information that I saw in the local press this morning. First, I do not intend to have any closed sessions at the public hearings. I believe that the hearings are public; they have to be transparent and that whatever evidence is presented has to be available to anyone who is interested in the carriage of the Inquiry.

So there will be no, I repeat, no closed sessions of this Inquiry. Second, I noticed in the local press this morning it was claimed that we may be

tapping phones. I can give you total assurance that there will be no phone tapping. It also suggested that there will be covert operations by the Inquiry. I give you watertight guarantee that there are no covert operations either under way or likely to happen in the future. I repeat, this is a Public Inquiry and its operations must be transparent and the information must be there for the public to share. As I've said before, all evidence will be given on oath or affirmation.

Now, this provides some protection for persons wishing to make an oral submissions. I emphasise that evidence on oath or affirmation and the protection requires the Inquiry be kept within the terms of reference. I would also recommend that those who are intending to submit a written submission should obtain a copy of the information paper, which is available at the Council offices, because it details the protection that you are given against defamation or harassment as a result of your making a submission.

The powers of protection are broad and strong and I encourage anyone who is submitting a written submission to read the information paper that we have distributed to the Council. I should also point out again that this is an Inquiry into aspects involving the governance of the Council. It is not a trial of individuals. The basis of the submissions and the presentation of evidence and other matters should therefore be dictated by this and not by the rules that ordinarily would apply in a legal action or formal court case between parties to those proceedings. Simply, this is an Inquiry.

The proceedings will be tape-recorded, and are being tape-recorded at this moment, in order to provide me with a transcript after the close of the Inquiry in order to prepare a report.

I will now move on to some of the procedures that we will follow during the hearings. Where speakers have already submitted a written document to the Inquiry and will then be appearing to present oral evidence it will be generally assumed that I have read the written material. I believe that the public access to written submissions and the public nature of these hearings allow affected parties to obtain sufficient particulars of contentious matters.

The mere fact that a critical remark is made during the hearings or contained in written submissions is not of itself sufficient to open up that comment to scrutiny on the grounds of denial of procedural fairness. The matters are no more than conclusions on disputed facts that are ancillary or collateral to the major findings called for in the terms of reference. The finding cannot be impugned for want of procedural fairness no matter how distressing the criticism or condemnation might be to the individual concerned, and I will repeat that: the matters are no more than conclusions on disputed facts that are ancillary or collateral to the major findings called for in the terms of reference.

The finding cannot be impugned for want of procedural fairness no matter how distressing the criticism or condemnation might be to the individual concerned. When a person appears at the public hearings I do not intend to go over all the details that might have already been covered in their

written submission. I may on occasions ask the speaker to provide a brief summary of the contents of the written submissions or I may ask the speaker to elucidate or amplify certain items contained within the submission. Or I may address other issues that are relevant and that Ms Annis-Brown or myself may raise from time to time.

I do not intend to allow a person to give an oral version of his or her written submission. In keeping with other inquiries that I have conducted, I propose to ask questions of the speakers, directed to the issues that I see as beneficial to my understanding of the issues rather than seeking that each speaker address the Inquiry on matters that they perceive to be relevant to my consideration. I would again like to emphasise that the Inquiry is conducted in terms of section 740 of the *Local Government Act 1993*. It confers the powers, authorities, protection and immunities, which are conferred on the commissioner by Division 1 of the *Royal Commissions Act*.

I want to emphasise that, in relation to that, this is a Public Inquiry incorporating those powers. For people to speak at it, they have to seek leave. Leave may or may not be given. It is only those who might wish to be allowed to participate in the Inquiry process who will need to seek leave. I've said earlier, and I'll repeat that at the end of my opening words, any person who wishes to be legally represented at the Inquiry should give notice to Ms Annis-Brown and that will be fairly soon. I propose to take applications for leave to speak before the Inquiry from persons who have not lodged a written submission; so it is not necessary to have a written submission to be able to appear and give oral information at the Inquiry.

Again if there are any such persons here today who may wish to appear - give oral submissions rather than a written submission again they could speak to Ms Annis-Brown as I conclude these remarks. I will say now that I intend to invite each of the elected representatives of the council to give oral submissions. I have already written to each of the elected representatives of the council inviting them to give a written submission as well. I will also invite the general manager to give an oral submission. I've also written to the general manager inviting him to give a written submission.

I also intend to invite some senior staff to give oral submissions to the Inquiry and they also would be welcome to give a written submission should they choose to do so. There will also be a number of other people that I am likely to invite to appear. In this context I should note that I have the power to summons people to appear at the public hearings. Any affected person who does not seek leave to appear at this stage is free to do so during the course of the Inquiry should they feel the need. So in terms of appearance, this is not the final opportunity for people to seek leave.

There have been instances in previous inquiries where people who were not speakers have interjected and have tried to reply to what the speaker was saying. This is contrary to the way in which I believe this Inquiry should be conducted: accordingly I will not accept interjections of that type or any type. I will require that speakers be given an uninterrupted

opportunity to reply to questions put to them. If necessary I will take steps and if necessary exercise the powers available to me under the *Royal Commissions Act* to ensure that this opportunity is extended to all speakers.

I will return to the theme, which I have already raised, that is the capacity of people to have legal representation at the hearing.

Under Section 7 of the *Royal Commissions Act*, I have the power to allow certain people to be represented by a lawyer. People who may seek to be represented are those who are directly and substantially interested in this Inquiry or those whose conduct may be challenged to their detriment. I will set out for you the way in which I envisage legal representatives may participate in the Inquiry.

Anyone who has been asked by me to attend and give evidence before the Inquiry may seek leave to have a lawyer present while they are giving their evidence. If granted leave to appear, the lawyer may object to questions being asked of their client.

At the end of a witness's evidence, the lawyer may ask their own client questions. This next comment is very important. Those questions should be limited to clarifying or elaborating on the evidence that the witness has already given. They will not be allowed to raise other things. What I have in mind is restricting questions to the type of question asked in re-examination. I expect that speakers will have different recollections of the same events. Ultimately it will be up to me to decide if necessary which version of the events I prefer.

I propose to deal with differing recollections in this way. First, if person A is aware that his or her recollection of events differs from the evidence given by person B then person A can give his or her version of the events once he or she is called as a witness. Having heard the evidence of person A, I may then decide to call person B. If person A has already given evidence then person A can write and tell me about his or her recollection of events. If I decide that I would like to hear more about what person A has to say then I will recall person A to the hearings. Therefore generally speaking I will not give a lawyer leave to ask questions of speakers in general.

Because having decided to approach the taking of evidence in this way, the rule in *Browne v Dunn* will not apply. To avoid recalling persons unnecessarily, I invite those seeking to respond to provide me with statements relying to assertions particularly if they are aware of likely evidentiary conflicts. I may write to certain witnesses and ask them to provide me with a statement on particular issues in order to expedite the hearings. I ask that those statements be provided during the course of the hearings so that I can ascertain whether or not I need to hear more evidence.

I should point out that I have not made a final decision to exclude other types of questions from being asked in particular circumstances. If a person wishes their legal representative to ask questions of a particular type, the legal representative can still seek my leave to ask those

questions. If possible I would prefer that lawyers indicate in advance and in writing if they seek leave to ask questions which fall outside the parameters I've just set out. In particular and this is of critical importance, I am concerned that the manner of questioning of speakers may become belligerent. This is contrary to the basis of this Inquiry, which aims to encourage members of the public to come forward with information.

The outcome of belligerent questioning in my view constitutes intimidation of speakers. Whether such intimidation is intended or not, the outcome is still the same and it is unacceptable to me and I will not tolerate it during the hearings. If the processes proposed by me are not followed, I would reluctantly withdraw the notion that all or some people can cross-examine: so I would ask for your co-operation on that front to proceed accordingly. I intend to be fairly conservative on issues related to the asking of questions. I must ensure that questions relate to the terms of reference. Questions put also need to be concise.

The length of the hearings is confined and I must ensure that I hear from as large a number of people from relevant groups as possible. My role is to inquire about various matters defined in the terms of reference. I and my associates will make inquiries about these matters. Any questioning of speakers by legal representatives or others should be for the purpose of enlarging or elucidating the information provided by the speakers. I will repeat some of the observations I have already made and which are particularly pertinent in this context. This is the third time I have repeated this.

The mere fact that a critical comment is contained in evidence given at the hearings is not of itself sufficient to open up that comment to scrutiny on the grounds of denial of procedural fairness. The matters are no more than conclusions on disputed facts that are ancillary or collateral to the major findings called for in the terms of reference. The finding cannot be impugned for want of procedural fairness, no matter how distressing the criticism or condemnation might be to the individual concerned. I think it is impractical if we are to get through the business of this public hearing and to maintain our focus on the terms of reference, to have people making statements about things at various times.

The Inquiry is not a forum for people to air their general views on the matters. It is an Inquiry into a number of issues, defined by the terms of reference. There may be isolated instances where it is appropriate to seek leave - for persons to ask questions of a speaker, providing that they are within the terms of reference. I stress however, that such occasions will be the exception rather than the rule. I repeat, the mere fact of a critical comment is not of itself sufficient to open up that comment to immediate scrutiny. I will repeat what I said earlier, that at the end of the proceedings we are reserving some time for people to reply briefly to issues that may have come up.

I may also, as I've said before, address such issues by way of a submission, a written submission in reply. And that is my preferred way of dealing with such issues. One of the inevitable realities of a Public Inquiry is that a wide variety of things will be expressed and talked about. Some

of the assertions might be right. Some of them might be quite wrong. I don't think it is the job of the Public Inquiry to immediately determine the rightness or wrongness of such assertions when they appear. Judgments about the worth of what is heard will be made at the appropriate time, and in relation to all the evidence.

I don't think that it is in any way practical that anybody who feels that the last speaker has said something they don't agree with, or that possibly reflected on them, has the right of an immediate reply. There may be comments made in many parts of the press and in other sources beyond the Inquiry itself, as the Inquiry proceeds. I do not think the business of the Inquiry is helped by engaging in debate or discussion on issues or ideas that the press or others might or might not pick up on. The Inquiry process is designed to get through a large number of people who want to speak and who have been invited to speak.

I would remind you once again, this is a Public Inquiry, and that people will be speaking under oath or affirmation. I repeat, at the end of the hearings there are opportunities to present submissions in reply. I'll now turn to natural justice.

In conducting this Inquiry, I propose to adopt various processes intended to ensure that natural justice is afforded. These processes will include publishing of the great majority of the submissions received, and given most of the people who have sought leave to make an oral submission to the Inquiry have the opportunity to do so.

I have also offered persons directly affected by the evidence the opportunity to reply either orally towards the end of the public hearings, and/or in writing within a period of two weeks beyond the end of the hearings, for those people who wish to make such responses. The primary purpose of the right of reply is to allow persons to address any of these issues in order to provide clarification or to maintain balance. I believe that the processes I am adopting for the conduct of this Inquiry are the fairest and most efficacious means of ensuring fairness.

I emphasise that it is my view that to allow written replies is the most appropriate way to facilitate the right of reply as it will enable me to consider the merits of an argument more clearly. When conducting other inquiries, I formed a view that this process is more beneficial to the conduct of the Inquiry. And in those other inquiries I have to say that so it proved. Again, as I previously indicated, there will be a period following the end of the public hearings when these opportunities for written submissions in reply will be available. That period is two weeks and after that period has elapsed, I will commence the task of writing my report.

The final report is to be presented to the Minister for Local Government, and will be tabled in Parliament. I am bound to lodge a report. The report may contain recommendations. It is for the Minister and the Governor to consider and act upon my report. Section 740 of the *Local Government Act* requires that I report to the Minister for Local Government. And as I said, in doing so I may make recommendations. My recommendations may include recommendations affecting the elected body of the council,

represented by the councillors, the corporate body of the council, represented by the staff, and the legislation under which Councils operate, principally the *Local Government Act*.

I emphasise that I have only the power to make recommendations. I do not have the power to implement changes directly. However, and this is important, I am empowered to refer matters that arise during the Inquiry to various departments, agencies, authorities or commissions. And these include amongst others, the police, the Independent Commission Against Corruption, the New South Wales Ombudsman, the Australian Securities and Investment Commission and the New South Wales Department of Local Government.

I'll say now that should any instance arise that in my view warrants referral to such a department, agency, authority or commission, then I propose to refer such matters during the course of this Inquiry, and not necessarily to await the end of the Inquiry before doing so. The *Local Government Act* embodies provisions in the *Royal Commissions Act* that provide for my report to be placed before Parliament. At the time that I furnish my report to the Minister for Local Government, my task is complete. It is then for the Parliament or the Minister to decide what actions may follow from any recommendations made by me. Similarly, publication of my report is a matter for the Parliament or the Minister to decide.

Thank you for your interest in the Inquiry. The hearings will recommence at 10 am in this venue, on 16 February 2005.