

2011

CODE OF CONDUCT REPORT

Re: Councillor M. Ticehurst, Lithgow City Council
Non-Compliance with Resolution

Ian Woodward
December, 2011



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Introduction

1. This Report concerns an alleged breach of the Lithgow City Council's Code of Conduct ("the Code") by Councillor Martin Ticehurst ("the Councillor") as a consequence of him not complying with a Resolution of Lithgow City Council ("the Council") No. 11- 200 dated 30 May, 2011. The Resolution required that he apologise to the General Manager of Eurobodalla Shire Council ("Eurobodalla") for his conduct following findings of prima facie breaches of the Code arising from a Report into his behaviour concerning correspondence with Eurobodalla in December, 2010.
2. In response to a complaint made to the General Manager of the Council by letter received October, 2011 from Councillor Fisher of the Council, the General Manager assessed the matter in accordance with the criteria set out in the Code and formed the opinion that the matter required further enquiry. A Conduct Reviewer was appointed in accordance with the provisions of the Code to conduct an enquiry
3. This enquiry assesses the complaint made against the Councillor that he has failed to comply with council's decision and thereby breached Clause 6.4 of the Code.

The Complaint

4. A formal letter of complaint was received by the General Manager of the Council from Councillor Fisher of the Council in October, 2011 noting that the Councillor had been censured in May, 2011 and had been required to apologise to the General Manager of Eurobodalla. The complaint notes that no apology has been forthcoming.
5. A letter dated 4 November, 2011 was received by the Council from the Mayor of Eurobodalla confirming that the Councillor had not apologised to the General Manager of Eurobodalla as was required by the Council Resolution.

Facts

6. A Code of Conduct Report was prepared in May, 2011 into the conduct of the Councillor concerning email representations made by him in December 2010. The emails sent by the Councillor alleged misrepresentations in the media at or about the time of the appointment of the General Manager of Eurobodalla (May 2008) concerning his qualifications.
7. The Code of Conduct Report found there was a prima facie breach of the Code of Conduct.
8. At Council's meeting on 30 May, 2011, Council resolved to find that there was a prima facie breach of Clause 6.3 of the Code of Conduct by the Councillor. The Council resolved that:
 - i) *Council finds that Councillor Ticehurst breached the Code of Conduct in that he showed a lack of respect to the General Manager of Eurobodalla Council, Paul Anderson, by sending emails in December 2010 to the Eurobodalla Council concerning the General Manager's tertiary qualifications (and employment);*
 - ii) *Councillor Ticehurst be required to make a formal apology in writing, within 28 days, to the General Manager of Eurobodalla Shire Council, Paul Anderson, for breaching the Lithgow Code of Conduct by not showing him respect in the circulation of the emails in December 2010 concerning his tertiary qualifications (and employment) and a copy of such apology to be provided to the General Manager of Lithgow City Council; and*
 - iii) *Council censure Councillor Ticehurst for breaching the Lithgow Code of Conduct."*
9. Council has received confirmation from the Mayor of Eurobodalla that the Resolution has not been complied with in that a verbal or written apology has not been received by the General Manager of Eurobodalla within 28 days or at all. The General Manager of the Council has also not received a copy of any apology directed to the General Manager of Eurobodalla.

10. I wrote to the Councillor by letter of 14 November 2011 enclosing the correspondence of complaint and the confirmation of the lack of apology. I invited a response by 25 November 2011. No response was received.

The Framework

11. The State Government requires Council to set a minimum standard for the conduct of Council Officials in carrying out their functions. The Council readopted the Model Code of Conduct as the Code of Conduct for Lithgow City Council by resolution on 14 September, 2009 in accordance with Section 440(3) of the Local Government Act 1993. The operative obligation on the part of Councillors is contained in Section 440(5) which provides that Councillors must comply with the applicable provisions of the Council's adopted Code as enforced for the time being. The Councillors have fulfilled their educative obligations.
12. The Code requires a standard of conduct from, relevantly, Councillors to enhance public confidence in the integrity of Local Government. The Code helps develop a practical way of identifying and resolving situations which involve inappropriate behaviour, conflict or improper use of the position.
13. Council Officials are guided by a number of Key Principals as an aide to interpreting the substantive provisions of the Code. Relevantly, a Council Official is required to:

“...have a duty to promote and support the key principals by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of Council”

“...treat others with respect at all times. This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in Local Government decision making”.
14. Part 2 of the Code sets out the conduct obligations required of Council Officials. Failure by a Councillor to comply with this part of the Code constitutes misbehaviour.

15. The general conduct obligations are set out in Clause 6 of the Code. Of relevance under Clause 6 of the Code is Clause 6.4 which provides:

“6.4 Where you are a Councillor and have been found in breach of the Code of Conduct, you must comply with any Council Resolution requiring you to take action as a result of that breach”.

16. The Code is very specific and to breach it is a further breach of the Code and constitutes misbehaviour.

The Findings

17. On the evidence available I find that the Councillor has not complied with the Council Resolution of 30 May, 2011. I make a finding of fact that the Councillor has not made a formal apology to the General Manager of Eurobodalla for the breach of the Code of Conduct and has not provided a copy to the General Manager of Lithgow within 28 days or at all.

18. I find there has been a prima facie breach of Clause 6.4 of the Code of Conduct in that the Councillor was found in breach of the Code of Conduct by the Council Resolution 11-200 of 30 May, 2011 and failed to comply with the Council Resolution which required him to take action as a result of that breach.

Comments in Relation to this Report

19. The draft Report was sent to Councillor Fisher and the Councillor for comment.

20. No comments were received.

Attachments

21. The following are attached for this Report:-

- Letter from Councillor Fisher to Lithgow City Council received October, 2011.
- Letter from Mayor of Eurobodalla Shire Council dated 4 November, 2011.
- Letter from Ian Woodward to Councillor Ticehurst dated 14 November, 2011.

Recommendations

22. I have found that there is a prima facie breach of the Code of Conduct (Clause 6.4) in that the Councillor did not comply with the Council Resolution of 30 May, 2011 requiring him to take action, namely sent a letter of apology as a result of that breach. The following factors have been taken into account when recommending a course to be taken under the Code:
- The breach is considered to be serious;
 - The breach is not the first by the Councillor (he has been previously censured on 2 occasions this Council term and suspended twice);
 - Contrition has not been expressed;
 - The breach arises out of an action sought by Council Resolution to deal with earlier breach of the Code;
 - The findings and recommendations will withstand the test of public interest and public scrutiny.
23. If Council finds a prima facie breach of the Code of Conduct by Councillor Ticehurst in that he failed to comply with the Council Resolution of 30 May, 2011 which required him to take action for a breach of the Code, namely, making a formal apology in writing, within 28 days, to the General Manager of Eurobodalla Shire Council, Paul Anderson, and forwarding a copy of such apology to the General Manager of Lithgow City Council, then I would **recommend that Council resolve** the following:
- Council finds that Councillor Ticehurst breached the Code of Conduct in that he failed to comply with the Council Resolution of 30 May, 2011 which required him to take action for a breach of the Code, namely making a formal apology in writing within twenty eight (28) days to the General Manager of Eurobodalla Shire Council, Paul Anderson and providing a copy of such apology to the General Manager of the Lithgow City Council.
 - Council censure Councillor Ticehurst for breaching the Lithgow Code of Conduct.

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- Council initiate the process for suspension of Councillor Ticehurst from Civic Office for breaching the Code of Conduct by Council making a request to the Director General of Department of Local Government.

Ian Woodward
December, 2011