

Memorandum



OP GRAND

EXHIBIT No. *236*
W. H. ... CLERK

CONFIDENTIAL

TO : Cr Shepherd
COPY : Cr Young
FROM : Joe McCabe Acting Chief Executive Officer
SUBJECT : Complaint about actions of Cr Young
DATE : 20 September 2005
FILE NO : LG211/-/-CF #17867603

Please find attached a self explanatory report which I concur with.

Please treat this report as a "confidential" document.


Joe McCabe
ACTING CHIEF EXECUTIVE OFFICER

Attach.

Memorandum

TO : Joe McCabe, Acting Chief Executive Officer
FROM : Conrad Martens, Fraud Prevention & Security Advisor
SUBJECT : COMPLAINT ABOUT ACTIONS OF COUNCILLOR YOUNG
DATE : 19 September 2005
FILE NO : LG449/258/03/CF (1063)

PURPOSE

To advise you on my assessment of a complaint by Cr Shepherd of official misconduct by Cr Young who voted at Council Meeting on 8/10/04 on a matter in which he had previously declared an interest.

FOCUS

PLANNING AND ENVIRONMENT COURT APPEAL NO. 63 OF 1999 - BIRD & SONS PTY LTD - LOTS 1 & 2 RP 218104 - 196 & 292 MAUDSLAND ROAD MAUDSLAND - DIVISION 2 - FILE PN155302/01/DA2(P5)

EVIDENCE

The following documents were examined during the assessment:

- PN155302/01/DA2 196 MAUDSLAND ROAD MAUDSLAND DA9802500 MCU9800204.
- Minutes of the City Planning Committee Meeting (335) 5 October 2004.
- Minutes of the Council Meeting (335) 8 October 2004.
- Minutes of the Council Meeting (336) 18 October 2004.
- Memorandum Cr Shepherd to Chief Executive Officer 22 October 2004.
- Memorandum Cr Shepherd to Chief Executive Officer 15 September 2005.
- Gold Coast Bulletin 14/9/05 article "Councillor accused of breach".

FACTS**Chronology**

- 1 Council received an application 10 July 1998 seeking Preliminary Approval for a Material Change of Use from Special Facilities (Golf Course, Clubhouse, Recreation Facilities, Motel accommodation units, Restaurant and Dwelling Houses) to
-

-
- Residential, Park Residential, Rural and Open Space land uses to permit Residential, Park Residential, Rural and Open Space.
- 2 About August 1998 Dredge & Bell Planning Pty Ltd gave the required notices of MCU / DA L1 & L2 RP218104 PN155302 at 196 & 292 Maudsland Road Maudsland.
 - 3 Council receives a letter dated 17/9/98 from Mr Peter Young (a private citizen) who resided at 275 Kopps Road Oxenford, objecting to the rezoning and providing grounds.
 - 4 Council Officers recommended to the Planning & Development (North) Committee 1 December 1998 that Council resolve to approve the application subject to conditions. Committee recommended the matter be deferred pending an inspection of the site.
 - 5 Council receives a facsimile dated 10 December 1998 from Mr Peter Young, urging Council to not approve the subject proposal and providing reasons why he would challenge it in a court.
 - 6 The same recommendation/report was again put before the Planning & Development (North) Committee on 11 December 1998.
 - 7 The Coordination Committee 17 December 1998 recommended that Council grant Preliminary Approval for a Material Change of Use application to permit Residential, Park Residential, Rural and Open Space.
 - 8 At it's meeting on 18 December 1998 (Minute No. C98.1217.029), Council resolved to refuse the application.
 - 9 The applicant (Bird & Sons Pty Ltd) lodged an Appeal against the refusal with the Planning and Environment Court (No. 63 of 1999).
 - 10 On the 5 March 1999 Council received a Planning and Environment Court Notice of Election from Mr Peter Young of 275 Kopps Road, Oxenford 4210 to become a co-respondent to the subject appeal.
 - 11 In April Mr Peter Young was elected as a Councillor for the City of Gold Coast.
 - 12 A "Without Prejudice" meeting was held at Council 1 August 2000.
 - 13 No further representations were received and the appeal was held in abeyance until such time as the draft Planning Scheme had progressed further for adoption.
 - 14 A second "Without Prejudice" meeting was held at Council 16 March 2004. Subsequent to this, Council received the appellants revised "Without Prejudice Submission" 5 April 2004 and an amended submission on 21 September 2004.
 - 15 On 5/10/04 the matter was again put to the City Planning Committee Meeting (335). The Minutes record:

"Cr P J Young (absent from meeting 10:35am to 10:44am)"

*Late Item 11 - PN155302/01/DA2 196 MAUDSLAND ROAD MAUDSLAND
DA9802500 MCU9800204:*

"Councillor Young declared an interest and left the room during discussion and voting on this item."

CP04.1005.011 "B That Council instruct its solicitors to seek to settle Planning & environment Court Appeal 63 of 1999 by way of a consent order, granting Preliminary Approval for Material Change of Use for Residential, Park

Residential Rural and Open Space land uses in accordance with submitted Concept Plan and Table of Development subject to the following conditions...

- 16 On 8/10/04 the recommendation was put to the Council Meeting (335). The Minutes record:

"4.1 CITY PLANNING

Cr Shepherd, Chairperson of the City Planning Committee, presented the Minutes of the Meeting of the City Planning Committee held on Tuesday, 5 October 2004.

RESOLUTION G04.1008.003 moved Cr Shepherd seconded Cr Douglas That the Report of the City Planning Committee Meeting held on Tuesday, 5 October 2004, covered by Recommendations CP04.1005.001 to CP04.1005.012 be received.

CARRIED"

"ADOPTION OF CITY PLANNING COMMITTEE REPORT

RESOLUTION G04.1008.006 moved Cr Shepherd seconded Cr Pforr That the Report of the City Planning Committee's Recommendations of Tuesday, 5 October 2004, numbered CP04.1005.001 to CP04.1005.012 be adopted with the exception of Recommendation Numbers CP04.1005.004 and CP04.1005.005 which were specifically resolved.

A Division was called

For 15 Cr Hackwood, Cr Power, Cr Pforr, Cr Molhoek, Cr Young, Cr Crichlow, Cr Douglas, Cr La Castra, Cr Shepherd, Cr Sarroff, Cr Grew, Cr Betts, Cr McDonald, Cr Robbins, Cr Clarke.

Against 0

CARRIED"

- 17 The Minutes of Council Meeting 336 on 18/10/04 record:

"RESOLUTION G04.1018.008 moved Cr Shepherd seconded Cr Young

That the Minutes of the Three Hundred and Thirty-Fifth Ordinary Meeting of the Council of the City of Gold Coast held on Friday 8 October 2004 at 9.00 am be confirmed.

CARRIED"

- 18 On 22/10/04 Cr Shepherd issued a memorandum to the Chief Executive Officer /copy to City Solicitor stating:

"Cr Young declared an interest" in the matter at the Committee meeting on 5/10/05.

"The reason for his declaration was the he was personally involved in the Appeal process."

"...at the Council meeting on 8 October he failed to declare this interest and in fact voted to adopt the recommendation of the Committee..."

and raising the concerns that:

"... Cr Young failed to declare a Material Personal Interest and voted to resolve a recommendation from Council's Planning Committee."

"I have concerns that this may place Council in a position of exposure and ask you to investigate the ramifications of this action."

- 19 On 15/9/05 Cr Shepherd sent a memorandum to the Chief Executive Officer stating:

"I need confirmation from you office as to whether this matter has been referred by you to the CMC for investigation of official misconduct or if it is appropriate for me to raise this matter during the [public] inquiry."

Observations

- 20 On the matter of the "interest" declared by Cr Young at the City Planning Committee Meeting (335), could be a perceived material personal interest or conflict of interests. The Minutes do not record Cr Young declaring a "material personal interest" within the meaning of section 6 of the Act.

6 Meaning of material personal interest

(1) A person has a material personal interest in an issue if the person has, or should reasonably have, a realistic expectation that, whether directly or indirectly, the person or an associate stands to gain a benefit or suffer a loss, including a benefit or loss as a director of a significant business entity under chapter 8, part 7 that is, or is to become, an LGOC, depending on the issue's outcome.

(3) However, a person does not have a material personal interest in an issue—

(b) if the interest is merely—

(i) as an elector, ratepayer or resident of the local government's area; or

- 21 Councillors can face severe penalties for failure to disclose material personal interests and liability should not depend on purely subjective judgements as to a benefit or loss; it should be objectively verifiable. The interpretation of subsection (1) is that the "benefit" or "loss" must be money or money's worth or at least something that can be measured or estimated in money. It must be something more than the promotion of a matter in which the councillor believes or which he supports. There is no evidence that approval or non-approval was going to have any effect on the value of Cr Young's property (even if he had expressed a personal view that his property would lose amenity if the application was granted).

- 22 Considering subsection (3)(b)(i) above, Cr Young was one of a significant group of ratepayers that would be affected by Council's decision on the application for MCU. It is a question of the degree to which councillors will be affected by decisions in such instances. However, it is arguable that this subsection specifically excluded Cr Young's interest from being a material personal interest.

- 23 The overwhelming argument is that Cr Young did not have a material personal interest.

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- 24 There is also the matter of Cr Young voting whilst having a personal interest in a matter. The Act (s229) also places requirements on Councillors where there is a conflict between their private interests (non-material personal interests) and the public interest that they are to serve, that is Councillors shall give preference to the public interest. In addition, the Code requires that a Councillor with actual or possible conflict of interests disclose their interest to the Council or Committee meeting prior to the matter being considered. The Councillor may then, at his or her sole discretion, debate and vote on the matter at hand whilst giving preference to the public interest.
- 25 An interest was declared at the City Planning Committee Meeting (335) and recorded in the minutes of that meeting, which were tabled at the Council Meeting (335). Therefore, Cr Young's personal interest was transparent to the Council when the recommendations of City Planning Committee Meeting (335) were adopted (G04.1008.006).
- 26 Moreover, it is noted that at the Council meeting there was no debate but a division was called and all Councillors voted to adopt the recommendations of the Committee. Presumably, had Cr Young not voted the same outcome would have resulted. Therefore Cr Young has arguably voted in the public interest and against his personal interests that were originally expressed.

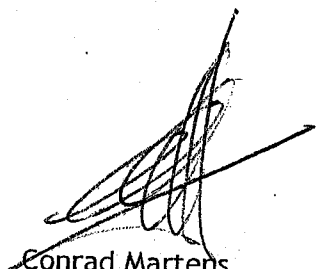
CONCLUSION

- 27 In his memorandum of 22/10/04 to the CEO, Cr Shepherd stated, "I have concerns that [Cr Young failing to declare a Material Personal Interest at the Council Meeting] may place Council in a position of exposure and ask you to investigate the ramifications of this action". My view is that there is no basis for the concerns that Council was or is exposed.
- 28 Also, on 15/10/05 Cr Shepherd again raised the issue with the Acting CEO seeking an investigation of "official misconduct". The evidence does not support a suspicion of official misconduct.
- 29 Cr Shepherd also asked whether it was "appropriate for [him] to raise this matter during the [Public Inquiry]". The responsibility falls upon the CEO to refer suspicions of official misconduct to the Crime and Misconduct Commission. The evidence does not raise a suspicion of a breach of the Local Government Act or official misconduct warranting referral to the CMC. Having said that, Cr Shepherd may raise his personal concerns with the CMC.

RECOMMENDATION

It is recommended that you advise Cr Shepherd:

1. There is no evidence from the files that would indicate Cr Young had a material personal interest; and
2. Cr Shepherd may raise any personal concerns with the Crime and Misconduct Commission.

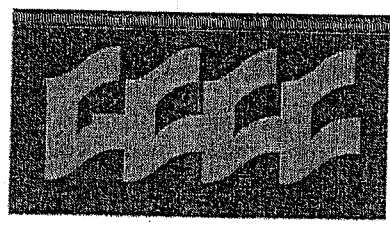


Conrad Martens
FRAUD PREVENTION & SECURITY ADVISOR
(5582 8816)

Enc:

- A) Excerpt (4 pages) Minutes of the City Planning Committee Meeting (335) 5 October 2004.
- B) Excerpt (4 pages) Minutes of the Council Meeting (335) 8 October 2004.
- C) Excerpt (3 pages) Minutes of the Council Meeting (336) 18 October 2004.
- D) Memorandum Cr Shepherd to Chief Executive Officer 22 October 2004.
- E) Memorandum Cr Shepherd to Chief Executive Officer 15 September 2005.
- F) Gold Coast Bulletin 14/9/05 article "Councillor accused of breach".

335



Gold Coast City Council

MINUTES

of the

CITY PLANNING COMMITTEE MEETING

held on

Tuesday 5 October 2004

at

9.00 am

Room 5

Nerang Community Bicentennial Centre
Nerang Southport Road, Nerang

OUR VISION

Naturally, the world's best place to be . . . because we will create a city that is recognised internationally for the quality, diversity and sustainability of its lifestyle, economy and environment. The Gold Coast's future will be secure as Australia's most desirable place to live and favourite place to visit.

OUR MISSION

To benefit our local community by sustainably managing the City's resources and opportunities, and by delivering high-quality, affordable services, in partnership with the community, State and Federal Governments, educational institutions and the private sector.

ITEM 11 **IMPLEMENTATION & ASSESSMENT**
WITHOUT PREJUDICE OFFER - PLANNING AND ENVIRONMENT COURT APPEAL NO.
63 OF 1999 - BIRD & SONS PTY LTD - LOTS 1 & 2 RP 218104 - 196 & 292
MAUDSLAND ROAD MAUDSLAND - DIVISION 2 - FILE PN155302/01/DA2(P5)
Refer 10 page attachment

Councillor Young declared an interest and left the room during discussion and voting on this item.

BASIS FOR CONFIDENTIALITY

- A I recommend that this report be considered in Closed Session pursuant to Section 463(1)(a) to (h) of the Local Government Act for the reason that the matter involves starting or defending legal proceedings involving Council.
- B I recommend that the report/attachment be deemed a confidential document pursuant to Sections 250 (2) and 1143 (4) of the Local Government Act and remain so unless Council decides otherwise by resolution.

BRIEF SUMMARY

This "Without Prejudice Submission" before Council seeks to resolve Planning & Environment Court Appeal No. 63 of 1999 which was lodged against Council's decision to refuse a development application seeking Preliminary Approval for a Material Change of Use to permit Residential, Park Residential, Rural and Open Space land uses as designated in the submitted Concept Plan Drawing and Table of Development.

In the assessment of the original proposal it was concluded by Council Officer's that "*in light of the sites geographic location, proximity to infrastructure services and the existing commercial node, physical suitability of the site, protection of the limited environmental qualities of the site and issues pertaining to the Draft Structure Plan it is considered that the proposal does have merit and represents an orderly approach to the planning of the area.*"

Notwithstanding the Officer's recommendation of approval, Council at its meeting on 18 December 1998 (Minute No. C98.1217.029) resolved to refuse the application on the following grounds:

1. It is contrary to the Strategic Plan;
2. There is no identified need for the development;
3. It will have an adverse impact on the amenity of the area; and
4. The Kopps Road Structure Plan has not yet been completed.

Following an assessment of the appellants "Without Prejudice Submission", Council Officer's are satisfied that the grounds of refusal have been adequately addressed and notwithstanding the conflict with the Strategic Plan sufficient planning grounds exist to justify approving the application despite the conflict.

It is therefore recommended that Council accept the appellants "Without Prejudice Submission" and advise Solicitors acting on its behalf of its decision with regard to the conduct of this Appeal.

ITEM 11 Continued
WITHOUT PREJUDICE OFFER - PLANNING AND ENVIRONMENT COURT APPEAL NO. 63 OF 1999 - BIRD & SONS PTY LTD - LOTS 1 & 2 RP 218104 - 196 & 292 MAUDSLAND ROAD MAUDSLAND - DIVISION 2 - FILE PN155302/01/DA2(P5)

Changed Recommendation

COMMITTEE RECOMMENDATION CP04.1005.011
moved Cr Crichlow seconded Cr Power

That on a "Without Prejudice Basis" in respect to the following property:

Real Property Description	Lots 1 & 2 RP 218104
Address of Property	196 & 292 Maudsland Road, Maudsland
Area of Property	45.95 ha
Proposed use	Residential, Park Residential, Rural and Open Space land uses in accordance with submitted Concept Plan and Table of Development

- A That the current report on this item be moved into Open Session and that Attachments 11.11 to 11.71 be deemed confidential pages pursuant to Sections 250 (2) and 1143 (4) of the Local Government Act and remain so unless Council decides otherwise by resolution.
- B That Council instruct its solicitors to seek to settle Planning & Environment Court Appeal No. 63 of 1999 by way of a consent order, granting Preliminary Approval for Material Change of Use for Residential, Park Residential Rural and Open Space land uses in accordance with submitted Concept Plan and Table of Development subject to the following conditions:

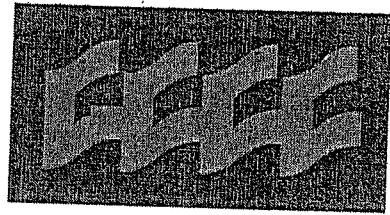
DEVELOPMENT IN ACCORDANCE WITH PLANS

- 1 The development shall be carried out generally in accordance with the approved Plan of Development No. 7635-PSP-2a(Sheet 2), dated 15 September 2004 and associated table of development.

INFRASTRUCTURE

- 2 The applicant shall make payment of contributions towards water supply headworks or sewerage headworks, water supply works external or sewerage works external and water supply works internal or sewerage works internal to be assessed on the basis of approved building plans or approved subdivision plans relevant to the proposed development. The contributions are due for payment prior to the issue of a Certificate of Classification or Building Final for any Building Works or the date of sealing of registrable plans of subdivision and will be calculated in accordance with the rates in force at the due date for payment.

335



Gold Coast City Council

MINUTES

of the

**COUNCIL
MEETING**

held

Friday 8 October 2004

at

9.00 am

Gold Coast City Council Chambers
135 Bundall Road, Surfers Paradise

OUR VISION

Naturally, the world's best place to be . . . because we will create a city that is recognised internationally for the quality, diversity and sustainability of its lifestyle, economy and environment. The Gold Coast's future will be secure as Australia's most desirable place to live and favourite place to visit.

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To benefit our local community by sustainably managing the City's resources and opportunities, and by delivering high-quality, affordable services, in partnership with the community, State and Federal Governments, educational institutions and the private sector.

4 RECEPTION & CONSIDERATION OF COMMITTEE REPORTS

4.1 CITY PLANNING

Cr Shepherd, Chairperson of the City Planning Committee, presented the Minutes of the Meeting of the City Planning Committee held on Tuesday, 5 October 2004.

RESOLUTION G04.1008.003 moved Cr Shepherd seconded Cr Douglas

That the Report of the City Planning Committee Meeting held on Tuesday, 5 October 2004, covered by Recommendations CP04.1005.001 to CP04.1005.012 be received.

CARRIED

ITEM 4

MATERIAL CHANGE OF USE (IMPACT ASSESSMENT) FOR A DUPLEX - PETER NIOTAKIS C/- MICHEL GROUP SERVICES PTY LTD - LOT 47 ON RP 91210 - 5 SANDOWN AVENUE, BUNDALL - DIVISION 7 - FILE PN51094/01/DA1(P1)

RESOLUTION G04.1008.004 moved Cr Douglas seconded Cr Crichlow

That Committee Recommendation CP04.1005.004 be adopted with an amendment to Condition A 2 under the heading of "Infrastructure Charges" such that reference to "RDPU03" be replaced with the words "Park Division 7".

CARRIED

ITEM 5

MATERIAL CHANGE OF USE (IMPACT ASSESSMENT) FOR AN EIGHT STOREY, 20 UNIT APARTMENT BUILDING - FOR QUADRANT PTY LTD C/- HUMPHREYS REYNOLDS PERKINS - LOTS 560-562 ON RP94914 AT 1 & 3 STANHILL DRIVE AND 6 TARCOOLA CRESCENT, SURFERS PARADISE - DIVISION 7 - FILE PN46393/01/DA1

RESOLUTION G04.1008.005 moved Cr Douglas seconded Cr Crichlow

That Committee Recommendation CP04.1005.005 be adopted with an amendment to Condition A 4 such that reference to "RDPU03" be replaced with the words "Park Division 7".

CARRIED

4 RECEPTION & CONSIDERATION OF COMMITTEE REPORTS

4.1 CITY PLANNING (Continued).

ADOPTION OF CITY PLANNING COMMITTEE REPORT

RESOLUTION G04.1008.006 moved Cr Shepherd seconded Cr Pforr

That the Report of the City Planning Committee's Recommendations of Tuesday, 5 October 2004, numbered CP04.1005.001 to CP04.1005.012 be adopted with the exception of Recommendation Numbers CP04.1005.004 and CP04.1005.005 which were specifically resolved.

A Division was called

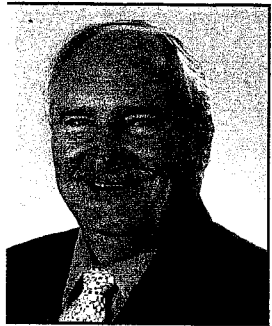
For	15	Cr Hackwood, Cr Power, Cr Pforr, Cr Molhoek, Cr Young, Cr Crichlow, Cr Douglas, Cr La Castra, Cr Shepherd, Cr Sarroff, Cr Grew, Cr Betts, Cr McDonald, Cr Robbins, Cr Clarke.
Against	0	

CARRIED

171-28-3057

57665

CITY OF GOLD COAST



**Councillor
Ted Shepherd**
Chair: City Planning



Gold Coast City Council

Representing Division 9

- Advancetown
- Australville
- Bonogin
- Gilston
- Highland Park
- Lower Beechmont
- Mudgeeraba
- Natural Bridge
- Numinbah Valley
- Reedy Creek
- Springbrook
- Tallai
- Worongary

CRIME AND MISCONDUCT
RECEIVED
28 SEP 2005
COMMISSION

20 September 2005

Mr Robert Needham
Chairperson
Crime and Misconduct Commission
GPO Box 3123
BRISBANE QLD 4001

CMC CLASSIFICATION

() Highly Protected
 () Protected
 () In-Confidence
 () Unclassified

Initials:.....
 Date:...../...../.....
 Reg No: 0105/16015

Dear Mr Needham,

I refer to the attached documents that I consider to be an instance of official misconduct on the part of Councillor Peter Young in voting on an item before Council's City Planning Committee and subsequent ratification by full Council on 8 October 2004.

On this occasion Councillor Young declared a Material Personal Interest and removed himself from the City Planning Committee during discussions on Item 11, CP04.1005.011. However during formal adoption of the Committee reports in full Council Councillor Young failed to declare the interest and continued to vote on this matter.

It is my understanding that the grounds for the declaration of interest were that Councillor Young was involved in an Appeal before the Planning & Environment Court and as such had a considerable involvement in this particular item.

As you can see from my memo of 22 October 2004 I had referred this matter to Council's Chief Executive Officer under the presumption that this matter would be referred to the Crime & Misconduct Commission for investigation and in light of the current enquiry into misconduct within the Gold Coast City Council I believe it is appropriate for me now to draw this matter to your attention.

Sincere regards

**COUNCILLOR TED SHEPHERD
DIVISION 9**

*2
appear matter
was not referred
to CMC by CEO*

Gold Coast City Council
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 Gold Coast MC QLD 9729
 AUSTRALIA

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 (07) 5596 6010
 tshed@goldcoast.qld.gov.au