

**CASE NO: 2587**

**ADJUDICATION BY THE NEW ZEALAND PRESS COUNCIL ON THE COMPLAINT OF KUMARA RESIDENTS' TRUST AGAINST THE PRESS**

**FINDING: UPHELD**

**TO BE PUBLISHED ON 7 JULY 2017**

**Background**

[1] The Kumara Residents Trust (KRT) complains about an article published in *The Press* and on Stuff on April 28, 2017. It complains under **Principle 1 (Accuracy, Fairness and Balance) and Principle 4 (Comment and Fact)**. In *The Press* the article is headlined "Smalltown row over mysterious Chinese garden" and on Stuff is headlined "Westland District Council allows town 'nest egg' to be used for Chinese garden".

[2] The article tells of the KRT's efforts to build a memorial Chinese garden in Kumara, the "beleaguered" council's support for \$150,000 from the town's endowment fund to be spent on the garden and the controversy caused that decision and the debate leading up to it. The town has a population of just 300 and there is division over how the money should be spent.

[3] The article includes critics and defenders of the project and reveals claims by four elderly townsfolk, plus "West Coast tourism boss" Jim Little, that they did not vote in favour of the garden by proxy, as the KRT had claimed. A former KRT chair denies any "fake votes". The debate over the garden and voting is put in the context of wider controversies surrounding the Westland District Council (WDC), with the report saying it has "allowed a self-appointed trust to use some of the town's decades-old nest egg to build it".

The complaint is upheld.

**Complaint**

[4] The KRT's complaint is multifaceted and broken down into bullet points, and can best be followed that way. It has been submitted by Chair Julie Rowe and, overall, says "the article is not a true and unbiased account of our project and our trust". She admits that the Trust has "made mistakes" and that trustees "chose not to answer" the reporter's questions because he was "pushy" and "accusatory". When approached by the reporter, she replied with a short, general statement that did not address his questions.

[5] To start, she says the newspaper headline labelling the garden "mysterious" is "misleading and inaccurate". Rowe says work on the project started in June 2014, when a leaflet was dropped in every mailbox in town inviting participation. Since, there have been community meetings, more letterbox drops and regular updates both in the monthly community newsletter, on Facebook and on the Kumara website.

[6] Rowe says the online headline that "Westland district council allows town 'nest egg' to be used for Chinese gardens" is also misleading as it implies it uses the entirety of the endowment fund, when in fact only \$150,000 of the \$338,000 fund has been released for the garden.

[7] Despite what the article says, Rowe argues that the KRT is “simply not a self-appointed trust”. The report says that “the beleaguered Westland District Council has allowed a self-appointed trust to use some of the town's decades-old nest egg to build it”, whereas Rowe says the board members now are not those who started the Trust in 2008, and many are not the board members who started the garden project in 2014. She says any resident or ratepayer in Kumara and the surrounding area can join the Trust and it’s those members who vote for the board. There are currently 84 members, she says. The Trust’s deed, supplied by Rowe, shows that membership of the Trust is open to “all residents and ratepayers of the Kumara community” and it is those “registered members” who elect the board. Rowe does, however, acknowledge that the trust’s Companies Office register was not up to date and until the article still listed the board members from 2014. Rowe says, however, that the reporter “should have researched more to ensure his claim of a ‘self-appointed trust’ was accurate”.

[8] The article quotes garden critic Des McGrath saying the money would be better spent on the memorial hall or sports ground and reports “some townsfolk” would prefer it spent on the school. Rowe complains that the endowment fund is tagged for “council reserves” only and supplies legal advice to support that. Those others properties are not reserves, so the money could not be spent on them. Omitting that fact is misleading.

[9] The article discusses a 2014 meeting at which the Trust got its mandate to go ahead with the garden. It says that four elderly residents recorded as having voted by proxy in favour of the garden have signed affidavits insisting they did not vote. The article continues “The votes were not counted at the meeting, no minutes were kept and the Trust was unable to provide the voting record”. Rowe complains that minutes were in fact kept. In response to *The Press* claim that the reporter had asked for the minutes and been told they were confidential, Rowe supplies emails she exchanged with him showing no mention of the minutes. (They did however also talk on the phone). She says the Trust has shared the minutes “with anyone who has asked”. “He didn’t ask us and if he was told by someone that they were confidential then that still shows that minutes were kept”. (The minutes have since been posted on the Trust’s website).

[10] As for the voting record, Rowe says that rather than being “unable” to provide it, the Trust simply refused because the vote was a secret ballot. They are willing to provide it to police.

[11] The KRT is also unhappy about how *The Press* reported a 2015 survey carried out in the town. The article says it showed about half the town’s population did not want the garden. This was important because the Trust told the WDC the vote in favour of the garden was “unanimous” and the Council then released funds. The KRT argues the survey was organised by McGrath and “the surveyors were biased and selectively door-knocked”. The Trust supplies a submission based on the survey, which reads, “Families of Trust members were not approached”.

### **Editor’s Response**

[12] Fairfax’s deputy editor, Canterbury Otago, Kamala Hayman stands by the article, saying the reporter interviewed eight Kumara residents, read all available documentation and got copies of signed affidavits from the residents who deny voting in favour of the garden by proxy. She stresses the KRT refused to answer many of the questions asked, and serious questions remain unanswered.

[13] Hayman argues the story has corrected two factual errors put about by the Trust. First, it has admitted that Little's supposed proxy vote should not have been counted. Second, the Trust has also admitted – in correspondence after the article – that its claims public submissions to the WDC ran 108-8 in favour of the gardens were wrong and the town is more evenly divided. It has failed to explain how either error arose. Hayman argues, therefore, that taken as a whole the article is accurate, unbiased and in the public interest.

[14] Responding to the specific points in Rowe's complaint, she says that, first, *The Press* believes the project is "mysterious" because most *Press* readers would have been unaware of the project. What's more, it's a mystery to "many in the local Kumara community" because so few details are available. For example, just why the project was initially costed at \$1.5m and more recently at \$398,000 remains unexplained.

[15] Next, Hayman says the "summary above the article" did not specify how much of the "nest egg" was being spent. It simply indicated the nest egg was being used. Precisely how much was to be spent was detailed in the body of the story.

[16] *The Press* says calling the KRT "self-appointed" is fair because of "the process which sees trustees nominated and appointed by other trustees". The minutes of meetings in 2013 and 2014 suggest only trustees attended and there was no record of a vote, she says.

[17] On the endowment fund only being for council reserves, Hayman points out that "the status of the land for the memorial garden was changed in order to designate it a reserve", therefore the other assets mentioned in the story, such as the hall, could be similarly changed to be eligible for grants from the fund.

[18] Hayman concedes minutes were taken at the June 2014 meeting, but says the reporter was refused access to them (although she doesn't say by whom) and points out that they were only posted to the KRT's website the day after the article was published. She says that crucially, the minutes do not provide a voting record nor explain the use of proxies.

[19] Finally, Hayman admits it is *The Press's* preference to provide as much context as possible around surveys, but argues the survey was still pertinent because it showed more disquiet about the project than the Trust was admitting publicly. (In an earlier letter to Rowe, Hayman writes, "I agree that we should have reported who carried out the survey and how").

### **Discussion and Decision**

[20] It's worth saying at the outset that the questions surrounding the garden project, the public money involved and the voting irregularities are undoubtedly worthy of investigation and reportage. The KRT's insistence that it's not news and that journalists should focus on the good things happening in Kumara does not do it any favours and simply creates suspicion from journalists and readers alike.

[21] The Trust also does itself no favours by refusing to answer questions about how it hopes to spend a substantial amount of public money, regardless of how pushy a journalist may or may not be. It's reasonable for journalists as the public watchdog to push for transparency.

[22] On the specific points in the complaint, the use of the word "mysterious" is curious. While questions remain unanswered, the issue has clearly been a matter of significant public

discussion in the area for several years, with meetings, leaflet drops and websites all providing information. To argue that it's "mysterious" because *Press* readers may not be aware of it, is to suggest that just about all news could be labelled "mysterious". However a single misjudged word does not make the story as a whole unfair or unbalanced.

[23] The Council accepts that the sub-head indicates only that the "town's nest egg" is being used for the gardens, not how much will be spent. Sub-heads cannot be expected to carry detailed information and those figures are clearly spelled out in the story. It is not misleading.

[24] The article's assertion that the KRT is "self-appointed" is however problematic. It's not unusual for certain individuals to dominate committees, especially in small communities. In addition, the rules are quite clear that any local can stand and the trustees are elected by all members. That was backed up in a video posted on Facebook by WDC mayor Bruce Smith. He added that calling the Trust a self-appointed body is "untrue... they're publically elected in a very transparent process". *The Press* presents no evidence the Trust is in breach of its deed and in using the term is unfairly maligning the Trust and insinuating that it is not operating by its own rules.

[25] While readers would have undoubtedly benefited from being told the endowment fund is only available for council reserves, Hayman makes a reasonable point that if the status of the garden land can be changed, so can other land in the township. Critics of the project have every right to express their view that the money should be spent elsewhere and, given that those wishes wouldn't be impossible to enact, the coverage is fair. Indeed, debate over how to spend the money is key to the story.

[26] *The Press* however is clearly wrong when it says, "no minutes were kept" of the 2014 meeting. While the story has done a public service by flushing out those minutes, being refused the minutes (something disputed by Rowe anyway) is quite different to their not being taken at all. That paints a very different picture of the Trust members' abilities and integrity. The Council also notes that while the article says the Trust was "unable" to provide the voting record, Rowe insists they were simply unwilling to reveal it. There is, again, a significant difference.

[27] As to the survey, Hayman admits *The Press* fell short of best practice by not telling readers it was carried out by the project's leading critic and that it was selective of the townsfolk polled. As she initially wrote, that should have been reported. Again, however, it's worth noting that this did draw more transparency from the Trust.

[28] Despite complaining under Principle 4, the KRT offers no substantive evidence that the article breached this standard; it is a clearly a news article and is presented as such. **The complaint against Principle 4 is not upheld.**

[29] However, the KRT has revealed several inaccuracies in the story that together are significant. The story does not lack balance, and *The Press* rightly argues that more was sought from the Trust and it could have done much more to explain itself. Indeed, the story covers some important issues of legitimate public interest and reveals important issues. Yet in describing the Trust as "self-appointed", by reporting that "no minutes were kept" and the KRT was "unable" to provide the voting record, and by not clearly describing the nature of the survey, the article is not fair to the complainant. **The complaint against Principle 1 is upheld.**

Press Council members considering this complaint were Sir John Hansen, Jo Cribb, Chris Darlow, Tiumalu Peter Fa'afiu, John Roughan, Mark Stevens and Tim Watkin.

Hank Schouten stood down to maintain the public member majority.