

WYONG SHIRE COUNCIL
REPORT AND RECOMMENDATIONS OF THE
CODE OF CONDUCT COMMITTEE MEETING
HELD IN THE Committee Rooms
ON 27 May 2008 COMMENCING AT 2PM

PRESENT

Cr W R Welham (Chairperson), General Manager and Mr J Cole.

Code of Conduct Committee findings on possible breaches of Code of Conduct relating to a use of information concerning a Councillor's non-payment of rates

Matter 2.1

A complaint has been lodged by Councillor Brenton Pavier regarding the conduct of Councillor Doug Eaton, in relation to the disclosure and use of information concerning the non-payment of rates by Councillor Ron Stevens. The matter was raised in the open session of Council's Ordinary Meeting on 28 November 2007 by Councillor Eaton. Further, an email was forwarded by Councillor Eaton to all Councillors at 9.50pm on 28 November 2007 which specifically dealt with details of the matter.

The complaint from Councillor Pavier relates to the use of personal information concerning the position of Councillor Stevens rating account at Wyong Shire Council, for purposes other than those for which the records were collected.

Section 9.13 of the Code states that when dealing with personal information you must comply with the Privacy and Personal Information Protection Act 1998 ("PPIIP Act"). Section 17 of the PPIIP Act outlines principles governing the use of personal formation and requires that a public sector agency that holds personal information must not use the information for a purpose other than that for which it was collected. Section 18(1) specifies the principle which prohibits the disclosure of personal information unless, relevantly, the disclosure is directly related to the purpose for which the information was collected and the agency disclosing the information has no reason to believe that the individual concerned would object to a disclosure. Under section 62 of the PPIIP Act it is an offence for a public sector official (which includes a local government councillor) to "...disclose or use any personal information about another person to which the official has or had access to in the exercise of his or her official functions ... otherwise than in connection with the lawful exercise of his or her official functions".

Minutes of the Code of Conduct Committee held on 27 May 2008 (contd)

By virtue of section 32 of the Privacy and Personal Information Act, Council must comply with any privacy Code of Practice that applies to it. As from 1 July 2000, the Privacy Code of Practice for Local Government had effect in modifying the application of Part 6 of the PPIP Act as applied to local government, so that Council can use information for a purpose other than which it was collected in certain circumstances where the use is pursuant to Council's lawful and proper functions and Council is satisfied the personal information is reasonably necessary for the exercise of those functions.

Section 33 of the PPIP deals with privacy management plans for public sector agencies. Again a general rule is set out under section 4 - personal information can only be used for the purpose for which it was obtained.

Councillor Eaton's actions of 28 November 2007 in forwarding an email to all Councillors using information from Councillor Graham along with the disclosure of this information at a Council meeting brings into question the breach of privacy principles generally outlined above as are effectively incorporated into the Code of Conduct as well as the key principles governing Councillor conduct.

Hearing

Councillor Eaton queried whether the information was confidential information. In his 'defence' he said that the information had 'dropped' and was in the general public realm and if it hadn't he wouldn't have dealt with it as he did. Primarily he believed he couldn't get confidential information and it was "out there" and that's why he used the information with the intention of trying to test whether it was true or false. By asking the question to Councillor Stevens in open Council, he stated that this was a response to him asking the question to Councillor Stevens previously and it being denied so he needed this to be tested.

Further in his 'defence' he expressed concern as to how rate collecting generally was to be undertaken with other residents of the community, if the Councillors themselves were not paying their rates. In fact he believes that a breach of the Code of Conduct was brought in question by Councillor Stevens in not showing leadership by paying his rates in circumstances where other residents could look to his conduct.

Councillor Eaton also believed that it was not appropriate for the Mayor to show various other persons the memo involved however once it was in the public forum he believes that it should be put in front of Councillor Stevens to have the opportunity to deny it.

Minutes of the Code of Conduct Committee held on 27 May 2008 (contd)

Finding

The Committee determined that as a matter of fact that Councillor Eaton's submission that the use of the information was within the public 'forum' was established and as such the breach of the privacy and personal information protection requirements as absorbed into the Code of Conduct was not breached in the circumstances of the particular disclosure.

Councillor Eaton's actions in forwarding the email to all Councillors and using the information from Councillor Graham, though potentially in breach of privacy requirements of the Code, was in circumstances where the material from Councillor Graham was already within the Councillor's knowledge, and not objectionable on a privacy basis.

In relation to disclosure/discussion at the Council meeting, the Committee believes that this was the inappropriate venue to raise the concerns that Councillor Eaton may have had regarding Councillor Stevens' conduct in not showing leadership and calling into question compliance with the associated Code of Conduct's requirements for Councillors. Further, it was believed that if a potential breach of the Code of Conduct was motivating the action of Councillor Eaton at Council this should have been raised with the General Manager and the appropriate procedures followed, rather than bring the matter forward on the floor of the Council. In review of the Committee's determination that the information was private, it could not see that raising the matter in open Council was the use of it for the proper functions of Council and for the purposes for which it was collected. The Committee could not see any proper purposes of the use of information which was achieved by the raising of the matter before open Council.

Under clause 4.8, the key principles of the Code of Conduct it requires that Councillors must:

" ... treat others with respect at all times."

The Code specifies that this includes observing the rights of other people. In the circumstances, bringing this matter of the private information before Council in open session and in email communication to Councillors, for no specific proper purpose of Council, was in the view of the Committee, a breach of this clause.

Minutes of the Code of Conduct Committee held on 27 May 2008 (contd)

CONCLUSION

Though the Committee found a breach of clause 4.8 of the Code of Conduct, it did not believe that the Privacy Provisions were breached in the circumstances of the case.

It also notes the suggested justification brought forward by Councillor Eaton relating to the need under principles 4.2 of the Code of Conduct to show leadership where he was calling into question whether this was achieved by Councillor Stevens' conduct. However there is an appropriate process (see Code of Conduct clause 5.4 which requires such questions be dealt with in accordance with established procedures) to deal with such concerns and these do not include simply by raising the matter, concerning what would be considered private information, at the open Council meeting and in broadly circulated communications.

Whilst the committee can accept that Councillor Eaton had a legitimate concern in relation to rate recovery generally, if the specific matter was to be raised for discussion it should have been held in confidential session where rate/rate recovery matters concerning individuals were normally dealt with.

In all the circumstances though a breach of clause 4.8 has found, no action is recommended by the Committee. These circumstances included:

- the Committee accepted Councillor Eaton's submission that the private matter was "out there" at the time of the email;
- the Committee noted his statement that if it hadn't been 'out there' then he wouldn't have dealt with it as he did;
- the Committee accepted he may have had a legitimate concern in relation to rate recovery generally;
- the specific privacy provisions were not found to be breached;

As for any leadership questions he raised concerning Councillor Stevens' conduct, if this was to be pursued by Councillor Eaton the normal process should have been followed and the Committee placed no weight on this submission.

Minutes of the Code of Conduct Committee held on 27 May 2008 (contd)

Recommendation

That Council find that Councillor Eaton did breach CI 4.8 of the Code of Conduct but no action be taken for the reasons outlined above.

Findings on possible breaches of Code of Conduct by Councillor Graham relating to a Councillor's non-payment of rates

Matter 2.2

A complaint has been lodged under the provisions of the Protected Disclosures Act alleging that Councillor Bob Graham released personal information to Councillors Eaton and Best concerning Councillor Ron Stevens' alleged non-payment of rates.

It is stated that Councillor Graham (as Mayor) was requested by the then Director Corporate Services (Mr James Brown) by email to follow up Councillor Stevens in regard to his outstanding rates. This was undertaken.

It is alleged that Councillor Bob Graham showed the email to other Councillors, including Councillors Best and Eaton and checked the information out with junior staff instead of working through a Director or Manager.

Hearing

Councillor Graham indicated that he was attempting to do his best and had served the Council well over a long period of time. He referred to the fact that the complaint was a protected disclosure and believed it had probably come from another Councillor and that was not the way that such matters should be dealt with. He believed the various Councillors were not giving him the respect that was due to him particularly having regard to his longstanding commitment and experience.

Councillor Graham referred to the Council meeting where he acknowledged the issue but refused to engage in the further debate on the matter. He had realised the 'error of his ways' and did not believe that the matter should be brought back for action under the Code of Conduct.

Minutes of the Code of Conduct Committee held on 27 May 2008 (contd)

In his role as the Mayor he believed that the information he had been provided with was done so in the course of the proper business of Council. He did not believe there was any concern in relation to passing on the email in an attempt to pursue that business ie. dealing with the non-payment of rates issue from a Councillor where he had been requested to help solve the problem by a Senior Council officer at Director level. The document he had been provided with didn't have "confidential" stamped on it.

He had told Councillor Stevens to be very careful about the issue as people would try to use it against him and he was in fact worried as staff knew about it.

Councillor Graham believed that it was his responsibility as the Mayor and having been approached by the Director for assistance to use every possible way to get Councillor Stevens to 'pay up'. In his opinion it was important that the matter be cleaned up from the point of view of the Council's position and how it was seen in the Community. He had been advised by James Brown that he had already spoken to Councillor Stevens three or four times without the problem being solved and thus Councillor Graham, being the Mayor, was asked to speak to Councillor Stevens in relation to the matter and he had consequently followed appropriate protocol.

Councillor Graham insisted the only staff that he dealt with was James Brown and the General Manager in relation to this matter.

When specifically asked about his sources of the information from officers in Council, he denied that there was anyone who he had spoken to other than the Council officers referred to above, "*I didn't know so I assumed that it would still be outstanding*" was his comment. He was adamant that he didn't think the information was confidential nor that it was inappropriate for him in his role of Mayor to discuss it with fellow Councillors.

In fact the other Councillors called him in relation to the matter and talked about it. He believed it was "out there" and he was trying to sort it out.

In summary he didn't distribute the email, some other Councillor did. He has apologised for dealing with the matter in the way he did but he believed it wasn't confidential; and it was a matter that he had been asked to sort out from the staff's point of view and it had the potential to damage both Councillor Stevens and the Council if it wasn't. Accordingly he believed the information was used for the proper purposes of the Act.

Minutes of the Code of Conduct Committee held on 27 May 2008 (contd)

Finding

The Code of Conduct requires that when dealing with personal information, the Privacy and Personal Information Act 1998, Council's Privacy Management Plan and the Privacy Code of Practice for Local Government must be complied with.

Section 9.13 of the Code states that when dealing with personal information you must comply with the Privacy and Personal Information Protection Act 1998 ("PPIP Act"). Section 17 of the PPIP Act outlines principles governing the use of personal information and requires that a public sector agency that holds personal information must not use the information for a purpose other than that for which it was collected. Section 18(1) specifies the principle which prohibits the disclosure of personal information unless, relevantly, the disclosure is directly related to the purpose for which the information was collected and the agency disclosing the information has no reason to believe that the individual concerned would object to a disclosure. Under section 62 of the PPIP Act it is an offence for a public sector official (which includes a local government councillor) to "...disclose or use any personal information about another person to which the official has or had access to in the exercise of his or her official functions ... otherwise than in connection with the lawful exercise of his or her official functions".

By virtue of section 32 of the Privacy and Personal Information Act, Council must comply with any Privacy Code of Practice that applies to it. As from 1 July 2000, the Privacy Code of Practice for local government had effect in modifying the application of Part 6 of the PPIP Act as applied to local government, so that Council can use information for a purpose other than which it was collected in certain circumstances where the use is pursuant to Council's lawful and proper functions and Council is satisfied the personal information is reasonably necessary for the exercise of those functions.

Importantly in this matter Councillor Graham, as the Mayor, was approached by the Corporate Services Director seeking his assistance. Consequently in the Committee's view his conduct has to be considered under the exclusion for personal information's use ie for the lawful exercise of his official functions. On balance, though the matter could have been dealt with more sensitively, the Committee accepted Councillor Graham's position that he was pursuing his mayoral role in what he perceived as the proper pursuit of his official functions.

Minutes of the Code of Conduct Committee held on 27 May 2008 (contd)

The issue had the potential to reflect poorly on the Council. Consequently the privacy provisions of the Code of Conduct were not breached. Further, in the circumstances with the refusal to engage in further debate on the matter at Council, the Committee concluded clause 4.8 of the Code, which sets out the principle of treating matters with respect, was not breached.

Recommendation

That Council determine that the Code of Conduct was not breached by Councillor Graham.

WYONG SHIRE COUNCIL

REPORT AND RECOMMENDATIONS OF THE **CODE OF CONDUCT COMMITTEE MEETING** HELD IN THE Level 5 Conference Room ON 11 September 2008 COMMENCING AT 3PM

PRESENT

Cr W R Welham (Chairperson), General Manager and Mr J Cole.

Adjourned from meeting 27 May 2008

Background

The Agenda for the Code of Conduct Committee Meeting of 27 May 2008 included items:

2.3 Item for consideration - Protected Disclosure Item Consideration of comments made to media in relation to the issue of parking infringement.

A complaint has been lodged under the provisions of the *Protected Disclosure Act* in relation to the conduct of Councillor Greg Best surrounding an incident where an infringement was issued by a Council Officer to Fiona Smith for illegally parking in a bus zone at Toukley. The Complaint alleges that Councillor Best's comments, which were the subject of extensive press coverage, breached the Code of Conduct.

2.4 Item for Consideration - Protected Disclosure, electoral funding and possible conflicts of interest.

A complaint has been lodged under the provisions of the Protected Disclosures Act regarding the funding provided to Councillor Greg Best as a candidate for the State seat of Wyong at the last election in March 2007. The complaint alleges that Councillor Best has failed to declare conflicts of interest in regard to subsequent matters considered by Council, which pertained to some bodies and their associates who provided funding to Councillor Best.

Prior to the meeting of 27 May 2008 Councillor Best requested that the matters be adjourned. The Committee agreed to the request. They were sought to be rescheduled on a few occasions but for various reasons could not be. The meeting was rescheduled for 3:00pm Thursday, 11 September 2008 at Council Chambers. Councillor Best was notified of the meeting by letter. He requested further adjournment. The request was declined and this was advised to him by letter from Council.

Minutes of the Code of Conduct Committee held on 11 September 2008 (contd)

Councillor Best had previously sought further particulars in relation to the matters to be reviewed by the Committee and these were provided in writing. The reconvening of the previous May meeting to deal with the above matters was held on Thursday, 11 September 2008 at 3:00pm. As noted Councillor Best was advised of this and his request for a further adjournment declined.

Councillor Best did not attend the Code of Conduct Committee Meeting. Inquiries from staff were made. The Committee was advised that Councillor Best had been at the Council building earlier in the day but had left.

In the circumstances the Committee determined to proceed with its review of the matters in the absence of Councillor Best, having satisfied itself that natural justice had been provided to him in all the circumstances of these matters.

The committee at the opening of the meeting considered the assertion by Councillor Best, that the Chairman Warren Welham was prejudiced/biased in relation to his ability to hear the matters. Mayor Welham was questioned by the other members of Committee in relation to whether there was any foundation for such assertion and none could be determined, such as to suggest a different person to be substituted for him in accordance with the Code of Conduct. (Note clause 6 - Conflict of Interest and clause 10.8 Complaint Handling Procedures)

2.3 Protected Disclosure, Comments made to Media in relation to the Issue of the Parking Infringement

As the complaint was lodged under the *Protected Disclosures Act* and as it dealt with a particular incident of which Councillor Best apparently had relevant knowledge, the Committee did not feel in the position to be able to deal with this matter in his absence. The need for further information to be provided by Councillor Best was felt critical to facilitate any real ability to deal with the complaint.

Accordingly, the Committee did not proceed to deal with this Complaint and it is still outstanding in the circumstances.

Minutes of the Code of Conduct Committee held on 11 September 2008 (contd)

The Committee noted the then impending change of Council and considered the potential problem of the matter's long history being outstanding with adjournments since the May meeting. The Committee determined in the circumstances not to consider itself "part-heard" in this particular matter and in consequence, if this matter proceeds, it may be dealt with by the new Code of Conduct Committee.

Recommendation

This matter should be referred back to the General Manager to be dealt with by the new Code of Conduct Committee.

2.4 Protected Disclosure - Electoral Funding and possible conflicts of interest

A complaint has been lodged under the provisions of the *Protected Disclosures Act* regarding the funding provided to Councillor Best as a candidate in the State seat of Wyong at the last election in March 2007. The complaint alleges that Councillor Best had failed to declare conflicts of interest in regard to subsequent matters considered by Council which pertained to some bodies and their associates who provided funding to Councillor Best.

The protected disclosure identified a number of different donors who were recorded on the Election Funding Authorities tables specifying details of political contributions received of more than \$200 by legislative assembly candidates for the 2007 New South Wales State Election on 24 March 2007. Of those matters disclosed the General Manager referred six matters to the Code of Conduct Committee. The Report deals with them below:

1. Buildev Developments (NSW) Pty Limited (GWH Group).

This company contributed an amount or value of contribution of \$5,000. The potential conflict matters related to this groups ownerships of twelve (12) industrial lots in the North Wyong Industrial Subdivision. Various matters were reported to Council which related to this land and concerned Development Control Plan 36 - Wyong Industrial Area, which was considered by Council on 26 September 2007 and 13 February 2008 along with a rescission motion on 27 February 2008. Councillor Best voted on these matters.

Minutes of the Code of Conduct Committee held on 11 September 2008 (contd)

The committee declined to make any adverse finding against Councillor Best or find a breach under the Council's Code of Conduct in relation to this issue or this complaint.

The committee sets out below the Code's framework for consideration which is also relevant to the other contributions/decisions dealt with in this report.

Political support is dealt with under clause 12.6.7. Under this a potential conflict of interest could arise when a campaign donor who contributes financially to the Councillor's election campaign has a matter before the Council for determination. The Code continues that in this situation the Councillor should consider the public perception of the relationship and sets out options which Council may choose to follow.

In the particular circumstances of this case the committee determined firstly, that as a factual matter Councillor Best would not likely have nor in the circumstances should have had an integral understanding of the various landholdings and ownership of allotments of the political donor in the area which was covered by the Development Control Plan. To do so would be to place great onus on a Councillor to delve into the detailed business dealings of a political donor and such positive obligation was not envisaged under the Code of Conduct. This is particularly the case as there was no mention of Buildev in the DCP consideration and report.

The committee generally noted in relation to the application of this clause, that if a Councillor was aware that a donor had land within a specific area which was covered by a variation or consideration of a planning 'control' or associated decision e.g. a draft DCP, LEP or Section 94 plan then such matters before Council would be covered by the clause. This was despite the Committee identifying the argument that a possible interpretation of clause 12.6.7 and in particular the words "... has a matter before the Council for determination" could seek to limit the application of the clause to specific proposals (or even more limited to those where a statutorily identified application was required) put forward by the donor, rather than also being relevant to decisions of Council dealing with relevant broader scale planning/Council considerations which affected donors. Another example would be if Council was considering taking action against the donor. In the Committee's view the clause should be interpreted having particular regard to the clause's comments about public perception. This would suggest clause 12.6.7 should be interpreted to apply in the broader circumstances, rather than a more strict interpretation of the clause to limit it, for example, to development applications.

Minutes of the Code of Conduct Committee held on 11 September 2008 (contd)

2. Coastal Hamlets Pty Limited (affiliated with Rosecorp, Rose Corporation, Rose Group)

This dealt with the land holdings in Catherine Hill Bay and Gwandalan rezoning. Coastal Hamlets had contributed \$9,000 to the electoral funding campaign.

(a) Boundary adjustment between Lake Macquarie City Council and Wyong Shire Council

The first matter voted upon by Councillor Best was the boundary alteration between Lake Macquarie City Council and Wyong Shire Council. The Committee did not make any adverse finding against Councillor Best in relation to this matter as the facts before it revealed that the vote was taken on 14 February 2007 and the donor had recorded a date for the contribution of 13 March 2007. Thus at the time of the decision by Council the donation had not been made.

The Committee made the same determination in relation to Councillor Best voting on the Department of Planning exhibition for Gwandalan and Catherine Hill Bay which was also decided at the meeting on 14 February 2007.

(b) Rosecorp Part 3A Application

The next conduct of Councillor Best reviewed by the Committee was his voting on a Part 3A Application by Rosecorp in relation to its Gwandalan Land Holdings. This was considered by Council on 13 June 2007. The minutes of this meeting record:

“Councillor Best declared a non pecuniary significant conflict of interest for the reason that a company associated with the applicant may have provided support to my past election campaign and did not participate in consideration of this matter. He left the chamber at 8:30pm, did not return and as a result took no part in the voting.”

Clearly there was no breach of the Code of Conduct in this matter and in fact Councillor Best appropriately identified the association/relationship between Coastal Hamlets Pty Limited and Rosecorp, declared an interest and chose one of the options suggested under the Code of Conduct clause 12.6.7.

Minutes of the Code of Conduct Committee held on 11 September 2008 (contd)

(c) Retail Strategy and DCP 81

Councillor Best voted on the Retail Strategy and DCP 81 at the Council meeting of 12 December 2007. This partly related to Rosecorp's village at Catherine Hill Bay.

The committee determined however that this was a broad matter/area which was Shire based, effecting a large Council area and effectively too 'remote' from the particular interests of Rosecorp so as to require Councillor Best to reasonably identify and then to declare a conflict in all the circumstances (obviously he may have, if he was aware of it and the committee makes no comment on what the appropriate course in such circumstance, other than a conservative approach is to be encouraged).

Accordingly, the committee does not find any breach of the code of conduct in relation to Councillor Best voting on this matter.

(d) Contributions Plan Northern Districts

The final matter in relation to Coastal Hamlets Pty Limited (Rosecorp, Rose Corporation, Rose Group) was the vote on 23 January 2008 on the Contributions Plan for the Northern District.

This report to Council was following the exhibition of the draft Northern Districts Contribution Plan and it identified the results of the public exhibition. The decision before Council was whether to approve the draft contributions plan for the Northern Districts and repeal, amongst other contributions plans, the existing one for Gwandalan.

The report on its first page under the heading Background stated:

"At its meeting on 14 February 2007 Council considered a report on two rezoning proposals by Rosecorp at Gwandalan and Catherine Hill Bay and resolved its staff prepare amendments to the Development Contributions Plan for the areas to ensure they cater for the proposed developments."

Minutes of the Code of Conduct Committee held on 11 September 2008 (contd)

and further

“Since that Council decision a further re-zoning proposal has been submitted by Coal and Allied for the Gwandalan Area and an amended proposal has been submitted by Rosecorp for its holdings at Gwandalan and Catherine Hill Bay...

“... Should Council decide not to proceed with the adoption of the plan, Council will not be able to levy the development contributions on the Coal and Allied and Rosecorp precincts which amount to approximately 900 lots plus associated facilities.”

From the above references in the actual report which contained the resolution upon which Councillor Best voted, the clear identification of Rosecorp was established. The Committee was satisfied that Councillor Best was or should have been aware of Rosecorp's involvement in the matter. Though the decision before Council was a contributions plan of more general application it specifically related to and identified amendments which dealt with Rosecorp's land at both Gwandalan and Catherine Hill Bay.

Some six (6) months before Councillor Best had declared a non pecuniary, and importantly a “significant” conflict of interest, in the Part 3A matter which dealt with the above. This effectively and appropriately recognised the inter-relationship between Rosecorp, the applicant for the Part 3A application being dealt with in that resolution and Coastal Hamlets Pty Limited, the donor in question. Though such inter-relationships between companies are sometimes unknown to a Councillor on the evidence before the Committee and with no evidence from Councillor Best, despite natural justice being provided to him in the

Committee's view to provide any such evidence, the clear conclusion of the facts, in accordance with the Committee's determination, is that:

1. Councillor Best would have or should have been well aware that Rosecorp were significantly affected by the determination of the contributions plan (it was set out in the report and numbered paragraphs); and
2. The donor to his election campaign, Coastal Hamlets Pty Limited, was inter-related with Rosecorp, as had been previously identified/disclosed by Councillor Best and another matter where he declared a conflict.

Minutes of the Code of Conduct Committee held on 11 September 2008 (contd)

Accordingly, the Committee determines in relation to this matter that Councillor Best did breach the Code of Conduct in relation to clause 12.6.7 and the associated clause 6 which deals with conflicts of interest, in that he did not declare such conflict in circumstances where clearly he should have and in fact previously had.

3. Hunter Ready-mix Concrete (GWH Group)

This group had provided funding to Councillor Best in the sum of \$5,000 on 1 March 2007. The Company had purchased a number of lots in the industrial subdivision at North Wyong. The relevant determination upon which Councillor Best voted was the Development Control Plan no. 36 being determined by Council on 26 September 2007, 13 February 2008 and a rescission motion on 27 February 2008.

As with the previous matter concerning the donations by Buldev, the Code of Conduct Committee did not determine that there was a breach of the Code of Conduct by Councillor Best. Again there was nothing in the material or otherwise within Councillors' or general knowledge which suggested Councillor Best's knowledge of this donor's involvement or interest in the Development Control Plan 36 i.e. the Committee could not determine that Councillor Best did or should have had knowledge of the donor's ownership of the lots which were affected by the decision of the Council.

4. Wilde and Gregory Investment and Management Pty Limited (Landin Realty Patrick Wilde, Kevin Gregory)

This donor (\$1,500 x 2) was involved in proposed re-zonings at Wyong Industrial Estates. The matter determined and voted upon by Councillor Best was Development Control Plan 36 - Wyong Industrial Area, where Councillor Best voted on motions on 26 September 2007 and 13 February 2008 as well as a rescission motion on the 27 February 2008.

Minutes of the Code of Conduct Committee held on 11 September 2008 (contd)

The Committee found a breach of the Code of Conduct by Councillor Best. This matter was unlike other matters where a lack of knowledge as to the identity of the donor and his relationship with the matter before Council was present or could be determined on behalf of the Council when voting on such matters. Pat Wilde's involvement in North Wyong industrial area is well known, extensive and has been for a long time. The Committee accepted Councillor Best knew or should have known of this well known fact. Some positive obligation exists on him to be careful regarding disclosures where there is such generally know involvement of individuals (in this case a donor) in relation to important development matters before Council. This is expected by the Code of Conduct.

5. Wyong Industrial Solutions and Estate (Patrick Wilde)

Again this donor (\$1,500) was involved in proposed re-zonings in North Wyong Industrial area and the votes the subject of complaint again related to Development Control Plan 36 as identified in the matter immediately above. The Committee did not come to the same conclusion as above as the interrelationship between the company did not have the same overt recognition as the previous company with the high profile involvement of Patrick Wilde with effective land ownership of extensive areas of the North Wyong industrial area (see for example comments on contribution matter No. 1 above concerning Buildev). There was no breach by Councillor Best of the Code of Conduct found on the facts as determined by the Committee.

6. Yeramba Estates Pty Limited (Bruce Johnson)

(a) Contributions Plan – intersection upgrade

Yeramba Estates Pty Limited made a contribution of \$5,000. The company had large land holdings in Warnervale Town Centre.

Councillor Best voted in relation to a Draft Section 94 Development Contributions Plan for the Wyong Employment Zone. Involved in this was the determination that Council seek the allocation of \$10,000,000.00, identified in the Central Coast Transport Action Plan, for a Sparks Road upgrade of intersections. This proposed funding assistance was contained within the report on draft contributions plan and also the contributions plan to the east (Warnervale Town Centre in the Warnervale District).

Minutes of the Code of Conduct Committee held on 11 September 2008 (contd)

In relation to this motion the Committee was at a disadvantage not having Councillor Best's assistance. On balance the Committee determined that there was no breach of the Code of Conduct by Councillor Best on the basis that the Section 94 Plan was effectively broad or too remote i.e. not specifically enough involved with the Warnervale Town Centre and consequently Yeramba Estates' well known land holdings. This was the question of fact, determined by the Committee.

It was clear in the report that the land within the Warnervale Town Centre would be affected and thus the decision in relation to the seeking of funding regarding road up section would be specifically relevant to it. However this was part of a quite large Draft Contributions Plan covering a broader area and this specific nexus or inter-relation may not have been so apparent as to raise the conflict question. This was only a smaller part of a larger contributions plan covering larger land areas.

The Committee did not find the facts to support a breach of the Code relating to this matter.

(b) Re-zoning of the Warnervale Town Centre and delays

This related to Councillor Best voting on the motion on 26 September 2007. It dealt with the Minister of Planning's lack of resolution of the re-zoning of both the Warnervale Town Centre and the Wyong Employment Zone and sought to raise various concerns. The similar matter concerning delays for the Warnervale Town Centre was considered by Council and voted upon on 31 October 2007.

The Committee's deliberation to find facts in this matter was again very difficult without the assistance of Councillor Best. It was within the knowledge of Committee Members however that there had been various briefings on the Warnervale Town Centre to Councillors, it was a high profile town planning/urban release issue at the Council and Yeramba Estates was well known amongst Councillors as one of the four or five major land holders in the Warnervale Town Centre.

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Yeramba Estates Pty Limited was clearly identified as a donor within their own name and accordingly the committee believed that Councillor Best should have been aware of this and should have declared an interest. It had been identified in previous Councillor briefing sessions and was considered to be “general knowledge” within Council due to the high priority and high profile of the Warnervale Town Centre in the strategic planning of the Shire for a number of years, as well as Yeramba’s involvement in it as one of the limited number of major specifically effected landholders.

In those circumstances the Committee determined that Councillor Best knew or should have known that a donor was particularly effected by the resolution under consideration and accordingly should have declared a conflict. The report specifically sought to get the minister to re-zone the land which would have clearly effected Yeramba Estates interests and here the Committee notes its earlier comments regarding item (a) hereof regarding the scope of clause 12.6.7.

The Committee found the facts to support a breach of the Code relating to this matter.

(c) Determination on submission on Wyong Employment Zone

Councillor Best voted on 12 March 2008 in relation to a submission on Wyong Employment Zone Land.

Unlike the Warnervale Town Centre matter the Committee was not able to come to any factual conclusion in relation to Councillor Best’s knowledge of Yeramba Estate’s interests or otherwise in these matters in relation to the employment Zone. Though there was reference to State Government proposed infrastructure contribution and it dealt with matters indirectly or even directly affecting Warnervale Town Centre, the Committee determined it was too remote having regard to both the content of the report and the lack of knowledge Councillor Best either had or should have had in relation to Yeramba Estate’s land holdings in the employment zone (as compared to the Warnervale Town Centre). So far as the Committee could determine, Yeramba Estate didn’t own any land in the Wyong Employment zone. Accordingly, the Committee did not find any breach of Code of Conduct in relation to this matter.

Minutes of the Code of Conduct Committee held on 11 September 2008 (contd)

Recommendations

Code of Conduct clause 10.15 sets out sanctions available to the Council. This states:

“10.15 Where the Council finds that a Councillor has breached the code it may decide by resolution to:

- 1. censure the Councillor for misbehaviour in accordance with section 440G of the Act.*
- 2. require the Councillor to apologise to any person adversely affected by the breach;*
- 3. counsel the Councillor;*
- 4. make public findings of inappropriate conduct;*
- 5. refer the matter to an appropriate investigative body if the matter is serious (for example, the Department of Local Government, the Independent Commission Against Corruption, the Local Government Ombudsmen or the New South Wales Police); and*
- 6. Prosecute for any breach of law.” (our emphasis)*

CONCLUSION

Having regard to the findings above, three matters stimulate the Committee to put a recommendation to Council for its consideration. Clause 10.14 allows that the Committee may “... recommend that the Council take any actions provided for in this Code that the Committee considers reasonable in the circumstances.”

Minutes of the Code of Conduct Committee held on 11 September 2008 (contd)

Of the protected disclosures and the numerous details thereunder the three factual circumstances as determined by the Committee may give rise to a determination by Council of a breach of the Code of Conduct in failing to declare an interest having regard to clauses 6 and 12. These are:

1. Councillor Best voting on the draft Northern District's Contribution Plan Donor – Coastal Hamlets Pty Limited – Rosecorp;
2. Councillor Best voting on the proposed rezonings/DCP 36 – Wyong Industrial area. Donor Patrick Wilde's associated entity – Wilde and Gregory Investment and Management Pty Limited.
3. Councillor Best voting on the Council's determination of the submission to the Minister in relation to the re-zoning of the Warnervale Town Centre and delays – Donor Yeramba Estates.

By reference to the sanctions outlined in paragraph 10.15 the Committee recommends that in relation to the three matters above, Councillor Best be censured by Council for misbehaviour in accordance with section 440G of the *Local Government Act*. In the Committee's opinion Council may find a breach of the Code of Conduct in relation to those matters which affected donors to his previous electoral campaign for the seat of Wyong in the State election in March 2007, where, when considered by Council, Councillor Best did not declare an interest.

The Committee points out to Council the various formal requirements under s440G(1)-(5) which deal with the Council's consideration of the recommendation of the Committee and these are set out below:

(1) A council may by resolution at a meeting formally censure a councillor for misbehaviour.

(2) A formal censure resolution may not be passed except by a motion to that effect of which notice has been duly given in accordance with regulations made under section 360 and, if applicable, the council's code of meeting practice.

Minutes of the Code of Conduct Committee held on 11 September 2008 (contd)

(3) A council may pass a formal censure resolution only if it is satisfied that the councillor has misbehaved on one or more occasions.

(4) The council must specify in the formal censure resolution the grounds on which it is satisfied that the councillor should be censured.

(5) A motion for a formal censure resolution may, without limitation, be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.

Recommendation

That Council censure Councillor Best for misbehaviour and breach of the Code of Conduct because of his repeating failure to declare conflicts of interest in relation to matters before Council, which matters affected doners to his previous election campaign for the seat of Wyong in the March 2007 State elections.