



Local Government Investigations and Compliance Inspectorate

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Cr Steven Tang
Mayor
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Corner of Glen Eira and Hawthorn Roads
Caulfield South, VIC 3162

PRIVATE AND CONFIDENTIAL

Dear Mr. Newton

RE GLEN EIRA INVESTIGATION OUTCOME

I am writing to inform you of the findings and outcome of the investigation into Glen Eira City Council. On behalf of the Local Government Investigations and Compliance Inspectorate (Inspectorate) I would like to thank you for the information you provided and your involvement in this investigation.

The Inspectorate is committed to rigorously investigating allegations of poor governance or corrupt behaviour, and conducts investigations according to best practice procedures in order to ensure all avenues are explored to prove or disprove a matter.

The Inspectorate received a total of 43 individual complaints in relation to the behaviour of council and individual councillors at Glen Eira, the first of which was received in November 2009. After establishing that 16 of these allegations either did not fall into the Inspectorate's jurisdiction or were not supported with sufficient evidence, the Inspectorate commenced an investigation into 27 matters involving council.

Following a comprehensive investigation involving interviews with 35 witnesses, the Inspectorate has found that there is insufficient evidence to prosecute any councillor for breaches of the *Local Government Act 1989* (Act) but has uncovered councillor behaviour that is at odds with the objectives of council.

In addition to the interviews, information was assembled from council minutes, transcripts of recorded council meetings, tape recordings of council meetings, council files, e-mail and written communications between councillors, and documents supplied by councillors, council officers and members of the public. Many of those interviewed submitted documentary evidence in support of their views.

While the Inspectorate found no prosecutable breach of the Act, the investigation uncovered a number of underlying issues with regard to transparency and accountability. The recommendations provided in the following summary of the allegations and findings are intended to improve business practice and the community's perception of council.

Complaint No.1 – Meeting minutes changed

The first complaint received by the Inspectorate alleged that councillors had changed the minutes of the special meeting held on 14 October, 2009. At the particular meeting the councillors discussed the reappointment of CEO Andrew Newton and voted on whether they would extend Newton's contract or readvertise the position.

Following the meeting, comprehensive minutes were circulated and the majority of the councillor group were concerned that the minutes were too detailed and recorded the views of individual councillors. At a meeting on 20 October it was decided by the councillor group to amend the minutes to include items, actions and decisions in the normal minute format, rather than the personal opinions of councillors.

The allegation was that councillors had breached both the Act and the Public Records Act (PRA). The Inspectorate found that the meeting had no status under the Act and therefore it was not a requirement that minutes be taken. While there was no breach of the Act in this instance, councillors should aspire to transparent and accountable practice and consider the Objectives of Council outlined in section 3C of the Act.

Complaint No.2 – Use of personal email addresses for council business

The second complaint alleged that councillors had breached the Act and the PRA by using their personal email addresses to conduct council business during the CEO reappointment process. There is no requirement under the Act or the PRA mandating councillors to use council-issued email addresses and therefore there is no breach of either Act.

Councillors are again reminded, however, of the objectives of transparency and accountability as per section 3C of the Act.

Complaint No.3 – Council officer not present during meeting

A further complaint alleged that councillors were in breach of the Act during the 20 October special meeting, where the issue regarding the minutes (see allegation No.1) was discussed. Council adjourned the meeting to another room in order to discuss the CEO contract and invited no council staff, so there was no independent note taker present.

This does not form a breach of the Act, however I remind councillors of their responsibilities under the Objectives of Council detailed in section 3C of the Act.

Complaints No.4 and No.5 – Conflict of Interest and inaccurate minutes

At the meeting on 4 November, 2009 it was alleged that council requested the CEO and all council officers to leave the chamber so there was no independent note or minute taker present. Standing orders were also suspended. Transcripts of the meeting indicate that one councillor was acting as the note taker, however this councillor later left the meeting due to a conflict of interest declaration. A further two conflict of interest declarations were made and councillors left the meeting. The

minutes of this meeting do not indicate that the councillors left the meeting nor the conflict of interest declarations, and interviews with councillors reveal nine different versions of what actually took place during the meeting.

There is insufficient evidence to indicate a breach of the conflict of interest provision of the Act, however I recommend that council accurately records all matters raised in future to ensure transparency and accountability. As a result of not having an independent note taker present, evidence suggests that the minutes of the meeting were inaccurate and do not comply with the guidelines set out in section 93 and section 79 of the Act.

I recommend that councillors review this section of the Act to ensure that minutes for future meetings comply with the guidelines set out in sections 93 and 79 of the Act.

Complaint No.6 – Improper use of standing orders

The meeting on 4 November, 2009 included a suspension of standing orders for a section of the meeting. The standing orders were suspended to allow “full and frank” discussion by councillors, and as detailed above there was no independent note or minute taker. During interviews, councillors provided nine different versions of their understanding of the suspension of standing orders provision which indicates a widespread lack of understanding concerning this provision.

I recommend councillors familiarise themselves with this provision and that an education session be conducted to ensure understanding.

Complaint No.7 – Improper set up of sub-committee

A sub committee was set up to handle communication with the legal firm assisting with the drafting of the CEO contract and a number of councillors had concerns that the committee was intentionally keeping information from other councillors and were not sure that they conducted meetings at all.

The Inspectorate found that the sub-committee was set up with no terms of reference, no reporting procedures, no meeting procedures and no status under the Act. There was no note taker at any of their meetings and evidence suggests that the sub-committee did not report back to other councillors as they were requested to. This is contrary to the councillors’ desire, as stated at the beginning of the process, that the CEO reappointment be transparent and auditable.

I recommend that for future practice, all sub-committees be set up with terms of reference, including the recording of meetings and provisions for open communication between the sub-committee and councillors. This practice would promote transparency and accountability in order to be in alignment with section 3C of the Act.

Complaint No.8 – Illegal clause in CEO contract

A complaint regarding an illegal clause appearing in a draft of the CEO contract was dismissed. The investigation found that while the clause did exist in an early draft, during interviews all councillors insisted that they did not request the clause. As soon as the legal status of the clause was brought to the attention of council, it was removed.

Complaint No.9 – Councillor expending council funds without approval

A further complaint alleged that a member of the sub-committee (referenced above) conducted a telephone conference with the legal firm without the authority of the sub-committee. The call was allegedly a conversation regarding the CEO contract. No minutes or notes were provided to council regarding this conversation and there is no record to indicate what was discussed.

The actions undertaken by the individual councillor were done without council resolution and caused an increase in legal fees. An individual councillor does not have authority to expend council funds without the prior approval of council.

Councillors should be reminded that they are expending public funds and with respect to section 3D(2)(c) of the Act, those funds must be managed in the most responsible and accountable manner.

Complaint No.10 – Covering of microphones during council meetings

Allegations arose that a number of councillors were covering microphones with their hands and making hand gestures instructing other councillors to do the same during council meetings. A number of councillors admitted that they occasionally cover microphones so that comments unrelated to council matters were not recorded or heard by the gallery. One councillor also admitted to removing the microphone during a discussion regarding the CEO appointment.

During interviews, councillors agreed that this behaviour does not appear to be in alignment with the objectives of transparency and accountability.

There is no evidence to support a breach of the Act in respect to this matter, however the investigation revealed shortcomings in the transparency and accountability of the process. I would like to again draw council's attention to the objectives of a council under section 3C of the Act.

Complaint No.11 – Conflict of interest regarding CEO appointment

A complaint was raised against two councillors alleged to have breached the conflict of interest provisions with respect to the CEO appointment process. The allegations arose because two councillors were members of the previous council (which was dismissed) and some councillors felt that the two who sat on the previous council may have preconceived opinions on the suitability of Newton as CEO.

During interviews, both councillors stated their support of Newton but said they wished to advertise the position in order find the best possible candidate for the role.

Both councillors are entitled to opinions and held legitimate positions throughout the process. There is no evidence to support a breach of the Act.

Complaint No.12 – Voting of Mayor

A member of the public submitted a complaint alleging that Cr Tang "brokered a deal" to be elected as Mayor, citing "evidence from two independent unnamed sources". During interviews, all councillors strongly rejected the allegation that a deal was brokered. Further to this, Cr Tang was the only person who nominated for the mayoralty.

There is no evidence to support this allegation and no substance to what appears to be purely rumour.

Complaint No.13 – Conflict of Interest concerning the Glen Eira Sports and Aquatic Centre (GESAC)

A complaint alleged that one councillor did not declare a conflict of interest concerning the planning of GESAC. The councillor in question joined council with the retention of the existing East Bentleigh Swimming Centre (which would be replaced by GESAC) as one of his election platforms.

The investigation found that the councillor joined council after the GESAC project had already been approved and therefore there is no evidence to substantiate the allegation.

Complaint No.14 – Changing of minutes

An allegation was raised by council officers and a councillor that the minutes from a Sport and Recreation Advisory Committee meeting, held on 14 April 2009, were changed with the intention of concealing what actually took place at the meeting. Copies of the original minutes and the reconfigured minutes were reviewed by the Inspectorate and it is clear that the amended minutes are a true representation of the original minutes. Changes were made to remove excessive detail and record only motions, outcomes and resolutions, and were accepted as true and correct at the council meeting on 22 September, 2009.

There is no evidence to support a breach of the Act.

Complaint No.15 – Conflict of Interest regarding the CEO appointment

Allegations were raised that a councillor had a conflict of interest in relation to the reappointment or appointment of Newton as CEO on the basis that the councillor had a preconceived opinion of Newton. The councillor had been involved in an ongoing commercial dispute with the council and had allegedly expressed the view that the CEO should have intervened to resolve the dispute.

The councillor stated that he originally held the opinion that Newton should be re-appointed for five years, but following discussion with other councillors, residents and business owners in the municipality he changed his mind. The councillor later formed the belief that the CEO position should be advertised so that the best candidate could be chosen for the role, but stated that he hoped that Newton would apply for the CEO position once it was advertised.

The positions that the councillor held throughout the process were legitimate positions and were changed based on fact. There is no evidence to support a breach of the Act.

Complaint No.16 – Conflict of interest regarding a planning matter

A councillor was alleged to have breached the conflict of interest provision by lobbying another councillor regarding a matter that he had previously declared a conflict of interest in relation to.

The Inspectorate reviewed the minutes of the relevant council meeting, which confirm that the councillor declared a conflict of interest and left the meeting at the appropriate stages.

There is no evidence to support a breach of the conflict of interest provisions of the Act.

Complaint No.17 – Misuse of position

Further complaints allege that a particular councillor abused their position by inappropriately using a council office access card. The councillor allegedly entered the council offices, without notice, on three separate occasions with the intention of discussing a private commercial dispute matter with a council officer.

In an interview with the Inspectorate, the councillor agreed that it was inappropriate to approach the council officers about personal or business related issues without an invitation.

There are two conflicting versions of the content of these conversations and there is no corroborative admissible evidence to confirm either the council officer's or the councillor's version of the conversation that took place on these three occasions.

As a result there is insufficient evidence to support a breach of the misuse of position provisions of the Act.

Complaint No.18 – Misuse of position

A further complaint regarding the alleged breach of the misuse of position provisions involves a councillor using a professional qualification to support an opinion on a council document.

The investigation found that the councillor amended a draft council response to a ratepayer query, which had been sent to the councillor for approval (by a council officer). The council officer raised concern over the advice offered by the councillor and made the point that the council would employ an external expert consultant if it wished to provide professional advice. The draft response was amended prior to being sent and all professional advice was removed.

As the advice in question was removed prior to the response being sent, there is no breach of the Act with respect to the misuse of position provisions. I recommend that the councillor involved in this matter be briefed on the possible consequence to council if they were to provide unauthorised opinion.

Complaint No.19 – Conflict of interest regarding the implementation of Local Law 307

At an assembly of councillors meeting a number of matters were considered, including draft local law 307. At this particular meeting a councillor raised concerns over the impact the law would have on local businesses and used the example of his private business to illustrate the point. The councillor did not declare a conflict of interest in discussing the matter and other councillors allege that in not declaring, he breached the Act's conflict of interest provisions.

The investigation determined that the councillor's personal interest in the matter is so remote that it could not be reasonably regarded as influencing decisions in relation to this matter, and that the interest is held in common with other ratepayers who would be affected by the change to the local law.

There is insufficient evidence to support a breach of the conflict of interest provisions of the Act.

Complaint No.20 – Council refusing to comply with the request from the Glen Eira City Council Audit Committee to refer a councillor to the Inspectorate for investigation

A complaint brought to the attention of the Inspectorate alleged that council refused to comply with a request from the Glen Eira City Council audit committee (audit committee) to refer a councillor to the Inspectorate for investigation. Following allegations of conflict of interest against a councillor, the audit committee recommended that *“Council consider writing to the Minister for Local Government to seek the advice of the Chief Municipal Inspector in reviewing these matters”*.

The investigation found that council discussed the recommendation and sought independent advice. The councillors voted on the matter at an ordinary council meeting and passed the motion that there was insufficient evidence to warrant any further action.

There is no evidence to support a breach of the Act.

Complaint No.21 – Public concern regarding the under-utilisation of assets

A number of Glen Eira residents submitted complaints to the Inspectorate alleging that council does not make appropriate use of public land, particularly in relation to the Caulfield Racecourse (CRC).

The land is currently controlled by trustees of the Caulfield Racecourse Reserve and the Melbourne Racing Club and legal advice confirms that council is unable to gain regular access to the land.

There is no evidence to support a breach of the Act.

Complaint No.22 – Conflict of interest for planning application

The Inspectorate received a complaint from a Glen Eira resident alleging a conflict of interest at an ordinary council meeting. At this meeting council tabled a planning application for someone whom the complainant alleges was an employee of Glen Eira City Council. Minutes confirm that there was no conflict of interest declared in relation to this matter.

Investigators interviewed council officers regarding this allegation and found that the applicant is a contractor for the City of Glen Eira, not an employee, and that they were aware of who had submitted the planning application. Taking this association into account, precautions were taken in relation to this application to avoid the perception of any conflict of interest. Councillors voted on the application without declaring conflict of interest because no councillor knew the applicant and there was no other reason to declare a conflict of interest.

There is no evidence to support a breach of the Act.

Complaint No.23 – Town planning: alleged applicant relationship

Glen Eira received a town planning application for the use and development of some land in the municipality. Part of the land had a section 173 agreement in place, which is designed to retain the land as public open space. While such an agreement is in place the part of land covered by the section 173 agreement can not be developed.

It was alleged that a councillor had some kind of association with the applicant and may have had a conflict of interest in relation to the decision making process on this application.

Investigators found no evidence to suggest that the councillor has any relationship with the applicant other than a ratepayer constituent relationship. All councillors interviewed stated that it was normal practice for both applicants and objectors to a planning permit to approach them with their views about a particular issue. All councillors viewed this as lobbying and part of the role of being a councillor.

There is no evidence to support a breach of the Act.

Complaint No.24 – Conflict of interest in relation to use of parks by sporting groups

The Inspectorate received numerous complaints in relation to usage of parks in the Glen Eira municipality and the unauthorised use of sporting grounds by sporting groups. One complainant raised issues because the sports club that he is associated with has been unable to train on the sporting grounds in Glen Eira for a long period of time, whilst unauthorised sporting groups had been using the same grounds without permits over that period of time. The complainant alleged a possible conflict of interest because he believed the unauthorised sporting group had connections to two Glen Eira councillors.

The investigation found that Glen Eira has a policy of "local laws reasonably enforced", meaning council enforcement officers provide warnings and education before they issue a penalty infringement notice to unauthorised groups playing sport in council parks or at sporting grounds. They are also required to notify council management if they intend to issue a penalty infringement notice so that they can try to resolve the issue. Council officers further stated that the complainant's sports team has an allocated sporting facility for its use and that his concerns about not having facilities are unfounded.

Based on evidence it appears that neither councillor has any relevant connection to the unauthorised sporting groups and therefore do not have a conflict of interest in this matter.

Council records reveal that the use of parks or sporting facilities by unauthorised sporting organisations has never been raised as an agenda item at a council meeting. At no time have councillors had to vote on the issues surrounding the unauthorised usage of parks and sporting facilities, therefore there has not been a need to declare conflict of interest.

There is no evidence to support a breach of the Act.

Complaint No.25 – Complaint regarding general behaviour of council officers in their professional roles

The Inspectorate received a complaint from a ratepayer in relation to what the complainant perceived as unprofessional behaviour and conduct of council officers. The complainant was unable to provide any admissible evidence of unprofessional behaviour or conduct by council officers and no evidence was discovered during the investigation that corroborates the allegations.

There is no evidence to support a breach of the Act.

Complaint No.26 – Council officers’ failure to provide timely and accurate advice to council

The Inspectorate received a complaint from a ratepayer in relation to what the complainant perceived to be a failure by the council officers to provide timely and accurate advice to council.

Council officers have strict policies and guidelines in place concerning the provision of accurate and timely advice to council. During the investigation they provided documents which refuted the allegations.

There is no evidence to support a breach of the Act.

Complaint No.27 – Failure of council officers to fulfil council resolutions

The Inspectorate received a complaint from ratepayer in relation to what the complainant perceived to be a failure of council officers to fulfil council resolutions regarding requests for reports.

Council officers have strict policies and guidelines in place concerning the provision of reports to council. During the investigation they provided documents which refuted the allegations.

There is no evidence to support a breach of the Act.

General Considerations and Recommendations to Council

- As referenced throughout this letter, the investigation revealed shortcomings in the transparency and accountability of councillor behaviour, and on occasion, administrative practice at councillor level. The *Objectives of a Council* detailed in section 3C of the Act are intended to be the overarching intentions of council; alignment with these objectives should be what council ultimately aspires to. I recommend that all councillors review section 3C of the Act and commit to conducting all council business in accordance with these objectives.
- I recommend that all councillors undertake comprehensive training to ensure they are aware of all their obligations under both the Act and the Glen Eira City Council Councillor Code of Conduct policy, which is also their Code of Governance. Councillors should ensure that they are committed to the principles that they agreed to in November 2009, when they accepted the Code of Conduct. These principles include honesty, integrity, objectivity, diligence, respect, community engagement, transparency and teamwork.
- I recommend that council ensure all councillors receive thorough induction training upon election to council. While the contents of the induction manual are satisfactory, education to complement the written material may provide the platform for councillors to gain complete understanding of their responsibilities.
- I recommend that councillors be reminded of the possible detriment to council if they provide unauthorised opinion on behalf of the council.
- The councillor-only meetings, which appear to be held regularly at Glen Eira by the current councillor group, may promote the perception by council officers that councillors are attempting to conceal details of conversations by avoiding the

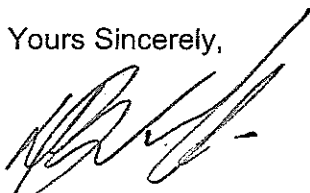
provisions of the Act. The councillor only meetings raise the perception of being secretive and are not consistent with the objectives of transparency and accountability in section 3C of the Act. Council may wish to consider revising this practice.

- I recommend that council ensure that an independent minute taker or council officer is present at all times during statutory council meetings. I further recommend that council ensures accurate minutes are taken at all meetings to ensure compliance with section 93 of the Act.
- If a subcommittee is arranged by council in future, I recommend that it be set up with terms of reference, including the requirement for the accurate recording of meetings, open communication between subcommittee members and the full councillor group. The principles of section 3C of the Act should be taken into account for all council-related business.
- I remind councillors of their responsibility under section 3D(2)(c) of the Act in relation to the expenditure of public funds. For future senior officer appointments, council may wish to consider engaging a firm that specialises in drafting local government CEO contracts. This may avoid the delays and disputes over contract clauses, and the subsequent significant budget overrun, experienced by Glen Eira council during this process.
- While legal advice has confirmed that the use of private e-mails for councillor to councillor correspondence (in relation to council matters) is not in breach of the PRA or the Act, once again it is not a practice consistent with the principles in section 3C of the act. I recommend that councillors conduct council business using their council-issued email addresses in order to ensure all business communications are open and auditable.

This investigation identified a general shift away from the objectives of a council, a trend that could be viewed as the cause of many allegations contained in this document. I provide these recommendations as an opportunity to improve the conduct of council business in accordance with the principles of section 3C of the Act and the expectations of the community. I encourage you to thoroughly review and share the recommendations with all councillors, and as a group commit to the highest standards of accountability and transparency in local government.

I would like to thank you for your participation in the investigation and encourage you to contact Inspector David Walker on 9665 9566 if you have any questions regarding this matter.

Yours Sincerely,



David Wolf
Chief Municipal Inspector
26/08/2010