



By email: [office@toole.minister.nsw.gov.au](mailto:office@toole.minister.nsw.gov.au)

12 October 2015

**The Hon Paul Toole MP  
Minister for Local Government**

**Re: Request for early action in response to ABC Background Briefing “Mayor Who Loves a Deal”, 4 October 2015 (Links at Attachment 1)**

**Dear Minister Toole**

Tomaree Ratepayers and Residents Association Inc. (TRRA) wishes to draw your attention to the content of this programme which we believe reveals a litany of procedural failures at Port Stephens Council as well as admissions by the Mayor, Bruce MacKenzie, of entirely unacceptable intervention in Council decision-making in relation to tendering and other decisions taken by Council. The key matters of concern are listed in **Attachment 2** to this letter.

We also believe that you should be aware of the damage to the public's faith in the institution of Local Government in New South Wales which will result from the dismissive attitude of the Port Stephens Mayor and his intemperate language in responding to the matters canvassed in this interview.

TRRA is an independent community association which represents the interests of 26,000 residents and ratepayers in the Tomaree Peninsula extending from Bobs Farm to Nelson Bay on the southern shores of Port Stephens. Over recent years we have challenged the Council and Councillors on their processes and conduct in dealing with many of the issues raised by this ABC programme. In most cases our attempt to secure proper transparency and compliance with legal obligations and administrative guidelines has been rejected outright or brushed off.

Our frustration on these issues has forced TRRA to lodge informal and formal GIPA applications and to make representations to you, to previous responsible Ministers and to ICAC. Relevant TRRA submissions and correspondence would be on the Departments files. With minor exceptions, TRRA has been disappointed by the responses received from the State level which recommend that we take our concerns directly to the Council or ultimately to seek redress and change through the ballot box at the next Council election. Prior to appealing to you as Minister we will have engaged in lengthy negotiations with Council officers and elected representatives and an appeal to the Minister is a last resort.



**A:** Po Box 290, Nelson Bay 2315 **T:** 4981 2715 **E:** [secretary@trra.com.au](mailto:secretary@trra.com.au)

If the community have to wait for the next Council election, the fall-out frequently ends in disaster and/or catastrophic avoidable waste of ratepayer's funds. Most importantly, the Mayor's clever use of the preference system applying to Local Government elections, as well as the doubtful funding support of some candidates, as detailed in the Background Briefing report, make it nigh impossible to achieve the degree of change necessary at the ballot box.

In the view of TRRA and a number of other community interest groups in Port Stephens, the issues and allegations in this radio programme, taken together with the aggressive and dismissive attitude of the Mayor, signal the need for State level intervention. Local groups such as TRRA can only go so far in investigating the facts. The resources and legal powers of your Department and of ICAC are the only way forward.

We therefore request that you as the responsible Minister and the Department of Local Government:

1. Carefully review the transcript of the Background Briefing Programme to gauge the seriousness of the situation and to identify the key matters of concern.
2. Instigate detailed inquiries into the numerous serious allegations of incompetence, corruption of the tender process and/or improper conduct.
3. Instigate corrective measures to deal with the findings of these investigations including referral to ICAC, police or appropriate law enforcement agencies.
4. As the problems at Port Stephens Council are by no means limited to the matters raised in this radio program, we would urge a more comprehensive review of the Council's performance as a basis for considering the appointment of an administrator.

To allow this ongoing failure in governance to continue in Port Stephens will result in increasing conflict and chaos at Council meetings, more shonky deals which do not serve the public interest, and more press exposures which will reflect badly on the institution of Local Government in New South Wales. The severity of this situation has already been aired in the NSW Parliament by our local member Kate Washington MP, who has responded to the widespread community discontent. This is no storm in a teacup!

We look forward to your response to our plea for assistance to resolve this situation.

Yours sincerely,

Catherine Norman  
Hon Secretary  
Tomaree Ratepayers and Residents Association Inc.



## Attachment 1:

Audio Link: [ABC Background Briefing The Sand Mining Mayor Who Loves a Deal, 4 October 2015](#)

RN Website Story and Full Transcript: [The Sand Mining Mayor Who Loves a Deal](#)

## Attachment 2:

### Summary of Key Matters Raised in the Background Briefing Report

1. Mayor Mackenzie leads a majority voting block on Council. He partly funded the group's election campaign in 2012. (following the election TRRA made a submission to the Election Funding Authority raising concerns about the legality of the 'donations' to candidates and the opportunity for abuse inherent in the preference system). [Newcastle Herald PSC Election Investigation](#)
2. Decisions taken to undertake major developmental works at the Bruce Mackenzie Complex (a horse activity park) at Salt Ash without proper approval by the Council's Section 355c Committee or submission of Development Applications. Use of Section 94 funds for a \$100,000 dressage arena which involved the contracting of certain works and supply of sand by Macka's Sand, a company in which the Mayor has an interest, was also raised. Reference is also made to dumping of soil and other fill from a Council road project at the instigation of the Mayor to create a BMX track on the site without the proper approval of the Section 355c Committee (which opposed the concept on a number of grounds including incompatibility with the horse activities). [Alexander Park Dressage, Salt Ash Pony Club or Bruce's BMX?](#)
3. Irregularities associated with a tendering process for the lease of a sand mining site on Council land on Cabbage Tree Road Williamstown. The Mayor in responding to queries about the award of the contract to Castle Quarry Products, when another tender was recommended by an evaluation panel, dismissed any suggestion of conflicts of interest or improper process. It was pointed out that the Mayor's company, Macka's Sand, was originally a tenderer, and the Council ultimately refused all tenders and conducted separate negotiations in which the Mayor was a key participant. This is covered in detail as a sequence of events in this article: [Cabbage Tree Road Sand Mine.](#)

We have concluded that the process followed by Council staff and its' evaluation panel was properly conducted and a preferred tenderer, Collins Sands was recommended. The Mayor then took a leading role in the decision making process which at this stage appears to seriously depart from the NSW Government Code of Practice for Procurement. This Radio interview has

revealed further concerns with that process. It makes reference to the Mayor gaining access to the results of the tender evaluation from the Council Business Papers, which would have been circulated to all Councillors on the Friday. He then withdrew the tender from his own company, on the Monday, the day before the tenders went to Council for decision. The Mayor stated that “he knew the tenders” and that he “did not want Collins (the recommended tenderer) to get it either”.

Council awarded the contract to a company with a non-complying tender which had not been able to offer the required bank guarantee, but later paid, in lieu a sum of \$250,000 in cash to Council. TRRA has a copy of the Transaction Report received from a GIPA request, but due to a redaction, doubts remain as to the origin of this cash. Castle Quarry Products was subsequently unable to meet its obligations and by a majority decision of Council, was allowed to transfer the contract to a second and then a third company without any new tenders being called. The first two of these companies had links to Buildev, an organisation also linked to Nathan Tinkler interests. In the interview, the Mayor when questioned on the origin of the cash deposit, stated that “I am not concerned where it came from”.

4. The conduct of the Mayor and his associates at a public meeting in Williamstown called by the State Member Kate Washington MP to discuss sand truck movements on public roads in the locality. The Mayor, an invitee, stands accused of unacceptable behaviour including the use of strong language which has been the subject of an address to Parliament by the local member.  
[Williamstown Meeting re Sand Trucks](#)
5. Throughout the background briefing programme the Mayor’s defensive and aggressive attitude and his frequent use of language not normally associated with the office of Mayor, should be matters of serious concern. This conduct sullies the reputation of Local Government generally and undermines public confidence in its elected representatives. The Mayor’s cavalier attitude has had repercussions in the past in the Pecuniary Interest and Disciplinary Tribunal [HERE](#). The transcripts of the two hearings: [HERE](#) and: [HERE](#) is truly damning and a further insight into his character.

We are not confident that we can break the stranglehold the Mayors voting bloc has on Port Stephens Council without some serious investigation into these revelations by this excellent well researched ABC program. This investigation needs to be undertaken by someone with the resources of ICAC or the Minister, to expose this behaviour and deal with it.