



***Minutes of the Ordinary Meeting of Council  
28 November 2006  
commencing at 10:20 am***

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**PRESENT**

**Councillors** – M P Berwick (Mayor), D P Egan (Deputy Mayor), W J Bellerio, M Cox, R Davis, D G Pitt and J Sciacca.

**Staff** – T C Melchert (Chief Executive Officer), D G Carey (General Manager Community & Corporate), I B Barton (General Manager Finance & Administration), R J Baade (General Manager Engineering), P Trotman (General Manager Development & Environment), A M Rodgers (Manager Corporate Support), M L Paterson and S K Andrews (Corporate Support).

**06/1128/01      CONDOLENCES**

Cr Berwick referred to the recent deaths of Grace Johanna Ramsay and Fred Hober. The Council stood and observed one minute's silence.

Moved Cr Berwick

Seconded Cr Egan

*“That Council send letters of condolence to the next of kin.”*

**Carried** unanimously

**ATTENDANCE/WITHDRAWAL**

The Workplace, Health & Safety Officer, Peter Chapman, and the Community Development Officer, Kelly Favas, attended the meeting at 10:27 pm.

**SUSPENSION OF STANDING ORDERS**

Moved Cr Berwick

Seconded Cr Cox

**06/1128/01A**

*“That standing orders be suspended to allow an address by Mr Tony Walsh of Far North Investigations.”*

**Carried** unanimously

**ATTENDANCE/WITHDRAWAL**

Mr Tony Walsh of Far North Investigations attended the meeting at 10:35 am.

CLOSURE OF THE MEETING TO THE PUBLIC

Moved Cr Berwick

Seconded Cr Cox

06/1128/01B

*“That, at the request of Chief Executive Officer and pursuant to Section 463(1)(h) of the Local Government Act 1993, the meeting be closed to the general public to allow in confidence discussion of an emergent issue being that of the recent investigation into workplace health and safety issues by Far North Investigations .”*

For: Cr Berwick, Cox, Sciacca, Davis

Against: Cr Egan, Pitt, Bellerio

**Carried**

ATTENDANCE/WITHDRAWAL

Cr Bellerio withdrew from the meeting at 10:36 am and re-attended the meeting at 10:38 am. The Community Development Officer withdrew from the meeting at 10:49 am and re-attended the meeting at 11:03 am.

The Community Development Officer withdrew from the meeting at 11:11 am.

RE-OPENING OF THE MEETING TO THE PUBLIC

Moved Cr Berwick

Seconded Cr Cox

06/1128/01C

*“That the meeting be re-opened to the general public.”*

**Carried** unanimously

ATTENDANCE/WITHDRAWAL

Mr Tony Walsh of Far North Investigations withdrew from the meeting at 11:20 am.

RESUMPTION OF STANDING ORDERS

With the agreement of the meeting standing orders were resumed.

ATTENDANCE/WITHDRAWAL

Cr Davis withdrew from the meeting at 11:20 am.

06/1128/02

MINUTES

Moved Cr Berwick

Seconded Cr Cox

*“That the minutes of the Ordinary Council Meeting held on 7 November 2006 be confirmed.”*

**Carried** unanimously

ATTENDANCE/WITHDRAWAL

Cr Davis and the Community Development Officer re-attended the meeting at 11:21 am.

**COMMUNITY & CORPORATE**

**06/1128/03 DOUGLAS SHIRE COUNCIL – REGIONAL ARTS DEVELOPMENT FUND (RADF) 2006/07 COMMITTEE RECOMMENDATIONS**

Moved Cr Egan

Seconded Cr Cox

*“That Council approve the RADF Committee’s recommendation for 2006/07, including \$3 780 for ‘out-of-round applications’.”*

**Carried** unanimously

**06/1128/04 REQUEST FOR FINANCIAL ASSISTANCE – NELLE SCHOOL OF PERFORMING ARTS**

Moved Cr Sciacca

Seconded Cr Egan

*“That Council not contribute financial assistance to ‘Carols in the Park 2006’.”*

An amendment was moved:

Moved Cr Davis

Seconded Cr Berwick

**06/1128/04** *“That Council not contribute \$4 200, however, equal support be provided for Christmas carols across the shire.”*

The amendment was put:

For: Cr Berwick, Cox, Davis, Sciacca

Against: Cr Bellerio, Pitt, Egan

**Carried**

The amendment became the motion and was put:

For: Cr Berwick, Cox, Davis, Sciacca

Against: Cr Bellerio, Pitt, Egan

**Carried**

ATTENDANCE/WITHDRAWAL

The Community Development Officer withdrew from the meeting at 11:40 am.

The Manager Planning, Paul Gleeson, attended the meeting at 11:45 am.



06/1128/05      SEPTEMBER QUARTERLY REPORT AGAINST 2006/07 OPERATIONAL PLAN

Moved Cr Cox

Seconded Cr Sciacca

06/1128/05      *"That Council note the September 2006 Quarterly Report against the 2006/07 Operational Plan."*

ATTENDANCE/WITHDRAWAL

Cr Egan withdrew from the meeting at 11:50 am and re-attended at 11:55 am.

Cr Pitt withdrew from the meeting at 11:52 am and re-attended at 11:54 am.

The Manager Planning withdrew from the meeting at 11:56 am and re-attended at 12:00 noon.

The Chief Executive Officer withdrew from the meeting at 12:05 pm and re-attended at 12:15 pm.

The Workplace Health & Safety Officer withdrew from the meeting at 12:06 pm and re-attended the meeting at 12:15 pm.

Cr Bellerio withdrew from the meeting at 12:19 pm and re-attended the meeting at 12:20 pm.

The Manager Planning withdrew from the meeting at 12:31 pm and re-attended the meeting at 12:43 pm.

The Workplace Health & Safety Officer withdrew from the meeting at 12:42 pm.

An amendment was moved:

Moved Cr Davis

*"That Council note the September 2006 Quarterly Report against the 2006/07 Operational Plan and that staff come back to council with a mechanism by which council can better participate in this process."*

The motion lapsed for want of a seconder.

The original motion was put:

For:              Cr Berwick, Egan, Sciacca, Bellerio, Cox, Pitt

Against:        Cr Davis

**Carried**

SUSPENSION OF STANDING ORDERS

Moved Cr Bellerio

Seconded Cr Pitt

06/1128/05A

*"That Council suspend standing orders to deal with the following emergent items:*

- the report from Far North Investigations;*
- the Daintree toilet block;*

*as well as items 06/1128/09, 06/1128/12 and 06/1128/08."*

**Carried** unanimously

06/1128/09 TPC 1242 – LOT 518 PTD2094, 65 MURPHY STREET, PORT DOUGLAS

Moved Cr Sciacca

Seconded Cr Bellerio

*"That Council approve the application for a preliminary approval and development approval for a Material Change of Use to facilitate the development of two (2) multiple dwellings (residential) on land described as Lot 518 on PTD2094, Parish of Salisbury and situated at 65 Murphy Street, Port Douglas, subject to the conditions recommended by the Planning Officer in her report."*

For: Cr Berwick, Egan, Sciacca, Bellerio, Davis, Pitt

Against: Cr Cox

**Carried**

06/1128/05B DAINTREE TOILET BLOCK

Moved Cr Bellerio

Seconded Cr Sciacca

*"That Council proceed to complete the toilet block."*

With the agreement of the mover and seconder the motion was left on the table pending further legal advice from Stuart Macnaughton.

ATTENDANCE/WITHDRAWAL

The General Manager Community & Corporate withdrew from the meeting at 1:10 pm.

The Chief Executive Officer withdrew from the meeting at 1:15 pm.

Cr Cox withdrew from the meeting at 1:17 pm and re-attended at 1:19 pm.

06/1128/05C     **FAR NORTH INVESTIGATIONS REPORT**

The report by Mr Tony Walsh of Far North Investigations, 'Douglas Shire Council Workplace Review', was presented to Council during in confidence discussions held earlier in the meeting.

Moved Cr Berwick

Seconded Cr Davis

*"That:*

- *the report authored by Mr Tony Walsh on behalf of Far North Investigations in relation to the Douglas Shire Council Workplace Review be tabled;*
- *Council note and receive the report by Mr Walsh and adopt his recommendations;*
- *Council note there has been no investigation and agree there should be none;*
- *Council adopt the email communication policy recommended by Mr Walsh in his report;*
- *Council finalise the meeting recording policy and begin recording all meetings;*
- *Council agree to introduce a zero tolerance policy for a trial period of three months, followed by review."*

ATTENDANCE/WITHDRAWAL

The Chief Executive Officer re-attended the meeting at 1:20 pm.

With the agreement of the mover and the seconder the motion was amended:

06/1128/05C

*"That:*

- *the report authored by Mr Tony Walsh on behalf of Far North Investigations in relation to the Douglas Shire Council Workplace Review be tabled;*
- *Council note and receive the report by Mr Walsh and adopt his recommendations;*
- *Council note there has been no investigation and agree there should be none;*
- *Council adopt the email communication policy recommended by Mr Walsh in his report;*
- *Council finalise meeting recording policy and begin recording all meetings;*
- *Council agree to introduce a zero tolerance approach to breaches of the Councillor Code of Conduct to take effect as from 28 November 2006."*

**Carried** unanimously

06/1128/12      UNNAMED ROAD BETWEEN SOMERSET ROAD AND  
SCOMAZZON ROAD, MIALLO

PERSONAL INTEREST

The Chief Executive Officer declared a personal interest in this matter, as he socialises with the applicant, and withdrew from the meeting at 1:30 pm.

Moved Cr Cox

Seconded Cr Berwick

06/1128/12A      *"That the status quo remain."*

For                      Crs Cox, Berwick, Davis

Against                Crs Pitt, Bellerio, Sciacca, Egan

**Lost**

Cr Berwick had in his possession a letter from Jenny Elphinstone Pty Ltd and addressed to the Chief Executive Officer regarding the Notice of Application for Permanent Road Closure Government Gazette Notification Reference 2006/0003418.

Moved Cr Berwick

Seconded Cr Cox

*"That the letter in relation to 06/1128/12 be tabled."*

The motion was not put to the meeting for a vote and therefore lapsed.

Moved Cr Sciacca

Seconded Cr Bellerio

06/1128/12B      *"That:*

- (i) Council provide funds in the 2007/08 budget for the construction of a gravel road from Scomazzon Road to serve Lot 255 on SR364;*
- (ii) the existing temporary road closures remain in place until the gravel road, specified in (i) above, is constructed;*
- (iii) upon completion of the gravel road specified in (i) above, a temporary road closure between Scomazzon Road and Somerset Road be requested of the Department of Natural Resources and Water in accordance with the plan in attachment 2;*
- (iv) Mr & Mrs Pelizzari accept responsibility for maintaining the section of temporarily closed road in (iii) above."*

For:                      Cr Sciacca, Bellerio, Pitt

Against:                Cr Berwick, Cox, Davis, Egan

**Lost**

Moved Cr Egan

Seconded Cr Sciacca

*"That Council write to the Department of Natural Resources and Water to request a complete road closure."*

With the agreement of the mover and the seconder the motion was withdrawn.

Moved Cr Berwick

Seconded Cr Davis

06/1128/12C

*"That the Council take no action on the matter."*

For Crs Cox, Berwick, Davis, Bellerio, Pitt

Against Crs Sciacca, Egan

**Carried**

The Chairperson proceeded to the following items in the agenda instead of resuming the order of business.

06/1128/08     PRIORITY INFRASTRUCTURE PLAN (PIP) – BASIS FOR PREPARATION OF PIP

Moved Cr Berwick

Seconded Cr Sciacca

*"That Council:*

- (i) *endorse the preparation of the Douglas Shire Council Priority Infrastructure Plan (PIP) on the following basis:*
  - (a) *that funding be recovered through 'up-front' charges on developments for all trunk infrastructure permissible under the Integrated Planning Act, including: (a) water supply; (b) sewerage; (c) stormwater drainage; and (d) land, and improvements thereto, for community facilities;*
  - (b) *that in preparing the PIP, Council identify on a case by case basis, the elements of the trunk infrastructure network which should be levied for the whole of the shire or on a catchment basis;*
  - (c) *that charges be calculated on a 'user pays' basis;*
  - (d) *that in preparing the PIP, checks are performed through the Council's ten-year financial model that the optimal balance of infrastructure charges and rates is being achieved;*
  - (e) *that community consultation be an integral part of preparing the PIP;*
- (ii) *confirm that terms of reference, based upon one above, are completed by officers and these be tendered as soon as practical."*

**Carried** unanimously



RESUMPTION OF STANDING ORDERS

Moved Cr Cox

Seconded Cr Egan

06/1128/08A *"That standing orders be resumed."*

**Carried** unanimously

ATTENDANCE/WITHDRAWAL

The Chief Executive Officer re-attended the meeting at 2:08 pm.

06/1128/06 DETAILS OF THE USE OF THE COUNCIL SEAL

Moved Cr Egan

Seconded Cr Cox

*"That Council receive the report providing details of the use of the council seal and endorse the actions of the Mayor and Chief Executive Officer in executing on its behalf, under seal, the documents detailed therein."*

**Carried** unanimously

06/1128/07 DECISIONS OF COUNCIL STATUS REPORT

Moved Cr Berwick

Seconded Cr Egan

06/1128/07A *"That all councillors advise proposed changes to the Douglas Shire Planning Scheme by the end of 2006 to General Manager Development & Environment and the proposals be dealt with as a matter of priority."*

An amendment was moved:

Moved Cr Davis

*"That the proposals be dealt with by engaging appropriate consultants to lead councillors through the process in a workshop format in 2007."*

The motion lapsed for want of a seconder.

PROCEDURAL MOTION

Moved Cr Bellero

06/1128/07B *"That the motion be put."*

**Carried** unanimously

The original motion was put:

**Carried** unanimously

CLOSURE OF THE MEETING TO THE PUBLIC

Moved Cr Berwick

Seconded Cr Egan

06/1128/07C

*"That pursuant to Section 463(1)(f) of the Local Government Act 1993, the meeting be closed to the general public to allow in confidence discussion of legal advice in relation to the Daintree toilet block."*

For: Cr Berwick, Cox, Sciacca, Davis, Egan, Pitt

Against: Cr Bellerio

**Carried**

RE-OPENING OF THE MEETING TO THE PUBLIC

Moved Cr Berwick

Seconded Cr Egan

06/1128/07D

*"That the meeting be re-opened to the general public."*

**Carried** unanimously

06/1128/05B     DAINTREE TOILET BLOCK

Moved Cr Bellerio

Seconded Cr Sciacca

*"That Council proceed to complete the toilet block."*

For: Cr Bellerio, Sciacca, Egan, Pitt

Against: Cr Berwick, Cox, Davis

**Carried**

06/1128/07     DECISIONS OF COUNCIL STATUS REPORT

Moved Cr Berwick

Seconded Cr Cox

06/1128/07E

*"That Council receive and note the Decisions of Council Status Report."*

**Carried** unanimously

**DEVELOPMENT & ENVIRONMENT**

06/1128/08     PRIORITY INFRASTRUCTURE PLAN (PIP) – BASIS FOR PREPARATION OF PIP

This item was dealt with after item 06/1128/12..

06/1128/09     TPC 1242 – LOT 518 PTD2094, 65 MURPHY STREET, PORT DOUGLAS

This item was dealt with after item 06/1128/05.

06/1128/10      TPC 1260 – LOT 85 RP729069, 25 PECTEN AVENUE, PORT DOUGLAS

Moved Cr Berwick

Seconded Cr Egan

*“That Council approve the application for a development permit for Material Change of Use to permit the development of two (2) x three (3) bedroom multiple dwellings (residential) on land described as Lot 85 on RP729069, Parish of Salisbury, and situated at 25 Pecten Avenue, Port Douglas, subject to the conditions recommended by the Planning Officer in her report.”*

**Carried** unanimously

ATTENDANCE/WITHDRAWAL

The Manager Planning withdrew from the meeting at 3:00 pm.

06/1128/11      AUSTRALIAN ALTERNATIVE COVERS ASSESSMENT PROGRAM (A-ACAP)

ATTENDANCE/WITHDRAWAL

The Chief Executive Officer withdrew from the meeting at 2:47 pm and re-attended the meeting at 2:50 pm.

Moved Cr Egan

Seconded Cr Berwick

*“That Council enter into an agreement with the Waste Management Association of Australia to become a supporting party in relation to the Australian Alternative Covers Assessment Program (A-ACAP).”*

**Carried** unanimously

**ENGINEERING**

06/1128/12      UNNAMED ROAD BETWEEN SOMERSET ROAD AND SCOMAZZON ROAD, MIALLO

This matter was dealt with after item 06/1128/05C.

## **FINANCE & ADMINISTRATION**

### **06/1128/13 REQUEST FOR REMISSION OF RATES DAINTREE VILLAGE TOURISM ASSOCIATION INC**

Moved Cr Sciacca

Seconded Cr Berwick

*"That Council:*

- (i) grant a remission of 100% rates and charges to the Daintree Village Tourism Association for the 2006/07 financial year;*
- (ii) include Daintree Village Tourism Association Inc with other assessments that receive a 100% remission on all rates and charges each year;*
- (iii) that (ii) above be subject to review should property use change from its current purpose as an information centre."*

**Carried** unanimously

### **06/1128/14 CONFIDENTIAL GENERAL REPORT BY EXTERNAL COMPLAINTS OFFICER**

### **06/1128/15 COMPLAINT LODGED BY PORT DOUGLAS WATERFRONT ASSOCIATION v CR DAVIS**

These matters were dealt with after item 06/1128/20.

## **NOTICES OF MOTION**

### **OFFICER COMMENT PROVIDED**

### **06/1128/16 RD4606M – ALL MONIES FROM ‘FOOL’S GOLD’ TO SUGAR WHARF**

Moved Cr Davis

Seconded Cr Pitt

*"That Council credit all monies received from the ‘Fool’s Gold’ film to the Sugar Wharf repair project."*

For: Cr Davis, Pitt, Bellero, Sciacca

Against: Cr Cox, Berwick, Egan

**Carried**

**06/1128/17 RD4506M – FUNDING ART**

Moved Cr Davis

Seconded Cr Berwick

*"That Council endeavour to strike a voluntary agreement on all large commercial developments (greater than \$5 000 000) that they contribute one half of one percent of their building budget to public art, adjoining or embodied in the public space of the projects on the proviso that the planning programme investigate the opportunity for contributions to be taken through the Planning Scheme."*

**Carried** unanimously

**06/1128/18 BB0906M – IMPROVE EXTERNAL COMMUNICATION**

Moved Cr Bellerio

Seconded Cr Sciacca

*"That General Managers be requested to liaise with their staff to identify those that require exposure to skills development in the areas of customer service, letter writing and improved interpersonal skills."*

**Carried** unanimously

**06/1128/19 MB1006M – VEHICLE ARRANGEMENT FOR MAYOR**

**ATTENDANCE/WITHDRAWAL**

Cr Pitt withdrew from the meeting at 3:18 pm and re-attended at 3:21 pm.

Moved Cr Berwick

Seconded Cr Cox

*"That Council take the opportunity to comprehensively review the Councillors' remuneration policy."*

**Carried** unanimously

**REPORTS – CHIEF EXECUTIVE OFFICER**

**06/1128/20 INTERNAL REVIEW OF FREEDOM OF INFORMATION REQUESTS**

Moved Cr Berwick

Seconded Cr Cox

*"That Council resolve to appoint the General Manager Finance & Administration as the alternative Freedom of Information Internal Review Officer."*

**Carried** unanimously

CLOSURE OF THE MEETING TO THE PUBLIC

Moved Cr Berwick

Seconded Cr Egan

06/1128/21

*"That pursuant to Section 463(1)(h) of the Local Government Act the Council meeting be closed to the public to allow for in confidence discussions relating to a report from the External Complaints Officer."*

**Carried** unanimously

OPENING OF THE MEETING TO THE PUBLIC

Moved Cr Berwick

Seconded Cr Davis

06/1128/22

*"That the meeting be re-opened to the public."*

**Carried** unanimously

06/1128/14      CONFIDENTIAL GENERAL REPORT BY EXTERNAL COMPLAINTS OFFICER

Moved Cr Egan

Seconded Cr Berwick

*"That Council accept the items in the attached report and proceed to implement these as soon as possible."*

**Carried** unanimously

06/1128/15      COMPLAINT LODGED BY PORT DOUGLAS WATERFRONT ASSOCIATION v CR DAVIS

Moved Cr Egan

Seconded Cr Berwick

*"That Council:*

- (i) note the advice of the report and take no further action under the code regarding this incident;*
- (ii) review the Code of Conduct for Councillors with a view to strengthening its enforcement powers."*

**Carried** unanimously

TERMINATION

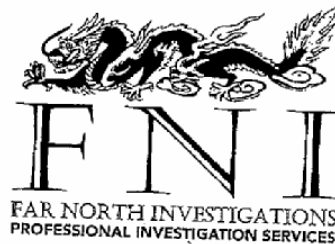
The meeting was closed at 3.52 pm.

Presented to and confirmed by Council on the *twenty-eighth* day of *November* 2006.

**M P Berwick**  
**Chair**

ATTACHMENT 1

Appendix 1



Thursday, 16 November 2006

Our Ref: 06/3099:ADW  
Your Ref: TCM:MSL

The Chief Executive Officer  
PO Box 357  
MOSSMAN QLD 4873

Attention: Terry Melchert

Dear Sir,

**RE: Douglas Shire Council Workplace Review**

We refer to the above matter and your request to conduct a workplace review with particular reference to interactions between Councillor Rod Davis and DSC staff, with an emphasis but not limited to, email traffic.

We have now concluded our inquiries and herewith submit our report for your consideration.

**Executive Summary**

As requested, we have perused the documents provided and have spoken with The Mayor – Councillor Berwick, David Carey and also Peter Chapman. In addition to the information gathered from these sources, we are also cognizant of the current climate that exists within the Douglas Shire Council and have been made aware that there are arrangements to have Code of Conduct training provided, commencing on 11<sup>th</sup> December 2006.

We note that the email material provided along with other documents pertain to Councillor Davis only and to that end we have not sought to include any other Councillors or indeed DSC staff in our review. The material provided for consideration consisting of, but not limited to emails to and from Councillor Davis, copies of newspaper articles detailing illicit drug possession and a drink driving offence, and assorted memoranda do appear prima facie to reveal a particular style of communication, which is not appropriate in a twenty first century workplace.

Notwithstanding this apparent inappropriate mode, we have been told that there is an absence of formal complaint or any completed incident reports from staff arising as a consequence of interaction via email with Councillor Davis.

Privileged for the use of clients and legal advisors only

PO Box 1008 Smithfield Queensland 4878 Telephone 4093 0022 Facsimile 4093 0044 mail@fni.com.au

Our Ref: 06/3099:ADW  
Your Ref: TCM:MSL

1.01

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Far North Investigations

Executive Summary continued

This absence gives rise to a train of thought that staff recognise the asymmetrical nature of the communication from Councillor Davis in his emails and other mediums and treat them accordingly. The majority of the emails examined had been directed to General Manager David Carey and we did canvass with him his feelings in regard to those emails. Mr Carey's response was simply that he and other staff as far as he was aware treated the emails in an apposite fashion and often did not respond to them at all.

Accordingly, although Mr Carey would on the basis of the emails provided be perhaps the person who should have been the most affronted, he has no lasting sentiment as a consequence of the emails received.

Given the lack of formal complaint from any staff, and with recognition of the many investigations that have been conducted at DSC in recent times, we are loath to seek out any complaints by canvassing the issue with staff outside of those mentioned above. Most especially as the subject of the review is a single Councillor, any such canvassing could well be interpreted as a deliberate attempt to provide some continuance to matters which have been the subject of previous investigations.

In light of the fact that Code of Conduct training is scheduled to commence on 11<sup>th</sup> December 2006, and that training has come about as a recommendation from a previous investigation, we firmly believe that rather than reigniting the issue by canvassing for complaints, the organisation would benefit from drawing a line in the sand once that training is completed and moving forward from that point.

To that end, we would emphatically recommend that consideration be given to a "zero tolerance" with regards to infractions of the Code of Conduct for a period of three months to ensure that Councillors and staff alike are aware that the adherence to the principles of the Code of Conduct is not discretionary nor limited to more junior members of the organisation.

The implementation of a "zero tolerance" policy may be seen by some as a draconian measure however it is nothing more or less than non-discretionary enforcement of an agreed set of rules and regulations. We note amongst the research material provided that there is a report on another investigation conducted by the External Complaints Officer in which he describes the Councillors' Code of Conduct as "*a detailed document with noble intentions but is lacking in meaningful powers of enforcement.*". We disagree with his interpretation of the Code as there are penalties prescribed within the Code, which are appropriate to such transgressions.

If transgressions are identified and dealt with swiftly, fairly and consistently in a transparent manner, the frequency of transgressions will ultimately be reduced, optimistically to the point where they cease to be an issue.



1.02

Our Ref: 06/3099:ADW  
Your Ref: TCM:MSL

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### Far North Investigations

#### Executive Summary continued

The implementation and adherence to a Code of Conduct is no different to the laws and regulations which govern our daily activities.

One issue that was identified during the examination of the material provided is of concern. We are referring to a series of memoranda and emails pertaining to the impoundment of a motor vehicle. The point of concern in this collection of documents can be found in the memorandum dated 2<sup>nd</sup> May 2006 from Grant Philp to Paul Hoye, Manager Environmental Services. Philp writes ...*Mr Davis advised me that Mark from Flagstaff Marine was a mate having a few troubles and told me to leave him alone...*

The stapled collection of material provided in relation to this matter ends with a memorandum from Hoye to the CEO therefore we remain unsure if this matter was proceeded with. If the quotation above from Philp is accurate, the action taken by Cr Davis is clearly of concern, as it would appear to describe a Councillor not only speaking directly with a staff member but also attempting to interfere in an operational matter, and possibly seeking to secure a favourable outcome for an acquaintance.

As mentioned we cannot form a clear finding on this matter as we are uncertain if any action was taken post the receipt of the memorandum from Hoye with the supporting material.

The determination that Council has an obligation to provide a safe workplace is correct and whilst the central theme of this inquiry revolves around email contact, the issue above regarding the impoundment of a motor vehicle could also be construed as adding an unfair burden to Philp during the performance of his duty.

#### Recommendations

As mentioned above, we were not provided with, nor did we seek to elicit any formal complaints regarding interaction with Councillor Davis. This should not be read as an exoneration of Councillor Davis' email style, but rather takes into account the tempestuous nature of events at DSC over the last few years and the pending intervention and training which hopefully will bring some succour to those involved.

The material provided however clearly indicates that there is a lack of understanding as to how emails should be used, how the message should be constructed and what language should be used. Email is simply a further arm of the greater communication sphere and normally is reflective of the users' normal mode of communication. Cr Davis' style, which is reflected in the provided material, is known as "flaming" in email parlance. Flaming is described as:

*Flaming is a virtual term for venting emotion online or sending inflammatory emails that are deliberately hostile and insulting.*

1.03

Our Ref: 06/3099:ADW  
Your Ref: TCM:MSL

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#### Far North Investigations

#### Recommendations continued

"Flaming" should be avoided as it creates conflict and tension and will not ultimately assist in having the subject of the email addressed.

It is a commonly held belief that the use of uppercase letters in an email is reflective of shouting and we note that Cr Davis does use uppercase letters frequently. The use of uppercase letters should be avoided wherever possible and if the premise that it equates to shouting is followed through, one would hope that the sender would not normally shout during face-to-face communication.

Whilst email is a wonderful tool for sharing information and issuing directions, the ramifications of its misuse are well documented and have resulted in serious workplace issues and workers compensation claims. Often these problems can arise when there is a misinterpretation on the part of the recipient of the email where they mistakenly apply the emotion they believe was intended by the writer. This often occurs when the email is neutral, something which Cr Davis does not appear guilty of.

There are clearly established protocols for the use of email, and a Google search under "email etiquette" will provide a wealth of material. It is also commonplace for organisations to implement an Email Policy and given the problems at DSC, this may well be worthy of consideration. To assist we have included a copy of a sample email policy, which may be of assistance.

#### Charges

We note in your formal instructions received on 16<sup>th</sup> November 2006, a query regarding charges. Our charges where no contract to supply services exists are \$1200.00 per day or part thereof (ex GST). We have entered into arrangements with other organisations where this can be markedly reduced. If a more stringent application of the Code of Conduct is approved, it may well be that DSC would seek to enter into such a contract so any breaches can be addressed by an independent investigator.   
[REDACTED]

#### Conclusion

Whilst we agree wholeheartedly that DSC has an obligation to provide a safe workplace, we do feel that the issues involved in this matter are broader than simple asymmetrical email communications. To that end, a more holistic approach through Code of Conduct training and implementation of a "zero tolerance" approach to breaches of the Code, will we believe go some way to achieving the aim of a safe workplace.

1-04

Our Ref: 06/3099:ADW  
Your Ref: TCM:MSL

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Far North Investigations

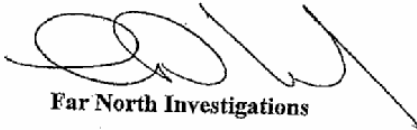
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**Conclusion continued**

To attempt to address historical issues some over two years old will result in a situation of conflict arising, and also draws into question management inaction. This more so given the absence of any formal complaint.

We trust this information is of assistance in this matter. Should you have any queries please do not hesitate to contact our office.

Yours faithfully



Far North Investigations

Encl:        Sample email policy  
              Memorandum of Costs

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[Company]  
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### EMAIL POLICY

*[This is a sample Email Policy document offered by Emailreplies.com. Enter your company name in the [Company] field and adapt and add rules to suit your company's needs. Note that this document is merely for informational purposes and should not be relied upon as a legal document]*

The purpose of this policy is to ensure the proper use of [Company]'s email system and make users aware of what [Company] deems as acceptable and unacceptable use of its email system. The [Company] reserves the right to amend this policy at its discretion. In case of amendments, users will be informed appropriately.

#### LEGAL RISKS

Email is a business communication tool and users are obliged to use this tool in a responsible, effective and lawful manner. Although by its nature email seems to be less formal than other written communication, the same laws apply. Therefore, it is important that users are aware of the legal risks of e-mail:

- If you send emails with any libelous, defamatory, offensive, racist or obscene remarks, you and [Company] can be held liable.
- If you forward emails with any libelous, defamatory, offensive, racist or obscene remarks, you and [Company] can be held liable.
- If you unlawfully forward confidential information, you and [Company] can be held liable.
- If you unlawfully forward or copy messages without permission, you and [Company] can be held liable for copyright infringement.
- If you send an attachment that contains a virus, you and [Company] can be held liable.

By following the guidelines in this policy, the email user can minimize the legal risks involved in the use of e-mail. If any user disregards the rules set out in this Email Policy, the user will be fully liable and [Company] will disassociate itself from the user as far as legally possible.

#### LEGAL REQUIREMENTS

The following rules are required by law and are to be strictly adhered to:

- **It is strictly prohibited to send or forward emails containing libelous, defamatory, offensive, racist or obscene remarks. If you receive an e-mail of this nature, you must promptly notify your supervisor.**
- Do not forward a message without acquiring permission from the sender first.
- Do not send unsolicited email messages.
- Do not forge or attempt to forge email messages.
- Do not send email messages using another person's email account.
- Do not copy a message or attachment belonging to another user without permission of the originator.
- Do not disguise or attempt to disguise your identity when sending mail.

#### BEST PRACTICES

[Company] considers email as an important means of communication and recognizes the importance of proper email content and speedy replies in conveying a professional image and delivering good customer service. Therefore [Company] wishes users to adhere to the following guidelines:

- **Writing emails:**
  - Write well-structured emails and use short, descriptive subjects.
  - [Company]'s email style is informal. This means that sentences can be short and to the point. You

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can start your e-mail with 'Hi', or 'Dear', and the name of the person. Messages can be ended with 'Best Regards'. The use of Internet abbreviations and characters such as smieys however, is not encouraged.

- o Signatures must include your name, job title and company name. A disclaimer will be added underneath your signature (see Disclaimer)
- o Use the spell checker before you send out an email.
- o Do not send unnecessary attachments. Compress attachments larger than 200K before sending them.
- o Do not write emails in capitals.
- o Do not use cc: or bcc: fields unless the cc: or bcc: recipient is aware that you will be copying a mail to him/her and knows what action, if any, to take.
- o If you forward mails, state clearly what action you expect the recipient to take.
- o Only send emails of which the content could be displayed on a public notice board. If they cannot be displayed publicly in their current state, consider rephrasing the email, using other means of communication, or protecting information by using a password (see confidential).
- o Only mark emails as important if they really are important.
- **Replying to emails:**
  - o Emails should be answered within at least 8 working hours, but users must endeavor to answer priority emails within 4 hours.
  - o Priority emails are emails from existing customers and business partners.
- **Newsgroups:**
  - o Users need to request permission from their supervisor before subscribing to a newsletter or news group.
- **Maintenance:**
  - o Delete any email messages that you do not need to have a copy of, and set your email client to automatically empty your 'deleted items' on closing.

#### **PERSONAL USE**

Although [Company]'s email system is meant for business use, [Company] allows the reasonable use of email for personal use if certain guidelines are adhered to:

- Personal use of email should not interfere with work.
- Personal emails must also adhere to the guidelines in this policy.
- Personal emails are kept in a separate folder, named 'Private'. The emails in this folder must be deleted weekly so as not to clog up the system.
- The forwarding of chain letters, junk mail, jokes and executables is strictly forbidden.
- On average, users are not allowed to send more than 2 personal emails a day.
- Do not send mass mailings.
- All messages distributed via the company's email system, even personal emails, are [Company]'s property.

#### **CONFIDENTIAL INFORMATION**

Avoid sending confidential information by e-mail. If you do, you must secure the information by including it in a Microsoft Word or Excel file and protecting it with a password. Then provide the recipient with the password by means of other communication, for instance by telephone.

#### **DISCLAIMER**

The following disclaimer will be added to each outgoing email:

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the company. Finally, the recipient should check this email and any attachments for the presence of viruses. The company



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accepts no liability for any damage caused by any virus transmitted by this email.'

**SYSTEM MONITORING**

You must have no expectation of privacy in anything you create, store, send or receive on the company's computer system. Your emails can be monitored without prior notification if [Company] deems this necessary. If there is evidence that you are not adhering to the guidelines set out in this policy, the [Company] reserves the right to take disciplinary action, including termination and/or legal action.

**EMAIL ACCOUNTS**

All email accounts maintained on our email systems are property of [Company]. Passwords should not be given to other people and should be changed once a month. Email accounts not used for 60 days will be deactivated and possibly deleted.

**QUESTIONS**

If you have any questions or comments about this Email Policy, please contact [Name], [Tel], [Email]. If you do not have any questions [Company] presumes that you understand and are aware of the rules and guidelines in this Email Policy and will adhere to them.

**DECLARATION**

I have read, understand and acknowledge receipt of the Email policy. I will comply with the guidelines set out in this policy and understand that failure to do so might result in disciplinary or legal action.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_