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IN THE INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES

DEPUTY PRESIDENT GRAYSON

THURSDAY 25 NOVEMBER 2010

IRC10/759 - NOTIFICATION UNDER S 130 BY THE DEVELOPMENT AND ENVIRONMENTAL PROFESSIONALS' ASSOCIATION OF A DISPUTE WITH WAGGA WAGGA CITY COUNCIL AND OTHERS RE COMPLAINT

STATEMENT

HIS HONOUR: Having had the benefit of further private conference with the parties the Commission has now been made aware of certain events, which in my opinion necessitate or strongly commend the making of a further statement by the Commission. That statement will be as follows:

This dispute has been the subject of three statements and a series of recommendations by the Commission made respectively on 11 August 2010, 7 October 2010 and 4 November 2010.

Critical to this dispute has been the complaint made by a Wagga Wagga builder, Mr Peter Hurst, which was made on 31 May 2010 to the Council. That complaint was directed at planning staff of the Council and some of the allegations contained in that complaint were immediately dismissed by the General Manager in a letter dated 15 June 2010. After a comprehensive investigation conducted by the independent internal auditor the General Manager of the Council advised Mr Hurst on 13 August 2010 that all other complaints had been dismissed. The Development and Environmental Professionals Association (DEPA) has pressed the Council to secure an apology from Mr Hurst for what it maintains are the incorrect and inaccurate allegations he, Mr Hurst, made against two of its employees in particular.

The Commission has supported this course of action in the interests of resolving an industrial dispute between Council and its planning staff and in

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that context was comforted by advice from solicitors acting for Mr Hurst, in a letter to the General Manager on 22 October 2010 that he, Mr Hurst, was prepared to apologise.

The Commission made the following observations in a statement made when the dispute was last listed on 4 November 2010:

"I consider having read the draft apology, that it is, in all the circumstances a reasonable draft which if adopted by Mr Hurst, would serve the broader purpose of achieving a dignified and courteous end to the tensions between Mr Hurst and employees of the Council engaged in professional planning administration. It seems to me on that basis alone that Mr Hurst is to be commended for providing his solicitors with instructions to tender an apology on his behalf. The terms of which are yet to be settled. In that regard he demonstrates on the face of it good faith in terms of his wish to join with the Council and its employees in bringing about a dignified and courteous end to those tensions. The Commission expresses the hope that the initiative will come to fruition."

It is regrettable that the dignified and courteous conclusion anticipated in that statement has been frustrated by advice from Mr Hurst's solicitors that he is now not prepared to enter into any further discussion aimed at agreeing upon an appropriate apology.

On 11 August 2010 the Commission made a number of further recommendations to assist the parties. One of those recommendations anticipated that the Council obtain a paid advertisement in the Daily Advertiser containing, among other things, Mr Hurst's apology.

I recommend that the Council pay for the insertion of a suitable advertisement in the Daily Advertiser briefly explaining the purpose of the advertisement, the previous advice from Mr Hurst's solicitors that he was prepared to apologise subsequent to his complaints being dismissed by the Council and finally, setting out the apology sought by Council which I described

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on 4 November 2010 and maintain today is a reasonable one.

I make no observations concerning Mr Hurst personally who is not a party to these proceedings beyond repeating my disappointment at what appeared on the last occasion to be his commendable good faith in acknowledging the need for an apology and his subsequent failure to act upon that commitment.

In relation to the cause of action proposed about meetings with Mr Hurst and other local developers in the circumstances of the current investigation instigated by the Minister for Planning into the Council's planning functions, I acknowledge as a matter of practicality that these meetings would be better delayed until the conclusion of that investigation.

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