

MINUTES OF THE FOXTON CODE OF CONDUCT SUBCOMMITTEE MEETING HELD IN THE STUART ELLWOOD ROOM, FOXTON MEMORIAL HALL, MAIN STREET FOXTON, ON 3 MARCH 2010 AT 12.30 PM

PRESENT

Mr S J Cull
Mr N G Gimblett
Mrs S M Paddison

IN ATTENDANCE

Mr D G Ward (Chief Executive Officer)
Mr A Cameron (Council's Legal Advisor)
Mrs K J Corkill (Meeting Secretary)

ALSO IN ATTENDANCE

Mr B V Vertongen
Ms N J Ellwood
Cr A M Hunt

1. WELCOME AND INTRODUCTION

The Chief Executive Officer extended thanks to those who had agreed to act on the Subcommittee, also advising that the name of the Subcommittee had been chosen as it was appropriate for the role for which the group had been formed.

Mr Ward clarified the role and responsibility of the Subcommittee and the actions it was required to take under the Foxton Community Board's Code of Conduct:

- the role of the group was prescribed in the Code of Code and Standing Orders;
- ultimately the Subcommittee would prepare a report which would be presented to a meeting of the Community Board;
- it was up to the Subcommittee to determine if the Code of Conduct had been breached;
- if a breach was determined it would be the Foxton Community Board that would decide on the action that would follow in accordance with the Code of Conduct.

A media release from Council on the Code of Conduct proceedings would be e-mailed to Subcommittee members for their information prior to release tomorrow. The article would also be available on Council's website.

2. APOLOGIES

There were no apologies recorded.

3. ELECTION OF CHAIRPERSON

Mr Ward called for nominations for Chairperson, with Mr Stan Cull proposed by Mrs Paddison and supported by Mr Gimblett.

Resolved

(Paddison / Gimblett)

"THAT Mr Stan Cull be elected Chair of the Foxton Code of Conduct Subcommittee."
CARRIED

Mr Cull assumed the Chair.

4. CONDUCT OF SUBCOMMITTEE BUSINESS

Mr Andrew Cameron, Council's Legal Advisor, outlined what he considered was an appropriate and transparent process for the Subcommittee to follow:

- if the Subcommittee was of the view in doing its business it would need to interview a variety of people, it would need to determine who those persons were;
- it would need to consider the manner in which those interviews were to be conducted;
- whether Mr Vertongen had the right to be present during those interviews needed to be determined;
- in relation to a time frame for completion, in his opinion, reporting to the Board Meeting of 22 March 2010 might be too tight a timeframe;
- when the Subcommittee's work had been completed it could report to the next available Community Board meeting, or would have the right to call a Special Meeting to report if that was considered appropriate.

With the Chair's agreement, Mr Cameron further clarified:

- generally speaking the process to be followed was for the Subcommittee to determine;
- the key point was to ensure that whatever process was followed was fair, reasonable and transparent, particularly for Mr Vertongen, as well as all other parties involved;
- the Code of Conduct did not set out how to undertake the investigation;
- bearing in mind the need to be fair, reasonable and transparent, the Subcommittee had to decide in the context of this particular complaint how it could fairly undertake the enquiry;
- it was an enquiry not a trial;
- perhaps what physically occurred may not be the issue;
- Mr Vertongen may be prepared to acknowledge (or deny) what he physically did and that may be a useful starting point;
- if Mr Vertongen accepted that as a matter of fact, then Subcommittee would be charged with determining, on the evidence, whether what he did constituted a breach of the Code of Conduct.

In response to a query as to whether it should be first ascertained whether Mr Vertongen, at the time, was acting in his capacity as Chair of the Community Board or as a private person, Mr Cameron said that was a matter which Mr Vertongen himself may wish to raise.

Mr Cameron continued:

- perhaps the next stage of the exercise was for Mr Vertongen to be asked if he wished to provide a written explanation of what occurred;
- if Mr Vertongen says he did nothing wrong, or what was alleged to have occurred did not happen, then evidence could be sought from others who were present;
- during the whole process, written statements would be the most useful, and fairest, way of gathering information for all concerned;
- further clarification could then be sought by way of interview if required;
- written statements would also identify people who may be able to assist in the process;

- when the Subcommittee had gathered a range of written statements, those written statements could then be perused, considered and the next step decided;
- once written statements have been received, questions could then be posed for clarification should there be any conflicts between critical statements;
- on the basis of the statements received, a preliminary view may be arrived at;
- should people be interviewed, this would be on the basis of clarification rather than cross examination;
- throughout the process Mr Vertongen would be entitled to see all statements and he would also be entitled to comment on those statements should he wish to, either personally or through a representative;
- there could be issues of privacy that may arise and there could be a reluctance by some people to come forward in a public forum;
- there were tools and methods available to address privacy concerns and the Subcommittee would be entitled to make a decision in accordance with Standing Orders and LGOIMA to go into public excluded if required;
- with regard to time frame, it would be unfair to Mr Vertongen to commence the process on the understanding that it had to be completed by a certain time;
- the Subcommittee's responsibility was to promptly carry out the enquiry and report back to the Community Board, but to take sufficient time to ensure that a proper and thorough process was undertaken;
- to address time issues, perhaps those from who statements are requested could be asked to respond within 14-21 days, which would not be unreasonable.

In response to a concern expressed about the liability of Subcommittee members, particularly Mr Cull and Mrs Paddison who did not come under Council's umbrella (as Mr Gimblett did by virtue of being a Community Board member) should a civil suit be taken against Mr Vertongen, Mr Cameron advised:

- the Subcommittee was tasked to carry out an enquiry, mandated by Council by resolution;
- provided the members conducted the process in accordance with the principles of natural justice and the process was carried out fairly, there would be no problem;
- however, it was still important that any utterances made by Subcommittee members were not defamatory or of a personal nature;
- should a civil suit be taken against Mr Vertongen, then the minutes of meetings and other information received could be discoverable.

Mr Ward supported Mr Cameron's comments, stating:

- Subcommittee members were covered under privilege;
- they were official appointees of Council, appointed under due process;
- one of the purposes of today's meeting was to consider the process to be followed and to address any questions around exposure.

The following was raised in discussion:

- Mr Vertongen should be requested to provide a statement, as well as Cr Allan, as he had laid the complaint, and Cr Hunt as she was probably the person who had raised the issue in the first instance;
- information on the official status of the event would be helpful;
- it would be appropriate for the Subcommittee to pass a resolution asking that Mr Vertongen, Cr Allan and Cr Hunt be requested to provide written statements;
- a further resolution requesting Mr Ward as CEO to circulate to members a copy of published material with regard to the event and also to provide copies of relevant Foxton Community Board agendas and minutes;

- if those two resolutions are passed, then it would be appropriate to ask the two persons present whether they would be prepared to provide the Subcommittee a statement within a reasonable time frame (14 days) and that would be followed up by a written request to Cr Allan for a statement;
- a statement was to be requested from Cr Hunt as she was a witness and had brought the matter to the attention of the Patons and had been part of the process bringing about the Code of Conduct complaint;
- the written statements could draw out other people who could assist with information.

Resolved

(Paddison / Gimblett)

"THAT the Foxton Code of Conduct Subcommittee requests Basil Vertongen, David Allan and Anne Hunt to provide written statements on the Foxton Beach Seawall Opening event on 20 November 2009 to be provided within fourteen (14) days of receipt of a written request."

"THAT the Chief Executive Officer be requested to circulate a copy of all published material with regard to the Foxton Beach Seawall Opening Event, together with Foxton Community Board Agendas and Minutes that relate to the Code of Conduct complaint."

CARRIED

Following the passing of the resolutions, Mr Ward suggested it would now be appropriate to request the two persons present, Mr Vertongen and Cr Hunt, if they were prepared to provide written statements, preferably within 14 days.

In response, Mr Vertongen said he would like to read what he was accused of doing. He had seen newspaper articles and had received a lawyer's letter from the Paton's lawyer, but he could not respond until he knew exactly what he was accused of doing. He was not prepared to respond to newspaper articles, particularly as there had been at least four versions in the media of what had happened.

For the record, Mr Vertongen was requested if he would provide a copy of the letter he had received from the Patons' lawyer.

Mr Ward also noted that he had sent a letter to Mr Vertongen on the matter.

For clarity, Mrs Paddison read out the Notice of Motion that had come before the Foxton Community Board at its 8 February 2010 meeting:

1. *THAT the Chair breached the Foxton Community Board's Code of Conduct by his actions in burning the article involving Mr & Mrs Paton while acting in his capacity as Chair in officially opening the Foxton Beach Seawall.*
2. *THAT the Chief Executive be instructed to report to the Board on the process to be followed in the event that the first motion is carried by the Board."*

The Community Board, at its 8 February 2010 meeting, had considered the Notice of Motion, and had passed a further resolution that the matter needed to be investigated.

Mr Cameron suggested on the basis of Mr Vertongen's comments, it would be inappropriate to take the matter any further with him today but that the matter should be put to Mr Vertongen in writing in a manner to which he could sensibly respond. He may then need to be provided with the written statements received so he could also respond to them.

Mr Cull queried, when the motion was passed at the Community Board meeting, was there evidence given by Cr Allan who had raised the issue.

Mr Gimblett advised that Cr Allan had spoken to the motion and had advised why he had taken the step he had.

Mr Cameron further noted:

- in relation to the Paton's involvement and requesting information from them, he suggested taking one step at a time;
- having listened to what Mr Vertongen had to say, to be fair to him, the first step would be to gain written statements as to what physically occurred;
- a complaint has been laid and specific allegations made, can these be substantiated;
- if on the basis of the material received there does appear to be a case to answer, then Mr Vertongen will be given the opportunity to respond;
- Mr Vertongen will be entitled to call evidence in support of his position.

Cr Hunt queried if any information needed to be provided by way of sworn affidavit, as she had been advised against this step. She had been asked at the time, and had provided to the Paton's lawyer, a sworn affidavit as an eye witness as to what had occurred. She had also tried to raise the matter at the 8 December 2009 Community Board Meeting, without success. The minutes of 8 February 2010 also included the matter. She was prepared to provide a written statement and copies of any media articles relating to the incident.

It was confirmed that all that was required was a statement setting out the facts, not a sworn affidavit.

The next steps would be:

- for a letter to be sent to Mr Vertongen referring to the process which had proceeded out of the Notice of Motion at the Community Board meeting of 8 February 2010, omitting any reference to media articles;
- a written request be sent to Cr Allan to provide a written statement on the matter, with a response time within 14 days if possible;
- when the written statements were received from Cr Allan and Cr Hunt a further meeting of the Subcommittee would be called to formally receive those statements;
- there may also be other persons, following receipt of the written statements, that the Subcommittee may wish to request information from.
- Mr Vertongen would then be invited to formally respond to the issues raised.

MEETING CLOSURE

There meeting concluded at 1.10 pm.

CONFIRMED this day of

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Chairperson