
LOCAL GOVERNMENT GOVERNANCE PANEL

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Our Reference: 589154,591353,591360 (599963) / BL : DB

20 June 2014

CONFIDENTIAL

Re: Report on the Investigation of three Codes of Conduct in relation to Councillor Graham Walkom of Kangaroo Island Council.

This is a report on the investigation undertaken into three separate complaints involving alleged breaches of the Kangaroo Island *Code of Conduct for Elected Members*, adopted by Council October 9, 2013, following the referral of these matters to the Local Government Governance Panel (the "Panel").

The three complaints are dealt with separately and were all conducted by interviews both by phone and in person; by reading emails and by reading documents relating to the events in question. The investigator was Panel member Ms Sue Vardon AO.

The first complaint 589154- the CEO –v- Councillor Walkom.

The complaint was referred to the Panel by Mayor Jayne Bates. The Chief Executive Officer Andrew Boardman made a complaint to her in writing that, at a workshop on Wednesday 5th March, Councillor Walkom commented that he (the CEO) lied in word and print and deliberately ignored or did not enact or did not advocate Council resolutions. The meeting was a second workshop to discuss where improvements could be implemented to further benefit the Council and the Community. Council members had been asked to raise issues prior to the meeting and then to look at ways that Council could improve.

Mr Boardman made other claims that Councillor Walkom had suggested that the Mayor and he were colluding in a manner to undermine the resolutions of Council and that the claims were unsubstantiated. He also stated that John Coombe, the Chair of the Workshop had informed Cr Walkom that the allegations were serious and required evidence to be produced for investigation or an apology should be provided.

Mr Boardman also referred to the fact that he understood further derogatory comments had been made about him after he had left the meeting. He had left early because of the comments made about him personally. Mr Boardman referred to a history of Councillor Walkom having had conditions placed upon him to modify his interactions with the CEO and in his view, the fact that there had been no change in Councillor Walkom's behaviour, constituted bullying behavior and was affecting his well being. Mr Boardman believed that there had been a breach of Part 2 of the Code of Conduct for Council Members, specifically:

"Council members must:

General Behaviour

- 2.2. *Act in a way that generates community trust and confidence in the Council*
- 2.3 *Act in a reasonable, just, respectful and non-discriminatory way when dealing with people*
- 2.4 *Show respect for other is making comments publically*

Relationship with Council staff

- 2.11 *Not to bully or harass Council staff."*

The Investigation.

Mayor Jayne Bates in an interview with the investigator Ms Sue Vardon, confirmed that there had been a workshop and that Councillor Walkom had made the comments as described. The Mayor also said that Councillor Walkom had been critical of herself and Mr Boardman for a long time.

The notes of the meeting include the words at page 3 *"It was suggested by Cr Walkom the Mayor and CEO are not acting or enforcing decisions of Council. There was a suggestion the Mayor and CEO were operating outside of their responsibilities and that the CEO was not being truthful in discharging his duties. Cr Walkom to provide examples and if he cannot he agreed to apologize to the Mayor and CEO. If the accusations can be substantiated the Mayor and CEO to apologize. (The CEO left the meeting at this stage)."*

Other Councillors (Davis, Denholm, Wilson) confirmed also that the commentary in Mr Boardman's written complaint was a fair reflection of the circumstances. They confirmed that Councillor Walkom continued to make derogatory comments after the CEO had left the workshop. Councillor Liu in interview was surprised that there was a Code of Conduct complaint. He said the meeting was "a time for airing an issue." He commented that Councillor Walkom has a strong personality and can be seen as having an intimidating personality. He agreed there had been criticism of the CEO.

Mr Boardman was interviewed and strongly denied that he behaved in the way Councillor Walkom described. This was his first appointment as CEO and there were issues that were challenging about managing a Council with expensive responsibilities and a low rating base. He described the Council as mainly united and he had a professional relationship with the Mayor. He believed strongly that they were both implementing the decisions of Council. He spoke of a deteriorating relationship with Councillor Walkom over three and a half years to the extent that it had become so unconstructive that the Mayor had made arrangements which prevented Councillor Walkom having direct contact with him.

Mr Boardman had been reluctant to attend the workshop because of the history of criticism from Councillor Walkom. He spoke also of the "flood" of emails from Councillor Walkom many of which were highly detailed and operational requests for information. Answering these took up a lot of time and deflected the Council staff from getting on with other business. Mr Boardman said there was a proper forum for raising concerns about his performance and this was the CEO performance review committee. Mr Boardman believed that any trust issues about the Council in the community were fuelled by negative commentary from Councillor Walkom in the Letters to the Editor of the local paper; negative comments to members of Parliament and through the social media site, Klpolis.

In his interview, Councillor Walkom raised many concerns about the Council – financial management, strategic capacity, and the tension within the Council itself. When asked about his view of the complaint, he acknowledged that his concerns were of long standing and relationships with the CEO had deteriorated. He was at pains to state he would like the conflict as he sees it, to be resolved and had made a recommendation to find a circuit breaker through a process known as "Burying the Hatchet". Council had not proceeded with

this idea, choosing instead to use the forums with John Coombe as a chance to put things on the table and air issues so that Council could move forward. Councillor Walkom stressed that he has a robust turn of phrase and had clarified at the workshop what he meant by lying. He had other concerns about what he saw as the inexperience of the Chief Executive and he believed he could find examples to prove his allegations made at the workshop.

Councillor Walkom understood that there was a process of raising matters of concern about the CEO's performance but he was not confident in its membership.

It is not the Panel's role to comment on the business issues of Council. This is a report about the behavior of a Councillor. This Code of Conduct complaint related to the behaviour of Councillor Walkom to the Chief Executive Officer of a Council to which he had been elected and for which there were expectations that points would be made in a respectful way. The Code of Conduct clearly expects such behavior.

Council has a formal and regular review of the CEO's performance and it is appropriate that issues of performance are raised in this place. The CEO is entitled to be respected in private and public forums and in meetings of Council.

Findings

The Panel considered the Code of Conduct alleged breaches. Two of the clauses of the Code to which Mr Broadman referred, relate to the community and the public. Mr Boardman's written complaint mostly dealt with behaviour at a workshop although he expressed frustration as his dealings with Councillor Walkom over time. We have focused on the workshop for this investigation. There was a decision to be made if this specific workshop would reflect negatively in the community or public domains. The investigator considers that this was a closed meeting and this was later confirmed by the Mayor and Chief Executive by email.

2.2 Act in a way that generates community trust and confidence in the Council.

This was not a public meeting and therefore this section does not apply so no breach is found.

2.3 Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.

We find a breach occurred because Councillor Walkom's comments about the CEO were not respectful and because they were not elaborated as explained in the meeting notes and expected as follow up action, not reasonable or just.

2.4 Show respect for others if making comments publicly.

This was not a public meeting and therefore this section does not apply so no breach is found.

There was comment that the meeting was taped and this tape may have been available to the public. There was no evidence presented to the investigator that such a tape existed.

2.11. Not to bully or harass Council staff

There is a certain robustness in Council debate and at a "closed" workshop to identify ways to improve council performance one might expect honest commentary. Even though Councillor Walkom believed he was operating in the spirit of trying to improve Council performance, he went too far with his personal comments. We find the breach occurred and his behaviour harassed the Chief Executive.

Despite Councillor Walkom's arguments of justification, it is not appropriate to accuse the CEO as he did without foundation and not follow through with examples to confirm his allegations. Councillor Walkom has a list of examples in his mind but there has been no follow through from the meeting. There is a proper process for commenting on the CEO performance and this would be a more appropriate and respectful place to raise concerns.

Recommendations

It is a matter for Council to consider what action if any it wishes to take however the panel recommends that Council:

- note this report at a formal meeting of Council
- notes that having investigated the alleged breach of the Code of Conduct for Elected Council Members, the Local Government Governance Panel finds that two breaches of the Code have occurred
- requires that Councillor Walkom apologise to the CEO in writing.

The Second Complaint 591353 Council –v- Councillor Walkom

The second complaint was referred to the LGGP on April 9th 2014. At the April 2014 Council meeting, the Council considered a report from the Ombudsman in regards to Councillor Walkom. The report was dated 26th March, 2014. This report referred in part to an email sent to the CEO from Councillor Walkom on 3 October 2013 and gave the opinion that:

"26. I consider on the face of the evidence presented to me, that the email sent to the CEO by Cr Walkom on 3 October 2013 is likely to be in breach of clause 2.11 of the Code. My view is that this particular email was intended to harass and belittle the recipient.

27. Clause 2.18 of the Code provides that complaints about behaviour alleged to have breached Part 2 should be brought to the attention of the council. Clause 2.19 of the Code provides that the complaint maybe investigated and resolved in any manner that the council deems appropriate. Accordingly, I consider that the Parliament intended for alleged breaches of Part 2 of the Code to be handled and resolved by the council.

28. In this instance, I propose that the matter be considered by the council as a possible breach of Part 2 of the Code.

The Council resolved to refer the matter to the Local Government Governance Panel as a violation of the Code of Conduct Part 2:

"Council Members must:

Relationship with Council staff

Section 2.11. Not to bully or harass Council staff.

The investigation.

Council had been holding negotiations with REX Airlines about improvement to the airport facilities on Kangaroo Island. There was some possibility that State and Federal funding might be forthcoming. The Mayor, Deputy Mayor and CEO representing Council and two other business representatives attended a meeting with REX to discuss this. The Mayor reported to Council that there had been a request that the membership of the meeting be restricted. The approved list did not include Councillor Walkom.

Councillor Walkom believed that he should have been represented at the meeting as well as he had been at a previous one. He had asked the CEO for details of the meeting as he wished to attend. The CEO advised who were the representatives and that there would be a report to Council after the meeting. He also advised that Council had been informed of the

meeting at an informal gathering. It was not a practice to take notes at these informal meetings, rather they were to keep Council informed of the coming events.

Councillor Walkom was not happy with this decision and he attended the REX meeting anyway.

Councillor Walkom was angered he says, by being excluded so he wrote a note of protest to the CEO on 3 October 2013.

"Subject REX meeting

IN CONFIDENCE – not for further distribution or discussion.

You are making it up as you go andy – no notes from an informal is the cop-out of an incompetent – and not the decision/practice of an experienced CEO such as John Coombes who frankly is disgusted at the idea and ongoing practice.

Do not think that your lecturous disposition cuts any ice with me andy – big mistake! If you think I am a fool you might think again. When I asked clear and simple questions about the coming meeting with REX your response was evasive and dishonest – twice! For stuff's sake you are the leader – not Bates, but then you have always used her as an excuse I hope you are not saying that the week forward was discussed and decisions made at an informal.

If council is to make a decision it needs to be put to council. Do you understand what Council is? I know that Bates does not.

I don't think you have read or understand what a spokesperson for a council can do or say if council has not made a decision on the matter – we do have clear legal opinion on this already. So all the mayor's waffle at the REX meet is irrelevant supposition, because there is no decision backing it, and likewise the many other meetings putting 'council's position' when council does not have one and she attends before council makes a decision. How many times do you as CEO clarify to others that council does not yet have a position – never that I have noticed.

Council has not agreed to any airport position apart from the representation visit to see Albo last year to discuss fund possibilities/options – THAT was a decision of council – a resolution made! It's just that the outcome was seriously embarrassing for council and state as discussed by government members. Council does not have any decision to fraternize with KIFA either.

How many situations are there where the mayor must make a decision between council meetings on behalf of council? There have been none reported to council that I am aware of. Obviously they should be and council's specific endorsement obtained. But then in a disorganized outfit there may be many, or the rules and protocol simply ignored. Don't suggest that the mayor's diary crap report is reporting such decisions – it is not!

Your answers this week to my questions regarding the airport are pathetic and embarrassing. I will however give serious thought to including them in my submission to Jamie Briggs regarding the airport upgrade. It will no doubt underscore the unprofessional attitude and capabilities of this council.

I will be commenting fully and frankly on any discrepancies in what is reported to council following the REX meet. Just because you treat REX and Sealink as crap, do you think that state govt executives and ministers do the same? They do not. You, Bates and council are regarded as an embarrassment in an increasing number of decision makers.

However, if you ever decide to be inclusive of your council and councillors please let me know – I will not continue to make the approaches to you on that matter.

*Thanks
Graham"*

Mr Boardman wrote an email that night to the Mayor advising that he would be making a formal complaint about Councillor Walkom and advised that he would not be engaging with

him until there was a resolution (of this unacceptable behavior). He objected strongly to being treated by Councillor Walkom with abuse and insinuations.

Councillor Walkom's offending email was on the end of a string of other emails about the REX meeting. An objective reading of the preceding emails from Councillor Walkom to the CEO and from the CEO to Councillor Walkom, would find their tone reasonable. The CEO was reporting on his understanding of the situation as it stood in relation to REX and the meetings. Councillor Walkom was seeking information about a meeting concerning a matter in which he had a lot of interest and in his view, significant expertise. Councillor Walkom then believing he should have been included on the delegation but was not, reacted very strongly.

Councillor Walkom clearly had a different understanding of what should be happening from that of the Mayor and the CEO.

There are many sections in his email to the CEO which are inappropriate both in tone and language. The words "cop out of an incompetent", "lecturous (sic) disposition", "evasive and dishonest", "I don't think you have read or understand what a spokesperson for a council can do", "Your answers.....are pathetic and embarrassing", "...you treat REX and Sealink as crap" are not language and phrases expected of a Councillor writing to a CEO. The email is disrespectful to the Mayor as well.

There are many ways to express dissatisfaction about something and a reasonable person would write their concerns politely and if required, firmly. Councillor Walkom admits to having a robust turn of phrase and if he gets fobbed off he can get aggressive. He believed in this case he was being fobbed off. However his email was inappropriate, disrespectful and insulting.

The Ombudsman's view of this email was that it was intended to harass and belittle the recipient. He also stated "the assertion that the communication is somehow immune from scrutiny and accountability, because it is marked IN CONFIDENCE by the author, is wrong. It is not relevant that the email was intended for the CEO's eyes only. It is relevant to consider what the email says and how appropriate it is for a council member to send that communication to the CEO". The Panel agrees.

Findings.

The investigator finds that this email was insulting and intended to harass the recipient viz the CEO and that it was not protected because it was marked IN CONFIDENCE. It went beyond robust in its tone and language and impacted upon the wellbeing of the CEO. The panel finds that it constitutes a breach of Part 2 of the Code of Conduct, clause 2.11 "not to bully or harass Council staff".

Recommendation

It is a matter for Council to consider what action, if any, it wishes to take however the Panel recommends that Council:

- notes this report at a formal meeting of Council;
- notes that having investigated the alleged breach of the Code of Conduct for Elected Council Member, the Local Government Governance Panel finds that a breach of the Code has occurred;
- passes a censure motion in respect of the Councillor Walkom
- requires Councillor Walkom to apologise to the CEO for his behaviour. The apology to be made at a Council meeting as a Personal Explanation in accordance with the LG Procedures at Meetings Regulation 15 (3) and in writing.

The third complaint 591360 Council –v- Cr Walkom

At the Kangaroo Island Council meeting on April 9th 2014 it was resolved at part 2 of a resolution concerning Councillor Walkom “the Council refers the inappropriate commentary by Councillor Walkom in regards to the CEO in the posting “Misleading CEO Report against Councillor’ to the LGGP as a breach of Section 2.2, 2.4. and 2.11 of the Elected member Code of Conduct.” The complaint was referred by the Mayor on April 9th 2014 to the Local Government Governance Panel for investigation.

“Section 2

Council Members must:

General Behaviour

2.2 *Act in a way that generates community trust and confidence in the Council*

2.4 *Show respect for others if making comments publicly*

Relationship with Council Staff

2.11 *Not to bully or harass Council staff.*

A previous Code of Conduct investigation into Councillor Walkom had recommended to Council a set of actions as a result of Councillor Walkom having sent “an email which was offensive in character and disrespectful towards Mr May and a group of residents of Kangaroo Island”. In accepting the recommendations, Council had added an additional directive “That all postings on all social media relevant to the offence be removed and replaced by a public apology”.

The Chief Executive wrote a report to Council for the meeting on 9th April outlining the follow up actions from these recommendations which in part claimed that Councillor Walkom had not met the requirements of the resolution of Council within the time frame required.

As he had indicated that he would not be at the next Council meeting, the Mayor emailed the report to Councillor Walkom for comment. He replied on March 30th with a commentary some of which was considered by the Mayor to be derogatory of the CEO and not relevant to the item on the agenda. This reply was circulated in full to the other Councillors but was to be edited for the council papers. Councillor Walkom objected and advised that if there was to be editing then he withdrew his response. He went on to state that if the CEO’s report as it stood were tabled, he would publish a clarification. He posted a copy of his reply to the Mayor along with other commentary on Kipolis 4.4.2014. This was five days before the Council meeting was to be held and preempted any response to his concerns, by the CEO.

The published letter included all the material viewed as derogatory comment by the Mayor and others and which had led to the decision to edit the original reply before circulating it for the Council agenda.

The CEO had the facts of his report reviewed after receiving Councillor Walkom’s comments and after reading the posting on Kipolis. An addendum was added and two documents to be considered together were presented to Council. To the best of his abilities and with another person checking facts, he believed that his total report was correct.

The published letter in Kipolis included the phrases:

- “Mr Boardman submits such a profligate and misleading report to council; in that it contains several serious effort of fact.....”
- “In my view, it has always been apparent that Mr Boardman does not understand just what is contributing to this increasing deficit and accordingly has made quite ineffective efforts towards this problem”. (not relevant)

- “misrepresentations made by him in this report”
- “Mr Boardman’s references to me..... both ludicrous and extremely hypocritical, when considering the number of resolutions of this council he as the CEO of this council either not implemented or not complied with-some for more than two years”

Councillor Walkom had had concerns about the CEO’s original report. His full response may well have been tabled on the agenda if it had not included offensive remarks about the CEO. It was appropriate for the Mayor to insist upon the editing.

As an example of what he considered of concern, Councillor Walkom cited that the CEO mentioned that “Cr Walkom has had his social website posting of 22 September 2013 removed” and “Cr Walkom has not replaced his social website posting of 22 September 2013 with a public apology”. Councillor Walkom believed that posting had remained up the whole time because the webmaster had refused his request to remove it. The addendum report responded to this concern by including the statement that in fact the webpost was locatable on the Klpolis.net website but still maintained that it could not be located for the period 17 March through 24th March 2014. The facts of this are in dispute but nothing indicates justification for the accusations of Councillor Walkom to the credibility of the CEO’s report.

It is surprising that Councillor Walkom would go public on a council report five days before it had been discussed. He preempted any Council discussion on the matter or any response the CEO may have made by way of addendum.

Findings

2.2 Act in a way that generates Community trust and confidence in the Council.

The posting in Klpolis 4.4.2014 was not only critical of the CEO but contained general commentary on Council finances. It is not uncommon for Elected Members to use social media outlets for their views. There is a point at which they exceed a reasonable position. By criticizing the most senior manager of the Council accusing him of lack of financial knowledge and alleging that resolutions of council are not implemented or complied with – for more than two years (without justification) constitutes in our view, acting in a way which does not generate trust and confidence in the Council.

We find a breach occurred.

2.4 Show respect for others if making comments publicly

By posting his letter to the Mayor which included derogatory remarks about the CEO, Councillor Walkom was disrespectful of Mr Boardman. The phrases he used were inappropriate and humiliating. We find a breach occurred.

2.11 Not to bully or harass Council staff.

The inappropriate comments about the CEO were intended in our view to harass him and we find a breach of the Code of Conduct.

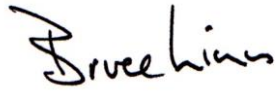
Recommendations.

It is a matter for Council to consider what action, if any, it wishes to take however the panel recommends that Council:

- notes this report at a formal meeting of Council;
- notes that having investigated the alleged breaches of the Code of Conduct for Elected Council Members, the Local Government Governance Panel finds that breaches of the Code have occurred;

- passes a censure motion in respect to Councillor Walkom;
- requires Councillor Walkom to apologise to the CEO at a Council meeting as a Personal Explanation in accordance with the LGA Procedures at Meetings Regulation 15 (3) and in writing.

This report concludes the investigation of the complaint by the Local Government Governance Panel.



Mr Bruce Linn
Acting Chairperson



Ms Sue Vardon AO
Panel Member