



19 April 2021

Mr Tim Hurst
Deputy Secretary, Local Government, Planning and Policy
Department of Planning, Industry and Environment

Dear Mr Hurst

Ian Robertson v Office of Local Government

I write in relation to the Case Conference on 26 April. As you understand, this is an issue arising from your Statement of Reasons - Determination by Departmentally Chief Executive, Office of Local Government and, in particular, your observation in reason numbered 20 that:

I have considered and taken into account that this conduct occurred in a single episode, and the absence of any prior offending or post event conduct in the past two years and the lack of previous incidents of misconduct on the part of Clr Funnell.

There are three issues of concern I raise here:

First, we have published our view that we find this statement inexplicable and demonstrably untrue. In my email to you of 11 February I identified a previous censure of Clr Funnell by the Council and subsequent complaints including a Code of Conduct complaint made by an employee, and at the same time also by depa and apparently others.

In a further email on 16 February, I identified examples of “prior offending” from:

- 13 March 2013
- 8 July 2014
- 6 March 2015
- 22 May 2015
- 26 October 2015
- 18 November 2015
- 5 June 2017
- 18 December 2017, and
- 25 November 2019,

I offered email evidence “if you would like it”.

Finally on 22 February I added to the list of prior behaviour this statement made at the Council meeting on 25 May 2020:

"Quite a number of people are choosing to say this is an attack on the staff. It's not an attack on the staff. If you want to do that, as I'm quite sure you all know, I'll do that on the merits of what they say and what those actions are that need attacking".

We also provided you (and Mr John Davies) with information about the complaint we made about the Councillor's behaviour in an email on 20 May 2022 to which our complaint to the General Manager of 19 May was attached.

And a further email on 12 June 2022 to both you and Mr Davies asking *"what's happening?"*

I write to reiterate our concern that the observations you made in reason 20 are demonstrably untrue and, as the complainant, and a union official in the industry who has had multiple conversations with you are about appropriate ways of managing bad behaviour by councillors, I simply don't understand how you could make the assertion with all of this evidence known to you.

Please explain. We are open to a settlement of our application.

I have attached the five emails referred to above.

Second, there is an urgent need to expedite the processing of our appeal, if we are unable to reach agreement before 26 April, and for OLG to expedite what we understand to be three Code of Conduct violation issues for Cllr Funnell. This includes breaches of the Code where we were one of the complainants.

Given the observation we say to be erroneous in reason 20 that indicates you were swayed by what is described as "this conduct occurred in a single episode, in the absence of any prior offending or post event conduct in the past two years and a lack of previous incidents" you ordered a relatively light suspension from Civic office for one month.

We believe that had reason 20 been more accurate there would have been a more significant penalty and the following breaches in the OLG pipeline are likely to have prevented Councillor Funnell standing for election in the local government elections in September. This is being talked about in Wagga Wagga as a near certainty, accompanied by a team of supporters who potentially could end up in the majority on the floor of Council.

Given Councillor Funnell's and his statements, this would have a negative effect on good governance at the Council and upon members of staff getting on with their normal work. In those circumstances we ask that you agree to expedite our proceedings and also those complaints with your Office, so that they can be concluded before September.

Third, we seek your confirmation that you had no role in the rejection of our GIPA application given that you also had a role in the investigation the subject of your 5 February 2021 Order. This would raise significant conflict-of-interest issues if it were the case.

Yours sincerely



Ian Robertson
Secretary

From: Ian Robertson
Sent: Monday, 22 February 2021 12:34 PM
To: Tim Hurst <Tim.Hurst@olg.nsw.gov.au>
Subject: RE: WTF, Chinese or Russian hackers have been on your site and changed clause 20

Hi Tim, any news on correcting paragraph 20? This is my third attempt to contact you because this is a significant problem that, if not remedied, will see this person continuing these unacceptable attacks on staff.

I could also have added to the list of prior behaviour this statement made at the Council meeting on Monday 25 May 2020:

"Quite a number of people are choosing to say this is an attack on the staff. It's not an attack on the staff. If I want to do that, as I'm quite sure you all know, I'll do that on the merits of what they say and what those actions are that need attacking".

He thinks that's his role, but you know it's the CEO responsible for managing staff, not a counsellor with no respect for the Code of Conduct.

Please fix this.

Ian Robertson
Secretary
depa

Ph: 9712 5255
www.depa.net.au

From: Ian Robertson
Sent: Tuesday, 16 February 2021 1:32 PM
To: Tim Hurst <Tim.Hurst@olg.nsw.gov.au>
Subject: RE: WTF, Chinese or Russian hackers have been on your site and changed clause 20

Good afternoon Tim, I'm going to provide you with some history of Councillor Funnell issues going back to 2013. These are being compiled by our members who have been dealing with this bloke you reckoned has not had "prior offending".

There is evidence available in emails if you would like it.

13 Mar 2013 – Comments made by Cr Funnell regarding enforcement action taken by Council in relation to inflatable clowns erected around city. Comments not visible behind paywall, although attached emails from (name deleted) to depa suggest that he was named.

8 July 2014 – Email sent to GM Phil Pinyon and then Director of Planning Andrew Crakanthorp from (name deleted) raising concerns regarding comments made by Cr Funnell in relation to a Development Application under assessment. Extract of story from Daily Advertiser:

Mr Penfold doubts he would have had the application approved if not for Cr Funnell's intervention.

"It was just getting nowhere until I got onto Paul Funnell," he said.

Cr Funnell is highly critical of the council's development approval system, which he says takes too long and is costing the city money due to its inefficiency.

"For the sake of Wagga, this whole issue needs to be reviewed in its entirety and it needs to be done now," he said.

But Cr Funnell says he is powerless to change the regulations.

"This is one of the problems we face as councillors - people think we have the magic bullet to fix this," he said.

6 Mar 2015 – Email from a member to acting GM Peter Adams (copying in Phil Pinyon) raising concerns about general attacks by Cr Funnell on staff in the media. The email cites comments by Cr Funnell in the Daily Advertiser on 5/3/15 in relation to DA requirements for ANZAC Car Park events and prior comments made by Cr Funnell in relation to a Development Application under assessment (noted above). The email also contains references to comments made by another Councillor. The email includes extracts from the ANZAC Day story:

State election independent candidate Paul Funnell echoed Mr Watts' concerns, labelling WWCC's demands to lodge DAs for something like a two-up mat as "utterly ridiculous" on two grounds.

"Are we really doing this to a national tradition?," he asked.

"Particularly when we're coming up to the 100th anniversary of the Anzac."

And concludes with the members comments:

I am sure that you share our frustration, but I repeat our request that Councillors are reminded of what is appropriate and what is not appropriate. Unless this behaviour is addressed head on I fear that attacks on staff and the organisation will continue and probably worsen to be more direct. If individuals feel that there are no consequences to their actions, why would they ever modify them?

Mar 2015 – Meeting between DEPA Members and then Director of Planning Andrew Crakanthorp

22 May 2015 (approx.) – Letter sent from Consultative Committee to GM Phil Pinyon. (Letter attached "Newspaper Article General Complaint"). Letter raised concerns about general staff attacks by two Councillors, including Cr Funnell, for comments made in a recent Daily Advertiser story in relation to the 9 Day Fortnight. Letter requested mediation. Extract from newspaper article:

Fellow councillor Paul Funnell has backed calls for the nine-day fortnight to be dispensed with.

"The levels of inefficiency and a lack of reality in commercial sense bewilders me," he said.

"We pay above industry standard and get below standard results ... it defies logic."

Nine-day fortnights were introduced to Wagga City Council employees in June 2009.

26 Oct 2015 – Meeting held between Consultative Committee chair and a member with Cr Funnell and Cr McLaren to discuss concerns regarding Councillor comments. Then GM Alan Eldridge in attendance.

18 Nov 2015 – Consultative Committee Meeting held – minutes provide summary of meeting with Cr Funnell (attached). Including:

Councillor Funnell stood by his comments, indicating that the comments were directed towards the Indoor staff rather than the Outdoor staff.

5 Jun 2017 – Email from a member to Acting GM Robert Knight, lodging a Code of Conduct complaint against Cr Funnell for comments made in the Daily Advertiser directed at Planning staff, including:

"They're cherry-picking sections of legislation to beat people around the head and stop development, which is stifling economic opportunities and turning people away from the city," Cr Funnell said.

"I know for a fact there are local developers who won't speak up about this for fear of retribution.

"The amount of roadblocks is ridiculous, we need to work toward fixing this problem, get away from individual opinions and back to what's best for the city."

Code of Conduct complaint never finalised.

18 Dec 2017 – Cr Funnell makes comment in Council meeting that planning staff are "looking under rocks to find problems" (Cr Funnell commences 46:09 on Council Livestream titled "Council Meeting 18th December 2017 – Session 2). A meeting was held between Senior Town Planners and GM Peter Thompson to discuss the issue on Tuesday 19th December 2017).

25 Nov 2019 - here is a link to the minutes of the meeting:

https://meetings.wagga.nsw.gov.au/Open/2019/11/OC_25112019_MIN_3694.PDF

But here is the relevant extract censuring the Councillor:

That Council:

- a notes it is in receipt of a final investigation report submitted to the Council for consideration in accordance with the Code of Conduct and Administrative Procedures for the Code of Conduct, and which has been made available to Councillors with the confidential business paper for this meeting**
- b notes the findings made by the investigator that Councillor Paul Funnell breached clause 3.3 of Council's Code of Conduct (September 2017) by failing to treat Councillor Vanessa Keenan with respect at all times in communications both in email correspondence and during meetings of Council in 2017, in particular on 27 November 2017**
- c accepts the recommendations of the investigator, made under Clause 8.35(g) of the Procedures for the Administration of the Code of Conduct, and accordingly resolves that Councillor Paul Funnell be formally censured for the breach, under Section 440G of the Local Government Act 1993 (NSW)**

CARRIED

RECORD OF VOTING ON THE MOTION

For the Motion

G Conkey OAM

D Hayes

R Kendall

D Tout

Against the Motion

Y Braid OAM

K Pascoe

How's that for prior offending?

And including a Council resolution from 2019 censuring him.

The sooner you correct paragraph 20, the better.

Ian Robertson
Secretary
depa

Ph: 9712 5255
www.depa.net.au

From: Ian Robertson
Sent: Thursday, 11 February 2021 5:29 PM
To: Tim Hurst <Tim.Hurst@olg.nsw.gov.au>
Subject: WTF, Chinese or Russian hackers have been on your site and changed clause 20

Hello Tim, that would seem to be a more palatable explanation for clause 20 in the statement you signed and made 5 February about that staff abuser, harasser, disrespecter of the Code of Conduct and serial pest, Paul Funnell.

Clause 20 is wrong. There was a previous Code of Conduct complaint which resulted in a censure by the Council of that counsellor and there are subsequent complaints, including one we were involved in where he thought it appropriate to malign the President of depa on the Daily Advertiser's

Facebook page. He's been censured on the one we are involved in and I've understood that's been referred to the OLG for action as well. And this is a bloke who has been banned from the Council Chambers and independently from attending any meetings that are attended by staff. I've seen footage of him ripping into a planner at a Council meeting and ignoring the Mayor calling him to order. How can you seriously be suggesting *"the absence of any prior offending or postevent conduct in the past two years and the lack of previous incidents of misconduct"*?

So we had form prior to the circumstances that you investigated and there are other code of conduct findings and requests live now.

Now that I'm alerted to this I have asked our members to give me a history as best they know it to better inform you.

It would seem to me that because 20 doesn't reflect the true circumstances, it will prejudice your ability to do something serious and deservedly tough as you work your way through the other issues.

Can you please explain?

Ian Robertson
Secretary
depa

Ph: 9712 5255
www.depa.net.au

Ian Robertson

From: Ian Robertson
Sent: Wednesday, 20 May 2020 9:48 AM
To: Tim Hurst; John Davies
Subject: Cllr Paul Funnell
Attachments: Letter and attachment to GM Wagga Wagga 19 May 2020.pdf

Good morning Comrades, I thought I'd give you a heads up so you are forewarned about this bloke, if you've not already been alerted.

I have attached a letter sent yesterday to the GM at Wagga Wagga.

Regards

Ian Robertson
Secretary
depa

Ph: 9712 5255
www.depa.net.au



19 May 2020

Mr Peter Thompson
General Manager
Wagga Wagga City Council

Dear Mr Thompson

Wagga Wagga City Council is an unsafe workplace

The *Work Health and Safety Act 2011* imposes significant obligations on employers to ensure the health and safety of workers and the workplace. There are significant penalties for failing to do so and significant powers for action to be taken against those creating hazardous workplace.

At 8:48pm on Sunday 10 May, Cllr Paul Funnell posted comments on the Facebook page of the Daily Advertiser about your employee, Senior Planner Steven Cook, which were vindictive, offensive, certainly defamatory, inaccurate and damaging to both Mr Cook's reputation and wellbeing. The comments offended and distressed Mr Cook. These comments remained on the site for around 12 hours.

Apart from the terms of abuse posted, the Councillor asserted that Mr Cook *"holds back development investment in the city... It is incompetence and ALP agenda's (sic) such as those like who I have been told is your brother that works at Council and is stifling and running interference for investment in the city"*.

The comments are intended to be intimidatory, to bully and discourage Mr Cook from independently discharging his professional responsibilities.

The comments also offended and distressed Mr Cook's colleagues, who are members of depa (and some have suffered at the hands of Cllr Funnell themselves) and who last week unanimously carried the following resolution:

That depa write to the GM voicing our concerns about the behaviour of Cllr Funnell and requesting that measures be implemented to ensure that Council staff have a safe and hazard-free workplace.

While our members focused on the Council and your obligations to provide a safe and hazard-free workplace, this issue is multifaceted. There are protections available to employees who have been mistreated in the workplace: the *Work Health and Safety Act*, of course, the Council's Code of Conduct, and the *Industrial Relations Act 1996* - where you know we have already sought and obtained remedies in the past for employees treated unreasonably at Wagga Wagga.

There have been other councils where our members have taken industrial action to protect themselves and their wellbeing against attacks like this.

My first communication with you was an email early on the morning of Monday 11 May seeking your urgent action on this clearly unacceptable behaviour by Councillor Funnell. I appreciate your immediate attention to that and your commitment to ensuring safe work for our members in an environment where antagonism to the work they do is rife. I understand that you spoke to the offending Councillor on the Monday morning and he took down the offending posting. But Councillor Funnell is a recidivist and something needs to be done.

Mr Cook lodged a Code of Conduct complaint with you on Monday 11 May which I understand you have already forwarded to a conduct reviewer, and this investigation is already underway, but I stress the importance of this matter being dealt with expeditiously. I am aware that Councillor Funnell has had a finding made against him on a previous Code of Conduct complaint, there may have been other complaints and he clearly has no respect and little concern for the wellbeing of staff. Mr Cook's Code of Conduct complaint lists other incidents - multiple incidents makes this bullying as well. This must change.

A decade ago, a local builder made a range of allegations against our members doing nothing more than properly applying themselves to their legislative obligations to control development. The Council had emerged from a period of inadequate resources and lack of attention to compliance and, as it sometimes happens, builders and developers resent having to comply with standards they had previously ignored. The Council had increased resources and committed itself to properly apply conditions of consent and enforce compliance with those conditions.

We thought the Council tardy in their response to these allegations and filed a dispute with the Industrial Relations Commission under section 130 of *the Industrial Relations Act 1996* on 6 August 2010. On 11 August DP Grayson issued a *Statement and Recommendations*. While the circumstances differ, the principles remain the same and there are aspects of the *Statement and Recommendations* which may in time be relevant for us.

Please note we reserve our rights to take any action to have Cllr Funnell dealt with by you in a way that ensures his unacceptable attacks upon our members cease once and for all.

The most significant aspect of DP Grayson's *Statement and Recommendations* was his observation "*that Council bears various obligations to its employees, including but not limited to the significant obligation of duty of care to protect employees against damage to their personal and professional reputation*". The Commission has a clear jurisdiction to deal with an issue such as the posting by the offending Councillor and you will note from the Statement attached there are a range of recommendations - including seeking apologies and other remedies.

Significantly, the first recommendation made by the Deputy President was "*that the Council obtain legal advice as to whether any employee has been defamed by any person and in particular by the complainant ... and thereafter that the Council take any legal action consistent with that advice.*"

Given the offensive and intimidatory posting, please obtain that legal advice.

You may also be aware that depa members in the Hurst Affair in 2010 took industrial action to ensure that the Council managed this properly. I do not believe this will be necessary with your assiduous nature, but it doesn't hurt to provide a reminder.

Returning to the unanimous resolution of members, I urge that you immediately accept that the statements by the Councillor create an unsafe workplace for our members and you need to take decisive action and make an approach to Safe Work for their intervention and to seek a remedy. Cllr Funnell should be banned from the workplace until these matters are resolved.

Finally, there have been previous attacks upon staff by the Councillor - in Committee meetings, and Council meetings where we have seen him difficult to control by other councillors and the Mayor, and he is clearly resistant to the standards of behaviour expected of his public office, the *Work Health and Safety Act 2011* and your obligations as an employer under the *Industrial Relations Act 1996*.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ian Robertson', with a stylized, flowing script.

Ian Robertson
Secretary

CBO:CAT

IN THE INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES

DEPUTY PRESIDENT GRAYSON

5

WEDNESDAY 11 AUGUST 2010

10 **IRC759/2010 - NOTIFICATION UNDER SECTION 130 BY THE
DEVELOPMENT AND ENVIRONMENTAL PROFESSIONALS
ASSOCIATION OF A DISPUTE WITH WAGGA WAGGA CITY COUNCIL
AND OTHERS**

Re complaint

15 **STATEMENT AND RECOMMENDATIONS**

20 HIS HONOUR: Having had the benefit of private conference with the parties,
and in that way, having had an opportunity to digest and discuss with the
parties the additional material provided, it now seems appropriate, if not
compelling, that the Commission express certain views in relation to this
dispute.

25 I note that the dispute has its origins in a complaint made against officers of
the Council by a person, Mr Hurst, engaged in housing and/or building
construction within the Wagga Wagga Council Municipality.

30 I note, without necessarily reciting the detail, that by letter of 15 June 2010 the
Council, under the hand of its General Manager, wrote to the complainant
rejecting allegations by the complainant, Mr Hurst, that Council employees had
received private benefits associated with their employment. I further note that
despite this response by the General Manager, that the complainant's
"allegations relating to personal gain or conflict of interest associated with
performance are therefore considered to be invalid", has not been reported by
the local media, has not drawn any apology or acknowledgement from the
35 complainant and as such has the potential to actually inflict damage to the
reputation and professional standing of persons, the subject of the complaint.

40 I further note from the material that the internal audit report which is marked
MFI 4 in the proceedings, into the "main allegation" that staff "have
manipulated undetermined development application numbers recorded to
Council for personal gain" and the finding of the internal auditors that, "it does
not appear as if there has been any fraudulent attempt to deceive through
incorrect reporting of development applications".

45 It is of significance in the context of these observations that the General
Manager yesterday wrote to the persons, the subject of complaint by Mr Hurst,
and said this, "These independent audit findings have now placed me in a
position where I can dismiss the Code of Conduct complaint lodged by
Mr Hurst in its entirety and I have now done so." It is, of course, trite to
50 observe, but nonetheless again in the context of these observations, entirely

appropriate, to observe that Council bears various obligations to its employees, including but not limited to the significant obligation of duty of care to protect employees against damage to their personal and professional reputation.

5 In those circumstances I propose to make and now make the following recommendations:

10 1. I recommend that the Council obtain legal advice as to whether any employee has been defamed by any person and in particular by the complainant, Peter Hurst and the Wagga Wagga Daily Advertiser. And in relation to the Daily Advertiser in editorial and journalistic content and the publication of blogs and thereafter that the Council take any legal action consistent with that advice

15 2. I recommend that the General Manger prepare a letter to the complainant, Mr Hurst, expressly rejecting the allegations made by the complainant in relation to personal gain, breaches of the Code of Conduct and alleged attempts to deceive by incorrectly reporting development applications.

20 A draft of this letter should be made available to the notifying Union by not later than 5pm tomorrow, that is, Thursday, 12 August 2010. And the Commission would expect in that regard that there can be agreement reached with the notifying Union on the content and terms of that letter.

25 3. I recommend that the letter be hand delivered to the complainant and that it contain, amongst other things, a request that he apologise to the staff, the subject of his complaints. That is to say, that he tender to those persons an apology in agreed form which is to be published as broadly as the allegations have been published by the complainant and that the complainant indicate
30 genuine remorse and a commitment to develop better interpersonal relationships in the future.

35 5. I recommend that the Council explore the publication of this letter as broadly as possible to local media and, in the absence of proper publication, be the subject of a paid advertisement, in particular in the aforementioned Daily Advertiser.

40 6. I recommend that the Council convene a meeting and extend invitations to the complainant, Mr Hurst, and other critical and/or hostile builders and developers in the City of Wagga Wagga, with a view to acknowledging the factual inaccuracies of the complaint and with a view to developing a positive civil and professional relationship for the future, with the further aim of securing an undertaking from the critics that the media campaign being waged against the Council is at an end.

45 I finally recommend that the Council, without delay, develop and implement a policy around its duty of care to employees and around its need within the employment relationship to protect them against personal and reputational damage in the future.

50 oOo

Ian Robertson

From: Ian Robertson
Sent: Friday, 12 June 2020 10:52 AM
To: Tim Hurst; John Davies
Subject: RE: Cllr Paul Funnell

Good morning Tim and John, I know it's only three weeks, which is not long in dealing with OLG, but are you keeping an eye on this?

I know Tim, that we've had lots of discussions about disciplinary regimes for councillors, the complications of suspension, the three suspensions before you removed entirely and all that, but it would be good if at some stage we could look at suitable mechanisms to take steps to get rid of the serial breachers of the Code of Conduct and the Act and put some dignity into public life in local government politics.

What's happening?

Ian Robertson
Secretary
depa

Ph: 9712 5255
www.depa.net.au

From: Ian Robertson
Sent: Wednesday, 20 May 2020 9:48 AM
To: Tim Hurst <Tim.Hurst@olg.nsw.gov.au>; John Davies <John.Davies@olg.nsw.gov.au>
Subject: Cllr Paul Funnell

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I have attached a letter sent yesterday to the GM at Wagga Wagga.

Regards

Ian Robertson
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