

## 7.1 Code of Conduct - Complaint of Behaviour

---

### EXECUTIVE SUMMARY

---

#### Purpose

To determine what sanctions, if any, should be imposed on Councillor Vincent De Luca given Council's finding at its meeting of 18 October 2011 that Councillor De Luca has breached Council's Code of Conduct.

#### Summary

In February 2011, a complaint was made to the General Manager alleging that Councillor De Luca breached Council's Code of Conduct. The complaint was made in relation to behaviour at a Council meeting in February 2011. The behaviour in question involves remarks allegedly made by Councillor De Luca to Councillor Falinski.

Attached for Council's consideration is a copy of the report of the Conduct Reviewer (see Attachment Booklet). The Sole Conduct Reviewer found that Councillor De Luca's conduct constituted a breach of clauses 6.2 and 6.4 of the Code of Conduct. The Sole Conduct Reviewer recommends, pursuant to the Code of Conduct, that:

- Councillor De Luca be censured for misbehaviour; and
- Councillor De Luca be required to apologise to Councillor Falinski.

At the Council meeting on 18 October 2011, Council resolved:

*"That Council note the report of the Conduct Reviewer and determine that Cr De Luca has breached the Code of Conduct and that sanctions will be determined at the next Council Meeting."*

A rescission motion in respect of Council's resolution has been submitted by Councillor Ray, Councillor Laugesen and Councillor De Luca, and is Item 11.1 on the Agenda to this Council meeting.

#### Financial Impact

Whether there is any financial impact will depend on Council's determination of the matter.

#### Policy Impact

Council is required to consider the matter in accordance with the Code of Conduct.

---

### RECOMMENDATION OF GENERAL MANAGER

That Council, having noted the contents of the report of the Sole Conduct Reviewer and (subject to the outcome of the rescission motion) having found that Councillor De Luca breached the Code of Conduct, determine whether or not to impose sanctions and, if so, what sanctions.

---

---

## REPORT

---

### Background

Section 440(3) of the *Local Government Act* 1993 provides that a council must adopt a code of conduct that incorporates the provisions of the model code of conduct prescribed by the *Local Government (General) Regulation* 2005. The adopted code may include provisions that supplement the model code.

Council has adopted a Code of Conduct as required by section 440. Council has also adopted a Conduct Review Committee Charter. Complaints alleging a breach of Council's Code of Conduct are regulated by the Code and the Charter.

### Relevant provisions

Clause 12 of Council's Code of Conduct relevantly provides:

***"12 COMPLAINT HANDLING PROCEDURES AND SANCTIONS***

....

**12.23** *The Conduct Review Committee/reviewer will report its findings and any recommendations to council only when it has completed its deliberations.*

**Sanctions**

**12.24** *Before a council can impose a sanction it must make a determination that a councillor ... has breached the code of conduct.*

**12.25** *Where the council finds that a councillor ... has breached the code, it may decide by resolution to:*

- censure the councillor for misbehaviour in accordance with section 440G of the Act*
- require the councillor ... to apologise to any person adversely affected by the breach*
- counsel the councillor ...*
- make public findings of inappropriate conduct*
- prosecute for any breach of law."*

(Emphasis added)

Clause 6.6 of the Code of Conduct provides:

**"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".*

The *Guidelines for the Model Code of Conduct for Local Councils in NSW* (Department of Local Government, October 2008) relevantly state on page 43 that:

***"5.5 Reports from conduct review committees/sole conduct reviewers***

*The council is the appropriate body to determine whether or not a breach of the code has occurred and has the discretion as to whether or not a sanction is applied. Councillors need to ensure that there is no re-hearing of the evidence when debating the report from the conduct review committee/reviewer. The debate should focus on the outcome of the*

*reviewers' enquiries and the appropriateness of any sanctions to be applied where there is a finding of a breach of the code of conduct".*

### **Investigation by Sole Conduct Reviewer**

The Sole Conduct Reviewer found that *"Cr De Luca's remark to Cr Falinski constituted a breach of both Clauses 6.2 and 6.4 of the Warringah Council Code of Conduct"*.

The Sole Conduct Reviewer recommends, pursuant to the Code of Conduct, that:

- Councillor De Luca be censured for misbehaviour; and
- Councillor De Luca be required to apologise to Councillor Falinski.

The nature of the complaint, the evidence collected by the Sole Conduct Reviewer and the Sole Conduct Reviewer's findings are set out in more detail in the Sole Conduct Reviewer's report.

A copy of the report has been provided to Councillor De Luca.

### **Council's role**

Council considered the report of the Sole Conduct Reviewer at its meeting on 18 October 2011. Pursuant to clause 12.24 of Council's Code of Conduct and having regard to the findings of the Sole Conduct Reviewer, Council found at that meeting that Councillor De Luca has breached the Code. In particular, Council resolved:

*"That Council note the report of the Conduct Reviewer and determine that Cr De Luca has breached the Code of Conduct and that sanctions will be determined at the next Council Meeting."*

**General Manager**

**Attachment Booklet** – Code of Conduct – Complaint of Behaviour. Report by Sole Conduct Reviewer

