

EUROBODALLA SHIRE COUNCIL

PUBLIC FORUM

All members of the community who have registered have been advised that they have a **maximum of seven minutes** to put their case.

Ordinary Meeting of Council on **10 December 2019**

Name	Subject/Comments
Public Forum – 9.30am	
Louise Webb	NOM19/009 Improved Impound Facilities.
Peter Cormick	NOM19/009 Improved Impound Facilities.
Donald Macdonald	NOM19/010 RE-INSTATEMENT OF SPECIALIST CONTINENCE NURSING POSITION IN EUROBODALLA SHIRE NOM19/014 ONE HOSPITAL
Allan Rees	NOM19/012 Hazard Reduction burning
Kathryn Maxwell	NOM19/012 Hazard Reduction burning
Trish Hellier	NOM19/012 Hazard Reduction burning
Lei Parker	CCS19/069 CODE OF CONDUCT COMPLAINTS STATISTICS REPORT
Brett Stevenson	CCS19/070 New Risk Management and Internal Audit Framework (OLG) Terms of Reference

LOUISE WEBB

COMMENTS IN SUPPORT OF NOM19/009

COUNCIL MEETING 10 DECEMBER 2019

I am here today to speak in support of Councillor Pat McGinlay's motion regarding the Eurobodalla pound.

I am a volunteer with the local branch of RSPCA NSW, but I am speaking as an individual, and putting forward views based on my observations as an RSPCA member.

I don't know how many of you councillors have been to the pound recently; it's very basic. It is cold, prison-like, and quite depressing. Yet the animals housed there are, on the whole, just family pets who, through no fault of their own, have found themselves homeless.

Since the beginning of this year, the local RSPCA Branch has taken 15 animals from the pound, and 10 others went to the RSPCA's Yagoona Shelter. These dogs and cats have all been adopted, which shows that animals in the pound are generally perfectly rehomingable.

In that regard, I would like to stress that the rangers do a great job in rehoming suitable animals. They are, however, hampered by the unwelcoming nature of the pound. The driveway and parking area are dirt, and there is nowhere for potential adopters to meet animals away from the noise and stress of the kennels.

Think about the great public facilities we have here in Eurobodalla. The parks, children's playgrounds, walkways and cycleways, boat ramps and wharves, drinking fountains, seating with ocean views, gas barbecues, community halls, tennis courts and more. We are well catered for. I believe it's time to do better for the animals in care at the pound.

I recently visited Shoalhaven Council's pound. It can accommodate 24 cats and 22 dogs, and some 600 animals have been rehomed from there since last year. There is a fully equipped laundry and food preparation area, medical treatment room, a bright, welcoming office, lots of space

for dogs in several enclosures, comfortable kennels with trampoline beds and blankets, a fully enclosed cattery and a large, separate, fenced grass area where people can interact quietly with animals they are thinking of adopting. It's an impressive complex which is achieving great results.

I am not suggesting Eurobodalla should aim for a facility like that. However, it does highlight some improvements we could make to give a little more comfort to impounded animals, lift rehoming rates, and lower the stress levels for all, including the rangers.

A paved driveway and parking area are a fairly basic provision which would make visitors feel more welcome. The present dusty, back-roads look implies that the pound is not somewhere where the public is expected or even wanted. The sterile nature of the external security fencing could possibly be helped by some painting, or murals along the lines of what has been done with other public buildings in the shire.

An extended exercise yard, ideally separated into two or more different enclosures, would give dogs more space and help relieve the stress of spending long hours each day locked up. Some portable kennels and child cubbyhouses that dogs could go into and out of would add some interest to the sterility of a bare yard.

I understand that there is permanent space for only four cats at the pound. This is not enough to cater for the explosion of the stray cat population every spring. Limited numbers of traps available from the Council and limited accommodation facilities at the pound mean that people turn to animal welfare organisations to catch and look after mother cats and their kittens that are living in drains, under houses and other unsuitable places. While the adults may be feral (and they are not always), international experience has shown that kittens born to feral mothers can often grow to make lovely pets, provided they receive human contact early enough.

The other important aspect of this is that control of the feral cat population everywhere, and particularly in this shire, interspersed as it is with national parks, is a vital part of wildlife protection. This council is to

be congratulated for its introduction of cat bibs, in order to reduce predation of native wildlife by cats.

I know that the Council is also applying for a grant from the NSW Government specifically address the issue of cat predation on Eurobodalla's threatened fauna. I suggest that an expansion of and improvements to the cat facilities at the pound could help in this regard.

There is always competition for funds at any level of government. It all comes down to priorities, to the priorities of the electorate and the community. It is my strong belief that our community would support, indeed welcome, improvements to our local pound along the lines I have suggested. I believe they would accept them as reflecting community standards and the distance we have travelled over the last ten to fifteen years in how we view and interact with animals.

This shire, with its large proportion of retired people, is home to thousands of domestic animals. We are fortunate to have access for our dogs to some beautiful beaches and walking areas, as well as the well-used dog park in Narooma.

It's time we cared better for those animals whose life is less blessed, who find themselves staring at possible death, because somehow they ended up impounded. Allocating resources to make them more comfortable and less stressed while they are in our care, and to assist in increasing our rehoming rates I see as a win-win, for the animals and for the shire.

Thank you for the opportunity to speak to you, and I hope you will give serious consideration to my comments.

I have brought a few photos of parts of the Shoalhaven Animal Shelter to show councillors for their information.

PUBLIC FORUM – 10 DECEMBER 2019. PETER CORMICK

AGENDA ITEM NOM19/009: IMPROVED IMPOUNDMENT FACILITIES

1. Councillor McGinlay's proposed motion, in which he seeks improvements to the animal pound, is clearly one that deserves unanimous support.
2. Those of us who have, and have had, the pleasure and privilege of sharing life with our four-legged friends will, surely, support this motion - with enthusiasm.
3. Having visited the pound earlier this year, to rescue a new little friend, Rusty, my wife and I can attest to the pound's harsh, prison-like structure. Animals already in a very distressed state are subjected to the frightening sounds of banging metal gates and placed in sparse, concrete cells, with the very small and vulnerable in cells next to the very large and intimidating detainees. It is a hell for all of them.
4. This description of the pound should in no way be taken as a criticism of the work that the rangers do. Our own experience of them is that they are dedicated to caring for the animals to the extent that the facilities and resources allow them.
5. I ask you to imagine your own pet placed in such an environment and then decide whether the current pound should be allowed to stay as it is.
6. Of course, it's all about money. But it is also about priorities. I have no doubt that the money can be found, from Council's very large investment fund, if there is the will to do so.
7. The motion seeks straightforward, positive action from you to agree, at the next budget review, to allocate sufficient funds to conduct a detailed inspection of the pound. This would allow assessment of its suitability as measured against community expectations and current best practice, and action upon those findings, with the improvements set out in part 2 of the motion, including an extended dog exercise area, construction of a separate, enclosed cattery and the construction of a separate office and visitors' area.
8. The background to the motion provides you with enough information and commentary to be persuaded to support the motion. That information and commentary includes the following:
 - "The facility run by Eurobodalla Shire Council, while meeting basic legal requirements, by its existence, is nevertheless old and due for replacement in the near future and is arguably not fit for purpose nor community expectations for the humane treatment or conditions of temporary captivity and accommodation of animals awaiting collection or re-homing."

- "... we have a duty to them that goes beyond legalities, and is based on what our society considers to be appropriate treatment for companion animals."
 - "It may be that rehoming suitable animals can be further improved through changes such as a revamped impound facility, which better caters for animals' needs, and provides a more welcoming space for visiting members of the public."
 - "It would be much more humane to house the cats in a fully enclosed structure, further away from the dogs. This would greatly assist in identifying cats which are rehomingable, by lowering their stress levels."
 - "Many of the dogs in the pound are larger breeds, yet the exercise area in our current facility is tiny."
 - "We also need a place where people can safely interact with animals they are thinking of adopting."
9. Finally, I ask you to please vote with your own animal companion in mind. And if you do not have one, please try to imagine how these vulnerable, distressed animals suffer in their confinement and how we can and should reduce that suffering to the full extent possible.

Eurobodalla Local Government Committee

Donald Macdonald

0428 313 500, nsw.labor.eurobodalla.lgc@gmail.com

NOM19/010, NOM19/014

Presented on behalf of Eurobodalla Labor Local government Committee and all residents of the Eurobodalla Shire who support these motions put forward by Councillor McGinlay and for the attention of all councillors of the Eurobodalla Shire.

- We support Cr McGinlay's motion that the Council write to the Southern NSW Local Health District (SNSWLHD), requesting that a Continence Nurse is employed in this Shire as a matter of urgency.
- It is concerning that alone of all the Shires in the SNSWLHD, we have no continence nurse.
- The statistics Cr McGinlay uses in support of his motion clearly shows that a continence nurse is required to support residents of all ages in this Shire. We note that the figures provided show that incontinence is a concern for a substantial proportion of the residents of this Shire, and so is an issue which the Council needs to address.
- The lack of a continence nurse has real implications for our local economy:
 - o It can affect the employment choices of working age people, who can find their work choices are limited because they have continence problems.
 - o Older people with incontinence are often forced to use expensive services such as nursing homes or hostels if their continence issues are not treated. Most older people would much prefer to stay at home, which is also a much less expensive option than hostel or nursing home care.
 - o Children who are experiencing continence issues can find it difficult to take full advantage of their education, which affects their employment prospects in later life.
- The Council can support the many residents of this Shire affected by incontinence by doing all it can ensure that Eurobodalla has a well-funded and supported Continence Nurse, and Cr McGinlay's proposal that the Council lobby our State and Commonwealth MPs as well as the Health District is a very positive step which we support.
- We support Cr McGinlay's motion that the Council reaffirm its commitment to the development of a single, high quality hospital facility, centrally located in our shire.
- This is an issue which has a real impact in this shire. Eurobodalla is still growing rapidly, and our hospital facilities are not keeping up with this growth. This has been a concern for many years, and residents warmly welcomed the announcement by Andrew Constance in 2118 that a level 4 hospital be built in the Shire. Despite some funds being made available by the State

Government, there have been few public announcements since and no mention of Federal Government funding.

- We share both Dr Holland's and Cr McGinlay's dismay that there appears to have been no practical action from the Council to ensure that this vital facility is made available to residents as quickly as possible.
- Another point which dismays us is no mention has been made of a timeline for the construction of this hospital. Many of our older and ill residents would like to know how much longer they have to travel long distances and have to put up with all the inconveniences associated with the present situation. A timeline is imperative.
- There needs to be real consultation with the Community about the location of the hospital, and so it is important that the Council releases information about proposed sites for this facility.
- Alongside the hospital, we need to know what services will be available in the community to support the in-patient services provided by the Hospital. We need the Council to be advocating with the State and Commonwealth Governments to ensure that we have the out-patient services which are needed to complement the services provided by the hospital.
- We need a regional hospital that is not partially a level 4 hospital. It will not be good enough for the hospital to be providing only one or two services at level 4, with a promise for more level 4 services at a later date. This Shire needs a regional hospital that provides a full range of level 4 services as soon as it is operational.
- We also need to know what will be provided at the regional hospital. Services for people who are experiencing Mental health issues, are not well provided for at present. This is only one gap in health services in this Shire. We need the Council to work with the health professionals, people who use the health services and the wider community, to ensure that the regional hospital provides the range of services the Eurobodalla Shire needs. The Council is the most appropriate body to advocate on the residents' behalf to make sure these services are provided by the State and Commonwealth Governments.
- Big projects like these can be used to benefit political interests. This project is too important to Shire residents for this to happen with our regional hospital. We hope that Councillors are able to resist pressure from such interests, so that there are no delays, and we have a hospital and related services that meet the needs of Eurobodalla residents, and those who visit this wonderful part of Australia.

Yours sincerely,
Donald MacDonald
Eurobodalla Labor Local Government Committee

NOM19/012

350 Eurobodalla welcomes Cr Pollock's Notice of Motion on hazard reduction burning as it gives an opportunity for the shire to consider this year's extreme and unprecedented bushfire season.

350 Eurobodalla is dismayed by the loss of life, the destruction of homes and the burning of 2 million hectares of forest. Six people have died so far, over 600 homes have been burnt and there are countless wallabies, koalas, birds and reptiles which have died in these fires, or lost their homes.

We are only in the second week of summer and by Sunday morning there were 96 bush and grass fires burning in NSW. NSW had a week long state wide bushfire emergency while still in spring.

Extreme fire has only reached the edge of Eurobodalla so far but north of us there are immense fires which have not been contained.

There will have to be a thorough examination of the new level of fire that looks at all factors in preparation for fires, fire fighting and planning to make homes and communities fire resistant.

The inquiry would call on current and former fire and emergency leaders, fire scientists, planning experts and the public.

There is a lot more happening with the emergency level of fires than considering the effectiveness of current hazard reduction burns.

The long drought has been made worse by climate change, drying out the bush and making wet gullies and rainforest vulnerable to fire.

There is a shorter period when it is safe to burn off.

Now the bushfire season in California and eastern Australia overlaps making it harder to share planes, helicopters and fire fighters. Can we get adequate fire fighting resources from Australia alone?

Is there adequate fire fighting staff and resources for RFS, Forestry and National Parks?

An inquiry should look at planning of new and existing residential and other developments

Children, the elderly and people with asthma are suffering with long periods of dangerous levels of bushfire smoke. We need resources to protect people from adverse health consequences.

The former fire and emergency chiefs, some with fifty years experience fighting bushfires, warn us that climate change is making the fires more intense with longer fire seasons.

They want action to increase Australia's bushfire fighting resources and they want action on climate change to reduce emissions. Australia must do its part.

Cr Pollock's motion raises the issue of preparing for bushfires, but does not go far enough. There should be an inquiry into all aspects of preparation, fire fighting and keeping people healthy.

Bushfire Risk to the Eurobodalla

Kathryn Maxwell

Ratepayer

Well, well, well. What else would we expect from the conservative block of 7 Councillors. Do everything you can to undermine the Rural Fire Service by allowing development in high fire risk areas and then try to shift the blame off the Council to the State Government and Rural Fire Service.

You have spend the last 3 years ignoring the community's pleas to change your approach that all development is good development, to take account of the rapidly changing climate, and restrict development to the town centres. This would make it much easier for the Rural Fire Service to protect life and property in a hotter and drier climate.

Now you want to shift the blame and responsibility fully onto the State Government claiming they have not done enough back burning. Once again you have conveniently ignored the facts:

- National Parks have a regular regime of hazard reduction burns for Parks in our area?
- Last year, National Parks actually conducted more hazard reduction burns than had been allotted to them due to suitable conditions?
- There is a narrow window in which to conduct hazard reduction burns (and getting narrower) where they can be controlled. If conditions are not conducive, burns do not achieve required outcomes or have to be postponed - **we cannot control the weather?**
- In National Parks, if an harzard reduction burn is ineffective or fails to take place due to conditions, it is done the following year if conditions allow. **There is no waiting for**

another ‘so many years’(contrary to Councillor Pollock’s assertion)?

- Hazard reduction burns can actually *enhance* the bush fire risk as it encourages new thicker growth? Areas burnt on our property in the 2002 bushfires resulted in growth of thick stands of green wattle which are highly combustible. * Private property owners who wish to conduct HR burns on their property can do so on their own with appropriate consultations, or they can ask their local RFS brigade or Fire Control in town, and it will be arranged? In short, **you can’t “achieve a more efficient process for Government and private property owners,” or “more frequent and regular hazard reduction burning in the State Forests and National Parks,” if conditions do not allow it.** And, as stated above, private property owners can do hazard reduction burns, after consultation, at any time when conditions are appropriate. And as for, **“a commitment of resources by the NSW Government to ensure that required hazard reduction burns can be undertaken as and when required,”** is just ridiculous.
- **Resources can and are committed to hazard reduction burns, but conditions may not allow them to take place at that particular time. “The spread and intensity of recent fires are testimony to the need for change.”** Yes it is. The need to admit there is a Climate Emergency. The need to act to counter what we are contributing to. **If Councillor Pollock and his mates wants to live in a wasteland, then his motion would go far in achieving such an outcome. It certainly wouldn’t result in the preservation of our “bush and native wildlife,” let alone human health and survival.**
- Burning more, and more often does not solve the problem, it exacerbates it!

- What The Council needs to do immediately:
 - Get the Council's bushfire maps updated
 - Set up bushfire refuges with air conditioners in every town, like the Bega Shire is currently doing
 - Amend the Local Environment Plan to restrict future development to the existing town centres.
 - Donate \$330,000 immediately to the Rural Fire Service operations in the Eurobodalla – the amount you recently spent on tourism advertising.
 - Extend the hours of operation of the Library so people can seek refuge from the heat and smoke.
 - Extend the hours of the pools so people can keep cool in to the evenings and open the pool 7 days a week.

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Good Morning Mayor, Councilors, General Manager, Staff and Gallery my name is Patricia Hellier from North Batemans Bay I would like to speak on item No NOM19/012 Bushfire Fuel Reduction Protocols.

I am here today to support this item given we have been impacted three folds on this current bushfire situation. We have one daughter who owns a house in Lake Tabourie, another daughter who owns a house at Maloney's Beach and our home borders onto Benandarah State Forest. In the 20 years that we have lived in our home to my knowledge we have never had back burning in the Benandarah State Forest. I thank Clr. Rob Pollock for bring forward this motion.

In preparing for the current situation we found that our two fire pumps were not working and we were lucky enough to purchase the last fire pump from on of the business in Batemans Bay, we soon found there was a limited amount of garden hoses and face masks etc. whilst this area of business may have somewhat benefited a number of other businesses are currently suffering and the current lack of access to the shire I believe would be unprecedented.

I would like to refer to part of a letter printed in the Bay Post Friday 6th December "Ill-informed regimes" from Robert Evans who had worked in the Forestry Commission for some 43 years and helped do 260,000 hectares of documented hazard reduction burns in that time.

Robert stated -" The rot set in back in 1974 when the NSW Government passed the National Parks & Wildlife Act to supposedly protect the native wildlife and natural environment – frightfully unrealistic fire regimes were introduced that prevent land managers from doing adequate hazard reduction burns, in 2014 Forestry, on the South Coast, through a Corporate Directive adopted those destructive fire regimes".

I will also refer to a publication in the Sydney Morning Herald 9th December headed "Prescribed burning 'key to controlling fires' by Vic Jurskis, a fellow of the Institute of Foresters of Australia, the body representing more than 1200 forestry professionals, says Australians are being told that "fires are uncontrollable in extreme weather and there's nothing we can possibly do". Viv states the "simple solution" of preventable or prescribed burns to reduce fuel levels of leaves, dead twigs, and other vegetation. "A fire break is going to do nothing at all. You have to manage the whole landscape".

This is supported by Fire Captain Brian Williams, 73 vice-president of the Volunteer Fire Fighters Association, supports the prescribed burn argument – Mr Williams said "The hazard process is what is stuffing the whole process" - "It is bogged down by green (environmental) and red tape which makes getting approvals for a prescribed burn a very slow and complex process. They have introduced a system that makes it virtually impossible to manage the bush in a sustainable way. Mr Williams states " I am just one of thousands of volunteers out there who are frustrated".

I have quoted from these three experienced and knowledgeable "hands on men".

My view is that "Good people can make bad decisions" whilst we all know we are currently experiencing extreme dry conditions there needs to be a change in the current "hazard process legislation" and I will add I believe it is a disgrace that we have some in our community that are trying to make this current situation into a "political one by aligning it with Climate Change".

Patricia Hellier
North Batemans Bay

Presentation – Lei Parker -

CCS19/069 CODE OF CONDUCT COMPLAINTS STATISTICS REPORT

The agenda papers for today's council meeting provide councillors and the public with a report that contains statistical information on Code of Conduct complaints relating to councillors and the General Manager from 1 September 2018 to 31 August 2019.

The Office of Local Government (OLG) requires Council to submit a Code of Conduct Complaints Statistics Report by the 30 November each year. Council submitted its Code of Conduct Statistics Report to the OLG on 12 November 2019.

The Model Code of Conduct, that applies to all NSW councils and sets the minimum standards of conduct for council officials, is prescribed by regulation for the stated purpose of assisting council officials to:

- understand and comply with the standards of conduct that are expected of them
- enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence
- act in a way that enhances public confidence in local government.

The statistical report that is before you today indicates that there were thirteen complaints received in the period from September 2018 to August 2019 - one more than in the previous year.

The summary report before Councillors simply contains the mandatory minimum statistical details required by OLG for its state-wide reporting purposes. The report offers no details of which officials were the subject of the Code of Conduct complaints, the nature of the complaints nor the outcomes.

All that the councillors (and the public) therefore have before them is that, of the thirteen complaints, two resulted in a requirement for "the subject person undertaking training or education relevant to the conduct giving rise to the breach" and that one of the thirteen was required to "apologise to any person or organisation affected by the breach".

Of the two Code of Conduct complaints referred to in the summary as "the subject person undertaking training or education relevant to the conduct giving rise to the breach", the following determination by a reviewer was revealed in *The Beagle* on November 18th, 2019

'It is my view after considering all the material available to me, that while the conduct is proven, I do not believe that the conduct is sufficiently serious to warrant investigation. The Councillor has conceded that they need to be careful with their words when interacting on social media. Beyond this, I have determined that the complaint is best resolved by alternative and appropriate informal action.

This will include directing the Councillor to guidance materials, specifically appendix 5 of the Councillor handbook 2017 about dealing with media and social media, the Council's Media Policy, as well as offering media and social media training more broadly."

The above edited review of a Complaint published in *The Beagle* offers no inkling of who the councillor was nor any details of the breach other than it happened in 'social media'. It does however reveal the processes of determination and the outcome which might reasonably be available, in the public interest, to the other councillors and to the wider community.

In an era in which public trust in all levels of government is at an all time low, it is clearly important that our community knows, at least in general terms, what inappropriate behaviour has occurred and what steps have been taken to rectify the situation.

In all, ten out of thirteen Code of Conduct complaints resulted in the reviewer deciding, following the completion of the preliminary assessment stage, "to take no action". Some might be tempted to argue that such an outcome in ten out of thirteen complaints might reflect poorly on those who complain, suggesting that the complaints must have been petty or vexatious.

As many in the community know, very often the complaints in question were well researched, clearly articulated and fully supported by evidence of breaches.

However this type of 'take no action' outcome does not necessarily mean that the reviewer had concluded that a breach had not occurred.

This can be because, in some situations, there can be technical and practical reasons why the matter is unable to be taken any further under the statutory framework that surrounds these Code of Conduct processes.

An example might be where a complex, non urgent Mayoral Minute of 1600 words is delivered to Councillors to read and absorb in 15 minutes. If someone was to lodge a Code of Conduct suggesting this was a breach and that Mayoral Minutes are meant to be of an urgent nature and not complex it might be expected that the OLG would support that complaint.

The fact is that the OLG would advise that the requirements of Mayoral Minutes is only a guideline and that it says uses the non-mandatory term SHOULD instead of MUST.

The third paragraph of clause 2.7.1 of the Practice Note, to which you have referred, is expressed in non-mandatory terms and is a better practice suggestion that does not (and cannot) limit the express legislative power of the mayor to move a mayoral minute without notice in accordance with clause 241(3) of the Regulation.

As such, the third paragraph on clause 2.7.1 of the Practice Note cannot form the basis of a breach of the code of conduct and the Office of Local Government will not be taking any action in relation to this matter.

The most unfortunate fact around all of these Code of Conduct complaints is that the community are not allowed to know anything outside the limited information that is contained in this annual report card. Even Councillors are not allowed to know of the details. There is a cone of silence over all Codes of Conduct complaints, even those where a councillor has been found in breach.

What are breaches under the Code?

A Councillor must not conduct themselves in a manner that:

- a) is likely to bring the council or other council officials into disrepute*
- b) is contrary to statutory requirements or the council's administrative requirements or policies*
- c) is improper or unethical*
- d) is an abuse of power*
- e) causes, comprises or involves intimidation or verbal abuse*
- f) involves the misuse of your position to obtain a private benefit*
- g) constitutes harassment or bullying behaviour under this code, or is unlawfully discriminatory.*

The Executive and staff are also required to comply with Acts, Policies and Guidelines and, if they breach them, they too can be subject to a Code of Conduct complaint.

An example might be where a General Manager fails to clearly describe the nature of a Confidential Matter that is on an Agenda and then also fails to provide accurate minutes of the resulting decision that is taken in the closed session of the meeting.

Another example might be where a General Manager fails to enact adopted motions or update policies, strategies and registers in a timely manner, as required by the Local Government Act and other relevant laws.

Any breach to the above, witnessed by a reasonable and fair member of the community could and should give rise to a Code of Conduct complaint so that an independent reviewer can consider if there is a breach.

On April 9th 2019 this Council formally adopted OLG's new mandatory Code of Conduct arrangements. These mandatory procedures included the following clause.

“12.2 Where a complainant publicly discloses information on one or more occasions about a code of conduct complaint they have made or purported to make, the general manager or their delegate MAY, with the consent of the Office, determine that the complainant is to receive no further information about their complaint and any future code of conduct complaint they make or purport to make.”

In a letter received from the ESC on December 6th, 2019 in connection with information that had been published in *The Beagle* on 18th November, as editor, I was advised by Council's Public Officer that:

“It is Council's intention to seek the Office of Local Government's consent **to receive no future code of conduct complaints made by yourself, the Beagle Weekly and or any of your associated organisations/businesses.**”

Council also advise in their letter that I have 28 days to make a submission on why Council should not proceed with the next steps.

In 28 days Council plan to write to the Office of Local Government to get permission **to receive no future code of conduct complaints** that might be made **“by yourself the Beagle Weekly and or any of your associated organisations/businesses.”**

This is way beyond the adopted repercussions of *“that the complainant is to receive no further information about their complaint and any future code of conduct complaint they make or purport to make”*.

This newly created consequence **to receive no future code of conduct complaints** that has been authored by the General Manager and the Council's Public Officer **has NOT been formally endorsed** by this Council nor the community and is outside the *Procedures for the Administration of The Model Code of Conduct for Local Councils in NSW*.

Does this draconian and illegitimate impost to ensure that no other Code of Conduct complaint can be lodged warrant a Code of Conduct complaint be made against the General Manager and the Public Officer for conducting themselves in a manner that:

- a) is likely to bring the council or other council officials into disrepute
- b) is contrary to statutory requirements or the council's administrative requirements or policies
- c) is improper or unethical
- d) is an abuse of power
- e) causes, comprises or involves intimidation or verbal abuse
- g) constitutes harassment or bullying behaviour under this code, or is unlawfully discriminatory.

Will an official Code of Conduct complaint be raised? And if so would we ever hear of the outcome if any breach and consequence is determined?

I couldn't possibly say

Lei Parker

**Agenda Item CCS19/070 : NSW Office of Local Government
Discussion Paper *A New Risk Management and Internal Audit
Framework for Local Councils in NSW***

Good Morning Councillors,

My presentation this morning relates to Agenda Item CCS19/070 regarding the NSW Office of Local Government Discussion Paper *A New Risk Management and Internal Audit Framework for Local Councils in NSW* currently on public exhibition.

Risk management for Councils is akin to risk management for corporations. Councillors are analogous to company directors, as outlined in the Department of Local Government ***Councillor Handbook 2017*** which states “*Councillors comprise the governing body of a council in the same way that a Board of Directors is the governing body of a corporation*”. The key difference is that Councillors obligations are towards residents and ratepayers, rather than for corporate shareholders.

The Office of Local Government Discussion Paper makes it clear that Council must discharge its risk management responsibilities across a wide range of potential issues. Factors to be taken into consideration include internal, political, economic, socio-cultural, technological, legal, and (notably for this presentation) “*environmental trends and drivers that influence the Council’s operating environment*” and which can be a source of risk.

Environmental risk therefore needs to be fully integrated within Council’s risk management and audit system. The system needs to be capable of identifying and responding to the occurrence of significant potential environmental risks including climate change related issues such as flooding from extreme weather events, coastal inundation from sea level rise and extreme storm events as well as increasing bushfire hazard (which is very pertinent to what is happening now down our east coast).

My presentation today is focussed on the important implications arising for Council’s public liability obligations, as well as Councillors own personal liability obligations, if responsibility for these risks are not effectively considered and discharged in Council’s decision-making. Particularly in those situations where it could be argued that Council has failed to heed the requirements to exercise a duty of care and to act in good faith when making their decisions. This links to Council’s public liability and insurance obligations and arrangements.

To clarify, an act is not done in “good faith” if it is done for an ulterior or improper purpose i.e. for a purpose other than for which the power was conferred. The defence of “good faith” cannot be used if, for example, a Council has made no real attempt to search its records, or it has no proper system to deal with requests for the type of information in question or if its information is outdated. The statutory concept of “good faith” requires more

than honest ineptitude, which is why an effective risk and audit system is of critical importance.

Therefore Councillors need to realise that the “good faith” defence is usually interpreted very narrowly by courts and offers only very limited protection against actionable liability. This is highlighted in recent formal legal opinion from prominent mainstream legal firm Minter Ellison regarding the duties of corporate directors/Councillors with regard to climate change risk. Minter-Ellison conclude it would be difficult for a director/Councillor to escape liability for a foreseeable risk of harm to the company/Council on the basis that he or she did not believe in the reality of climate change. The Court will ask whether the director/Councillor *should have known* of the danger. This would involve an assessment of the conduct of the particular individual against the standard of a reasonable person, by reference to the prevailing state of knowledge.

The law has often had to deal with liability for negligence in the context of rapidly developing science. At one time, for example, knowledge was such that an employee could be exposed to asbestos without negligence. At a certain point, however, ignorant defendants become liable for those risks on the basis that a reasonable person would have known of them.

It may be helpful here to think of a hypothetical example where, a Council may have failed to update its disaster management plan within the specified timeframe for renewal. This would certainly not be helpful if the Council wanted to mount a good faith duty of care defence for any action against it in a court of law. .

However, if the same Council was also found to have also had an outdated drought water supply management plan, an outdated Bushfire Risk Management Plan, incomplete or outdated bushfire mapping, and had ignored expert statutory advice regarding planning matters in extremely hazardous bush fire prone land the matter would be more clear cut. Under circumstances such as these, it would be very difficult to conduct a legal defence based on good faith and duty of care provisions. The growing awareness and well documented understanding of the greatly increased bushfire risk we now face is exemplified through the 10 year period which has elapsed since the introduction of the “catastrophic” bushfire rating by relevant authorities in 2009. By now, a Council would be expected to have up-to-date systems in place to deal with such catastrophic levels of risk.

A key question arising from these hypothetical examples relates to what actions will be triggered when Council’s risk management and audit system has identified a significant probability of risk for Council. To be of practical utility, a risk management and audit system should trigger actions to forestall or rectify the identified risk – there is little point in identifying and documenting a risk if the management system and/or management itself does not respond to the risk identified by the system.

The above discussion and hypothetical example raise some significant risk management questions regarding Council's existing and future risk management and audit framework, which are outlined below:

- 1. Has Council sought legal advice regarding the risk to its public liability insurance cover that may result from its failure to incorporate professional RFS planning advice, including a strategic bush fire study and up-to-date bushfire mapping, in the recent RLS planning proposal,?**
- 2. If current insurance coverage is at risk, are individual Councillors and/or ratepayers potentially liable for future negligence claims arising from Council's failure to heed the RFS advice?**
- 3. How will Council's existing and future risk and audit system monitor and respond to these significant types of risks?**

These are important risk management questions which require a public response from Council so Eurobodalla residents and ratepayers know exactly where they stand in relation to exposure to future risks, as well as potential liability claims.

I would appreciate a timely answer to these questions and to those I posed at last week's public access session on 3/12/19.

Thank you,

Brett Stevenson