

# **ATTACHMENT BOOKLET**

## **Part 1**

**ORDINARY COUNCIL MEETING**

**TUESDAY 24 JULY 2012**





## TABLE OF CONTENTS

Item No	Subject	
<b>PART 1</b>		
<b>6.1</b>	<b>CODE OF CONDUCT - REPORT BY SOLE CONDUCT REVIEWER – COMPLAINT REGARDING CONDUCT AT COUNCIL MEETING</b>	
	Attachment : Sole Conduct Reviewer Final Report.....	2
<b>6.2</b>	<b>CODE OF CONDUCT - REPORT BY SOLE CONDUCT REVIEWER - COMPLAINT REGARDING CONDUCT IN COUNCILLOR LOUNGE - CR LAUGESSEN</b>	
	Attachment : Sole Conduct Reviewer Final Report.....	117
<b>PART 2</b>		
<b>7.1</b>	<b>ANNUAL COMMUNITY SURVEY RESULTS 2012</b>	
	Attachment : Micromex Community Survey Report 2012.....	140
<b>8.1</b>	<b>NARRABEEN LAGOON DREDGING</b>	
	Attachment : Narrabeen Lagoon Community Consultation Outcomes Report ....	249
<b>8.3</b>	<b>PRELIMINARY INVESTIGATION - COUNCIL MANAGEMENT OF CROWN LAND ADJACENT TO MANLY DAM</b>	
	Attachment 1: Map One - Land Parcel Map.....	323
	Attachment 2: Individual Land Parcels .....	324
	Attachment 3: Parcel Summary Table - Manly Creek .....	328
<b>8.8</b>	<b>ADOPTION OF DRAFT WARRINGAH SECTION 94A DEVELOPMENT CONTRIBUTIONS PLAN 2012</b>	
	Attachment : Draft Warringah S.94A Development Contributions Plan 2012 .....	329

**Code of Conduct Report by Sole Conduct Reviewer****Complaint of Behaviour****Warringah Council****Report into allegations of misconduct and/or misbehaviour by Councillor****Virginia Laugesen during the Council meeting of 16 August 2011**

1. On 21 September 2011 an anonymous typed complaint was received by the General Manager, Warringah Shire Council, Mr. Rik Hart. By virtue of the initial referral of the matter for investigation to Mr. Adam Halstead as a Sole Conduct Reviewer I must therefore assume that The General Manager considered the criteria under Clause 13.1 of the Warringah Council Code of Conduct<sup>1</sup> ('the Code') prior to the referral taking place, as he is required to do.
2. On 21 October 2011 Mr. Halstead contacted the subject of the anonymous complaint, Councillor Virginia Laugesen, notifying her of his appointment as the Sole Conduct reviewer (see Annexure A).
3. On the same date Councillor Laugesen responded to Mr. Halstead via email citing perceived bias due to his appointment (see Annexure B). Councillor Laugesen also indicated that she would "*enter into no further correspondence about the matter*" presumably with Mr Halstead.
4. On 28 October 2012 and in response to the apprehension of perceived bias as noted by Councillor Laugesen, Mr. Halstead appointed myself as

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<sup>1</sup> Warringah Council Code of Conduct Version 8d – 8 September 2009.



the Sole Conduct Reviewer (see Annexure C) to investigate and oversee the complaint originally made on 21 September 2011. He did so under Clause 12.19(d) of the Code.

5. Also in 28 October 2011 Mr. Halstead sent Councillor Laugesen an email notifying her of my appointment (See Annexure D).
6. From the outset I must indicate that the views expressed within this investigation are entirely my own and have not been influenced by any person including those of Mr. Halstead, Councillor Laugesen or any other person.
7. Included in the materials received by me to investigate the matter were:
  - A copy of the anonymous and edited typed letter of complaint;
  - Email correspondence between Mr. Halstead and Councillor Laugesen dated 21 October 2011; and
  - A DVD containing Closed Circuit Television (CCTV) of the 16 August 2011 Warringah Council meeting (running time 23 minutes 49 seconds).
8. As noted in my original instructions, the contents of the initial complaint were edited and the edited version of the document together with the DVD evidence provides the foundation upon which this report is based. Having initially reviewed the nature of the complaint I must assume that the edited parts of the typed complaint received by the General Manager are of no relevance to the substance of the complaint itself and/or act to specifically identify the anonymous complainant and are therefore of no consequence given the available evidence. Particularly with reference to the very limited scope of the complaint and the relevance of the DVD

evidence, I do not believe it is necessary to ascertain the identity of the complainant.

9. I am of the opinion that should the nature of the complaint be justified at a preliminary or prima facie level based on all available information, then the actual identify of the anonymous complainant is unnecessary to the conduct of the investigation. Of particular importance I note that such anonymous complaints are protected under the Code of Conduct and as such, I have formed the opinion, that for the purpose of preparing this report, having regard to the substance of the complaint itself, that it is unnecessary to establish the identify the complainant.
10. It is clear to me that the substance of the complaint is based on the conduct of Councillor Virginia Laugesen within the Council Meeting of 16 August 2011. In fact, and on the basis of the information provided to me to allow to me conduct this investigation, that alleged conduct is itself limited both in scope and time frame. The purpose of my investigation is to determine whether that conduct breached the relevant Code of Conduct.
11. On receipt of the material as detailed I conducted an initial assessment as required under Clause 13.1 of the Code. At the initial stage of the investigation I considered that an investigation was warranted as the alleged conduct could reasonably constitute a breach the Code of Conduct. Specifically, at the initial stage of the investigation I thought that the conduct alleged might contravene Clause 6.2 and 6.5 of the Code. On 5 December 2011 I sent Councillor Laugesen an email notifying her of my appointment (see Annexure E).

12. In response to that email Councillor Laugesen responded via email on 7 December 2011 (see Annexure F). Within that email she stated she would not further correspond with me on the matter of the anonymous conduct allegation because she had sought advice concerning my appointment. Councillor Laugesen stated my appointment was *"made in breach of Section 177 of the Local Government Act, which supersedes Section 12.19(d)"* of the Code. She also noted objection to my appointment on the basis of advice obtained from the Warringah Council Internal Ombudsman that I am not listed on the Council's register of code of conduct reviewers. Councillor Laugesen stated that I am *"ineligible to pursue the investigation."*
13. On 20 December 2011 I sent an email to Councillor Laugesen simply responding to her 7 December 2011 email and indicated that, despite her choice not to further correspond with me, that I would nonetheless continue my investigation (see Annexure G).
14. On 2 March 2012 I sent Councillor Laugesen a letter by registered post offering her the opportunity to provide a submission in response to the allegation (see Annexure H). Councillor Laugesen was given 21 days within which to provide that response.
15. I note that my letter as sent on 2 March 2012 was sent via Australia Post Registered Mail and Person-to-Person confirmation was requested. This was done as a direct response to the stance adopted by Councillor Laugesen and as outlined in her emailed response to me of 7 December 2012 where she stated she would enter into no further correspondence with me concerning my investigation.

16. I particularly make that point because as will be seen later in my report and as noted in Councillor Laugesen's formal response dated 28 March 2012, the Councillor took objection to being inconvenienced by the method I adopted in sending my 2 March 2012 letter by registered post.
17. My letter dated 2 March 2012 was received by Councillor Laugesen on 7 March 2012 (see Annexure I). On 7 March 2012 Councillor Laugesen called myself and discussed the investigation generally and the once again took objection to having received the letter by registered post as opposed to receipt via email.
18. Within that brief telephone conversation and subsequent email received 7 March 2012 from Councillor Laugesen (see Annexure J), she further raised her concern as she viewed the current investigation as being 'trivial, frivolous, vexatious or not made in good faith'. Councillor Laugesen also voiced her concern at the fact that neither Warringah Council General Manager Mr. Rik Hart or I have the contact details for the anonymous complainant. I confirmed with Councillor Laugesen during that telephone call that I did not have the contact details of the anonymous complainant nor did I feel it necessary for the purpose of the investigation to ascertain the identity of the anonymous complainant. At no stage during the conduct of the investigation have I been in contact with Mr. Hart and as such I cannot comment on whether he is aware of the identity of the anonymous complainant.
19. In short and considering the nature of the complaint itself and the available evidence, particularly the DVD evidence, I have never considered it necessary to establish the identity of the anonymous

complainant. After receiving the formal submission of Councillor Laugesen on 28 March 2012, I still do not believe that the identity of the anonymous complainant is necessary or required to complete the enquiry. As I consider the identity of the anonymous complainant to be irrelevant.

20. Again on 8 March 2012 Councillor Laugesen sent an email to myself (see Annexure K) questioning the investigative process and questioned *"Warringah's habit of public funding of vexatious and in this case, semi-literate anonymous complaints for political purposes, however this administrative behaviour is endorsed by the majority-faction councillors, so the community and I must live with the high cost of 'democracy' in Warringah."* During that same email Councillor Laugesen raised a number of questions of me concerning the investigation.
21. On 8 March 2012 and following Councillor Laugesen's email of the same date, I responded via email (see Annexure K) simply indicating that I would not enter into further dialogue with her and I looked forward to receiving her formal response to my 2 March 2012 letter.
22. On 12 March 2012 I became aware of an article within the Manly Daily newspaper of the same date. The article was titled "Mystery, and costly, complainer" (see Annexure L). Within the article it would appear that Councillor Laugesen has conveyed information to the author concerning the original investigation with a view to attempting to establish the identity of the anonymous complainant. Councillor Laugesen is quoted within the article as saying *"To prevent further public cost and to be able to properly defend my reputation, I would like the complainant to contact me,*



*even anonymously, with more details."* I must make clear that I have not ascertained whether Councillor Laugesen did in fact communicate with the Manly Daily reporter or not. If in fact she had done so, that would possibly breach her obligation to maintain confidential communications as requested of her in Mr. Halstead's email of 28 October 2012 (see Annexure A).

23. Although outside the scope of the current investigation, it would be remiss of me not to comment on Councillor Laugesen's attempts to identify the anonymous complainant. Particularly through, if accepted as true, her disclosure to the Manly Daily. Any such disclosure would of itself possibly constitute a breach of the Code of Conduct specifically Clause 10.10. As made clear though, that ultimate consideration is beyond the scope of my investigation which is limited to the allegation concerning the 16 August 2011 Council meeting only.

24. On 14 March 2012 in response to an email received from Councillor Laugesen I sent the Councillor a copy via email of my 2 March 2012 letter (see Annexure M).

25. Again on 14 March 2012 Councillor Laugesen sent me an email questioning my investigation (see Annexure N).

26. On 28 March 2012 I received Councillor Laugesen's formal response to my investigation (see Annexure O).

27. On 7 April 2012 I received a further email from Councillor Laugesen attaching an updated document constituting her formal response to my investigation (see Annexure P). The new document served to replace that document received on 28 March 2012. Councillor Laugesen cited errors

contained within her document sent 28 March 2012. For that reason I have only included the second and final version as transmitted on 7 April 2012.

28. On 7 April 2012 I sent Councillor Laugesen an email confirming receipt of the updated formal response (see Annexure Q).

29. As will become clear in the body of my report, it became apparent to me that the conduct of Councillor Laugesen outside of the initial complaint and in direct response to the investigative process undertaken, may have in fact constituted a further and more worrying breach of the Code than the subject of the initial complaint itself.

Standard of proof required (The Briginshaw Principle).

30. Whether an issue has been proved to the reasonable satisfaction of a tribunal or investigative body depends upon the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding and should not be reached by inexact proofs, indefinite testimony or indirect references.<sup>2</sup>

31. In determining whether a breach of the Code has occurred I must apply the test established in *Briginshaw v Briginshaw* (1938) 60 CLR 336.

32. Dixon J in *Briginshaw v Briginshaw* (ibid) stated:

*“Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable*

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<sup>2</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362 per Dixon J.

*satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences. Everyone must feel that, when, for instance, the issue is on which of two dates an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgment if the question was whether some act had been done involving grave moral delinquency".*

33. In *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449

Mason CJ, Brennan, Deane and Gaudron JJ reviewed the authorities to provide a clear statement of the *Briginshaw* principle stating:

*"The ordinary standard of proof required of a party who bears the onus in civil litigation in this country is proof on the balance of probabilities. That remains so even where the matter to be proved involves criminal conduct or fraud. On the other hand, the strength of the evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what it is sought to prove. Thus, authoritative statements have often been made to the effect that clear or cogent or strict proof is necessary 'where so serious a matter as fraud is*



*to be found'. Statements to that effect should not, however, be understood as directed to the standard of proof. Rather, they should be understood as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct."*

34. As is clear from the current matter being investigated there is no suggestion or allegation of a criminal breach. The allegation relates solely to conduct which may be considered as breaching the Code of Conduct and as such conduct unbecoming of a Councillor attached to Warringah Council.

Analysis of the evidence and the Code of Conduct.

35. An analysis of Councillor Laugesen's formal response received 7 April 2012 was undertaken together with a review of the DVD containing the CCTV footage of the 16 August 2011 Council meeting.
36. Councillor Laugesen's nine-page formal response received 7 April 2012 and dated 28 March 2012 largely contains matters irrelevant to my overall consideration of the matter. Especially given that the conduct complained about is available as real evidence in the form of DVD CCTV footage taken of the subject Council meeting. There was therefore no need for me to interview persons present at the meeting or for that matter seek any clarification from the anonymous complainant.

37. In her formal response Councillor Laugesen continued to raise irrelevant considerations such as my appointment and other factors which failed to directly address her conduct during the 16 August 2012 meeting. It was made clear in the formal response at paragraph 10 that Councillor Laugesen feels that she is being subjected to *“repeated maladministration and discrimination...by Warringah Council”*.
38. Of concern to myself and with reference to Councillor Laugesen’s apparent attempts to identify the anonymous complainant, her formal response directed a level of contempt towards the anonymous complainant and the typed complaint leading to this investigation. At paragraph 21 of the Councillor’s formal response she referred to the *“remedial level of literacy”*<sup>3</sup> of the anonymous complainant’s typed document. At paragraph 25 Councillor Laugesen said *“I note the anonymous complainant’s apparently reduced level of intellectual capacity and research ability, as indicated by his/her writing skills and lack of basic meeting practice awareness...”* I am of the view that questioning the level of literacy of the anonymous complainant or otherwise being critical of the complainant is in my mind an irrelevant factor for consideration and only shows a level of disdain that should be discouraged by public officials.
39. Specifically it would appear that Councillor Laugesen has breached a Code of Conduct key principle at Clause 4.8 with regard to showing a lack of respect for the anonymous complainant. As is made clear from Councillor Laugesen’s formal response and as highlighted above, she has failed to *“treat others with respect at all times”*.

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<sup>3</sup> Paragraph 21.

40. At paragraph 23 of Councillor Laugesen's formal response she states that because the complaint is that she failed sit down "*...in my defence, I put to you Mr. Daily, that I must have eventually sat down, or I'd still be standing in the chamber today...*" Such a statement is non responsive and completely irrelevant.
41. As already stated by myself the DVD containing the CCTV of the Council meeting provides a sound basis to make a determination of the subject matter of the complaint. It is abundantly clear from viewing the Council meeting that factions within the Council exist and those factions result in dysfunctional relationships and hence, as a direct result dysfunctional Council meetings.
42. It is also abundantly clear that several Council members during the 16 August 2011 meeting similarly failed to follow the proper procedures of meetings. At 20 minutes and 28 seconds I believe that Councillor Laugesen conducted herself in a manner which went beyond what might be the conduct of a strong and robust debate within the Council meeting. What transpired was simply a stalemate between the Acting Chairperson Jason Falinski and Councillor Laugesen. The Acting Chairperson made repeated requests for Councillor Laugesen to return to her seat at which she simply refused to comply.
43. At 21 minutes and 17 seconds it appeared that the Acting Chairperson calls for an Inspector Ryan and momentarily Councillor Laugesen ceased talking before again resuming her question of the Acting Chairperson. For the purposes of the activity and I assume Inspector Ryan to be a Council Ranger employed within Warringah Council.
44. At 22 minutes and 4 seconds Councillor Laugesen still refused to resume her seat and states "*No I will not resume my seat until I have an explanation...*"

45. Shortly thereafter a vote is called for and the Council meeting is then closed at 23 minutes and 1 second.

46. Misbehaviour is relevantly defined under Clause 3 of the Code of Meeting Practice<sup>4</sup> for the purposes of Clause 440(G) of the Local Government Act 1993 as:

- (a) a contravention by the Councillor of this Act or Regulations
- (b) a failure by the Councillor to comply with an applicable requirement of the Code of Conduct as required by Section 444(5) of the Act
- (c) an act of disorder committed by the Councillor at a meeting of the Council or a Committee of the Council but does not include a contravention of the disclosure requirements.

47. The Oxford English Dictionary defines 'disorder' as a lack of order, the disruption of peaceful and law-abiding behaviour and 'disordered' as to disrupt the functioning or order of.

48. I also note that Clause 10 of the Code of Meeting Practice also states that whilst the Chairperson rises during a meeting *'(a) any Councillor then speaking or seeking to speak must, if standing immediately resume his or her seat...'*

49. Again with reference to disorder, Part 4 of the Code of Meeting Practice relates specifically to 'Keeping Order at Meetings'. Clause 29 refers to Acts of Disorder and relevantly Clause 29(1)(e) states *"A Councillor commits an act of disorder if the Councillor, at a meeting of a Council or a Committee of a Council says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council or Committee into contempt."*

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<sup>4</sup> Version dated 23 March 2010.

14

50. I believe that Councillor Laugesen's behaviour as outlined did constitute an act of disorder as defined.

51. I also believe other Councillor's similarly conducted themselves in a disorderly manner although not to the same extent as Councillor Laugesen. This investigation is however only concerned with the alleged conduct and behaviour of Councillor Laugesen and no other Councillor's.

Determination and findings.

52. In coming to a final determination and despite my previous comments, whilst finding that Councillor Laugesen did conduct herself in a disorderly manner and misbehaved during the 16 August 2011 Council meeting and in so doing contravened the Code of Conduct, I am of the opinion that the breach itself is not serious.

53. Councillor Laugesen questioned within her formal response why the Acting Chairperson did not censure her during the relevant meeting under Part 4 of the Code of Meeting Practice when he had the chance to do so. That point is a relevant consideration raised by Councillor Laugesen. In response and upon review of the 16 August 2011 Council meeting I can only surmise that very shortly after the interaction between Councillor Laugesen and the Acting Chairperson the meeting was formally closed hence possibly removing the need for further confrontation.



15

54. I find that Councillor Laugesen has not demonstrated nor expressed any contrition. I find that although not serious, it is not technical or trivial. I make no finding as to whether the breach represents repeated conduct.

55. I find that an educative approach would be more beneficial to a punitive approach.

56. In accordance with Clause 14.9 of the Code and as the complainant is anonymous there can be no benefit in a specifically targeted apology. Likewise I do not believe that the breach of the Code warrants a public finding of inappropriate conduct. Nor do I believe Councillor Laugesen should be prosecuted for her conduct as I have determined that whilst a breach of the Code occurred, it was relatively minor.

57. I make no other findings under Clauses 14.9.

58. I am of the opinion that following the allegation of the breach of the Code and the conduct of Councillor Laugesen during the investigative process conducted, she has demonstrated a lack of procedural knowledge of the Code of Conduct and Code of Meeting Practice, most specifically as her conduct related to the attempts to identify the anonymous complainant, her apparent involvement of the local print media in that process and her apparent breach of Clause 10.10 of the Code resulting from the 28 October 2011 email from Mr. Halstead as it related to the non-disclosure of confidential information.

59. I am of the opinion that whilst the focus of the initial complaint the subject of my investigation was, whilst found proven utilising the Briginshaw standard, and determined to be minor, those other actions highlighted above, may in fact constitute a more serious breach of the Code of Conduct. However as my initial investigation relates solely to the investigation of the Councillor's

16

conduct during the 16 August 2011 meeting, any further alleged behaviour is not the subject of this enquiry and therefore does not form the basis upon which any findings have been made within this report.

60. On that basis I make no recommendations concerning that alleged conduct and limit my consideration to the extent of the evidence available to me as it relates to the 16 August 2011 meeting. I would however refer that matter to Council for further consideration and investigation.
61. I would therefore, based on my reasons as stated recommend that Councillor Laugesen be censured for her misbehaviour.

Addendum.

62. On Tuesday 22 May 2012 a copy of the draft report with annexures was sent via email to Councillor Laugesen. The Councillor was asked to provide any feedback to the draft report by 3pm Friday 25 May 2012 (see Annexure R).
63. On Wednesday 23 May 2012 no reply had been received to my 22 May 2012 email. My Chambers Clerk Miss Jodie Fosse at my request telephoned Councillor Laugesen and confirmed with her that she had in fact received the email and draft report sent the previous day. During that telephone call the Councillor apologized to my Clerk for not responding earlier. Shortly after that telephone call was made Councillor Laugesen formally responded via email confirming receipt of the draft report sent 22 May 2012.
64. On Friday 25 May 2012 I received a formal response from Councillor Laugesen (see Annexure S). Within that response Councillor Laugesen made

no request for an extension of time to consider the report although did comment on the limited time within which she was requested to provide a reply to my 22 May 2012 communication.

65. During the Councillor's formal response of 25 May 2012 she failed to raise any matters relevant to the allegation relating to her conduct of the 16 August 2011 Council meeting. I note that within her response the Councillor repeatedly refers to myself dismissing the original complaint, which is inconsistent with the direct findings of my report. The Councillor further repeatedly alleges, notably without providing any supporting evidence that I am biased in my determination of her conduct. I re-iterate in support of my finding that the evidence relied upon is commonly referred to as 'real evidence' in the form of closed circuit television. Hence there is no need for any further supportive evidence.

66. On 14 June 2012 I sent an email to Councillor Laugesen again inviting her to provide any additional and further response to my report and allowing for an additional 7 days to provide that feedback (see Annexure T). A new deadline of Friday 22 June 2012 was nominated within my email.

67. On 15 June 2012 Councillor Laugesen sent an email in response. Within that email she failed to raise any relevant issues pertaining to the findings as reported to her on 22 May 2012 concerning her conduct the subject of the complaint. (see Annexure T).

68. On 22 June 2012 Councillor Laugesen sent a further email (see Annexure T). Within that email she again failed to raise any matters relevant to my report findings communicated to her on 22 May 2012. She simply re-iterated her earlier allegation, again without any evidence to support her assertion, that I



18

am biased and that I should disqualify myself from any further involvement in the investigation. I am of the opinion that Councillor Laugesen has in her additional responses dated 15 and 22 June 2012 failed to raise anything further which may be relevant to my determination and finalisation of the matter. For that reason I do not propose to amend or alter my earlier recommendations as noted within the body of this report.



Kirk Dailly

List of Annexures

N.B. At the request of Councillor Laugesen personal contact details have been removed from the attached email communications.

**Annexure 'A'** – Email from solicitor Mr. Adam Halstead to Councillor Virginia

Laugesen dated 21 October 2011.

Adam Halstead

**From:** Adam Halstead [REDACTED]  
**Sent:** 21 October 2011 14:04  
**To:** 'virginia.laugesen@warringah.nsw.gov.au'  
**Subject:** Confidential - Code of Conduct complaint  
**Attachments:** Complaint letter - Laugesen.pdf  
Dear Councillor Laugesen

As you would be aware, I am a conduct reviewer for the Warringah Council.

A complaint was received by council on 21 September 2011 and has been referred to me by the General Manager in my capacity as a sole conduct reviewer (cf. Code of Conduct Committee) for investigation.

The complaint has been made anonymously and it relates to a meeting of council on 16 August 2011 at which you were present and I am reasonably satisfied that you are the person referred to at point 21.11 of the letter of complaint.

A copy of the complaint is attached for your review and response to allow you the fullest opportunity to address the allegations.

Please note the complaint refers also to matters arising at the same meeting that do not relate to you – those parts have been deleted because they identify other persons and have no bearing on the allegations about you.

**Please note that for the purposes of my inquiries I declare this email communication and the attached letter of complaint to be confidential information for the purposes of clause 10.10 of the Warringah Council Code of Conduct (ver. 8d of 8 September 2009). This information may only be used by you to prepare a response or to obtain legal advice from a qualified legal practitioner who holds a practising certificate as an *Australian Lawyer* as defined by the *Legal Profession Act 2004*.**

**The attachment is provided on a confidential basis and must not be released or discussed with any person other than your legal advisor (should you wish to obtain such advice). It is provided to you to allow you the fullest opportunity to make a comprehensive response to the allegations contained therein as far as they relate to you. Disclosure of this email or the attachment to any person (including other councillors) except your legal advisor may give rise to a breach of the Code of Conduct.**

The complaint relates to a meeting of councillors where the public was present and to your comments and conduct during that meeting.

I now seek your response to the allegations contained in the attached letter of complaint for the purposes of my making an assessment of the allegations and complaint as to whether a formal inquiry will be conducted in to matter. In the event I determine an inquiry is necessary further information may be requested, including by way of interview.

It would be appreciated if your written response could be provided to me by return

21/10/2011

mail ( [adam@bradfieldmills.com.au](mailto:adam@bradfieldmills.com.au) ) no later than 5pm Friday 4 November 2011.

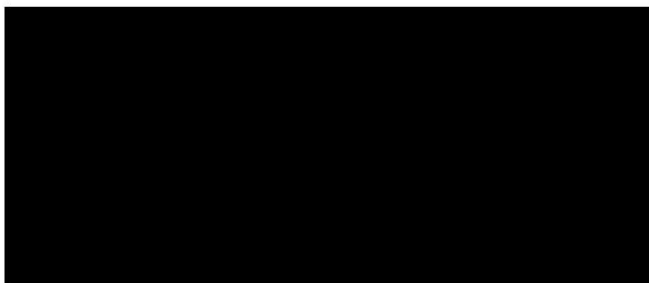
After your complaint is received I may contact you further to clarify specific matters or to discuss issues arising.

Please contact me by return email if you have any specific questions in relation to my request for a response, otherwise I look forward to receiving your reply.

I reiterate this request is for the purpose of obtaining an initial response from you in relation to the allegation to assess whether an inquiry will be made in accordance with the Code of Conduct.

Yours faithfully

Adam Halstead



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21/10/2011

*Annexure 'B' – Email from Councillor Virginia Laugesen to solicitor Mr. Adam Halstead dated 21 October 2011.*

/ **im Halstead**

**From:** Cr Virginia Laugesen [Virginia.Laugesen@warringah.nsw.gov.au]  
**Sent:** 21 October 2011 19:00  
**To:** Adam Halstead  
**Cc:** Andrew Patterson; CWheeler@ombo.nsw.gov.au  
**Subject:** RE: Confidential - Code of Conduct complaint  
Dear Mr Halstead,

1. Any time spent addressing this anonymous complaint is a waste of public money.
2. As you were a panellist on the case against me of 2009-2010, which was the subject of a maladministration investigation and as a result triggered an enquiry by the Minister for Local Government into the Local Government Code of Conduct (underway now), it is my understanding that you have an apprehended bias in this case and are ineligible to investigate me.
3. I will enter into no further correspondence about this matter.

Regards,

Cr Virginia Laugesen

**From:** Adam Halstead [REDACTED]  
**Sent:** Friday, 21 October 2011 2:04 PM  
**To:** Cr Virginia Laugesen  
**Subject:** Confidential - Code of Conduct complaint

Dear Councillor Laugesen

As you would be aware, I am a conduct reviewer for the Warringah Council.

A complaint was received by council on 21 September 2011 and has been referred to me by the General Manager in my capacity as a sole conduct reviewer (cf. Code of Conduct Committee) for investigation.

The complaint has been made anonymously and it relates to a meeting of council on 16 August 2011 at which you were present and I am reasonably satisfied that you are the person referred to at point 21.11 of the letter of complaint.

A copy of the complaint is attached for your review and response to allow you the fullest opportunity to address the allegations.

Please note the complaint refers also to matters arising at the same meeting that do not relate to you – those parts have been deleted because they identify other persons and have no bearing on the allegations about you.

**Please note that for the purposes of my inquiries I declare this email communication and the attached letter of complaint to be confidential information for the purposes of clause 10.10 of the Warringah Council Code of Conduct (ver. 8d of 8 September 2009). This information may only be used by you to prepare a response or to obtain legal advice from a qualified legal practitioner who holds a practising certificate as an *Australian Lawyer* as defined by the *Legal Profession Act 2004*.**

**The attachment is provided on a confidential basis and must not be released**

25/10/2011

**Annexure 'C'** – Email from solicitor Mr. Adam Halstead to Sole Conduct  
Reviewer dated 28 October 2011.



From: "Adam Halstead" [REDACTED]  
Subject: Code of Conduct Inquiry  
Date: 28 October 2011 2:35:54 PM AEDT  
To: "Kirk Dailly" [REDACTED]

P Attachment 52 KB

Dear Mr Dailly

I refer to our conference yesterday and thank you for agreeing to conduct an inquiry in relation to allegations of a breach of the Warringah Council Code of Conduct by Councillor Virginia Laugesen.

I confirm the following were provided at conference on 27 October 2011:

- Copy of anonymous letter of complaint (edited version as provided to Councillor Laugesen)
- Copy of my email to Councillor Laugesen dated 21 October 2011
- Copy of email response from Councillor Laugesen dated 21 October 2011
- CD with electronic recording of Warringah Council meeting of 16 August 2011

In accordance with the procedural requirements of the Code of Conduct I have assessed the allegations contained in the complaint with regard to clauses 13.1 and 13.1 of the Code of Conduct.

Following that assessment I have determined an inquiry should be made into those allegations and for the reasons discussed (and as appear in my email as attached) have decided to *engage another appropriately qualified person to make enquiries into the complaint* as provided by clause 12.19(d) of the Code of Conduct.

Councillor Laugesen has now been notified in writing of your engagement in relation to the matter and my attached email to the councillor relates.

Please now find **attached** the following further information for your reference:

- Copy of my email to Councillor Laugesen of 28 October 2011
- Contact details for Councillor Laugesen

As discussed, you are formally engaged to conduct an inquiry into the conduct by Councillor Laugesen during the council meeting on 16 August 2011 and the engagement is at the hourly rate of \$300 plus GST.

Please contact me if you have any queries or if you require anything further.

I look forward to receiving your report in due course.

Regards

Adam Halstead



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Although we believe that this email is free of any virus or other defect which may affect a computer, it is your responsibility to ensure that it is virus free. We do not accept any responsibility for any loss or damage arising in any way from the use of this email.

  
28 JUL 12 10:00 AM (170 KB)



Virginia Burgess

Telephone:  
Facsimile:  
Mobile:



[virginia.burgess@warringah.nsw.gov.au](mailto:virginia.burgess@warringah.nsw.gov.au)

**Annexure 'D'** – Email from solicitor Mr. Adam Halstead to Councillor Virginia Laugesen dated 28 October 2011. Document originally embedded within Annexure 'C'.

**Adam Halstead**

**From:** Adam Halstead [REDACTED]  
**Sent:** 28 October 2011 10:52  
**To:** 'Virginia.Laugesen@warringah.nsw.gov.au'  
**Subject:** Code of Conduct Inquiry

Dear Councillor Laugesen

I refer to your email of 21 October 2011 in response to mine of the same date.

Your stated intention to enter no further correspondence is noted, however as a matter of procedural fairness the following is drawn to your attention.

In dealing with a complaint, clause 12.19 of the Code of Conduct (the Code) provides a conduct reviewer must make a determination to:

- a) Not make enquiries, or
- b) Resolve the complaint by alternative and appropriate strategies, or
- c) Make enquiries into the complaint, or
- d) Engage another qualified person to make enquiries into the complaint, or
- e) Not make enquiries or discontinue making enquiries where it becomes evident the matter should be referred to another body or person.

Clause 13.3 of the Code provides the assessment criteria at clause 13.1 of the Code is to be used in making an initial assessment of the complaint to determine the course to follow in dealing with a complaint. The assessment criteria provide various matters be taken into account when assessing the nature and circumstances of the complaint, including whether the conduct that is the subject of the complaint could reasonably constitute a breach of the Code of Conduct. Other matters are also required to be given consideration, which include whether the complaint is trivial, frivolous, vexatious or not made in good faith, whether an alternative and satisfactory means of redress is available as well as how serious the complaint is and the significance it has for council.

Your contention that "any time spent addressing this anonymous complaint is a waste of public money" has been specifically noted and taken into account for the purpose of my assessment under clause 13.1 of the Code. I have also considered the content and nature of the complaint, your response of 21 October 2011 generally and reviewed the electronic recording of the council meeting of 16 August 2011. The available evidence has been assessed as to whether the allegations contained in the complaint could reasonably infringe the standards of conduct provided at clause 6 of the Code and therefore comprise a breach of the Code.

28/10/2011

My considered view is that when the grounds provided at clause 13.1 of the Code were weighed on the available evidence (most relevantly the electronic recording of the meeting), the allegations regarding your conduct on 16 August 2011 if substantiated, may reasonably be found to give rise to a breach of the Code and whilst this issue of itself is not determinative, when an overall assessment is made it has considerable weight in relation to the other factors.

**It is therefore determined that an inquiry into the complaint is to be conducted as provided by clause 12.19 of the Code.**

Your contention as to a reasonable apprehension of bias arising on the basis of my involvement in this matter is rejected as the matters you have raised and rely upon in your claim do not relate to the complaint that is now to be the subject of an inquiry. The fact I have in the past been a member of a Conduct Review Committee panel that inquired into your conduct on a different occasion for a separate, unrelated matter is not of itself evidence that give rise to a proper foundation for a claim of bias, particularly when the sole purpose of the Conduct Review Committee is to undertake inquiries into the conduct of elected councillors.

The “maladministration investigation” previously conducted by the Division of Local Government about unrelated matters is not relevant to this inquiry and you have not provided any evidence as to how your claim would give rise to a reasonable apprehension of bias. In *Maloney v New South Wales National Coursing Association Ltd* (1978) the Court of Appeal found that a mere suspicion of bias is not sufficient to require a decision-maker to be disqualified from exercising their functions. Your claim of bias would appear to be based on such a ground and in any case is rejected as having no basis in fact.

The current review of the Model Code of Conduct being undertaken by the Division of Local Government has no relevance to an inquiry into the current complaint and your contention in this respect is also rejected.

You have provided no evidence that could objectively be relied upon to substantiate a finding of a reasonable apprehension of bias in the current matter. Accordingly there is no basis to your claim of bias.

Notwithstanding my resolute view that your claim of bias is unfounded in relation to this matter, I have determined to exercise my discretion in accordance with clause 12.19(d) of the Code to avoid any further objection, delay or unnecessary costs arising in relation to this issue. I duly note the relevance of the reference to “a waste of public money” in your email

28/10/2011



of 21 October 2011.

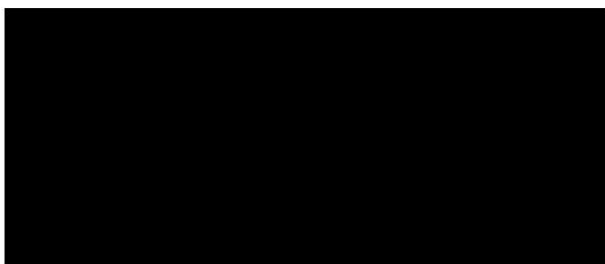
Accordingly, Mr Kirk Dailly of Counsel has been engaged pursuant to clause 12.19(d) of the Code to conduct an inquiry into the complaint. Mr Dailly will conduct an independent inquiry into the matter in accordance with the Code and provide a report at the conclusion of his inquiry.

Mr Dailly will exercise the powers and functions of a reviewer under the Code and will contact you in due course in relation to the inquiry.

**For the purposes of the inquiry I declare this email communication and any future correspondence in relation to the matter to be confidential information for the purposes of clause 10.10 of the Warringah Council Code of Conduct. The correspondence and any information arising from it may only be used by you to prepare a response or to obtain legal advice from a qualified legal practitioner who holds a practising certificate as an *Australian Lawyer* as defined by the *Legal Profession Act 2004*. This and all future communications are provided on a confidential basis and must not be released or discussed with any person other than your legal advisor (should you wish to obtain such advice). Disclosure of this email or the attachment to any person (including other councillors) except your legal advisor may give rise to a breach of the Code of Conduct.**

Yours faithfully

Adam Halstead



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28/10/2011

**Annexure 'E'** – Email from Sole Conduct Reviewer to Councillor Virginia  
Laugesen dated 5 December 2011.

From: Kirk Dailly [REDACTED]  
Subject: Code of Conduct Inquiry  
Date: 5 December 2011 10:24:01 AM AEDT  
To: virginia.laugesen@warringah.nsw.gov.au



Dear Counsellor Laugesen,

As you are aware from the email sent to you from solicitor Mr. Adam Halstead on 28 October 2011 I have been engaged pursuant to clause 12.19(d) of the Code to conduct an inquiry and provide a report at the end of my investigation into a complaint arising from your alleged conduct at the council meeting of 16 August 2011. I will again contact you in the coming weeks prior to Christmas concerning my inquiry and to speak with you.

Regards,

Kirk Dailly Barrister LL.B. Solicitor LL.M.  
[REDACTED]

cc: [REDACTED]

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**Annexure 'F'** – Email from Councillor Virginia Laugesen to Sole Conduct

Reviewer dated 7 December 2011.

From: "Virginia Laugesen" <[REDACTED]>  
Subject: FW: Code of Conduct Inquiry  
Date: 7 December 2011 1:08:59 PM AEDT  
To: [REDACTED]

1 Attachment 145 KB

Dear Mr Dailly,

I write to acknowledge receipt of your email of 5 December 2011 (below).

Please note, I am advised that your appointment has been made in breach of Section 377 of the Local Government Act, which supersedes Section 12.19(d) of the Warringah Council Code of Conduct.

Further, I have advice from the Warringah Council Internal Ombudsman that you are not listed on Council's register of code of conduct reviewers.

In view of the above, I regret there can be no further correspondence between us on the matter of the anonymous conduct allegation (attached), as you are ineligible to pursue the investigation.

Yours sincerely,

Cr Virginia Laugesen

**From:** Cr Virginia Laugesen [mailto:Virginia.Laugesen@warringah.nsw.gov.au]  
**Sent:** Monday, 5 December 2011 1:17 PM  
**To:** Virginia  
**Subject:** Fwd: Code of Conduct Inquiry

Begin forwarded message:

**From:** Kirk Dailly [REDACTED]  
**Date:** 5 December 2011 10:24:01 AM AEDT  
**To:** [virginia.laugesen@warringah.nsw.gov.au](mailto:virginia.laugesen@warringah.nsw.gov.au)  
**Subject:** Code of Conduct Inquiry

Dear Counsellor Laugesen,

As you are aware from the email sent to you from solicitor Mr. Adam Halstead on 28 October 2011 I have been engaged pursuant to clause 12.19(d) of the Code to conduct an inquiry and provide a report at the end of my investigation into a complaint arising from your alleged conduct at the council meeting of 16 August 2011. I will again contact you in the coming weeks prior to Christmas concerning my inquiry and to speak with you.

Regards,

Kirk Dailly [REDACTED]  
[REDACTED]

*Auto-generated email*

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Dear Internal Ombudsman

I want to make a complaint [REDACTED]

At the meeting in 16 August [REDACTED] lots of statements that were wrong. I have been told by a woman at the environment defenders office that council people are not allowed to say things that are wrong and misleading. She also told me that councils have to know what they are voting on and are not allowed to say that they do not know what they voted on.

I want you to investigate this meeting because [REDACTED] lots of things that were misleading and are against the code of conduct I think.

I looked at the website and made notes:

21.11. Another woman sitting at the table says she did not understand what the first motion was and wants someone else to explain it to her, then she went sit down. Don't councillors have to understand the motion they are voting on.

**Annexure 'G'** – Email from Sole Conduct Reviewer to Councillor Virginia  
Laugesen dated 20 December 2011.

From: Kirk Dailly [REDACTED]  
Subject: Response to 7 December 2011 email  
Date: 20 December 2011 11:23:27 PM AEST  
To: Virginia Laugesen [REDACTED]



Dear Cr Laugesen,

I acknowledge receipt of your email dated 7 December 2011 and attached below. Noting your objections and comments I must therefore advise that I will continue with my inquiry as previously indicated. I would therefore assume from your email that should I ask you to provide any input to the inquiry or to answer any questions you would simply decline such an offer. Of course should you adopt that course, which appears clear from your email, that will be noted within my inquiry.

Regards,

Kirk Dailly [REDACTED]  
[REDACTED]

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On 07/12/2011, at 1:08 PM, Virginia Laugesen wrote:

Dear Mr Dailly,

I write to acknowledge receipt of your email of 5 December 2011 (below).

Please note, I am advised that your appointment has been made in breach of Section 377 of the Local Government Act, which supersedes Section 12.19(d) of the Warringah Council Code of Conduct.

Further, I have advice from the Warringah Council Internal Ombudsman that you are not listed on Council's register of code of conduct reviewers.

In view of the above, I regret there can be no further correspondence between us on the matter of the anonymous conduct allegation (attached), as you are ineligible to pursue the investigation.

Yours sincerely,

Cr Virginia Laugesen

From: Cr Virginia Laugesen [mailto:virginia\_laugesen@warringah.nsw.gov.au]

Sent: Monday, 5 December 2011 1:17 PM

To: Virginia

Subject: re: w/c Code of Conduct Inquiry

Insert recorded message

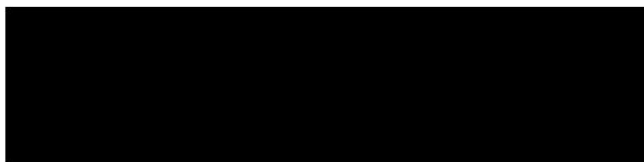
From: Adam Halstead <adam.halstead@warringah.nsw.gov.au>

To: [adam.halstead@warringah.nsw.gov.au](mailto:adam.halstead@warringah.nsw.gov.au)  
Subject: Code of Conduct Inquiry

Dear Councillor Laugesen,

As you are aware from the email sent to you from solicitor Mr. Adam Halstead on 26 October 2011, I have been engaged pursuant to clause 12.19(d) of the Code to conduct an inquiry and provide a report at the end of the investigation into a complaint about the Council's decision-making process regarding the appointment of a Councillor. I will again contact you in the coming weeks prior to a meeting concerning the inquiry and to speak with you.

Regards,



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«Complaint letter - Laugesen.pdf»

Annexure 'H' – Copy of letter from Sole Conduct Reviewer to Councillor Virginia  
Laugesen dated 2 March 2012.



2 March 2012

Councillor Virginia Laugesen  
Warringah Council  
Civic Centre  
725 Pittwater Road  
Dee Why NSW 2099

Dear Councillor Laugesen,

Re: Code of Conduct Inquiry.

As you are aware from my email communications to you sent 5 and 20 December 2012 I am conducting a Code of Conduct Inquiry concerning allegations of a breach of that Code by yourself in the circumstances of a Council meeting that took place on 16 August 2011.

As a matter of fairness to yourself and noting your email of 7 December 2011, I am offering you this final opportunity to provide your own input to the allegation prior to myself submitting the completed report to Council.

Should you wish to provide a submission I would ask that you do so within 21 days of receipt of this letter. After that time I expect that I will be in a position to finalise my report.

Thank you for your anticipated consideration concerning this matter.

Yours faithfully,


Kirk Dailly  
Barrister

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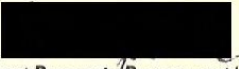
**Annexure 'I'** -- Receipt of registered mail received 7 March 2012. Confirming receipt of Annexure 'E'.

**Registered Post** 

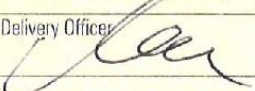
**Delivery Confirmation – Advice Receipt**


Registered Post No. <b>505985443014</b>	Sender's Reference <b>KIRK DAILY.</b>
--	--

Receipt is acknowledged of the Registered Post item, the number of which appears above.

**Sign Here**  Signature of Addressee\* or Agent 

\* Registered Post articles sent **Person to Person** must be signed by the **addressee only**.

Signature of Delivery Officer 	Date delivered <b>7/3/12</b>
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8855077 Nov 2005

**Annexure 'J'** – Email from Councillor Virginia Laugesen to Sole Conduct

Reviewer dated 7 March 2012.

From: "Virginia Laugesen" [REDACTED]  
Subject: Anonymous code of conduct allegation  
Date: 7 March 2012 6:52:49 PM AEDT  
To: "Kirk Dailly" [REDACTED]

Dear Mr Dailly,

As discussed by phone today, in future could you please correspond about code of conduct charges by email here and not by registered mail, as today's collection of your 21-day notice letter meant an inconvenient 10km round trip to council and to Dee Why Post Office.

Could you please also forward the letter by email, so that I have an electronic record of it, thank you.

I reiterate my objection to the waste of public money on this and all anonymous complaints outsourced by Warringah Council management, contrary to the principles of the Warringah Council and NSW Model Codes of Conduct that under S12.9 allow for the dismissal of conduct charges of the nature of that which you and Mr Halstead have been investigating since September:

12.9 The **General Manager** must determine either to:

- a) take no further action and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is **trivial, frivolous, vexatious or not made in good faith**, or
- b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
- c) discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or
- d) refer the matter to the Conduct Review Committee/reviewer.

I note with concern that neither you nor the general manager, Rik Hart, have contact details for the anonymous complainant and that he/she cannot therefore be interviewed or contacted with an update on the progress of their grievance that you have assumed is directed at me. I conclude then that Mr Hart is satisfied that the complainant will read about my punishment in the *Manly Daily* or when he/she next tunes in to a council meeting to protect the Housing Strategy process from minority councillor criticism?

My formal response will be sent in due course.

Regards

Virginia Laugesen

T [REDACTED]  
M [REDACTED]

**From:** Kirk Dailly [REDACTED]  
**Sent:** Tuesday, 20 December 2011 11:23 PM  
**To:** Virginia Laugesen  
**Subject:** Response to 7 December 2011 email

Dear Cr Laugesen,

I acknowledge receipt of your email dated 7 December 2011 and attached below. Noting your objections and comments I must therefore advise that I will continue with my inquiry as previously indicated. I would therefore assume from your email that should I ask you to provide any input to the inquiry or to answer any questions you would simply decline such an offer. Of course should you adopt that course, which appears clear from your email, that will be noted within my inquiry.

Regards,

**Kirk Dailly** Barrister LLB, BAppSc, Dip Pol



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On 07/12/2011, at 1:08 PM, Virginia Laugesen wrote:

Dear Mr Dailly,

I write to acknowledge receipt of your email of 5 December 2011 (below).

Please note, I am advised that your appointment has been made in breach of Section 377 of the Local Government Act, which supersedes Section 12.19(d) of the Warringah Council Code of Conduct.

Further, I have advice from the Warringah Council Internal Ombudsman that you are not listed on Council's register of code of conduct reviewers.

In view of the above, I regret there can be no further correspondence between us on the matter of the anonymous conduct allegation (attached), as you are ineligible to pursue the investigation.

Yours sincerely,

**Cr Virginia Laugesen**

---

**From:** Cr Virginia Laugesen [mailto:Virginia.Laugesen@warringah.nsw.gov.au]  
**Sent:** Monday, 5 December 2011 1:17 PM  
**To:** Virginia  
**Subject:** Fwd: Code of Conduct Inquiry

Begin forwarded message:



**From:** Kirk Dailly <[REDACTED]>  
**Date:** 5 December 2011 10:24:01 AM AEDT  
**To:** [virginia.laugesen@warringah.nsw.gov.au](mailto:virginia.laugesen@warringah.nsw.gov.au)  
**Subject:** Code of Conduct Inquiry

Dear Counsellor Laugesen,

As you are aware from the email sent to you from solicitor Mr. Adam Halstead on 28 October 2011 I have been engaged pursuant to clause 12.19(d) of the Code to conduct an inquiry and provide a report at the end of my investigation into a complaint arising from your alleged conduct at the council meeting of 16 August 2011. I will again contact you in the coming weeks prior to Christmas concerning my inquiry and to speak with you.

Regards,

**Kirk Dailly** Barrister LLB, BAppSc, Dip Pol  
[REDACTED]

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<Complaint letter - Laugesen.pdf>

**Annexure 'K'** – Email from Sole Conduct Reviewer to Councillor Virginia Laugesen dated 8 March 2012. Also includes email from Councillor Virginia Laugesen to Sole Conduct Reviewer dated 8 March 2012.



From: Kirk Dailly [REDACTED]  
Subject: Re: Anonymous code of conduct allegation  
Date: 8 March 2012 3:40:19 PM AEDT  
To: Virginia Laugesen [REDACTED]



Dear Councillor Laugesen,

Consistent with my brief discussion yesterday over the phone, my limited involvement is to conduct an inquiry into the allegation concerning the Council meeting of 16 August 2011 and your alleged conduct during that meeting. Beyond that I do not propose to enter into a dialogue with you concerning matters you have raised in the attached email received this morning or other matters not directly relevant to the allegation being investigated.

I also note and with reference to any inconvenience caused in collecting my letter to you dated 2 March 2012, and on review of your previous email communications to me, in addition to being standard procedure in my practice of contacting persons I wish to obtain a formal response from, I refer to your email to me of 7 December 2011 whereby you said "*I regret there can be no further correspondence between us on the matter of the anonymous conduct allegation.*". It is for those reasons as stated that the letter was sent as registered person to person mail.

I look forward to receiving your formal response as invited in my 2 March 2012 letter.

Regards,

Kirk Dailly Barrister LLB, BAppSc, Dip Pol



08/03/2012 10:15 AM

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On 08/03/2012, at 10:15 AM, Virginia Laugesen wrote:

Dear Mr Dailly,

Unfortunately Warringah Council management won't help me with questions on code of conduct process, compelling me to contact you at ratepayers' expense.

I deeply regret Warringah's habit of public funding of vexatious and in this case, *semi-literate* anonymous complainants for political purposes, however this administrative behaviour is endorsed by the majority-faction councillors, so the community and I must live with the high cost of 'democracy' in Warringah.

I'm aware that you are not listed on council's endorsed conduct reviewer panel and may not be fully across the supposed 'processes' or the flexibility WC management applies to procedure, depending on the subject.

I wonder if you might clarify your position on **where we are** in this investigation, as per my timeline below and my experience in past trivial complaints against me taken to full investigation by the general manager;

**16 Aug 2011:** alleged incident at housing strategy council meeting chaired by Cr Falinski

**21 Sept 2011:** Mr Halstead appointed to review anonymous complaint against three councillors.

**21 Oct 2011:** Mr Halstead notifies me of complaint.

**28 Oct 2011:** Mr Halstead argues no apprehended bias but hands over case to you anyway, despite S377 of LGA.

*ACTION BY REVIEWERS DURING THIS TIME?*

*INQUIRY? INTERVIEWS?*

**5 Dec 2011:** You notify me of your appointment to the investigation despite not being on WC's resolved reviewer panel list.

**7 Dec 2011:** You notify that you will proceed with investigation despite not being on WC panel list.

*ACTION BY REVIEWERS DURING THIS TIME?*

*INVESTIGATION? DRAFT REPORT?*

**7 Mar 2012:** Registered post letter giving me 21 days' notice to respond to the complaint.

**7 Mar 2012:** Mr Andrew Patterson confirms your permission to act on this case despite your not being on Council's conduct reviewers' panel list. Mr Patterson refers me to DLG and NSW O to query your appointment as is out of his jurisdiction as internal ombudsman.

*POTENTIAL FUTURE TIME-LINE:*

**28 Mar 2012:** VL response deadline

**Mid-Apr 2012:** Draft report

**Mid-May 2012:** VL response deadline

**June 2012:** Final report

**July 2012:** Report to council

**Aug 2012:** Council to vote on VL punishment\*.

As you may be aware, Warringah Council Management applies a range of different procedures to code of conduct 'inquiries', depending on the target. Its maladministration has triggered a review by the DLG and NSW Ombudsman.

Sometimes I'm not allowed to contact the reviewers, such as during a high-value property development matter, when Mr Hart insisted on intercepting all my correspondence and scanning it to his record system; sometimes I *am* allowed direct contact with his lawyers; sometimes council legal staff is allowed to help me on process, sometimes I'm referred to private counsel; sometimes I am supplied the file

documents, sometimes not; sometimes I'm supplied the public cost of these 'investigations', sometimes I'm not.

Has Mr Hart insisted on seeing all of our correspondence this time?

Usually I'm not given notice to respond to an anonymous complaint until after I receive a report from the reviewer/s.

I note that all I have to respond to, over the next three weeks, is the original anonymous letter (attached). While it's good to have the original 'document' to hand for a change, my usual experience is that in the time between the complaint being outsourced by Mr Hart to lawyers and my getting notice to 'defend' myself – *six months in this case* – by then I'm responding to a *preliminary report* following an 'investigation'.

That is, I'm not usually responding to the original complaint *again*, after it's been with reviewer(s) for six months, but to a document *substantiating* the 'charge(s)' and somewhat justifying Mr Hart's funding of anonymous cases with public money at a fee I understand is around \$300 per hour.

Questions

So am I now responding to the *substance* of the anonymous complaint *again*?

Or is my response due in three weeks going to form the basis of your draft/preliminary report, to which I will be asked to respond again, with the usual notice period of 28 days, upon which you will finalise the report for Mr Hart to have published in the media?

If the above is correct, *at which council meeting* might councillors be voting on my 'punishment' for your anonymous complainant? By my estimation, it would be the August meeting, which is the final meeting of this term. Should I prepare for a re-election campaign based on public waste spent on politicised code of conduct charges funded by management for the conservative councillors?

As you would be aware, the Code is explicit on bureaucracies interfering in political process, so I'm just wondering if council might be aware of the perception of the reasonable person that if your anonymous complaint and others against me equally mired in unexplained delays, if delivered at the August meeting, may be perceived as deliberate interference in my re-election potential and a case for discrimination?

Do you take discrimination cases in your private practice?

*\*If the resolution is that I apologise, to whom would that apology be addressed?*

Regards

Virginia Laugesen  
Freelance Journalist & Copywriter

T  
M

From: Virginia Laugesen  
Sent: Wednesday, 7 March 2012 6:53 PM  
To: 'Kirk Daily'  
Subject: Anonymous code of conduct allegation

Dear Mr Daily,

As discussed by phone today, in future could you please correspond about code of conduct charges by email here and not by registered mail, as today's collection of your 21-day notice letter meant an inconvenient 10km round trip to council and to Dee Why Post Office.

Could you please also forward the letter by email, so that I have an electronic record of it, thank you.

I reiterate my objection to the waste of public money on this and all anonymous complaints outsourced by Warringah Council management, contrary to the principles of the Warringah Council and NSW Model Codes of Conduct that under S12.9 allow for the dismissal of conduct charges of the nature of that which you and Mr Halstead have been investigating since September:

*12.9 The General Manager must determine either to:*  
*a) take no further action and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith; or*  
*b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing; or*  
*c) discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing; or*  
*d) refer the matter to the Conduct Review Committee/reviewer.*

I note with concern that neither you nor the general manager, Rik Hart, have contact details for the anonymous complainant and that he/she cannot therefore be interviewed or contacted with an update on the progress of their grievance that you have assumed is directed at me. I conclude then that Mr Hart is satisfied that the complainant will read about my punishment in the *Manly Daily* or when he/she next tunes in to a council meeting to protect the Housing Strategy process from minority councillor criticism?

My formal response will be sent in due course.

Regards

Virginia Laugesen

T  
M

From: Kirk Daily  
 Sent: Tuesday, 20 December 2011 11:23 PM  
 To: Virginia Laugesen  
 Subject: Response to 7 December 2011 email

Dear Cr Laugesen,

I acknowledge receipt of your email dated 7 December 2011 and attached below. Noting your objections and comments I must therefore advise that I will continue with my inquiry as previously indicated. I would therefore assume from your email that should I ask you to provide any input to the inquiry or to answer any questions you would simply decline such an offer. Of course should you adopt that course, which appears clear from your email, that will be noted within my inquiry.



Regards,

Kirk Dailly Barrister LL.B. BAppSc. Dip Pol

20th Dec 2011 10:08 AM

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On 02/12/2011, at 1:08 PM, Virginia Laugesen wrote:

Dear Mr Dailly,

I write to acknowledge receipt of your email of 5 December 2011 (below).

Please note, I am advised that your appointment has been made in breach of Section 377 of the Local Government Act, which supersedes Section 12.19(d) of the Warringah Council Code of Conduct.

Further, I have advice from the Warringah Council Internal Ombudsman that you are not listed on Council's register of code of conduct reviewers.

In view of the above, I regret there can be no further correspondence between us on the matter of the anonymous conduct allegation (attached), as you are ineligible to pursue the investigation.

Yours sincerely,

Cr Virginia Laugesen

---

From: Cr Virginia Laugesen [mailto:Virginia.Laugesen@warringah.nsw.gov.au]

Sent: Monday, 5 December 2011 1:17 PM

To: Virginia

Subject: Fwd: Code of Conduct Inquiry

Begin forwarded message:

From: Kirk Dailly - [REDACTED]  
Date: 5 December 2011 10:24:01 AM AEST  
To: [virginia.laugesen@warringah.nsw.gov.au](mailto:virginia.laugesen@warringah.nsw.gov.au)  
Subject: Code of Conduct Inquiry

Dear Counsellor Laugesen,

As you are aware from the email sent to you from solicitor Mr. Adam Hatstead on 28 October 2011 I have been engaged pursuant to clause 12.19(d) of the Code to conduct an inquiry and provide a report at the end of my investigation into a complaint arising from your alleged conduct at the council meeting of 16 August 2011. I will again contact you in the coming weeks prior to Christmas concerning my inquiry and to speak with you.

Regards,

Kirk Dailly, Barrister U.B. (AppSc. Dip. Pol.)

*Respect the Environment*

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<Complaint letter - Laugesen.pdf>

Annexure 'L' – Copy of Manly Daily article dated 12 March 2012.



NEWS LOCAL  
Manly Daily

EVENTS

Click here to submit your **event** listing 

## Mystery, and costly, complainer

COUNCIL 12 MAR 12 @ 04:15PM BY CHARIS CHANG

Tweet 2

Recommend

Send

Be the first of your friends to recommend this.



Cr Virginia Laugesen

WARRINGAH councillor Virginia Laugesen has launched a public appeal for an anonymous resident who lodged a code of conduct complaint against her to come forward.

Cr Laugesen said she had been given 21 days to respond to the resident's complaint but needed to better understand the person's grievances.

"The letter sent to the general manager after last August's council meeting is unsigned and contains no contact details, in fact it doesn't name me, but I'm assured the three key lines in the complaint refer to me."

More than half of the one-page letter has been blacked out, creating mystery and confusion, she said.

The complaint has already been under investigation for six months and Cr Laugesen said she was told it related to an August 16 council meeting where she questioned acting chair Cr Jason Falinski over one of his rulings.

"I'm not sure, from the letter's limited content, how my questioning an unexpected procedural motion has triggered a complaint considered serious enough for external investigation for so long, at considerable public cost."

Cr Laugesen said the council's general manager, Rik Hart, passed the complaint to a code of conduct reviewer on September 16.

It is now being examined by a second reviewer, who is a barrister.

"I'm concerned that an expensive inquiry into such a limited and ambiguous complaint's content might continue past six months," she said.

"To prevent further public cost and to be able to properly defend my reputation, I would like the complainant to

contact me, even anonymously, with more details."

**Cr Laugesen's email is: [virginia.laugesen@warringah.nsw.gov.au](mailto:virginia.laugesen@warringah.nsw.gov.au)**

21 SEP 10 @ 04:59PM

### **Minister to look into code of conduct mess at Warringah**

LOCAL Government Minister Barbara Perry will investigate why a code of conduct complaint against Warringah councillor Virginia Laugesen is still unresolved, despite the incident that led to the complaint occurring almost a year ago.

<http://www.wherelive.com.au>

**WHERE *i* LIVE**  
...and how

All times AEST

**Annexure 'M'** – Email from Sole Conduct Reviewer to Councillor Virginia

Laugesen dated 14 March 2012.

From: Kirk Dailly [REDACTED]  
Subject: Re: Anonymous code of conduct allegation  
Date: 14 March 2012 2:31:49 PM AEDT  
To: "Virginia Laugesen" [REDACTED]



1 Attachment 519 KB

Councillor Laugesen,

Please find document attached as requested in your email of today's date.



2 March 2012

Councillor Virginia Laugesen  
Warringah Council  
Civic Centre  
725 Pittwater Road  
Dee Why NSW 2099

Dear Councillor Laugesen,

Re: Code of Conduct Inquiry

As you are aware from my email communications to you sent 5 and 20 December 2011 I am conducting a Code of Conduct Inquiry concerning allegations of a breach of that Code by yourself in the circumstances of a Council meeting that took place on 16 August 2011.

As a matter of fairness to yourself and noting your email of 7 December 2011, I am offering you this final opportunity to provide your own input to the allegation prior to myself submitting the completed report to Council.

Should you wish to provide a submission I would ask that you do so within 21 days of receipt of this letter. After that time I expect that I will be in a position to finalise my report.

Thank you for your anticipated consideration concerning this matter.

Yours faithfully,

Kirk Dailly  
Barrister



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Regards,

Kirk Dailly Journalist, L.H. B.A. Dip Pol



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On 14/03/2012, at 10:42 AM, Virginia Laugesen wrote:

Dear Mr Dailly,

Would you please advise me of whether your inquiries for Mr Hart and his anonymous correspondent has so far or will in the future involve your asking assistance from the Environmental Defenders' Office? They appear to hold the key to the reason for this complaint, being mentioned clearly in the correspondence attached. In the absence of credible evidence of a code breach or our ability to contact the complainant and verify the nature of his/her grievance, what contact have you made with the EDO to clarify the advice they gave to the complainant?

Please advise if your retention by Warringah Council has extended to your contact with the EDO and let me know the result of that contact, thank you.

And could you please forward a copy of your deadline letter electronically, as requested last week?  
Thank you.

Regards

Virginia Laugesen  
Freelance Journalist & Copywriter

T  
M

From: Kirk Dailly  
Sent: Thursday, 8 March 2012 3:40 PM  
To: Virginia Laugesen  
Subject: Re: Anonymous code of conduct allegation

Dear Councillor Laugesen,



Consistent with my brief discussion yesterday over the phone, my limited involvement is to conduct an inquiry into the allegation concerning the Council meeting of 16 August 2011 and your alleged conduct during that meeting. Beyond that I do not propose to enter into a dialogue with you concerning matters you have raised in the attached email received this morning or other matters not directly relevant to the allegation being investigated.

I also note and with reference to any inconvenience caused in collecting my letter to you dated 2 March 2012, and on review of your previous email communications to me, in addition to being standard procedure in my practice of contacting persons I wish to obtain a formal response from, I refer to your email to me of 7 December 2011 whereby you said "I regret there can be no further correspondence between us on the matter of the anonymous conduct allegation...". It is for those reasons as stated that the letter was sent as registered person to person mail.

I look forward to receiving your formal response as invited in my 2 March 2012 letter.

Regards,

Kirk Dailly Barrister LLB, BAppSc, Dip Pol



0438 49 700 253 488

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On 08/03/2012 at 10:15 AM, Virginia Laugesen wrote:

Dear Mr Dailly,

Unfortunately Warringah Council management won't help me with questions on code of conduct process, compelling me to contact you at ratepayers' expense.

I deeply regret Warringah's habit of public funding of vexatious and in this case, *semi-literate* anonymous complainants for political purposes, however this administrative behaviour is endorsed by the majority-faction councillors, so the community and I must live with the high cost of 'democracy' in Warringah.

I'm aware that you are not listed on council's endorsed conduct reviewer panel and may not be fully across the supposed 'processes' or the flexibility WC management applies to procedure, depending on the subject.

I wonder if you might clarify your position on where we are in this investigation, as per my timeline below and my experience in past trivial complaints against me taken to full investigation by the general

manager:

**16 Aug 2011:** alleged incident at housing strategy council meeting chaired by Cr Falinski

**21 Sept 2011:** Mr Halstead appointed to review anonymous complaint against three councillors.

**21 Oct 2011:** Mr Halstead notifies me of complaint.

**28 Oct 2011:** Mr Halstead argues no apprehended bias but hands over case to you anyway, despite S377 of LCA.

*ACTION BY REVIEWERS DURING THIS TIME?*

*INQUIRY? INTERVIEWS?*

**5 Dec 2011:** You notify me of your appointment to the investigation despite not being on WC's resolved reviewer panel list.

**7 Dec 2011:** You notify that you will proceed with investigation despite not being on WC panel list.

*ACTION BY REVIEWERS DURING THIS TIME?*

*INVESTIGATION? DRAFT REPORT?*

**7 Mar 2012:** Registered post letter giving me 21 days' notice to respond to the complaint.

**7 Mar 2012:** Mr Andrew Patterson confirms your permission to act on this case despite your not being on Council's conduct reviewers' panel list. Mr Patterson refers me to DLG and NSWOO to query your appointment as is out of his jurisdiction as internal ombudsman.

*POTENTIAL FUTURE TIME-LINE:*

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As you may be aware, Warringah Council Management applies a range of different procedures to code of conduct 'inquiries', depending on the target. Its maladministration has triggered a review by the DLG and NSW Ombudsman.

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to help me on process, sometimes I'm referred to private counsel; sometimes I am supplied the file documents, sometimes not; sometimes I'm supplied the public cost of these 'investigations', sometimes I'm not.

Has Mr Hart insisted on seeing all of our correspondence this time?

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I note that all I have to respond to, over the next three weeks, is the original anonymous letter (attached). While it's good to have the original 'document' to hand for a change, my usual experience is that in the time between the complaint being outsourced by Mr Hart to lawyers and my getting notice to 'defend' myself – *six months in this case* – by then I'm responding to a *preliminary report* following an 'investigation'.

That is, I'm not usually responding to the original complaint *again*, after it's been with reviewer(s) for six months, but to a document *substantiating* the 'charge(s)' and somewhat justifying Mr Hart's funding of anonymous cases with public money at a fee I understand is around \$300 per hour.

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If the above is correct, *at which council meeting* might councillors be voting on my 'punishment' for your anonymous complainant? By my estimation, it would be the August meeting, which is the final meeting of this term. Should I prepare for a re-election campaign based on public waste spent on politicised code of conduct charges funded by management for the conservative councillors?

As you would be aware, the Code is explicit on bureaucracies interfering in political process, so I'm just wondering if council might be aware of the perception of the reasonable person that if your anonymous complaint and others against me equally mired in unexplained delays, if delivered at the August meeting, may be perceived as deliberate interference in my re-election potential and a case for discrimination?

Do you take discrimination cases in your private practice?

*"If the resolution is that I apologise, to whom would that apology be addressed?"*

Regards

Virginia Laugesen

Freelance Journalist & Copywriter

T. [REDACTED]  
M. [REDACTED]

From: Virginia Laugesen [REDACTED]  
Sent: Wednesday, 7 March 2012 6:53 PM  
To: 'Kirk Daily'



Subject: Anonymous code of conduct allegation

Dear Mr Dailly,

As discussed by phone today, in future could you please correspond about code of conduct charges by email here and not by registered mail, as today's collection of your 21-day notice letter meant an inconvenient 10km round trip to council and to Dee Why Post Office.

Could you please also forward the letter by email, so that I have an electronic record of it, thank you.

I reiterate my objection to the waste of public money on this and all anonymous complaints outsourced by Warringah Council management, contrary to the principles of the Warringah Council and NSW Model Codes of Conduct that under S12.9 allow for the dismissal of conduct charges of the nature of that which you and Mr Halstead have been investigating since September:

*12.9 The General Manager must determine either to:*  
*a) take no further action, and give the complainant the reasons in writing as provided in clause 12.1 of the Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith; or*  
*b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing; or*  
*c) discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing; or*  
*d) refer the matter to the Conduct Review Committee/reviewer.*

I note with concern that neither you nor the general manager, Rik Hart, have contact details for the anonymous complainant and that he/she cannot therefore be interviewed or contacted with an update on the progress of their grievance that you have assumed is directed at me. I conclude then that Mr Hart is satisfied that the complainant will read about my punishment in the *Manly Daily* or when he/she next tunes in to a council meeting to protect the Housing Strategy process from minority councillor criticism?

My formal response will be sent in due course.

Regards

Virginia Laugesen

T  
M

From: Kirk Dailly  
 Sent: Tuesday, 20 December 2011 11:23 AM  
 To: Virginia Laugesen  
 Subject: Response to 7 December 2011 email

Dear Cr Laugesen,

I acknowledge receipt of your email dated 7 December 2011 and attached below. Noting your objections and comments I must therefore advise that I will continue with my inquiry as previously indicated. I would therefore assume from your email that should I ask you to provide any input to the inquiry or to answer any questions you would simply decline such an offer. Of course should



you adopt that course, which appears clear from your email, that will be noted within my findings.

Regards,

Kirk Dailly Barrister LLB BAppSc Dip Pol

[REDACTED]

PH: 09 755 6100

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On 07/12/2011, at 1:08 PM, Virginia Laugesen wrote:

Dear Mr Dailly,

I write to acknowledge receipt of your email of 5 December 2011 (below).

Please note, I am advised that your appointment has been made in breach of Section 377 of the Local Government Act, which supersedes Section 12.19(d) of the Warringah Council Code of Conduct.

Further, I have advice from the Warringah Council Internal Ombudsman that you are not listed on Council's register of code of conduct reviewers.

In view of the above, I regret there can be no further correspondence between us on the matter of the anonymous conduct allegation (attached), as you are ineligible to pursue the investigation.

Yours sincerely,

Cr Virginia Laugesen

-----  
From: Cr Virginia Laugesen [mailto:Virginia.Laugesen@warringah.nsw.gov.au]  
Sent: Monday, 5 December 2011 1:17 PM  
To: Virginia  
Subject: Fwd: Code of Conduct Inquiry

Begin forwarded message:

From: Kirk Dailly <[REDACTED]>  
Date: 5 December 2011 10:14 AM AEST  
To: [virginia.laugesen@warringah.nsw.gov.au](mailto:virginia.laugesen@warringah.nsw.gov.au)

Subject: Code of Conduct Inquiry

Dear Counsellor Laugesen:

As you are aware from the email sent to you from solicitor Mr. Adam Halstead on 28 October 2011 I have been engaged pursuant to clause 12.19(d) of the Code to conduct an inquiry and provide a report at the end of my investigation into a complaint arising from your alleged conduct at the council meeting of 16 August 2011. I will again contact you in the coming weeks prior to Christmas concerning my inquiry and to speak with you.

Regards,

Kirk Dailly Barrister U.B. B.A. (Hons) Dip Pol

AKN 98 750 900 800

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<Complaint letter - Laugesen.pdf>

<Complaint letter - Laugesen.pdf>

**Annexure 'N' – Email from Councillor Virginia Laugesen to Sole Conduct**

Reviewer dated 14 March 2012.



**From:** "Virginia Laugesen" [REDACTED]  
**Subject:** RE: Anonymous code of conduct allegation  
**Date:** 14 March 2012 3:24:20 PM AEDT  
**To:** "Kirk Dailly" <[REDACTED]>  
**Cc:** "Lyn Brown" <lyn.brown@dlg.nsw.gov.au>, "Lyn Brown" <lyn.brown@dlg.nsw.gov.au>

[2 Attachments: 554 KB](#)

Dear Mr Dailly,

Thank you for supplying a copy of your deadline instruction letter on my second written request and previous verbal request.

I gathered from your silence on the matter of my substantive question, that you have not yet and will not in the future be conducting any actual *inquiries* based on the (limited) substance of the anonymous complaint letter (attached).

At no cost to rate payers, I have contacted the EDO myself today and ascertained from their principal solicitor that there is no record in their register of inquiries of a call about Warringah Council's Code of Conduct criteria in the period since 16 August.

However, I am aware that you are bound by your instruction from General Manager, Rik Hart, via original investigator, Adam Halstead, to pursue this anonymous complaint as a serious one for determination in the public arena after publication of your findings and my response(s). I take it you will find the time to prevent my personal contact details from being published.

Please stand by for my formal response.

Regards

Virginia Laugesen  
Freelance Journalist & Copywriter  
T [REDACTED]  
M [REDACTED]

**From:** Kirk Dailly [REDACTED]  
**Sent:** Wednesday, 14 March 2012 2:32 PM  
**To:** Virginia Laugesen  
**Subject:** Re: Anonymous code of conduct allegation  
**Importance:** High

Councillor Laugesen,

Please find document attached as requested in your email of today's date.

[Mail Attach...eml \(92 KB\)](#)

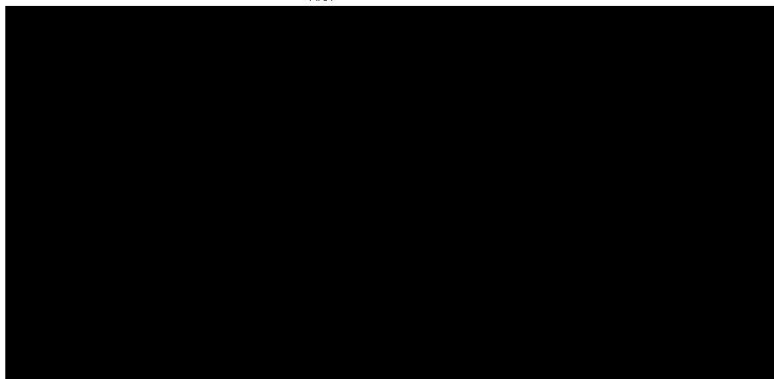
Dear Internal Ombudsman

I want to make a complaint [REDACTED]

At the meeting in 16 August [REDACTED] lot of statements that were wrong. I have been told by a woman at the environment defenders office that council people are not allowed to say things that are wrong and misleading. She also told me that councils have to know what they are voting on and are not allowed to say that they do not know what they voted on.

I want you to investigate this meeting because [REDACTED] lots of things that were misleading and are against the code of conduct I think.

I looked at the website and made notes.



21.11 Another woman sitting at the table says she did not understand what the first motion was and wants someone else to explain it to her, then she went sit down. Don't councillors have to understand the motion they are voting on.



**Annexure 'O'** – Email from Councillor Virginia Laugesen to Sole Conduct Reviewer dated 28 March 2012. Document embedded within email removed and replaced by subsequent email received 7 April 2012 and noted as Annexure 'M'. Embedded document within Annexure 'L' not included.

From: "Virginia Laugesen" <[REDACTED]>  
Subject: Response to anonymous complaint as required due to Mr Rik Hart's delegation for external investigation at public expense  
Date: 28 March 2012 5:39:27 PM AEDT  
To: "Kirk Daily" <[REDACTED]>

2 Attachments: 559 KB

  
[Response \(1\).docx \(211 KB\)](#)

Dear Internal Ombudsman

I want to make a complaint [REDACTED]

At the meeting in 16 August [REDACTED] lot of statements that were wrong. I have been told by a woman at the environment defenders office that council people are not allowed to say things that are wrong and misleading. She also told me that councils have to know what they are voting on and are not allowed to say that they do not know what they voted on.

I want you to investigate this meeting because [REDACTED] lots of things that were misleading and are against the code of conduct I think.

I looked at the website and made notes:

[REDACTED]

21.11 Another woman sitting at the table says she did not understand what the first motion was and wants someone else to explain it to her, then she went sit down. Don't councillors have to understand the motion they are voting on

Annexure 'P' – Email from Councillor Virginia Laugesen to Sole Conduct Reviewer dated 7 April 2012. Document embedded within email is letter from Councillor Virginia Laugesen originally dated 28 March 2012 and updated as per contents of email.

From: "Virginia Laugesen" [redacted]  
Subject: Redaction of previous Code of Conduct response and submission of revised reply  
Date: 7 April 2012 11:58:59 AM AEST  
To: "Kirk Dailly" [redacted]

1 Attachment (210 KB)

Dear Mr Dailly,

I regret that I have just discovered that I included comments in my response to you of 28 March that are in error.

The attached copy has all relevant references removed.

Though Mr Halstead has been involved in three code of conduct matters against me, he did not in fact rule against me in the matter where Cr Sutton called me "a f\*\*\*ing liar" in the chamber, as dismissed as "robust debate" in the sole reviewer's final report.

Yesterday I had cause to respond to Mr Halstead on another anonymous conduct charge against me that has been in train since May 2011. In the process of doing so, I discovered the conduct reviewer who ruled against me in that matter was Barry Davidow and not Mr Halstead, as I had recalled in error. It seems I had confused Cr Sutton's attack on me with another councillor's code of conduct case against her that Mr Halstead dismissed and therefore he has so far not ruled against me in two matters, only one (Kerr vs Laugesen).

If you could please indulge me by forgiving this regretted lapse during somewhat fraught times where I have been subjected to two anonymous conduct charges within the space of a week at the discretion of Warringah Council General Manager Rik Hart and perhaps also appreciate the impact of this ongoing harassment on my time. I would appreciate your attending to the deletion of my earlier response of 28 March and turning your attention to the attached revised document instead, within which the changes are minimal.

**This message serves as notice that if the original version of my reply is published by Warringah Council general manager, Rik Hart, under his authority as administrator of council's agenda and business papers, despite my correction and the attached revision supplied as soon as I determined an error had occurred, that I am absolved from any liability as I have corrected the matter expeditiously and in good faith.**

I look forward to your report coming to the council for final resolution and I apologise for any delay or additional cost to the community for my inadvertent error. Mr Hart may approach me for reimbursement for the cost of your time spent on this correction if required, as I am at fault for the procedural lapse in this instance.

Acknowledgement of your receipt of this message is requested, thank you.

Regards

Virginia Laugesen

  
[Response to ...pdf \(210 KB\)](#)

28 March 2012

Cr Virginia Laugesen  
Independent Warringah Councillor

Mr Kirk Dailly  
Via email to:



Dear Mr Dailly,

**RESPONSE TO ANONYMOUS CODE OF CONDUCT COMPLAINT OF 16 AUGUST 2011 ALLEGEDLY  
MADE ON THE RECOMMENDATION OF THE ENVIRONMENTAL DEFENDERS' OFFICE  
THE APPARENT CHARGE BEING:  
CR LAUGESSEN NOT SITTING DOWN**

1. I note that Section 12.9 of the Warringah Council Code of Conduct allows for the dismissal of vexatious and trivial complaints, such as the one you are investigating.
2. I note Warringah Council management's strict policy is to outsource all complaints against councillors, no matter their tenor or quality, to external review at public expense.
3. I note you were delegated the authority to investigate this trivial anonymous complaint by its original reviewer, Adam Halstead, despite your not being listed on Warringah Council's official register of Code of Conduct reviewers.
4. I note Mr Adam Halstead was appointed to the matter by Warringah Council General Manager, Rik Hart.
5. I note Mr Adam Halstead previously ruled against me in a code of conduct matter when he was part of a three-member panel on a staff member's complaint against me of 12 October 2009, which was originally submitted anonymously but due to what appears to be maladministration and/or incompetence, the complainant's identity and the identities of parties involved in inciting the complaint – Mayor Michael Regan and Mrs Bronwen Regan, then *Bronwen Thomas* – were revealed to me in a copy of an email from the staff member to Warringah Council general manager, Mr Rik Hart, dated 12 October 2009, which was eventually supplied to me in order to address the complaint with procedural fairness and
6. In reference to the above item, I note Mr Adam Halstead's previous ruling of 30 April 2010 to Warringah Councillors on another Code of Conduct matter as follows (my emphasis):
  25. *In the current matter, the alleged conduct occurred during meetings that were controlled by a chairperson. The issue of the comments attributed to Councillor Sutton are such that on each occasion the comments could have been brought to the attention of the meeting chairperson for immediate action during the respective meeting. That was the most appropriate time for these complaints to have been made.*
  26. *When the matters provided at clause 13.1 of the Code are weighed, the complaint and the further complaint:*
    - *relate to conduct that is not serious in the range of conduct the Code anticipates;*

- *are (more probably than not) trivial, frivolous, vexatious or not made in good faith, when the relationship between the parties is taken into account (that is, as political opponents);*
- *relate to matters for which an alternative and satisfactory means of redress was available at the time of the conduct, that being sanctions by the chairperson during the relevant meeting*

*Therefore the complaint and the further complaint that are the subject of this assessment determination do not warrant further action and it is not necessary to conduct a formal enquiry to determine whether a breach of the Code has occurred.*

7. I note all parties involved in the administration of this "case" against me refute my suggestion that the appropriate procedure to meet the 'reasonable person test' for the delegation of paid work would be to engage a member of the councillor-endorsed panel to investigate a councillor, despite the triviality of the matter concerned.

8. I note that despite my immediate response of 21 October 2011 to the 21 September anonymous complaint on my receipt of it from Mr Halstead, I have been pursued – as per the application of Code of Conduct practice under Section 19 – for a final response, following five months of "inquiry" by yourself and previous "inquiry" and delegation by Mr Halstead, indicating that the matter is regarded as serious according to yourself, Mr Halstead, Warringah Council general manager Mr Rik Hart and complaints administrator, Warringah Council Internal Ombudsman, Mr Andrew Patterson, presumably despite all parties' professional attention to Section 12.9 of the Warringah Council Code of Conduct and NSW Local Government Model Code of Conduct, ie:

*12.9 The General Manager must determine either to:*

- a) take no further action and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or*
- b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or*
- c) discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or*
- d) refer the matter to the Conduct Review Committee/reviewer.*

**Source:** [http://www.warringah.nsw.gov.au/council\\_now/documents/GOV-PL935CodeofConduct.pdf](http://www.warringah.nsw.gov.au/council_now/documents/GOV-PL935CodeofConduct.pdf).



9. For the public record, I table below my first response again, as supplied on the day of receipt of the complaint, below, originally emailed on 21 October 2011 at 5:45pm:

Dear Mr Halstead,

1. Any time spent addressing this anonymous complaint is a waste of public money.
2. As you were a panellist on the case against me of 2009-2010, which was the subject of a maladministration investigation and as a result triggered an enquiry by the Minister for Local Government into the Local Government Code of Conduct (underway now), it is my understanding that you have an apprehended bias in this case and are ineligible to investigate me.
3. I will enter into no further correspondence about this matter.

Regards,

Cr Virginia Laugesen

**From:** Adam Halstead  
**Sent:** Friday, 21 October 2011 7:04 PM  
**To:** Cr Virginia Laugesen  
**Subject:** Confidential - Code of Conduct complaint

Dear Councillor Laugesen

As you would be aware, I am a conduct reviewer for the Warringah Council.

A complaint was received by council on 21 September 2011 and has been referred to me by the General Manager in my capacity as a sole conduct reviewer (cf. Code of Conduct Committee) for investigation.

The complaint has been made anonymously and it relates to a meeting of council on 16 August 2011 at which you were present and I am reasonably satisfied that you are the person referred to at point 21.11 of the letter of complaint.

A copy of the complaint is attached for your review and response to allow you the fullest opportunity to address the allegations.

Please note the complaint refers also to matters arising at the same meeting that do not relate to you – those parts have been deleted because they identify other persons and have no bearing on the allegations about you.

Please note that for the purposes of my inquiries I declare this email communication and the attached letter of complaint to be confidential information for the purposes of clause 10.10 of the Warringah Council Code of Conduct (ver. 8d of 8 September 2009). This information may only be used by you to prepare a response or to obtain legal advice from a qualified legal practitioner who holds a practising certificate as an Australian Lawyer as defined by the Legal Profession Act 2004.

The attachment is provided on a confidential basis and must not be released or discussed with any person other than your legal advisor (should you wish to obtain such advice). It is provided to you to allow you the fullest opportunity to make a comprehensive response to the allegations contained therein as far as they relate to you. Disclosure of this email or the attachment to any person (including other councillors) except your legal advisor may give rise to a breach of the Code of Conduct.

The complaint relates to a meeting of councillors where the public was present and to your comments and conduct during that meeting.



*I now seek your response to the allegations contained in the attached letter of complaint for the purposes of my making an assessment of the allegations and complaint as to whether a formal inquiry will be conducted in to matter. In the event I determine an inquiry is necessary further information may be requested, including by way of interview.*

*It would be appreciated if your written response could be provided to me by return email ( [adam@bradfieldmills.com.au](mailto:adam@bradfieldmills.com.au) ) no later than 5pm Friday 4 November 2011.*

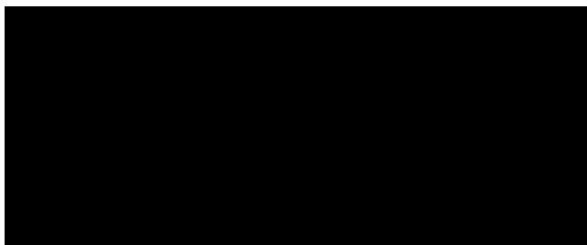
*After your complaint is received I may contact you further to clarify specific matters or to discuss issues arising.*

*Please contact me by return email if you have any specific questions in relation to my request for a response, otherwise I look forward to receiving your reply.*

*I reiterate this request is for the purpose of obtaining an initial response from you in relation to the allegation to assess whether an inquiry will be made in accordance with the Code of Conduct.*

*Yours faithfully*

*Adam Halstead*



*Liability limited by a scheme approved under Professional Standards Legislation*

*This email and attachments ("this email") contain confidential and privileged information. Legal professional privilege attaches to this email and is not waived by mistaken delivery. If you are not the named and intended recipient, you must not read, use, copy, disclose or disseminate this email or the information contained in this email but must delete it and notify us either by return email or telephone on [REDACTED]*

*Although we believe that this email is free of any virus or other defect which may affect a computer, it is your responsibility to ensure that it is virus free. We do not accept any responsibility for any loss or damage arising in any way from the use of this email.*

10. Noting my initial assertion that this entire matter is a waste of time and money, I supply you with this formal response in for the purposes of exposing for the public interest and on the public record, the repeated maladministration and discrimination I believe I am being subjected to by Warringah Council for reasons of retribution and political malice – notably by an allegedly anonymous party, who cannot be contacted for either interview as part of your and Mr Halstead's "investigations", nor to be advised of the outcome of the complaint they have filed to the Warringah Council general manager, Rik Hart, who has determined the matter to be serious enough to incur considerable public cost in reviewers' fees and additionally in internal administration, including preparation of the eventual report for presentation and debate at a future meeting of Warringah Councillors.

11. I note my receipt of this complaint was on **21 October 2011**, one month after it was received by Mr Halstead on 21 September 2011 and **eight weeks** after the alleged incident took place.

12. I note my response to original reviewer, Mr Adam Halstead, was provided by me 3.5 hours after receipt of the complaint on 21 October 2011 and that other than your letter of 8 March 2012, all contact during the five months to that date was instigated by me for an expeditious resolution, other than correspondence from Mr Halstead, when he argued with me against his having apprehended bias on the one hand, due to the Kerr vs Laugesen conduct charge, but in the same email he

delegated the complaint, ultimately to you, despite your absence from the official Warringah Council code register of conduct reviewers, an action supported by both Warringah Council General Manager, Rik Hart and his complaints administrator, Warringah Council Internal Ombudsman, Andrew Patterson.

13. To confirm our discussion during my phone call to you of 8 March 2012 outlining your causing my unnecessary inconvenience over a trivial and anonymous code of conduct complaint: On hearing that a 'registered mail' notice had been delivered to council to my attention, I presumed the correspondence was of high importance and took time from my working day to drive to Dee Why, collect the card, drive to the post office and queue to claim the registered mail.

14. To my surprise, the letter I collected in good faith was simply your notice of my 21 days' notice to respond to the code of conduct breach of an alleged incident on 16 August 2011; this letter of 8 March 2012 being your only contact with me since 7 December 2011 when you advised of your appointment to the "case", several weeks after Mr Halstead had nominated you as his delegate and colleague in the "investigation".

15. As we had corresponded previously by email about your appointment, I suggested on 8 March that in future, you and your colleagues might consider continuing to correspond by email to save anonymous code of conduct targets further unnecessary inconvenience, other than that time consuming responsibility already in train for such targets made necessary by the task of defending their reputations against political malice funded by public cost in reviewers' fees and internal administration by council staff. I note also that, thanks to your chosen delivery method of registered mail, that staff in the mayoral office also took the time at public expense to scan the post office card, email it to me and to advise me by telephone that they had not been permitted by Australia Post to either know the source of the correspondence or to sign for the letter on my behalf, despite a courier service to councillors that was scheduled for that day that could have delivered the letter to me, let alone the obvious convenience of email contact, given the trivial nature of this "inquiry" and anonymous complaint.

16. I note that original reviewer, Mr Halstead, the Warringah Council Internal Ombudsman Mr Andrew Patterson and Warringah Council general manager, Mr Rik Hart refute my position that Mr Halstead as ultimate reviewer on this "case" has *apprehended bias*, due to his previously ruling against me in the Kerr vs Laugesen Code of Conduct charge (see above), and further, that:

- Mr Halstead has no authority under S377 of the Local Government Act to delegate paid contract work on behalf of Warringah Council to a third-party; however, I was notably advised again by Warringah Council internal ombudsman, Andrew Patterson, who administers complaints on behalf of Warringah Council General Manager, Rik Hart, on 8 March 2012 that the *Warringah Council Code of Conduct* overrides S377 of the Local Government Act, because 'the Code of Conduct is an instrument of the Division of Local Government and the Division writes the Local Government Act'. Though I don't consider this to be *legal advice*, I did not spend money or time having this *opinion* confirmed by a professional expert, given Warringah Council's monetary resources for applying its Code of Conduct to anonymous and trivial matters is uncapped and its enthusiasm for doing so is inexhaustible.

17. If there was an "inquiry", leading to the "investigation", I would be interested to know who was "interviewed" since 21 September 2011, when the complaint was received by Warringah Council general manager, Rik Hart, given that no identity or contact details were supplied – except for the fact that any contact with you or Mr Halstead during proceedings to this effect costs ratepayers \$262 per hour plus expenses.

18. I note however, that the cost to satisfy my curiosity or concern as to whether the accepted investigative practice of interviewing complainants and/or “witnesses” has taken place and how, given the complaint is anonymous, might cost Warringah ratepayers’ in the vicinity equivalent to the cost of six months to one year’s rates.

19. I note your confirmation that as the anonymous complainant left no contact details whatsoever with his complaint, that your investigation is *proceeding* at public cost, but without any interviews being conducted with the aggrieved party and without their direction as to their interpretation of the “breach” and without any witnesses being interviewed.

20. I note the council meeting in question was chaired by Cr Jason Falinski and its topic was the Warringah Housing Strategy, a topic on which Cr Jason Falinski and I have disagreed in the past and likely will in the future. This is a situation which, in my understanding, is not yet an offence outside of Warringah Council’s boundaries, such as within the Law or in according to the LGA or within the Model or any other Code of Conduct. I note that some among Warringah’s constituents might prefer the initiative of ‘robust debate’ such that has occurred between Cr Jason Falinski and I since 2008 to the apparent subservience to Warringah Council management that is a feature of other Warringah Councillors under its current leadership – this is of course demonstrated by Mr Halstead and other reviewers’ past rulings against me and others for our accusations of attacks by councillor colleagues at the chamber when oppositional councillors are apparently unable to meet our debate points with appropriate formality and without vulgarity.

21. I note that the unnamed complainant in his/her 2.5 lines of detail has supplied a clue to you that his/her grievance was with the section of the meeting related to the Warringah Housing Strategy, albeit demonstrated by a remedial level of literacy it appears that he/she apparently took offence to reactions made in debate by not just me but also by two other councillors, about Cr Falinski’s rulings on the Warringah Housing Strategy’s treatment as an agenda item that evening. I note the anonymous complainant’s comments against the other two councillors have been censored by Warringah Council management in the complaint letter I received, presumably to prevent his/her multiple targets conferring on what is considered by Warringah Council general manager, Rik Hart, as a serious threat to Warringah Council’s reputation of professional standards of meeting management and governance. I believe the colloquial term for the practice of preventing ordinary contact and information-sharing by censorship and by the accompanying veiled threats of legal action from the reviewers and Warringah Council on the three complaint targets’ conferring on their matters is: ‘divide and conquer’.

22. The meeting in question being several months ago, on 16 August 2011, I don’t recall the alleged debate points and as I’m unfortunately not paid to watch the video of the council meeting as I believe you and Mr Halstead have been, I won’t be revisiting the meeting electronically over a trivial matter such as this. I further suggest that if additional anonymous correspondents motivated by the power of influencing future political outcomes aided by administrative practices of funding anonymous complaints are inclined to notate each of my philosophical disagreements with Cr Jason Falinski that those upholding Warringah Council’s Code of Conduct to the letter of its “law” would be engaged in conduct breach administration duties for several decades to come, at least under the present regime and at the current pace applied to “inquiries”.

23. I note however, the gist of the anonymous complaint, which does not name me, is that I ***didn’t sit down***. However, in my defence, I put to you, Mr Dailly, that I must have eventually sat down, or I’d still be standing in the chamber today, awaiting an answer to my query as apparently put to Acting Chair, Cr Jason Falinski, about his ruling on the Warringah Housing Strategy that night.

24. Further to the above, I note that according to the Warringah Council Code of Meeting Practice and the LGA, the responsibility for controlling a councillor’s conduct during a council meeting rests



with the Chair or in this case, the Acting Chair, Cr Jason Falinski. I note the substitute chair made no disciplinary order against me, eg. ordering my expulsion from the chamber by rangers etc, which was one of several options available to the Acting Chair had he taken legitimate offence to my interpretation of my duties under S232 of the LGA, which I thought I was exercising at that meeting by attempting to establish the basis for Cr Jason Falinski's procedural ruling. That is, if Cr Jason Falinski as acting chair at the 16 August 2011 Warringah Council meeting was aggrieved by my inquisitiveness or, as your correspondent infers via the Environmental Defenders' Office's alleged advice to him/her, that my ignorance of council procedure may have in fact warranted immediate action at the time, whether by my expulsion or another remedy for my silencing as available to the Acting Chair, Cr Jason Falinski at his sole discretion. Instead, this anonymous code of conduct "inquiry" has consumed a vast amount of Warringah Council's resources that might have otherwise been directed to overdue projects of maintenance or to funding Warringah Councillors' Notices of Motion that are routinely ruled "out of order" by Mayor Michael Regan, due to a supposed "lack of funding".

25. I note the anonymous complainant's apparently reduced level of intellectual capacity and research ability, as indicated by his/her writing skills and lack of basic meeting practice awareness (unless exaggerated to help distort their identity) has prevented him/her from including any reference to the acting chair's obligations for keeping order, which is otherwise common knowledge in international meeting practice.

26. I note with regret the public cost incurred by the complainant's ignorance of basic meeting practice rules has however resulted in a lengthy "investigation" of me, incurring considerable council resources, whereas the other two councillors' cases presented in the same letter but censored in my copy, were dismissed as trivial several months ago.

27. I note by the now seven-month long period of "inquiry" and "investigation" of this case, that none of the professionals involved during that time – ie. the Warringah Council general manager, Rik Hart, Warringah Council Internal Ombudsman, Andrew Patterson, original reviewer, Adam Halstead or yourself, Kirk Dailly, have had cause to consider that the acting chair, Cr Jason Falinski, held the absolute power to overcome my concern at that meeting and have me removed from the chamber or otherwise be silenced for questioning his unexpected ruling on the way the Warringah Housing Strategy was going to be debated under his chairmanship.

28. I regret that none of the parties involved in this "case" has demonstrated the initiative to dismiss the anonymous complaint by an apparent supporter of Cr Jason Falinski before incurring considerable public expense.

29. I note again, the same anonymous complainant's allegations made against two other councillors, as censored from my complaint, were dismissed last year after the "inquiry" phase, while the case against me has been upheld for seven months and deemed serious enough by the parties responsible for its administration and determination to make its way to "investigation" and the public domain, inviting media reporting and other public commentary in timing with the local government re-election campaign period.

30. I note the anonymous complainant quotes the Environmental Defenders' Office in the few lines of their letter and I note Mr Dailly's assertion to me that the terms of reference of his engagement do not extend to making inquiries of the EDO to check their contact records for additional validity, in the absence of other investigative leads provided.

31. In view of this lack of engagement with the available leads, I contacted the Environmental Defenders' Office in early March and spoke to the principal solicitor, who checked the organisation's phone register of incoming inquiries and found that there was no such inquiry by a Warringah

constituent made on or near the relevant dates in question about any Warringah Councillor, council meeting and/or the code of meeting practice or code of conduct obligations. I offer this personal and validated finding without charge to Warringah Council ratepayers for my time spent on pursuing this line of obvious inquiry, made in an attempt to defend my reputation and to address the shortfall in investigative procedure available in the terms of reference for local government code of conduct matters.

32. It appears therefore, that the reference to Environmental Defenders' Office contact may be a work of fiction by the anonymous complainant, designed to "validate" their grievance in support of Cr Jason Falinski's procedural ruling in his role as acting chair of the 16 August 2011 council meeting.

33. I look forward to your explicit ruling on the connection between the Environmental Defenders' Office and my crime of "not sitting down" in order to produce an answer from the Acting Chair, Cr Falinski on his ruling on the Warringah Housing Strategy, given the EDO is one of very few 'clues' given by Warringah Council general manager, Rik Hart's mystery correspondent as to the veracity of my offence and the apparent requirement for my public sanctioning and its report in the media during the re-election year of the term.

34. I note with concern on behalf of the Warringah Community that the anonymous complaint is upheld to external "investigation" despite failing in its 2.5 lines of correspondence to quote any section of the Code of Conduct and that the complaint has nonetheless taken up the fees and time of two lawyers, the salaried cost of administration by Warringah Council internal ombudsman, Andrew Patterson, the salaried cost of Warringah Council general manager, Rik Hart's oversight of the matter and the salaried cost of council's internal legal department, since August 2011.

35. In contrast, I note that my personal time has notably been deemed as worthless by the parties concerned and that I have once again been successfully sidelined by Warringah Council management's self-determined code of conduct policy for external review, from my personal, professional and council duties by having to attend to this "serious" matter, in an effort to protect my reputation.

36. I note that neither you, Mr Dailly, nor Mr Halstead, are able to notify the anonymous complainant of the result of your investigation or of any of our correspondence as his/her identity is unknown and no contact details have been supplied. I note the only course of notification may be via publication in the media of highlights of this "investigative" process and its debate by the full council.

37. I note that my informal and formal requests via GIPA (FOI) for the public cost of this complaint to date have been refused by the Warringah Council internal ombudsman, Andrew Patterson, despite use of public funding of such exercises being in the public interest.

38. I note however, according to Warringah Council Internal Ombudsman, Andrew Patterson, that the public will be entitled to know the full cost of this investigation only on its completion and not before, and only by my or another party's successful GIPA application as determined by Mr Patterson.

39. I note you have not offered me an interview, nor have you interviewed any other parties, such as members of the gallery present on 16 August 2011, the date of the alleged incident, wherein you might discover the identity of the complainant, if he or she were present. I note regular public gallery attendees, Mr Michael Syme and Warringah Mayoress, Ms Bronwen Regan, were in the gallery on that occasion and might be able on request, to assist you with your inquiries as a starting point and as a gesture to investigative procedure. They may also be able to assist you with the

identities of other viewers of this meeting who may volunteer support to the complainant's vague claims.

40. I note your confirmation on 8 March 2012 that you will consider this alleged incident in isolation and not in conjunction with any in the series of poorly-chaired and dysfunctional Warringah Council meetings since 2008, including one where I was called "a f\*cking liar" by another councillor.

41. I note your confirmation on the phone on 8 March 2012 that you were unaware that the censored sections of my complaint letter – numbering more than 14 lines of type – relate to complaints by the same anonymous correspondent against two other councillors and that you were also not aware as of 8 March 2012 that those two complaints censored from my letter were dismissed last year, I believe by Mr Adam Halstead, also at public cost after being deemed by Warringah Council General Manager Rik Hart, as being serious enough to warrant external 'investigation'.

**42. In effect, this single-page complaint, anonymously delivered to the Warringah Council General Manager, Rik Hart, has been investigated three times by external reviewers, at a cost of \$262 per hour plus expenses.**

43. I submit that the treatment to which I have been subjected at Warringah Council by its misuse of the code of conduct at public expense and the publicity such cases attract risks the prevention of a wide spread of community members participating in local government elections for fear of such treatment as I have experienced for not falling in line with political conservatism and the management culture.

44. In closing and for the public record, I look forward to the Division of Local Government's review of the Local council Code of Conduct to bring to an end the perpetuation of politicised, anonymous, trivial, malicious, vexatious and potty complaints against councillors, which are clearly designed to silence and sideline certain political opponents where those opponents threaten to expose the inadequacies of certain elected representatives.

*Please note: all items of evidence referred to in the above response are available for supply on request.*

Yours faithfully,

Cr Virginia Laugesen  
Independent for C Ward



**Annexure 'Q'** – Email from Sole Conduct Reviewer to Councillor Virginia

Laugesen dated 7 April 2012.

From: Kirk Dailly [REDACTED]  
Subject: Re: Redaction of previous Code of Conduct response and submission of revised reply  
Date: 7 April 2012 9:52:53 PM AEST  
To: Virginia Laugesen [REDACTED]



Councillor Laugesen,

I confirm receipt of your email of today's date and the contents. Thank you for communicating and correcting your mistake.

Regards,

Kirk Dailly Barriester LLB, BAppSc, Dip Pol



ALM 88 / 01 033 465

PLEASE NOTE THAT INSTRUCTIONS WILL NOT BE ACCEPTED IF TRANSMITTED VIA EMAIL UNLESS PRIOR APPROVAL IS SOUGHT AND GRANTED.

*This correspondence is for the named persons' use only. It may contain confidential or legally privileged information or both. No confidentiality or privilege is waived or lost by any mis-transmission. If you receive this correspondence in error, please immediately notify the sender and delete it from your system. You must not disclose, copy or rely on any part of this correspondence if you are not the intended recipient.*

*Please think about our environment. Please do not print this email unnecessarily.*

*Liability limited by a scheme approved under Professional Standards Legislation.*

On 07/04/2012, at 11:58 AM, Virginia Laugesen wrote:

Dear Mr Dailly,

I regret that I have just discovered that I included comments in my response to you of 28 March that are in error.

The attached copy has all relevant references removed.

Though Mr Halstead has been involved in three code of conduct matters against me, he did not in fact rule against me in the matter where Cr Sutton called me "a f\*cking liar" in the chamber, as dismissed as "robust debate" in the sole reviewer's final report.

Yesterday I had cause to respond to Mr Halstead on another anonymous conduct charge against me that has been in train since May 2011. In the process of doing so, I discovered the conduct reviewer who ruled against me in that matter was Barry Davidow and not Mr Halstead, as I had recalled in error. It seems I had confused Cr Sutton's attack on me with another councillor's code of conduct case against her that Mr Halstead dismissed and therefore he has so far not ruled against me in two matters, only one (Kerr vs Laugesen).

If you could please indulge me by forgiving this regretted lapse during somewhat fraught times where I have been subjected to two anonymous conduct charges within the space of a week at the discretion of Warringah Council General Manager Rik Hart and perhaps also appreciate the impact of this ongoing harassment on my time. I would appreciate your attending to the deletion of my earlier response of 28 March and turning your attention to the attached revised document instead, within which the changes are minimal.

This message serves as notice that if the original version of my reply is published by Warringah Council general manager, Rik Hart, under his authority as administrator of council's agenda and business papers, despite my correction and the attached revision supplied as soon as I determined an error had occurred, that I am absolved from any liability as I have corrected the matter expeditiously and in good faith.

I look forward to your report coming to the council for final resolution and I apologise for any delay or additional cost to the community for my inadvertent error. Mr Hart may approach me for reimbursement for the cost of your time spent on this correction if required, as I am at fault for the procedural lapse in this instance.

Acknowledgement of your receipt of this message is requested, thank you.

Regards

Virginia Laugesen

<Response to Kirk Daily investigation, anonymous complaint on EDO advice.pdf>

**Annexure 'R'** – Email from Sole Conduct Reviewer to Councillor Virginia Laugesen dated 22 May 2012. The same email also contains Councillor Laugesen's email acknowledgment of receipt dated 23 May 2012.

**From:** "Virginia Laugesen" [REDACTED]  
**Subject:** RE: Draft report attached  
**Date:** 23 May 2012 4:03:12 PM AEST  
**To:** "Kirk Dailly" [REDACTED]

---

Dear Mr Dailly,

Receipt is acknowledged.

Regards

Virginia Laugesen

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**From:** Kirk Dailly [REDACTED]  
**Sent:** Tuesday, 22 May 2012 2:23 PM  
**To:** Virginia Laugesen; Virginia.Laugesen@warringah.nsw.gov.au  
**Subject:** Draft report attached

Dear Councillor Laugesen,

Please find attached my draft report for your information and attention. In consideration of your preferred method for receiving documents, could you please confirm by return email receipt of this communication and the attachment for my records. In the alternative failing confirmation of receipt of this email I may have to send the document via registered post.

Should you wish to provide any feedback before the report is made final could you please do so by 3pm this Friday 25 May 2012.

Thank you for your anticipated consideration concerning this matter.

**Annexure 'S'** – Email from Councillor Virginia Laugesen to Sole Conduct Reviewer to dated 25 May 2012 attaching her formal response to the draft report sent 22 May 2012.



**From:** "Virginia Laugesen" [REDACTED]  
**Subject:** FW: Draft report attached: Response  
**Date:** 25 May 2012 11:37:11 AM AEST  
**To:** "Kirk Dailly" [REDACTED]

2 Attachments, 3.4 MB

Dear Mr Dailly,

My response to your Draft Report is attached.

Regards

Cr Virginia Laugesen

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**Subject:** Draft report attached

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[Draft report ...pdf \(3.3 MB\)](#) [Response to...docx \(67 KB\)](#)

**25 May 2012**

**Response to Findings of Sole Conduct Reviewer Kirk Dailly**

**Code of Conduct Complaint by Anonymous**

**Re: 16 August 2011 Warringah Council Meeting**

**TO WHOM IT MAY CONCERN**

From the outset, I again express in my submission that Mr Dailly is acting ultra vires and beyond jurisdiction in that he is not a properly appointed Warringah Council Sole Conduct Reviewer. The only body with the power to appoint a person to the Warringah Council Code of Conduct Committee is the elected Council by Resolution.

I have been denied procedural fairness throughout the matter, particularly with regard to the fact that Mr Halstead (who I alleged had apprehended bias due to a previous ruling against me) had already determined that Mr Dailly make "enquiries" into the complaint, thus fettering and preventing Mr Dailly (if he were so properly appointed) from exercising other powers under the Code of Conduct such as dismissing the complaint immediately as not made in good faith, vexatious and trivial. Instead, the matter was predetermined and I submit that due to the comments made by Mr Dailly in his Draft Report that he came to the matter with a closed mind, prejudice and clearly not open to persuasion.

The Code of Conduct is also clear in that a Code of Conduct Reviewer may only have regard to matters referred to it by the General Manager. Apart from the fact Mr Dailly is not a Code of Conduct Reviewer, Mr Dailly's report indicates he has acted procedurally ultra vires, gone beyond the scope of the allegations referred to him by Mr Halstead and taken into account irrelevant considerations. While he dismissed the complaint as 'not serious' he goes on to introduce further matters not notified to me and to find that I should be censured due to how I responded to the complaint and because of a failure to show contrition. His belief that I should be showing contrition in my response where I deny I have breached the Code of Conduct is further evidence that he prejudged the matter and was conflicted by apprehended bias.

I am also further being denied procedural fairness and natural justice in being given only three (3) days to respond to his Draft Report of 83 pages in length and received on the day of a council meeting, 22 May 2012.

In response to the report, in the short time I have had to prepare, I submit the following, noting that I have not had sufficient time to comprehensively consider the allegations made against me by Mr Dailly in his findings:

1. I note there is no case to answer in relation to the complaint under review.
2. I note the Section 14.7(h) of the Code of Conduct that prescribes 'undue delay' in managing inquiries and that this anonymous complaint has been under review and investigation since September 2011.
3. I note that no reference is made by Mr Dailly to Mr Halstead's mention in his first contact with me as the original reviewer, to the outcome of the two other Code of Conduct allegations made within the same complaint letter as that pertaining to me, ie. whether those two complaints against other councillors (censored in my copy) are also still under investigation and whether there is any relationship between those two matters to the anonymous complaint against me. I believe Section 6.2(f) on 'discrimination' may apply to the treatment of my case, depending on the status of the other two inquiries.
4. In supply of this response I have respected the provision of **three (3) days'** **notice** by Mr Dailly to respond to his 83-page draft report, noting the following extract from his email of 2.23pm on 22 May 2012:

***'Should you wish to provide any feedback before the report is made final could you please do so by 3pm this Friday 25 May 2012.'***

5. I note that the complaint referred to Warringah Council Conduct Reviewer, Adam Halstead was delegated by Mr Halstead to Mr Dailly, despite the Code of Conduct's **Section 12.12**, 'Conduct Review Committee/Reviewer':

*Council must resolve to appoint persons independent of council to comprise the members of a Conduct Review Committee and/or to act as sole conduct reviewers.*

And therefore the relevance of –

**Section 377(1)(u) of the LGA:**

*(1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council, other than the following:*

*(u) any function under this or any other Act that is expressly required to be exercised by resolution of the council.*

6. I note that at **page 1-2, paragraph 4**, Mr Dailly asserts that after my suggestion of Mr Halstead's apprehended bias (which Mr Halstead denied), his own appointment by Mr Halstead is legitimised by **Section 12.19(d)** of the Code of Conduct:

*The Conduct Review Committee/reviewer is responsible for making enquiries into complaints made under clause 11.1 alleging breaches of*

*the code of conduct by councillors and/or the General Manager and must determine either to:*

*... (d) engage another appropriately qualified person to make enquiries into the complaint*

In view of the terminology and apparent intent of the above clause, I suggest that Mr Dailly was in no position to:

- (a) provide a recommendation, particularly using introduced matters to do so, based on conjecture and opinion rather than evidence collated from “enquiries”;**
  - (b) Provide a recommendation without providing adequate notice to respond to the ‘new material’;**
  - (c) Withhold evidence or subsequent complaints on which it may be that he has relied on in his findings when acting outside the constraints of 12.19(d) by making recommendations in a final draft report rather than ‘making enquiries’ as the clause directs; or**
  - (d) sign off his correspondence as “conduct reviewer”.**
7. On the substance of the Draft Report, I note the absence of details of witness interviews undertaken or witness statements provided (whether made openly, anonymously or under protected disclosure) during the eight-month period since this matter was delegated for external review in September 2011 and the supply of comments based on conjecture being provided as a substitute for statements to support the anonymous allegation as delegated.
8. In early correspondence it was established by the reviewer(s) that the complainant is uncontactable. It would appear to the reasonable person that Procedural Fairness principles and the nature of the complaint (ie. its triviality) would render its valid dismissal, given the Division of Local Government’s Practice Note of 30 June 2010, ‘Complaints Assessment Policy and Guidelines’, specifically on matters of ‘credible evidence’ and ‘anonymity’. However, instead an unknown influence over the reviewer(s) compelled them to persevere to a finding over eight months for publication and council resolution.
9. I note in the absence of any presentation of witness interview transcripts or witness statements provided in support of the anonymous complaint, the inclusion in Mr Dailly’s Draft Report of assumptions made by him about decisions, actions and the omission of actions by the 16 August 2011 council meeting Acting Chair, Cr Jason Falinski, provide the substantive material on which councillors voting on Mr Dailly’s recommendations are to base their conclusions and decisions, ie at:



- **page 11, paragraph 38**, on the complainant's lack of literacy skills, this is substantiated by the quality of his/her letter and my comment on his/her research abilities is directly related to the Chair's responsibility for meeting control, which extinguishes the complainant's argument against me, as verified by Mr Dailly at paragraph 53 as 'a relevant consideration' ; and
  - **page 14, paragraph 53**, where Mr Dailly 'only surmises' about the meeting's closure, which was in reality handled contrary to the Code of Meeting Practice (a breach of the Code of Conduct he has not to my knowledge pursued separately to the complaint delegated to him) and additionally, in this section Mr Dailly injects emotive language, namely by specific use of 'confrontation'. If my defense of the public interest in the management of the Draft Housing Strategy was in fact considered a confrontation, the Acting Chair could have ruled accordingly, but did not. There was no 'confrontation'. At best, the situation should be determined as the highly valued feature of Australia's democracy - 'robust debate' – as ruled in past Code of Conduct matters undertaken by Warringah's conduct reviewers.
10. If substantive evidence to support Mr Dailly's assumptions has been compiled from witnesses and is available to me, being the subject of the complaint entitled to procedural fairness and as I am only three days ago in receipt of unsubstantiated opinion presented as a ruling in a Draft Review for response at short notice and potentially for publication; and with my purpose being presumably to support my prior reply of good faith, that there is no charge to defend – as supported by Mr Dailly via dismissal of the charge as 'not serious' – for the sake of currently absent procedural fairness, I request any such evidence on which Mr Dailly has relied to be provided by reply email and that on its supply, applicable further notice be given to me under the terms of the Code of Conduct at **Section 14.7 (a) to (h)**, 'Procedural Fairness', for my specific response to the new material with adequate time.
11. At Mr Dailly's **page 6, paragraph 20** and again at **page 11, paragraph 39**, where he pointedly extracts from my email to him and makes an assertion unrelated to his delegation, Mr Dailly appears to be taking on a role well beyond his purview, ie. one with a right to censor my free speech and adjudicate on my freedom of expression made in a private correspondence and my right to express my opinion when being unduly politically harassed over a trivial matter with the clear intention of manipulating a faulty Code of Conduct and a questionable administration of it, to my direct detriment.
12. If the anonymous complainant has issued a follow-up complaint to Mr Dailly or Mr Halstead via the general manager, as per **Sections 12.1 and 14.8** of the Code of Conduct, I welcome the opportunity to address that complaint if receipt of such a complaint (not supplied to me) has instigated Mr Dailly's

comments and opinions, in due course when I receive formal notice of the matter, with the appropriate report to the Division of Local Government for the unusual procedure undertaken by a purported 'conduct reviewer'.

13. Further to (9) and (10), above, if Mr Dailly's comments at his **paragraphs 20 and 39** are published at the discretion of the Warringah Council general manager, I will have reason to consider the action of the inclusion of that erroneous commentary in any report to Council and the act of its publication as being undertaken with the likely intention of inciting a subsequent Code of Conduct breach from the anonymous complainant or another party and, given the lengthy time and considerable funding given to the matter at hand and prior politically malicious anonymous complaints made against me, it can be reasonably assumed that any subsequent complaint – whether or not anonymous or viable – will be afforded unlimited financial resources by Warringah Council in both fees paid to reviewer(s) and unlisted internal administration support costs and without a capping of its 'review' or 'investigation' period, given the failings of the present Code of Conduct as documented by the Division of Local Government, NSW Premier in its present review paper and as debated by members of the NSW Parliament on my behalf and the record of Warringah Council's internal management of conduct investigations.

14. I note that any subsequent anonymous complaint about me considered valid by the general manager and made as per item 13, above, is open to being provided by any political operative with malicious intent against me and I note to that effect, Mr Dailly's comment at his **paragraph 9, on page 3** provide an applicable precedent to that person for such a complaint's review, should this occur:

*'I am of the opinion that should the nature of the complaint be justified at a preliminary or prima facie level based on all available information, then the actual identity of the anonymous complainant is unnecessary to the conduct of the investigation. Of particular importance I note that such anonymous complaints are protected under the Code of Conduct and as such, I have formed the opinion, that for the purpose of preparing this report, having regard to the substance of the complaint itself, that it is unnecessary to establish the identity of the complainant.'*

15. I note Mr Dailly's commentary at his **pages 15-16, paragraphs 58-60** contains findings and recommendations without his noting relevance to subsequent complaints received by the general manager and having been delegated to him by Adam Halstead for review on behalf of the Warringah Council General Manager, Rik Hart under **Section 12.1 or 14.8** of the Code of Conduct, indicating that no such complaints have been received and invalidating those sections of his Draft Report. The fact of an undue delay in making findings and the inclusion of irrelevant commentary has been included



when the delegated complaint has been determined as 'not serious' indicates influence by outside parties in the matter's decision-making process.

16. I note that Mr Dailly's comments and recommendations at pages **15-16, paragraphs 58-60** are verified as being beyond the scope of his delegation, specifically as his additional comments are inconsistent with the Warringah Council Code of Conduct, **Section 14.8**:

***The Conduct reviewer will only deal with matters referred to it by the General Manager or Mayor.***

17. I note, in relation to item (8), above, Mr Dailly's statement in the Draft Report at paragraph 23 indicates a contradiction within his own document and that additions have been made due to unknown influence:

***'... beyond the scope of my investigation which is limited to the allegation concerning the 16 August 2011 Council meeting only.'***

18. I note, in further contradiction of Mr Dailly's above comment on the 'scope' of his investigation under the terms of the Code of Conduct and given the matter as delegated to him by Mr Halstead and not by the general manager or a resolution of the council, a concerning comment again indicating influence or bias at **page 9, paragraph 29** of the Draft Report (emphasis added):

*'As will become clear in the body of my report, **it became apparent to me** that the conduct of Councillor Laugesen outside of the initial complaint and in direct response to the investigative process undertaken, may have in fact constituted a further and more worrying breach of the Code **than the subject of the initial complaint itself.**'*

19. If published, the above comment may give rise to the potential for the reasonable perception by the Warringah community of:

- a worrying disregard for the legislated terms of the Local Government Code of Conduct
- prejudice [S14.7 (f)]
- the erroneous insertion of personal opinion by a contractor to Warringah Council who holds a position of power and influence that is contrary to the guidelines for Reviewers at **Sections 14 and 6.2 (d)** of the Code of Conduct and to the general legal principles of Procedural Fairness and Natural Justice
- a disregard for the presence or absence of evidence or witness statements, whether openly provided or under Protected Disclosure, in making recommendations that strictly pertain to the delegation of Mr Dailly's authority and the substitution of such evidence with conjecture

- the insertion of material beyond the scope of the task, contradicting the author's own statements to the effect of 'scope'
- confusion by the conduct reviewers about their role in conducting inquiries as specifically delegated and according to **Section 14.8** implying their inability to meet the task of professional review to the standards required of procedural fairness preventing political discrimination
- general maladministration of code of conduct investigative procedure should Warringah Council by publishing the document accept of the introduction of erroneous material
- maladministration by Warringah Council by publication without revision, indicated by the acceptance of personal commentary and the author's own notations of the actual scope of his inquiry
- interference in process by the introduction of personal conjecture, indicating fettered discretion in a Report that the reasonable person may perceive as influential to the voting Councillors' resolution of a matter by giving undue opportunity for politicisation during a council meeting
- interference in political process by acting beyond the delegated brief and Code of Conduct scope in dismissing the prima facie complaint and introducing a new complaint without cause or evidence after eight months of inquiry using that time to manufacture cause against me to find for 'censure'
- manipulation of a faulty Code of Conduct policy and unmonitored administration procedures to cause the matter to come to council reasonably close to the local government election day, given the 12-week conclusion by dismissal of an investigation of an accusation against a majority-faction councillor on 22 May 2012 of a breach of pecuniary interest where the complainants provided contact details, were interviewed and where a complexity of evidence was examined and reported in detail by its conduct reviewer.

20. Notwithstanding the above, if the comments and recommendations made by Mr Dailly at **pages 15-16, paragraphs 58-60** are the result of a complaint or complaints that have been referred to him for investigation by the Warringah Council general manager as per **Section 12.1** of the Code of Conduct, I request that I be provided with formal notice of any such complaint in accordance with the Code of Conduct's **Section 12.9(d)**, that has occurred following the general manager's assessments under **Section 12.9 (a) to (c)**, 'Complaint Handling Procedures' and in compliance with **Section 14.7(a) to (h)**, 'Procedural Fairness', noting from Section 14.8 –

***The Conduct Review Committee/reviewer will only deal with***

***matters that are referred to it by the General Manager or the Mayor.***

21. If no additional complaint has been received by the General Manager and delegated to Mr Dailly, leading to his comments and recommendations in the Draft Report at **paragraph 29 and 58-60**, I request that any references or recommendations unrelated to the complaint as delegated by the general manager, ie. retained for publication regardless of my response for debate by Warringah Councillors in open session and that only that material from the Draft Report specifically in relation to the 16 August 2011 council meeting and the complaint received about that meeting; be removed from future drafts and/or the final report to prevent the perception of the undertaking by any Code of Conduct administrator or stakeholder as being designed to incite further anonymous complaints against me in the present political and politicised environment of Warringah Council.
22. At **page 15, paragraph 58**, Mr Dailly asserts as his 'opinion' that I have a lack of procedural knowledge of the Code of Conduct. I refer Mr Dailly and any readers of this response to his Draft Report to item 24, below and to complaints I have made in my own name about other councillors, where I have supplied specific references to the Code of Conduct and more than 2.5 lines of 'relevance' and no references to a specific breach, as has occurred with this complaint against me.
23. Also at **page 15, paragraph 58**, Mr Dailly falsely states that I attempted to identify the complainant. This statement shows that Mr Dailly's enthusiasm for mentioning the media's publication of my representations to them (as supplied to him) has clouded his comprehension, or that he has not paid attention to detail to a level expected of a formally enlisted 'conduct reviewer'. The content of the media report clearly and accurately includes my statement:
- "To prevent further public cost and to be able to properly defend my reputation, I would like the complainant to contact me, even anonymously, with more details."***
24. I further note that any person the subject of media exposure, as Mr Dailly has been in the Sydney Morning Herald on December 2, 2010 when defending his client Pierre Elias Mikhail in a case of alleged police prejudice, would be aware of the subject of a press article's appropriate lack of control on a story's emphasis or content, by which I refer to the Manly Daily's opening remarks on which Mr Dailly apparently relies to dramatise his item 58 and others, which were not attributed to me but were published at the editor's discretion as prose:

***WARRINGAH councillor Virginia Laugesen has launched a public appeal for an anonymous resident who lodged a code of conduct***



***complaint against her to come forward.***

25. Further to my items 22 and 23 above, I note Mr Dailly's repeated references at his **page 6, paragraph 22 and page 7, paragraph 23** to the media story of 12 March 2012 about the matter he has been delegated to investigate. I note particularly, Mr Dailly's comment (emphasis added):

*'Although outside the scope of the current investigation, it would be remiss of me not to comment on Councillor Laugesen's attempts to identify the anonymous complainant.'*

And I submit that the matter of 'scope' and the specific use of 'remiss' clearly indicate further that Mr Dailly has been compelled, I suggest by some form of outside influence, to introduce material unrelated to his delegation (in fact he admits it by this very comment) and that 'remiss' indicates an obligation on him, perhaps by a form of 'brief' undertaken, to the effect of ensuring fault is found regardless of its source or inconsistency with procedural fairness.

26. At his **paragraph 22**, Mr Dailly states that he 'became aware of the Manly Daily story'. I request that Mr Dailly, who states at his **page 2, paragraph 6**:

*'From the outset I must indicate that the views expressed within this investigation [sic] are entirely my own and have not been influenced by any person including those [sic] of Mr. Halstead, Councillor Laugesen or any other person.'*

While it is certainly clear that Mr Dailly was not 'influenced' by me, despite my successful argument against the complaint, which he ruled as 'not serious', given that he still ruled for my censure on a spurious introduced matter, given his highlighting a lack of influence by 'any other person', I request that Mr Dailly explain how he became aware of the Manly Daily story of 12 March 2012 and why he decided to include it in his report or investigation, given he supplies no evidence that a Code of Conduct complaint has been delegated to him in relation to the Manly Daily article's appearance by the original complainant or any other party, ie. there being no justification for its inclusion in the Draft or any Final Report and given the article's supply and appearance is in contradiction of the statement at Mr Dailly's **page 2, paragraph 6** and that its inclusion is unrelated to his brief and that he himself states this when he introduces the new material that was supplied to him:

*'Although outside the scope of the current investigation, it would be remiss of me not to comment on Councillor Laugesen's attempts to identify the anonymous complainant.'*

27. Was the Manly Daily article supplied to Mr Dailly by a member of Warringah Council staff who is involved in Code of Conduct administration? If so, was

this information 'supporting' censure supplied as an additional and formal complaint against me by the party who notified Mr Dailly of the article? Which parties other than myself, the Internal Ombudsman and the general manager are aware of Mr Dailly's appointment to the delegated Code of Conduct allegation? I am aware by early correspondence confirming it, that the anonymous complainant has provided no contact details to the council or the reviewer(s) of this case. Has this changed and if so, did the complainant provide the story either direct to Mr Dailly or to him via the general manager? Am I to be presented with the matter of the media story to answer as a separate complaint? When?

28. Further to the above, Mr Dailly makes two references to my contact with the media at his **paragraphs 23 and 58** as being a breach of **Section 10.10** of the Code of Conduct, indirectly at 23 and directly at 58.
29. I submit that if published, Mr Dailly's comments relating to **Section 10.10** of the Code telegraphs to members of the council and their political associates a breach he considers as having substance for further investigation and for which he supplies pre-emptive commentary from a position of influence and authority. This action is inconsistent with the Code of Conduct at **Section 4.7** (referenced below).
30. I submit that Mr Dailly's repeated irrelevant and out of context assertions about **Section 10.10**, if published as per his Draft Report, in the present political and politicised conditions at Warringah Council, could potentially incite further anonymous Code of Conduct claims against me that could be referred with procedural 'validity' for external review regardless of retrospectivity, under the current terms of the Code of Conduct which also does not specify a cap on the duration of an investigation nor its funding with public money even if submitted anonymously. Such action may reasonably be considered harassment or 'political discrimination', under **Section 6.9** of the Code of Conduct:
- You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination, on the grounds of sex, pregnancy, age, race (including nationality, cultural or religious background), responsibilities as a carer political affiliation, marital status, disability, homosexuality or transgender grounds or if a person has an infectious disease.*
31. I welcome debate from any party on the issue of my contact with the media in relation to the trivial anonymous charge delegated to Mr Dailly and reviewed and investigated for a period of eight months at public expense, having ultimately been dismissed as 'not serious'.

32. I put to any detractors about my contact with the media, my obligation to **Section 232** of the Local Government Act and below provide with emphasis of its specific relevance to my duty to protect the public from the expense in both financial funding and administration resources applied to vexatious and costly anonymous complaints:

**LOCAL GOVERNMENT ACT 1993 - SECT 232**

**What is the role of a councillor?**

**232 What is the role of a councillor?**

(1) *The role of a councillor is, as a member of the governing body of the council:*

- *to provide a civic leadership role in guiding the development of the community strategic plan for the area and to be responsible for monitoring the implementation of the council's delivery program*
- **to direct and control the affairs of the council in accordance with this Act**
- **to participate in the optimum allocation of the council's resources for the benefit of the area**
- *to play a key role in the creation and review of the council's policies and objectives and criteria relating to the exercise of the council's regulatory functions*
- *to review the performance of the council and its delivery of services, and the delivery program and **revenue policies of the council**.*

(2) *The role of a councillor is, as an elected person:*

- **to represent the interests of the residents and ratepayers**
- **to provide leadership and guidance to the community**
- *to facilitate communication between the community and the council.*

33. I advise political detractors, 2012 election candidates, Code of Conduct administrators and the anonymous complainant to review **Section 232** of the Act, above, while keeping in mind **Section 12.9 (a) and (b)** of the Code of Conduct which were bypassed on this matter eight months ago in September 2011:

*The General Manager must determine either to:*

- a) *take no further action and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or*
- b) *resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or ...*



34. In support of the above for consideration to readers of this response, should it be published during the 2012 election campaign period, I further submit the below Notice of Motion, one of several of my actions as an elected representative, moved with **Section 232** in mind, particularly in relation to providing leadership and with the deepest respect for my constituents and all of my fellow Warringah residents:

**NO 6/2012 POLICY REVISION OF ANONYMOUS CODE OF CONDUCT COMPLAINT MANAGEMENT**

**MOTION**

*That Council:*

*A. Notes that more than \$106,000 in reviewers' fees, plus additional in-house administration costs has been spent since September 2008 on councillor conduct investigations, including an unknown amount on anonymous complaints, where correspondents were unable to be contacted for interview or to be advised of investigation outcomes and*

*B. in line with the Division of Local Government's complaint investigation and management procedures as per its Practice Note 'Complaints Assessment Policy and Guidelines', specifically on matters of 'credible evidence' and 'anonymity', dated 30 June 2010, inserts to the Warringah Council Code of Conduct, effective immediately, a clause at Section 12.9 as follows:*

***'e) for anonymous complaints, the general manager is to decline to investigate or pursue the complaint without any preliminary enquiries being made.'***

*Relevant background provided to councillors and staff for the above motion included for their consideration:*

***DLG Practice Note, Complaints Assessment Policy and Guidelines, 30/06/2010***

***Relevant extract 1: Section 9***

*Complaints in response to which the department is more likely to intervene include those with:*

*credible evidence of a serious breakdown in council operations where the council is operating in an unsatisfactory manner or where there are major flaws in significant processes within council*

*credible evidence of breaches of the pecuniary interest provisions of the Act (see also the Pecuniary Interest Breaches – Guidelines)*

*credible evidence of misbehaviour on the part of a councillor under the discipline provisions of the Act (see also the Misbehaviour Guidelines)*

*credible evidence of a serious and substantial waste of council money raised in a protected disclosure to the Director General*

*credible evidence of non-compliance with important aspects of the Act and/or Regulations with adverse consequences for the broader local community or the local government sector as a whole.*

**Relevant extract 2: Section 10**

*The department will generally decline to investigate or pursue the following types of complaints without any preliminary enquiries being made:*

*where the matter complained about is assessed as being of a minor/insignificant nature*

*where the allegation is not accompanied by basic information needed to support the complaint that would be reasonably accessible to the complainant*

*where there is no threat to public interest involved in the matters raised and/or there is little scope for remedial action by the department*

*where the complainant is anonymous.*

**3 Link to DLG Practice Note**

[http://www.dlg.nsw.gov.au/DLG/Documents/GIPA/Complaints%20Assessment%20Policy.pdf#xml=http://www.dlg.nsw.gov.au/dlg/Scripts/dtSearch/dtisapi6.dll?cmd=getpdfhits&u=ac3712&DocId=1699&Index=\\*a23fb5b248ffc5ad0a4bfb28eef94cdd&HitCount=2&hits=4d2+4d3+&SearchForm=E%3a\WEBSITES\DLGPROD\DLGWWW\DLGHome\dlg\\_advanced\\_Search.asp&.pdf](http://www.dlg.nsw.gov.au/DLG/Documents/GIPA/Complaints%20Assessment%20Policy.pdf#xml=http://www.dlg.nsw.gov.au/dlg/Scripts/dtSearch/dtisapi6.dll?cmd=getpdfhits&u=ac3712&DocId=1699&Index=*a23fb5b248ffc5ad0a4bfb28eef94cdd&HitCount=2&hits=4d2+4d3+&SearchForm=E%3a\WEBSITES\DLGPROD\DLGWWW\DLGHome\dlg_advanced_Search.asp&.pdf)

**4 Section 11, Warringah Council Code of Conduct**

**Protected disclosures**

11.3 The Protected Disclosures Act 1994 aims to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector.

11.4 The purpose of that Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals, and that matters raised in the disclosures are properly investigated. **REPORT TO ORDINARY COUNCIL MEETING ITEM**

**NO. 6.1 - 24 APRIL 2012 - 5 -**

*11.5 If a complaint under this code is or could be a protected disclosure, you must ensure that in dealing with the complaint, you comply with the confidentiality provisions of the Protected Disclosures Act set out in section 22:*

*'An investigating authority or public authority (or officer of an investigating authority or public authority) or public official to whom a protected disclosure is made or referred is not to disclose information that might identify or tend to identify a person who has made the protected disclosure unless:*

- (a) the person consents in writing to the disclosure of that information, or*
- (b) it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern, or*
- (c) the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.'*

35. In final reference to Mr Dailly's commentary about a media story he was supplied by an unknown party a full six months into his 'investigation' of a matter he dismissed as 'not serious', in my having alerted the public to a vexatious, trivial, costly, politically-motivated and semi-literate anonymous complaint, I make reference to the duty of the 'Fourth Estate', for all its shortcomings, as the primary watchdog for and often enforcer of democracy, particularly in the presence of toxic and aspirational local politics and politicised bureaucracies where resident dissatisfaction with the present regime is evident by the high number of formal complaints about Warringah's administration and the high number of representations to councillors about dissatisfaction with council staff and their recommendations and regular negative media commentary by residents that by far outweighs positive comment about council administration. It may be preferable to some, such as for the party or parties who supplied Mr Dailly with the article of 12 March for informal inclusion in his Draft Report (or who submitted it to the general manager as a formal complaint), that is, unless he discovered the story himself, that the media did not 'interfere' with Warringah Council general business or code of conduct practices, hence the provision of that article for inclusion in Mr Dailly's findings. I note Mr Dailly does not indicate or clarify to readers of his report, the fact that relevance to **Section 10.10** and confidentiality 'breaches' as he proposes to be submitted (or that have been submitted) is a matter for the publisher of the article and their legal counsel. Nor does he observe that no party's 'confidentiality' was breached, given the complainant is anonymous. A reasonable person might apply S232 of the LGA to my actions, ie. the public interest in Warringah Council Code of



Conduct administrators' practices, which I note are currently under investigation by the NSW Ombudsman, also in the public interest.

36. Publication of any report including assertions extending beyond the brief of the Code of Conduct matter under referral and exhibiting the potential for perceptions of maladministration of an instrument of the Local Government Act may give rise to public indications of inconsistencies with pertinent aspects of **Section 6** of the Code of Conduct, 'General Conduct Obligations' detrimental to the public image of Warringah Council, ie (emphasis added):

6.1 You have an **obligation to comply with the provisions of the Local Government Act, 1993, the associated regulations and council's policies.**

6.2 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into **disrepute**. Specifically, you must not act in a way that:

(a) **contravenes the Act, associated regulations and council's relevant administrative requirements and policies**

(b) is **detrimental to the pursuit of the charter of a council**

(c) is **improper** or unethical

(d) is an abuse of power or **otherwise amounts to misconduct**

(e) causes, comprises or involves **intimidation**, harassment or verbal abuse

6.3 You must act **lawfully**, honestly, **responsibly and exercise a reasonable degree of care and diligence** in carrying out your functions under the Act or any other Act (section 439).

6.5 You have a responsibility to **behave professionally** and to develop and maintain constructive working relationships.

#### **Fairness and equity**

6.7 You must consider issues **consistently, promptly and fairly**. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.

6.8 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. **You must not take irrelevant matters or circumstances into consideration when making decisions.**

#### **Harassment and discrimination**

6.9 You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public.

*This includes, but is not limited to harassment and discrimination, on the grounds of sex, pregnancy, age, race (including nationality, cultural or religious background), responsibilities as a carer political affiliation, marital status, disability, homosexuality or transgender grounds or if a person has an infectious disease.*

37. I note that Mr Dailly gives priority to the consideration of 'contrition' at his **page 15, paragraph 54**:

*I find that Councillor Laugesen has not demonstrated nor expressed any contrition.*

despite his dismissing the matter delegated to him as 'not serious'.

38. Mr Dailly falsely and without cause insists on 'contrition' and uses its absence from my earlier response to the anonymous charge to support publication of his ruling of 'censure', based on introduced matters unrelated to the actual complaint before him. He has issued irrelevant considerations beyond his contracted role, for the apparent purpose of initiating negative public review and resolution beyond the scope of his appointment to be expressed by the elected body in a highly politicised environment and with timing close to the 8 September election day. Mr Dailly has ruled for censure based on how I responded to him and not based on any comment or evidence provided by any aggrieved party. Given the unknown complainant, had he or she come forward with their identity to exercise their opportunity for interview, whether on the record or under protected disclosure, could have contributed further evidence in support of Mr Dailly's opinions, it is inappropriate for 'contrition' to be prioritised as has occurred in this Draft Report.

39. Mr Dailly, at **page 15, paragraph 55** goes on to further demonstrate and extend apprehended bias in relation to an irrelevant absence of 'contrition' by indicating his opinion and preference for the councillors' approach in their pending resolution in open session of this matter, own ruling on the matter delegated to him of it being 'not serious':

*I find that an educative approach would be more beneficial to a punitive approach.*

40. Further on the subject of 'contrition' being mandatory in Mr Dailly's opinion, despite my rejection of the complaint's substance as delegated and his dismissal of it as 'not serious', at **page 15, paragraph 56**, Mr Dailly continues his commentary related to a lack of remorse by finally acknowledging the futility of an apology to an anonymous complainant, an opinion consistent with my comments to the Manly Daily published on 12 March 2012, to which Mr Dailly and/or other unknown parties have taken such offence as to breach procedural fairness by introducing that article to this Draft Report to encourage 'censure' (or a future anonymous complaint). On the veracity of anonymity, Mr Dailly states:

*In accordance with Clause 14.9 of the Code and as the complainant is anonymous there can be no benefit in a specifically targeted apology.*



*Likewise I do not believe that the breach of the Code warrants a public finding of inappropriate conduct.*

41. However, despite the stated 'lack of benefit' in an apology, as above, due to the complainant's anonymity, at **page 11, paragraph 39**, Mr Dailly asserts and appears to intend for publication and judgement by the elected body and the wider Warringah Community, the belief that the same anonymous complainant deserves 'respect' and despite the fact that the complainant, without Warringah Council's publication of Mr Dailly's report, would be oblivious to my comments about their capacity to comprehend council business, recognise the several breaches of the Acting Chair on the 16 August 2011 and equally report them as breaches, successfully navigate the Code of Conduct or prepare to an average standard of literacy, a letter of complaint. Each assertion is verified by the complaint itself and additional of my assertions in this response can be verified by viewing of the meeting webcast, this time paying attention to the Code of Meeting Practice and the duties of a meeting Chair.

42. Mr Dailly's opinion that absent contrition is a priority for the councillors' consideration when they vote, when I have in detail denied that I have breached the Code of Conduct and successfully proven that fact to Mr Dailly in his capacity as 'conduct reviewer' is further evidence that he prejudged the matter for a resolution of my 'punishment' and in doing so has been conflicted by apprehended bias, despite his comment at **page 2, paragraph 6** 'indicating' his absence of influence.

43. I note that Mr Dailly initially considered that the complaint as he was delegated to review it, may have breached **Sections 6.2 and 6.5** of the Code of Conduct and that as a result of detailed response, those charges have not been upheld in Mr Dailly's Draft Report.

44. I note that, arising from the Draft Report resulting from investigation of **Sections 6.2 and 6.5** over an eight-month period of review of those clauses, in which its author advises he has gone beyond the scope of his delegation, that the report's content in commentary and recommendations may be perceived by a reasonable member of the Warringah Community as incurring inconsistencies with the Mandatory Code of Conduct in general and with the following sections of the Warringah Council Codes of Conduct in particular:

- i) **Section 14.7 (a) to (g)**, specifically on the matter of the absence of witness statements and provision of evidence on which the reviewer's commentary about the alleged incident are based:

- i. *Procedural fairness*

- In conducting enquiries, the Conduct Review Committee/reviewer or the person engaged to do so should follow the rules of procedural fairness and must –*

- a) provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation
- b) provide the person the subject of the complaint with an opportunity to place before the Conduct Review Committee/reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry
- c) provide the person the subject of the complaint with an opportunity to address the Conduct Review Committee/reviewer in person
- d) hear all parties to a matter and consider submissions before deciding the substance of any complaint
- e) make reasonable enquiries before making any recommendations
- f) act fairly and without prejudice or bias
- g) ensure that no person decides a case in which they have a conflict of interests

ii) **Section 14.8**, specifically on the matter of the presentation of new material, at pages 15-16, paragraphs 58-60:

- Committee/reviewer will ensure it deals with all complaints in accordance with the provisions of Section 12 of this Code.
- All persons who are the subject of complaints that are referred to the Conduct Review Committee/reviewer will receive written information about the process being undertaken to deal with the matter.
- The Conduct Review Committee/reviewer will only deal with matters that are referred to it by the General Manager or the Mayor.

iii) **Section 14.8**, specifically on the matter of the period of eight months having elapsed since delegation to Mr Dailly's authority to review the complaint concerning the 16 August Warringah Council meeting, specifically:

*Where the Conduct Review Committee/reviewer determines to make enquiries into the matter, such enquiries should be made without undue delay.*

iv) **Section 13.3, Section 13.2 and Section 13.1, 'Complaint Assessment Criteria'** (which are each linked to the other), in relation to Section 14.8 (as above), noting the duration of the inquiry and the matter's dismissal as 'not serious', specifically given the Code of Conduct's explicit direction as follows (emphasis added):

**Section 13.2:**

Complaints that are assessed as **not having sufficient grounds to warrant referral** to the Conduct Review Committee/reviewer or that are to be referred to a more appropriate person or body **can be finalised by the General Manager** or the Mayor, in the case of complaints about the General Manager.

**Section 13.3:**

If a matter is referred to the Conduct Review Committee/reviewer, then the Conduct Review Committee/reviewer **should use the above criteria in clause 13.1 for its initial assessment of the complaint and determination of the course to follow in dealing with the complaint.**

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**Section 13.1:**

- a) whether there is any prima facie evidence of a breach of the code of conduct
- c) whether the complaint is trivial, frivolous, vexatious or not made in good faith
- d) whether the conduct the subject of the complaint could reasonably constitute a breach of the code of conduct
- e) whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police
- f) whether there is an alternative and satisfactory means of redress
- g) how much time has elapsed since the events the subject of the complaint took place
- h) how serious the complaint is and the significance it has for council

- v) **Section 12.1, 'Complaint Handling Procedures', specifically on the matter of the introduction of new material, comments and recommendations in the reviewer's Draft Report of related to what appears to be a subsequent complaint of which I have not been notified:**

Complaints about the conduct of councillors, members of staff of council, members of council committees and delegates of council should be addressed in writing to the General Manager.

- vi) Further to (iv), above, should the Draft Report be upheld and published with the inclusion of the comments and recommendations by Mr Dailly at **page 8, paragraph 29 and pages 15-16, paragraphs 58-60**, ie. his commentary and recommendations unrelated to the matter delegated to him by Mr Halstead and to which no subsequent formal and delegated complaint about me pertains at time of writing, the inconsistencies with the following Clauses of the Model and Warringah Codes of Conduct are of specific concern:

**Section 12.9(d)**, referral by the General Manager  
**Section 14.7 (a) to (g)**, Procedural fairness  
**Section 14.8**, ie.:

*The Conduct Review Committee/reviewer will only deal with matters that are referred to it by the General Manager or the Mayor.*

- vii) **Section 4**, 'Key Principles', specifically the latter section of **Section 4.7** as emphasised below and noting the introduction to this section of the Code of Conduct states (emphasis added):

*The Code of Conduct applies equally to formal and informal dealings between councillors, staff and others.*

**which goes on to say, specifically in relation to exercising authority on behalf of a council:**

*The Code of Conduct is based on the following key principles:*

*4.7 ... This means ... exercising any conferred power strictly for the purpose for which the power was conferred.*

45. I note that in accordance with clause **14.9 of the Mandatory Code of Conduct** it appears from his Report that Mr Dailly may have also erred by not documenting, addressing or giving full regard to:

*h) the degree of reckless intention or negligence of the subject*

*i) the extent to which the breach has affected other parties or the council as a whole*

*k) whether the findings and recommendations can justified in terms of the public interest and would withstand public scrutiny*

*m) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action*



*n) what action or remedy would be in the public interest.*

In conclusion, I first note the DLG Practice Note of 19 June 2008, 'Council decision making prior to ordinary elections':

***'Councils should also avoid active distribution of material during this period if it promotes the current elected council's policies or emphasises the achievements of an elected member or group'***

and the reasonable interpretation of this direction as being also applicable to the Council's distribution or publication of material emphasising damaging, false or unfairly prescribed resolutions on or allegations of misconduct against an elected member, particularly if published, distributed, reported on, publicly commented on by a member of council staff or elected member of the council or provided to parties outside the jurisdiction of Code of Conduct administrators, despite receiving documented notification of responses indicating maladministration for consideration for removal where inconsistencies apply.

Second, noting Section 6.6 of the Code of Conduct (emphasis added):

***6.6 Where you are a councillor and have been found in breach of the code of conduct, you must comply with any council resolution requiring you to take action as a result of that breach.***

and noting

- the absence of an appropriate appeals process for when malicious and trivial complaints are resolved following perceptions of influence or bias in that process other than via action in the Supreme Court
- the demonstrated capacity for politicisation of Warringah Council conduct complaints
- the limits on the subject of a complaint where they assert maladministration or political vexatiousness that are ignored for the purpose of political maliciousness or vendetta or the timing of re-election activity
- the above being a state of affairs currently considered deleterious by the Division of Local Government, Office of the Premier of NSW and as such being specific subjects for comprehensive review of the Code of Conduct which has been determined to be unviable and open to misuse, abuse and maladministration;

I further submit that if Mr Dailly's Draft Report –

- proceeds to council resolution without removal of my highlighted references and adjustments made in good faith within in the three (3) day notice period provided



- proceeds to council resolution without response to the above outlining reasons for my submission to be ignored
- is published without removal of commentary, opinion and rulings that are inconsistent with this matter's actual delegation, ie. circumstances relevant only to the matter referred to Mr Dailly about the 16 August 2011 council meeting
- rejects the abovementioned submissions about sections of the Warringah Council Code of Conduct and the Mandatory Code of Conduct not being addressed;

and if the matter is ultimately resolved by majority Councillors' vote as recommended by Mr Dailly, ie. for my 'censure' on a charge for which no complaint applies and where the actual delegated matter has been deemed 'not serious' by its 'reviewer', I submit that it may be reasonably perceived by the Warringah Community and the various Local Government authorities that:

- the administration of this complaint has been deliberately undertaken – not least as apparent by its substantial delay in resolution of at least nine months and despite its triviality, anonymity and ultimate ruling as 'not serious' – with a view to being resolved at a council meeting in open session and timed with the intention of causing me direct personal discredit and direct harm to my reputation;

particularly if unsubstantiated published commentary specifically orchestrated for detrimental publicity by way of media report or by the future circulation of political material using extracts from the findings, media reports and/or council resolution, during the 2012 election campaign period.

**Cr Virginia Laugesen**

**Annexure 'T'** – Email from Sole Conduct Reviewer to Councillor Virginia Laugesen dated 14 June 2012. The same email also contains Councillor Laugesen's return email dated 15 and 22 June 2012.

**From:** "Virginia Laugesen" [REDACTED]  
**Subject:** FW: Additional time within which to provide a formal response  
**Date:** 22 June 2012 10:49:04 AM AEST  
**To:** "Kirk Dailly" [REDACTED]  
**Cc:** "Adam Halstead" [REDACTED]; "Department of Premier and Cabinet (Local Government V)" <DLG@dlg.nsw.gov.au>; "Lyn Brown" <lyn.brown@dlg.nsw.gov.au>; <marie.ficarra@parliament.nsw.gov.au>

Dear Mr Dailly,

I refer to my correspondence to you below of seven days ago, which remains without reply.

I reiterate my request that both you and Mr Halstead disqualify yourselves from dealing with this matter due to apprehended bias, for the reasons outlined to you on 15 June.

I also advise that I have since received correspondence from the Division of Local Government acknowledging my claims of procedural ultra vires on your part and I am advised of the DLG's intervention, thus providing further evidence that both you and Mr Halstead should disqualify yourselves.

I will be making a complaint to the Legal Services Commissioner about your and Mr Halstead's conduct in this matter to date.

I also note Mr Halstead's comments in his letter to the Warringah Council General Manager highlighting that you were appointed due to your experience in criminal law and prosecution is not only further evidence of bias but is also defamatory and I reserve my rights in this regard.

In your report, you also falsely determine that intervention was required by a Ranger, 'Inspector Ryan'. Mr Ryan is Council's Director of Planning and Governance and was responding to a question I asked at the meeting in his capacity as such. Your conclusions in this regard again indicate apprehended bias and clearly that you came to this matter with a closed mind and as a prosecutor rather than as an unbiased reviewer.

I require your written response to the above and to the matters raised in my previous email as a matter of urgency, thank you.

Regards,

Cr Virginia Laugesen

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**From:** Virginia Laugesen [REDACTED]  
**Sent:** Friday, 15 June 2012 1:32 PM  
**To:** 'Kirk Dailly'  
**Cc:** 'office@page.minister.nsw.gov.au'; 'marie.ficarra@parliament.nsw.gov.au'; 'Lyn Brown'; 'nswombo@ombo.nsw.gov.au'; 'Department of Premier and Cabinet (Local Government)'  
**Subject:** RE: Additional time within which to provide a formal response

Dear Mr Dailly,

I note with concern that it would appear I am again not being accorded procedural fairness and natural

justice, in that this Code of Conduct matter has been pre-judged, particularly given Mr Halstead's email of **June 7 2012** (attached), confirming to Warringah Council general manager Rik Hart and Internal Ombudsman Mr Andrew Patterson your and Mr Halstead's recommendation that I be censured by the elected council.

This is despite my comprehensive response provided to you on **25 May** (attached), under the three-day response period you supplied to me on **22 May**.

It is apparent that both you and Mr Halstead have apprehended bias in this matter and therefore I submit that you should both disqualify yourselves, with the case being immediately referred to an independent Code of Conduct reviewer whose mind is not infected in this matter.

I further note my specific request of **25 May** for you to disclose who forwarded you the Manly Daily article of 12 March 2012, on which you have substantially relied to reach your finding of censure, remains unanswered. I repeat that request here for the source of that information supplied to you after this case had at that time been under investigation for a full six months and I again note your lack of disclosure to me of that article and its source being a major investigative lead informing your findings until your Draft Report and as remains emphasised in your Final Report for the attention of the voting councillors.

I look forward to your immediate response.

Regards,  
**Cr Virginia Laugesen**

**From:** Kirk Dailly [REDACTED]  
**Sent:** Thursday, 14 June 2012 9:29 PM  
**To:** Virginia Laugesen; Virginia.Laugesen@warringah.nsw.gov.au  
**Subject:** Additional time within which to provide a formal response

Dear Councillor Laugesen,

I have been advised to allow you a further 7 days within which to provide a formal response to my draft report sent to you on 22 May 2012. If you would like to provide any further detail by way of formal response I look forward to receiving your feedback. An additional 7 days will mean that you should, if you choose provide any further response by midday next Friday 22 June 2012.

If you could once again reply email confirming receipt of this email communication.

Regards,

*Kirk Peter Dailly*

LLB BAppSe DipPol  
Barrister--at-Law



T 02 9235 3100

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AB 558 750 993 485

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## **Warringah Council**

### **Report of Code of Conduct Inquiry into allegations of misbehaviour by Councillor Virginia Laugesen arising from an incident on 2 May 2011**

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#### **Background**

1. The report relates to an inquiry arising from a complaint made under the provisions of the Warringah Council (the Council) Code of Conduct. The complaint identified Councillor Virginia Laugesen as having engaged in improper and offensive conduct.
2. On 3 June 2011 an anonymous complaint was sent to the office of the Internal Ombudsman at Warringah Council by email. The complaint made an allegation about misbehaviour by Councillor Virginia Laugesen following an incident on 2 May 2011 in the Councillors' Room at the Warringah Council Chambers following a general council meeting on that date.
3. The allegation was that Councillor Laugesen conducted herself in an abusive and offensive manner toward a visiting member of the public, Ms Bronwen Thomas<sup>1</sup>. Ms Thomas had been invited into the Councillors' Room by another Warringah Councillor as a guest on 2 May 2011.

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<sup>1</sup> Although referred to as Ms Thomas by the anonymous complainant, and throughout this report, it should be noted that Councillor Laugesen has referred to Ms Thomas as *Mrs Regan* in her correspondence in relation to the complaint

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

4. The complaint alleged that whilst Ms Thomas was in the Councillors' Room, Councillor Laugesen approached her and shouted "fuck off, fuck off, just fuck off" at which time Ms Thomas and another Councillor present, Councillor Kirsch, proceeded to leave the Councillors' Room. As they left the room Councillor Laugesen is alleged to have repeatedly shouted at Ms Thomas to "fuck off" and then also have called her a "fucking psycho".

#### **Initial Inquiry**

5. On 29 June 2011 the complaint was referred by the Internal Ombudsman on behalf of the General Manager to a Conduct Reviewer appointed to the Conduct Review Committee of the Warringah Council, Mr Peter Givorshner. Mr Givorshner commenced an investigation into the complaint and subsequently made a determination to conduct an inquiry into the allegations regarding the conduct by Councillor Laugesen on 2 May 2011.
6. As part of the inquiry conducted by Mr Givorshner a letter dated 15 September 2011 was sent to Councillor Laugesen requesting her reply to the allegations.
7. In her response of 16 September 2011, Councillor Laugesen conceded that she had "invited Mrs Regan to fuck off three times". Councillor Laugesen denied that she continued to shout the words. Councillor Laugesen also accepted that her actions may be considered a breach of the Code of Conduct. In mitigating her actions, Councillor Laugesen stated the incident had occurred in a private room and was a private exchange. Councillor Laugesen reflected that the incident could have been avoided if she had removed herself from the Councillors' Room and therefore the situation that gave rise to the incident. Councillor Laugesen stated she did not recall calling Ms Thomas a "fucking psycho".
8. Attached to Councillor Laugesen's response was a document dated 16 September 2011 entitled *Apology*. Councillor Laugesen provided that

| 2

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

document to Mr Givorshner for the purpose of forwarding to Ms Thomas and it was subsequently provided to Ms Thomas in the course of the inquiry.

9. Also attached to Councillor Laugesen's 16 September 2011 response to Mr Givorshner was a document entitled *To Whom It May Concern: Anonymous Complaint - Apology*. That document was apparently intended for sending to the anonymous complainant from Councillor Laugesen.
10. On 16 September 2011 Mr Givorshner afforded Councillor Laugesen the further opportunity to provide any further submission or response she considered appropriate in relation to the complaint.
11. On 19 September 2011 Councillor Laugesen responded to Mr Givorshner and indicated she would not be submitting any further material.
12. On 20 September 2011 Mr Givorshner provided the *Apology* document to Ms Thomas.
13. On 10 October 2011 Ms Thomas provided a written response to Mr Givorshner wherein she considered that Councillor Laugesen had misrepresented the incident and the purported apology was not to her mind an apology at all and should not be accepted as such in relation to the inquiry.
14. In relation to the inquiry, Mr Andrew Patterson, the Warringah Council Internal Ombudsman, prepared a statement on 14 September 2011 about a telephone conversation he had with Councillor Laugesen during the afternoon of Tuesday 3 May 2011. Mr Patterson received a telephone call from Councillor Laugesen and during their conversation Councillor Laugesen referred to the Council meeting of 2 May 2011. Councillor Laugesen told Mr Paterson about the incident in the Councillors' lounge with Bronwen Thomas and said that she had told Bronwen Thomas to "fuck off and it was lucky for her that it was only verbal".

| 3

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

15. On 18 October 2011 Mr Givorshner made a decision to disqualify himself from further participation in the inquiry into the alleged misconduct by Councillor Laugesen arising from the incident on 2 May 2011.

#### **Finalisation of the Inquiry**

16. On 9 November 2011 the matter was referred to the Conduct Reviewer providing this report for consideration and finalisation in accordance with the Code of Conduct. At the time the matter was referred, a determination had been made by the initial Conduct Reviewer to conduct an inquiry pursuant to clause 12.19(c) of the Code of Conduct.
17. The available evidence accompanying the 9 November 2011 referral letter was reviewed and duly assessed as being sufficient for a prima facie finding of a breach of the Code of Conduct. As a result the inquiry under clause 12.19(c) into the conduct of Councillor Laugesen was confirmed as the appropriate response to the complaint and continued.
18. On 8 March 2012 a request was sent to Councillor Laugesen for a response to specific issues related to the allegations. Councillor Laugesen replied on the same date indicating she intended to provide a formal response to the request at a later time. Also on 8 March 2012 requests for information were also sent to a number of other persons in relation to the alleged incident on 2 May 2011.
19. A subsequent communication was received from Councillor Laugesen on 8 March 2012 requesting the complaint be dealt with by way of mediation.
20. On 14 March 2012 a response was sent to Councillor Laugesen's request for the matter to be referred for mediation with advice that since an inquiry was current in relation to the complaint it was not possible for the matter to be referred to mediation given the operation of the provisions of the Code of Conduct. The inquiry therefore proceeded in accordance with the previous

| 4

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

determination. It was suggested to Councillor Laugesen that she seek professional advice if necessary in relation to the relevant provisions of the Code of Conduct as to the formal procedure for an inquiry.

21. On 19 March 2012 Councillor Laugesen sent a further email communication in relation to her mediation request to which a reply was sent to her on 20 March 2012 reiterating the relevant provisions of the Code of Conduct that apply to an inquiry. On 20 March 2012 Councillor Laugesen sent a further email in relation to the same issue that did not warrant further response.

22. Councillor Laugesen sent an email on 6 April 2012 in response to the complaint that contained a lengthy submission and numerous attachments. The content of the submission was largely irrelevant to the incident of 2 May 2011 that was the subject of the complaint. A further email was sent by Councillor Laugesen on 10 April 2012 as an addendum to her submission that was also not specifically responsive to the 2 May 2011 incident.

## **SUMMARY OF EVIDENCE**

23. The following is a summary of the evidence considered in relation to the findings arising from the inquiry:

- Letter of complaint as contained in an email to the Warringah Council Office of the Internal Ombudsman and sent on Friday 3 June 2011
- Statement of Mr Andrew Bruce Patterson, Warringah Council Internal Ombudsman, dated 14 September 2011
- Email from Conduct Reviewer, Mr Peter Givorshner, to Councillor Virginia Laugesen with attached letter dated 16 September 2011



Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

- Email communication from Councillor Virginia Laugesen to Conduct Reviewer, Mr Peter Givorshner, with attached apologies to Bronwen Thomas (referred to as 'Mrs Regan' in the document) and also to the anonymous complainant, both dated 16 September 2011
- Email communication from Councillor Virginia Laugesen to Conduct Reviewer, Mr Peter Givorshner, dated 19 September 2011
- Letter from Ms Bronwen Thomas to Conduct Reviewer, Mr Peter Givorshner, dated 9 October 2011, in response to the Apology document from Councillor Virginia Laugesen dated 16 September 2011
- Written submissions from Councillor Virginia Laugesen dated 5 April 2012
- Email communication from Councillor Virginia Laugesen with attachment as addendum to her submission of 5 April 2012
- Written submissions in response to the comment draft of this report from Councillor Laugesen of 9 July 2012 (comprised of three separate email communications) and 11 July 2012 (comprised of two separate email communications).

24. Regard was also given to administrative documents of Warringah Council and various correspondence associated with the referral of the matter in relation establishing jurisdiction to inquire into the complaint.

#### **STANDARD OF PROOF**

25. In considering any allegation as to a breach of the Code the standard of proof to be applied is that of proof on the balance of probabilities. This principle was re-stated in the administrative decision-making context by the New South

| 6

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

Wales Administrative Decisions Tribunal in *Polglaze v Veterinary Practitioners Board of NSW* [2008] NSWADT 228. In that matter the Tribunal determined the standard of proof to be applied is the civil standard, which is proof based on the balance of probabilities. The application of the standard requires the available evidence to be weighed and findings made on the basis of whether any particular issue or event is more likely than not to have occurred. The assessment of the evidence has been approached on that basis.

26. The balance of probabilities standard of proof may vary from case to case in accordance with the principles laid down by the High Court in *Briginshaw v Briginshaw* (1938) 60 CLR 336; in that evidence of a more substantial nature will be necessary in circumstances where allegations are more serious. The principle may be described in summary as being that any allegation requires that degree of persuasive proof as is appropriate to the seriousness of the allegation. The effect of the principle is that a serious allegation will require a high degree of evidence whereas an allegation of a less serious nature will be founded on a lesser standard with a varying range in between.

27. The *Briginshaw* principles have been given due regard in this matter in the context of allegations that fall within the moderate to serious range of misconduct as assessed for an elected Councillor and so the evidence has been assessed accordingly. That is, evidence of some weight must be present for the findings.

## CONSIDERATION OF THE EVIDENCE

28. The allegations concerning Councillor Laugesen arising from the complaint of the 3 June 2011 that she used offensive language and conducted herself in a generally abusive manner towards Ms Bronwen Thomas.

| 7

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

29. It is not disputed by Councillor Laugesen that she told Ms Thomas to “fuck off” on at least three occasions. She was unable to recall whether she called Ms Thomas a “fucking psycho”. Her lack of recall may be explained by her highly charged state of mind that was evident from her comments the next day to Mr Patterson. In her response to the ‘Apology’ document submitted by Councillor Laugesen, Ms Thomas said that her recollection is clear that Councillor Laugesen did in fact refer to her as a “fucking psycho” as well as being told to “fuck off” repeatedly, which is consistent with the allegations in the anonymous complaint. Ms Thomas considered the actions by Councillor Laugesen to be an unprovoked attack which she considered aggressive, confronting and hostile.
30. In her response of 16 September 2011 Councillor Laugesen contends the comments directed to Ms Thomas were an ‘invitation’ for Ms Thomas to “fuck off”. That contention is not reasonable in the context of the incident and when the discussion Councillor Laugesen had with the Internal Ombudsman the following day, as recounted by Mr Patterson in his statement dated 14 September 2011, is taken into account.
31. The weight of the evidence is therefore that Councillor Laugesen told Ms Thomas to “fuck off” on numerous occasions, although the precise number of times is not specifically able to be determined, and referred to Ms Thomas as a “fucking psycho” in what can only reasonably be considered a hostile manner.
32. The evidence received from the Internal Ombudsman, in his statement dated 14 September 2011, is a valuable reference as to Councillor Laugesen’s state of mind and intentions during the incident on 2 May 2011. Mr Patterson’s evidence carries substantial weight given his conversation with Councillor Laugesen on 3 May 2011 was in very close proximity to the incident on 2 May 2011. Councillor Laugesen said words to the effect of “yes I did tell her to fuck off and it was lucky for her that it was only verbal” during the conversation

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

with Mr Patterson. It is evident from that comment that Councillor Laugesen had a significant degree of hostility towards Ms Thomas on 2 May 2011.

33. The reason for the comments by Councillor Laugesen and her related conduct towards Ms Thomas in the Councillors' Room on 2 May 2011 remains unclear. The actions and words of Councillor Laugesen would not on any objective measure be considered a normal or appropriate reaction to a person entering a room, regardless of the nature of their prior encounters.
34. There is no doubt that Ms Thomas entered the Councillors' Room at the invitation and request of another councillor, who had the same usage rights to the room as Councillor Laugesen. It would also appear to be the case that invited guests in the room were not uncommon and there was at least some precedent for persons other than councillors to be present in that room after Council meetings. Council has the best knowledge of the accepted custom and practice in relation to this issue.
35. The lengthy submissions provided by Councillor Laugesen on 6 April 2012 and 10 April 2012 are largely unconnected with the incident of 2 May 2011. That material relates to what would appear to be a history of some animosity, at least to the mind of Councillor Laugesen, between her and Ms Thomas. Such friction would seem to be confirmed to some degree given the response Ms Thomas provided to the 'Apology' document proffered by Councillor Laugesen. The purpose of a Code of Conduct inquiry is not to mediate disputes, but rather to make inquiries, obtain evidence and determine the facts of the incident on 2 May 2011 that is the subject of the complaint.
36. Comment should be made about the request from Councillor Laugesen of 8 March 2012 and on several subsequent occasions to have the matter referred for mediation. The identity of the complainant is not known so that person could not have participated in any mediation. In any case the most appropriate parties to engage in any mediation would be Councillor Laugesen

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

and Ms Thomas. The request by Councillor Laugesen presupposes that Ms Thomas would have agreed to mediate, which is not known and an issue that in any case was not further explored given the restrictions presented by the Code of Conduct pertaining to an inquiry. It is perhaps a matter that could be considered by council in relation to clause 14.9 of the Code of Conduct.

37. A Conduct Reviewer is bound by the provisions of the Code of Conduct. Clause 12.19 is the relevant provision and requires that a Conduct Reviewer (or Conduct Review Committee) deal with a matter according to one of the options in that clause. Once a determination is made to deal with a complaint by way of inquiry, mediation cannot thereafter be pursued as part of the inquiry. As a consequence of that provision, once an inquiry was commenced in relation to the complaint of 3 June 2011 it was not then open to the Conduct Reviewer to revoke the determination to conduct an inquiry and thereafter refer the complaint for mediation even had Ms Thomas agreed.

38. As advised to Councillor Laugesen during the course of the inquiry however, her offers to have the complaint mediated are relevant in respect of clause 14.9 of the Code of Conduct in relation to the sanctions, if any, to be imposed as a result of any finding the provisions of the Code of Conduct have been breached.

39. Despite the lengthy submissions, many attachments and numerous communications in relation to the complaint from Councillor Laugesen during the course of the inquiry, the issues are straightforward. The first is whether the words used by, and conduct of, Councillor Laugesen on 2 May 2011 was a breach of the Code of Conduct. The second is if that conduct was a breach then what sanction should be imposed by Council in response.



Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

## **KEY FINDINGS**

40. The following findings have been made on the balance of probabilities with regard to the available evidence:

- Councillor Laugesen was present in the Councillors' Room at the Warringah Council Chambers on 2 May 2011 following a Council meeting when Ms Thomas entered the room as a guest of another councillor.
- Councillor Laugesen shouted at Ms Thomas the words "fuck off" on a number of occasions whilst Ms Thomas was in the Councillors' Room and also referred to her as a "fucking psycho".
- Councillor Laugesen conducted herself in a hostile and aggressive manner towards Ms Thomas.

## **CONSULTATION**

41. Councillor Laugesen was provided with a copy of the draft version of this report on 4 July 2012 and provided the opportunity to make comment in relation to the report by no later than 5pm Wednesday 11 July 2012, being a period of seven days.

42. On 5 July 2012 Councillor Laugesen sent email advice that she would not provide any further response.

43. On 9 July 2012 Councillor Laugesen provided comments by way of written submissions in relation to draft version of this report in three separate email communications.

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

44. On 11 July 2012 Councillor Laugesen provided further comments by way of written submissions in two separate email communications.

45. The content of the five email communications received between 9 July 2012 and 11 July 2012 was reviewed in relation to the inquiry and report.

46. In her various communications Councillor Laugesen made demands for responses to various queries, none of which had any relevance to her ability to comment on the draft report and were therefore not provided. She also made reference to the following issues:

- various other Code of Conduct inquiries that have no bearing on this matter;
- claimed bias by the current conduct reviewer and requested the conduct reviewer be disqualified from the matter;
- claimed she had been denied procedural fairness and natural justice;
- claimed breaches of the Code of Conduct in relation to the inquiry generally;
- claimed undue delay in relation to the conduct of the inquiry, but also requested a further 28 days in which to comment upon the draft report;
- made numerous unsupported allegations as to the involvement of the General Manager and other councillors in relation to the original complaint and general conduct of the inquiry.

47. It was apparent from the content of the various communications of 9 July 2012 and 11 July 2012 that Councillor Laugesen incorrectly assumed the

| 12

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

opportunity for her to comment upon the content of the draft report was for the purpose of making further submissions in relation to the substantive complaint and the inquiry generally. However, the following comments have been extracted from the various submissions from Councillor Laugesen as being relevant to the draft report.

48. Councillor Laugesen considered the draft report to have lacked emphasis on her prompt response to the original reviewer and apology to Ms Thomas. In relation to this comment the reviewer is satisfied these facts are sufficiently contained within the report and do not warrant further emphasis given the ultimate decision is one for council. Due process would ordinarily require she be given an opportunity by council to make submissions as to these issues at the time the report is considered. It is therefore not a matter that requires any expansion in this report.

49. Councillor Laugesen requested her original response to the complaint and her related apology document be included in the final inquiry report. Whilst the full content of those documents is not included in the body of this report, those documents are relevant to the deliberations required of council arising from the inquiry and will therefore be made available with this report for that purpose.

50. Although strictly a submission on the evidence to which the findings relate, the following issue is a substantive matter arising from Councillor Laugesen's recent comments that warrants attention. Councillor Laugesen now emphatically denies having referred to Ms Thomas as "a fucking psycho" on 2 May 2011. The recent denial is in contrast to her original response to the complaint wherein she stated *It is true that I invited Mrs Regan to 'fuck off', though I only did so three times... and that I don't recall calling Mrs Regan "a fucking psycho"...* There is a marked difference between her original evidence of having no recall and the denial now made. It would not be a reasonable proposition to accept Councillor Laugesen's new claim that some

| 13

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

14 months after the incident of 2 May 2011 she now has a better recollection than at the time of her response on 16 September 2011, which was about four months after the incident.

51. It is the case however that Councillor Laugesen now denies referring to Ms Thomas as “a fucking psycho” and it is of course open to council to accept that denial should it consider the evidence does not support the related finding in this report.

52. A further comment by Councillor Laugesen in her communication of 9 July 2012 (at 19:28), which is also not strictly comment on the draft report but warrants reproduction in full, as it is highly relevant to the key findings arising from the inquiry, is: [with original emphasis]

My comments to Mrs Regan on May 2 were made because there were no witnesses for her in the room and because of my considerable distress on that occasion when I felt pushed to breaking point at her ongoing provocation of me over a long period of time, culminating in her unnecessary presence that night in my only place of privacy at the council chambers after a difficult council meeting. Had any of her political friends actually been present I would hardly have acted in a way to invite their support of Mrs Regan via the code of conduct, given Mr Hart’s predilection for their prolonging of cases against me.

53. It would seem from that comment that Councillor Laugesen considered herself to have been given something of an unfettered opportunity to have done as she wished during her encounter with Ms Thomas on 2 May 2011. This is a matter that could appropriately be taken into account when weighing the evidence.

54. Councillor Laugesen makes much of the fact that other witnesses were not interviewed as part of the inquiry into the allegations of her conduct, however as is made clear in this report, the evidence relied upon to make the findings

| 14

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

carries significant weight, not least of which are her own admissions as contained in her original response of 16 September 2011, the apology document and her comments to the Internal Ombudsman the day following the incident. It should be noted for the sake of completeness that several other persons were contacted in the course of the inquiry who advised they could not provide direct evidence of the incident on 2 May 2011.

55. The comments that were relevant to the draft report received from Councillor Laugesen on 9 July 2012 and 11 July 2012 were not of a nature as to warrant any changes to the substance of the report or key findings that appear in this final version.

56. As has been mentioned earlier in this report, the issues for determination are straightforward. They are whether the conduct during the incident on 2 May 2011 breached the Code of Conduct and if so the sanction that is to be applied.

#### **APPLICATION OF THE LAW AND CODE OF CONDUCT**

57. The *Local Government Act 1993 (NSW)* (the Act) is the legislation that applies to the operation of councils in New South Wales. The provisions of the Act had effect at all times relevant to this inquiry. Section 440 of the Act requires a council to adopt a Code of Conduct that incorporates the provisions of the model Code of Conduct as contained in the Regulations to the Act.

58. Warringah Council resolved on 8 September 2009 to adopt the current version of the Code of Conduct (the Code). The Code appears to have incorporated the provisions of the model code as required by the Act and so the Code had application at the time of the events of 2 May 2011.

59. Clause 12.1 of the Code provides complaints about the conduct of councillors should be addressed to the General Manager in writing. The complaint to which this inquiry relates was made in writing by email to the Office of The

| 15



Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

Ombudsman who in turn referred it to the General Manager. The Internal Ombudsman is an officer with specific responsibility for receiving complaints on behalf of the General Manager and so the complaint is accepted as having been made in accordance with the Code and is subject to the complaint handling procedures and sanctions provisions of the Code.

60. The General Manager is responsible for making an assessment of a complaint that is made in accordance with the Code (clause 12.8) and thereafter must determine the manner in which a complaint is to be handled (clause 12.9). The General Manager complied with the complaint handling requirements in the present matter by causing the complaint to be referred to a Conduct Reviewer.

61. In dealing with a complaint, clause 12.19 of the Code provides that a Conduct Reviewer must make a determination to:

- a) *not make enquiries into the complaint and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or*
- b) *resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, making recommendations to the General Manager, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or*
- c) *make enquiries into the complaint, or*
- d) *engage another appropriately qualified person to make enquiries into the complaint, or*
- e) *not make enquiries or discontinue making enquiries where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing.*

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

62. Clause 13.3 of the Code provides the Committee should use the complaint assessment criteria at clause 13.1 of the Code in making an initial assessment of the complaint to determine the course to follow in dealing with a complaint. The assessment criteria at clause 13.1 are:

- a) *whether there is any prima facie evidence of a breach of the code of conduct*
- b) *whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as General Manager*
- c) *whether the complaint is trivial, frivolous, vexatious or not made in good faith*
- d) *whether the conduct the subject of the complaint could reasonably constitute a breach of the code of conduct*
- e) *whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police*
- f) *whether there is an alternative and satisfactory means of redress*
- g) *how much time has elapsed since the events the subject of the complaint took place*
- h) *how serious the complaint is and the significance it has for council*
- i) *whether the complaint is one of a series indicating a pattern of conduct.*

63. These issues were considered and it was determined that when the grounds provided at clause 13.1 of the Code were weighed, the complaint contained allegations of conduct that, if substantiated, may reasonably be found to give rise to a breach of the Code and the Act. An inquiry as provided by clause 12.19(c) of the Code was considered the most appropriate method of dealing with the matter.

| 17

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

### Conduct Standards

64. The following provisions of clause 6 of the Code are relevant to the complaint:

6.2 *You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute. Specifically you must not act in a way that:*

a) *contravenes the Act, associated regulations, council's relevant administrative requirements and policies*

...

c) *is improper or unethical*

d) *is an abuse of power or otherwise amounts to misconduct*

...

e) *causes, comprises or involves intimidation, harassment or verbal abuse*

...

6.4 *You must treat others with respect at all times.*

65. These requirements of standard are relevant to the 'Key Principle' at clause 4.2 of the Code as to *Leadership*:

*You have a duty to promote and support the key principles by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of the council. This means promoting public duty in the council and outside, by your own ethical behaviour.*

66. The standard of conduct provided at clause 6.4 specifically reflects another of the 'Key Principles' in the Code at clause 4.8 in relation to *Respect* that provides:

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

*You must treat others with respect at all times. This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision making.*

67. The Code and the standards it provides are obligations required of all council officials. The standards are a mandatory minimum level of conduct expected to be observed at all times. The Introduction to the Code includes the following statement:

*... The role as an elected person requires councillors to represent the interests of the community and provide leadership. This Code sets the standard of conduct that is expected when council officials exercise these roles.*

68. The need for councillors to comply with the standards of behaviour contained in the Code of Conduct is to ensure community confidence in the Council's ability to govern fairly and effectively. In the context of these principles from the Code, the findings arising from the evidence have been applied to the relevant provisions in the Code as extracted above in determining the matter.

## DETERMINATION

69. The undisputed evidence is that Councillor Laugesen shouted at Ms Thomas the words "fuck off" on a number of occasions whilst Ms Thomas was in the Councillors' Room. The weight of the evidence is that Councillor Laugesen also referred to Ms Thomas as a "fucking psycho". The evidence also supports the finding that Councillor Laugesen conducted herself in a hostile and aggressive manner towards Ms Thomas whilst engaged in that shouting exercise.

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

70. There is no doubt that improper conduct by Councillor Laugesen was verbal abuse and harassment. The incident was also such as to have caused Ms Thomas to have been intimidated.
71. The conduct by Councillor Laugesen towards Ms Thomas on 2 May 2011 was in breach of clause 6.2 of the Code in that it was conduct likely to bring the council or holders of civic office into disrepute. The behaviour by Councillor Laugesen was improper (Clause 6.2(c)), otherwise amounts to misconduct (clause 6.1(d)) and was verbal abuse and harassment that caused and involved intimidation (clause 6.1(e)).
72. There was a complete failure by Councillor Laugesen to meet the standard required by the Code at clause 6.4 *to treat others with respect at all times*.
73. It is an essential requirement for elected councillors to understand their roles and responsibilities as provided by the *Local Government Act 1993* and as specified in the Code of Conduct. Those roles and responsibilities are not optional and the available evidence makes clear that Councillor Laugesen failed to comply with the requirements of the Code of Conduct on 2 May 2011.

## RECOMMENDATION

74. Section 440F of the Act defines conduct that is considered to be *misbehaviour of a councillor* and provides:

### **440F Definitions**

*(1) In this Division:*

***misbehaviour*** of a councillor means any of the following:

- (a) a contravention by the councillor of this Act or the regulations,
- (b) a failure by the councillor to comply with an applicable requirement of a code of conduct as required under section 440(5),

| 20

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

(c) *an act of disorder committed by the councillor at a meeting of the council or a committee of the council,*

*but does not include a contravention of the disclosure requirements of Part 2.*

75. Subsection 440F(1)(b) of the Act provides that a breach of a council code of conduct will constitute *misbehaviour* where that breach is a failure to comply with subsection 440(5) of the Act.

76. Section 440 of the Act relates to the requirements for councils to adopt and apply the provisions of a Code of Conduct. Subsection 440(5) of the Act establishes the requirement for a councillor and staff to comply with the Code of Conduct adopted by their council. That subsection provides:

- (5) *Councillors, members of staff and delegates of a council must comply with the applicable provisions of:*
- (a) *the council's adopted code, except to the extent of any inconsistency with the model code as in force for the time being, and*
  - (b) *the model code as in force for the time being, to the extent that:*
    - (i) *the council has not adopted a code of conduct, or*
    - (ii) *the adopted code is inconsistent with the model code, or*
    - (iii) *the model code contains provisions or requirements not included in the adopted code.*

77. The conduct by Councillor Laugesen on 2 May 2011 was in breach of Clauses 6.2 and 6.4 of the Code of Conduct. The Code of Conduct was adopted by Warringah Council pursuant to section 440 of the Act. Accordingly, the conduct by Councillor Laugesen was a failure to comply with the Code of Conduct as provided by subsection 440(5) of the Act.

78. Councillor Laugesen's conduct was therefore *misbehaviour* as defined by section 440F of the Act.



Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

79. Clause 14.9 of the Code provides that on making a finding of a breach of the Code, a Conduct Reviewer may make recommendations to Council that it take any of the following actions:

- a) Censure the councillor for misbehaviour*
- b) Require the councillor to apologise to any person adversely affected by the breach*
- c) Counsel the councillor*
- d) Make public findings of inappropriate conduct*
- e) Prosecute for any breach of the law*
- f) Revise any of the council's policies, procedures and/or the code of conduct.*

80. The conduct by Councillor Laugesen was ***misbehaviour*** according to the statutory definition and the breach of the Code by her was a comprehensive disregard of the conduct standards required of elected council officials and as such it is a matter that should be viewed as relatively serious.

81. However, given the nature of the complaint and the fact the incident occurred in the Councillors' Room after a Council meeting in what was essentially a private setting restricted to councillors and their guests, it is not considered appropriate for any recommendation to be made as allowed by the discretion provided at clause 14.9 of the Code of Conduct.

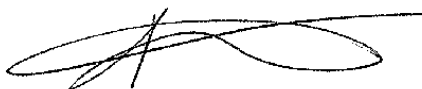
82. The incident occurred in the Councillors' private room and as the Council is the final arbiter of the matter, it is best placed to determine the appropriate sanction for a breach of the Code in such circumstances since it alone can determine the appropriate standards of acceptable conduct in that private environment, but also having regard to the standards expected of councillors as contained in the Code.

| 22

Warringah Council | Conduct Review Inquiry Report | Laugesen | 13 July 2012

83. The issue of sanction should therefore be determined solely by Council with reference to the available material without the recommendation or further input by other persons. Accordingly, the opportunity to make a formal recommendation under clause 14.9 is declined and the issue of sanction deferred wholly to Council.

84. It should be noted however there are relevant matters that should be taken into account for the purposes of that provision of the Code of Conduct, specifically the 'Apology' documents from Councillor Laugesen for which a determination needs to be made by Council as to an objective assessment of their content when considered with due regard to the response from Ms Thomas. Councillor Laugesen also indicated on 8 March 2012 that she sought to have the matter be referred for mediation, but that course was not possible for the reasons previously outlined. The public record is relevant in relation to Councillor Laugesen in that she has previously been the subject of adverse conduct findings, which is an issue that may also be relevant to Council for the purposes of clause 14.9.



Adam Halstead  
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Warringah Council  
13 July 2012