

2012

CODE OF CONDUCT REPORT

Re: Councillor M. Ticehurst, Lithgow City Council
The 5 March, 2012 Meeting

Ian Woodward
April, 2012



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Introduction

1. This Report concerns alleged breaches of the Lithgow City Council's Code of Conduct ("the Code") by a Councillor in his official capacity at a Council Meeting on 5 March, 2012 which was adjourned to 19 March, 2012 ("the 5 March Meeting") due to lack of quorum.
2. In March, 2012, a letter was received by the General Manager of the Lithgow City Council ("the Council") making a formal complaint arising out of the behaviour of Councillor Martin Ticehurst ("the Councillor") which allegedly occurred during the 5 March Meeting.
3. The complaint arose because of the alleged actions of the Councillor at the 5 March Meeting which was said to be in breach of the Code as they were disrespectful of others and put the Council in disrepute.
4. In response to the complaint, 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. The General Manager appointed me as a Conduct Reviewer under the provisions of the Code to conduct an enquiry. The brief of the enquiry was to ascertain the facts of the alleged incidents and make findings as to whether there has been prima facie breaches of the Code and if so, make recommendations as to any reasonable action which may be taken under the Code.
5. I have found there to be sufficient information to pursue an enquiry under the Code.

The Complaint

6. Generally the complaint is that Councillor Ticehurst called a member of the public a "*boofhead*" during a debate in the Council Chambers at the 5 March Meeting and failed to withdraw the comment and apologise to that person when asked to do so by the Mayor.

7. Additionally, when the Councillor failed to apologise for the remark he left the council meeting and encouraged Councillor McGuinness to leave with him, thereby knowingly reduced the numbers of councillors below quorum so that the Council could no longer conduct its business.

Investigations

8. After reviewing the material, I came to the determination there was sufficient material to warrant me to make enquiries into the complaint pursuant to the Code.
9. I wrote to the Complainant requesting confirmation of the complaints as made and as a consequence of the response, wrote to Councillor Ticehurst setting out particulars of the complaint and inviting him to make submissions either in writing or in person (with a support person or legal representative) by 9 April, 2012. No response was received from the Councillor.
10. In order to ascertain the facts, the following were interviewed:
 - Councillor H Fisher;
 - Councillor C Hunter;
 - Mr Len Ashworth.
11. I have ascertained that each has a clear recollection of the events which took place with slight variations which one would expect from eye witness accounts. Most helpful to the investigation were the contemporaneous notes of the meetings taken by Mr Len Ashworth, journalist of the Lithgow Mercury newspaper. In my view, this was a reliable source which was largely supported by the memory of the Councillors.
12. It was ascertained from those interviewed that on the night of 5 March, 2012, a debate was taking place with Councillor McGinnes addressing the Council. A member of the public interjected whilst the councillor was speaking. Councillor Ticehurst responded to that person by calling him a "*boofhead*".

13. Councillor Fisher was seated opposite Councillor Ticehurst and was approximately 4 metres away. Councillor Hunter was sitting next to Councillor Ticehurst to his right. Len Ashworth was sitting in the place reserved for the Press and was a very short distance away from Councillor's Ticehurst and McGuinness when they were leaving. All the witnesses stated they heard the proceedings clearly.
14. The Mayor addressed Councillor Ticehurst and said: "You should not make those comments." The Mayor requested Councillor Ticehurst to withdraw the remark said by him to the public.
15. The Mayor asked Councillor Ticehurst on at least two (2) occasions to withdraw the remark. Councillor Ticehurst refused to do so and the Mayor asked him to leave the meeting on the basis that he had not complied with his request.
16. The Mayor adjourned the meeting to allow Councillor Ticehurst to comply with his request to leave. It is said that Councillor Ticehurst rose to his feet at approximately 8.02 pm and said to Councillor McGuinness "*Come on Joe*". Councillor McGuinness stood up and began walking out of the meeting with Councillor Ticehurst. Councillor Ticehurst then turned around and faced the Councillors and public gallery saying "*Have a nice evening. You won't have quorum now*".
17. At the point where these words were said, Councillor's McGuinness and Councillor Ticehurst were approximately 2 metres from Len Ashworth. Mr Ashworth states that he could hear the words very clearly and wrote them down in his notebook.
18. In accordance with the appropriate regulation the Mayor adjourned the meeting for 10 minutes. After that period had transpired the council still had no quorum and the Mayor adjourned the meeting for the evening.
19. At the resumption of the 5 March Meeting on 19 March, 2012, the Mayor noted that there was unfinished business and began the meeting by asking Councillor Ticehurst to again withdraw the remark made to the member of the public and to apologise.
20. Councillor Ticehurst refused to apologise. There is a variation in recollection for this meeting as to whether Councillor Ticehurst remained silent when requested to apologise or said the words "*I certainly am not going to withdraw the remark.*"

21. The Mayor then requested that Councillor Ticehurst to leave the council meeting. The Councillor refused to do so.
22. The NSW Police were called and Councillor Ticehurst was escorted from the Council meeting.

Matters for Notation

23. Councillor Ticehurst has been invited to make both written and oral submissions.
24. No material has been provided by Councillor Ticehurst in response to the complaint.
25. Councillor Ticehurst has not objected to the appointment of the Conduct Reviewer.
26. Every opportunity has been given to Councillor Ticehurst to address the Conduct Reviewer so as to afford natural justice concerning any matters relevant to the deliberations in the preparation of this Report.
27. The Code has been adopted by the Council on 14 September, 2009 and the Councillors have been appropriately educated in the Code.

The Framework

28. The Local Government Act, 1993, NSW ("the Act") is the legislation that applies to the operation of Councils in New South Wales.
29. The State Government requires Councils to set a minimum standard for the conduct of Council Officials in carrying out their functions. The Council adopted the model Code of Conduct as its Code of Conduct for Lithgow City Council by Resolution on 14 September, 2009 in accordance with Section 440(3) of the Act. 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 in force for the time being. The Councillors have fulfilled their educative obligations.
30. Clause 12.1 of the Code provides that complaints about the conduct of Councillors should be addressed to the General Manager in writing. The complaint to which this

enquiry relates was made in writing to the General Manager in March, 2011. I am satisfied that the complaint was made in accordance with the Code and is subject to the complaint handling procedures and sanction provisions of the Code.

31. The General Manager carried out an assessment of the complaint in accordance with the Code and determined that an enquiry should be conducted by a Conduct Reviewer.
32. The General Manager complied with the complaint handling requirements in relation to this complaint by appointing me as a sole Conduct Reviewer in accordance with the Code and referred the complaint in accordance with Clause 12.9(d) of the Code.
33. In dealing with the complaint, a determination was made by me under Clause 12.19 of the Code that I should make enquiries into the complaint.
34. Clause 13.3 of the Code provides that an assessment should be made based upon the criteria set out in Clause 13.1 of the Code in making an initial assessment. When carrying out that assessment, I determined that if the allegations made in the complaint were correct then a breach of the Code may arise such that the conduct would breach the Standards provided in Clause 6 of the Code. It was on this basis that I determined that enquiries should be made as provided for in Clause 12.19(c) of the Code.
35. 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.
36. Council Officials are guided by a number of key principles as an aide to interpreting the substantive provisions of the Code. Relevantly, a Council Official is required to:

“You have a duty to make decisions in the public interest. You must not act in order to gain financial or other benefits for yourself, your family, friends or business interests. This means making decisions because they benefit the public, not because they benefit the decision maker.”

“...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.”

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

37. 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.
38. The general conduct obligations are set out in Clause 6 of the Code. Of relevance under Clause 6 of the Code are the following:

“6.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the Council or holders of Civic Office into disrepute. Specifically, you must not act in a way that:

(a) ...

(b) is detrimental to the pursuit of the charter of a Council;

(c) is improper or unethical; or

(d) is an abuse of power or otherwise amounts to misconduct;

(e) causes, comprises or involves intimidation, harassment or verbal abuse;

(f) ...

(g) ...

6.3 You must treat others with respect at all times.”

The Findings

39. On the evidence available I make a finding that Councillor Ticehurst called a member of the public a “boofhead” at a public Council meeting on 5 March 2012 and that such a word was used in a disparaging way and amounts to “*verbal abuse*”. It is not expected that an elected council official will engage in name calling during a Council meeting. Should there be an “accidental” or provoked outburst then it is expected that there

would be an immediate withdrawal of the comment and an apology. A withdrawal and apology have not been forthcoming from Councillor Ticehurst.

40. Calling members of the public disparaging names and engaging in verbal abuse, demeans the office of Councillor and constitutes an act of disrespect. The Code of Conduct prescribes limits to the tone and content of debates and obliges Councillors to remain within those limits. Councillors should not transgress those limits and should remain civil and reasonable during council debates.
41. It is important that the community has confidence in the elected members and in the capacity of the Council to undertake its responsibilities with a degree of decorum. To do otherwise is to show disrespect to others and bring the Council into disrepute. A message must be sent to the community that the council does not accept such behaviour and an apology for disparaging remarks is entirely appropriate. I therefore make a prima facie finding that Councillor Ticehurst breached **Clauses 6.1** and **6.3** of the Code by making the disparaging remark.
42. On the evidence I find that Councillor Ticehurst failed to withdraw the remark and apologise to the member of the public contrary to the request from the Mayor. I find that this was disrespectful and a prima facie breach of **Clause 6.3** of the Code. It is recognised that in the heat of a debate some infraction of the Code may occur and an apology may go some way to remedy the situation. In this case the Councillor has not apologised.
43. On the evidence I find that Councillor Ticehurst deliberately encouraged Councillor McGinnes to leave the 5 March Council Meeting knowing that the number of Councillors would fall below quorum once he and Councillor McGinnes left. I find this to be a prima facie breach of **Clauses 6.1** and **6.3** of the Code in that it was improper; was detrimental to the pursuit of the council charter; and, showed lack of respect to the other councillors remaining at the meeting prepared to continue with Council business.
44. Further, on the evidence I find that Councillor Ticehurst failed to leave the council meeting on 19 March despite being requested to do so by the Mayor and only left when escorted by the NSW Police. I find this to be a breach of **Clauses 6.1** and **6.3** of the Code as it brings the Council into disrepute by contravening meeting procedure thereby requiring the Police to be brought in and, shows disrespect for the office of the Mayor.

Attachments

45. The following are attached for this Report:-

- Written Complaint to General Manager received March 2012.
- Letter to Complainant from Conduct Reviewer dated 28 March 2012.
- Letter to councillor Ticehurst from Conduct reviewer dated 2 April 2012.

Comments in Relation to this report

This Draft Report was sent to the complainant and the councillor for comment. No comments were received and some minor amendments as to form have been made.

Recommendations

46. I have made a finding that there have been prima facie breaches of the Code of Conduct (Clauses 6.1 and 6.3) in that the Councillor:

- called a member of the public a disparaging remark;
- failed to withdraw the remark as requested by the Mayor on 5 March, 2012;
- knowingly encouraged the number of Councillors to be reduced below quorum such that council could not continue its business on 5 March, 2012;
- failed to withdraw the remark and apologise as requested by the Mayor on 19 March, 2012;
- failed to obey a direction of the Mayor to voluntarily leave the Council meeting on 19 March, 2012 and required the assistance of the NSW Police.

47. The following factors have been taken into account when recommending a course to be taken under the Code:

- The breaches are considered to be serious;

- The breach is not the first by the Councillor (he has been censured on 3 previous occasions on this term of council and suspended twice)
- Contrition has not been expressed – the Councillor was asked to apologise at the resumption of the meeting on 19 March 2012 and failed to do so.
- The breach represents repeated conduct
- The breach impacts upon the reputation of the Council as to how it conducts its debates in public
- The actions of the Councillor compromised the capacity of the council to exercise its functions efficiently by the reduction of the number of councillors taking part on 5 March 2012
- Opportunities have been given for the Councillor to attempt to remedy the situation by withdrawing the comment and apologising however he has not accepted this offer and has refused such requests

48. In the circumstances I **recommend that Council resolve** the following:

- (i). Councillor Ticehurst has breached the Code of Conduct in that his actions at the Council meeting on 5 March 2012, which resumed on 19 March 2012, brought the Council into disrepute (Clause 6.1) and he showed a lack of respect (Clause 6.3) for others in that:
 - he called a member of the public a disparaging remark at the Council meeting on 5 March 2012;
 - he failed to withdraw the remark as requested by the Mayor at the meeting on 5 March 2012;
 - he knowingly encouraged the number of Councillors to be reduced below quorum such that council could not continue to conduct its business at the meeting on 5 March 2012;
 - he failed to withdraw the remark as requested by the Mayor at the continuation of the 5 March 2012 meeting on 19 March 2012;

- he failed to obey a direction of the Mayor to voluntarily leave the Council meeting on 19 March 2012 and was required to be escorted from the meeting by the NSW Police.
- (ii). Council censure Councillor Ticehurst for breaching the Lithgow Code of Conduct.

Ian Woodward
April, 2012