



MINUTES

Closed Council Meeting

18 November 2019

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MINUTES OF CLOSED COUNCIL MEETING
held at the Council Chamber, 62-64 Menangle Street, Picton NSW 2571
on Monday, 18 November 2019 at 7.54pm

PRESENT: Cr Judith Hannan, Cr Robert Khan, Cr Michael Banasik, Cr Blair Briggs, Cr Matthew Gould, Cr Simon Landow, Cr Noel Lowry

IN ATTENDANCE: Chief Executive Officer, Acting Manager Governance, Legal Counsel, Information Technology Officer and two Minute Takers

1 APOLOGIES AND LEAVE OF ABSENCE REQUESTS

Cr Matt Smith

2 DECLARATION OF INTEREST

Nil

17 CLOSED REPORTS

The Deputy Mayor, Cr Gould Chaired the meeting.

At 7:53pm, Cr Michael Banasik left the meeting returning at 7:56pm.

Cr Lowry addressed the meeting and at 8:10pm, Cr Noel Lowry left the meeting.

17.3 CODE OF CONDUCT COMPLAINT - CONDUCT REVIEWER'S REPORT

Cr Hannan indicated that she would move an alternate motion.

Cr Gould foreshadowed an alternate motion as distributed to Councillors.

RESOLUTION 272/2019

Moved: Cr Michael Banasik

Seconded: Cr Judith Hannan

That Council moves into Committee of the Whole.

On being put to the meeting the motion was declared **CARRIED 6/0**

In Favour: Crs Judith Hannan, Robert Khan, Michael Banasik, Blair Briggs, Matthew Gould and Simon Landow

Against: Nil

Cr Gould requested speeches in Committee of the Whole be kept to five minutes.

MOTION

Moved: Cr Judith Hannan

Seconded: Cr Robert Khan

That Council:

- 1. Note the report from the conduct reviewer.**
- 2. Request the investigator to make additional enquiries and submit a supplementary report.**

On being put to the meeting the motion was declared **LOST 2/4**

In Favour: Crs Judith Hannan and Robert Khan

Against: Crs Michael Banasik, Blair Briggs, Matthew Gould and Simon Landow

Cr Gould's foreshadowed motion was put to the Committee of the Whole.

RESOLUTION 273/2019

Moved: Cr Matthew Gould

Seconded: Cr Blair Briggs

- 1. That Council notes in the public minutes that Council considered a report from an external Code of Conduct Reviewer in relation to alleged inappropriate conduct by Councillor Lowry where he brought Council into disrepute and repeatedly breached the Code of Conduct by making inappropriate, unethical and improper public comments with regards to staffing matters. These comments were made after these concerns had previously been independently reviewed through the appropriate mechanisms and Councillor Lowry was aware that these matters were found to have been managed appropriately.**
- 2. That Council notes its commitment to the highest ethical standards and acting in a manner consistent with the adopted Code of Conduct. Further that as elected representatives of the community Councillors should be held to high standards of behaviour, particularly with regards to accountability and transparency in the discharge of their duties.**
- 3. That Council accepts the Code of Conduct Reviewer's report and notes the findings that Councillor Lowry breached Council's Code of Conduct in respect of eight separate counts of misconduct and that one additional act of misconduct was not substantiated.**
- 4. That after reviewing the Code of Conduct Reviewer's Report:**
 - a) Council finds Councillor Lowry committed misconduct as defined under section 440F of the Local Government Act and breached Clause 3.1(a) of Council's Code of Conduct by conducting himself in a manner likely to bring council into disrepute. Council formally censures Councillor Lowry for this misconduct under section 440G of the Local Government Act.**
 - b) Council finds Councillor Lowry committed misconduct as defined under section 440F of the Local Government Act and breached Clause 3.1(a) of Council's Code of Conduct by conducting himself in a manner likely to bring a council official into disrepute. Council formally censures Councillor Lowry for this misconduct under section 440G of the Local Government Act.**

- c) Council finds Councillor Lowry committed two counts of misconduct as defined under section 440F of the Local Government Act and breached Clause 3.1(c) of Council's Code of Conduct in two instances by engaging in improper conduct. Council formally censures Councillor Lowry for this misconduct under section 440G of the Local Government Act.
 - d) Council finds Councillor Lowry committed two counts of misconduct as defined under section 440F of the Local Government Act and breached Clause 3.1(c) of Council's Code of Conduct in two instances by engaging in unethical conduct. Council formally censures Councillor Lowry for this misconduct under section 440G of the Local Government Act.
 - e) Council finds Councillor Lowry committed misconduct as defined under section 440F of the Local Government Act and breached Clause 3.12(b) of Council's Code of Conduct by failing to take reasonable care to ensure his actions did not adversely affect the health and safety of other persons and doing so in a way detrimental to the pursuit of the charter of council. Council formally censures Councillor Lowry for this misconduct under section 440G of the Local Government Act.
5. That whilst Council condemns the statements made by Councillor Lowry, Council does not accept the Code of Conduct Reviewers recommendation relating to Allegation 3 alleging that Councillor Lowry provided unauthorised comments to the media on an issue linked to a council activity in a way detrimental to the pursuit of the charter of council. Council finds this allegation is not substantiated because:
- a) Councillors are entitled to appropriately express personal opinions to media provided they do not purport to be expressing the view of Council. Councillor Lowry did not present his view as the position of Council.
 - b) The allegation is predicated on the fact that Councillor Lowry breached the Media Liaison Administrative Protocol. Unlike Council policies, Administrative Protocols do not apply to Councillors and as such no breach could occur.
6. That for each count of misconduct outlined under point 4 above Council refer the Conduct Reviewer's report to the Office of Local Government pursuant to Clause 7.59(i)(ii) of the Procedures for Administration of the Code of Conduct, for further action as appropriate under sections 440H and 440I of the Local Government Act. Council makes this referral noting that as a result of the Supreme Court case of *Cornish vs Secretary, Department of Planning, Industry and Environment* Council is unable to impose sanctions other than censure, however it remains open to the Departmental Chief Executive to impose additional sanctions as deemed appropriate, such as requiring an apology to be issued.

On being put to the meeting the motion was declared **CARRIED 4/2**

In Favour: Crs Michael Banasik, Blair Briggs, Matthew Gould and Simon Landow

Against: Crs Judith Hannan and Robert Khan

RESOLUTION 274/2019

Moved: Cr Matthew Gould

Seconded: Cr Blair Briggs

That Council move out of Committee of the Whole.

On being put to the meeting the motion was declared **CARRIED 6/0**

In Favour: Crs Judith Hannan, Robert Khan, Michael Banasik, Blair Briggs, Matthew Gould and Simon Landow

Against: Nil

CODE OF CONDUCT COMPLAINT - CONDUCT REVIEWER'S REPORT

The resolution from the Committee of the Whole was put to the meeting.

RESOLUTION 275/2019

Moved: Cr Matthew Gould

Seconded: Cr Blair Briggs

1. That Council notes in the public minutes that Council considered a report from an external Code of Conduct Reviewer in relation to alleged inappropriate conduct by Councillor Lowry where he brought Council into disrepute and repeatedly breached the Code of Conduct by making inappropriate, unethical and improper public comments with regards to staffing matters. These comments were made after these concerns had previously been independently reviewed through the appropriate mechanisms and Councillor Lowry was aware that these matters were found to have been managed appropriately.
2. That Council notes its commitment to the highest ethical standards and acting in a manner consistent with the adopted Code of Conduct. Further that as elected representatives of the community Councillors should be held to high standards of behaviour, particularly with regards to accountability and transparency in the discharge of their duties.
3. That Council accepts the Code of Conduct Reviewer's report and notes the findings that Councillor Lowry breached Council's Code of Conduct in respect of eight separate counts of misconduct and that one additional act of misconduct was not substantiated.
4. That after reviewing the Code of Conduct Reviewer's Report:
 - a) Council finds Councillor Lowry committed misconduct as defined under section 440F of the Local Government Act and breached Clause 3.1(a) of Council's Code of Conduct by conducting himself in a manner likely to bring council into disrepute. Council formally censures Councillor Lowry for this misconduct under section 440G of the Local Government Act.
 - b) Council finds Councillor Lowry committed misconduct as defined under section 440F of the Local Government Act and breached Clause 3.1(a) of Council's Code of Conduct by conducting himself in a manner likely to bring a council official into disrepute. Council formally censures Councillor Lowry for this misconduct under section 440G of the Local Government Act.

- c) Council finds Councillor Lowry committed two counts of misconduct as defined under section 440F of the Local Government Act and breached Clause 3.1(c) of Council's Code of Conduct in two instances by engaging in improper conduct. Council formally censures Councillor Lowry for this misconduct under section 440G of the Local Government Act.
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 - e) Council finds Councillor Lowry committed misconduct as defined under section 440F of the Local Government Act and breached Clause 3.12(b) of Council's Code of Conduct by failing to take reasonable care to ensure his actions did not adversely affect the health and safety of other persons and doing so in a way detrimental to the pursuit of the charter of council. Council formally censures Councillor Lowry for this misconduct under section 440G of the Local Government Act.
5. That whilst Council condemns the statements made by Councillor Lowry, Council does not accept the Code of Conduct Reviewers recommendation relating to Allegation 3 alleging that Councillor Lowry provided unauthorised comments to the media on an issue linked to a council activity in a way detrimental to the pursuit of the charter of council. Council finds this allegation is not substantiated because:
- a) Councillors are entitled to appropriately express personal opinions to media provided they do not purport to be expressing the view of Council. Councillor Lowry did not present his view as the position of Council.
 - b) The allegation is predicated on the fact that Councillor Lowry breached the Media Liaison Administrative Protocol. Unlike Council policies, Administrative Protocols do not apply to Councillors and as such no breach could occur.
6. That for each count of misconduct outlined under point 4 above Council refer the Conduct Reviewer's report to the Office of Local Government pursuant to Clause 7.59(i)(ii) of the Procedures for Administration of the Code of Conduct, for further action as appropriate under sections 440H and 440I of the Local Government Act. Council makes this referral noting that as a result of the Supreme Court case of *Cornish vs Secretary, Department of Planning, Industry and Environment* Council is unable to impose sanctions other than censure, however it remains open to the Departmental Chief Executive to impose additional sanctions as deemed appropriate, such as requiring an apology to be issued.

On being put to the meeting the motion was declared **CARRIED 4/2**

In Favour: Crs Michael Banasik, Blair Briggs, Matthew Gould and Simon Landow

Against: Crs Judith Hannan and Robert Khan

Crs Hannan and Cr Khan requested that their vote against the motion be noted and read out in open meeting.

RESOLUTION 276/2019

Moved: Cr Blair Brigg

Seconded: Cr Michael Banasik

That Council moves out of Closed Council into Open Council.

On being put to the meeting the motion was declared **CARRIED 7/0**

In Favour: Crs Judith Hannan, Robert Khan, Michael Banasik, Blair Briggs, Matthew Gould and Simon Landow

Against: Nil

The minutes of this meeting were confirmed at the Extraordinary Meeting of the Wollondilly Shire Council held on 16 December 2019.

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MAYOR