

OPENING ADDRESS – 16 FEBRUARY 2005

Good morning, ladies and gentlemen. As you will be aware, my name is Maurice Daly. I have been appointed to hold a Public Inquiry into Tweed Shire Council. I will do so independently, without fear or favour.

The Terms of Reference call on me to inquire, report and provide recommendations on the efficiency and effectiveness of the governance of Tweed Shire Council. The Terms of Reference direct me to 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.

I may also make other recommendations as I see fit including whether all civic officers in relation to the Council should be declared vacant.

I take this opportunity to emphasise that my role is to review governance aspects involving the Council. It is not, as has been recently suggested, to inquire into matters involving possible corruption. My role is to look at aspects within the Terms of Reference and to report on governance issues particularly affecting this Council. If any evidence comes before the Inquiry that suggests that there might have been corrupt actions, and if the claims appear to have substance, I will pass the evidence to an appropriate body defined by my powers of referral.

In the past 3 months the Office of the Inquiry has collected a range of material from Tweed Shire Council and from a number of other sources. As well, the Office has received a large number of written submissions. Having analysed this material I have recognised at least five major themes that will be explored during the hearings. These themes are:

A. Election issues

The conduct of Councillors and developers, including receipt of donations, in particular, those 1999 and 2004 ordinary elections.

B. Conflicts of interest issues

Arising from the first point, the associations of persons and the compliance by Councillors with the Council's adopted Code of Conduct. Secondly, councillor's declaration of their pecuniary interest in the preceding five years.

C. Development processes and Statutory Functions

In particular, the Council's understanding of planning instruments; Section 94 Contributions; Section 96 Variations; and the handling of certain significant development applications in the areas including Kingscliff, Casuarina and Cabarita / Bogangar.

D. Transparency and communication with the community

The use of closed sessions of meetings of the Council, especially in the consideration of large development applications. Council's complaints management systems; Council and Councillor's interaction with the public.

E. Compliance with Council's Charter (Section 8, Local Government Act).

In particular, having regard to the long term and cumulative effects of council's decisions in its area.

When opening the public hearings on 16 December 2004, I outlined the procedures that I intend to adopt, indicating that I propose to manage the Inquiry on as informal a basis as possible. I take the opportunity to repeat my earlier comments that:

“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.”

Since the opening of the public hearings, the emphasis of the Inquiry has been to review the written submissions forwarded to the Inquiry. As at 28 January 2005, I had received some **356** submissions. Since that time further submissions have been received.

I have not made all of the submissions available to the public. I have also exercised my discretion to delete parts of certain submissions, whether identifying the author or otherwise. I emphasise that I exercise my discretions whether to make submissions publicly

available. The great majority of submissions have been made available, only 68 have not been made available.

The majority of the submissions that were withheld did not address matters falling within the Terms of Reference. Some persons writing such submissions actually sent multiple submissions thereby adding substantially to the total of submissions that were withheld.

I received 7 submissions from anonymous sources.

Contrary to suggestions, I have never encouraged anonymous submissions. For obvious reasons, I have chosen not to make anonymous submissions publicly available. Therefore the material contained in these submissions will not form part of the evidence considered for my report.

Copies of the published submissions are available for inspection at the Council's libraries at Murwillumbah, Tweed Heads and Kingscliff.

I again emphasise that the context of this Inquiry concerns a broad domain, namely the governance of Tweed Shire Council.

In the next few weeks I will be calling on the Councillors and staff of Tweed Shire Council to address issues relating to the Terms of Reference. Additionally, I have made arrangements to call upon members of the public, representatives of developers, consultants and politicians to provide input into the Inquiry.

In order to get through the work involved it will be necessary to conduct the hearings in a timely and efficient manner. In order to achieve this outcome, I propose to adopt the following course:

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 5 of the Terms of Reference. As I indicated at the commencement of the public hearings, if any

person wished to make such statements, they should have done so by a written submission.

Appearances at the Inquiry will either be by way of application for leave to appear; or by my invitation. People seeking leave to appear after today must do so in writing. Anyone making such a request should provide a short summary of the issues that they would seek to raise, when they make their application.

Having read the submissions, I anticipate that some of the evidence that may be given during the course of this Inquiry will be contentious and that the Councillors, the Council and individuals who are part of that process may want the right of reply. I will put aside some time towards the end of the hearings to permit some people to make oral replies.

I again emphasise, however, that it is my strong preference for people who wish to make replies to evidence that may come forward during the hearings to do so by providing a written reply rather than an oral reply.

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.

These processes were more fully spelt out in my opening address of December 16 2004. A copy of this is attached to the notice board, and is available on the Inquiry's web site.

The schedule of persons called to address the Inquiry each day will be advertised on the noticeboard at the entrance to the hearing rooms. 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.

I again emphasise, that the Inquiry has a lot of work to get through. While 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.

I would again stress that evidence before this Inquiry can only be given in accordance with the Terms of Reference. I repeat that I do not have the power to overturn or change any approval granted by the Council. I will consider evidence solely from the point of view of the Terms of Reference.

In the last few weeks a number of issues have arisen that bear some response from me. Before doing so it is appropriate to repeat my earlier comments:

“This is a Public Inquiry and its operations must be transparent and the information must be there for the public to share.”

I have addressed numerous letters regarding privilege or confidentiality claimed by the Council. I have been surprised by the approach taken by the Council in purporting to reclaim privilege after having resolved to waive it.

Similarly, I have been called upon to deal with claims regarding reports and other material said to be “confidential”. Having reviewed this material, I have formed a view that it is unlikely that much of it could have been properly regarded as confidential when it came before the Council. Given the lapse of time and the construction of the development associated with it, I now doubt that any confidentiality that might have then existed could now apply.

I should re-state that this is an Inquiry into aspects involving the governance of the Council and will direct its inquiries towards Council’s transparency in its dealings and its communication with the community. I am concerned that, so far as possible, all material should be available to the public.

I remind people again that, at the end of the hearings there will be an opportunity to present submissions in reply, either orally and/or in

writing within a period of two weeks beyond the end of the hearings. 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 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.

[Applications for leave to appear – short adjournment?]

I will now call the first speaker, Mayor Polglase