REPORT
OF AN INVESTIGATION

UNDER SECTION 430
OF THE LOCAL GOVERNMENT ACT 1993

RE: KU-RING-GAI COUNCIL

November 2000

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EXECUTIVE SUMMARY

This is an Executive Summary of our report as Departmental Representatives concerning an investigation under section 430 of the Local Government Act 1993 into Ku-ring-gai Council (formerly known as Ku-ring-gai Municipal Council) presented to the Minister for Local Government and the Director General of the Department of Local Government, and copied to the Council, pursuant to section 433 (1) of the Act.

References in this report to the Mayor and Deputy Mayor, as the case may be, are, unless otherwise indicated, to Clr Tony Hall and Clr Laura Bennett, respectively. It is noted that in September 2000 a more recent Mayoral election was held and Clr Bennett elected Mayor and Clr Ted Roach as the Deputy Mayor.

BACKGROUND

On 13 January 2000 the Acting Director General of the Department of Local Government, Mr Tim Rogers, approved an investigation under section 430 in respect of the Ku-ring-gai Municipal Council. Mr Robert Bulford and Mr Gary Bevan, Senior Investigations Officers of the Department, were authorised to act as Departmental Representatives to conduct the Investigation. The Terms of Reference authorised for the Investigation were:

> *To investigate and report on:*
>
> *(1) the conduct of the Mayor, Councillor Tony Hall of Ku-ring-gai Municipal Council towards the employees of the Council;*
> *(2) the Mayor's allegations about the conduct of Council's General Manager and other Council employees;*
> *(3) the Mayor's relationship with Councillors, senior staff and other employees of the Council; and*
> *(4) any associated matter which warrants special attention.*

This Investigation was approved following representations from Council and Clr Hall himself to the Department to undertake such an investigation, after a Council initiated intended inquiry process had failed to proceed. That process in turn followed a period of instability at Council after the September 1999 Council elections, which brought to office a large number of new Councillors without previous local government experience, most of whom had been candidates endorsed by the Ku-ring-gai Preservation Trust, and the election of Clr Hall as Mayor on 21 September 1999.

One of the first acts of the Hall Council was to approve a Mayoral Minute of 28 September 1999, which sought to initiate a number of sweeping changes, with a view to implementing the election platform of the Trust endorsed Councillors. The Mayoral Minute is in many respects the key issue which set off the chain of events which ultimately led to our Investigation.

The Mayoral Minute purported to give the Mayor wide powers on a number of matters, to make a series of fundamental changes to the way Council functioned, in

particular through a proposed system of Principal Committees and the formation of a Staff Committee with functions in relation to staffing matters to be undertaken by the Councillors, and to propose that there be a Residential Development Strategy Task Force and a Financial and Operational Management Review Audit Task Force, as well as a communications audit undertaken.

The Mayoral Minute itself generated extensive concerns amongst staff and its representative union, the New South Wales Division of the Federated Municipal and Shire Council Employees' Union of Australia (the "MEU"), as to the extent of and implications flowing from the powers purported to be granted to the Mayor and the Staffing Committee. Apparently the involvement of the MEU in the way that happened was extremely unusual and itself an indication that its most senior officers considered there was something seriously amiss.

The Mayoral Minute also had as one of its primary aims the sweeping away of long-standing and recently re-endorsed resolutions of previous Councils imposing restrictions on Clr Hall's contact with and conduct towards members of the Council staff, going back as far as 1989. The evidence is that there had been an extensive history of concerns and complaints about Clr Hall's conduct as a Councillor in the terms of previous Councils, and that these restrictions had been imposed, with some degree of success, with a view to managing the situation. Those restrictions had been the subject of a complaint by Clr Hall to the NSW Ombudsman in 1999 alleging, essentially, that Clr Hall was being discriminated against. The findings of the Ombudsman were adverse to Clr Hall.

Soon after Clr Hall's election as Mayor, and in particular once the Mayoral Minute had been adopted, the General Manager started receiving complaints from various persons about the conduct of Clr Hall towards staff. The General Manager sought to bring these to Clr Hall's attention and, in accordance with the principles of natural justice, sought his comments in relation to the allegations against him, before taking the matter further, as appropriate, in accordance with Council's Code of Conduct and related policies and procedures. One of the allegations of Clr Hall, considered pursuant to paragraph (2) of our Terms of Reference, was as to the way in which the General Manager managed those complaints.

As the weeks went by in September and October 1999 further complaints kept coming in, and the MEU also became involved in that aspect on behalf of its members. All attempts by the General Manager to deal with the complaints were thwarted by Clr Hall, who continually denied that there was a problem. Conversely, he sought to blame the General Manager.

Clr Hall also sought to accuse the General Manager of failure to carry out her duties by allegedly not carrying into effect Council's resolution in relation to the Mayoral Minute and by actively seeking to undermine and challenge that resolution by having sought legal advice as to certain aspects of the Mayoral Minute which she felt may be contrary to the Act. This was a theme maintained by Clr Hall, in particular before our Investigation, and this is one of the other issues examined by us pursuant to paragraph (2) of our Terms of Reference.

In mid to late October the MEU issued a strongly worded ultimatum to the General Manager and the Council in relation to the alleged conduct of Clr Hall towards staff, and this and the lack of response from Clr Hall forced the General Manager to take action to bring the matter directly to the attention of the Councillors, which was in any event the next step she would have taken under Council's policies and procedures. She sought to do this on a confidential basis by distributing the information to Councillors to be received by them at their meeting on 26 October 1999. Clr Hall found out about this, intervened, and managed to have most of the papers withdrawn. Some sets, however, had already come into the hands of some of the Councillors.

The press became aware of the issue, with a key story, centring on two issues, namely the alleged state of the Mayoral car (not only in terms of cleanliness, but also in terms of its safety), for which staff were impliedly held responsible, and Clr Hall's perception that he was being denied adequate secretarial assistance, in particular being taken up by the Daily Telegraph on 25 October. This led to further involvement by the MEU. Another issue examined by us pursuant to paragraph (2) of the Terms of Reference is this question of the alleged responsibility of the General Manager for the secretarial assistance position.

With Councillors becoming aware of the problems in relation to Clr Hall's alleged conduct towards staff, Clrs Laura Bennett (the Deputy Mayor) and Graeme Anderson issued an ultimatum to Clr Hall on Sunday 7 November 1999 that unless he stood aside to permit an inquiry to be undertaken in relation to the allegations they would resign. Clr Hall accordingly stood aside for this purpose. Council commenced the steps needed to implement a proposed inquiry process, but before this could proceed very far Clr Hall unexpectedly, and to the dismay of his fellow Councillors and others, returned on 16 November saying that he was only going to resume ceremonial and chairmanship functions, but in fact going much further than that. For this and other reasons, the Council initiated Inquiry process failed during December. Council, on the other hand, as noted, immediately resolved to request the Department's intervention and involvement.

With Clr Hall back at the helm the complaints from staff resumed and a short period of relative peace and stability ended. By the time our Investigation was approved on 13 January 2000 it was widely reported in the press that there had been some 13 complaints from staff about Clr Hall. We soon discovered that this was well short of the mark.

Investigation process

Very early into the Investigation process we had before us some 39 complaints from a total of 35 complainants. Most of these had already been made when our Investigation was ordered. During the course of our Investigation further alleged incidents regarding or involving Clr Hall were being continually, and quite properly, reported to us. We have lost count of the number of complaints therefore that exist in total.

Our Investigation has covered a very wide range of issues brought to our attention and falling within the various paragraphs of our Terms of Reference. All, however, have a common thread – Clr Hall.

The bulk of the complaints and allegations falling within paragraph (1) of the Terms of Reference, that is to say concerning the alleged conduct of Clr Hall, were denied or not accepted to varying degrees by Clr Hall. In our Investigation we have therefore sought carefully to test all these complaints and allegations. This has entailed not only seeking the comments of Clr Hall in relation to them, but also interviewing as witnesses before our Investigation the complainants, persons who were said to have witnessed or otherwise been involved in the incidents, the General Manager and Clr Hall.

Eight of the ten Councillors were also interviewed as witnesses and otherwise contributed to our Investigation. Only Clrs Elise Keays and Ian Cross were not so involved. Witnesses also included some members of the public as well as several former Councillors.

In the result, over a period of some four weeks in February, and again in the first two weeks of April, we interviewed a total of 66 witnesses. Some witnesses such as the General Manager and Clr Hall were interviewed for a lengthy period and over several days. All witnesses interviewed gave sworn testimony to us.

We then examined carefully and at length all the evidence that we had before us. That evidence comprised tapes of our interviews, transcripts of some of the interviews, written submissions, the complaints, documentary evidence going to many, many thousands of pages, tapes of Council meetings or Council Committee meetings, business papers of those meetings provided to the Councillors, minutes of meetings and so on.

Reviewing all the evidence has been an enormously time consuming, daunting and exhausting task.

While we have in this report not dealt with each and every complaint that was referred or given to us for the purposes of our Investigation, we should state for the record that all such complaints were duly considered by us during the course of our Investigation. We have in this report only dealt with those complaints that are considered by us to be the most serious, or that are particularly illustrative or relevant to points we felt needed to be made from a management overview perspective. If we were to consider each and every complaint and issue that has come to our attention, this report, already a document of some length, would in all probability amount to a report of some 700 or more pages.

We wish to note for the record that Clr Hall and his legal adviser gave only qualified and in some cases limited co-operation to us in our Investigation, and this has not assisted matters. Council's own refusal, albeit apparently on legal advice, not to produce certain documents which we had sought pursuant to our statutory powers has also not assisted us in this Investigation.

In order to meet natural justice or procedural fairness requirements, once we completed a first draft of our report we provided extracts of that report to persons who might be directly and personally adversely affected by the findings or comments in those extracts, inviting their submissions and comments on those extracts. All such persons have provided such submissions and comments to us and those submissions and comments have been carefully and duly considered. This report has been revised to reflect those submissions and comments as necessary and where it was appropriate to do so. In the case of Clr Hall, he has provided extensive comments and submissions to us, in various stages, and these have been duly considered and any necessary or appropriate changes made to the report.

Clr Hall, however, raised a significant number of concerns about the processes and procedures followed by us in our Investigation and in particular objected to the next step in meeting natural justice or procedural fairness principles, that is to say, the provision to the Council as a corporate body, represented by the elected Councillors and the General Manager, of a copy of the entire final draft of our report for their perusal and comment. Various demands were made of us and undertakings sought, and ultimately legal proceedings were commenced by him in the Supreme Court of NSW seeking an injunction against us and both the Director General and Deputy Director General of the Department of Local Government. His barrister advised the Court that Clr Hall was concerned that release of the report to the Councillors could damage his reputation and moreover adversely affect his chances of being re-elected as Mayor at the mayoral election to be held by Council on 5 September 2000. The legal proceedings were commenced on 17 August and the matter came before the Court on 29 August and it was agreed that an expedited hearing of the application should take place on 5 September 2000. On 31 August Clr Hall's legal advisor explored the possibility of settling the proceedings. An Agreement was reached on 1 September 2000. The proceedings were discontinued.

We accordingly proceeded to provide a copy of the complete final draft report to the Council as a corporate body, represented by the elected Councillors, including Clr Hall as the then Mayor, and the General Manager, as well as to the then two former Councillors who were involved in and part of the events since September 1999, Clrs Anderson and Malicki. Comments were duly received from those persons, as well as from some Councillors as individuals, and these were all carefully considered and taken into account in finalising this report.

In the result, whilst it is a matter of regret and concern that the completion of this Investigation has taken longer than we had hoped or expected, the matter has really been out of our hands. Consequently this report, while issued in November 2000, really only examines issues and evidence of matters falling within the Terms of Reference and that occurred before May 2000, and its findings and conclusions should be read and understood in that context.

A number of persons who were invited to comment on drafts or extracts of drafts of this report were concerned that the presentation of a critical report at this time and only on the basis of evidence and events up to May 2000 would provide a distorted picture of the situation at this Council. It was put to us that this report fails to acknowledge the many positive achievements and events at Council, in particular subsequent to the first quarter of this year.

However, we consider it to be outside the Terms of Reference of this Investigation to re-open this Investigation to take and consider evidence on such matters. This Investigation has not been a general or wide ranging investigation and report into the general functioning, successful or otherwise, of all facets of Council, but is one in respect of the particular matters falling within the specific Terms of Reference of the Investigation, starting with the complaints about the conduct of Clr Hall towards staff that were referred to us, moving to the complaints that Clr Hall had about the General Manager and her staff, the relationships between Clr Hall and the General Manager and her staff on the one hand and his fellow Councillors on the other, and concluding with an examination of any issues arising out this process that came to our attention and warranted special mention.

It is accordingly for others to consider and judge Council's general performance and the roles and responsibilities of the elected body and the General Manager and her staff in respect of the big picture in general and more recent events and achievements in particular.

The alleged conduct of Clr Hall towards staff – Paragraph 1 of the Terms of Reference)

As noted, a large number of complaints and allegations in relation to Clr Hall's conduct towards staff were drawn to our attention during the course of our Investigation. The staff concerned ranged from the General Manager and her senior staff, or Directors, to managers, secretaries, works staff and so on – in other words across the full range of persons employed by Council. The allegations ranged from what might on their own be regarded, without knowing or understanding the full story and the context, as from the seemingly trivial to the serious.

The reactions of staff to such conduct ranged from the wearied acceptance or decision or ability to live or cope with the same to surprise, anger, distress, anxiety, and stress induced medical symptoms and so on. The evidence is also that a number of staff have left Council's employ largely or at least partly and to varying degrees due to Clr Hall and his conduct. One of Council's Directors, Mr David Young left Council's employ in October last year. It was widely rumoured or reported that Clr Hall was a major reason for this. Clr Hall, we think it true to say, was very angry about this. He pursued the General Manager obsessively and unmercifully over the issue, accusing her of being the problem. However, the evidence, including from Mr Young himself, is quite clear on the matter – Clr Hall was one of the reasons and a key factor. At least two employees have retired on medical grounds due to conditions exacerbated by Clr Hall.

All complaints and allegations considered in this report and on which findings are made have been fully tested by us during the course of this Investigation. This process has included the putting of particulars of those complaints and allegations to the person affected by them or against whom they were made, and obtaining and considering that person's response to them.

A common theme running through the complaints about Clr Hall's conduct is that he shouts at people. Some witnesses sought to say that he merely spoke loudly. However, the overwhelming evidence supports a conclusion that Clr Hall, when he becomes angry and agitated, does in fact shout at people, and that this is but part, and a major part, of his inappropriate conduct towards people. There is evidence also that he can at times be perfectly charming and polite and behave appropriately, but this does not excuse the bad behaviour.

The evidence is also that Clr Hall's conduct towards staff since he became Mayor on 21 September 1999 is in fact nothing new. It is merely a continuation of inappropriate conduct going back many years, albeit at a considerably increased level. Clr Hall's election as Mayor gave him a profile and position from which to have a far greater impact than had ever been the case before, unfortunately with adverse consequences.

This sort of behaviour, from a person in public office and in the public eye, and in particular from one holding the rank of mayor, is, we consider, unacceptable. It is not calculated either to encourage respect for the man, the office, the Council or local government in general.

In her written submissions to us the General Manager summarised her concerns about the behaviour of Clr Hall in the following terms:

> In summary, the Mayor's behaviour has included:
>
> - irrational and dysfunctional actions
> - shouting, abusing, threatening, humiliating staff
> - witch-hunts
> - interference in staffing and operational issues
> - on-going attacks on the General Manager and staff
> - no attempt to 'working together', rather continually undermining the General Manager and staff
> - actions beyond power of the Mayor under the Local Government Act 1993
> - a publicity / media campaign by the Mayor against the General Manager and staff
> - distortion of the facts to residents and the media
> - refusal by the Mayor to accept responsibility for his behavioural problems
> - refusal by the Mayor to address his behavioural problems
> - exhibiting behaviour which is not acceptable, to the point where issues about the Mayor's mental stability have been raised continually by staff with the General Manager
> - abuse and harassment of staff which contravenes Council's obligations under the OH&S Act.

The evidence we have obtained in our Investigation confirms all these allegations.

As the leader of the staff the General Manager is the staff member who has been subjected to the principal inappropriate behaviour by Clr Hall. His behaviour towards her is again of long standing, but his election as Mayor gave him a platform from which to settle old scores, and the evidence is that he was planning this even before the elections. He was out to get the General Manager.

Conversely, the evidence is that the General Manager herself at all times behaved with decorum and professionally towards Clr Hall and his Councillors, even in the face of considerable provocation and difficulties. Several Councillors told us that they were concerned that the General Manager was bottling things up inside, and that this was having a bad effect on her. The General Manager confirmed that her stress at dealing with the daily onslaught from Clr Hall when he became Mayor was such that she was not able to devote her full time and attention to managing, ie to being a General Manager, and spent far too much time having to put out brush fires started by Clr Hall. Her health was also being affected, she told us.

The evidence is that Clr Hall's behaviour towards the General Manager was hostile, confrontational, antagonistic, deliberately diminishing of her reputation, rude and condescending, derogatory and humiliating, suggesting inefficiency or ineptitude on her part, and that he "screamed" or shouted at her all the time. The evidence is that Clr Hall has prevented the General Manager from discharging her clear duties and role as General Manager under the Local Government Act 1993 by not allowing her to speak up and advise the Councillors on various matters as and when the need arose.

The evidence is that Clr Hall's behaviour towards Mr David Young was equally inappropriate, and a continuation of aggressive behaviour starting in about April 1999, when he became the Acting Director Open Space and Infrastructure. As noted, the evidence is that this and how he saw Clr Hall was behaving to everyone else played a large part in his decision to leave Council. Mr Young had said as much in a confidential memo of 25 October 1999 to the General Manager, but it was put to us by Clr Hall that the General Manager got Mr Young to write this under duress, that it was not true and that she even dictated some of the words. The evidence of Mr Young does not support this at all.

Council's then Director Planning and Environment, Mr Chris Young, gave evidence to us of long standing problems encountered by him with Clr Hall's behaviour. As to the period after Clr Hall became Mayor he told us of the frequent accusations, humiliations and intimidations to which he was subjected. His evidence was corroborated by other witnesses.

The evidence establishes that Mr Ian Canham, formerly Council's Group Manager Operations, a senior staff position equivalent to Director, and his staff have been subjected to frequent unreasonable and repeated demands for information, to harassment, and to inappropriate conduct at the hands of or from Clr Hall. Mr Canham was responsible for matters such as motor vehicles and garbage and waste collections services until he retired due to ill health. These are issues on which Clr Hall has expressed a lot of interest and generated a lot of work and stress amongst staff. The state of repair and cleanliness of the Mayoral car, and the issue of a service log book for the car have figured prominently, the former attracting the interest of the press in the form of an article in the Daily Telegraph on 25 October 1999, in turn generating considerable stress and other problems with Council's works staff and leading to the intervention of the MEU. The evidence is that Clr Hall was abrasive, rude and obstructionist towards Mr Canham and his staff. The evidence is that he improperly accused Mr Canham and another employee of misleading the Council.

After his conduct towards the General Manager, Ms Bignell, Clr Hall's conduct towards Council's former Director Environmental & Regulatory Services (dealing basically with development applications and so on), Mr Glendinning, was particularly singled out by various witnesses, mostly Councillors, to us. It is particularly of note that the Councillors in question chose to comment on Clr Hall's conduct towards employees in terms of his conduct only towards the General Manager and Mr Glendinning, such was their level of concern. The evidence is that Clr Hall's enmity and inappropriate conduct towards Mr Glendinning is of long standing. We have found that it continued with particular vigour after Clr Hall became Mayor. The evidence is of Clr Hall's being rude and humiliating in his conduct towards Mr Glendinning and of him not letting him speak up when needed in Council meetings.

It is clear that any attempt by Clr Hall as Mayor or Chairman of any meeting over which he presides to prevent a member of staff, which includes the General Manager and her Directors, speaking up to point out some matter which that person believes the Councillors should be aware of is insupportable and should, in our view, be rightly condemned. We are aware that Clr Hall's argument is that the staff do not run the Council and the Council Chamber is a place for the elected Councillors only to debate matters. This in our view is equally insupportable. The running of Council is clearly, under the Local Government Act 1993, a joint and co-operative affair between the General Manager and her staff on the one hand and the Councillors on the other.

We found Clr Hall's reaction to the allegations as to his conduct towards Mr Glendinning to be quite unacceptable and extraordinary. This reaction included sustained and vitriolic attacks on Mr Glendinning, for example demanding that he come forth in person with allegations backed up by statutory declarations, no less, despite the fact that we had made it quite clear to Clr Hall and his legal adviser that Mr Glendinning himself was not the author of the allegations.

The evidence is that Mr David Lethbridge, Council's long-standing Internal Auditor, has been subjected to inappropriate behaviour and a campaign of retribution from Clr Hall for Mr Lethbridge's perceived part in a court case involving Clr Hall in the early 1990s. Mr Lethbridge told us that he believed that this was behind moves by Clr Hall, endorsed by his fellow Councillors, to have the internal audit role inappropriately reporting direct to the Mayor when Council determined an organisation structure on 19 October 1999.

And so the list goes on. Our report deals with a number of other examples of proven misconduct of Clr Hall towards various staff members. Even the report, as noted, only deals with the more serious cases and does not cover all the complaints before us.

One of the worst manifestations of Clr Hall's inappropriate conduct towards staff is in his conduct towards not only a veritable stream of secretaries, both temporaries and permanents, provided for him, but also towards other secretaries with whom he came into close and regular contact in the course of his daily duties, namely the General Manager's Personal Assistant and the Secretary to the Councillors. All

these three women shared the same large office between the office of the General Manager and that of the Mayor. The parade of secretaries was a matter that we note has attracted considerable attention in the press.

General conclusions regarding Clr Hall's conduct towards staff

The overwhelming evidence encountered by us in our Investigation shows quite clearly that the complaints against Clr Hall are proven.

His conduct towards staff has been manifestly inappropriate and is not conduct consistent with either his statutory roles and responsibilities as Mayor or Councillor, nor with the standards of behaviour demanded by Council's Code of Conduct. Nor is Clr Hall's conduct befitting what, in our view, the community can and should expect of a person holding public office.

The evidence also shows that whilst Clr Hall's conduct towards the General Manager and many Directors and senior staff was inappropriate, most of them managed to develop coping mechanisms. That is not, however, to excuse Clr Hall's conduct in any way. But it is a different or more serious matter, when it comes to his conduct towards more junior members of staff. They have equally been subjected to inappropriate and unacceptable behaviour. Clr Hall's conduct, moreover, is considered all the more reprehensible, given their inability in most cases, because of their more junior position in the Council organisation, and in many cases because they have not known Clr Hall for as long, to be able to fend for themselves and to speak up and tell him to behave, or simply to ignore his onslaughts and get on with their jobs.

Clr Hall's conduct towards the General Manager and her staff is shown to be rooted frequently in long held animosities and causes or beliefs held by him. It is plain that the attempts of past Councils to curb and manage him caused Clr Hall deep personal anger and grudges. He saw his way to putting that to rights, in his view, when he was swept to power at the forefront of a group of well meaning but totally inexperienced people.

We have found, on the evidence before us, both in terms of Clr Hall's own words to us, plus those of the more forthright and candid of those Councillors whom we interviewed, that, in those Councillors who were first elected to Council at the September 1999 Council elections, we have a group of new and totally inexperienced Councillors who were, in the early months following the election, all too willing not to question but to follow the Mayor, Clr Hall. They accepted what he told them, with most unfortunate consequences for the General Manager and her staff, for themselves and the people of Ku-ring-gai. Were it not for these people it is likely that Clr Hall would not have been able to get away with what he has done.

We have found that Clr Hall's behaviour has caused considerable problems at Council and these problems ultimately come at a cost to the ratepayer and at a cost of the Council's General Manager and staff not being able to deliver to the community the services and so on that the community rightly demands.

There is evidence that consultants are being unnecessarily engaged when there are already professional staff there both ready, able and willing to do what is needed. There is evidence that the appointment of some consultants has been made in a way and in circumstances that raise a number of concerns which we consider in more detail in our report. There is evidence that the Residential Housing Strategy has been handled, at the insistence and instigation of Clr Hall and his Councillors, in a way which raises serious questions as to the adequacy of public consultation and as to how base study reports have been released for public comment. There is evidence that Clr Hall's conduct towards a number of members of staff working on the Strategy has unnecessarily impeded and interfered with their performing their tasks.

There is evidence that Clr Hall has publicly improperly undermined and questioned Council's involvement in carrying out its legal obligations in relation to social planning.

There is evidence that Clr Hall has been making unsubstantiated and improper allegations of corruption against Council staff and that this has caused at least some of his fellow Councillors to lose patience with him, demanding that Clr Hall take steps to retract and curb such allegations, but there is also evidence that Clr Hall has not been fully co-operative with his fellow Councillors on this.

There is evidence that Clr Hall has made repeated acknowledgments of his conduct being inappropriate and adversely impacting on staff, has made repeated expressions of supposed contrition and promises to reform, only to return to his old habits and ways before the ink is hardly dry or the words died away. It is clear that the man cannot be believed or trusted on this.

The evidence is that Clr Hall's conduct has adversely impacted on staff morale, that it has led to an extraordinary level of stress and need for counselling on the part of staff, at the cost of the ratepayers. The evidence is that his conduct has resulted in staff seeking to avoid contact with Clr Hall and to be relieved of the need to perform their duties so as to avoid coming into contact with him. And the evidence is that his conduct has adversely impacted on Council's ability to recruit staff.

In short, Clr Hall's conduct has presented Council with a serious problem, which urgently needs to be managed in an appropriate way.

Complaints from Clr Hall concerning the General Manager (Paragraph (2) of the Terms of Reference)

At the commencement of our Investigation we obtained particulars from Clr Hall as to the allegations he wished us to consider pursuant to paragraph (2) of our Terms of Reference. While that paragraph extended to allegations that he might have made against members of staff other than the General Manager, in the result his particularised concerns were limited to concerns about the General Manager.

The particulars provided by Clr Hall, through his legal adviser, were frequently expressed in emotive language and presentation. Likewise, what was complained

about was frequently not clearly or concisely expressed. In one instance, namely relating to concerns apparently arising out of the alleged involvement by the General Manager in an accident and insurance claims arising from that accident, it was far from clear to us what was being suggested. The allegations were limited to unsubstantiated innuendo, innuendo moreover which if substantiated entailed some extraordinary and very damaging allegations not only to the General Manager but also to other members of staff who were involved in the process. All attempts by us to pin down exactly what it was that was being alleged resulted in no success and back down, though in terms which frequently left the innuendo mischievously still hanging.

Nonetheless, in our report we have endeavoured to describe and to deal with the allegations as best we can in the circumstances.

Alleged obstruction by the General Manager and her staff of implementation of decisions of Council and the will of the electorate

The first set of allegations we have considered under the heading of allegations that the General Manager and her staff obstructed the implementation and decisions of the Council and the will of the electorate and the community. This is a theme that Clr Hall has pursued publicly. The evidence does not support the allegations, and indeed is to the contrary. Staff are there to support and advise the elected Councillors as to the law and accepted practices on the various matters that come before the elected body. Staff should not be criticised simply for doing their jobs in a professional way and in accordance with the law.

A particular instance of the General Manager's supposedly not having carried out her statutory duty to implement Council decisions is in relation to the Mayoral Minute of 28 September 1999, as adopted by Council on that day. Various aspects of and issues arising out of that Minute are examined by us in another Part of our report. At this juncture we note that a number of aspects of that Minute were in fact contrary to the law and therefore some of the powers granted to the Mayor in that Minute were *ultra vires*. The obligation of the General Manager to implement decisions of the Council is to implement lawful decisions. It is moreover the duty and role of the General Manager to advise the Councillors where there may be questions arising under the law as to the legality or other implications of what they propose to do or be done. Therefore, we do not regard the General Manager as having done anything wrong in what she did after the Minute was passed in seeking to obtain legal advice about it.

The evidence is that Clr Hall, in his rage at the apparent insubordination or effrontery of the General Manager to challenge his pivotal Mayoral Minute, went to extraordinary lengths to attack and rein in the General Manager over her faxes and other moves. His conduct in that regard was both unjustified and inappropriate.

Alleged obstruction by Mr Ian Glendinning

A late allegation from Clr Hall that surfaced during our interview with him as a witness before our Investigation was that Council's then Director dealing with development applications and so on, Mr Ian Glendinning, had actively sought to undermine a decision by Council to have a Development Control Unit. However the evidence does not support this. The evidence is that it was Council's decision to delay consideration of the introduction of such a body, and that reports presented by Mr Glendinning to the Councillors on the matter were balanced and put the case both for and against such a proposal.

Also in our interview with him Clr Hall put it to us that both Mr Glendinning and the General Manager had been involved in and were guilty of failing to implement decisions of Council in relation to the auditing of or checking up on compliance with the terms of development and other approvals granted by Council. Again, the evidence does not support this. As to the General Manager it was the proposition of Clr Hall that she acted improperly in seeking legal advice on the matter – but the evidence is that it was the decision of Council itself that she do so.

We have noted that the evidence about supposed obstruction and lack of co-operation from the General Manager and her staff was in fact the other way. This evidence largely came from the Councillors themselves, and it shows that the General Manager and her staff went to considerable lengths to try to work and co-operate with the new Council.

Other allegations against the General Manager

Clr Hall alleged that the General Manager drummed up the complaints against him and that she did so as part of a political power play by herself against him. The further submission or suggestion is that the complaints were therefore all made up and without substance. We found on the clear probative and sworn testimony of each and every one of the complainants who appeared as witnesses before us that there was no evidence at all that the General Manager drummed up the complaints or that they lacked substance. No evidence to support such an allegation was provided to us by Clr Hall. On the contrary, the evidence shows that it was Clr Hall himself who was in self-denial about there being any problem in his conduct towards staff. He sought to blame others, such as the General Manager, instead.

Clr Hall also made allegations as to the way in which the General Manager dealt with the complaints against him. We have examined the evidence on how these complaints were dealt with at some length and we have found no reason to criticise the General Manager in any way on the matter. On the contrary, we have found evidence that it was Clr Hall who obstructed the General Manager in her attempts to deal with them. For example, Clr Bennett told us that Clr Hall often spoke to her in terms that the complaints against him were supposedly "trumped up".

As noted, Clr Hall sought to make much of a motor vehicle accident in which the General Manager was involved, and the insurance claims arising out of it. The accident in fact happened a number of months before Clr Hall was elected Mayor.

As we have said, what it was that the General Manager was supposed to have done wrong was not made clear to us, but the inference was that she had a conflict of interest and had otherwise acted improperly in the matter. We have found no evidence at all to support such a conclusion.

Secretarial assistance

Clr Hall also made allegations that the General Manager was somehow deliberately responsible for what he saw as inadequate secretarial assistance to himself. This is a matter on which Clr Hall has made an extraordinary public fuss for some time. The evidence is that he has a veritable parade of some 15 secretaries working for himself since he became Mayor, some of them permanent employees, but most temporaries. The evidence is that most have left because they found Clr Hall's behaviour towards them inappropriate. The evidence supports a conclusion that this was so, as has already been noted. One of the permanents was a person who was actually chosen by Clr Hall himself, he having got involved in the recruitment process in a way which was both unusual and inappropriate. One of Clr Hall's main concerns has been that he has not been able to have a secretary with shorthand skills. The evidence is that it is very difficult to obtain someone these days with such skills, and despite the best endeavours of the General Manager and her human resources staff, getting someone suitable having such skills has not been possible. Clr Hall has also sought to make much of the fact that the General Manager and her staff have mostly only provided him with temporary secretaries. However, the fact is that while his inappropriate behaviour towards his secretarial assistants continues, with attendant stress and other worries to the women concerned, there is an occupational health and safety issue and the General Manager and her staff find themselves in the invidious position of placing Council and others at risk in hiring a permanent employee in those conditions.

Garpac issue

The last of the allegations against the General Manager we have examined in our report related to allegations that the General Manager failed to report certain matters to Council. The evidence is that before the September 1999 elections and before Clr Hall was elected Mayor Council had contracted out its garbage and waste collection services, but for some reason chosen to retain ownership of the trucks and related plant and equipment. Council had purchased certain compactors, mounted on those trucks, from a company called Garpac. For various reasons problems were being encountered and the compactor units were breaking down. Claims were being made against Garpac under warranty to fix them up. Council was having difficulty getting this done properly. Just before the Council elections it had been rumoured that Garpac was in financial difficulties.

At the same time the General Manager had commissioned an independent report from Price Waterhouse Coopers on a number of operational issues in respect of Council's garbage and waste collection service. A number of those issues related to staffing matters, which are under the Local Government Act 1993 the responsibility of the General Manager to manage. Because of the implications and concerns the General Manager arranged to have a confidential briefing given by PWC to the then

Mayor and Deputy Mayor. It was the evidence of the General Manager that she had been advised both by two sets of lawyers acting for Council and by PWC that it was not appropriate at that time for any report on the matter to go to the Council itself, and that the only report that should so go, as and when the situation became clearer and the facts were known, was as to the financial implications for Council if Garpac did in fact go under. The representative of PWC who undertook the report for Council agreed that the matter had been discussed at the meeting he held with the General Manager and the former Mayor and Deputy and that there was a consensus, of which he was part, that the situation on reporting was as the General Manager put to us. In those circumstances the General Manager's actions in delaying any formal report to the full Council were consistent with the advice given to her as well as with the consensus at the meeting.

News as to the true situation re Garpac only came to light after the Council elections. The General Manager briefed Clr Hall informally about the matter, including about PWC's involvement. Clr Hall's own evidence corroborated this. She also presented a report to the full Council on the same night that it commenced full business and considered the all important Mayoral Minute of 28 September. In that report she said nothing of the existence of the PWC report or as to the issues it raised, which were still being worked through. The new Council, prompted and influenced by Clr Hall, had serious concerns over the garbage and waste collection service and resolved, in ignorance of the PWC report, to commission its own independent report and investigation.

The issue is, therefore, not only whether the General Manager acted reasonably in not telling the Councillors about the PWC report on 28 September, in reliance on the advice and consensus she had at that time that it was not appropriate that she do so, but acted reasonably in all the circumstances. Our conclusion is that the General Manager could have handled the matter better and should have reported the matter to the new Councillors so that they were not being told only part of the story, with consequential likelihood of failing to understand what was going on. That reporting could have been handled in such a way that any need for confidentiality and managing industrial relations or other issues were duly managed. However, given that the General Manager did what she did in reasonable reliance on the advice she had or thought she had, we are not prepared to make any adverse findings against the General Manager on this aspect.

General

Nearly all of the submissions made to us by or on behalf of Clr Hall in our Investigation were no more than a series of unsubstantiated, groundless and, in our view, mischievous allegations. The allegations against the General Manager over the motor vehicle accident are a prime case, and represented another example of Clr Hall seeking to re-raise with our Investigation old chestnuts that had been well and truly rejected by others – in this case his fellow Councillors, led in particular by Clr Anderson.

Clr Hall's relations with his fellow Councillors (Paragraph (3) of the Terms of Reference)

The evidence is that the relationship that Clr Hall has had in particular with his fellow Councillors who were elected as candidates endorsed by the Trust is an extraordinary one, one that has undergone a considerable change since the first few weeks after Clr Hall was elected Mayor. The evidence is also that that relationship has contributed to or caused a large number of problems and issues of concern. These issues and problems are considered in the context of paragraph (4) of our Terms of Reference.

The evidence is that Clr Hall has dominated his fellow Councillors, who came to Council without any knowledge or experience of local government and therefore came to rely on Clr Hall to tell them the ropes. Clr Hall himself admitted to us that "seven of them didn't have a clue". Clr Hall has unreasonably frequently used his position as Chairman of meetings to monopolise and/or dominate debate, at the expense of his fellow Councillors. He has given them advice. That advice is not always accurate. That advice has frequently been misleading. This has particularly been so in the planning and development application assessment arena. Attempts by senior staff to correct the situation have been improperly interfered with by Clr Hall.

We have examined this further under the heading of Clr Hall's indoctrination of his fellow KPT Councillors. Various Councillors gave evidence to us during the course of our interviewing them about Clr Hall's having indoctrinated his fellow Ku-ring-gai Preservation Trust Councillors into believing that the General Manager and her staff could not be trusted, that they would actively seek to undermine and not carry out Council's adopted policies and resolutions, and that the Councillors should stick together and not fraternise with the General Manager and her staff to avoid being suborned by the General Manager and her staff. Clr Anderson said that "duchessing" was the word used by Clr Hall.

The evidence is that the truth was otherwise. But the evidence is that in the early weeks at least all the Councillors who had been elected as candidates endorsed by the Trust believed otherwise and merely accepted what Clr Hall told them. None had any personal experiences which might corroborate or prove Clr Hall's thesis, one which he equally put to the believing community. Clr Anderson was the first to break ranks and form an independent view, closely followed by Clr Bennett. Others of this group of Councillors have gradually become aware of the true situation, some more than others. Two at least appear not to question and remain loyal to Clr Hall.

We have in our report particularly examined Clr Hall's relationships with Clrs Bennett and Anderson. Clr Anderson resigned from Council in April this year, citing Clr Hall as one of the principal reasons for his need to bow out of local government because of the impact that this was having on his health. Clr Bennett, Clr Hall's running mate at the last elections in the St Ives Ward, and who only got elected on the strength of Clr Hall's own vote, was elected as Deputy Mayor at the same time Clr Hall became Mayor. However, as noted, her eyes were soon being opened that there was a problem at Council, and that problem was largely Clr Hall. She particularly learned

this when she came in as Acting Mayor between 7 and 16 November 1999 when Clr Hall briefly stood aside to permit a proposed Council sponsored inquiry into the complaints against him. She only managed to secure Clr Hall's standing aside by threatening to resign herself if he did not. And when he unexpectedly returned to his duties that was a source of considerable dismay to her, as well as to a number of other Councillors and the staff. It was also in that period too that Clr Bennett conducted a process investigating allegations against the General Manager and in the process realised that those allegations, which came from Clr Hall, had no substance. That process was also a considerable revelation to her.

It was not without surprise, therefore, that when Clr Anderson announced his intention to resign there was an extraordinary public outburst between Clr Hall and Clr Bennett, when he accused her of disloyalty.

We have also found evidence of irritability and condescension and just down right discourtesy or rudeness by Clr Hall towards his fellow Councillors. His behaviour towards them is frequently not befitting that expected of a person holding public office.

We also examined Clr Hall's relationship with the independent Councillors, particularly Clr Elaine Malicki and Clr Ted Roach. We note that Clr Malicki for a short time lost her position on Council as a result of a decision of the Administrative Decisions Tribunal, but that she has only in the last few weeks been re-elected at a by-election.

The evidence is that Clr Malicki was a long time sparring partner of Clr Hall, though not necessarily opposed to him on all issues. The evidence also indicates that Clr Malicki has frequently unfairly and improperly been singled out by Clr Hall and subjected to questionable rulings from him as Chairperson of meetings. The evidence is also that Clr Hall sought to sideline the independent Councillors from Council affairs, in particular in relation to the important task of bringing in a Residential Housing Development Strategy, a strategy that clearly required wide community consultation from all areas and Wards of Council. It was only due to Clr Roach's insistence and threats that those ratepayers and members of the community in the Wahroonga Ward, entirely represented by independent Councillors, obtained a voice in that process through the involvement of Clr Roach as their elected representative. The evidence is that despite being legally entitled to attend meetings on this issue, Clr Hall improperly sought to prevent Clr Malicki formally participating as a Councillor in the matter.

Another issue that was examined by us were allegations of gender discrimination on the part of Clr Hall towards female Councillors and the General Manager, Ms Rhonda Bignell. The evidence does not support any convincing finding that there is such discrimination, largely because the supposed victims of that discrimination did not themselves see it as such. The evidence is nonetheless that Clr Hall's behaviour towards them is not acceptable. The persons in question are Clr Bennett and Clr Malicki and the General Manager herself.

Additional issues (Paragraph 4 of the Terms of Reference)

In the course of our Investigation into the ostensibly limited issues falling within the first three paragraphs of our Terms of Reference we have in fact encountered a large number of serious problems at Council generally, principally in the way the Mayor and the Councillors as a whole are going about performing their tasks and responsibilities as elected members under the Act. In fact this Investigation has become not so much an investigation into a series of complaints and allegations against Clr Hall as Mayor and against the General Manager, but an Investigation into these additional issues. This is one of the key reasons that has led to the length of time it has taken to complete our Investigation and present our report. It is also apparent from the fact that more than a third of our report is devoted to these issues.

Behind or linking all these issues and problems is one factor, or rather person – Clr Hall.

Some seven out of the ten Councillors elected at the September 1999 Council elections were new to Council, not having served at all as a councillor before and not having any prior experience or knowledge of local government. One Councillor (Clr Ted Roach) had served one previous term as a councillor, but on the last but one Council. Only Clrs Hall and Elaine Malicki were repeat Councillors.

Of itself the newness and lack of experience of Councillors should not present a problem. Various forms of support are available to such Councillors to assist them to learn the ropes and come to grips with their roles and responsibilities under the Act. The Department of Local Government itself has produced a booklet entitled *So you're thinking of becoming a Local Government Councillor*, along with various other guidelines and publications, all of which explain and assist in this regard. Another important publication is one jointly issued by the Department and the Independent Commission Against Corruption entitled *Under Careful Consideration: Key Issues for Local Government*.

Council also has a number of brochures and documents available and these were distributed to all Councillors shortly after they were elected at an induction or briefing session organised by the General Manager for the purpose of welcoming the newly elected Councillors. At the request of the General Manager a senior officer of the Department also addressed that meeting on the question of the roles and responsibilities of the elected members versus those of the General Manager and her staff, as envisaged by the Act.

The evidence is however that a planned follow up briefing session from an officer of the Independent Commission Against Corruption on matters such as corruption and other issues within the jurisdiction of the Commission was cancelled on the express orders and insistence of Clr Hall. A further briefing session on the important issues of development applications and how they are handled, plus other planning matters, such as the question of appeals to the Land and Environment Court, was also abandoned, largely it seems because of Clr Hall and what was happening in the early weeks at Council as a result of him.

Most importantly the General Manager and her professional staff, experts in their various fields, were at all times there and willing and able to assist and advise the Councillors. This is established not only by evidence from the General Manager and key members of staff, but also by the documentary evidence as well as by evidence from a number of the Trust Councillors. They conceded that even from the outset the General Manager was courteous and co-operative to them, but of course they interpreted this as but an example of what Clr Hall told them they needed to be wary of.

Every Councillor therefore had ample opportunity to learn about their new tasks and positions and obtain expert or professional advice and guidance on particular matters as and when needed.

All this network of support was thwarted and circumvented as a result of Clr Hall and his influence on his newly elected Councillors, principally those from the Trust, who of course held the majority on the Council.

We have already noted that the clear evidence in our Investigation shows that Clr Hall dominated these Councillors and exploited and took advantage of their newness and inexperience. The evidence is that he also indoctrinated and misled them into false impressions about their roles and responsibilities and in particular into believing that the General Manager and her staff could not be trusted, were to be avoided in case they were suborned or “duchessed”, and that they would actively seek to undermine Council’s adopted policies and resolutions and the mandate of the Trust.

The evidence is that Clr Hall likewise has on a number of occasions misled Councillors about the provisions of the Local Government Act 1993 and the Environmental Planning and Assessment Act 1979, the two key pieces of legislation they need to be familiar with in order to be able to discharge their roles and responsibilities as elected members. More importantly he has sought to abuse his position as chairman of meetings to prevent the General Manager and her senior staff speaking up and pointing out or advising as to the true situation.

The result is that a number of poor and questionable, if only from the point of view of best management practice, let alone the law, judgments and decisions have been made by the Councillors on a range of issues. The evidence is that despite the growing awareness of at least some of the Councillors that they have been duped and let down by Clr Hall many of their misconceptions and misunderstandings are continuing.

At the heart of these problems is a fundamental lack of understanding by both Clr Hall and the other Councillors as to their correct roles and responsibilities under the Act. Right from the start they were conditioned by Clr Hall to be suspicious of staff and their motives, so that when, for example, they were given the correct story by the senior officer of the Department at their induction session nearly all did not listen to or believe what he was saying. They likewise treated clear and correct advice from the General Manager and her staff.

They will continue to do so at their risk. There is a need for all Councillors to correctly understand their roles and responsibilities, and to consider advice with an open mind, which may require revising past views.

We have in our full report examined a number of instances where such poor or questionable decisions have been made. We commenced our examination of this issue with the seminal Mayoral Minute of 28 September 1999 itself. Firstly, however, we considered the way in which Clr Hall went about preparing and bringing in his Mayoral Minute.

While, technically speaking, a Mayor is free under clause 16 of the Local Government (Meetings) Regulation 1999 to introduce unilaterally a motion or proposal (via a mayoral minute) at any time and without notice, when it comes to the Mayoral Minute and the wideness of its subject matter, as well as the sweeping nature of what it sought to achieve, we do have serious concerns as to Clr Hall's use of this procedure on that occasion. If ever this was a situation where there was a need for co-operation with and assistance of the General Manager and her professional staff this was one.

Our concerns go wider than this, however. We were also concerned at the lack of adequate consultation with even his Deputy Mayor, let alone other Trust Councillors, in its preparation. The evidence is that whilst Clr Hall discussed some of the proposals which appeared in his Mayoral Minute with his fellow Trust Councillors at his home two days before he introduced the Minute, he did so in general terms only and did not cover every aspect of what was in the Minute. A number of Councillors gave evidence to us that a number of aspects of what were ultimately in the Minute came as a surprise to them on the night they saw a copy of the document for the first time.

There are also the many problems that arise in relation to the frequent poor and unclear drafting of the document and what it was trying to say or achieve. The issue over the impact of the Minute, or even the elections, if that is the trigger, on the existence of the lesser committees, that is to say other than the "Principal Committees" provided for expressly in the Minute, is a case in point. The confusion and angst that this created with staff has already been noted.

The evidence is that on the night of 28 September Clr Hall, as Mayor and Chairperson of the meeting, gagged debate and rammed his Minute through, with the support of his then compliant fellow Trust Councillors, and this is not appropriate. It must not be overlooked that Councillors of only a week's standing were being asked to consider and vote on complex and wide-ranging matters of which they knew next to nothing. Clr Hall also improperly refused to let the General Manager speak or make points and to answer questions which were asked by a number of the independent Councillors. Much grief and mischief may well have been averted if the Mayoral Minute had been properly dealt with and handled.

We have in our report largely restricted our examination of the Mayoral Minute to those issues which have generated the most concern at Council and which have figured prominently in our Investigation. First, we noted that the Minute purported to give to the Mayor delegated power to sign all outgoing correspondence on behalf of

Council. Such a delegation was plainly impractical and inappropriate, yet the Councillors, with the exception of Clrs Malicki and Roach, who voted against the Mayoral Minute in its entirety, in their wisdom chose to approve it. It was apparently proposed to be amended on 5 October 1999 to limit its scope to more realistic levels, but the evidence is that, for reasons which have not been explained, this amendment was not made on the day. Council therefore needs to address this delegation immediately.

The Mayoral Minute purported to give the Mayor delegated power in relation to media releases, apparently contemplating, in a way which is contrary to what is stated in the Act as well as to Council's contractual commitments in its contract with the General Manager, that the Mayor should have the key role on this. Actually the language of the delegation is narrower than other parts of the document would appear to suggest or contemplate, and the delegation is limited strictly speaking to making media statements which are intended to inform the public of a formal Council decision or policy. Yet, two media releases which we saw issued under the name of Clr Hall as Mayor actually go far wider than this and therefore would appear to have been made without formal authority to do so. The language of both is moreover unfortunate and not calculated to bring credit to Clr Hall as a person, to his office or to Council itself. It is clear to us that steps need to be taken at Council to manage the question of media releases by Councillors better.

The Mayoral Minute contemplated that there would be a wide-ranging independent audit of all communications with ratepayers and residents. The way in which the auditor was appointed is a matter for concern. There is also evidence that the auditor never completed the task and resigned due to a conflict of interest (due to Clr Hall purporting, apparently without any legal authority to do so, to appoint the proposed auditor, a personal acquaintance of some 30 years' standing, also to the role of public relations officer for Council, and despite Council already having a competent professional employed by Council to fulfil that role) and other concerns, yet the Councillors have apparently not done anything about the matter leaving the incomplete audit hanging.

By the same token it is noted that the Minute contemplated examining the setting up of a precinct Committee system. Despite the very important issue of a Residential Development Strategy, and the need for an effective system of communication and consultation with the community on this, there appears to have been no attempt to follow this up, despite it being flagged as a key part of the Trust's election manifesto.

Perhaps the delegated power having the most impact and repercussions that the Mayoral Minute purported to grant to the Mayor was that of full access to all Council offices and areas and to all Council documents or "information sources". The General Manager told us that it was the issue of greatest concern to the staff, given past experiences with Clr Hall. The powers were supposedly underpinned by statutory "emergency powers" granted to the Mayor under the Act. There are in fact no such powers. There is moreover a real question whether a Mayor can lawfully have the sort of wide-ranging access rights, both in terms of premises and information, that was contemplated by either the original minute, or an amendment made on 5 October 1999. Even if some far-reaching access rights were legally given, there is a further question as to the practical wisdom or need for this in terms

of best administrative practice. These powers therefore need to be re-examined by Council at the earliest opportunity.

The issue of the so-called denial by the General Manager of access to Clr Hall, despite the adoption of the Mayoral Minute, has become something of a cause celebre with Clr Hall. The evidence is that the General Manager has in fact given him access to a large number of parts of Council's premises, though access to some of them might be considered to be questionable. Clr Hall's position is that he should have been given more, and to that extent the General Manager was failing to carry out a Council decision, supposedly in breach of section 335 of the Act. Clr Hall has relentlessly pursued the General Manager over the matter, though it was not an issue formally re-raised with our Investigation, as were so many others.

It is clear from the evidence that Clr Hall was behind and closely involved with a decision by Council on 2 November 1999 to confront the General Manager over two aspects in which her performance was said to be in question. One of those aspects was the supposed failure to implement the Council decision on access. The other was one relating to a supposed failure to notify Council about problems and related issues arising out of malfunctioning garbage compactor systems fitted on Council's garbage trucks, and in particular to the supposed failure of the General Manager to notify the Mayor and Councillors about an independent investigation already commissioned from Price Waterhouse Coopers in the life of the previous Council. Despite the General Manager being cleared on both accounts by the sub-committee appointed by Council to examine these allegations, Clr Hall sought to re-raise the second issue as one to be examined by us pursuant to paragraph (2) of our Terms of Reference. This appears to be typical of Clr Hall and his tactics.

The evidence establishes a wide-ranging and sustained inappropriate involvement by Clr Hall and the Councillors in staffing matters, contrary to the Act. There is a manifest failure on the part of Clr Hall and the Councillors on this account to understand their correct roles and responsibilities on such matters. This is another key area in which the influence of Clr Hall is dominant, and the evidence indicates that he has used his dominant position to pursue long-standing desires, previously largely and correctly curbed, to intervene and intermeddle in such matters. Clr Hall has a long-standing history, going back many years, and into the times of previous Councils, on this score.

The role of Councillors in relation to a proposed Staff Committee as originally intended by the Mayoral Minute of 28 September 1999 is an example of Clr Hall and the Councillors getting it wrong in this way. The later consideration, on 21 March 2000, by the Councillors of a Mayoral Minute on staff redundancy payments is another. The problems encountered by Councillors in February 2000 in relation to the extent of "consultation" required under section 337 of the Act in relation to the appointment and dismissal by the General Manager of senior staff is yet another. The controversy in April and May 2000 as to Mr Chris Young not being re-appointed to his Director's position is related to this.

We have also examined the steps taken by the Councillors to determine an organisation structure on 19 October 1999, a matter they were required to address pursuant to section 333 of the Act. There were in our view a number of problems

with the structure so approved, not the least of them being that the internal audit role and the secretaries to the Mayor and Councillors were to report and be responsible directly to the Mayor. This was not appropriate and has created a number of problems. The debate was orchestrated, led and dominated by Clr Hall. The advice of the General Manager and a model proposed by her were ignored and one put forward by Clr Hall inappropriately accepted by the Councillors.

One issue which has been relentlessly and inappropriately pursued by Clr Hall is his desire to obtain copies of, or detailed information about the terms of, the contracts of employment of senior staff. He has been told time and time again that he is not entitled to these, including advice from the Department to the General Manager in early November 1999. There are a number of provisions in the Act and Regulations under the Act dealing with such matters, setting out the extent and detail required as to information on staffing matters that must be given periodically not only to the community, but also to the Councillors. However, it seems that these have not readily been understood. Our report examines in more detail the admittedly complex question of what entitlements to information on such matters exist, and when and how such information is to be imparted.

Another instance of Clr Hall inappropriately and repeatedly trespassing into operational matters, matters that are the responsibility of the General Manager, is in relation to matters relating to the purchase and disposal of mobile plant and equipment, such as motor vehicles. Clr Hall sought to have Price Waterhouse Coopers examine a range of issues relating to motor vehicles by instructions he issued to them on 1 November 1999. Notwithstanding the statutory responsibility of a mayor under clause 19 of the Local Government (Financial Management) Regulation 1999 to “sign off” on the Council accounts, at that time Clr Hall as Mayor had no authority to do this. Many of the issues were ones in respect of which he had been rebuffed by previous Councils. On 2 November 1999 the Councillors themselves authorised that firm to proceed, but it is questionable whether retrospective authority could be given to Clr Hall on this. In any event, as subsequent events proved, the Councillors found to their cost, and to the considerable cost of the ratepayers, that the issues put to PWC to examine appeared to have no substance. The instructions to that firm were progressively revoked. All this was happening at the same time as the inquiry by Council’s sub-committee (comprising Clrs Bennett and Little) was finding that there was equally nothing in the allegations against the General Manager that they were examining. Clr Hall was behind all these, and later the General Manager was advised that “the witch hunts are over”.

Another area in which the Councillors do not properly understand and appreciate their roles and responsibilities as councillors is in the planning and development approval area. Again, Clr Hall’s influence is behind this. There is a misconception as to the effect of the Ward system. Just because Councillors are elected to represent particular Wards is not a reason for them to “switch off” on matters such as development applications which relate to properties outside their Wards. We have seen a number of instances when the Councillors have, apparently on this theme, delegated their decision making authority and roles to the Ward Councillors on development applications. Such a practice is inappropriate and fraught with dangers. Councillors have also inappropriately allowed particular issues before

Council, such as the Residential Development Strategy, to overwhelm them and consume their time and attention, at the expense of their other responsibilities.

Likewise, a number of instances of inappropriate practices in relation to planning and development matters, and in particular to the handling of appeals to the Land and Environment Court, have come to our attention. Some of these appear to entail a resurrection of practices trenchantly criticised by the Ombudsman, in reports directly relating to this Council, a number of years ago. The evidence is that attempts by the Senior Staff to speak up and advise against this have been interfered with by Clr Hall as Mayor and Chairman of Council's meetings. Issues of concern in this regard are the practices of "calling up" by Councillors of DAs to be dealt with by the elected body rather than by staff under delegated authority, and undue favouring of views of residents and objectors. Similarly there is evidence of inappropriate interference by Clr Hall, with the acquiescence of his fellow Councillors, in the matter of instructing of solicitors to act for Council in Land and Environment Court appeal matters, and the evidence is that this has caused disruption and disadvantage to Council. Another instance of inappropriate conduct by the Councillors is in relation to shopping around for compliant expert consultants on Land and Environment Court appeals. This is also something which had come to the attention of the Ombudsman some years before and resulted in adverse comment from her office.

There is clear evidence that Clr Hall has not been effectively discharging his duties and responsibilities as Mayor. When Clr Bennett came in as Acting Mayor during the short period that Clr Hall stood aside for the purposes of the then intended Council sponsored inquiry in November 1999 she found masses of correspondence all over the place in the Mayoral office that had been building up and was not being answered or dealt with. There is no evidence to suggest that the supposed lack of adequate secretarial assistance provided to Clr Hall was in any way to blame. Clr Hall was the problem.

We are also concerned that Council does not have in place an adequate and documented complaints handling system for dealing with ordinary complaints, let alone complaints relating to National Competition Policy matters.

We have already noted that Clr Hall succeeded in getting his fellow Councillors to agree to appointing a sub-committee on 2 November 1999 to examine allegations as to the General Manager's performance on two issues. The sub-committee comprised Clrs Bennett and Little. However, the evidence is that Clr Little was not consulted about his becoming involved, and in fact played no role in any way in the process. He therefore failed to discharge the delegations and responsibilities given to him by Council. The way in which the Councillors went about approving that process on 2 November and the way in which the sub-committee proceeded to examine the allegations leave much to be desired. Despite the insistence by Clr Hall on natural justice principles being adhered to in relation to allegations about him, scant regard was paid to them in relation to those made at his behest against the General Manager.

Moreover the process undertaken by the sub-committee was not appropriate and was in breach of the requirements in this regard under the General Manager's contract, which appears to have been overlooked and disregarded by all involved in

the process. Clr Bennett instructed solicitors, Blake Dawson Waldron, to assist and advise her in relation to the process; however, in so doing she acted without authority.

Clr Bennett's own evidence is that when she met with the General Manager and her legal adviser, accompanied by representatives from Blake Dawson Waldron, she was told quite a different story from what she expected to hear, and was "flabbergasted". The outcome of the process was that she reported back to the Council, in closed session, on 30 November 1999 that none of the allegations against the General Manager was proven.

Exactly what took place at the 30 November meeting is not entirely clear in all relevant details. In particular, whilst it seems that Clr Bennett verbally reported to the Councillors on what had taken place, and did hand out some documents to the Councillors, including copies of written advices from Blake Dawson Waldron, what was in that opinion is not clear. It was the evidence of Clr Bennett that Blake Dawson Waldron had formally and "emphatically" advised that Council should destroy all documents relating to the exercise, including the opinion giving that advice, and the evidence of Clr Anderson at least corroborates that this is what she told the meeting.

We were surprised to learn that this is supposedly what was so advised, particularly given that destruction of Council documents was clearly against the law. The evidence is clear that the documents were in fact destroyed, and that the Councillors passed a resolution to so destroy them. Compounding the problem, this resolution was not minuted or recorded, which was in breach also of the Local Government Act 1993 and Regulations under that Act.

We therefore sought to use our powers to get at copies of documents via section 431 of the Act and issued a series of notices under that section with that end. Ultimately, despite our attempts to obtain a copy of the legal advice, we were thwarted by the Council's decision, apparently in turn on further advice both from Blake Dawson Waldron and another firm, not to co-operate with us. Blake Dawson Waldron also refused to take up our invitation to us to confirm that they had not so advised Clr Bennett, which they could have done if that was the case and they wished to comply with their client's instructions not to waive the legal privilege attaching to such advice.

It is clear that in acting as they did to approve the destruction of records the Councillors thought they were avoiding potential litigation at the suit of the General Manager who was anxious to ensure her reputation was in tact by not even having any suggestion of her performance being examined at all made public. But in our view this did not excuse the conduct of the Councillors, and there were other ways in which the matter might have been handled.

In addition to the issues arising in relation to the allegations against the General Manager which the Councillors dealt with, there is an issue as to whether the Councillors have adequately discharged their responsibilities to be a proper employer and to manage the problems arising out of the complaints about Clr Hall. The evidence is that many Councillors were well aware from an early time that there

was a problem or at least became progressively aware of this. Yet no steps were taken other than to attempt to have a Council sponsored inquiry process and then to ask the Department to intervene and handle the matter. It is clear however that other measures were available to the Councillors to deal with the issues. Latterly some steps have been taken, but this is a question of too little too late. Moreover, even what has been done could not in all cases be said to be appropriate. No steps, for example, have to our knowledge been taken to address the problems arising under the original Mayoral Minute, or to correct the problems with the organisation structure as approved by the Councillors on 19 October last year. The re-imposition of restrictions on Clr Hall along the lines of what used to be in place, before these were swept away by the Mayoral Minute, should also be considered.

Conclusions

The evidence before us in our Investigation presents a picture of Clr Hall as a person convinced in what he sees as his own moral cause. He sees himself as a committed auditor, inquisitor and protector of ratepayers' funds and interests.

It is undoubtedly the case that one of the statutory functions of a councillor under the Local Government Act 1993 is to review the performance of the Council and its delivery of services (section 232 (1) dot point 4), but this role is under the Act required to be discharged "as a member of the governing body of the Council", that is to say through the collective decisions and actions of the Councillors as a whole, albeit with the matter being brought, as appropriate, before the full Council by a Councillor who is concerned about the issue. But even here that Councillor must, under the Meeting Regulations and Council's Code of Meeting Practice, have the support of at least one other Councillor as a seconder to the motion. It is clear that going it alone is not what is envisaged by the Act.

To the extent that the Act permits a Councillor to pursue an issue for the purposes of it being brought before the full Council in this way, there is a limited role for the Councillor to act on his or her own. But, we believe that Clr Hall goes too far and has got carried away with his own crusade. He is frequently deluded in his convictions that something is wrong. He sees intrigue, conspiracy, wrong-doing, corruption and so on at every turn. He does not seem to mind how he pursues his cause. Nor does he seem to mind whom he hurts in the process. In fact, our impression is that he rather enjoys it.

His interpretation of his statutory responsibilities and role under, and of various provisions of, the Act is frequently imaginative, distorted and confused, if not at times just plain wrong.

Like any crusader there are undoubtedly times when Clr Hall has a point, though not necessarily for the reasons he puts forward, and not necessarily even quite the point he thought he was making.

The evidence further clearly establishes that Clr Hall's habits in this regard are of long-standing. His elevation to the Mayoralty in September 1999 merely gave him, he felt, a platform from which to pursue his zeal, and with which to settle a few old

scores, with added vigour, and for a time, at least, effect. Certainly, whilst the majority of the Council, comprising the seven successful Councillors who had been endorsed as candidates at the September elections, were under his aura and influence, this was so – and consequently Clr Hall was able to wreak considerable havoc on the General Manager and her staff, at a cost ultimately to the ratepayers.

All this is highly unacceptable. It has been going on unabated – and for at least three months after September 1999 at a greater level almost to the extent of being out of control – for far too long.

Clr Hall has been admonished, warned, restricted, curbed, censured, and found wanting many times along the way. He has treated Council's restrictions and attempts, quite properly, to manage the situation largely with contempt and ignore.

He has abused and lodged complaints about anyone and everyone who has sought to stand in his way or bring him to account. He lodged complaints with the NSW Ombudsman about the restrictions imposed on him by the last Council. Those complaints were found not to be justified. He then complained directly to the Ombudsman herself about the officer who handled his original complaints. That complaint was found to be without foundation. As noted at the commencement of this Executive Summary, our own role as Departmental Representatives has already been the subject of challenges by Clr Hall in the Supreme Court.

We now have a group of Councillors and the General Manager and her staff hamstrung and pre-occupied simply with dealing with every brush fire he starts and attempting, sometimes in extremely trying and difficult circumstances, to manage the problem. They are frequently not successful. Their attempts are not always appropriate.

It is high time that all this was brought to a halt.

The Councillors' view seemed to be that their responsibilities had been discharged by calling in the Department. However, neither the Minister nor the Department have any power to discipline or remove the Mayor under the current provisions of the Local Government Act 1993. Council also has no power to remove the Mayor, but it can invoke the Code of Conduct. It is therefore the Council – acting through its governing body – the Councillors – who have the power *and moreover duty* to address the matter under the Code.

Latterly, but only in the closing stages of our Investigation, the Councillors have taken a number of belated steps. The measures they have taken have not always been appropriate or within the constraints of the law in our view. Many Councillors still have not necessarily fully understood and appreciated the situation and what can and should be done to deal with it. Addressing some of the excessive powers granted by delegation to the Mayor in the Mayoral Minute of late September 1999 is an obvious area in this regard which the Councillors have not yet attacked. There are others.

It was put to us by Council as a corporate body, as well as by others, when providing comments on the final draft of this report, that the Councillors had really discharged

their responsibilities and done all they could reasonably do in this regard by the steps they sought to take in November to instigate a Council promoted independent inquiry process into the complaints against Clr Hall and his conduct, as well as by their December resolution to call in the Department to deal with the matter. We are far from convinced that this is so.

Councillors need to consider their roles, responsibilities and duties at the earliest opportunity. This consideration should be swift so that remedial action can commence to repair the damage already done to the fabric of the Council structure, its employees and its public image.

This would demonstrate to the residents and ratepayers of the Ku-ring-gai Municipality that Council can control its own affairs and that it has a vision for the future.

This report has concentrated on the complaints brought before it and the findings which must necessarily be made from those issues. A report of this nature must detract from the impact of the perception of Councillors being able to achieve the positive things for which they stand and to improve the functions of Council in a co-operative and productive fashion. The time has come for Councillors to concentrate on rebuilding that relationship and achieving those outcomes.

Councillor Hall was elected as Mayor from amongst the Councillors. The Local Government Act provides that it is the Councillors themselves who must make the decision as to future mayors and the powers which they are prepared to grant an elected mayor.

Somewhat by way of postscript, we note that after drafts of this report were circulated to relevant parties, but before this report was finalised, some steps have already occurred towards addressing some of the outstanding issues and concerns raised in this report. A Mayoral election has been held, and Clr Laura Bennett is now the Mayor and Clr Ted Roach the Deputy. Council has also commenced or, in its corporate response to the final draft of this report, signalled an intent to commence a process to implement or address a number of those issues and concerns. We note in particular Clr Bennett's advice, as Mayor and on behalf of Council, that a number of such steps have particularly been taken since the recent Mayoral election and her consequent election as Mayor.

This is encouraging. Council needs to follow these through and to be able to demonstrate in due course to the community that the measures it has taken are both appropriate and effective.

Those few recommendations we make in our report have been made having regard to the foregoing.

PART 1

1. INTRODUCTION

This is our report as Departmental Representatives concerning an investigation under section 430 of the Local Government Act 1993 into Ku-ring-gai Council (formerly known as Ku-ring-gai Municipal Council) and is presented to the Minister for Local Government and the Director General of the Department of Local Government, and copied to the Council, pursuant to section 433 (1) of the Act.

1.1 Terms of Reference

On 13 January 2000 the Acting Director General of the Department of Local Government, Mr Tim Rogers, approved an investigation under section 430 in respect of the Ku-ring-gai Council (then known as the Ku-ring-gai Municipal Council). Mr Robert Bulford and Mr Gary Bevan, Senior Investigations Officers of the Department, were authorised to act as Departmental Representatives to conduct the Investigation. The Terms of Reference authorised for the Investigation were:

To investigate and report on:

(1) the conduct of the Mayor, Councillor Tony Hall of Ku-ring-gai Municipal Council towards the employees of the Council;
(2) the Mayor's allegations about the conduct of Council's General Manager and other Council employees;
(3) the Mayor's relationship with Councillors, senior staff and other employees of the Council; and
(4) any associated matter which warrants special attention.

On the same day Clr Hall and the Council were formally notified of the Investigation and the Investigation was publicly announced by the Minister for Local Government.

1.2 Background to the Department's involvement in an Investigation

The following account is an abbreviated and simplified account of a complex series of events which unfurled at Ku-ring-gai Municipal Council following the Council elections of 11 September 1999 and the later election of Clr Hall as Mayor of Council on 21 September 1999.

Not long after Clr Hall was elected Mayor, Council's General Manager, Ms Rhonda Bignell, started receiving complaints from her staff about the alleged conduct of Clr Hall towards staff. On 14 October 1999, she wrote to Clr Hall about these complaints, seeking his response to them. His immediate response was to deny that his behaviour was causing any problem. Complaints continued to come in, and the impact of Clr Hall's behaviour on staff was beginning to come to the attention of at

least one other Councillor, namely Clr Elaine Malicki, who wrote to the General Manager on 21 October 1999, seeking her urgent advice as to what steps she was taking to address the matter. The press also got wind of a story and, also on 21 October, a reporter from the Daily Telegraph faxed the General Manager seeking comment on a proposed story on conflict at the Council. This appeared on 25 October, and generated an immediate and considerable reaction within Council and also resulted in involvement in the matter on the part of the staff members' union, the New South Wales Division of the Federated Municipal and Shire Council Employees' Union of Australia (which will henceforth in this report be referred to simply as the "MEU").

On 26 October 1999, the General Manager again wrote to Clr Hall to advise him about the receipt of further complaints, noting that she had yet to receive his formal response to her first memo, and seeking his response. She also prepared a confidential memo to the Mayor and all Councillors to report the matter, in a preliminary way, to them, and to copy them on her memo of the same day to the Mayor, as well as to inform them about the MEU concerns and demands. The papers for the Councillors were placed at their allocated positions in the Council Chamber as there was a Council meeting that night.

However, Clr Hall found out about this and directed the General Manager's Personal Assistant to collect the papers before they got to the Councillors. This was not fully achieved, with at least one Councillor (Clr Malicki) managing to obtain and read the papers. Clr Malicki issued a handwritten memo to the General Manager the same night demanding to know when Councillors were going to be informed of the complaints against the Mayor. She copied this memo to the Mayor and Councillors, the MEU representative, and the North Shore Times and the Hornsby and Upper North Shore Advocate (referred to hereafter as the "Advocate") She also raised the matter with the Department on 31 October 1999. The story of the staff complaints got into the papers, for example the Hornsby Advocate of 28 October 1999.

On 27 October 1999 the General Manager wrote a further confidential memo to Clr Hall (alone) about the complaints, chasing his response and notifying him of the MEU concerns.

Clr Hall's response to the 26 October memo was merely to demand that the staff complaints be put into statutory declarations, and on 28 October the General Manager replied that she would not require this, and reiterated her request for the matter to be addressed by Clr Hall as a matter of urgency. At the close of a meeting on 1 November 1999, the General Manager spoke to Clr Hall about the issue of the staff complaints. He again denied the allegations and refused to discuss the matter, suggesting that the General Manager had made it all up. On the same day the MEU also wrote to the General Manager chasing a response on the matter. Later that day Clr Hall wrote to the General Manager asking if she was adhering to Award dispute procedures regarding the complaints and indicated that he would not reply to the earlier memos from the General Manager until he had a reply to this demand. A same day response from the General Manager to Clr Hall explained the process she was following. The Award dispute provisions were not in fact applicable.

We acknowledge in this regard that the General Manager told us that she did follow the Award provisions at least as part of the process, in terms of having a procedure in place, under the Award, where staff might be able to lodge complaints or grievances with their superiors or the Director in charge of the Department where they work, but the Award, she said, did not apply once the complaint came through to her as General Manager. At that stage she said it was a question of applying clause 7.2.2.

Only six days later, on Sunday 7 November 1999, a meeting took place at Clr Hall's home between Clr Hall and Councillors who had been endorsed Ku-ring-gai Preservation Trust (hereafter referred to as "KPT", or simply the "Trust") endorsed candidates, led in particular by the Deputy Mayor, Clr Laura Bennett. Clr Bennett advised Clr Hall to step down as Mayor to allow an independent investigation to be conducted into the complaints about him. Clr Hall refused, at first, to do so, but faced with an ultimatum and threat from Clr Bennett that she would resign if he did not do so, he backed down and agreed to so step aside. A press release about Clr Hall's standing aside was issued that very day. Clr Bennett immediately took over as Acting Mayor.

On 9 November 1999, at a meeting of Council's Environment and Planning Committee, the Councillors resolved that an independent arbitrator should be appointed to investigate the conduct of Clr Hall.

Two days later, on 11 November 1999, the President of the Local Government Association, Clr Peter Woods, recommended to Clr Bennett that Mr Bill Henningham would be an ideal person to conduct the process. On 15 November 1999 Clr Bennett issued a minute to her fellow Councillors regarding proposed changes to the minuting of Council's resolution of 9 November, which had been brought to her attention by Clr Coleman. The next day, 16 November 1999, Clr Bennett prepared a proposed motion concerning the terms of reference of the proposed inquiry. However, the same day Peter Woods again wrote to Clr Bennett, this time with suggestions as to more extensive terms of reference. Council was due to consider the proposed terms of reference at a meeting that night of its Environment and Planning Committee.

Earlier that day Clr Hall had issued a fax to Clr Anderson in which, amongst other things, he mentioned his understanding that the appointment of the person to conduct the proposed inquiry and its terms of reference were due to be considered that night, and stating that he "would be thankful for that". He added, "If this is so, I would not attend as agreed and seek leave please when the chair seeks apologies, my presence otherwise being a conflict of interest". Word reached Clr Bennett only a short time before the commencement of the meeting that Clr Hall intended to resume his Mayoral duties and proposed to appear that night for that purpose. She hurriedly called a meeting of all Councillors in the Mayor's office, which she had been occupying as Acting Mayor. Clr Hall walked into this impromptu meeting and later took up his position in the Mayoral or chairperson's seat in the Council Chamber.

Whilst his solicitor faxed through a letter to Clr Bennett advising that Clr Hall considered that Council's policies and procedures were not being correctly followed in the proposed Henningham inquiry process as it was being implemented by

Council, this letter had not in fact reached Clr Bennett at this time. That letter furthermore put the view that it was not appropriate for the Environment and Planning Committee to deal with the matter that night and that it should come before the full Council. The letter then continued:

> However in the meantime and subject to these procedures being resolved our client, on our advice, sees no reason why he should further absent himself from carrying out his Mayoral duties in respect of:
>
> (i) Chairmanship of Council meetings and Committee meetings; and
> (ii) Carrying out of his civic responsibilities as required by the Local Government Act.
>
> … In our view our client has an obligation to maintain his elected position …

The meeting accordingly took place with Clr Hall in the Chair. Clr Hall addressed the Council and advised that he would not allow the matter to be dealt with that night. He ruled out of order a motion that standing orders be suspended so that the matter of the proposed inquiry could be dealt with as a matter of urgency. In the result, following a short adjournment called for by Clrs Bennett and Graeme Anderson, the matter was referred by Clr Hall to a meeting of the full Council to be held on 23 November 1999.

The day before this meeting was to take place, i.e. on 22 November 1999, the General Manager sent another memo to Clr Hall about the receipt of yet more complaints about him.

At the meeting of 23 November 1999 Council, in closed meeting (i.e. with the public excluded), resolved that an "independent arbitrator" be appointed to inquire into the conduct of Clr Hall, set the terms of reference and approved the appointment of Mr Henningham for the purpose. The appointment, as directed by the resolution, was formally made by the General Manager in conjunction with the Deputy Mayor the next day.

Mr Henningham took a few days before he communicated with Council regarding his appointment, and wrote to them on 7 December 1999 providing a draft of the proposed procedures he would follow in conducting his inquiry. He also wanted Council to enter into a deed of indemnity with he and his assistant. This deed was the subject of a proposed motion from Clr Anderson prepared on 9 December 1999 with a view to being presented to Council's Environment and Planning Committee on 14 December 1999, it apparently being the intention that any claim under the deed would be covered by Council's indemnity insurance. However, the next day Council's indemnity insurers advised that any such claim would not be so covered, and recommended against Council itself giving any such indemnity. As a result, Clr Anderson withdrew his motion.

Also on 10 December 1999, Mr Henningham wrote to Council to raise serious concerns about his ability to be able to "discharge [his] functions" and proceed with the inquiry, given that Clr Hall had resumed his role and position as Mayor, going in this regard "beyond activities of a civic and ceremonial nature", and the further incidence of complaints about the conduct of Clr Hall which had come to his attention.

Clr Hall, through his solicitor, sought an investigation by the Department of Local Government on 13 December 1999, but in view of the fact that at that time the Henningham inquiry process appeared to be proceeding, it was not considered appropriate by the Department that that process be duplicated. Clr Hall's calls for a Departmental inquiry were given publicity by the North Shore Times on 15 December 1999. That same day Council formally resolved to call for such an inquiry and the Department advised Clr Hall's solicitor of its decision. However, the next day Clr Hall's solicitor was again in correspondence with the Department pressing his client's demand for a Departmental process and indicating that the Henningham inquiry process was not appropriate for a number of reasons.

The Henningham inquiry process continued to encounter a number of problems and impediments to its proceeding, and by 21 December 1999 Council passed a resolution that for various reasons it considered that the proposed Henningham inquiry should not proceed, and that in the interests of the Mayor, staff and the community, an inquiry should be held by the Department. Council further resolved that the Acting Deputy Mayor, Clr Anderson, should communicate the Council's determination to the Department. Clr Anderson so advised the Department the next day. In his letter he said:

> We now ask the Department to break the log jam and to raise an Inquiry as quickly as possible. It will be in everyone's best interest for the matter to go forward immediately and not to protract further. In particular we are concerned for the staff who have a high degree of expectation that their concerns will be listened to in the near future.

Ultimately, after having given these submissions careful consideration, and after having conferred with Clr Hall and his solicitor on various aspects or issues concerning or arising out of any investigation that might be undertaken by the Department, the Acting Director General of the Department made his determination of 13 January 2000, noted at the commencement of this report.

1.3 The legislative framework for local government

The conduct of local government in New South Wales is governed by the Local Government Act 1993. That Act replaced the long-standing Local Government Act 1919.

We quote from what was said in the section 430 Investigation into the Bega Valley Shire Council in 1999 pages 8 and 20-22, and reproduced in the subsequent report of the Commissioner in the ensuing Public Inquiry under section 740:

> *Section 439 in Chapter 14 of the Local Government Act 1993 Act states that:*
>
> *439 Conduct of councillors, staff and delegates*
>
> *1. Every councillor, member of staff of a council and delegate of a council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act*

This places obligations on councillors and council staff to act honestly and exercise a reasonable degree of care and diligence in carrying out their functions. This means that they should not take advantage of their position to unduly influence other councillors or staff members in the performance of their duties or functions. Nor should they use their position to obtain, either directly or indirectly, an advantage for themselves or any other person.

Councillors and staff have a responsibility to behave professionally and to work diligently to develop a constructive working association without letting personal feelings influence their relationship.

To assist in meeting these major responsibilities a model Code of Conduct was issued by the Minister for Local Government in March 1994. It recognised the new legislative and administrative framework in which local government operated and gave councils the flexibility to adapt it to meet particular organisational needs and circumstances. …

2.3 Roles and Responsibilities of Councillors and the General Manager

An important initiative in the reform program was to clarify and improve the decision making and management process in local government. To do this, it was necessary to reconsider the role of elected councillors, including that of the chief elected person (formerly the Mayor or Shire President) vis a vis the role and function of the council's staff.

Under Ordinance 4 of the 1919 legislation each council was required to have a range of statutory positions including a town/shire clerk who was the "Chief Administrative Employee" of the council and responsible for "general control" over employees subject to any direction by the council or mayor.

The 1993 Act recognised that a legislative and management system and structure drawn from nineteenth century English local government was not appropriate to modern organisations. The opportunity was taken to recast the formal relationships building on modern management principles as well as current public administration and codifying many of the good practice issues which had developed in councils.

The title of chief executive officer was not continued in the 1993 Act. This was deliberate so as to avoid the misconception that all power previously held by the elected mayor was transferred to the general manager.

Chapters 9 and 11 of the 1993 Act set out the statutory roles and duties of councillors and the general manager. The role of a councillor as a member of the governing body is to direct and control the council's affairs, allocate resources, determine policy, and monitor the council's performance (s.232(1)) As an elected person, a councillor communicates council policy and decisions to the community, exercises community leadership and represents the views of residents and ratepayers to council (s.232(2)).

The Act makes the general manager responsible for the efficient and effective operation of the council's organisation and for carrying out the decisions of the council (s.335(1)). A number of powers are reserved for the general manager, principally the control of staff (s.335(2)). Council staff undertake their duties according to directions from the general manager or their delegate, and by following established policy and procedure. When making recommendations or providing advice to the council, staff are not required to follow any direction given by the councillors or the council as to the content of the advice or the recommendations. The general manager is ultimately responsible for the actions of the staff.

The clear division of functions acts to protect staff from direct interference by elected individuals and force the elected body either to repose trust by delegation (Mayor or

General Manager) or act as a body by majority and on record rather than by direction of individuals and through confused and confusing lines of authority.

And again:

The conduct of Council staff and delegates is covered in section 439 of the Local Government Act, while the need for a Code of Conduct is specified in section 440 (1).

It is against criteria such as these that the performance of the Council, at either a corporate or elected level, must be measured.

The requirements of the Local Government Act are supported by a framework of Regulations, Practice Notes and Codes, some of which are mandatory and some of which are adopted voluntarily by councils.

These documents provide subsidiary information and requirements which guide the achievement of the Council's Charter and its operations at both elected and staff level.

PART 2

2. THE INVESTIGATION PROCESS

2.1 General

Section 430 of the Local Government Act 1993 provides:

> (1) The Director General may, at the request of the Minister or on the Director General's own initiative, authorise any person (referred to in this Part as a "Departmental representative") to investigate any aspect of a council or of its work and activities.
> (2) An authority may be given generally or in respect of a particular matter.
> (3) The functions of a Departmental representative are as set out in the authority. …

Section 431 provides:

> (1) For the purpose of exercising his or her functions, a Departmental representative may direct a person to do any one or more of the following:
>
> (a) to appear personally before the Departmental representative at a time and place specified in the direction,
> (b) to give evidence (including evidence on oath),
> (c) to produce to the Departmental representative any document that is in that person's custody or under that person's control,
> (d) to grant to the Departmental representative such authorities as may be necessary to enable the Departmental representative to gain access to any document that is in the custody or under the control of any bank, building society, credit union or other person.
>
> (2) For the purposes of this section, a Departmental representative may administer an oath.
>
> (3) A Departmental representative may take copies of or extracts from any document to which the Departmental representative gains access under this section.

2.2 Obtaining of further and better particulars from complainants re the allegations against Clr Hall

For the purposes of our Investigation a number of complaints against Clr Hall were referred to us for examination under paragraph (1) of our Terms of Reference. In order to meet principles of natural justice and fairness, we needed to provide particulars to Clr Hall of the nature of such allegations. Unfortunately, before we could do so we needed to get from the complainants themselves further information to clarify or plug essential gaps in what they had said in their complaints. We therefore sent a series of letters to all those complainants seeking such information.

2.3 Protected disclosure issues

We had, however, certain rules that we needed to take into account before we could provide the necessary particulars to Clr Hall. Those included the provisions of the Protected Disclosures Act 1994. The NSW Ombudsman has issued *Protected Disclosures Guidelines* in relation to that Act and its implementation by bodies such as local government councils. The Ombudsman is one of only several investigating authorities under that Act to whom disclosures may be made by whistleblowers about such matters as corruption and maladministration. The Department of Local Government is not such an authority. Therefore a disclosure made to the Director General, or ourselves as officers of that Department, is not a "protected disclosure" under that Act.

Nonetheless, section 22 of that Act provides that persons to whom a protected disclosure is referred are still bound by certain rules to ensure that one of the tenets of the Act, namely protection, and anonymity to ensure that protection, is still accorded to whistleblowers. We are bound by that section.

Accordingly, in each of the letters we wrote to complainants we said:

> Kindly note, however, that we do not propose to provide to Clr Hall and his legal advisers copies of the actual written complaints against him, even though he has called for access to the same on a number of occasions, and continues to maintain an entitlement to access. We are mindful in this regard of relevant provisions of the Protected Disclosures Act 1994 and the aim of that legislation to protect public officials who voluntarily disclose information which shows or tends to show corruption, maladministration or serious and substantial waste of public money by a public authority or public official. We note that the Act provides protection by imposing penalties, including fines and imprisonment, on persons who take detrimental action against another person in reprisal for a protected disclosure.
>
> As Departmental Representatives conducting the section 430 Investigation we are required in particular to comply with the provisions of section 22 of the Protected Disclosures Act, which provides that to the extent that information or documents have been referred to the Department and were made available to us by the Department for the purposes of our Investigation we too are required not to disclose information that might identify or tend to identify a person who has made the protected disclosure *unless* certain conditions are met. These are:
>
> (a) the person making the protected disclosure consents in writing to the disclosure of the information in question; *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 officers or public officials (ie we as Departmental Representatives) are 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.
>
> Pursuant to paragraph (b) of that section, accordingly, we are of the view that it will, in order to meet the necessary natural justice requirements, be essential that we provide a statement to Clr Hall and his legal advisers which provides detailed information as to what it is that he is alleged to have done or said, or not done or said, as the case may be, as to the time and place at which this took place, and as to the identity of the person or persons to whom the statements and conduct in question were directed or spoken. As we have said, on the other hand, this will not necessarily require us to go to the lengths of

> providing a copy of the actual complaint document, unless, that is, you as complainant consent in writing to this occurring.
>
> We accordingly seek your consent in writing to the provision of a copy of your complaints to Clr Hall and his legal advisers. Please note, however, that in asking you this we impose or imply no obligation whatsoever on your part to provide that consent. That is a matter for you to decide.

In response to our letters many complainants willingly gave us consent to have copies of their original complaints provided to Clr Hall and his legal adviser. Many, on the other hand, did not, and we respected and complied with their wishes. In such cases we merely provided our own statement of particulars, along the lines explained in the letters to complainants.

We note that Ku-ring-gai Municipal Council has adopted an internal reporting policy under the Protected Disclosures Act.

2.4 Procedure at witness interviews

Consistent with our powers under our instrument of appointment it was necessary to interview all complainants as witnesses before our Investigation. Clr Hall had already sought to deny most if not all of the complaints and allegations against him, so we also determined that it would be necessary to ascertain who might have been witnesses to such incidents as were alleged to have happened and to interview those persons also as witnesses.

Given the Terms of Reference of our Investigation, we also held an initial briefing both with Clr Hall and his legal adviser, and the Acting General Manager (Mr Darren Condon) in the absence of the General Manager on holidays. When she returned a few days later we also briefed her on the proposed procedures to be followed in our Investigation. We likewise briefed Clr Graeme Anderson who was then Acting Deputy Mayor, in the absence of Clr Laura Bennett, and on her return, Clr Bennett herself.

We determined that we would take all evidence from witnesses as sworn testimony. Witnesses were therefore either administered an oath, or an affirmation, an alternative provided for in the Oaths Act. All interviews were also tape recorded in order to assist us as Departmental Representatives in this Investigation and in particular in order to ensure that we had a correct and accurate record of what witnesses told us.

Councillors were also invited, through Clr Anderson, to lodge with us or to notify us of any submissions or issues they might wish to raise for the purposes of our Investigation and in particular paragraph (3) of the Terms of Reference. Some did so, whilst others chose not to. Those Councillors who did so were interviewed by us as witnesses. We also interviewed as witnesses some Councillors who were cited as witnesses in relation to the complaints against Clr Hall. In the result, however, not all Councillors became witnesses before our Investigation.

All witnesses had the freedom and right to bring a person of their choice with them to the interviews. This might be a legal or other adviser, a union representative, or simply a friend, spouse or relative, or even just someone as observer. We were notified by some staff that they wished to be accompanied by a union representative, but all such staff ended up arriving at their allotted times without such a representative, saying nonetheless that they were happy to proceed regardless. Two staff members did bring another staff member to act as observer, and we were happy to accommodate that.

On the other hand, two Councillors arrived with a member of the community (a different one in each case) and we were also happy for this to occur. But one of the Councillors, and his observer, both sought to produce their own tape recorders to record the interview. We were not prepared to allow this, given the nature of an Investigation under section 430, and there was initially some dissent to our ruling. Ultimately, we think it fair to say under some protest, the private recorders were put away and, we presume, switched off.

All witnesses were also told that transcripts and copies of tapes would neither be made available to them or their advisers, nor to any third party. That has been complied with. Witnesses were, on the other hand, advised that what they told us might be contained in our report to the Director General and the Minister and that they may be named in that regard. No witness raised that at the time as a matter of immutable concern, and the interviews proceeded accordingly.

We interviewed some 66 witnesses over a period lasting more than four weeks. Some witnesses such as the General Manager and Clr Hall were interviewed for a lengthy period and over several days.

We then examined carefully and at length all the evidence that we had before us. That evidence comprised tapes of our interviews, transcripts of some of the interviews (as to which see the next section of our report), written submissions, the complaints, documentary evidence going to many many thousands of pages, tapes of Council meetings or Council Committee meetings, business papers of those meetings provided to the Councillors, minutes of meetings and so on.

2.5 Use of transcripts of witness interviews

In a number of cases where we have interviewed witnesses we have had independent transcripts prepared of the tapes of the interviews. The possibility of there being transcripts was alerted to all witnesses, but, as noted above, all were told that any such transcript would be for our own personal use as Departmental Representatives in conducting the Investigation and would not be made available either to the witness or to any third person.

All witnesses were, however, informed that information given to us in the course of interviews might be included in this report, and that evidence or information could not be accepted by us under conditions of confidentiality. One of the clear ways in which information or evidence given to us by a witness in an interview may be included in this report is to quote from the relevant part of the transcript of that interview. Some

witnesses, when making submissions to us in respect of the final draft of this report, put it to us that in quoting from the transcript of our interviews with them we were somehow breaching trust and confidentiality. We must make it quite clear that in view of what all witnesses were told this is patently not so.

A typical introduction to the interviews with Councillors or former Councillors went as follows:

> Mr Bulford: You are aware that for the purposes of the investigation we are interviewing a number of persons including yourself?
>
> Witness: Yes.
>
> Mr Bulford: This interview, you are also are aware, is being taped. A transcript may be prepared to assist us, both the tapes and transcripts are to be used only for our own purposes and we do not intend to provide copies or access to either of them to any other person. I think I have previously briefed you on this - at the end of the investigation process we will be preparing a report to the Director General of the Department and to the Minister, is that correct?
>
> Witness: Correct.
>
> Mr Bulford: In that report it is quite likely that information that you give to us during the course of this interview will be included in the report and you may be identified in that report. However, following from that I would just like to be point out that we are unable to and do not receive information and evidence or information under pledges of secrecy or confidentiality. In other words no off the record. …

Transcripts were obtained in respect of the evidence of all persons who at the time of the interview were Councillors and who appeared as witnesses before us, for the General Manager and all senior staff who gave evidence to us, and for some other key witnesses.

In quoting from the transcripts we have substituted the name of the Departmental Representative who asked the question for “Q” and the name of the witness for “A” [Answer].

2.6 Consideration of events prior to Clr Hall’s election as Mayor

An issue of contention between Clr Hall and his legal adviser and ourselves has been the extent to which events occurring before Clr Hall became Mayor in September 1999 might be considered by us for the purposes of our Investigation and its Terms of Reference.

We had advised Clr Hall and his adviser that we proposed to examine such events, and we have done so. We have taken advice on this and firmly believe that it was in order for us to do so.

We consider that it is necessary to examine them, not as matters falling themselves within the Terms of Reference of our Investigation, or more particularly paragraph (1)

of those Terms of Reference, but as evidence which might assist us to understand further the nature of the complaints, the nature and degree of the alleged conduct of Clr Hall, and the nature of the staff reactions to and the consequences arising from such conduct.

One response of Clr Hall and his legal adviser to our indication of our intentions to examine past events was to put it to us, that when it came to examining the issues to be considered under paragraph (2) of our Terms of Reference, that is to say, the allegations of Clr Hall against the General Manager and/or her staff, we should proceed in like fashion. Our attention was therefore drawn to alleged issues considered in the Public Inquiry under section 740 into the Maitland Council, in which the General Manager was a key player, having shortly before that Inquiry got under way resigned from her position as general manager of that Council. Our attention was also drawn to certain matters arising even earlier at the Liverpool Council, at a time when the General Manager was one of the senior staff there, before she went to Maitland, concerning an industrial relations case relating to a former employee of that Council that came before a Conciliation Commissioner. We note that submissions were put to that effect also in the Maitland Public Inquiry.

We also have determined, after having carefully considered the matter, that in neither case is the material to which our attention was so assiduously drawn relevant or of probative value to the issues to be examined by us in the course of our Investigation, having regard to our Terms of Reference. That material is therefore not considered further in this report.

We should add that in respect of the alleged issues said to have arisen in the Maitland Inquiry it was put to us by Clr Hall's legal adviser that we needed to have regard to "the co-ordinated way in which 'staff complaints' were presented to the Maitland Inquiry thereby placing the six Councillors critical of Ms Bignell in a poor light". We must first note that we have no knowledge of such an issue being raised in the Maitland Inquiry and second that there was no evidence of that having been the case. The matter was pressed upon us as being relevant to the allegation against the General Manager (particularised by Clr Hall for the purposes of paragraph (2) of the Terms of Reference of our Investigation) that she drummed up complaints against Clr Hall and that she did so as part of a political power play by herself against Clr Hall. The further submission or suggestion is that the complaints were therefore all made up and without substance. We have carefully examined this allegation and our conclusions on it are set out elsewhere in this report.

Lastly, we note that at a later time Clr Hall, through his legal adviser, also sought to press on us the need to interview a person who had been an employee of Council some 12 to eighteen months before Clr Hall became Mayor, allegedly because of his views as to matters that occurred before or shortly after he left Council's employ shed light on similar issues arising after that time in which the General Manager was said to be complicit or involved. We have examined the documentary evidence and written statement of that person provided to us by Clr Hall's legal adviser, and have determined, for the same reasons as set out above, that it is of no relevance or probative value or assistance to us in that instance. That evidence, too, is accordingly not considered further in this report.

On the other hand, in reaching our conclusions in this Investigation on the various matters dealt with in this report we have taken due regard to evidence and materials provided to us in written form by Clr Hall's legal adviser, from a Mrs Cynthia Kuiper, Ms Helen Ferns and a Ms Therese Fletcher. However, that evidence is not otherwise specifically noted elsewhere in this report. We saw no need or value in formally interviewing these persons further.

2.7 The provision to Clr Hall of particulars of the allegations against him

The initial and major provision of particulars to Clr Hall of the nature of the allegations against him, at least those then available to us, occurred on 14 February 2000. On that date we wrote to his legal adviser and provided a written statement setting out those particulars. Where we had the consent of the complainant to do so, a copy of the complaint containing any relevant allegation was attached. Most of those particulars are quoted at the relevant parts of this report.

In that statement and in our other advices to Clr Hall and his legal adviser we clearly flagged that we would provide further particulars as and when they were available to us. Our initial advices as to when and how particulars were to be so provided were put to us later by Clr Hall's legal adviser as amounting to some sort of undertaking, and it was alleged that, in later (when we commenced our interview with Clr Hall as a witness) seeking orally to put particulars of such matters, or further matters that had come to our attention since we last provided particulars, we were somehow breaching that undertaking. We dispute this, but we see no value in pursuing or prolonging that argument further at this time and in this report.

We should also add that certain particulars which we did have in writing (provided to us by a witness) were, with the consent of that witness, copied to Clr Hall and handed to him at the first day's interview.

On 4 April 2000 we again wrote to Clr Hall's legal adviser about the provision of particulars. Our letter said, as to relevant parts:

> We note that you have indicated that in your view inadequate particulars have been provided at this time in relation to the allegations against your client and that you did not agree with the way in which we told you that we proposed to provide any further particulars to your client of any allegations against your client which have not to date been fully or adequately, in our view, particularised to your client.
>
> We further note that, in endeavouring, during the course of questioning of your client in the interview, orally to put to your client further particulars of certain allegations, your client, on your advice, declined to answer our questions in relation to the matters so particularised. We note that, on behalf of your client, the proposition was put forward that those particulars needed to be given in writing to your client before your client would be in a position to respond to those allegations as so particularised, and to our questions in relation to them. We also note that you put, on behalf of your client, the proposition to us that, in not having already provided further written particulars of such allegations to your client prior to the commencement of the interview, we supposedly breached an alleged undertaking given to your client.

We have given careful consideration to each of these matters and taken advice on them. We propose, as a result, to proceed with our conducting of our Investigation in the way that we have already advised to you, both previously and at the commencement of and during the course of last Thursday's interview.

That is to say, we note that we did advise you in our letter of 25 January last, in which we sought to address a number of apparent misconceptions on your part as to what was said by us at our initial preliminary briefing of you and your client on 17 January 2000, that we proposed to provide to your client a statement prepared by us, or actual copies of complaints in which such allegations as might fall within paragraph (1) of the Terms of Reference of the Investigation might have been made, as soon as such relevant details and particulars were available to us. Nothing was said by us to indicate that any such statement would necessarily be in writing.

The clear advice given to you at our briefing and as repeated in our 25 January letter was that the statement would be provided where the maker of the allegations, or complainant, did not agree to a copy of his or her complaint being provided to you. A copy of the complaint would only be provided when and if the complainant consented. As we explained to you, both at the briefing and in the letter, the reason why the intended particulars could not be provided to you at that time was that we awaited receipt of advice from the relevant persons as to further information which we had requested or proposed to request in order to be able to provide the necessary particulars, as well as advice as to whether such consent would be provided or not. This advice to you was a statement by us as to our intent as to how such matters would be handled, and we deny that any "undertaking", as you have put it, was given by us. …

Our letter of 14 February and the statement enclosed with that letter were prepared at a time before we had formally commenced our interviews of witnesses before this Investigation. As was indicated to you in both our briefing and our letter of 25 January, we considered at that time or those times that it was likely that further allegations, or further particulars of allegations already before us, would be provided to us by witnesses during the course of their interviews or otherwise during the course of the Investigation. We indicated in this regard our intent to provide to your client further particulars of these at the earliest possible time, but that we would not necessarily be providing those particulars from what might be told to us by such witnesses and would not be providing to your client copies of tapes of interviews, or of transcripts or parts of or quotations from any transcripts made from those tapes, as you had earlier demanded.

We confirm that we propose to continue this Investigation on the basis that, where we consider it appropriate or necessary so to do, further particulars will be provided, as soon as practicable, and at the appropriate time, of any allegations against your client, falling within paragraph (1) of the Terms of Reference, and not already particularised to your client. In this regard we propose either to provide such particulars orally during the course of our interviewing of your client as a witness assisting us with our Investigation, or at the very latest in writing contained in the draft report which will be provided on a confidential basis to your client and other relevant persons or persons having a sufficient interest in the Investigation as to warrant giving to them a draft report, with an opportunity for comment on its contents, before the final report is issued to the Director General of the Department of Local Government and the Minister for Local Government, and copied to the Council, pursuant to section 433 of the Local Government Act 1993. …

Following on the advice confirmed to you above, so far as any other alleged incident is concerned which occurred at the meetings referred to in the last paragraph and which has not already been particularised to your client, we have already, during the course of our interview last Thursday, provided oral particulars to your client of all details which we are presently able to provide. These will not be further confirmed in writing before the proposed next interview with your client.

Demands were made for further particulars; however, as with all complaints provided to us we can only provide particulars from the information available to us. Moreover, we do not agree with the demands made for extensive details down to the last degree as to what was said, to whom, when, where, and what was the full context of the conversation, and the proposition that unless these are available we are somehow precluded from even giving any consideration to the allegations. If pertinent details are missing, then it is simply a matter for us as investigators to decide what weight or whatever is to be given to the evidence before us. In any event, in many cases we fail to see the need for such precise and extensive details to be available before we can make findings of a general nature as to Clr Hall's conduct being inappropriate over a particular period, in a general way, to a particular witness.

2.8 Clr Hall's qualified co-operation with the Investigation

When Clr Hall came before us as a witness before our Investigation, but before we formally commenced the interview, his legal adviser told us:

> Now what I'm putting quite simply is this. If there are allegations in that direction they should be properly stated as per your undertaking and they should be given to us and they will not be responded to here, I will advise you in advance of that position so that you're not, if you like, wasting time on other important matters you may wish to pursue. If you have further matters to put to us in that regard, they should be stated.

As noted, the issue of what and how particulars should be put to Clr Hall of the allegations against him has been the subject of some debate and disagreement between us and Clr Hall's legal adviser. That debate and disagreement was particularly evident at the commencement of our discussions that day.

At the commencement of the second day of our interview with Clr Hall we advised he and his legal adviser:

> I would like to note that clearly there have been some misunderstandings on some issues and I would state now that during the course of our investigations to date and in particular during interviews with witnesses, a number of issues have arisen which we have determined require further examination as part of our Investigation. That is to say that we wish to seek comment from Councillor Hall in relation to them. Some of them are matters which we believe can be quite easily and quickly disposed of by our asking a series of simple questions in interview of Councillor Hall and obtaining his reply to them in the interview. Where there may be issues of greater substance that require further consideration by Councillor Hall before replying then, as I have already indicated last week, we are quite happy for Councillor Hall to take the questions on notice and reply to us in writing at the earliest opportunity. On receipt of those responses we will examine them and consider whether there is any further issue which we will need to pursue with Councillor Hall, and how. The next issue that I wish to say something on is on the question of circulation to affected parties of our draft report. We must point out that there are a number of options available to us and we are not in a position to determine which course to follow until such time as we have completed that draft report. However, we should add that it is common practice in investigations of this type, a practice often followed we note by both the Independent Commission Against Corruption and the Office of New South Wales Ombudsman, to provide to persons who may be substantially affected by findings and recommendations in the draft report, with extracts of the relevant parts affecting that person before a full copy of the final draft is circulated to all parties.

> And so as to give that person an opportunity to respond to those substantial issues before the draft is finalised for circulation and comment to and by all parties.

However, after and notwithstanding that proposition was put to Clr Hall and his adviser, we still encountered a number of instances in which, on advice, Clr Hall declined to answer the questions we put to him unless and until the particulars were so provided in writing. Our oral statement of the particulars, coupled with a simple question as to whether, yes or no, Clr Hall agreed with what was alleged, resulted in such refusals. This approach is not one that has assisted this Investigation come to a speedy and orderly conclusion.

There is another aspect which we must note for the record. This is that at many stages during our interview with Clr Hall, and in particular during the second day, we sought to put questions to Clr Hall, and Mr Dunn sought to reply to them. This continued notwithstanding our reminding Mr Dunn as to what we saw as his role as legal adviser to the witness. Mr Dunn was not sworn as a witness before us and in any event he was not involved in the alleged incidents he sought to tell us. We therefore cannot accept or treat as evidence what Mr Dunn sought to tell us, even if on his client's behalf. Nor was our interview the equivalent of a court of law where a legal adviser may put, usually at the end of the hearing of the evidence, and not during it, arguments or submissions to the judges or other presiding persons.

It should be noted that this Investigation is not a judicial body or process bound by the rules of evidence. Therefore the rules as to hearsay (or non-first hand) evidence do not apply to us. This is similar to the argument that was put to the Commissioner in the Public Inquiry under section 740 of the Local Government Act 1993 into the Maitland Council in 1997, a process that is quite different to the investigative process we are undertaking pursuant to a different section of the Act, namely section 430.

Even if we were to assume, for the moment, that this Investigation is bound by the same legal rules and principles as are applicable to a Public Inquiry under section 740, we note that the argument put to the Commissioner in the Maitland Inquiry and his reply were that:

> … even if the rules of evidence do not apply to a non-judicial inquiry, such as the present Inquiry, the rules of natural justice do and those rules require that "*every attempt must be made to administer justice*" and that findings in a report of the results of the Inquiry must be made on the basis of "*evidence having rational probative force*" … . I propose only to refer to one seemingly particularly helpful judicial quote by Lord Justice Diplock of the English Court of Appeal in the *Moore* case (para 10 of S2):
>
> > *The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than it must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that ... he may take into account any material which, as a matter of reason, has some probative value in the sense mentioned above. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue.*

> Readers of this report will find that I have gone to some pains to ensure that the findings I have made on the evidence placed before and allegations made to this Inquiry have been reached after very careful consideration, and with these very principles in mind.

We have in considering the evidence before us in this Investigation and in reaching any conclusions set out in our report, endeavoured at all times to follow these principles. We therefore consider that we are perfectly entitled to, and do, where appropriate, give due consideration to hearsay evidence. As with the Commissioner, it is simply a question of the weight we attach to that evidence.

We should add that we have, wherever at all possible, gone out of our way to avoid relying on hearsay evidence and have at all times sought to bring before us witnesses who have direct, first-hand evidence to give to us, whether as recipients of the alleged conduct of Clr Hall, or as witnesses to that conduct.

2.9 Circulation of drafts of the Investigation Report to affected parties and legal proceedings arising out of this

In accordance with what we said to Clr Hall and his legal adviser, and more importantly to meet natural justice and procedural fairness requirements, as soon as we completed a first draft of this report we provided a copy of relevant extracts of that draft to the key persons who might be directly affected by any adverse findings or comments in those parts of the draft, to enable them to give to us any submissions and comments they might wish to make. This occurred on 18 July 2000. These persons were Clr Hall, his legal adviser, the General Manager, Ms Bignell, the Deputy Mayor, Clr Bennett, and Clrs Coleman and Little.

Each person was requested to provide such submissions and comments by a particular time, namely by 4 August 2000. In the case of Clr Hall, he sought, through his legal adviser, various extensions of time. An initial extension was granted to 11 August, and then a further and final extension until 5.00 pm on 15 August 2000. On 15 August, but after the 5.00 pm deadline, we received however a further request from Clr Hall, through his legal adviser, for yet another extension, together with what was described as a "provisional written submission". It was requested that we grant an extension until 21 August. Legal proceedings were also threatened on a number of grounds unless we gave certain undertakings.

After taking advice on the matter, we declined to provide those undertakings. We replied by facsimile to the legal adviser the next day. Our letter provided:

> We refer to your letter of 14 August 2000, received by us by facsimile transmission on 15 August 2000 at 17:16 hours. We refer in this regard to your letter on behalf of Clr Hall enclosing what you describe as "provisional written submissions". We note that this correspondence was received outside the extended deadline permitted to your client.
>
> Nevertheless we have noted the contents and will give due consideration to the issues raised when revising our draft report, where necessary, and finalising it. We are now proceeding to attend to that task.
>
> We are not prepared to grant any further extensions of time, as was notified to you in our last letter. We expect to be able to complete our review of our draft report in about one

week's time. Provided that any further comments your client may seek to make are received by us within sufficient time to deal with them, we will endeavour to consider them when undertaking the process of review and making any amendments to the draft.

As you have noted, what was submitted to your client for his comment and consideration was merely an extract of the draft in so far as it related to the complaints against or made findings concerning your client. Other parts of the report which may have made findings against other persons were, of course, in the same way as we proceeded vis a vis your client, not provided to anyone other than the person affected. You and your client would appear, with respect, to presume too much in so far as you appear to conclude that the report only contains findings adverse to your client.

Natural justice requires that we provide to persons affected by or in respect of whom adverse findings are made in our draft report a copy of the relevant part or parts of the report, together with the evidence on which such findings are based, and a reasonable opportunity to comment on or make submissions in respect of that material. In the case of our draft report, the evidence is, as we have previously indicated to you, that evidence which is contained and quoted in the report itself. We firmly believe that we have met these requirements, and as you are aware have granted a number of extensions of time and concessions to your client in this regard. We are neither required nor prepared to go further.

Comments received by us in relation to the draft or extracts circulated will, as we have indicated above, and pointed out a number of times already, be duly considered when finalising our draft report. We are not required, nor are we proposing, to enter into a further exchange of extracts of drafts.

The next step is for our draft report, in full, to be made available to Council as a corporate body. This is required to meet natural justice and fairness requirements vis a vis that body. Our draft report contains interim draft adverse findings affecting the corporate body. That body is constituted by not only the elected Councillors, but is also represented by the General Manager. In this instance, also, it will be necessary for copies to be provided to former Clrs Anderson and Malicki, given that they are equally affected by the report and its findings.

As previously indicated, therefore a copy of the full draft will be provided to all Councillors, including of course your client, and to the General Manager for further comment and review before the report is finalised and formally issued to the relevant persons pursuant to section 433 of the Act. This is, so we understand, standard practice in reports of investigations of this type. Again in accordance with usual practice, all copies will be provided under conditions of confidentiality, which will be required to be maintained until the final report is released in accordance with the Act.

We are not proposing, nor are we required, to give you or your client, or for that matter any other person, prior written notice before issuing our draft report to those persons in this way.

This letter produced a swift reaction from Clr Hall and his legal adviser. On 17 August 2000 Clr Hall commenced legal proceedings against us in the Supreme Court of NSW seeking to injunct us from proceeding to the next step of providing a final draft of our report to the Council as a corporate body. Clr Hall obtained an order from Mr Justice Dowd of the Court that day shortening the usual time for and altering the usual means of service of notice on us as to the commencement of those proceedings.

The case came before the Court on Tuesday 29 August 2000 with a view to securing a judge to hear the matter and getting a hearing date. The Department of Local

Government had sought on our behalf an expedited hearing on a number of grounds, including the public interest in having the issues resolved and this Investigation completed. Clr Hall's barrister at first agreed to this, in particular having regard to the fact that the Mayoral election was due to be held on the evening of Tuesday 5 September 2000, an event which was behind Clr Hall's moves for an injunction as he advised the Court that he considered his chances of re-election as Mayor might be jeopardised if the Councillors received our draft report beforehand.

But later that day (29 August) Clr Hall's barrister advised the Court that he would not be available for a hearing of the matter until after 6 September 2000. After giving consideration to the submissions of both sides, eventually the matter was set down to be heard by Her Honour Justice Simpson on 5 September 2000.

Meanwhile, upon receipt of submissions and comments from all the persons to whom extracts of our first draft of this report had been provided, those submissions and comments were duly considered and the draft report was reviewed and any necessary or appropriate amendments were made to it. Included in this regard were late further submissions lodged with us on 29 August 2000 by Clr Hall's legal adviser on his behalf. These late submissions were lengthy and comprised a document described as "Supplementary Submissions" and an affidavit from the legal adviser. Similarly, despite comments from Clr Little being received some 17 days after the time provided to him for comment had expired, his comments were also examined and were therefore considered in that process.

However, late on 31 August 2000 we received a letter from Clr Hall's legal adviser exploring the possibility of settling the proceedings. This was duly considered by us and, in response to the invitation to do so, we put to the legal adviser a settlement proposal, basically entailing us agreeing that we would give due consideration to Clr Hall's submissions, as noted above, and that the only version of the final draft report to be delivered to the Council as a corporate body would be the final draft created after considering those submissions. We said that we would withdraw our undertakings to the Court in exchange for Clr Hall discontinuing his proceedings against us and the Director General and Deputy Director General.

The Agreement between the parties was signed on 1 September 2000.

After taking into account all comments and submissions received by us, including Clr Hall's "provisional written submission" and "supplementary submission", a final draft of this report was compiled and provided to the Council as a corporate body, constituted by not only the elected Councillors, but also represented by the General Manager. In this instance, also, it was necessary for copies to be provided to then former Clrs Anderson and Malicki, given that they were equally affected by this report and its findings. This final draft was handed out to the relevant persons on 4 September 2000. All recipients received their copies of the final draft under strict conditions of confidentiality, and all were given the opportunity to comment on and make submissions in respect of the draft.

Council sought a formal extension of time in which to make such submissions and this was granted. In due course submissions and comments were received from Council as the corporate body, through the then new Mayor, Clr Bennett, and from

Clr Hall, through his legal adviser, and Clrs Roach and de Vulder, as well as from the General Manager and former Councillors Anderson and Malicki. Comments and submissions were also made by Blake Dawson Waldron, Solicitors.

All comments and submissions were duly considered and examined, and this report has been revised, finalised and issued having regard to them.

We note that the Terms of Reference contained no requirement as to the time in which our Investigation was to be completed. We also note that at no time in this Investigation or in particular at our initial briefings of relevant persons to be involved in the Investigation did we ourselves indicate or promise any particular deadline or timetable for our Investigation. We are concerned that Council and a number of persons appear, incorrectly, to think otherwise.

2:10 Recent evidence and events at Council

In an Investigation such as this, covering as it does such a large number of allegations and issues, and having to deal with such a large volume of evidence and materials provided to us from a large number of witnesses, there is inevitably an unavoidable lapse of time between the date of the most recent evidence or events which we have examined and the production of our final report.

The report writing process is necessarily protracted, as can be seen just from the sheer size of this report, and the process is also unavoidably and necessarily extended by the need to meet natural justice and fairness considerations by circulating extracts of the draft report to affected parties, allowing them a reasonable time in which to consider those extracts and lodge submissions or replies in respect of them, and then having ourselves to give due consideration to such submissions and replies and making any necessary amendments to our draft report, and so on.

This means that we have to draw the line in the sand somewhere and not consider or deal with events falling after that time. If we were not to do so our Investigation would in effect never get completed.

Therefore, our report considers and deals with evidence of issues and events and allegations put to us until a short time after we ceased our interviews of witnesses. As noted, the witness interviews were concluded with our interview of Clr Hall himself over two days extending over a two week period, namely on 30 March and 6 April 2000. Where evidence and events falling after that time and approximately before mid to late May 2000 were drawn to our attention we gave consideration to them, where appropriate, in our report. In some cases we called for further documentary evidence on such matters in examining and assessing them. Except to that extent, therefore more recent events at Council have unavoidably not been considered or acknowledged, other than in respect of broad acknowledgement of such developments as brought to our attention by persons lodging submissions and replies to extracts of our draft report.

Clr Hall in his submissions in respect of the extracts of our draft report provided to him put it to us that we should re-open our Investigation to take evidence on more

recent developments at Council. We gave due consideration to this request, but have determined, after taking into account submissions from all other relevant parties, that it was not in the public interest or in the interest of the parties that we should do so. In our view it is in the interests of both the public, Council and the Councillors, in particular Clr Hall, that our Investigation be finalised, after following all due process, at the earliest time.

Clr Hall, through his legal adviser, put it to us we had failed to take account of developments at Council in the last six months. As explained above, this is to overstate the position given that we have given consideration to events drawn to our attention which occurred as recently as mid to late May 2000. Clr Hall's submissions went on to assert:

> … you have therefore ignored what we submit has been the substantial and genuine improvement in Mayoral/staff/Councillor relations which has occurred [in that six months].
>
> It is further submitted that over this period of approximately six (6) months there has been a number of fundamental changes at Ku-ring-gai Council which have impacted in a strongly positive way as they relate to Clr Hall. These ought in any fair minded assessment be considered and brought into your Report. It may be that certain other changes which have occurred such as the resignation of Clr Anderson and Mr Glendinning have assisted (irrespective of the rights and wrongs of these persons previous arguments with the Mayor) in bringing this about. As you also would be recently aware, Clr Malicki has been dismissed from office and a new Councillor has been elected replacing Clr Graeme Anderson. All of these changes are of a positive nature as it effects [sic] Clr Hall. More importantly, however, has been the success of Clr Hall and indeed all Councillors and staff involved in overseeing the progress of the Residential Strategy now to a point where it has been presented to the State Government with full community support and strong support from the overwhelming majority of Councillors. Of significance also in this regard is the fact that the Mayor's relationship with Mr Chris Young prior to his departure improved significantly thereby rendering "out of date" your comments in the Report relating to the Mayor's relationship with that Council officer.
>
> … It is our submission that Clr Hall has to a large measure overcome his initial difficulties and inexperience in the role of Mayor and the Council has, as a result, worked relatively harmoniously and effectively at all levels.

We should also note that Clr Bennett in her written reply to the extract of the draft report presented to her for comment submitted to us that:

> What I am confident about is that the vast majority of councillors and staff will continue to work together for the benefit of the residents of Ku-ring-gai. Your findings cannot take from us the achievements of the last 8 months. Together staff and Councillors have prepared a residential strategy acceptable to the community, reoriented spending to deal with our deteriorating infrastructure, begun the revamp of our planning instruments and prepared an adequate s94 plan. The community in the Gordon Ward by-election have endorsed our efforts.
>
> We have done this without the benefit of your Inquiry, which has been inordinately delayed. Whatever you include in the final report it is my belief that staff and councillors will continue to work together for the benefit of the residents.

In its corporate response to the final draft of our report, issued through the then new Mayor, Clr Bennett, Council again formally expressed concerns that its alleged

recent positive achievements, in particular since the beginning of this year, are not reflected in this report.

This Investigation is not, of course, a general investigation about Council's performance or its success or otherwise in providing its services and carrying out its day to day functions, as can readily be seen from the Terms of Reference. To the extent that in Part 6 of this report we deal with matters that, in the course of our Investigation, have come to our attention, and on which we have found it necessary to comment, or note or suggest a need for change or improvement, this should only be taken as an indication that we found matters which merited our attention and required such comment, being matters falling within paragraph (4) of our Terms of Reference. This is not to suggest that there may not be other areas and aspects of Council's performance and operations which are functioning well and in respect of which there are no problems which require attention, matters on which we can express no comment, given the lack of evidence before us on them.

As we indicated to Clr Hall and his legal adviser, in any event, no doubt, the Councillors in considering our report, and in any action taken by them in relation to Council business and affairs after our final report is issued, will take into account their own views as to more recent events from their own perspectives, recognising, however, the fact that they as councillors are ultimately accountable to the electorate and the community for their performance.

2.11 Statutory requirements relating to the Investigation Report

Section 433 (1) of the Local Government Act 1993 provides:

> A Departmental representative must report to the Minister and the Director General on the results of the investigation and must send a copy of the report to the Council.

Section 433 (2) of the Act provides:

> The report may comment on any matter which, in the Departmental representative's opinion, warrants special mention and may contain such recommendations as the Departmental representative considers appropriate.

These additional matters, also permitted via paragraph (4) of our Terms of Reference, are dealt with at Part 6 of this report.

Section 433 (3) provides:

> A report furnished to the council under this section must be presented at the next meeting of the council after the report is received.

Clause 17 of the Local Government (Meetings) Regulation 1999 provides in this regard:

> When a report of a Departmental representative has been presented to a meeting of a council in accordance with section 433 of the Act, the council must ensure that the report:

(a) is laid on the table at that meeting, and
(b) is subsequently available for the information of councillors and members of the public at all reasonable times.

Section 434 requires the Council, within 40 days after presentation of the report, to give written notice to the Minister of the things done or proposed to be done to give effect to any recommendations in the report. There are also provisions in that section whereby Council can be compelled to act on the recommendations applicable to it.

PART 3

3. THE ALLEGATIONS AGAINST CLR HALL AND HIS RELATIONS WITH SENIOR AND OTHER STAFF

Paragraph (1) of the Terms of Reference required us to investigate and report on the conduct of the Mayor, Clr Hall, towards the employees of the Council, that is to say towards the staff. Paragraph (3) of the Terms of Reference also required us to investigate and report on, generally, the Mayor's relationship with senior staff and other employees of the Council.

The Local Government Act 1993 contains a number of provisions dealing specifically with "senior staff", and in some cases imposes additional or higher obligations and responsibilities on such senior staff (for example in relation to the disclosure of pecuniary interests – see sections 441, 445 and 459). The Dictionary to the Act defines "senior staff" as "the general manager of the council and the holders of all other positions identified in the council's organisation structure as senior staff positions". So far as the general manager is concerned, section 334 (2) reinforces this by reiterating that "the position of general manager is a senior staff position". Section 332 (1) requires the Council to determine an organisation structure, as well as to determine "those positions within the organisation structure that are senior staff positions". Section 333 requires the Council to re-determine the organisation structure within 12 months after any ordinary election of the Council.

3.1 The legal framework as to the appropriate conduct of a Councillor or Mayor

The 1993 Act provides for people to be elected to office as representatives of a local government area, or ward where the area is divided into wards, as is the case with Ku-ring-gai Municipal Council. These persons are "councillors". A mayor is a councillor with additional powers and duties.

Section 226 of the Act provides:

> The role of a mayor is:
>
> - to exercise, *in cases of necessity*, the policy-making functions of the governing body of the council between meetings of the council
> - to exercise such other functions of the council as the council determines
> - to preside at meetings of the council
> - to carry out the civic and ceremonial functions of the mayoral office. [Emphasis added]

It is to be noted that the first bullet point is qualified by the important words that we have italicised ie "in cases of necessity". We sought to obtain from Clr Hall his views or understanding as to the meaning of these words:

> Clr Hall. Mr Bulford, I see the Local Government Act 1993 as a performance based piece of legislation. Probably as part of Government policy, State Government policy at the time. To make it more user friendly, more helpful, rather than the prescriptive document of the 1919 Act, of which I was, for seven years in this Department, part of the interpretation area because I was private secretary to the Minister for Local Government from 1972 to - 1965 to 1972. So I was well imbued with dealing directly with Under Secretaries. Mulholland, Barnett, Poxon.
>
> …And the performance based legislation that was adopted - was enacted in 1993 did give a certain amount of flexibility to Councils that in effect gave them - unless it was inconsistent with our legislation, the authority by resolution to do certain things. And my job was to explain it and then place it to Council and they resolved on it. Now I felt, having spoken to Councillor Woods and a number of other people in Local Government, that I was within law to provide a flexibility in the terms of, where necessary - because that is a very broad term and the flexibility was written into that Mayoral Minute.

We got no further on the point.

The words "in cases of necessity" have a limited meaning or scope, and need to be interpreted in an objective sense. The individual view of the individual mayor as to what is a matter of necessity does not mean the end of the story. Moreover, "necessity" is not necessarily the same as "emergency", though there could situations where an emergency, in the true, strict and objectively judged sense, may mean that it is necessary that the mayor exercise the particular policy making function that needs to be addressed by him, in the absence of the ability of the full council to do so. Clause 2.3 of Council's policy on the *Provision of Information and Interaction between Elected Members and Staff*, noted below, contains some examples of what Council has identified as cases of necessity.

Council may nonetheless, as a separate matter and relying on and subject to the different powers in and provisions of sections 377 to 379 and dot point 2 of section 226 of the Act, formally delegate or grant such powers to the Mayor, or whomever, over whatever period it chooses. Policy making functions are also, of course, not functions which extend to decisions on development and other applications that need an urgent and immediate decision.

Under section 222 the elected representatives or "councillors" comprise the governing body of the council. Section 223 provides that:

> The role of the governing body is to direct and control the affairs of the council in accordance with this Act.

Section 232 provides:

> (1) The role of a councillor is, as a member of the governing body of the council:
>
> - 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 management plans 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.

Given that under these sections it is a requirement that both the mayor and councillors act in accordance with the terms of the Act, it is also important to note that relevant paragraphs of section 7 of the Act provide:

> The purposes of this Act are as follows:
>
> (a) to provide the legal framework for an effective, efficient, environmentally responsible and open system of local government in New South Wales,
> (b) …
> (c) to encourage and assist the effective participation of local communities in the affairs of local government, …

Section 8 (2) also provides:

> A council, in the exercise of its functions, must pursue its charter …

And section 8 of the Act provides that each council in the State has certain "charter" obligations, which include:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively

- to exercise community leadership

- to have regard to the long term and cumulative effects of its decisions

- to facilitate the involvement of councillors, *members of the public*, users of facilities and services *and council staff* in the development, improvement and co-ordination of local government

- to keep the local community and the State government (and through it, the wider community) informed about its activities

- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected

- to be a responsible employer. [Emphasis added]

Conversely, or by way of limiting the power and role of the mayor and councillors, section 335 (1) of the Local Government Act 1993 provides:

> The general manager is generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council.

The General Manager and her staff are employees or staff of Council and run the place on a day to day basis and ensure its services and so on are provided to the community. Councillors are not and cannot be employees.

Section 335 (2) goes on to provide:

> The general manager has the following particular functions:
>
> - the day-to-day management of the council
> - to exercise such of the functions of the council as are delegated by the council to the general manager
> - to appoint staff in accordance with an organisational structure and resources approved by the council
> - to direct and dismiss staff
> - to implement the council's equal employment opportunity management plan.

Note should also be made of the terms of section 352 of the Act, which sets out rules to ensure the independence of staff for certain purposes:

> (1) A member of staff of a council is not subject to direction by the council as to the content of any advice or recommendation made by the member.
>
> (2) This section does not prevent a council from directing a member of its staff to provide advice or a recommendation.

Directions from council must come via decisions of the Councillors as a whole, acting as the governing body. Section 371 provides in this regard that:

> A decision supported by a majority of the votes at a meeting of the council at which a quorum is present is a decision of the council.

Every council is required by section 440 of the Act to have a code of conduct to be observed by councillors and members of staff, amongst others. That code may follow the Department of Local Government's own model code issued for the purpose. Ku-ring-gai Municipal Council has adopted a code that is modelled on but goes beyond the model code, doing so for a number of reasons dictated by past experience, not the least of which, so we understand, relate to Clr Hall and his past conduct towards staff.

Council's Code of Conduct was adopted with effect from 6 August 1996. Whilst Council has distributed to the present Councillors copies of a document bound up with a cover proclaiming it is the Code of Conduct, that bound document in fact comprises several separate policy and procedure documents adopted by the Council, and not just the Code of Conduct proper. This process appears to have caused some confusion, even with Council's own legal advisers, from time to time.

Relevant parts of Council's Code of Conduct, strictly so called, are as follows:

WHAT ARE THE PURPOSES OF THIS CODE?

To assist Councillors, members of staff … :

- to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence [section 439 (1) of the Act].;
- to provide a practical means of identifying and resolving situations which involve conflict of interest or improper use of their positions; and
- to act in a way which enhances public confidence in the system of local government.

OTHER RESPONSIBILITIES OF COUNCILLORS, MEMBERS OF STAFF …

Equitable treatment of people and situations

A Councillor, member of staff or … must:

- not act contrary to law;
- not act unreasonably, unjustly or oppressively or in a discriminatory manner;
- …
- treat members of the public fairly and equitably and with respect, courtesy, compassion and sensitivity;
- refrain from any form of conduct, in the performance of his or her public or professional duties, which may cause any reasonable person unwarranted offence or embarrassment or give rise to the reasonable suspicion or appearance of improper conduct or partial performance of his or her public or professional duties;
- not act for an improper or ulterior purpose or on irrelevant grounds.

…

A Councillor, member of staff or … who knows or has reason to suspect any … unethical conduct must report it immediately to the General Manager or nominated alternate.

BREACHES OF THIS CODE

Sanctions may be applied if this Code or any relevant law is breached. Depending on the nature of the breach, sanctions may include counselling, disciplinary action (including termination of employment), the laying of criminal charges and the taking of civil action.

Notwithstanding the last two quoted sections, Council has, except as and to the extent noted below, not adopted any other policy or procedure document which makes it clear how alleged breaches of the Code should be dealt with and what sanctions may be applied. The joint Department of Local Government and Independent Commission Against Corruption publication *Under Careful Consideration: Key Issues for Local Government* (March 1997) makes certain recommendations as to what may be needed in this regard. We recommend that Council should address this as quickly as possible. The circumstances examined in this report provide ample reason as to why this should have been done long ago.

It is noted that Council has in fact moved to adopt at least one of the key recommendations of *Under Careful Consideration*, namely the adoption, with effect from 2 June 1998, of a policy entitled *Provision of Information and Interaction between Elected Members and Staff*. This is closely modelled on the model such policy in Appendix 1 to *Under Careful Consideration*, but again with amendments suited to Council's situation.

The Council policy document follows and reproduces a number of rules and procedures which we have quoted elsewhere in this report from the main body of *Under Careful Consideration*. The following parts of the policy document are particularly noted for the purposes of this report and the issues examined in it:

1.3 … the following interactions are deemed inappropriate:

- … junior staff being asked to answer questions or provide documents to Councillors who are overbearing or threatening;
- Councillors directing or pressuring staff in the performance of their work; or recommendations they should make …

3.2.5 The General Manager shall not unreasonably decide that a document is not relevant to the performance of the Councillor's civic duty and deny access to a Council document. The General Manager must state his/her reasons for the decision if they refuse access.

3.2.6 Councillors can request access to other documents of the Council either by a Notice of Motion to the Council or a Freedom of Information application.

3.2.7 The General Manager shall keep a record of all requests by Councillors for access to information (other than those documents listed in 3.1) and report to the Council regularly on all requests. …

4.2.1 Councillors and staff must comply with this policy. …

4.2.3 For all but straightforward advice on administrative matters, Councillors should put their requests for information or advice in writing to be answered by the General Manager or the appropriate senior officer. …

4.2.4 If a Councillor is concerned about any refusal to provide information, they should firstly raise the matter with the General Manager or the Mayor (if it was the General Manager who refused to provide the advice). If the Councillor is still dissatisfied they should request the information by way of a Question on Notice to the Council. …

6.0 BREACHES OF THIS POLICY

For this policy to be effective and meaningful, appropriate reporting of breaches and appropriate sanctions need to be established and consistently applied. All parties need to have confidence that the policy will be complied with and breaches will be dealt with appropriately. Any cases of clear breaches of the policy that are not dealt with appropriately will erode confidence in the ability of the Council to deal with complaints and reduce the efficiency of the Council. …

7.2.1 All occasions of a Councillor or staff member not complying with this policy should be immediately reported to the General Manager.

7.2.2 Where the report relates to the conduct of a Councillor, the General Manager shall immediately report the matter to the Mayor and to the next Council meeting. …

7.2.5 Before a report to Council by the General Manager (or the Mayor), the General Manager (or the Mayor) should undertake preliminary enquiries to establish the facts. The preliminary investigations may take any form the Mayor and General Manager considers appropriate, but must involve discussions with the staff member or Councillor involved. Natural justice principles need to be satisfied in dealing with an alleged breach.

8 Council recognises the rights of every Councillor to access to information … While providing access to records and information for Councillors is an integral

part of the staff organisation role within the responsibility of the General Manager, the balance between the volume and reasonableness of requests for information by individual Councillors must be weighed against the amount of staff resources and associated costs of providing large volumes of information or in carrying out procedural reviews for individual Councillors. This also applies to repetition and duplication of the request.

Where there are issues regarding the volume, duplication and reasonableness of requests for information by individual Councillors, the General Manager shall have responsibility for determining if the information can be supplied, after assessing the impact the request will have on staff resources and other Council work. If the requests are deemed by the General Manager to breach the principles of reasonableness, or impact significantly on staff resources, then the General Manager should report the matter to the Council for determination. Options for alternative provision of information, such as verbal responses instead of typed lengthy responses, may be proposed by the General Manager.

3.2 The complaints about Clr Hall

Clr Hall has, except for a short period between July 1990 and September 1991, been a Councillor of Ku-ring-gai Municipal Council since he was first elected in September 1987. He has served two terms of office as Deputy Mayor, in 1987 and again in 1995-96. He stood for re-election as Councillor at the September 1999 Council elections as an endorsed candidate of the Trust. He was elected Mayor, by a ballot of Councillors, on 21 September 1999.

The complaints about Clr Hall which have been brought to our attention for the purposes of our Investigation were numerous and covered a wide range of issues and alleged conduct.

At the time the Minister for Local Government publicly announced on 13 January 2000 that this Investigation had been approved it was widely reported in the press that there had been some 13 complaints from staff about Clr Hall.

Very early into the Investigation process we had before us some 39 complaints from a total of 35 complainants. Most of these had already been made when our Investigation was ordered. During the course of our Investigation further alleged incidents regarding or involving Clr Hall were being continually, and quite correctly, reported to us.

These complaints and the issues they raise are progressively dealt with in the following sections of this report. Particulars of the complaints were, as we have noted at previously, progressively also provided to Clr Hall and his legal adviser. We have set out at the commencement of each relevant section of this report, where possible and relevant to do so, the statement of particulars of the relevant allegations provided to Clr Hall.

The initial statement of particulars comprised some 20 pages and even more pages of attachments, and was divided into numbered paragraphs, being 27 paragraphs in all. The final such paragraph was general in nature, and for the sake of record we set out in this section of our report the terms of that paragraph:

> A number of allegations of a general nature regarding the conduct of Clr Hall and his attitude and approach to staff have been put before the Departmental Representatives. Specific incidents and names or other details are not available, except to the extent that they may be encompassed in other allegations, details of which are provided in other parts of this Statement of Particulars.
>
> These are that Clr Hall, while displaying frequent and severe mood swings, makes demands rather than requests to staff. It is alleged that Clr Hall threatens staff who ask legitimate questions about unreasonable deadlines and demands, in particular having regard to the requirement that requests be made through the General Manager in the first instance. It is alleged that since the September elections Clr Hall has frequently countermanded the General Manager's instructions and interfered with her staff processes that implement Council's vision. It is said that it is extremely difficult for staff to carry out the Ku-ring-gai Plan while simultaneously being subject to threats from the Mayor for not carrying out his direct orders. It is further said that even when staff act on his demands and carry out research and provide reports without the knowledge or direction of the General Manager they are rewarded by verbal abuse and have their professional integrity questioned.

While we have in this report not dealt with each and every complaint that was referred or given to us for the purposes of our Investigation, we should state for the record and for the benefit of the complainants that all such complaints were duly considered by us during the course of our Investigation.

We have in this report only dealt with those complaints that are considered by us to be the most serious, or that are particularly illustrative or relevant to points we felt needed to be made from a management overview perspective.

Lastly, we note that even though some particular complaints and allegations considered by us are not referred to or dealt with in this report, our findings have, where those complaints and allegations have been fully tested, invariably been that the complaints and allegations were borne out by the probative evidence and that Clr Hall's conduct on those occasions was inappropriate.

All complaints and allegations considered in this report and on which findings are made have been fully tested by us during the course of this Investigation. This process has included the putting of particulars of those complaints and allegations to the person affected by them or against whom they were made, and obtaining and considering that person's response to them.

3.3 General issues about Clr Hall's conduct

3.3.1 General concerns by Councillors about Clr Hall's conduct

During the course of our interviews with them, it was clear to us that a number of Councillors were uncomfortable or dissatisfied to varying degrees with the conduct of Clr Hall. Some said so outright. Clr Anderson's evidence is considered elsewhere in this report.

Clr Little told us in our interview with him that in the first three weeks of Clr Hall's Mayoralty he had been uncomfortable with the Mayor's conduct towards staff:

Clr Little: … Well, I guess if I was to make a comment on this, the conduct of the Mayor, I believe that I should make a comment on that. And that is that in the first three weeks that we were there I was uncomfortable with the conduct of the Mayor with respect to some staff, and I did bring that to his attention that I believed that his conduct was inappropriate and that I wished to have that addressed.

Mr Bulford: What was his response to that?

Clr Little: His response to that was that he would do something about it.

Mr Bulford: And did he do something about it to your observation?

Clr Little: Yes, I believe his conduct improved substantially after about a three week period.

He later added:

The first three weeks I regarded as unsatisfactory. After that it improved to the point where in fact I didn't feel I had to raise the issue.

The Councillor's further evidence is considered elsewhere in this report.

While, in his oral testimony to us, Clr Little seemed to think that there was only a problem in the first three weeks, the overwhelming evidence before us is that this was not so, and that the unsatisfactory conduct of Clr Hall continued. This evidence is considered in the following sections of this report.

We should also note that Clr Little provided, at a late stage in the process of revising our draft report, further comments expressing concerns about Clr Hall. He said:

The month following [the introduction of the Mayoral Minute on 28 September 1999] … was a particularly difficult period for both staff and Councillors. While the staff had to go through the problems of a restructure, the seven inexperienced Councillors had to go through a steep learning curve. Added to this was the Mayor's autocratic style, which created underlying friction with staff and many Councillors. The Mayor's use of Mayoral Minutes introduced on the night of the Council or Committee Meetings without adequate notice, was a particularly contentious practice.

3.3.2 Clr Hall's loudness of voice vs. shouting

Before dealing with the details and specifics of the allegations against Clr Hall, we wish to consider, as a preliminary matter, an issue which has frequently been put in the course of those complaints. This is that Clr Hall allegedly frequently shouts at people. Clr Hall has largely denied this.

We asked Clr Bennett, the Deputy Mayor and former close associate of Clr Hall, about his manner of speaking to or addressing people:

Mr Bulford: He, as we understand it, although we have not seen that for ourselves, he has a loud voice in normal circumstances, is that right?

Clr Bennett: Yes he does.

Mr Bulford: What about, say, when you were meeting. Say, for example, the meeting that took place on the Sunday at his home. Would you say he was talking to you and your fellow Councillors in a fairly sort of loud way or was it quite calm and pleasant and friendly?

Clr Bennett: It wasn't loud at all.

Mr Bulford: So, he is perfectly capable - - -

Clr Bennett: It was very gentle, and considerable charm was exercised.

Mr Bulford: So he is perfectly capable, on occasions, of speaking in moderate and measured and calm tones and oozing charm?

Clr Bennett: Absolutely and he always did so, with the possible exception of Councillor Anderson, on a few occasions. He always did so with the KPT endorsed candidates in the early period and he particularly did so with respect to myself.

Clr Bennett did tell us, however, that she had seen Clr Hall shout at the General Manager. So far as the public is concerned, she said that how she described him as behaving towards the Trust Councillors was how he behaved, with one exception, towards the public too.

In his interview with us Clr Ian de Vulder was not prepared to go so far as to admit that Clr Hall shouted, but he did concede that when Clr Hall got "aggravated" he could become "very loud". See elsewhere in this report.

However, during the course of our Investigation we came across a considerable body of evidence from other witnesses, much of which is quoted or otherwise referred to elsewhere in this report, to confirm that Clr Hall does at times shout at people, or certainly speak very loudly.

This sort of behaviour, from a person in public office and in the public eye, and in particular from one holding the rank of mayor, is, we consider, unacceptable. It is not calculated either to encourage respect for the person, the office, the Council or local government in general.

3.4 Clr Hall's relationship with staff prior to his becoming Mayor

As already indicated in this report, we have been interested in the historical situation covering the period before Clr Hall became Mayor in September 1999 for various reasons. One of these is as a point of comparison with the post September 1999 situation, so as better to understand that situation.

Clr Malicki, one of only two long serving Councillors on this Council, gave us the following observations on Clr Hall's behaviour over the years:

Councillor Hall's behaviour hasn't really changed over the years. It's intensified now and I

> think the fact that he's Mayor has played a huge role, but he's always been much the same. The difference has been that previous Mayors have attempted to deal with his behaviour in certain ways. The previous two Mayors, Councillor Richard Geddes and Councillor David Dobbin were fairly strict with Councillor Hall and they took a lot of the questioning and complaining that were fairly customary with him on to themselves.
>
> …they tended to handle these [complaints and information requests he lodged] in conjunction with the General Manager and, I suppose to a certain extent, provide a buffer to her, but he's always been the same, Tony hasn't changed.

We asked Mr Guy Paroissien, a long standing employee with Council going back to 1983, and currently Council's Manager Environmental Policy, a position he has held for about two years, about his relationship with Clr Hall before Clr Hall became Mayor. He told us:

> …I think it's fair to say I've had extensive dealings with Councillor Hall over a considerable period of time …
> …He can be pretty volatile at times and he can be very aggressive…
>
> …not all the time...he's unpredictable is probably an unfair word but it's the only word I can think of right in front of me at the moment. That he would sometimes be very aggressive and other times he'd be very pleasant.
>
> …so you didn't usually know until the meeting started what sort of mood he was going to be in, in that sense…he could be very aggressive about issues.
>
> …at first I used to find it pretty intimidating…I've been with Council for 17 years, so over time, I built up resistance …

Mr Paroissien told us that Clr Hall engaged in that type of behaviour with other people but this aggression was restricted to members of staff. The evidence of other staff corroborating this is considered at various sections of this report.

3.5 Measures taken by previous Councils to manage Clr Hall's behaviour

Soon after the 1987 Council elections a Mayoral Minute of then Mayor, Mr Richard Lennon, was adopted giving access to all Aldermen as they were then called, to Council Departmental heads and their deputies. This apparently worked reasonably well for a time, but in mid 1989 problems arose which led to both staff and six of the Aldermen approaching then Ald Lennon expressing their concerns about Clr Hall's interaction with staff. Following discussion it was agreed that then Ald Lennon would talk to Clr Hall about the matter. As a result it was actually agreed between then Ald Lennon and Clr Hall that the latter's contacts with staff should be restricted to contact only with the then Town Clerk (forerunner to the current role of general manager) and the then Mayor, Ald Lennon, or in the absence of the Town Clerk, relevant deputies.

The then Mayor, Ald Lennon produced a Mayoral Minute dated 28 August 1989 whereby he sought the formal endorsement of Council for this action. Council did so on 29 August 1989.

The then Alderman Richard Geddes, later to become Mayor of Council, posed a question on notice dated 6 April 1993 to the Town Clerk in which he sought advice as to whether this motion was being enforced and applied. The Town Clerk's reply, in a memo to the Mayor, was dated 15 April 1993 and the response was that while the Mayoral Minute was "still current", "I have refrained from implementing it in the life of this Council in the hope that previous experience would not again arise". The Town Clerk added:

> I must say that the current situation is extremely stressful to all Department Heads and myself.
>
> On many occasions, Alderman Hall speaks to other Staff contrary to all Resolutions and this further intensifies the stress and bad feeling.
>
> I suggest that the time has come for you to issue a strong directive to Aldermen as a follow up of your memo to Aldermen on 27 January 1993, and your memo to the Protocol Officer of 15 February 1993.

We asked Mr Lennon as to how effective the terms of the Mayoral Minute that he brought in were:

> Mr Bulford: It's been put to us that the Mayoral minute didn't necessarily stop him going direct to all sorts of staff?
>
> Mr Lennon: It didn't, it didn't. It just gave the staff an opportunity of saying, "Well, I'm not allowed to talk to you. You must go and ask the Town Clerk" and of course it did give quite a lot of burden on the Town Clerk.
>
> …
>
> Mr Bulford: But in general would you say that it was reasonably successful in keeping the worst of the problems under control?
>
> Mr Lennon: It certainly kept the worst of them. It didn't keep it completely under control. I think it certainly helped but I wouldn't say it was a complete success.

Clr Hall's disruptive behaviour continued, however. On 24 September 1997 then Mayor Richard Geddes wrote to Clr Hall, with a copy to all Councillors, about his conduct. He wrote again on 22 October 1997. Clr Geddes noted that this conduct breached Council's 1989 adoption of the Lennon Mayoral Minute.

In early 1998 Council decided to introduce a new waste service. There was some community resistance. It was apparently supported by Clr Hall. In March a demonstration or information session was arranged at the St Ives Showground. One of various staff members involved in this was Ms Louise Hardy. She was involved in an incident with Clr Hall which particularly distressed her. A number of complaints came in about that. A report came to Council on 24 March and it was recommended that the Council should support the staff in their actions to implement Council's resolutions on the waste service. That recommendation was adopted. Clr Hall's conduct was seen as undermining Council's decision and the work done by staff to implement it.

The conduct of Clr Hall towards Council's new media manager, Ms Virginia Leafe, in May 1998 is noted at section 3.16 of this report.

On 17 February 1999 the General Manager had to write again to her Directors to remind them about rules for Clr Hall's contacting of staff, in view of the receipt of a number of complaints about his breaking those rules, as contained in the 1989 resolution. On 19 March 1999 the General Manager reported to the Mayor and Deputy Mayor of the day about further incidents of harassment of staff by Clr Hall.

On 30 March 1999, following expressions of concern from the Mayor, Clr David Dobbin, regarding Clr Hall's "ongoing attitude towards Councillors and staff, and his continued efforts to divide and misrepresent the Council", Council resolved that the "General Manager investigate and report on what action Council may take regarding possible breaches of Council's Code of Conduct by Councillor Hall". That report was presented to Council's meeting of 13 April. It noted:

> There have been a number of both written and verbal complaints by staff about the behaviour of Councillor Hall relating to rudeness, intimidation, threats and shouting, in particular towards members of staff. These complaints have been on-going over a long period of time. Most of these complaints have resulted from staff having person-to-person contact with Councillor Hall.
>
> At the same time, there has been a long history of very large amounts of staff time being wasted in repetitive and voluminous inquiries from Councillor Hall, well beyond the scale of reasonableness, preventing staff from carrying out their duties.

Council did not complete its consideration of the matter, and resumed this at its meeting of 20 April 1999. Its resolution was in effect to amend its earlier resolution of 30 March seeking a further report from the General Manager. But at the same time a number of other resolutions were passed, including:

> A. That inappropriate behaviour by Councillor Hall as outlined in the report will not be tolerated by this Council.
> B. That Councillor Hall be put on notice that behavioural standards as required by the Code of Conduct and the Anti-Discrimination Act, 1977 are to be adhered to at all times.
> C. That the Mayoral Minutes of 1989 and 1998, directing that all of Councillor Hall's contact with the staff be through the General Manager be re-endorsed …

We should also note that, in April also, an issue arose in relation to Clr Hall attempting to contact the union covering Council staff (the MEU) apparently about the issue of "gratuities" paid to staff under the Award governing their terms of employment. This resulted in a memo from Clr Dobbin to Clr Hall, and copied to other Councillors, admonishing him for this and reminding him that such industrial relations matters were operational matters for the General Manager to deal with. The matter was in fact at the time one in respect of which the MEU had lodged a dispute and therefore in respect of which legal proceedings were under way. Clr Hall had lodged a motion seeking to have the matter discussed in public forum, and the General Manager wrote to him on 9 April to advise that this would not be appropriate. She had legal advice backing this up.

At the same time, also, the General Manager had received a lengthy memo from Clr Hall dated 1 April 1999 with various demands and pejorative accusations, including against her. She was upset at them and the matter was raised with the

Mayor and Deputy Mayor. This was partly behind the steps taken by Council later that month.

Clr Dobbin followed up Council's resolution of 20 April 1999 by writing to Clr Hall the next day and stating:

> The General Manager is not a target for your personal attack and she does not have to tolerate unfounded and personal allegations by yourself. I would suggest to you in the strongest terms you refrain from any further personal attacks on the General Manager and concentrate your energies and behaviour in a more constructive and conventional manner.

Council's resolutions received some publicity, with the North Shore Times publishing an article on 23 April 1999 under the banner headline:

HALL WARNED

No 'inappropriate' acts

We asked Mr Chris Young, Council's most long standing senior member of staff, and at the time of our interview with him holding the position of Director with the title Director of Planning and Environment, about the situation vis a vis Clr Hall before he became Mayor and the background to the measures put into place by previous Councils. Mr Young was an employee of Council for over 20 years (he left Council's employ in the latter stages of our Investigation), reaching the position of Chief Town Planner in 1978 and holding variations of that position ever since. He told us:

> Mr Young: Well Councillor Hall, over a number of years, in his particular modus operandi, was one who sought to question many things and continued to seek information about development applications … And in that particular time he was always very keen to obtain details of plans, he would ring, he would seek information. We'd probably have a number of volatile discussions because at various times, in seeking the information he would make accusations that certain things were occurring with staff, such as somebody was on the take or somebody's doing something illegally ... He would seek to be taken out on site and to question some of the information that was put in reports. The relationship varied depending on what the issue was and he would sometimes be in favour of an application, other times he would not. There were - in conversations at times there were threats of whether we could withstand an investigation into certain issues, and that was a fairly common occurrence.
>
> Mr Bulford: So he was confrontational?
>
> Mr Young: He was very confrontational, yes. And - - -
>
> Mr Bulford: How would you say he compared with other Councillors?
>
> Mr Young: In the - in the 20 years that - well over 20 years that I've had in a senior position, we've had quite a number of characters through Council, as most Councils would have, and he has certainly been the most confrontational over that particular time.
>
> Mr Bulford: But not the only one?

Mr Young: Not the only one.

Mr Bulford: But not to the same extent as him?

Mr Young: That's correct.

Mr Bulford: What can you tell us in terms of problems that had been encountered, as we understand, with Councillor Hall that resulted in certain steps being taken to control the way in which he could approach staff for information and so on?

Mr Young: Well when that first came up it was, once again related to the approach and the very confrontational manner that he had with staff, it was - it was not unusual for him to ring any member of staff and demand information, copies of files, copies of relevant information, and members of staff felt intimidated by that particular approach and the Mayor of the day was concerned at - of the complaints that he was receiving from the staff and the way in which there appeared to be leaks in the organisation because some staff were concerned that if Councillor Hall would ring up and threaten them, you know, with certain actions about their jobs, that if they gave him the information well then he would keep off their back. In many cases that just appeared to intensify the particular approaches that he would have. And the Mayor of the day then sought to control that particular behaviour from a staff point of view and also from a point of view of keeping some sort of control on confidential information in the organisation.

The evidence of Ms Carol Logan, Council's Manager Human Resources was:

Mr Bulford: …are you aware that the Council had in place certain resolutions which restricted and kept in check Councillor Hall, in terms of who he could talk to and how he could go about contacting staff, were you aware of that?

Ms Logan: Yes I was aware of that.

Mr Bulford: In your professional capacity would you say that that had an impact in terms of reining in and ensuring that things were on an even keel when contrasted with the life of the present Council?

Ms Logan: Yes I believe that it did, but I also believe further that it was a combination of the Council members that were also able to keep a check, some of those behaviours are now exhibiting themselves.

Mr Bulford: People were prepared to, the elected body, were prepared to stand up to Councillor Hall?

Ms Logan: They were, and they did.

We asked Mr Paroissien about how well the measures put into place by previous Councils and he said:

> In a general sense probably - he probably did. In terms of if that resolution was still in force when he used to ring me at home when I was Parks Manager [between January 1991 and November 1994], he clearly didn't.

The evidence of Ms Sandra Santens, Secretary to the Councillors, who had worked with Clr Hall for six years, and who knew him pretty well, was:

Mr Bulford: Would you say that the resolutions that - when they were in place, were effective in avoiding the sorts of problems that you know from your own

experience and from hearing your fellow workmates that are now occurring?

Ms Santens: No, not really. No. Tony doesn't take notice of resolutions if don't suit him. Although he uses them against other people all the time. But no, taking more than a resolution to change Councillor Hall's behaviour or the way he does things.

Mr Bulford: So what would it take to get him, whilst he's Mayor and even if he were not to be a re-elected Mayor, if he were to remain a Councillor, what would it take him to control himself so that everybody can get on with their lives?

Ms Santens: Million dollar question. I don't know. I truly don't know.

Lastly, we note the evidence of the General Manager to us in our interview with her:

Ms Bignell: He became worse because the previous Councils in the last 2 years were able to manage him, relatively stop him from getting to the staff, and that's where I had to be that buffer.

Mr Bulford: Would you say there was any resentment, apparently, on his behalf?

Ms Bignell: Oh yes, "I've been gagged." He'd go to the press, "I've been gagged, I can't talk to the staff, I've been gagged, I can't do my job." He uses it.

Mr Bulford: So he was waiting for the day until he became Mayor and could get rid of those restraints?

Ms Bignell: Absolutely and just go for it. I mean he's really back in the '80's. He wants to take the Council back to the '80's. There's a lot of talk about "We're a reform Council." I haven't seen any reform. Liverpool was major reform, to say the least, and we did a lot of reform at Maitland as well, but he announced on 28 September that he wants to take it back and this is what we've done, take it back to 1987.

3.6 Clr Hall's complaint to the NSW Ombudsman about measures taken by previous Councils

On 1 March 1999 Clr Hall lodged a letter of complaint with the NSW Ombudsman, with a number of follow up letters that month. The Ombudsman's Senior Investigation Officer who handled the matter described the complaint in the following terms:

> As I understand it, your basic complaint is that you are being discriminated against by virtue of the restrictions that have been placed on you in relation to access to staff.

Clr Hall apparently requested that his complaint be addressed as a protected disclosure. However, as was later advised by the Senior Investigations Officer, that Officer disclosed his name to the Council "having determined that this disclosure was necessary in order to investigate the matter effectively". The Officer's Investigation included a meeting with the Mayor and the General Manager about the matter, which took place on 25 June 1999. The Officer's report of the Investigation is dated 30 June 1999.

The conclusion reached by the Office of the Ombudsman was that Clr Hall's complaint did "not warrant formal investigation by this Office". It was also formally advised that the complaint was not a protected disclosure. Clr Hall was advised that the file would be closed on the matter.

It is of relevance to note various observations in the Ombudsman's Office reply to Clr Hall:

> I confirm that this Office does not take the view that restrictions on councillors are by their nature unreasonable. … the right to information [of a councillor] is not unlimited. [Reference was then made to *Under Careful Consideration* and to the fact that Council had adopted a policy as per the model policy on Council access to information in that document.] … The policy itself does not discriminate in that it applies to all councillors. … You will be aware that the Ombudsman is generally supportive of the principles behind the model policy …
>
> Having regard to this background information, there is nothing inherently unreasonable about a councillor having to direct requests for access to information to the General Manager. The only issue then, from the point of view of this Office, is whether the restriction is improperly discriminatory. The discrimination, however, appears to be of a modest kind – having regard to direct requests to the General Manager rather than to more junior staff.
>
> As I understand it, the two reasons for the imposition of the restriction on your access to information are that the demands were placing an excessive burden on council resources and that you were harassing staff.

The letter went on to note information provided by the General Manager as to the volume (a greater volume apparently than Clr Hall over the period noted was generated by Clr Malicki) and nature of Clr Hall's requests for information, but that those of Clr Hall were of a "more complex or investigative nature". It was then concluded:

> On this basis, and in the absence of more recent evidence of Clr Malicki's use of resources, I am unable to determine whether you are being discriminated against in relation to resources used.

The following was also stated by the Officer in the letter:

> In relation to the second reason, you do not appear to allege that other councillors have treated staff in the same way as you are alleged to treat staff. Nor do you appear to dispute the allegations regarding your treatment of staff. As such, there is nothing on which to base a conclusion that you are being improperly discriminated against. This reason alone would provide a valid basis on which to restrict the manner in which a councillor is able to access information. Accordingly, on balance, I am not satisfied that you are the victim of improper discrimination.

The report went on also to examine a number of other matters, including the question of Clr Hall then being restricted in his access to the Council offices to the Councillors' room and other formal areas such as the Council Chamber. The Officer noted that Councillors at that time had a key to the Councillors' room and noted the policy adopted by Council as to what areas of Council ordinary Councillors were entitled to access. It then continued:

> The General Manager decided that you should be subject to restrictions because of some claims of unacceptable behaviour in other areas of the Council. In the absence of evidence to conclude these claims are unfounded, I am unable to conclude that the restrictions are unreasonable.

We note that on 2 July 1999 Clr Hall wrote to the Mayor, Clr Dobbin, (with a copy to all the other Councillors) a memo entitled "Discrimination of an elected member by the General Manager". That memo was a reply to other correspondence on the matter. In it he stated:

> … You reiterate all the falsehoods about my relations with staff … I surmise the staff are concerned about reprisals. …

Clr Hall received a reply from the Mayor dated 8 July 1999 refuting Clr Hall's claims against him and stating:

> I take further comfort in expressing that view from the fact that the Ombudsman has now advised Council that it has investigated the various complaints raised by you in your memos of recent times and that it has found that your complaints and allegations of discrimination and other unfair practices are completely unjustified.

Clr Hall lodged a complaint with the thenOmbudsman about her Senior Investigations Officer. That complaint is understood to have been that the Officer sought to provide a copy of his correspondence to Clr Hall also to Council. Pending the examination of that further complaint the Ombudsman requested the Mayor not to circulate copies of that correspondence to the other Councillors, as he had been planning to do. Clr Dobbin complied with this request.

However, by letter of 19 July 1999 the Ombudsman herself wrote to Clr Dobbin to advise that she had reviewed all the files and correspondence and that she was satisfied that "Clr Hall's complaint about [the officer] is entirely without substance". She went on to state that the provision to the General Manager of a copy of the officer's final letter to Clr Hall about the complaints "was in accordance with our usual procedures and appropriate in the circumstances".

Clr Dobbin accordingly wrote on 23 July 1999 to all Councillors and Clr Hall to advise them of the situation and to copy to them the two letters from the Ombudsman's Office. That letter includes the following:

> Given that most of the complaints you have made have been circularised to all Councillors as well as alerting them to the fact that you had raised these complaints with the Ombudsman I am now taking the opportunity to share with all Councillors the reply from the Ombudsman. …
>
> The Ombudsman wrote to the General Manager directly with a copy of the findings of that investigation which found that all issues you had raised were unfounded or had no substance. I acknowledge that on receipt of that same information that you have obviously received directly from the Ombudsman that you had further cause to complain to the Ombudsman about the Investigating Officer yourself, obviously because you were not happy with umpire's findings.

3.7 The sweeping aside of the previous measures

The Mayoral Minute introduced by Clr Hall on 28 September 1999, the first major initiative of his Council, after his election as Mayor on 21 September, swept aside all previous Council resolutions imposing restrictions on him. It said:

> All previous resolutions restricting Council access to Clr Hall from 1989, particularly Minute No. 195 of March 1999, are formally revoked by this Council and of no further effect.

3.8 Conduct towards the General Manager

3.8.1 The particulars provided to Clr Hall

On 14 February we provided, in our Statement of Particulars of all the then known allegations against him, the following statement of the particulars relating to his alleged conduct towards the General Manager of the Ku-ring-gai Municipal Council, Ms Rhonda Bignell:

> A large number of allegations have been made concerning the alleged conduct of Clr Hall towards Council's General Manager, Ms Rhonda Bignell, over an extended period, but focusing on the period since the Mayoral election on 21 September 1999. Some of these have emanated from persons who have not consented to their complaints being copied to Clr Hall, and the gist of the allegations are set out below.
>
> Others have been made by Ms Bignell herself in Part 1 of a set of submissions provided by Ms Bignell to the Departmental Representatives. Ms Bignell has consented to that part of her submissions being copied to Clr Hall, but not to other parts. Part 1 of her submissions is Attachment 1 to this Statement of Particulars.
>
> As to the first-mentioned allegations:
>
> It is alleged that at a date which has not been specified Clr Hall interrupted a meeting between the General Manager and staff member Adele Jones in the General Manager's office. It is alleged that, ignoring Ms Jones, Clr Hall spoke in a very threatening manner to the General Manager in her presence, demanding information. Clr Hall is alleged to have yelled at Ms Bignell, calling her "General Manager" in a most sarcastic and belittling tone, and without waiting for her to answer kept saying "you are the General Manager aren't you", pointed and shook his fingers at her, slammed down books he was holding at her and told her to get the answer. It is alleged that Clr Hall was most threatening in his manner and that his behaviour in front of a junior member of staff was inexcusable.
>
> It is further alleged that on Monday 24 January 2000 at approximately 2 pm in the level 3 conference room there was a meeting between the Northern Waste Board, Hornsby Shire Council and Ku-ring-gai Municipal Council. The subject of the meeting was green waste in Northern Sydney. It is alleged that Clr Hall managed to work into the discussion comments about the number of community complaints about Council's own kerbside garbage and recycling arrangements. It is alleged that Clr Hall threw his papers on this issue onto the table in front of all present and exclaimed, "This is unacceptable, General Manager". This was alleged to have been repeated two more times, to the alleged embarrassment both of Council staff and other persons present.

While the General Manager's response was lengthy, some 17 pages in Part 3 alone, her covering letter to us contained the following comments, which we present as a general summary of her allegations:

> Despite the length of my submission, I wish to note that this submission represents the 'tip of the iceberg'.
>
> It has been impossible to cite the non-stop daily examples of the irrational and dysfunctional behaviour of the Mayor since his election on 21 September 1999.
>
> I have provided just some examples and I believe interviews with staff complainants will assist to put together a picture of the situation.
>
> In summary, the Mayor's behaviour has included:
>
> - irrational and dysfunctional actions
> - shouting, abusing, threatening, humiliating staff
> - witch-hunts
> - interference in staffing and operational issues
> - on-going attacks on the General Manager and staff
> - no attempt to 'working together', rather continually undermining the General Manager and staff
> - actions beyond power of the Mayor under the Local Government Act 1993
> - a publicity / media campaign by the Mayor against the General Manager and staff
> - distortion of the facts to residents and the media
> - refusal by the Mayor to accept responsibility for his behavioural problems
> - refusal by the Mayor to address his behavioural problems
> - exhibiting behaviour which is not acceptable, to the point where issues about the Mayor's mental stability have been raised continually by staff with the General Manager
> - abuse and harassment of staff which contravenes Council's obligations under the OH&S Act.

3.8.2 Clr Hall's general behaviour towards the General Manager

In his written responses to the submissions of the General Manager to this Investigation, provided through his legal adviser, Clr Hall made the following statement:

> Insofar as the General Manager has attempted to paint a picture where every single discussion was characterised by the same aggressive behaviour of the Mayor and passive innocent behaviour by herself, such descriptive detail is obviously fanciful and melodramatic.

We have noted above the evidence given to us by Clr Little as to his concerns about the behaviour of Clr Hall towards staff in the first three weeks of his Mayoralty. Later, he went on to elaborate, albeit rather sparingly, in response to our questions, and told us that one of the staff that came to mind in this regard was the General Manager, Rhonda Bignell. This conduct apparently occurred at Council meetings. The questioning continued:

> Mr Bulford: What it was that you observed that caused you concern?

Clr Little: Okay. Well, I just think that the tone of voice to the General Manager and just the general - the general behaviour, that's all I can say.

Mr Bulford: What do you mean by the "general behaviour"?

Clr Little: Well, the tone, the - I don't know whether I can be more specific than that. I just felt uncomfortable, that's all.

We got no further details from the Councillor on these incidents. On the other hand, ample and probative evidence of many incidents came to us from other witnesses. This evidence is considered in the following sections of this report.

In our interview with the Deputy Mayor, Clr Bennett, we asked her as to her observations on the relationship between Clr Hall and the General Manager:

Mr Bulford: On the other hand would you say that her approach at that meeting [of 29 September 1999] was not confrontational, that it was conciliatory and reaching out - - -

Clr Bennett: The General Manager's approach is never confrontational.

Mr Bulford: Even with Councillor Hall?

Clr Bennett: No, she's never confrontational, I have never seen the General Manager be confrontational, not with Councillor Hall.

Mr Bulford: So she manages to keep her cool?

Clr Bennett: The General Manager has great difficulty in dealing with Councillor Hall's style.

Mr Bulford: Could you explain more about that?

Clr Bennett: She seems to shrink into herself. She clearly finds the way he presents himself, his aggression, his intensity, his hostility, as intimidating and it took a long time for the General Manager - in the early period the General Manager simply never talked at all, she used to take notes in meetings, it was like being with a stenographer. She would just collapse into herself and she would be silent.

Mr Bulford: Withdraw into a shell?

Clr Bennett: Yes, and that is not, I am now frequently on the receiving end of Councillor Hall's hostility and that is not the way to deal with Councillor Hall. Such behaviour provokes him.

The General Manager's evidence to us, however, was that her reaction to Clr Hall was a deliberate and conscious decision on her part not to attract further friction by comment or standing up to the Mayor.

Mr David Young, Council's former Acting Director Urban Space and Infrastructure, told us in our interview with him:

Councillor Hall, very soon after the General Manager started, started making allegations … about the fact that the only reason she got the job at Ku-ring-gai was because the State Government and the Mayor, which was Richard Geddes at the time, did a deal to get her out of Maitland so they could sack the Council up there. In other words right from

the start he was diminishing her reputation or trying to and that carried on one way or another for some period of time.

Ms Ann Gabay, the first of Clr Hall's Mayoral secretaries, told us:

Mr Bulford: … Did you have occasion to witness, perhaps because you were in Councillor Hall's office at the time, occasions where he was talking to or addressing or whatever it might be described as, the General Manager, Rhonda Bignell?

Ms Gabay: Well most - well I've seen him - his relationship with Rhonda, not so much in his office because Councillor Hall would normally storm into our area and insist on seeing the General Manager. He spoke down to her. Definitely. He was rude - he was rude to most people.

Mr Bulford: Yes, but particularly to the General Manager, as I understand it?

Ms Gabay: Well I was only there for a short while as his PA. He was - he was rude to everyone.

Speaking of the period before he became Mayor the General Manager told us:

I would say that there was no cordial relationship. From the word go it was antagonistic, from him to me, I've given a couple of examples. I'd only been there about 6 weeks and he did his first report of me to the Ombudsman. When I first came there I did, as I said, ask the Councillors to come in and he came in and sat down and had a cup of tea and it was the weirdest conversation I've ever had. He said, "If the other Councillors know that I'm here you'll be in big trouble." … I said it was a really strange interview and I asked him what his interests are and he hasn't got any interests in terms of community services, he just wanted to tell me how everybody was corrupt. He said, "I'll tell you who's got to go, Young," that's Chris Young, "Tucker, Bruce Tucker and Ian Glendinning, you've got to get rid of them," and I said, "Yes, all right, okay," and he said, "I'm going to show you everything here I've got about Richard Geddes and then you'll find out how corrupt he is." So he opened his bag and he pulled out all his stuff about how Richard Geddes is a member of the Order of St Lazarus which every prominent QC and everybody else is and some sort of fundraising group. He went on and on and on about Richard. Then he actually set me up - I found out later he set me up. He said, "I'm a full supporter of you, I supported you at the interview, Richard Geddes didn't support you. He supported [a named applicant]. Richard Geddes supported him and I supported you. This is going to be a test of your confidentiality. If you tell anyone that then I'll know you can't keep a secret." So it didn't take me long but about 3 months it was fairly obvious it was the other way round.

The General Manager told us that she had asked Mr Geddes for his version of events. It was quite the opposite of what Clr Hall apparently told her.

She summed up her perception of Clr Hall's views towards her:

His antagonism and his demands for material and so on were just as excessive and so on as they continued to be. It's never been cordial. I've always tried to treat him like everybody else but you can't and he's just totally antagonistic. I do believe he certainly resents me, I don't think he can stand me to be perfectly honest and that's fairly clear.

3.8.3 Clr Hall's conduct towards the General Manager since becoming Mayor

In our interview with the General Manager she told us about how things started off between she and Clr Hall:

> Ms Bignell: Yes, Wednesday the 22nd, he met with me, he told me a whole lot of things, first of all he wanted a car for the Mayoress to be driven by a driver everywhere that she wanted to go. I said "A car, okay fine," and he was shouting by this stage so I said okay. I came back to him in writing and said, "As a matter of fact that's not covered in the provision of facilities for Councillors. I'll put it in and then it'll have to go to public exhibition." - "I didn't say that, I didn't ask for that." So anyway, there was stuff like that. He was wanting things like the Mayoral office changed around. That's when he spoke to me then and he said that I'm not to change any staff or I'm not to have any redundancies and the new Council's going to introduce policies on this. I asked what level they were talking about policies on staff, was it operational? He said, "At the strategic level, this is because of Val Dooley, the cook's, redundancy and I'm not to make any staff movements whatsoever. So I knew full well that it was on. He also asked that I supply a note about the Contract dates for the senior staff. … Then he said that he wanted to meet with the Directors and the Deputy Directors. I said, "We don't have Deputy Directors any more, haven't had any Deputy Directors since 1993." - "I want to see the Deputy Directors as well." So, that was day one, that wasn't the most pleasant day and so yes, there were a couple of days there we sort of had an issue.

Clr Graeme Anderson gave evidence to us in our interview with him about his witnessing of the conduct of Clr Hall towards the General Manager:

> Clr Anderson: … Then there came his attitude with Rhonda which was also, to me, unacceptable. Not only to a Chief Executive but to anyone.
>
> Mr Bulford: What sort of things was he doing or saying to Rhonda Bignell that made you say or feel that what he was doing was unacceptable?
>
> Clr Anderson: It's the tone and the questions asked and the statements made. The tone in an attack can make a huge difference and he would fire questions at her and then make remarks, "This will be another thing that's hidden." This type of derogatory remarks which I've never ever heard between senior people in any company that I've been associated with and I've got a very wide business experience.
>
> Mr Bulford: Those remarks were made in full hearing of all the Councillors?
>
> Clr Anderson: Generally not where the open public was concerned, generally not, but the Glendinning attacks went out in public.
>
> Mr Bulford: Yes?
>
> Clr Anderson: The attacks on Rhonda were more attacks on - not as acid in public. The attacks when there were just the three of us there were acid, the tone was strong.
>
> Mr Bulford: So you are talking, when you mentioned "Just the three of us," you were talking outside the Council Chamber?
>
> Clr Anderson: Outside Council Chamber. In either the Mayor's office or the General

Manager's office. The attacks claiming that gross inefficiency, matters were being hidden, that even inferring that matters were corrupt. Saying that staff members, inferring that staff members were corrupt. Always very clever wording but very strong and in a form of language that is just not acceptable between business people.

Mr Bulford: What sort of impact did you observe that these attacks had at the time on Rhonda Bignell?

Clr Anderson: Rhonda played it very cool externally. I did become concerned and I asked her how was she handling it. She said she'd been with some tough bastards before and she could handle it.

Mr Bulford: How would you say her approach was to the Mayor. Was she being rude and what have you back to him or was she always cordial and co-operative?

Clr Anderson: Any time I've been in the presence of Rhonda, with other staff or on our own with the Mayor, she's always been extremely punctilious in her answers. Very correct, almost as though there was a microphone present, very correct.

Mr Bulford: So that is both in terms of what she was saying and how she was saying it?

Clr Anderson: Yes, I could not have kept my cool as well as she has.

Mr Bulford: So would you say she behaved in an entirely professional way?

Clr Anderson: I would give her 99.5 on a professional basis.

We asked Clr de Vulder as to his perceptions as to how the Mayor behaved towards the General Manager at Council meetings:

Mr Bulford: Can you recall any occasion at a Council meeting where the General Manager has been spoken to by Councillor Hall?

Clr de Vulder: Yes several times.

Mr Bulford: How would you say that Councillor Hall spoke to her?

Clr de Vulder: Sometimes very politely and sometimes with abrasiveness and anger and that goes both ways.

Mr Bulford: You say she was abrasive and angry back to him, do you?

Clr de Vulder: No, she has shown that she has been very displeased, not by shouting.

Mr Bulford: How has she shown that she's been displeased?

Clr de Vulder: In body language I suppose.

Mr Bulford: What sort of body language?

Clr de Vulder: Deep frowns and just facial expressions that are showing displeasure.

Mr Bulford: She has not raised her voice?

Clr de Vulder: I've never heard her raise her voice, no.

Mr Bulford: She has not, by the words she has used, shown sarcasm, anger or

displeasure?

Clr de Vulder: I haven't seen that, no.

On the other hand, see also the evidence of Clr Bennett at section 3.8.2 of this report, whose evidence we find more compelling.

One of the General Manager's general concerns has been at Clr Hall not letting she and the staff speak up when they needed to at Council meetings:

Ms Bignell: … the problem that I've had and a number of the senior staff have had is he won't let us speak. "No we don't want - I'm not asking any more questions about the DA from Mr Glendinning."

Mr Bulford: You are saying Councillor Hall won't let you the General Manager or your Directors speak?

Ms Bignell: That's right. In fact what he said to me when he came in, and I haven't recorded what day it was, he said, "I'm not having any more of the staff debating the matter on the floor of Council. The Councillors debate it and I don't want any debate from the staff." So sometimes the staff, especially if he's saying things that aren't right, the staff would ask if they could get up and put the facts.

Mr Bulford: Yes?

Ms Bignell: He made it very clear to me that he wasn't going to - he was going to allow the staff to speak as little as possible at meetings.

The General Manager also told us about a meeting or confrontation which took place some time between when Clr Hall resumed his Mayoral duties on 16 November and 8 December 1999:

> We were in a meeting and I think Dick Graham was there, it was about a Development Application. They all went out of the room except for he and I [i.e. Clr Hall] and it was a really weird thing. He said, "I don't like this infrastructure restoration fee," because we charge developers if they mess up the road, "That's a breach of your Contract, I don't like it, it's a breach of your Contract." I said to him there, "Tony, can't you ever be civil, can't you ever sit down and be civil?" "It's a breach of your Contract." I said, "Why don't you stop yelling and shouting and why don't you just be civil. This is the weird bit - he just leaned back like this and said, "You're an interesting personality." I'm thinking that he thought he can't rile me, even with his screaming and that - I might add that I go home and kick Gerald [General Manager's husband] because we haven't got a cat and obviously it has an awful effect if you've got somebody manic in your face all day.

During our interview with Clr Hall his legal adviser told us that Clr Hall remembered such a meeting, but not its date. However, it was put to us that this meeting was one about concerns about the way appeals were being run in the Land and Environment Court. It seems to us that the subject matter of the meeting is not the issue here, and for this purpose at least is not relevant. It was admitted by Mr Dunn on his client's behalf that "there was indeed some heated discussion about this matter". We sought later to question Clr Hall himself about this admission. Clr Hall would not admit that there had been any "heat" on his part, as opposed to Mr Ian Glendinning's part, who was said to have been at the meeting. Clr Hall merely admitted to "anger" on his part. We really think that this is playing with words. He also on further

questioning admitted to being "irritated" with Mr Graham, and that he had raised that firm's role in the case against him in 1990 over his travel expenses claim. He told us he felt that the firm had supported the staff in the matter, rather than the Council itself. We have also noted the evidence of Mr Lethbridge, Council's Internal Auditor, as to his treatment similarly at the hands of Clr Hall over this affair – see section 3.15 of this report.

The General Manager told us that Clr Hall's conduct towards her after he became Mayor caused her stress levels to rise. This was detected in a routine medical check up she had. One physical manifestation of stress was that she started to have a return of asthma attacks and needed to use an inhaler again.

The General Manager has raised with us concerns about Clr Hall as Mayor improperly in her view seeking to demand that certain items of business go on the agenda for meetings. However, clause 13 (1) (b) of the Local Government (Meetings) Regulation 1999, contemplates that the Mayor has a role to play in what goes on the agenda.

3.9 Other specific incidents involving Clr Hall and the General Manager

3.9.1 Public denigration and humiliation of the General Manager

The General Manager submitted to us that Clr Hall frequently denigrated and humiliated her in public, such as at Council meetings. One occasion on which this was said to occur was at Council's meeting of 19 October 1999. The General Manager's oral testimony about this was as follows:

> He's done a lot of public criticism of staff. There is an instance, I could find the date, where he certainly was having a go at humiliating me because he, with his thing that he thinks that he should be an internal auditor on everything that the Council does, he wanted to know about compliance and, you know, we've got some compliance officers that go around and check and make sure people are doing the right building and all that sort of business. I don't get that report, I mean that's an operational thing for a Manager and a Director to do. "Oh General Manager, you don't read the compliance reports and find out how many people the compliance officers went to." I said, "No, that's why we've got a Director and a Manager to do that." "Oh you don't read the reports then." It was very humiliating, he attempted to humiliate me, where the Advocate rang the next day and said, "Well he really tried to humiliate you last night." So it's very obvious in public.

We have listened in full to the tapes of various meetings of the Councillors that took place, one after the other, on the night of 19 October 1999, when one of the key matters considered was an organisational structure. Immediately after that debate, when the matter moved back to proposals over the establishment of a Development Control Unit, Clr Hall asked Mr Glendinning about an additional report that he had previously been asked to provide:

> Clr Hall: Well, Mr Glendinning, would you like to table that document, please. It might have been helpful if you'd given a copy to the Mayor. Because I'm going to move deferral of the matter to next week. You can pass it up, pass it round, and it's deferred to next week. [Said in an irritated and admonishing tone and

then a pause] General Manager, no more surprises like this, please. Have you got your signature on this?

General Manager: No.

Clr Hall: Well, you'd better sign it. Please, I want your signature on it. Thank you [in a very peremptory manner] Thank you, can you sign it please.

General Manager: No, Mr Mayor, I didn't write it –

Clr Hall: [progressively raising his voice in loudness and tone] Well, General Manager, we're talking about a major policy issue, you're in charge. This officer seems to be the General Manager to my mind at the moment.

General Manager [in a clearly professional and courteous way]: Mr Mayor, you asked Mr Glendinning to bring back some points of discussion for tonight –

Clr Hall: [cutting right across the General Manager] General Manager, through you, you're the operational general manager. [pause] I'm very upset. [pause] …

However, there is much to be said from the impressions gained from simply being there, so we took the opportunity of our interview with the Deputy Mayor, Clr Bennett, to ask her about her recollections:

Mr Bulford: If I put to you that the Mayor made, at various stages, comments along the lines of "Compliance Officers - have you read their reports?" Asking the General Manager, "So you haven't read their reports."?

Clr Bennett: Yes, he does that all the time, he does that sort of thing all the time.

Mr Bulford: On another occasion, "I don't get any support, no one writes my speeches."?

Clr Bennett: Yes, I remember that comment very clearly. That will be on the tape.

And later:

Mr Bulford: That sort of behaviour, in terms of suggesting that he doesn't get the required support and so on, that's a sort of common theme on other occasions, is it?

Clr Bennett: Well it is a theme that has come up. It was expressed with particular intensity that night.

Mr Bulford: Would you say that was likely to be seen as humiliating by the General Manager?

Clr Bennett: Oh yes, I think so and, in fact, I absented myself deliberately from the vote on that matter because I had previously raised the issue of the General Manager's complaint about the location of the staff under the organisational structure with the Mayor and he had assured me that it was practised in several other Councils for the organisational structure to take the form that he was recommending with a PA directly under the Mayor's control.

Mr Bulford: Yes?

Clr Bennett: When I asked him about it on the floor of Council he fobbed me off and, at that point, I decided I'd been misled and I wasn't going to vote. So I left the Chamber.

Clr Malicki in her evidence to us given during her interview with us confirmed that in her view Clr Hall humiliated and behaved badly towards the General Manager. She told us that he frequently made statements such as:

> Haven't you read this, don't you know this, isn't that amazing, the General Manager doesn't know.

She confirmed that Clr Hall frequently sounded off about the lack of support he was getting from the General Manager and her staff. We found an instance of this during the debate at Council's 19 October 1999 meeting.

Mr Ian Canham, formerly Council's Group Manager Operations, gave the following evidence to us about how the Mayor spoke to and treated Rhonda Bignell in Council meetings.

> Mr Canham: Well I believe the factor of - the female factor came in where he wasn't going to take advice from a female, and - which is sad really because - and he would also ask questions of the General Manager which he knew the answers to, and he just wanted to know whether she could come up with the same answer. And I mean, that's - in open Council - - -

Mr Canham indicated that Councillor Hall was hostile towards her, put her down and humiliated her. He told us about an atrocious toilet incident:

> Mr Bulford: Were you present the Council meeting when she actually wanted to leave the room to go to the toilet?
>
> Mr Canham: Yes, and he told her to sit down. Yes. Wasn't allowed to go. She wasn't allowed to leave the room. Disgusting. Absolutely bloody disgusting. And there were some in the gallery thought that was funny. I didn't think it was funny at all.

The incident occurred at Council's meeting of 19 October 1999 – at that stage actually it was Council's "Policy and Strategy Development Forum", but still a Committee of all Councillors. We have listened to the tapes of that meeting in full. It is clear from the tapes that what is alleged to have happened did in fact occur. The incident occurred very late at night when the Councillors were well advanced in their consideration of a revised *Policy on the Payment of Expenses and Provision of Facilities to Councillors*. During this debate, in our view, Clr Hall was acting in an increasingly petulant and discourteous manner to his fellow Councillors.

From the tapes, the following is distinctly heard – the debate being at that point on what items of clothing and so on were to be provided to Councillors pursuant to the Policy:

> Clr Hall: [reading from paragraph 1 (f) of the proposed Policy] … 'A copy of booklets produced by Ku-ring-gai to assist incoming Councillors.' What's it mean? It means nothing. You should get it anyway. Take it out. You know, it's like a kindergarten this document. Absolutely like a kindergarten. The previous Mayors wouldn't be bothered talking to anyone on these. Just put it through as if it was - they got what they wanted.

The debate continued, with Councillors voting on the Policy on a clause by clause basis. When they got to clause 2 (xiii) the following was said:

> Clr Hall: You get a raincoat and a pair of gumboots. Have you all had a raincoat and a pair of gumboots?
>
> (Various Councillors): No.
>
> Clr Keays: I haven't got my raincoat and gumboots.
>
> Clr Hall: Have you got any business cards? No. General Manager, General Manager, can we, can we find out why we don't get any, any facilities? Is there a reason why you, you not –
>
> [Several female Councillors are heard interrupting at this stage]
>
> Clr Hall: I'm talking about the existing policy, Clr Malicki, you've got your raincoat and gumboots. Mine's worn out.
>
> [Various speakers talking at once – inaudible]
>
> Clr Hall: - - [In a querulous tone] Well what do you mean, you don't know?
>
> General Manager: I don't know where [rest is inaudible]
>
> Clr Hall: Well, where's the rain coats and the gumboots, so called, no one's got them either?
>
> General Manager: Well, we can get them for you.
>
> Clr Hall: [Said loudly] Yeah, but, General Manager, they are [loudly tapping on his papers several times] – they are to be given to the Councillors.
>
> General Manager: Well, we can do that when we get their boot sizes [sniggering from a number of people heard at this] and, um –
>
> Clr Hall: Godfather! [in an exasperated and loud tone] I don't know. All right. Well, I mean, the simple, stupid little things. I shouldn't have to worry about these things. I've only got 400 staff to worry about things like this. [reading from clause 2 (a) (xi)] Council will provide tea, coffee and refreshments to the Mayor when fulfilling his or her – well the previous P.A. said to me "Go and get your own cup of tea". So I do. But I notice it's there. …

The debate moved onto Christmas cards, with the Mayor heard to be continuing to make smart Alec comments. He then said:

> Clr Hall: Is the General Manager leaving? Are you leaving? You're leaving? What? Well, I'd like you to get permission to go Mr [sic] General Manager. What? Godfather.
>
> Clr Malicki: She's the Chief Executive Officer. She can go to the toilet.
>
> Clr Hall: What? Well, OK. There happens to be the Chair here. [in an exasperated tone] For Heaven's sakes.

Mr Brian Mazur told us that in the period since he had been in the position Acting as Director of Operations he had had to attend some Council meetings. These meetings were therefore after about November 1999. He told us:

> Whenever he could he would always try and make a comment about the General Manager I guess insinuating that there was something that was lacking in her preparation of work.

This sort of behaviour is, we consider, quite unbecoming and inappropriate. It is calculated to bring the office of Mayor and Councillor and the Council into ridicule and disrepute and should not be tolerated.

3.9.2 Meeting of 12 October 1999

A member of staff, whose identity we know but is not revealed having regard to the principles of the Protected Disclosures Act, lodged a complaint with the General Manager over the conduct of Clr Hall towards the General Manager, which that person witnessed, at a meeting attended by Clr Hall, Clr Bennett, the General Manager, Mr Darren Condon, Council's Director of Finance & Corporate Services, and Mr Ian Canham, then Council's Group Manager Operations, at 5.30 pm on 12 October 1999. The meeting was about Council's Car Policy, or rather Clr Hall's concerns over it.

The complaint alleged that at the meeting Clr Hall "was very aggressive and adversarial in his line of questioning", that the General Manager on more than one occasion said to the Mayor that she and those staff members present were quite happy to answer any questions, but that she went on to ask Clr Hall if the discussion could be "of a more pleasant nature".

Clr Bennett gave evidence to us about her recollections of this meeting:

> Clr Bennett: The Mayor raised a series of concerns with the General Manager over the car policy and the car policy wasn't something that I'd had a particular interest in nor did I follow it up at the time. The Mayor, whenever possible, asked me to sit in on meetings so that he would have a witness and I didn't necessarily have any background in the issues that were being discussed. From memory a number of issues were raised with respect to the car policy. One had to do with the, let me think how to phrase it, the changeover period. Whether it was 2 years or 12 months. The Mayor had gotten hold of some internal documents which suggested that the General Manager had altered the changeover period from 2 years to 1 year, so that our cars were replaced every 1 year, rather than every 2 years. The Mayor claimed that this was a breach of Council policy. I definitely remember that coming up. The General Manager asserted that it was an operational matter and that she had the discretion under the policy to do this and, in any event, it had only been for a trial period and it had been abandoned when circumstances indicated it was not the most optimum economic arrangement to have a changeover of, I think, 1 year.

About the Mayor's behaviour, Clr Bennett said that he was "very aggressive and very loud".

She continued:

> Clr Bennett: …I distinctly remember having to intervene and I didn't intervene in the sense of direct confrontation because I never did so at that point in time.

> What I would attempt to do is to diffuse things by redirecting …

Clr Bennett confirmed that it was the Mayor who was dominating the proceedings and the talking, saying:

> Yes, it's always the Mayor who dominates.

Clr Bennett also said that the Mayor would not let Darren Condon or Ian Canham speak and would just talk over them.

Mr Canham's evidence about the meeting and what he wanted was as follows:

> Mr Canham: Well it was - it was just like the Spanish Inquisition, you know. We were sat down and treated like bloody school girls. And questioned about different things and yelled at and screamed at by the Mayor, and so was the General Manager. The General Manager tried to get him back on track - on an even keel, of trying to get him to talk civilly to us and ask civil questions but he wasn't interested in that.
>
> …And he wanted information right there and then, and as I said to him, "I can't get this information for you right now, I'll have it for you tomorrow morning".

Mr Canham confirmed that Ms Bignell attempted several times to ask him what was the issue or the problem but the Mayor "just told her to shut up". He also confirmed that the Mayor would not let Darren Condon speak. He added:

> …[The Mayor] Yelled at us, and was getting, you know, really red in the face and pointing and - because he had his chair turned up, you know, "This is a big power game, I'll have the chair turned up so I'm sitting higher than you plebs", you know, crap, that he used to carry on with.

Mr Canham said he felt humiliated by the Mayor's conduct and felt as if he was being accused of doing something wrong but didn't know what it was he was supposed to have done.

3.9.3 The Northern Waste Board Meeting

Particulars of the alleged conduct of Clr Hall towards the General Manager at this meeting, involving representatives from other organisations, and therefore a very public forum outside the confines of Ku-ring-gai Municipal Council itself, are set out at section 3.8.1 of this report.

We asked the General Manager about the matter in our interview with her. She tended to dismiss the incident as just one in many. "It wasn't as bad as the others" she said. Her evidence confirmed what is alleged in the particulars. She also told us:

> Ms Bignell: … he got right off the track, "Look at how many complaints there were, this just isn't good enough General Manager." I have to say it was a little like water off a duck's back. My first day back, I'd just got back and I thought, "Here we go again," and I didn't make a note of it. But yes that was entirely inappropriate. The Mayor of Hornsby has actually spoken to me on other

occasions about how inappropriate he sees his behaviour generally but that was the first time.

Clr Hall's legal adviser written reply to these allegations was as to relevant parts:

> Clr Hall quite relevantly raised a question as to whether other municipalities had the same problem with collection of their green waste disposal as did his Council. He did so in the context that he was seeking some solution for what may be a common problem … Clr Hall did not intend thereby to be critical of the General Manager nor was the comment meant in any personal way.

This response seems to miss the point, which is not about what was said, but about how it was said. We find on the evidence that Clr Hall did behave inappropriately at this meeting.

3:10 Clr Hall's relationship with staff since becoming Mayor

Clr Malicki's evidence as to Clr Hall's relationship with staff after he was so elected Mayor, was:

Mr Bulford: What can you tell us about his behaviour towards the General Manager and the staff after that date? Was there any noticeable change from what happened before?

Clr Malicki: Yes, absolutely huge. There was absolutely no controlling him. He strutted around, the way he even stood was different and he was louder. Well, in Council meetings he was very dominating, very arrogant, but his behaviour was just dreadful towards the staff. I guess I'm trying to say it nicely for your taping.

Mr Bulford: You can be as frank as you like.

Clr Malicki: Yes, it's a lot worse than it was. … Look, the very fact that he got his Mayoral Minute up the second week he was Mayor made him think he was all powerful.

And later:

Clr Malicki: It was a completely different attitude that the Mayor took. Now Tony came in with the attitude, "I am the boss, I am definitely the one in charge here and you will do what I say."

Mr Bulford: Yes?

Clr Malicki: That was the attitude that came to everything. Council meetings, any meeting with the staff and so on. He was far far worse because he was Chair.

Mr Bulford: You observed this for yourself, not only in the context of Council or Committee meetings at which you were present, but presumably also at some of these meetings with staff?

Clr Malicki: Oh yes.

Mr Bulford: You were personally present?

Clr Malicki: Absolutely, the behaviour with staff at Committee meetings and so on was pretty appalling.

Mr Paroissien gave similar evidence:

Mr Bulford: ... Start with the position when he became Mayor. Did you observe any changes in his behaviour?

Mr Paroissien: Yes, well certainly - I mean he was very aggressive, but he - - -

Mr Bulford: More so than he was before?

Mr Paroissien: I think more so in the point that he felt more in a position where he could exercise power and he was certainly going to take that opportunity and exercise the power …

Mr Bulford: Right. And was it more so in terms of quantity as well as volume, as it were?

Mr Paroissien: Yes, I think so. Yes, from my experience. You know, just some of the comments he made. At one stage in a telephone conversation with him, he made the remark - he said, "Look, you're talking to the Mayor now, not your staff", and implied that, you know, that I would treat my staff as fools and that I was - you know, that I couldn't get away with it with him, which I thought was pretty unfair because I'd never treat my staff as fools. I can give you the date of that if you wish.

Mr Bulford: Do you have it to hand?

Mr Paroissien: Well it was the date of the Water Week launch.

Mr Chris Young told us this:

Mr Young: …the biggest change was that - because of the Council resolutions [in 1989 and 1999] there was a much lesser degree of contact than we probably would have had with a - - - … there was a form of control upon that. Once he became Mayor, he certainly sought to be a person whereby he had access to all areas, all files and all staff, and had an expectation that he would be given, without any question, everything, and multiple copies et cetera.

Mr Bulford: So would you say it fair to say that both the quantity of his demands and - escalated, and the way in which he made those demands worsened?

Mr Young: Yes. Yes, very much so.

And he added:

Well it certainly became vast quantities and the demands to have things done within very short limit of times increased and an expectation that everything would - everything that - the normal course of events would cease and that they would be undertaken immediately.

Ms Ann Gabay, the first of Clr Hall's secretaries, told us this about Clr Hall:

Mr Bulford: Were there occasions when you witnessed him or overheard him either in the civic area or in his office where he might have been talking to somebody else but in the process belittling or criticising members of staff?

Ms Gabay: Yes.

Mr Bulford: Did that happen frequently?

Ms Gabay: He did that all the time. Yes. He spoke down to people. He tried to make people feel small, incompetent.

Mr Bulford: Would that have occurred - would he have done that sort of - made those sort of statements about staff in the presence of people who were not themselves members of staff?

Ms Gabay: Yes.

3.11 Conduct in relation to David Young

Mr David Young was, until 26 October 1999, Council's Acting Director Open Space and Infrastructure, a position he had been acting in since approximately April that year. Speaking of the period before Clr Hall became Mayor, Mr Young told us:

Mr Young: I had a purely professional relationship as a starting point. I respected and understood his role as a Councillor, I gave him no more or less favour than any other Councillor. Anything I would tell him I would tell anybody else. I had no problem dealing with him as a person and I say that with qualification because over the years I've dealt with probably hundreds of Councillors in my time in Local Government and he was equal to but no worse than probably a dozen other Councillors I'd had to deal with over the years and I'm talking there in terms of being - this is my opinion - a little irrational at times, very vocal, aggressive. But I could cope with that myself in my job. I mean I had sufficient authority and confidence to say "No we're not doing that," or "This isn't appropriate," or "That's not the correct procedure."

Mr Bulford: Did he take no for an answer?

Mr Young: With me I think it would be fair to say yes.

However, Mr Young went on to say:

… when it got to April, that's when I took over in my joint role, things started to change somewhat.

His evidence on these changes continued:

Mr Young: …Not very long after we had our first Traffic Committee, and this becomes an important part of our relationship breaking down to some extent. So I was appointed, by virtue of receiving a delegation to act as the Director of Infrastructure, I received all the delegations through the General Manager to function in the same capacity as my predecessor had, of which 90 per cent was exactly the delegations I already had but it picked up a few extra ones which included being Chairman of the Traffic Committee. That's the RTA's [sic] Traffic Committee.

…the operation of that [Ku-ring-gai Traffic] Committee is that the Council's representative, which was me, was the Chairperson. Now, at the first meeting - this is after he's told me how helpful he'll be - - -

In relation to what happened at the meeting he said:

Mr Young: I've chaired plenty of meetings before but I was taken a little bit by surprise at this one. It's basically a closed meeting in the sense that members of the public can come along if they want to address the Committee on particular items, for example they're invited, they stay outside the meeting room and then we talk about that issue, they come in and they tell us all about it. We discuss it a little bit and then the people go out. … but the reason for that, apart from the fact it's always been done that way, is that that is how the RTA prefer it to be done. That is that the Committee is supposed to provide advice to the Council and there are some problems with publicly announcing the recommendations of the Traffic Committee before the Council has actually had the opportunity to know what those recommendations are. That is the sort of reason why that has been done. Some Committees do it different ways.

Mr Bulford: Okay?

Mr Young: So, I opened the meeting, got into the usual stuff of apologies and adopting the Minutes and Councillor Hall, who always attends these meetings, and it's always been acceptable for Councillors to come and turn up.

Mr Bulford: Yes?

Mr Young: They don't have any voting rights or anything but by all means turn up and observe.

Mr Bulford: Yes?

Mr Young: And to some extent participate. So, Councillor Hall got up in the probably loudest and most aggressive form that I had ever seen him, but I had been told about before, and yelled and screamed to the extent that I couldn't even hear half of it, that he was challenging my authority to conduct the meeting, demanding that I leave immediately and hand it over to him or to somebody else who knew what they were talking about. I can't remember the exact detail but he challenged my qualifications, challenged my authority in terms of delegations under the Act, et cetera.

Mr Bulford: When you say qualifications?

Mr Young: Engineering qualifications.

Mr Bulford: Right, so he just simply said you didn't have the necessary technical knowledge or experience to be able to - -

Mr Young: To be able to deal with these issues and understand what was going on.... I mean it seemed like he was jumping up and down for 5 minutes. It was probably only one but it was such a shock and he was so loud and all the rest of it I was taken aback a little bit. So, somewhere during that I took the unusual step of standing up and yelling at Councillor Hall, quite politely, but basically asking - - -

Mr Bulford: Was it necessary to speak loudly because he was shouting, otherwise you wouldn't have been heard?

Mr Young: Absolutely, I mean he was shouting.

Mr Bulford: Were you yelling in anger or simply yelling in order to be heard?

Mr Young: Oh no, I never get angry, that's just not in my nature. I just stood up and was sort of standing up here and said, "Councillor Hall please be seated, please

be quiet."

Mr Bulford: You were the Chairman?

Mr Young: Yes, I was the Chair, yes, and I was supposed to control the meeting.

Mr Bulford: Okay?

Mr Young: So, after a couple of instants he actually did be quiet and I asked him to sit down and remain quiet and I may have said, "Shut up" or something like that but it was certainly not any more crude than that. So, he did actually sit down and then I explained, obviously having been challenged on all those things I thought for the benefit of the rest of the Committee who I'd only met for the first time, and I didn't know whether they actually shared any of Councillor Hall's concerns, so I did explain the fact that I had all of the delegations handed to me by the General Manager on such and such a date and that the role of the Committee, for example, was as I explained before, it was an RTA Committee, it wasn't one of the Council's.

Mr Bulford: So this outburst from Councillor Hall had taken place right at the beginning of the meeting?

Mr Young: Within a minute of starting on the agenda, right at the start. It couldn't have been better timed for his purpose than anything else. Now, I can't remember whether it was during that initial outburst or followed a couple of minutes later, but then he also took up the issue of the representatives of the Member of Parliament - whether or not they had authority to be there, because he contended incorrectly under some section of some code of the RTA documents that they had to actually be the Member of Parliament, that it couldn't actually be a representative of theirs ... One of the people, Rob Forster, was actually the representative of the Member for Davidson. He'd been there many times before and he was, you know, part of the furniture in that sense. He definitely - sorry, the challenge was whether or not they had written authority to be there. Now Robert Forster had written authority and I was actually aware of that, I happened to have it in my folder and I mentioned that, yes, I had seen written authority on that point. The other person, I'm just trying to think of his name, I should know it, he was the previous Mayor - Richard Lennon. Richard Lennon was appointed by the member for Ku-ring-gai and this was either his first or second meeting because representation had changed for whatever reason.

Mr Bulford: Yes?

Mr Young: So, Richard Lennon wasn't too impressed and he defended himself saying he did have the authority and the right [confirmed by our inspection] and as you can imagine, being a previous Mayor and long serving Councillor, he knew a little bit about the Traffic Committee too.

Mr Young went on to tell us that some time before the meeting took place Clr Hall had spoken to him and:

challenged the right of, for instance, a Council staff member to be the Chairperson of Committee, because that was certainly something he didn't like. He believed it should be a Councillor because it's a Council Committee and however many times you explained it's not a Council Committee it's actually a different committee - -

Mr Young also told us:

Not long after that particular meeting. Yes, that note you've got there is actually a memo from Councillor Hall to the Mayor, the then Mayor, David Dobbin, complaining about my inability to operate this Committee and the travesty and all the rest of it. You can understand from there where he's coming from. He complains about the Parliamentary Members et cetera. In response to that the Mayor actually sent back a very brief response explaining that I did have the authority.

When we interviewed Mr Lennon as a witness before our Investigation we asked him about this meeting of the Traffic Committee. He confirmed to us that he attended as the representative of Mr Barry O'Farrell MP. He advised that Clr Hall's behaviour was a problem. He also told us:

Mr Lennon: When he first became Mayor there was a dispute with this traffic committee as about what kind of committee it was. He wanted it open to the public.

Mr Bulford: Yes?

Mr Lennon: I was ambivalent about it to be quite frank because I'd been given instructions from Barry O'Farrell that we didn't really mind either way and we were quite happy with the public. However, the police and the RTA were very strong in the fact there should be - you take submissions from the public. We're an advisory committee and the people then have the opportunity of addressing Council because Council can change the recommendations. It's only a recommendation committee.

Mr Bulford: Yes?

Mr Lennon: And it was put to Tony Hall that it was an RTA committee set up under the terms of the RTA Act not the Local Government Act. I don't know whether that's true or not but that's what was put to him and he wanted to get verification from the General Manager. So he sent a member of staff to get the General Manager and the message came back that the General Manager is in conference and he then demanded that she appear on the spot which I thought was impolite to put it mildly to be perfectly honest and which she did appear.

Mr Bulford: He made these demands loudly in the meeting?

Mr Lennon: Oh, everybody heard them, oh, yeah, there's nothing quiet about these demands. She did appear and I thought a little bit flustered, you know, and she was able to - well, she basically backed up what the RTA and police had said but however he asked her to get legal clarification on the matter which apparently she did later on because the Committee now just takes submissions from the public and it's not open so I presume that's how we do it. I just think it's an unfortunate situation that the staff are being bullied and I think a fellow like David Young who was a first class member of the Council staff has had to leave and I think that's a shame, a great shame.

The General Manager told us about how she was summarily called by Clr Hall, having been dragged out of another meeting. She said:

I went into the biggest fiasco of all time. Here is the Mayor on the seat … The police, the RTA and the State members all jacked up and they said, "This is not a public meeting, this is a technical committee meeting," and the police and there's two burly sergeants or whatever there, Inspectors I think, Inspector Knowles and the RTA, they were jacked up and they actually refused to go on with the meeting. They said, "This is a Technical Committee, we are not having it hijacked by politicians." Anyway, Hall naturally had geed up a whole lot of residents to come. "This is dreadful, secret meetings," and all the rest of

> it. So, they dealt with one item that a lot of the residents were there for. We've got the Mayor saying, "We're not having any more secret meetings, this is a Committee of Council. General Manager, is this a meeting of Council." I said, "No it's not, it's actually an RTA Committee." "Well I want legal advice and I want legal advice now." So the upshot of that was I actually got legal advice on it from Abbott Tout that said, "It's a Committee of the RTA, it's not a Council Committee."

We have verified this by inspecting a copy of that advice provided to us. The General Manager also told us that she had received a phone call that night from the Police complaining about the incident:

> So Inspector Knowles rang me and left a message and I actually rang him from home. He said, "I just want to tell you that he is absolutely appalling, the police are just so angry, against him and all the rest of it with what he's trying to do with the Traffic Committee and take over and turn it into a public fiasco," and all the rest of it.

Before we move on from the Ku-ring-gai Traffic Committee to other issues in relation to Mr David Young and Clr Hall, we will deal with a further aspect in which Clr Hall has improperly disrupted the proceedings of that Committee.

Subsequent to David Young's chairing of meetings of this Committee Clr Hall got himself appointed as Chairman of the Committee, insisting that he had a right to be so appointed. While section 369 of the Local Government Act 1993 provides that the Mayor is to chair or preside over Council meetings unless he is absent or requests someone else to do so, this only applies to meetings of the full Council. Likewise, while clause 40 (1) (a) of the Local Government (Meetings) Regulation 1999 provides that the chairperson of each Committee of the Council is to be the Mayor, unless he does not wish to be so, that only applies to meetings of Council Committees. Mr Young's evidence, corroborated by the General Manager, was that this Committee is not a Committee of Council. Clr Hall therefore has no statutory or other right to precedence in terms of chairing its meetings.

Ms Ann Gabay, the secretary to the former Mayor, Clr David Dobbin, and the first of Clr Hall's secretaries when he became Mayor, told us:

> He would often make remarks - comment on the fact that David Young, for instance, who was Director of Open Space and Infrastructure, wasn't a qualified engineer and why did he have the position that he had …

Mr Young told us that from these events in April 1999 his relationship took a downturn which did not improve:

> Mr Young: …it took a very quick dive down to a new level and basically remained at that level. That level meant that, for example, no less than once a week he and I would have - I'm just trying to think what you'd call it - a significant disagreement, which had never happened before.
>
> Mr Bulford: Was he aggressive in his approach to you. I mean did he shout, did he point things at you and say, "I want this and I want this now." What sort of things did he say?

Mr Young proceeded to give an example of an incident that occurred over the October 1999 long weekend where Clr Hall, then Mayor, demanded that all roadwork immediately cease on the Eastern Arterial Road.

> Mr Young: On the Sunday before that Public Holiday I got a phone call at home and who was on the phone but Councillor Hall and he was screaming and yelling so loud that I actually had to hold the phone out here. I couldn't get a word in, I didn't know what he was talking about, it was just yelling and screaming in absolute fury.

He added:

> Mr Young: Well the work was roadwork so we were basically organising to have the road surface resealed.
>
> Mr Bulford: Yes?
>
> Mr Young: A pretty routine sort of job. We had everything prepared and ready to go on the Tuesday. Nothing had actually started, there was no work happening.
>
> Mr Bulford: So there was no dislocation to traffic or anything like that?
>
> Mr Young: No, but his demand was "Stop that work immediately, I'm the Mayor, I'm directing you." This is after all the garble that I couldn't work out to start with.
>
> Mr Bulford: Yes?
>
> Mr Young: So he went on and I got to the stage where I said, "Councillor Hall, if you're going to speak to me like that I'm not going to discuss anything with you," and I hung up on him.
>
> Mr Bulford: Yes?
>
> Mr Young: Now that was probably after about 5 minutes I think. If I can just correct that. I actually did respond a little bit first. I said to him that there was no work starting, that tomorrow was a Public Holiday, that there was no way I could possibly contact any contractors or other people and get them to stop work, particularly since they hadn't started, but there was just no means of going through that process. I didn't have any direct contact with them. I mean it would have obviously a complicated process and there were contracts in place to start work.
>
> Mr Bulford: Was that the sort of instruction that you'd ever received from any other Mayor?
>
> Mr Young: I've never had any Councillor speak to me in that tone before.

Mr Young also added that, 5 minutes after he had hung up on the Mayor, the Mayor rang back:

> So, he rang back again and in a much more civilised tone said, "I'm really sorry for being so aggressive, I'm just really upset." Something like, "I'm the Mayor and I'm responsible for all these problems in the Municipality and I need this fixed and that fixed." He was still a little bit heated and I must admit I wasn't too pleased being rung up on a Sunday afternoon and I explained to him that, for example, that we'd gone through the proper consultation process …

Mr Young added that he told the Mayor:

that he couldn't give me direction as the Mayor, that I was responsible for deciding what work took place and the General Manager or the Council could give me a direction but he couldn't. Then he sort of gradually watered it down to, "Can you at least have a look at it, can you do this, can you do that."

Mr Young continued:

Mr Young: Then somewhere towards the end he said, "I want a report on my desk on Tuesday morning at 7 o'clock and I want to know exactly," he then started to fire up again.

Mr Bulford: Yes?

Mr Young: "I want to know exactly what's going on and I want to get the bottom of this," and all the rest of it.

Mr Bulford: What time did he want the report on his desk?

Mr Young: He said 7 o'clock on the Tuesday morning, not the Monday morning which was the Public Holiday.

Mr Bulford: At least he didn't ask for that?

Mr Young: No, but as it turned out he had irritated me so much I actually went into work on the Monday because, having said that everything was in order, which I believed it was, I actually went into work and spent most of the day in there. … I did the report. I didn't give it to him at 7 o'clock. I did it when I finally turned up. I took it up to him and he didn't want it, after all that effort he didn't want it because he'd obviously thought about it since and realised that everything was okay.

Mr Bulford: What did he say to you that led you to believe that he did not want it?

Mr Young: Because I handed it to him and he flicked it down on the desk and he said something about, what was it, something along the lines of "Yes I spoke to somebody or other," in fact it was to the Ward Councillors and they acknowledged that we had notified people and they did know about it. Because in his initial allegations to me on the phone he was saying, "You haven't told anybody, you haven't notified anybody," but of course the Ward Councillors knew exactly what was going on, it was no surprise to them at all.

Mr Young told us that these two problems that he told us about in his relationship with Clr Hall were the main ones and that they were:

the two main situations where I had to actually take the unfortunate step of telling a Councillor what they could and couldn't do.

The General Manager told us in our interview with her:

David was one that would come into my office sit down and we'd just chew the fat about how he saw the political situation and probably David, like every other Director, would come to me almost each day, "The Mayor's done this, it's terrible," and all of the rest of it. As he was leading up to what was his resignation … it was very clear he was very unhappy and he just said to me, "I can't work in this environment, it's just so terrible." Then he came to me and he said it looked as though he was going to be offered a job "this afternoon or tomorrow." … and he said, "I just can't stand it." David was a really pale

> fellow and he was almost white. You could just see the effect it was having on him. … he was saying how unhappy he is, how he's not sleeping, how the Mayor's done this and David was trying to Chair the Traffic Committee and the Mayor's interfering and then the Mayor became Chairman and he just turned it into a complete debacle. I'd have to say the Mayor liked David enough that he didn't actually shout at him, but what David was saying was he couldn't stand the way he was shouting at everyone else, but also what the Mayor was doing to David's job. Like he was taking over David's job even though he didn't necessarily shout at David. David was very unhappy about that.

Just over a week after the incidents with Clr Hall we have related above, namely on 13 October 1999, Mr Young tendered his written resignation to the General Manager.

Mr Young also told us:

> … up until my finishing time there would have been a number of occasions and, in the last month, probably once a week where, for one reason or the other, I would have had a meeting with him. I mean open door type meetings where he would have said, "Do this, do that". I'm just trying to remember what some examples would have been. One of them was to do with the swimming pool. There was always something to do with roadworks where he's basically say, "I want this to happen, you do it, I'm the Mayor". He just had this little record, "I'm the Mayor, I direct you to do it," and I would give him my normal response of, "I know you're the Mayor but you can't give me directions. Tell me what it is that you're talking about and I'll see whether or not it should be responded to or otherwise."

Mr Young's written resignation memo said nothing as to why he was leaving, other than to say it was for "personal reasons" and "which include the ongoing uncertainty about any desirable future prospects with Council". The memo also contained statements in which Mr Young made a claim for redundancy payments. The General Manager in her evidence to us did agree that the question of putting in a possible redundancy claim was discussed several times with Mr Young in the weeks leading up to his resignation, but she also stressed that Mr Young's unhappiness in his job was an important factor he raised with her. She said both were mentioned by Mr Young when he came in to deliver his resignation letter to her on 13 October.

Mr Young sought to take issue with us in using the word "resignation" during our interview with him, but as he was then in an as yet unresolved legal dispute with the Council over a claim for redundancy we do not feel it appropriate for us to get into that debate. We do note that in fact the word "resignation" is not used in his letter to the General Manager. He said to us, "if you want to use the word 'resigned' I resigned from the Acting position, I wanted to go back effectively to my substantive position but it didn't exist, so by default I left".

The General Manager told us that on receipt of this advice she got her Corporate Management Team together to meet with Mr Young. The reasons for his leaving were openly discussed. Clr Hall figured prominently. However, Mr Young said that for various reasons he did not want it publicly known why he was leaving. The General Manager sought to respect his wishes.

The next day an announcement was made to the staff that Mr Young had resigned and the General Manager by memo, with a heading that started with the word "Resignation", told the Mayor and Councillors:

> It is with regret that I inform you that David Young, Acting Director Open Space & Infrastructure has resigned.

As noted, the memo said nothing about the reasons why Mr Young was leaving Council's employ.

The General Manager told us about the difficulty she faced with trying to respect Mr Young's wishes:

> So the difficulty was, for me, it put me in a pretty difficult position, I then had to announce to the Councillors, and most of the Councillors really like David, I had to say, "David Young has announced his resignation and he prefers not to give his reasons," or something. That sent them into a spin, so the Mayor just went absolutely ballistic. "Where's he going, I want to know why, why's David Young leaving?" I said, "David doesn't want his reasons to be known." "Where's he going, has he got a job?" I said, "David doesn't want his reasons to be known." It was very difficult, put me in a really difficult position.

We note that parts of Mr Young's confidential memo were quoted in the press, for example in the Advocate of 4 November 1999.

In the table set out at section 6.6.2 of this report we have listed a number of occasions on which Clr Hall has persistently demanded information as to the circumstances of the resignation of the David Young.

The General Manager told us that on 14 October 1999 she was summonsed by Clr Hall into his office. She found Clr de Vulder there. She said that Clr Hall made a series of aggressive demands to be told why Mr Young was leaving. It was submitted to us by the General Manager that, after "rudely demanding a copy of" Mr Young's contract, which the General Manager told him was not available to elected members, "he became even ruder and threatened that if I didn't give it to him he would put up a Mayoral Minute". The submissions continued:

> He then held us my memo of 14 October and the copies of the staff complaints about him and said "I'm not very impressed with this". I said "I am happy to talk to you about it, but there is a serious problem with your behaviour towards staff". He said "the problem is you and I". I said "No, it's about your behaviour to staff". He would not discuss it any more.

Clr de Vulder confirmed to us that he was present with the Mayor when he met with the General Manager on this date. He confirmed that the Mayor asked the General Manager why David Young was resigning. He said that in response the General Manager had said:

> Clr de Vulder: She said that she didn't know why. I think he was being asked why he was leaving and she said she didn't know why he was leaving but that he had given his resignation and that he didn't have to say why he was leaving.
>
> Mr Bulford: Did she say anything about David not making his reason public?
>
> Clr de Vulder: Yes, something like that, yes.
>
> Mr Bulford: What was Councillor Hall's response to that?

Clr de Vulder: I've no idea. I don't remember his response.

Mr Bulford: Did he repeat the question, his demand for information?

Clr de Vulder: I think so, he may have said something to the effect of, "Are you sure he didn't say why he was going," or something, I don't know.

Mr Bulford: That is all he said?

Clr de Vulder: I don't recall his actual words.

Mr Bulford: Did he say it in a threatening manner?

Clr de Vulder: I don't remember a threatening manner, no.

Mr Bulford: Is Councillor Hall ever threatening?

Clr de Vulder: Abrasive, if that's taken as threatening.

Mr Bulford: Was Councillor Hall abrasive on this particular occasion?

Clr de Vulder: I don't recall him being abrasive but he may have been.

Mr Bulford: Did Councillor Hall demand to see David Young's contract?

Clr de Vulder: At that point, at that meeting?

Mr Bulford: Yes.

Clr de Vulder: He may have done, I'm not sure if it was that occasion, but I know he has asked. I have been present when he has asked.

Mr Bulford: What was the General Manager's response?

Clr de Vulder: That it wasn't for him to see.

Mr Bulford: What did the Mayor say to that?

Clr de Vulder: I'm not sure, he may have said he thought it was. I don't know the actual - - -

Mr Bulford: Was he abrasive, in your words, when he said that?

Clr de Vulder: I think he would have been.

Mr Bulford: Would he have been more abrasive than his earlier questions and statements?

Clr de Vulder: Yes, probably.

Mr Bulford: So you concede he was getting a bit angry?

Clr de Vulder: Yes, I would think so.

Mr Bulford: How does Councillor Hall show anger, in your experience?

Clr de Vulder: Well generally he gets loud.

Mr Bulford: Would you say he shouts?

Clr de Vulder: Not exactly shouts but he certainly - I wouldn't call it shouting but he gets very loud and you can tell there is anger there.

At about 12 noon the next day, ie on 15 October 1999, Clr Hall again summonsed the General Manager to his office, where this time Clr Anderson was already present. Amongst other concerns Clr Hall raised the matter of the press reports about Mr Young's resignation. He accused her of being the cause. He also asked to meet with the Directors at 2 pm that afternoon. Despite this apparently not being Clr Hall's intention, the General Manager insisted on being present at this proposed meeting.

Clr Hall tendered to us during our interview with him a copy of a file note that Clr Anderson had created that evening at home. It largely confirms the General Manager's evidence to us of what took place at the noon meeting, though it does not mention anything about the Mayor having accused Ms Bignell of having been the cause for Mr Young's departure.

The General Manager told us that the events of the noon meeting caused her to leave in a state of some distress and she suffered an asthma attack shortly after.

The same day Clr Hall had written a memo to the General Manager in which he demanded to be told the circumstances of Mr Young's resignation. This was apparently handed to Ms Bignell at the noon meeting.

Clr Hall's memo, which was circulated by Clr Hall to the other Councillors, as well as the Directors, provided, as to relevant parts:

> I acknowledge receipt of your memo of 14 October, attached, (no file no.) advising the Mayor and Councillors of the resignation of the Acting Director Open Space and Infrastructure, Mr David Young with no detail as to why he had resigned nor his last day of service. When I sought this information from you orally late on 14 October you told me it was not in my power to seek this information and you refused to disclose to me Mr Young's employment details relating to resignation. Given that you told me when I asked, Mr Young's resignation was effective immediately, I have now become aware Mr Young sought to depart on 26 October 1999. Under s. 337 of the Local Government Act are you not required to consult with Council relating to senior staff positions particularly in respect of any appointments and dismissals? Please clarify and confirm the matters raised.
>
> I have also become aware you advertised the position of Director Open Space and Infrastructure in the Australian daily newspapers last month without any prior consultation either with myself nor the Council. As I recall you did not indicate to the previous Council you proposed to advertise the position, once approved. Notwithstanding my own dissent to the combined departmental structure, I was led to believe at that meeting on 31 August that Mr Young would continue in the new position he had held since 6 April 1999, until his employment contract expired and would then be given the opportunity to reapply. Being the last decision the previous Council made, inappropriately in my view, surely you expect a new council would review the current organisational structure as per s.332 of the Act, on gaining office after September 11, 1999? In fact I asked you this question at your annual performance review on 20 August 1999. The question was not replied to and remained unanswered when the restructuring was deliberated on at the Council meeting of 31 August. Would you please clarify the above and provide details of the advertisement.

> …
>
> While it is unusual for you to have notified Council of Mr Young's resignation in such a public manner yesterday, given your propensity to deal with staff related matters under confidential cover, I request that you provide to the next meeting of Council, as a staff committee report, a detailed response of the questions I have addressed in this memo please.

The General Manager responded in writing on the same day telling him that no reasons for Mr Young's resignation had been given by him and that he was not required to. She pointed out that she had not said that the resignation was effective immediately, but merely that he had tendered his resignation that day. On the advertising of the position she said:

> In the briefing that I did with Councillors re Directors' contracts on 30 June 1999, I set out the intended strategy for the advertising of the positions – either as two separate departments, or as one for OS and Infrastructure.
>
> Since the election of the new Council and its immediate review of the Organisation Structure, the recruitment process has been put on hold until a decision is made on the structure.

She also corrected the Mayor's wrong statement that Mr Young had not been interviewed for the position. She concluded by saying:

> I have answered the questions raised in your memo and will bring a report on the replacement for the position to the Staff Committee.

We consider the General Manager's response to have been entirely adequate and proper and that there was nothing more that was required of her at that time. Consultation under section 337 was not required as Mr Young had resigned. There was no reason for the General Manager to "consult" at every step she takes, and none in particular why she should do so before advertising any staff position. These are operational matters, which are the purview of the General Manager under the Act. In any event the General Manager did inform the Council of her intention to advertise, and this would amount to sufficient "consultation" at that stage of the employment process, in our view, if consultation were needed at all at that time. Should Clr Hall be suggesting that the General Manager had misled he and the other Councillors of the time, then it should be noted that Mr Young only told the General Manager he was going to leave on 13 October, weeks after. Further, while Section 333 of the Local Government Act 1993 requires that the organisation structure be reviewed "within 12 months after an ordinary election of the council", it would be unworkable if the General Manager's hands on the employment front were tied until such time as the elected body got around, some time in this 12 month period, to reviewing the structure.

Clr Hall continued to pursue the matter.

We asked the General Manager for more information about this, particularly having regard to submissions and allegations that had been put to us by Clr Hall through his legal adviser against the General Manager in the following terms:

However, the question now arises, *could Mr Young have been influenced to alter his letter of resignation, to then include criticism of the Mayor not just because of Ms Bignell's pleading as he stated in the writer's conversation with him, but also because of some implied or express possibility of a future settlement of his redundancy claim*? [Mr Dunn's emphasis]

Our questioning of the General Manager was as follows:

Ms Bignell: The Mayor was saying to me, "You pushed him out, did you push him out, why is he leaving, how did you get on with him?" So I went to David and I said, "David look it's a really difficult position I've got here," and the other Councillors were asking as well and I said, "It's a really difficult situation. I know you've said you don't want your reasons to become public but I think that I am going to have to say something to the Councillors about why you've said you're leaving."

Mr Bulford: Councillor Hall says you broke down in tears?

Ms Bignell: I did not.

Mr Bulford: And virtually pleaded?

Ms Bignell: With who?

Mr Bulford: With Young to write this memo.

Ms Bignell: What a bloody liar, he is such a liar, that is bullshit. … I wasn't in tears. I went to David and I said, "David I'm going to have to do something about letting the Councillors know." I did not break down in tears, I went to David and I said in his office, "I'm going to have to say something. I know you've said that you don't want to but I've got no choice. The Mayor is screaming and yelling and backing me into a corner and is not only saying it to himself he's saying it to the other Councillors." David said, "Yes, I've been thinking about it, I think I'd better write something as well." So, David offered to write something so I did not break down in tears, you never see me in tears.

Mr Bulford: He offered rather than you asked?

Ms Bignell: He offered.

Mr Bulford: You neither asked, nor begged nor cried?

Ms Bignell: No, I neither begged, cried or asked. I said to him, "David I'm going to have to write something," and he said, "I've been thinking about it, I think I'd better do something." I did say, "That would be good if you want to do that and I'd be happy if you did that.

…

Mr Bulford: Now, as to the content of what went into that memo, did you in any way suggest that any particular paragraph go into the memo?

Ms Bignell: No, I think David brought it to me. I have a feeling he might have brought me the draft and said, "This is what I'm going to write."

Accordingly, on 25 October, the General Manager wrote a confidential memo to Clr Hall to provide to him a copy of the document provided to her by Mr Young. She also said:

> You have asked me to provide reasons for the resignation of David Young.
>
> I have had several discussions with Mr Young. He has asked me to hold in confidence what has been said to me about his personal reasons for resigning. It is a matter for you to speak to Mr Young directly if you wish to pursue these reasons, and I trust that you will observe the confidentiality that needs to repose on such discussions.

Mr Young's memo to the General Manager provided:

> I have become aware of persistent claims that a major reason for my departure is because you have either made things too difficult for me or that our working relationship has broken down in some way.
>
> For the record I would like to confirm that neither of these suggestions are factually correct in any way and that my reasons for departure have nothing to do with anything that is within your power or influence.
>
> In contrast, it is true that the main reason I have stayed with Ku-ring-gai this long is because of the positive opportunities, challenges and trust that you have given me over the last couple of years. I believe that we have had an excellent professional relationship and I have no criticism whatsoever with respect to the way you have treated me or the accountability you have attached to my work.
>
> As I am sure you will appreciate, my reasons for leaving are complex and personal, and I resent the speculation and persistent inquiries of those people who will not respect this situation.
>
> In terms of work related issues associated with my decision, I can confirm that a major reason for leaving at this particular time relates directly to the inappropriate behaviour of the Mayor and the consequential negative implications of this behaviour on staff morale, and the potential inability for staff to function in an independent and professional environment. I accept and respect most of the changes proposed by the new Council, but will not tolerate the verbal abuse, intimidation, harassment, and public criticism of staff by the Mayor. The working environment that this sort of inappropriate behaviour creates is not one that I wish to be employed in.

Despite the fact that this memo was confidential and Mr Young's requests for confidentiality, as expressed to the General Manager, it is in the interests of justice and all parties concerned, we believe, that the record be set straight. While the General Manager told us that Mr Young was aware his memo was going to Clr Hall and consented to this, we note Mr Young's evidence differs. In any event, we note that much of what is in the memo has by one means or another largely got already into the public arena. That is why we have quoted from the memo in full in this report. The General Manager told us that it was not she who leaked the memo to the press.

The final answer on the matter really comes from Mr Young himself in his sworn testimony to us. This is what he said as to his reasons for leaving Council's employ:

> Mr Young: Somewhere in the couple of weeks prior to doing that [handing in the notice] I had actually, informally I suppose you'd say, hinted to the General Manager that I was not too happy in the place and that I was thinking of leaving.

Mr Bulford: Why were you not happy?

Mr Young: Well that's interesting and it does need clarification. Although on the surface everybody thinks that it was all because of Councillor Hall that, in fact, is not the case. By that I mean it wasn't the main reason for leaving.

Mr Bulford: But it was a reason?

Mr Young: It was a reason. If you can just think of that from my position for a minute. I'm thinking about the fact that I've asked for a renewal and I can't have one. Yes, I can apply for the new job and I may well get it but I actually have to go through the whole process and I may or may not make it and all the rest of it.

Mr Bulford: Yes?

Mr Young: I've got a situation where I know I've got no other job to go back to. I've got a new Council which, at that time, was a little bit uncertain and that is I didn't know whether there were any radical policy directions, what sort of things I'd actually be working on and in more recent times I'd come to find that the Mayor Councillor Hall, for example, didn't think that I was suitable for the Traffic Committee.

Mr Bulford: He was making life unpleasant for you?

Mr Young: Yes, he was making some aspects of my life unpleasant. His initiative had also out of the blue decided I was going to Chair this new Development Control Working Group, or something.

Mr Bulford: Residential strategy?

Mr Young: No, not the residential strategy. There was a resolution of Council that they set up a Development Control Taskforce and somewhere in the Council resolution I was the new Chairperson of that Committee and I was going to have open public sessions several days a week hearing complaints and submissions on Development Applications.

Mr Bulford: This was an area outside your area of expertise and what have you?

Mr Young: Well not only that, it's an area that - it was definitely outside my expertise and interest.

Mr Bulford: You would not have time to do it?

Mr Young: If I did that when was I going to do this other job that I was actually reasonably interested in.

Mr Bulford: Yes?

Mr Young: So, I got to the stage where I thought this little package that I'm looking at here in Ku-ring-gai is becoming less and less palatable every day and not only might the job itself be lost to me ultimately, when it goes out publicly, but the different tasks involved are becoming less and less what I'm actually personally interested in and, on top of that, I have to put up with people like Councillor Hall irritating me, annoying me, whatever else.

And this is what Mr Young said as to how Ms Bignell behaved and spoke to him on 25 October 1999:

Mr Young: …as a lead up to that meeting, for the previous week the General Manager had, on a number of occasions said to me, probably since the day I handed in my "resignation" for a better word, she had said to me, "Can't you give us something in writing to say why you're leaving." She was under pressure from the Mayor and others to understand what is going on.

Mr Bulford: Are you sure she said, "Can't you give us something in writing," or did she simply say, "Can I not tell them why you're going."?

Mr Young: Okay, well I can't be positive prior to that meeting on the 25th. Up to the 25th I can't be positive whether she used the words "in writing," but I'll get to the writing bit on the 25th. She certainly wanted something other than just her word of why I was leaving and I suppose you'd say she pestered me a few times saying, you know, whether it was saying can't she say something or can't I say something I don't know.

The interview continued:

Mr Bulford: Why do you think she pestered you. Was it simply the repetition of the question or the way in which - - -?

Mr Young: I know why from the General Manager .

Mr Bulford: You have described her approach to you as pestering?

Mr Young: Yes.

Mr Bulford: Why would you say she was pestering?

Mr Young: Because I said to her on numerous occasions, and she might have mentioned it every day or second day, on numerous occasions I said, "I'm not interested in getting into this little political - -"

Mr Bulford: But when she told you she was asking for an ability to be able to make public the reasons why you were going, did she not at the same time say to you that she was under considerable pressure from the Mayor?

Mr Young: Yes, at some point she did, I was aware of that, and I was basically of the view that it was nobody's business. Like not the public business.

…

Mr Bulford: Let us go to the 25th?

Mr Young: So on the 25th, well I don't know what time I arrived in the office, but it must have been around 10 o'clock or 9.30, the General Manager lobbed in my office, sat across my desk leaning forward on the chair, I remember it quite well, in what I would describe as an emotionally distressed state.

Mr Bulford: Was she crying?

Mr Young: Well, the comment I made to my wife when I got home was I thought she was going to cry.

Mr Bulford: But she did not actually cry?

Mr Young: No she didn't, no, no.

Mr Bulford: She said then something along the lines of, "You've got to give me something in writing about why you're leaving. I'm under real pressure, the Mayor and the Councillors believe the only reason you're leaving is because

our relationship," meaning the General Manager's and mine, "has broken down" and that they're blaming her for [me] leaving, it's all her fault, et cetera. Yes?

Mr Young: She pleaded with me in that sense, to give her something in writing so that at least she knew that it wasn't her fault. So I said to her, "I'll think about it." I said I really didn't want to do anything or put anything in writing but I'll think about it. So I did think about it and during the next half hour or so I actually put together - which is probably that memo there. Sorry, prior to her leaving..

He added:

> …prior to her leaving I said to her something along the lines that one of the reasons I didn't want to put anything in writing is because the minute I do it'll go all over the place.

Mr Young said that the General Manager's response to that was:

> She said, "That's not a problem." All you have to do is stamp is "Confidential" and it can't go anywhere. So consequently I stamped it confidential. … I took it up to her and I physically handed it to her. She took it in her hands and she read it and I can't remember what - but she basically went, "M'mm m'mm," you know, like yes that's fine.

In relation to the General Manager providing a copy of the letter to Councillor Hall he couldn't recall Young whether or not she said anything about that except that:

> She may have said that, however, I can also say that if I thought that it was going to be handed to anyone I wouldn't have given it to her. I mean that was the whole reason why I didn't want to put anything in writing.

The interview continued:

Mr Young: I must admit, naively or otherwise, what I expected her to do with it was not give it to anyone but actually be able to say, "I have - - -?

Mr Bulford: Knowing Councillor Hall surely you must have formed some view that he would not take no for an answer and simply be told by the General Manager, "You can be assured, I have it in writing, that David Young is going for the following reasons." Would you not concede that is a perfectly probable scenario?

Mr Young: I can't accept that just because the Mayor demands something which is a staff personnel matter and confidential would be handed over by the General Manager to the Mayor just because he insisted. I mean I never gave him anything he insisted upon.

Mr Bulford: You did him a report didn't you, that you went in and did on a Public Holiday?

Mr Young: Sure and as I said before, whenever he demanded things what I did, as I would do for any Councillor, is actually say, "Tell me what it is you want and if it's reasonable then I'll do it." The reason I went in and followed that up is because I had made statements to the Mayor at that time saying, "Yes we did everything strictly by the book," and I was aware we'd done advertising, I didn't know how much but I knew we had. So I actually for my own sake, I wanted to make sure that I was correct …

Clearly, Mr Young had not been subjected to the pressures that the General Manager was, and perhaps he did not fully realise what impact they were having.

Mr Young later told us this about his relationship with the General Manager:

> Mr Bulford: What is the nature of your relationship with her? Would you say you get on well?
>
> Mr Young: Yes, very well.

He later added:

> Up until the day I physically left the place I think it would be fair to say that our relationship was perfectly amicable. We had always co-operated.

Our questioning continued:

> Mr Bulford: So it is quite clear, therefore, that any allegation that you may have left because of any problem you had with her would be totally and utterly untrue?
>
> Mr Young: Yes and that's why in the memo I actually made that point. Obviously that memo was written in a half hour after I suppose an emotional discussion and if I'd thought about it I would have written it a little bit differently, but that's beside the point. The only thing that the General Manager might have had any control or influence over was whether or not she re-appointed me to the position and I believe she had the power to do so, but that never impacted in any way on our relationship while I was working there.

Ms Carol Logan, Council's Manager Human Resources, also told us that Mr Young:

> in a conversation I had with that person, was quite specific in terms of the impact that Councillor Hall was having on him personally, and his ability to conduct his role professionally, and to the level that he would.

3.12 Conduct towards Chris Young

Mr Chris Young was, at the time of our interview with him, Council's Director of Planning and Environment, dealing basically with the policy and planning control side of planning matters, as opposed to the development and other applications coming into Council for determination. His employment history is set out at section 3.5 of this report. It goes back 20 years with this Council.

We asked him about his relationship with Clr Hall before he became Mayor:

> Mr Bulford: In this period pre-September last year was there any particular occasion where you personally had a run-in, if I can put it that way, with Councillor Hall?
>
> Mr Young: I had run-ins with Councillor Hall on many - on many occasions.
>
> Mr Bulford: So how would you say, bringing things up to September, but just before the election, how would you say your relationship was with Councillor Hall? How would you describe it?
>
> Mr Young: I think that the - we had - we had a working relationship whereby I knew fairly

well the way in which he would react, so at any particular time when he was - he was asking a question which I thought was quite reasonable for any Councillor to raise, and I would give the information, I had an expectation that at some stage or other that there would be a threat or some form of harassment would come into the conversation.

Mr Bulford: And that expectation came as a result of previous experience, is that correct?

Mr Young: That's correct. And so it meant that I would still seek to answer his questions and try and do it on a somewhat relaxed and jovial atmosphere with him to try not to be confrontationalist with him, to - so he would spark off into a particular - - -

Mr Bulford: Because presumably confrontation sparked confrontation, did it, with him?

Mr Young: It did. In some cases we found that - I certainly found that if I stood up to him and questioned him, and there certainly were a couple of times in the past when I - when I certainly lost my temper with him and certainly yelled at him after he'd made some quite scurrilous statements, and that in some cases settled him down. And he would then - - -

Mr Bulford: But not always?

Mr Young: Not always, no. No. Sometimes it made it worse.

Chris Young was the author of or co-signatory to various complaints or memos of concern about Clr Hall's behaviour that, with his consent, were copied by us to Clr Hall by way of providing particulars of the complaints and allegations against him. Before we dealt with those, however, in our interview with Mr Young, we asked him whether there were any other comments he wished to make about Clr Hall's behaviour towards staff, or he in particular, since Clr Hall became Mayor:

Mr Young: Some of the instances that aren't in that particular list that you went through are fairly regularly occurring problems. There's a Residential Strategy Task Force meetings that meet every Monday to deal with a number of issues, not necessarily all the matters with the residential strategy itself, and I've certainly found myself to be the brunt of a number of accusations and humiliations and intimidations that have occurred at that meeting, from the Mayor in particular. … generally they are to the issues of why we haven't done something, why is it specifically - that I have done something here - without any warning. Quite often it'll be things that we don't have anything to do with. Not the responsibility. And he will seek to target myself or somebody else in the team.

Mr Bulford: Would you say that what he's been doing on those occasions is either directly or inferentially criticising staff for their level of co-operation with the Council? Or lack thereof?

Mr Young: Yes, but I think it goes into a different area as well. It's been my impression there that if somebody - if somebody has contacted him and made a statement, then if that person has - - -.

Mr Bulford: When you say "somebody", you mean a staff member?

Mr Young: No, I mean a member of the public.

Mr Bulford: Member of the public, okay?

Mr Young: Or a resident action group or something. Somebody like that. And they happen to be at that particular meeting, he would take the opportunity to raise it and criticise us in public without any reference to us, and in many cases - - -

Mr Bulford: And have you actually seen that occur yourself as a witness first-hand?

Mr Young: Yes. Yes, I've seen it happen to myself, I've seen it happen to the Communications Officer, I've seen it happen to the General Manager, and - and other of my staff members - - -

Mr Bulford: And would you say it's a very frequent occurrence?

Mr Young: It was a very frequent occurrence, it hasn't been of late. In the last - - -

Mr Bulford: Can you offer any views as to why that change has happened of late?

Mr Young: My own personal view is since the Investigation has been announced, that he has sought to change that behaviour and it's certainly nowhere near as frequent as previous.

Mr Bulford: It goes on still, though, every now and then is that correct?

Mr Young: It goes on …

In a written submission to our Investigation Clr Anderson stated:

> In Task Force meetings he [Clr Hall] baited Chris Young in public, and one day he kept riding him to where Chris pushed his chair back and started to say he had had enough. I was forced to intervene to save the situation.

In our interviews with Mr Young he was unable to say when this might have occurred and had no particular recollection of such a particular incident. As his evidence above notes, however, he did tell us that there were various occasions at Task Force meetings where he was goaded or whatever by Clr Hall and that:

> I try and put them all in the background and sort of just - and just get on with it.

Mr Young drew our attention also to a memo of complaint he wrote to the General Manager on 11 February 2000 about the conduct of Clr Hall in a telephone conversation he had with him at approximately 9.30 am that morning. One of the several issues raised during that conversation was Clr Hall's demands that Mr Young not give priority to working on a plan of management for the Wade Lane Carpark (behind the Council offices), but should give priority to matters at St Ives, the Ward Clr Hall was elected in, and in particular to a plan of management for the St Ives Shopping Centre carpark.

In the memo Mr Young said to the General Manager:

> [Clr Hall] continued with a claim that we were doing a Plan of Management for Wade Lane Car Park as top priority because staff had a special sticker scheme for car parking. I said I did not know about it and he claimed as a member of CMT [Corporate Management Team] and I must as it was CMT endorsed and it would be raised with the investigators.

> I said we were doing it only as a priority as Rotary Markets were due to have the lease renewed. He became heated and stated Rotary are not important. His issues for St Ives are top priority and again the secret staff sticker scheme. I again said I knew nothing of it and priority was because of the lease.
>
> He listed a tirade of matters on St Ives and how Mr Glendinning and his staff had done things and messed up the area and he had photos of accidents happening.

In our interview with Mr Young he told us that there was no "secret" (the word used by Clr Hall) sticker scheme, indeed no such scheme at all. He said, "The only sticker system that the Council has is a red and green sticker for the ability to park in the Council car park behind the Chambers". He also told us that he had made enquiries of both Mr Darren Condon, Council's Director Finance & Corporate Services, and the General Manager about the alleged sticker scheme for staff, and both said they knew of no such scheme. We then asked him if he had told Clr Hall about this, but his reply was:

> Mr Young: No I didn't. No.
>
> Mr Bulford: Is there any reason for that?
>
> Mr Young: Because it prolongs the confrontational aspect with him. You get back and you - when you tell him that he's wrong, it opens it all up again.
>
> Mr Bulford: Let sleeping dogs lie?
>
> Mr Young: That's right.

In his memo to the General Manager Mr Young went on to add:

> I had sent him a memo stating that the top priorities for our limited resources on plans and management were certain car parks and the reasons behind that, mainly because there are leases. He said that he wanted that St Ives one to be undertaken as a top priority.

We then asked him:

> Mr Bulford: Who normally sets the priorities on this sort of work amongst the staff? Is it a matter for you as the Director and the General Manager or do you act according to resolutions of Council as to what work they want you or what tasks they want you to deal with first?
>
> Mr Young: Well both normally. We would look at the - at our management plan to see whether there was any specific ones that the Council had - we would act upon Council resolutions first…
>
> Mr Bulford: Are there any Council resolutions in this area saying which - - -
>
> Mr Young: There is - - -
>
> Mr Bulford: Which proposals or issues have priority?

Mr Young: Not at that particular time. There was a Council resolution that made the St Ives plan of management a top priority.

Mr Bulford: There was?

Mr Young: Yes.

Mr Bulford: When was that?

Mr Young: That was just before this - the telephone call - I think it might be the Tuesday evening before that. I had sent him the memo on the basis of saying that these other ones - I accepted Council's resolution. We'll undertake that matter, I've got the matter in train, but be made aware that these other ones will be delayed because this is a top priority.

Therefore, if by his memo Mr Young was seeking to suggest that Clr Hall had sought to direct Mr Young and his staff as to work priorities in breach of section 352 of the Act, or a similar concept, and we are not sure that this is what Mr Young was necessarily complaining of, it seems clear that Council had set the priorities by resolution, as it was entitled to do. As the answer to the last question suggests, all that Mr Young was putting was that Clr Hall was failing to understand the implications for Council in terms of the impact that giving such priority may have on other matters it and its staff needed to attend to.

However, we also asked Mr Young about the statement he noted in his memo to the General Manager about Clr Hall allegedly referring the matter to us in our Investigation:

Mr Bulford: Now what's he mean by, "It would be raised at the investigation"? I presume he means "Gary's and my Investigation"?

Mr Young: That's correct. And I took that as - I took that as a threat against me to say that I would be - that I would be under investigation or a challenge because I didn't know about a resolution of the Council. It's a fairly common sort of tactic that has been used.

Mr Bulford: So the approach that he's undertaken towards you that's resulted in this memo is vintage Councillor Hall, is it?

Mr Young: It is. Very much so.

3.13 Conduct towards Ian Canham

The following particulars were provided to Clr Hall on 14 February 2000 of his alleged conduct towards Mr Ian Canham:

Clr Hall's alleged conduct towards Mr Ian Canham, Council's recently resigned Group Manager Operations, has been the subject of a number of complaints and allegations referred to the Departmental Representatives for the purposes of this Investigation.

Much of these relate to alleged demands by Clr Hall towards Mr Canham for information or action, which whilst on occasion may be accompanied by the word “kindly”, are said to be delivered with or accompanied by unequivocal enmity and unpleasantness. Such demands are alleged to have been unreasonable both in their manner of delivery and in the time in which it was expected that they would be complied with (urgent and “now”).

The service log book for the Mayoral car figures prominently in this regard, and we have been supplied with copies of correspondence (falling in particular in the period between 19 October and 25 October 1999) about this matter. See eg memo from Clr Hall to the General Manager of 19 October. On the other hand, it is noted that most of the demands are understood to have been made over the telephone or in person, both to Mr Canham and to other staff. For example, a request from Clr Hall to Council workshop foreman Mr Gary Scott at 7.30 am on 18 October 1999, when it was allegedly implied by Clr Hall that someone had stolen the manual, after Mr Scott had asked Clr Hall if he had found the service manual as he had noticed it on the rear seat of his car and Clr Hall replied that it was only the folder.

It is alleged that earlier, at approximately 4.15 pm on 15 October 1999, Mr Canham spoke on the telephone with Clr Hall whilst the former was in his car. It is possible that this call was one transferred from the General Manager. The conversation is alleged to have gone as follows:

Hall: Where are you, on the F3 in one of our utes?

Canham: No, Mr Mayor, in my ute.

H: One of our utes.

C: No, Mr Mayor, my ute – I own it.

H: Oh so you own your own ute?

C: Yes, Mr Mayor, I own my own ute.

H: Oh, well, where is my Service Log Book?

C: Mr Mayor, the Service Log Book was on the rear seat of your vehicle yesterday.

H: No, that was the owners manual.

C: Mr Mayor, I have been informed by the workshop that the Service Log Book was on the back seat of your car yesterday.

H: Don’t worry about it, I will ring GMH and give them the Vin number and get a new Service Log Book.

C: Thank you Mr Mayor. [Mr Canham then terminated the call]

Notwithstanding this it is alleged that at 9.55 am on 19 October 1999 Clr Hall told Mr Canham that if he did not have a Service Manual for the Mayoral car that day Clr Hall would report Mr Canham to the Chatswood police.

It is alleged that Clr Hall made other demands for the production of the log book during the course of the day. He allegedly spoke to Ms Lynette Wagland, staff member, at about 3.50 pm on the same day about the book. See her file note at Attachment 2.

[That file note it is recorded that Clr Hall informed Ms Wagland that “if I did not have a Service Manual for the Mayoral car today he would report me to the Chatswood Police. I have no idea what the charge would be.” She noted that she had told Clr Hall when she saw him later in his office at or shortly after 3.15 pm that afternoon, when she handed the

Service Manual to Clr Hall that this book was the same book that had been in the car all along. Ms Wagland further notes that she had written and spoken to the Mayor to tell him this "on no less than 4 occasions over the past fortnight to no avail other than to receive verbal abuse". She noted that Clr Hall spoke to her gruffly on this meeting in his office and snatched the log book out of her hands.]

On the instructions of the General Manager Mr Canham went shortly after 3.15 pm that same day to the Mayor's office and found Clr Hall with a Mr Geoff O'Rourke and a Mr Ron Adams. Clr Hall is alleged to have summoned Mr Canham into his office and said in a gruff voice, "So this is the book". Mr Canham replied, "Yes, Mr Mayor, this is the book". Clr Hall is alleged to have snatched it from him and Mr Canham said, "The Service section is at Chapter 12 at the end of the book, the Owners Manual". Clr Hall is alleged to have replied, "So this is the same book as I have in the car". Mr Canham said, "Yes, Mr Mayor" and Clr Hall allegedly said "So all the servicing should be in that?". Mr Canham then said "Yes Mr Mayor". It is alleged that this information had been both orally and in writing imparted to Clr Hall on no less than 4 occasions over the past fortnight to no avail other than to receive verbal abuse.

It is further alleged that the conversation continued:

H: I do not take too kindly to you organising a Union meeting yesterday morning.

C: I did not organise a Union meeting.

H: Mr Kelly said that you did. I am not too impressed with this, so you let Mr Kelly know, as there were no Union delegates there.

C: Yes, there were.

H: Well, I am not too impressed with you sir.

It is appropriate at this juncture to note a number of complaints over the conduct of Clr Hall relating to his conduct towards staff in expressing his concerns over the alleged state of the Mayoral car, in particular in relation to its cleanliness, and the state of repair of its airconditioning and brakes. Our attention has particularly been directed in this regard to a report in the Daily Telegraph of 25 October 1999 and comments attributed to Clr Hall therein. These (inter alia) led, so we understand, to the involvement of the MEU and a meeting or meetings between Clr Hall and the Union and the imposition of workbans by the Union. We understand that Clr Hall will already be aware of the details here.

It is further alleged that at 9.00 am on 25 October 1999 Clr Hall telephoned Mr Canham and the following conversation took place:

C: Good morning, Mr Mayor.

H: Have you read this morning's paper?

C: Yes.

H: Well, I want a pot hole at the Village Green Parade fixed today. I also want those hoops in place near the skate board rink in place today. You've had a week.

C: I have discussed this with David Young to have the task funded.

H: No – I want you to do it and I want it done today. I also want a report on my desk regarding the unconstitutional union meeting that was held last Monday morning. It's in the minutes that Mrs Goff took that it was a union meeting.

C: No, it wasn't. It was a central meeting point for the staff in the yard to meet with you.

> H: Well, I want a report on it on my desk today and I want to know how it was organised over the weekend.
>
> C: OK Mr Mayor. [Mr Canham then terminated the call.]

We have inspected copies of contemporaneous file notes made by Mr Canham which support the above phone calls.

Mr Ian Canham was for 21 months the Group Manager Operations at Ku-ring-gai Municipal Council. This entailed the supervision of nearly 200 outdoor staff and services. He retired on 31 January 2000 due to ill health. Prior to his taking up his position at Ku-ring-gai he had worked at the Maitland Council and before that at the Port Stephens Council. He told us that he had a total of 19 years' experience in local government.

Mr Canham's position, despite the title, was a senior staff position equivalent to that of the other Directors.

We asked Mr Canham about his early experiences with Clr Hall in the period before he became Mayor. He told us he was:

> abrasive, rude, obstructionist. He was - you know, I could tell from day one, I could tell that he was a problem … but he was kept under control by other Councillors because on most occasions the vote went 9-1 at anything - at any Council meeting.

One example of Clr Hall's, in our view, improper pursuit of Mr Canham, and another Council employee, Mr Brian Mazur, the Manager responsible for Council's motor vehicle fleet, from the period prior to Clr Hall's Mayoralty, but one which we consider it necessary to examine to understand what has happened after September 1999 – given that Clr Hall continued to pursue the same issues constantly – caused the General Manager to write the following memo on 28 April 1999 to Clr Hall:

> Mr Canham informed you on 16 April that Plant No. 1196 went to Enfield Auction House on 12 April. Yet on 19 April, you have again questioned the process and made a statement about the staff (Mr Canham or Mr Mazur):
>
> "Why did he mislead Councillors".
>
> Both Mr Canham and Mr Mazur have seen me individually about your allegation and both are very concerned about it. Mr Mazur has written to me about your comments. …
>
> Again, your allegation that these staff 'mislead the Council' without foundation is totally unacceptable.
>
> Both staff have requested from you a written apology for making the false allegation and the angst that such allegations caused them.
>
> I am asking you to provide that written apology to both staff members.

Mr Mazur's memo to the General Manager said, amongst other things:

> … Under normal circumstances I would accept any request/comment from the councillor, through the Group Manager, as part of my job. However the comment, by councillor Hall

> … I interpret as suggesting that I have lied to councillors regarding the information that I had provided as to the disposal of the vehicles. The statement may be defamatory …
>
> I find the councillor's comment offensive and an attack on my integrity. It is one thing for the councillor to seek relevant information but quite another to make baseless accusations even after receiving accurate and truthful information. …

We asked Mr Canham about the matter in our interview with him:

> Mr Canham: This was over the previous engineer's car and it had actually gone to auction.
>
> Mr Bulford: This was Mr Tucker, was it?
>
> Mr Canham: Yes. It had actually gone to auction and Mr Tucker attended the auction and actually purchased the vehicle, in open auction, which is - and he wasn't an employee of Council, so - - -
>
> Mr Bulford: He was perfectly entitled to do that?
>
> Mr Canham: Well I think in Australia we're allowed to do those sorts of things.
>
> Mr Bulford: Yes. Councillor Hall perceived that there was some sort of underhand deal and special price to Mr Tucker, as I recall?
>
> Mr Canham: I believe that not to be the case. He did think there was an underhand deal done, but I can recall the figures fairly accurately. We'd put a reserve of 27,000 on the vehicle and it gained - it reached 29,000 at the auction, which was $1500 dearer than the market place, so - I mean Council did quite nicely out of it, thanks very much.

Mr Canham told us that Clr Hall never did apologise. This was corroborated by the General Manager. We asked her whether any steps had been taken to follow this up, and if not why not:

> Because we knew he wouldn't apologise and he never apologises for any of this. He will never accept responsibility and apologise for anything that he's done.

Mr Mazur was also questioned on the matter in our interview with him. Despite the fact that Clr Hall's letter of 19 April, in which the "misleading" accusation is made, is worded in such a way that the allegation is clearly against Mr Canham, Mr Mazur told us that he took offence because he was the one who supplied the information that was passed on to Clr Hall that was allegedly misleading. Mr Mazur said:

> I wrote to the General Manager saying that I felt that that was a personal attack on my integrity and that the information we had given was correct that there were no problems with it and I felt that if that letter was then made public that I may very well seek legal advice.

In our interview with Mr Canham we asked him about his experiences with Clr Hall after he became Mayor. He told us:

> Mr Canham: He became more aggressive, dictatorial, demanding of people, not only myself but people, and that was as of the elections on the 27th. He brought out a Mayoral Minute which was, you know, five or six pages long. I haven't got a copy of it, but it was just demanding things to be done his way, the Hall

way. And he was going to do - overrule everything and he was running the show, as far as he was concerned.

Mr Bulford: Would you say that it would be correct to say that he got out of control?

Mr Canham: Totally.

Mr Bulford: That the level of his behaviour just exploded relative to - - -?

Mr Canham: Yes.

Mr Bulford: Even though it was bad before?

Mr Canham: His hat sizes grew 10 - by 10 fold that night.

According to the evidence before us, Clr Hall's conduct, particularly in relation to his many requests for information, has been a matter of especial concern in terms of his impact on and dealings with Mr Canham. This is apparently because many of the issues in which Clr Hall has seemingly had particular interest are ones falling within the areas of responsibility of the Manager Group Operations, such as motor vehicles and waste collection.

We asked Mr Canham:

Mr Bulford: In his requests for information did you find that there might be repeat requests for the same information from time to time?

Mr Canham: Yes.

Mr Bulford: Often?

Mr Canham: He would either - he would ask me several times the same question or ask others the same question, to see if he'd get the same answer.

The evidence of various witnesses set out at a number of places in this report corroborates and demonstrates this. The question of Clr Hall's repeated and unreasonable demands for information is dealt with in summary or overview form, bringing together the evidence of a number of witnesses, is at section 6.6.2 of this report.

The issues over the service log book are considered at section 3.27.2 of this report. Those over the state of the Mayoral car dealt with at section 3.27.1 of this report.

Clr Hall's reply to the particularised allegations as to his conduct towards Mr Canham was initially to state merely:

The allegations contained in this segment are also with respect emotional and general.

Demands were made for further particulars and our approach to such requests has been discussed previously at section 2.7 of this report.

3.14 Conduct towards Ian Glendinning

Particulars of Clr Hall's alleged conduct towards Mr Ian Glendinning, until 6 April 2000 Council's Director Environmental & Regulatory Services, and one of a small number of senior staff members, were provided to Clr Hall on 14 February 2000 in the following terms:

> This is an instance of long standing alleged animosity and conduct towards Mr Ian Glendinning by Clr Hall, but continuing and escalating since the Mayoral election of 21 September 1999. Such conduct and concerns have in particular been especially brought to the attention of the Departmental Representatives by some Councillors, whom we do not consider it relevant to name, when the conduct of Clr Hall towards no other employee of Council, other than Ms Bignell, has been so singled out. This conduct has allegedly left an indelible scar on Mr Glendinning and has contributed in no small way to his decision not to apply for renewal of his contract when it expires on 6 April 2000.
>
> It is alleged that Clr Hall has continuously made allegations about Mr Glendinning's character, honesty and skills. These are understood by the Departmental Representatives to have led to a number of inquiries and investigations by the Department of Local Government, the Independent Commission Against Corruption and the Ombudsman. None is alleged to have come to any outcome which entailed a finding in favour of Clr Hall's allegations.

Mr Glendinning was a Council employee for nearly 12 years, commencing July 1988. He held various senior staff positions virtually equivalent to that held under the title mentioned above.

These particulars prompted the following reply from Clr Hall, through his legal adviser, Mr Robert Dunn, when replying to these particulars:

> *Clr Hall entirely refutes the attempt to make him a scapegoat for Mr Glendinning's future plans and/or decision not to apply for renewal of his contract when it expires on 6 April 2000*. [Mr Dunn's emphasis]
>
> In a matter of such alleged seriousness it is entirely inadequate and, indeed improper, that Clr. Hall should be asked to respond without a direct statement from the complainant himself. Clr Hall does not believe that Mr Glendinning, despite the serious differences that exist between himself and that Council officer, would be reticent or wish to hide behind general comment from others in relation to any alleged complaint. …
>
> … Clr Hall declines to make any further comment unless and until a Statutory Declaration is provided setting out in detail Mr Glendinning's complaints. …

On 4 April 2000 we advised Mr Dunn that:

> So far as concerns alleged conduct of your client towards Mr Ian Glendinning, we provided to your client, in that statement, a full statement of all particulars as were then available in relation to such allegations. We particularly note that we advised you that the alleged conduct of your client towards Mr Glendinning was raised with us as a matter of particular concern by some Councillors. We said nothing in that statement to indicate or suggest that Mr Glendinning was the complainant, or even one of the complainants, who made such allegations.

We must make it clear that the particulars of the allegation, that the conduct of Clr Hall was allegedly in no small measure a contributing factor to Mr Glendinning's

decision not to seek a renewal of his contract, were provided by us to Clr Hall in good faith from the information then available to us. It should be noted that no complaint from Mr Glendinning about Clr Hall's conduct towards him was provided either directly or indirectly to us. Mr Glendinning did lodge written submissions with us for the purposes of our Investigation. These in fact arrived after the original particulars were provided to Clr Hall on 14 February 2000. Mr Glendinning put it to us that:

> Mr T Hall has been an alderman or councillor during all of my period of employment. It has not been a comfortable association. I have always found his behaviour objectionable and exemplified by his constant use of threats, false allegations, vexatious complaints and belligerent attitudes.

Mr Glendinning also said in those submissions:

> My current contract of employment ends on 6 April 2000 and I have not sought fit to renew my contract, however it is likely that if the General Manager had seen fit to offer an extension of the contract I would have agreed. [Emphasis added]

Therefore, it is clear that on the statement of Mr Glendinning himself, we must find that Clr Hall's conduct towards Mr Glendinning was not a contributing factor, as was alleged. Nonetheless we must note that we do find it extraordinary that these particulars elicited the outburst, a sustained outburst against Mr Glendinning, particularly when we made it quite clear at an early stage that Mr Glendinning was not necessarily the source of the allegations. This response we take to be corroborative of itself of the vitriol in the relationship, in particular on Clr Hall's part, between he and this former Director.

We also note the following from a letter that Mr Dunn wrote to us on 5 April 2000:

> We adduce from the comments which you now make that all you have in relation to these allegations are hearsay comments by some Councillors and no complaint from Mr Glendinning himself. The allegations that were previously put were generalised and mentioned no specific incident. In that form they were entirely unsatisfactory and any suggestion that was previously made, namely that Mr Glendinning was leaving because of my client, was absolutely refuted. As we stated, Mr Glendinning had demonstrated that no [sic] only was he able to look after himself but he had not hesitated to criticise the Mayor, Council and other Councillors even on a public basis. Further, it may now be noted that Mr Glendinning is to receive some undisclosed substantial payment from the Ratepayers of Ku-ring-gai Council through the generous terms of his Contract. However, this information has not been made available to Councillors as the democratic representatives of the Ratepayers but remains a secret between the staff member and the General Manager. …

The terms of section 339 of the Local Government Act 1993 and clause 31 (1) (b) of the Local Government (General) Regulation 1999 are considered by us at section 6.6.3 of this report. Suffice it to say at this juncture that there is no requirement that the General Manager had to disclose this information to Councillors on or before 5 April 2000.

Mr Dunn returned to the question of particularisation of the allegations as to Clr Hall's conduct towards Mr Glendinning at some length when we came to interview Clr Hall as a witness in our Investigation. Some of the same themes noted

above were repeated, despite what we had already advised Mr Dunn in writing as to whether or not Mr Glendinning had himself lodged a formal written complaint against Clr Hall. In fact, as noted in our letter to Mr Dunn, most of the allegations or expressions of concern about Clr Hall's conduct towards Mr Glendinning came to us, unprompted, at a very early stage in our Investigation from a number of Councillors. We shall come shortly to the evidence obtained by us on that score from Councillors as witnesses before our Investigation.

First, however, we note the following comments or submissions put to us by Mr Dunn before our interview with Clr Hall formally commenced:

> Mr Dunn: Now if there is a complaint regarding Mr Glendinning, that not only ought to be in writing and put to us on the basis of the undertaking you gave us on 29 February, but it also should be put on the basis that no doubt Mr Glendinning, if he's made a complaint, will have consented to that complaint being passed on. Because we have a respect for Mr Glendinning in this regard. We don't believe he'd ever hide behind someone else, he would be more than up front in saying if he was making a complaint or not.
>
> Mr Bulford: All witnesses, I've indicated to you, who have been called before us because of complaints made, have been asked as to whether they wish or do not wish copies of their documents to be provided. That's as far as I will say. No witness is compelled to consent, and I do not propose to compel any witness to so consent.
>
> Mr Dunn: Certainly. But if there is a complaint and an allegation by a senior Council officer at that level and you made it - - -
>
> Mr Bulford: That applies to people whether they are senior Council officers or lesser mortals in the organisation.
>
> Mr Dunn: Well lesser mortals aren't necessarily as articulate and as trained in putting things down in writing and we're quite tolerant towards the lesser mortals, let me tell you. But when it comes to senior Council officers, they are being paid an extraordinary amount of money to be competent in those skills.
>
> Mr Bulford: The amount of money that they - - -
>
> Mr Dunn: Well, it recognises.
>
> Mr Bulford: With respect, Mr Dunne, the amount of money that they're paid is entirely irrelevant as to whether they are or are not compelled to consent to copies of their documents being supplied to your client.

The sustained campaign against Mr Glendinning continued on as late as 25 May 1999 when Mr Dunn wrote to us to allege, on his client's behalf, that Mr Glendinning had improperly engaged in private business, entailing at the least conflicts of interest, before he left Council's employ. Some evidence in support was provided, principally in terms of evidence about the registration of a company in which Mr Glendinning is shown as having an interest or connection. It was also sought to link these accusations to the General Manager in terms of suggesting that she was aware of what was going on and chose not to do anything about it.

However, it was well known, even to us at an early stage in our Investigation, that Mr Glendinning's contract, which was to expire on 6 April 2000, was not to be

renewed and that he had not sought such renewal. It was, so we have been advised by both Council's Manager of Human Resources and the General Manager, common knowledge at Council that Mr Glendinning was going to go into his own business as a consultant on planning and development matters after he left. The General Manager also told us that it was with her knowledge and consent that Mr Glendinning made preparations about setting up the administrative and infrastructure aspects of that business before he left. While he was given time off by her to do this, he in fact took very little time off to attend to such matters.

Part of the allegations also entailed another former employee of Council who is now Mr Glendinning's business partner. However our advice is that this person left Council's employ as early as 26 February 2000, before some of the alleged activities took place, so if anything along the lines alleged took place it may well be that these aspects were attended to by him rather than Mr Glendinning himself. It was also common knowledge around Council that this staff member was going to be Mr Glendinning's partner.

In all the circumstances, we do not consider that there is an issue that requires our further examination or that falls within our Terms of Reference.

Clr Little gave us only limited information about the Mayor's conduct towards Mr Glendinning and merely said that it made him "uncomfortable". We sought further information on this:

> Mr Bulford: And what was it that the Mayor was doing vis-a-vis Mr Glendinning that caused you to be uncomfortable?
>
> Clr Little: Again general tone, that aspect of it.

Clr Bennett's observations of Clr Hall's conduct towards Mr Glendinning were:

> Clr Bennett: He's very aggressive with Ian Glendinning, extremely.
>
> Mr Bulford: More so than with the General Manager?
>
> Clr Bennett: Of all the Council officers, in different ways, I would say that the Mayor is equally aggressive with Glendinning and with the General Manager. … Glendinning is immensely hostile to the Mayor and very aggressive.

Clrs Malicki, Roach and Anderson in written submissions to our Investigation all made a point of Clr Hall's bad treatment of Mr Glendinning. In our interview with Clr Malicki she told us that "he's horrible to him, just terrible". We asked her for more information about this:

> Mr Bulford: What concern is it you have regarding his relationship with Ian Glendinning. Are you able to give us any particular examples of occasions since Councillor Hall became Mayor where you observed that you felt he was treating Glendinning inappropriately?
>
> Clr Malicki: There have been a number of occasions in Council, and I would suggest three or four, where Mr Glendinning has not been allowed, either not been allowed to speak, not been allowed to finish, told to sit down.

Mr Bulford: These are meetings of Council?

Clr Malicki: During meetings of Council with the public present, in front of the whole gallery, so it might even be more than that.

Mr Bulford: That sort of approach from the Mayor, is that worse than was being meted out to other directors, say, or the General Manager or was there anything particularly, vis a vis Glendinning, that was more intense or worse?

Clr Malicki: He's always hated Ian. He's had so many investigations into Ian's Department, you know, and issues that he's been involved in, Waste Management.

Mr Bulford: Is he in charge of the Development Area is he?

Clr Malicki: Yes, Development Control, but also Waste Management. Tony loves Waste Management, he's always been, you know, getting around tips and so on.

Mr Bulford: Yes?

Clr Malicki: Ian is a bit provocative, but Ian will also insist, where he can, on making sure that the Councillors are informed and this is where this has been particularly noticeable. He's tried to say, "Mr Mayor, I have to tell the Councillors that there's a court case on in so many days and we must have a decision on this tonight," …

Mr Bulford: It's not just a question of Councillor Hall refusing to let Glendinning do it, it's the way that Councillor Hall goes about that refusal?

Clr Malicki: Yes, it's really bad news, it's horrible, I've said that before.

Mr Bulford: So is it shouting? Can you give us some details?

Clr Malicki: It's really bullying. The officers have their hands tied, as you know, in Council meetings. They don't speak very often. Hall will only let them speak when spoken to, so they can't sort of "Mr Mayor excuse me can I say something about this," which is what they were able to do in the past with other Mayors.

Mr Bulford: Yes?

Clr Malicki: With Councillor Hall they do not speak.

Mr Bulford: He has made statements, as we understand, to say that staff - "These meetings are not here as a forum for staff to debate the matters. It is the elected Councillors who are here to debate matters." Is that right?

Clr Malicki: But there's no stage that I've seen anywhere where the staff get to talk to Councillors, to talk as professionals to the elected Councillors. In the past we've had great policy meetings where we're all absolutely equals. We would, on odd occasions, have shouting matches, if we disagreed philosophically, not often, but it was really productive. We don't have any of those. The policy meetings even are in the public domain and the staff don't set the issues, the Councillors set them, the staff don't, by and large, give reports.

Clr Roach gave evidence as follows:

I think that Mr Glendinning has in fact, on many occasions, nearly all occasions,

endeavoured to probably try and do the right thing. He's caught in a very unfortunate position, I think, that most people in his position in Councils are, where you've got an Act of Parliament that you've got to administer, you know, whatever it is. You've got people coming in off the street wanting to do developments, you've got - they've got architects, town planners, people who understand what the Act is. He's got to be able to operate within the Act, he's got to put forward reports that comply with the Act. He's got Councillors who have been elected because they are going to stop - because people want a development down the street stopped. And quite often these people are not aware of what the Act is or, you know - and so it's very easy for somebody like Councillor Hall to manipulate residents to make out that the reason why developments take place is because of, you know, the type of (indistinct) that say Glendinning doesn't know his job or that there's a conspiracy to side-step the general public and the Councillors by the staff. And that's - and Glendinning cops most of that flak.

…

To the point where if you want to ask Glendinning a question, quite often whenever Glendinning or even sometimes the General Manager was asked, Hall would not allow the question to be answered.

The evidence shows that the treatment of Mr Glendinning by Clr Hall is of long standing and pre-dates Clr Hall's assuming the position of Mayor. Ms Santens, the secretary to the Councillors, gave evidence of her witnessing Mr Glendinning being dressed down by Clr Hall before he became Mayor. This evidence is quoted at section 3.17 of this report.

Mr Glendinning himself gave us the following evidence:

Mr Bulford: Speaking in a fairly broad brush way, I don't want to go into too much detail here, but what can you tell us of the nature of your relationship and dealings with Councillor Hall in the period before he became Mayor?

Mr Glendinning: In the broader sense, extreme - you know, a classic Jekyll and Hyde personality. Generally extremely uncomfortable relationship characterised by the use of bullying tactics, threats, innuendo, vexatious complaints, negativity, creating issues where there are no issues, generating enormous disharmony both between elected officials and the Council staff, always being a focus of attention, many many times being the only person that's opposed to a proposal and then carrying it on for years afterwards, even though the matter had been finished and completed and determined.

Mr Bulford: Would you say that the principal driver of that sort of conduct on the part of Councillor Hall was the issue rather than the man?

Mr Glendinning: No.

Mr Bulford: I mean - - -

Mr Glendinning: No.

Mr Bulford: The man being you, was it personal to you?

Mr Glendinning: A lot of it was personal, yes. In my view. A lot of it's been personal.

Mr Bulford: Could some of it have arisen out of the mere fact that at least from the early days you just happened to be the person in charge of [Development Control] matters and matters on which Councillor Hall disagreed?

> Mr Glendinning: I think it's probably more to the point that I was one of the few people that was prepared to stand up and not take his abuse and bullying tactics. I think I said to you in my first letter to you that my first contact with Councillor Hall was - I hadn't even met the guy, I was told about him, and he was abusing a member of staff in the middle of the office area, outrageously, and I just walked up to this bloke and said, "That doesn't happen in this office. Who are you?" "I'm the Deputy Mayor" "Big deal. You don't do this in my office. Please leave".

Mr Glendinning gave us evidence of his humiliation at the hands of Clr Hall at Council meetings:

> Mr Glendinning: ... "Sit down. I don't want that information. Only speak when you're spoken to." And not like in a nice, polite way, like, "Sit down", and - - -.
>
> Mr Bulford: But he does that on occasions to Rhonda Bignell too, doesn't he?
>
> Mr Glendinning: Yes. Yes. Not only me. As I said, I wouldn't necessarily say he's directed all his bitter and twistedness to me. He's - just the - just the - every damn thing that you touch, it's like there's an issue attached to it. Somebody has done something wrong, you know. We're all corrupt. We're all taking bribes. We're all telling lies. And the way that he makes outrageously misleading statements, like he'll quote part (a) of a section of an Act, but not part (b), which provides all the qualifications to part (a). Or he'll tell people, like he attempted to do at the last Council meeting, that the provisions of the Ku-ring-gai Planning Scheme Ordinance prevail over the State policy.

The General Manager's evidence to us was corroborative and she summed up the position in terms of telling us that in her view Clr Hall has been "very rude to him". She also told us:

> What he actually does a lot is that the Councillors will ask a question, "Can we ask Mr Glendinning or Mr Young this?" "No, I'll answer that." So he will answer it.

She later told us:

> Now Ian's sort of sitting there and I have to say a bit like a caged lion saying, "Mr Mayor can I speak, that is not correct." "No, no." There were certainly a number of meetings and I can't recall which ones where he wouldn't let Ian speak at all. "No, I'm not asking you Mr Glendinning", and Ian's saying, "But Mr Mayor I've got to," and a couple of times Ian did get up, even though the Mayor was the Chairman and say, "Mr Mayor, I've got to tell the Councillors that is not correct." "Just sit down Mr Glendinning." So it was really publicly humiliating, it was terrible.

Mr Ian Canham also gave evidence corroborating the evidence as to the conduct of Clr Hall towards Mr Glendinning at Council meetings:

> … at Council meetings it was just disgraceful the way he used to carry on and treat staff. Ian Glendinning, for instance, on several occasions, was asked to - by Councillors to give explanations of some of the development rules and regulations and as soon as he'd start to get up and give the information he was told to sit down and shut up.

Mr Canham confirmed that Mr Glendinning from time to time stood his ground by saying that the advice had to be given but when asked whether he overstepped the mark in his behaviour, Mr Canham's response was:

Mr Canham: No. I think he has to advise Council of the correct procedures to be followed, and it's up to them whether they follow them or not. But if they're not given that information they're making unadvised decisions.

Mr Bulford: Perhaps I didn't make myself clear as to what I was getting at. In standing his ground was he at all discourteous towards the Mayor in insisting on speaking when the Mayor - despite the Mayor saying that he had no right to speak?

Mr Canham: Yes.

Mr Bulford: He was?

Mr Canham: Yes. But that's the nature of the beast. But - and they've known each other for 12 years so - - -

Mr Bulford: But would it equally be true to say that Ian Glendinning gave as good as he got?

Mr Canham: Yes.

Mr Guy Paroissien, Council's Manager Environmental Policy and an employee of Council since 1983, told us that in the period before Clr Hall became Mayor he often had to attend Council meetings on matters relating to his job. We asked him about this:

Mr Bulford: And how did you observe Councillor Hall's behaviour as an ordinary Councillor at those meetings?

Mr Paroissien: He could be quite disruptive at meetings. Sometimes I think - - -

Mr Bulford: Can you elaborate as to what you mean by that?

Mr Paroissien: He used to interject and he'd be quite negative and - I don't know how Ian Glendinning didn't walk down and - I don't know. I don't know how Ian kept his temper over those years. I went for six months and I admire Ian for his patience over the years. You know, Tony Hall used to just sit there and bait him and insinuate things and, you know - - -

Mr Bulford: What sort of things did he insinuate?

Mr Paroissien: Just sort of insinuate the staff were incompetent or, you know, what was the deal or something like that, and he'd sort of mutter things.

Mr Bulford: What, you mean insinuating corruption?

Mr Paroissien: Or - yes, or corruption or incompetence, you know, in relation to reports on building and development matters, and I don't know how Ian kept his cool, I really don't. I admire him.

Mr Bulford: But there were occasions where he fought back?

Mr Paroissien: Ian?

Mr Bulford: Yes.

Mr Paroissien: Well yes, Ian's a pretty forthright and vigorous person and he used to get - throw it back sometimes, yes. I think Ian's his own worst enemy sometimes in that respect.

It is not without interest to note the following passage in the joint Independent Commission Against Corruption and Department of Local Government guidelines entitled *Under Careful Consideration: Key Issues for Local Government*:

> A prime responsibility of council staff is to help councillors make the best decisions. This cannot happen unless staff believe they can give frank advice without fear of reprisal from a senior manager or councillor who may have an opposing position on a matter. Council staff are there to serve the public and must be allowed to give their professional views if they perceive that the public interest requires it. [page 22]

The views of Clr Roach, quoted above, are therefore quite correct on this issue.

It is therefore clear that any attempt by Clr Hall as Mayor or Chairman of any meeting over which he presides to prevent a member of staff, which includes the General Manager and her Directors, speaking up to point out some matter which that person believes the Councillors should be aware of is insupportable and should, in our view, be rightly condemned.

We are aware that Clr Hall's argument is that the staff do not run the Council and the Council Chamber is a place for the elected Councillors only to debate matters. This in our view is equally insupportable. The running of Council is clearly, under the Local Government Act 1993, a joint and co-operative affair between the General Manager and her staff on the one hand and the Councillors on the other.

This whole misguided approach by Clr Hall is we believe but part of his again insupportable proposition that the staff, led by the General Manager, have somehow hijacked Council away from the elected body and the ratepayers, electors and the community. This is dealt with at section 6.6.3 of this report.

3:15 Conduct towards David Lethbridge

Particulars were provided to Clr Hall on 14 February 2000 as follows:

> It is alleged that at Council's meeting of 19 October 1999 Clr Hall demanded that Council's then Manager Internal Audit, Mr David Lethbridge, return to the Chamber and demanded a meeting between he and Mr Lethbridge and the General Manager to discuss the duties of Mr Lethbridge. It is alleged, so it appears to the Departmental Representatives, that the alleged conduct of Clr Hall towards Mr Lethbridge on this occasion and others since the Mayoral election of 21 September 1999 is related to but involves an escalation of conduct alleged to be bullying, intimidation and threats from Clr Hall towards Mr Lethbridge for some years. There is an implication that a decision of Council, at the alleged behest of Clr Hall, to outsource internal audit and management review functions (thereby creating a redundancy in Mr Lethbridge's job as Manager, Internal Audit, and the need for him to be provided with other duties) entails some sort of culmination of a vendetta or campaign by Clr Hall against Mr Lethbridge. Further particulars have been requested of these allegations, and will be supplied to Clr Hall as soon as they are to hand.

Clr Hall's initial written response to these allegations included a denial that the complaint was an escalation of conduct over some years. He said that:

> Quite clearly, this complaint reflects the dissatisfaction of the officer to a valid Council decision.

The complaint was otherwise dismissed as having “no validity to this investigation”.

Mr Lethbridge was a witness in our Investigation. He told us that he had worked at Council for 14 years and currently held the position of Executive Officer, Internal Audit Manager to the General Manager and before that he was the Manager Internal Audit. He had held that position from February 1998 until October 1999, that is to say until after the Hall Council determined on 19 October 1999 to approve an organisation structure presented by the Mayor, in preference to one recommended by the General Manager. On this see section 6.8 of this report.

Mr Lethbridge told us that his new role was not much different from that undertaken before, but with a change of focus of duties.

Mr Lethbridge told us about his relationship with Clr Hall before he became Mayor:

> My dealings with Councillor Hall go back quite a substantial way. You could probably say they go right back to 1987 when he first came onto Council and my first dealings with Councillor Hall at that particular stage which was then Alderman Hall was an attack upon the treasury area as I was the Treasurer at that particular time and it was on the integrity of the treasury staff and myself as the Treasurer to do with investments of Council and an accusation that we must have been receiving some kind of kick back was the words he used because we were not investing with Westpac which was Council's banker. At that particular stage I actually wrote quite a strong memo to the Town Clerk of the day, Warren Taylor, objecting to that inference and saying that the attack on the staff was unwarranted. So the ongoing issues with Councillor Hall have come from there.

The questioning continued:

> Mr Bulford: Now, did Councillor Hall make in subsequent times, that is up until September last year when he became Mayor, other allegations or whatever against you?
>
> Mr Lethbridge: There was continuous attack on my - my abilities, my integrity, my qualifications that every opportunity that Councillor Hall could bring up he would bring up the fact that I wasn't a CPA accountant. I'm actually a member of the National Institute of Accountants, in fact a fellow of the National Institute of Accountants.
>
> Mr Bulford: Yes?
>
> Mr Lethbridge: The management of Council at the time had no problems with my qualifications but he continued in open Council to attack them.
>
> Mr Bulford: Why has Councillor Hall continued to question and attack your qualifications and you over all this time? Is there any reason for it that you'd know or suspect of?
>
> Mr Lethbridge: No, I don't think that he attacked me on a personal basis any more than he attacked anybody else that was management of Council of the day. I believe that Councillor Hall used that type of tactic as a political ploy not as a personal attack even though at the time I did actually take it on board and it did cause me great stress but I continued to maintain a professional air as much as I possibly could. I treated Councillor Hall or Alderman Hall of the

day exactly the same as any other alderman and try to supply him with the information that he required but he continued on reiterating and going over old ground and demanding reports on reports he'd already been given all aspects of the finances - - -

Mr Bulford: So he regularly raised questions not about your capacity as such - I mean in addition to doing that, should I say, he regularly raised questions on financial matters?

Mr Lethbridge: Financial matters demanding to see - - -

Mr Bulford: And demanding information and so on?

Mr Lethbridge: Demanding information which took an enormous amount of time.

Mr Bulford: And would it be fair to say that the information that he received was not what he hoped or wanted to get?

Mr Lethbridge: That's right. Well, the answers that he was receiving were factual answers not the answers that he wanted.

Mr Bulford: Right, so - - -

Mr Lethbridge: There was another dimension to this which I think is very important that you understand. Councillor Hall in 1989, 1990 went through a court case about - under Section 30 of the old Act which was receiving a benefit - a financial benefit as his position of alderman.

Mr Bulford: Yes?

Mr Lethbridge: Council did a trip overseas to Beijing to the International Local Government Conference which was to be paid for by all Councillors. The operations of that process was that we paid - council paid all the accounts and the Councillors were to reimburse Council. That took place on all Councillors bar Councillor Hall who approached me and said that he - his words were, "I'm strapped for cash at the moment. Will you use your delegation of authority to allow me to pay this bill off?" My answer to Councillor Hall was, "As far as I'm concerned you're a ratepayer of the community and you owe Council money. So in that instance I will enter into a scheme of arrangement with you to pay this off provided it's paid by 31 December." I used my delegation of authority and gave him written confirmation of that. Councillor Hall after - yes, being exonerated of that particular charge which the other Councillors pushed and pushed very heavily made a statement - - -

Mr Bulford: It was that arrangement that was the subject of the charge of receiving a benefit?

Mr Lethbridge: Yes, that's right.

Mr Bulford: But it was found not to be - - -

Mr Lethbridge: Not to be the case that all Councillors in fact that went to Beijing received the same benefit and it was considered frivolous I think and discharged.

Mr Bulford: In that case how could it link with his continued pursuit of you on matters?

Mr Lethbridge: He made a statement after that took place that anybody that had any involvement with that particular case he would get rid of and they were the words.

Mr Bulford: Even though he had - that you had in fact given him the accommodation he wanted?

Mr Lethbridge: That's right and - - -

Mr Bulford: It's not as though you denied him or dobbed him in or anything?

Mr Lethbridge: No, no, he - he maintained that anybody that had anything to do with it was responsible for the court case. Now [that] included Councillors as well as staff.

We had been previously aware of the past case concerning Clr Hall and frankly had felt that it was not a matter likely to be relevant to the Terms of Reference of our Investigation. However, given the evidence of Mr Lethbridge as to the key role that case and its fall out had in understanding Clr Hall's conduct towards Mr Lethbridge after Clr Hall became Mayor in September 1999, and moreover, given that, at the very outset of our interview with Clr Hall himself, Clr Hall had quite irrelevantly brought the matter up in response to a simple question (which should have merely elicited a simple yes or no) as to whether he had been in office as a councillor continuously, we have on balance decided to include this evidence in our report.

We had asked this of Mr Lethbridge:

Mr Bulford: So you think that that's an important element in Councillor Hall's attitude towards you?

Mr Lethbridge: Absolutely because he brings it up constantly.

On further questioning, however, Mr Lethbridge agreed that the matter had not been brought up since Clr Hall had become Mayor. Nonetheless, we are prepared to accept that the issue is an important one underlying Clr Hall's relationship with and conduct towards Mr Lethbridge. At section 3.8.3 of this report we have noted the Mayor's own admission of his frustration or irritation with Mr Dick Graham of Abbott Tout for that firm's part in the affair and that it was behind his conduct at a meeting after he became Mayor when he was rude to Mr Graham. It is clear, therefore, on the evidence, that the 1990 affair is a matter which still troubles and haunts Clr Hall some ten years later.

Moving now to the events after Clr Hall became Mayor, we note that Council determined, as we have indicated, its revised organisation structure on 19 October 1999. In that structure the position of internal audit reported direct to the Mayor. This had been a matter of some debate, but the result was as noted from our listening of the tapes.

Council's decision elicited a swift response from Mr Lethbridge, because the very next day he wrote to the General Manager and indicated that as the effect of Council's resolution would be to "halve my duties" he "appl[ied] for redundancy". This claim was reiterated in a further memo he sent her on 25 October. Mr Lethbridge told us:

The response from the General Manager from this said that she believed that the position wasn't redundant; that she said, "I am not going to agree to any redundancy because I

> still require an internal audit function regardless of what the Mayor has said." That she believed that the organisational structure as it stood was ultra vires on those particular issues and she said she had spoken to the Mayor about it on that evening.

However, Mr Lethbridge also told us that as of the date of our interview with him, namely 2 March 2000, his role was still being examined by Council's Human Resources Department and his position therefore still not clarified. In the meantime, on the other hand, by agreement with the General Manager, Mr Lethbridge had taken on other duties, being a special assignment for her in examining business planning and service arrangements in the operational area. He told us that he undertook that role until he was called back to the Civic Management office area "to assist in the public liaison and trouble shooting in that area which I did so straight after Christmas".

Clr Hall has himself sought to get involved in the ongoing discussion of Mr Lethbridge's duties. This aspect is dealt with at section 6.8 of this report.

Mr Lethbridge's final words on the issue were as follows:

> I honestly believe that one of the reasons that his organisational structure was geared the way it was was to bring on either redundancy or a dismissal. Now, it could be argued that I'm being - having a touch of paranoia about that but I still go back to the time that he undertook to get rid of anybody that had anything to do with that case.

Our questioning of Mr Lethbridge also covered other matters:

> Mr Bulford: So with that background of the changes to your role and so on what has been your experience in dealing with Councillor Hall since he became Mayor?
>
> Mr Lethbridge: Well, the experience with Councillor Hall since he became Mayor is that his attitude and his badgering and his bullying type tactics which is verbal bullying has become - became increasingly worse; that he was demanding unrealistic and unreasonable things. He showed a great display of not being in control all the time with the way he treated people. He constantly had people in tears.
>
> Mr Bulford: I'm talking about him towards you.
>
> Mr Lethbridge: And - well, I was involved in that in trying to assist them to cope with it because I guess I was a little bit case hardened.

3.16 Conduct towards Virginia Leafe

Ms Virginia Leafe's formal title as an employee of Council is Corporate Communications Executive. She reports directly to the General Manager in that position. She described her role as the "chief information officer of the Council". This includes the dissemination of information from Council to the community, dealing with the press and organising all major community events. So far as Council's Residential Development Strategy is concerned, therefore, her role was to manage the information flow to and from the community in Council's consultative process with the community in formulating that strategy and its policies on medium to

high density development and such like. Ms Leafe joined Council in April 1998, having previously been employed in a similar role for five years by the North Sydney Council, apparently a fertile source of employees for Ku-ring-gai Municipal Council.

By way of background, we note that within about only one month of Ms Leafe's joining Council she was the subject of a complaint from Clr Hall, ie before he was Mayor, alleging that she had breached Council's Code of Conduct. That complaint and its circumstances had been kept confidential, and it would serve no useful purpose to break that confidence. Suffice it to say that we are satisfied on the evidence provided to us that the complaint was duly examined by the General Manager and determined to be without substance. Clr Hall's own part in the matter was criticised.

We provided to Clr Hall this statement of particulars of other allegations referred to us for the purposes of our Investigation:

> This meeting took place on 25 October 1999.
>
> Clr Hall is alleged to have continuously asked staff member Virginia Leafe inappropriate questions about personal and personnel issues. He is alleged to have asked her about her working arrangements, in the presence and hearing of other staff and Councillors. Ms Leafe is alleged to have felt very embarrassed and upset and felt compelled to leave the meeting. On the way out it is alleged that Clr Hall yelled at her to sit down, but Ms Leafe kept going, with Clr Hall still shouting after

Clr Hall's reply to this was that he recalled the meeting, but that he denied:

> *having "continuously asked inappropriate and personal questions*" of the officer. He did ask her about her working arrangements. However *this was only in the context of the Committee's future meetings and Ms Leafe's availability to attend those meetings*. [Clr Hall / his legal adviser's italics.]

Clr Hall admitted that Ms Leafe:

> walked out of the meeting. This was despite Clr Hall pleading with her:
>
> > "*I'm sorry you've misunderstood me. If you have misunderstood please return to your chair*."
>
> Clr Hall believes that part of the reason for Ms Leafe's over-reaction to his question arose from her resentment at that time to the appointment of Mr Peter Walker as a Public Relations Consultant. Mr Walker had conducted an internal audit and review of the effectiveness of Council's Communication Policies. Mr Walker had made implied criticisms of the way in which Ms Leafe's job had been carried out. Mr Walker had criticised Ms Leafe for not having prepared budgets or programmes. He had found her management was ad hoc. She had treated his audit questionnaire as a personal affront. Her over-reaction to the Mayor's inquiry as above is explained by her resentment to the Mayor for his perceived part in engaging Mr Walker.

Clearly Clr Hall admits that his conduct, or what he said, towards Ms Leafe caused her to be upset and caused her to walk out of the meeting. But he seeks to sweep this aside by saying it was all an over-reaction and resentment.

In our interview with Ms Leafe we asked her a number of questions with a view to testing the allegations about resentment.

Ms Leafe gave us the following statement, during the course of our discussing with her the terms of the Mayoral Minute and the powers granted to the Mayor in it to make statements to the media, as well as of an early instruction to staff about media contact, and a later one correcting the omission of Ms Leafe's position as being one authorised to make such contact, as to which see section 6.3.2 of this report:

> I talked to the Mayor about - a couple of days after he came into office, and we had quite a amicable conversation, I guess, and it was sort of difficult because I find I can't really talk to Councillor Hall, I find him very difficult - a very difficult person to communicate with, just going through a back and forward conversation, that's all. But nevertheless I did explain to him my role and he - he was very wary of my role, and I explained to him what I did, how I - for some reason I think he thought that I was like just worked for particular people, and that's not the case, but that seemed to be his perception. And I explained that wasn't the case. I explained what I do for a Mayor, if necessary. The things that I can do. And he seemed to be quite happy with that. And we went away quite happy. And I don't know, after that things just didn't happen that way.

She also told us of concerns she had with the appointment of Mr Peter Walker as part of the staff assisting the Mayor. We note in this regard that Council had on 19 October 1999, six days before the incident we are examining here, considered a proposed *Policy for the Payment of Expenses and the Provision of Facilities to Councillors*. Council had then resolved to approve the proposed Policy and to place it on public exhibition, as required by section 253 of the Act. Mr Walker was actually never appointed by the General Manager to this position, despite the clear intention that he be so appointed – though, as we note at section 3.31.2 of this report, no steps could be taken to do so until the public exhibition period had expired. Clr Hall, on the other hand, announced to the 25 October meeting that Mr Walker had been duly appointed to assist the Mayor as Public Relations Officer, as well as to carry out a "communications audit" [see section 3.31.2 of this report.]. Clr Hall's advice to the meeting and his fellow Councillors was therefore clearly a misleading of those present as to the true situation. Ms Leafe told us:

> When the Mayor put out the Provision of Facilities and Expenses to the Mayor and Councillors, he built in that, that wasn't there before, a provision for a Public Relations Officer and a part time Protocol Officer to be attached to his office. Now obviously I was very concerned with that. I felt my job was being threatened because he wanted to bring his own press secretary in.

Ms Leafe also made the following comments in relation to some of the work that Mr Walker apparently did in his intended/de facto Public Relations Officer role:

> Ms Leafe: Before that he had been to the - with the Mayor, developed a newsletter for the Residential Strategy Taskforce. Now this newsletter I had nothing to do with. He did this.
>
> Mr Bulford: You'd expect in your role that you would have?
>
> Ms Leafe: Absolutely. And that's why I had these concerns and who's doing the audit ... He had developed this newsletter with the Mayor which was just a media release in actual fact, it wasn't a newsletter, it was a media release, with the Mayor's views. Now, I had grave concerns about that because it was not - -

-

Mr Bulford: But it went out under the banner of the Council?

Ms Leafe: It went out under the banner of the Council. I had grave concerns about that because, first of all, it wasn't reflective of the Task Force.

Mr Bulford: How often - how many times did that go out?

Ms Leafe: Once. It went out to the whole Municipality. … There was a once-off. Then it was stopped because it caused a major uproar on a particular issue. The B2 and the B3 corridor at Turramurra. Major uproar. We had people belting down the Council doors saying, "What are you doing?" The Task Force went, "What are you doing? This isn't an endorsed Council decision." … The information [was] simply inaccurate. So then there were the Task Force members that started to say "Why aren't we using Virginia", you know, and - - -

We should add that Ms Leafe also told us about her reactions to a particular media release, but it was one issued *after* the meeting of 25 October 1999. She also talked about the Mayor's media release on Sunday 7 November 1999, announcing that he was standing aside, and said that she had a "big issue" to raise in relation to it. She said that the media release was written by Peter Walker but she had no knowledge that it was happening or had any input into the matter. She said:

I was a laughing stock of the media the next day. They all rang me up going, "What the hell's going on? Why don't you know about this? This is a joke. Who do we ring now? What do we do?" Like it was so - it was very embarrassing. I mean, I can get over those things, I don't really care, but nevertheless I was being publicly laughed at about my management of the - - -

…

Such an important matter. And no-one in the whole organisation knew about it till we - I was rung up by the media the next day.

We also asked Ms Leafe about the communications audit, which was one of the many matters covered by the Mayoral Minute of 28 September 1999. Her evidence was that this in fact was never completed. The General Manager gave us similar evidence. This is considered at section 6.4 of this report. As to the concept of there being an audit at all, Ms Leafe told us:

I was very concerned that the communications audit must be fair. Very concerned about that. It was my opinion that I don't believe it was meant to be fair, given the Mayor's sort of relationship with me.

She also told us that she felt that Mr Walker did not appear to her to have the right background or experience to carry out the audit. Nevertheless there is evidence to show that Ms Leafe co-operated with the audit and provided information to Mr Walker for the purpose (see section 6.4 of this report).

We have no evidence to corroborate Clr Hall's assertions as to all the findings supposedly reached in Mr Walker's audit, let alone that these were communicated to any of the staff, and in particular Ms Leafe, such that any conclusion could be

reached as to the nature and level of resentment alleged. We are therefore unable to accept Clr Hall's explanations or evidence on this account.

Ms Leafe told us in our interview with her of the circumstances of her walking out, that she was very upset "a rare occurrence for me", embarrassed and crying:

> Ms Leafe: …It's terrible. I was so embarrassed. I walked out of the meeting because he wouldn't sort of stop focusing in on me and then he - first of all he was - if I describe the incident, to the best of my remembering ability. I used to work at the Council, I now work at the Council five days a week. Last year I worked at the Council four days a week and one day from home. I have a young child. And that was - - - … [by arrangement] with the General Manager. … It was approved for me. And the Mayor asked me when was I in the office, because Mondays - the Task Force was on Mondays and Mondays was the day I was not in the office, but I started to come in for the meeting. Well first I wasn't allowed to go to the meetings, I was banned from the meetings, then I came to the meetings because we were discussing communications, and the Mayor asked me could I come into the office all the time, and - after he'd said a few other things that I can't quite remember, and I said "No. I'll take that up with the General Manager".
>
> Mr Bulford: He was saying this in the Residential Task Force meeting?
>
> Ms Leafe: Yes, in front of the whole Councillors and other staff, my peers and all that sort of stuff … he was embarrassing me. So anyway I let that go, I just said that's something I will discuss with the General Manager, but I was getting upset, and then he started going on about the communication part of it, and because he'd bought in another communications person - two, in fact, to do what I would normally do, he brought in Lucy from GHD, Lucy - I can't remember her last name, from GHD, a consultancy.
>
> …
>
> Ms Leafe: …To do the public consultation which I was - I could have done.
>
> Mr Bulford: On the residential strategy, yes?
>
> Ms Leafe: Absolutely, and I just had done a very major project in that myself. But he did that, I perceive it, as purposefully to get at me, to say, "You're not competent at it". He then went on, when I started to talk about the communications - I wanted to listen to the tapes but you have them, so I didn't quite - he started sort of berating me about my professional ability. And then I picked up my things and I walked out. And he said, "Sit down. You sit down, don't you dare leave this meeting. Communications Manager sit down." And I just left, you know.
>
> Mr Bulford: These are the words he used, "Communications Manager"?
>
> Ms Leafe: …Yes. Something - it was to that. And I walked out…I walked down the road and sobbed, and I thought, "Oh this is terrible".

However, we have also listened to the tapes of this meeting, and the following was heard – though we should note that immediately before this there had been a resolution to close the meeting to the public, so it is possible that what the tapes recorded, and therefore what we heard, was what was said when the meeting re-opened to the public:

Clr Hall: Does everyone know Virginia Leafe? … Virginia, the General Manager has appointed Peter Walker, public relations, to come in tomorrow –

Ms Leafe: Mm, mm –

Clr Hall: -- on the communications audit and has also – be my public relations officer, er, as well.

Ms Leafe: Mm, mm.

Clr Hall: [said in a very moderated and conversational tone] On the basis that we've got to get this residential strategy in a newspaper type operation up and running at the end of the week. You are only here 3 days a week, aren't you?

Ms Leafe: No, I'm here 4 days in the office, and one day from home.

Clr Hall: And one day at home.

Ms Leafe: Mm, mm.

Clr Hall: Can you make it 5 days in the office? Or is that your employment contract?

Ms Leafe: I'll talk to Rhonda about that.

Clr Hall: [said as a polite inquiry] Oh, okay, right. So this is your day in the office is it?

Ms Leafe: No, this in not usually my day in the office, but I came in –

Clr Hall: Oh, okay. That's what I thought. Good. Thank you very much for your help. Would you like to talk to the consultation program?

At this juncture Ms Leafe proceeded to do so. Extensive discussion took place on plans for communicating with the community on the residential strategy. These involved Ms Leafe, Mr Chris Young, the Director responsible for planning matters, and various Councillors, especially Clr Little who appeared to question various aspects of the proposals of Council's consultants, Gutteridge Haskins & Davey (referred to hereafter as "GHD"), and of Ms Leafe. It would appear that Clr Hall actually left the Chamber at one stage during the course of these discussions, but re-entered before they were complete. In the meantime, the debate appeared to be co-ordinated by Clr Bennett.

In the course of Ms Leafe's report on the GHD recommendations Clr Hall questioned Ms Leafe as to what her role would be. Ms Leafe replied that she did not know. Clr Hall then said that she would have to be involved in the process "and I ask you to take it on". Ms Leafe responded, "Sure".

The discussion moved to the costs of the exercise and the number of people and hours that would be needed, leading to a seemingly non-commensurate increase in costs. Clr Hall chimed in and said, "This seems to be over the top, frankly, and it must perhaps be designed not for us to accept it". This comment occasioned a number of other people all to speak at once, with the result that what was said, and who spoke, is indeterminable. Mr Chris Young then spoke up strongly and said:

Mr Young: No, Mr Mayor. I'd object to that, because we spent a lot of time working this out about trying how to do it. It's certainly not done on the basis of –

Clr Hall: (said not in a particularly loud voice or shouted) Don't leave the room please.

While the last statement was made by Clr Hall the discussion is heard to continue in the background. It seems that Ms Leafe left at this stage, but no one is heard on tape to say anything further about it, and certainly Clr Hall, whose voice is always clearly heard on the tapes we have listened to, in fact to the extent of speaking over other persons who have the floor, is not heard to say anything further, nor to plead further for her to return or to apologise. No one appears to have batted an eyelid at Ms Leafe's apparent departure.

Were it not for what we have to say next we would, on this occasion at least, have accordingly felt inclined to accept Clr Hall's evidence or explanation, and reject the testimony of Ms Leafe, other than to find that she was in fact upset, even if that was somewhat of an over-reaction on her part.

Ms Leafe's evidence and other probative evidence before us does certainly demonstrate that there was concern and perhaps even resentment at many facets of the Mayoral Minute, including the proposed communications audit. She told us, "I was most certainly worried about the Mayoral minute with a communications audit because I saw it as a direct threat to me. To my job."

We have no real probative evidence, and only Clr Hall's unsubstantiated accusation and supposition, that *this* was what was really behind or *caused* Ms Leafe's walkout and upset. Nor are we convinced that such a conclusion is one that should be drawn by inference from the evidence noted above.

The theme of staff over-reaction is one repeated by Clr Hall in relation to many of the allegations against him concerning his conduct towards staff. We are prepared to accept that there may have been some underlying simmering concern and consternation on the part of many staff, including Ms Leafe, as to what was happening generally at Council in this first month of Clr Hall's Mayoralty, and that what was intended to be achieved by the Mayoral Minute played a large part in that. We are also prepared to accept that this may well have engendered reactions on the part of staff to what might in isolation be seemingly regarded as trivial or minor incidents and that such reactions, if so considered in isolation, might be wondered at. However, we are firmly of the view that each incident must be considered in the context of the big picture, or what was going on as a whole at Council.

In that context any supposed over-reaction, whatever its cause, on the part of Ms Leafe is in our view understandable and excusable. Conversely, Clr Hall is responsible for the consequences of each incident, as well as the collective situation. A responsible employer must have in place systems to cope with the frail and the firm, the sensitive and the insensitive, and so on, and must be cognisant of the need to keep behaviour within such bounds as recognise the spectrum of reasonably likely human strengths, frailties and weaknesses.

Lastly, notwithstanding what we heard on the tapes of the meeting of 25 October 1999, Clr Anderson gave the following sworn testimony to the Investigation:

> Clr Anderson: … in a Task Force Meeting you'd sit at a table like this with about 15 people in the room. There was a lady down there, I think from memory now it was Virginia Leafe, I know it was a lady and he harassed her to the stage where she stood up and left the room. It was getting to the stage where I felt someone had to stand up and hit him because it was very bad.
>
> …
>
> Mr Bulford: What sort of harassing?
>
> Clr Anderson: Well sort of like this - "We're pleased to have you with us today, you weren't here last week."
>
> Mr Bulford: Sarcastic?
>
> Clr Anderson: "Why weren't you here last week." "I wasn't in the Chamber." "Oh, how many days a week do you work?" "I work 4 days in the Chamber of Council and one day at home." "How convenient for you, how nice of you to come in today. Today is one of your day's off?" "Yes, Mr Mayor." "And who made this arrangement." "That's between me and the General Manager, Mayor." "Well it's so nice of you to give us your time and I trust you'll be able to perform properly." She stood up and walked out. I think she would have been entitled to slap his face.

In the circumstances it seems to us that there are two explanations that are possible here, barring a rejection of the evidence of both Clr Anderson and Ms Leafe, which we are not prepared to do, namely either the problems complained of occurred at a meeting other than that of 25 October or they did occur then but were not within earshot of the tapes and were not picked up by them. We are inclined to think the latter. Certainly we heard nothing on the tapes to corroborate Clr Hall's assertion that he apologised to Ms Leafe and called after her for her to return to the meeting.

Not without some initial hesitation, therefore, we conclude that Clr Hall did act in the way towards Ms Leafe that is alleged and that his behaviour in this regard was unacceptable.

3.17 Conduct towards Nicole Williamson, General Manager's PA and Sandra Santens, Councillors' Secretary

The particulars provided to Clr Hall of his alleged conduct towards these two ladies were as follows:

> The alleged conduct of Clr Hall towards the General Manager's PA, Ms Nicole Williamson, has been the subject of a number of written communications, copies of which are at Attachment 3. [Memos co-signed by Ms Nicole Williamson and Ms Sandra Santens, dated 12 and 25 October 1999, together with a further memo from Ms Williamson alone of 29 September 1999.]
>
> At this time the Departmental Representatives have no further or more specific particulars to be able to provide to Clr Hall, other than advice from Ms Williamson that the incidents are constant, all day, every day. It is also alleged that both she and Ms Sandra Santens, the secretary to the Councillors, have witnessed Clr Hall rummaging through their desks and in trays on more than one occasion.

> It is also alleged that Clr Hall continually speaks to both Ms Williamson and Ms Santens in a loud voice and in a manner that is aggressive, belittling and causes intimidation. The Departmental Representatives understand that Ms Santens has only in the last few days been admitted to hospital after suffering a suspected heart attack and that Ms Williamson was under medical orders required to take a period of stress leave during January, and has since tendered her resignation, which is directly attributed to tension and stress suffered by her due to the alleged conduct of Clr Hall.
>
> It is further alleged that the Civic Management area has turned into an area of yelling, confrontations, sarcasm, constant comments about the lack of support of Ms Santens and Ms Williamson, their inefficiency, their supposedly "losing" things, and invading of desks.
>
> It has also been documented that Ms Santens and Ms Williamson were for a period relocated away from their normal location in the Council offices due to concerns over the alleged behaviour of Clr Hall. This was advised to the Mayor and Councillors in the General Manager's memo of 26 October 1999 to them.

As noted above, the memos or complaints provided to Clr Hall, with the consent of the complainants, were memos of 29 September and 12 and 25 October 1999. The first memo provided:

> I wish to lodge my views on an event that occurred this afternoon in the Civic Management area.
>
> The Mayor entered the Civic Management area at approximately 5.05 pm to see if a fax he was sending had gone through. The fax was still going through and he muttered something about how long it was taking to fax and then muttered something about keeping the door between the Civic office and the Mayoral office open.
>
> The Civic office staff received an e-mail from the General Manager on 27 September 1999, advising that upon investigation of why the Civic area was so humid, it was found that keeping the door open was affecting the building's air conditioning and that it must be kept closed at all times. I believe this is also a security measure.
>
> As the Mayor walked out of the Civic area back to the Mayoral office, he said in exact words "If you touch this door, I'll … ". He didn't finish the sentence, but as only Sandra Santens and I were present, I took this as a personal threat to either myself or Sandra.
>
> The Mayor continued to enter the Civic area throughout the day, demanding the door be kept open and kicking at the door and door stopper. As supervisor to the secretarial staff in the Civic area, I believe this is an unacceptable working environment.

The 12 October memo provided:

> I wish to report that the behaviour of the Mayor during the last three weeks has made both Sandra Santens and myself feel extremely stressed and intimidated.
>
> He continually speaks to us in a loud voice and in a manner that is aggressive, belittling and causes intimidation.
>
> We would like to request that access to the Civic Management area by the Mayor be denied until his behaviour and attitude towards us improve.

The memo of 25 October and the allegations noted in the final paragraph of the particulars provided to Clr Hall are considered at the next section of this report.

Clr Hall's written reply, through his legal adviser, to these allegations as particularised was as follows:

> The allegations are again noted to be general and non-particularised. Insofar as it is implicit in these allegations that the Mayor is solely responsible for the atmosphere of tension and conflict which then existed in the Council, that is emphatically denied. As has been stated, the General Manager made her intentions clear and obvious to the Mayor; Councillors; members of the public; and staff in response to Council's resolution of the 28th September 1999. … The manner of presentation of these allegations gives a misleading, exaggerated and distorted view. Since about 18 November 1999 the situation between Clr. Hall and staff has improved greatly. A meeting held at 3:00 p.m. on 18 November between the Mayor, Ms Williamson and Mrs Santens in the General Manager's room led to a cordial working arrangement between the Mayor and those present being reached.

In our interview with her, Clr Malicki told us that of all the staff "my biggest concern was those two ladies". We asked her about this:

> Clr Malicki: I was observing huge changes in their demeanour. Nicole was a classic case. When she arrived she was just a delightful bouncy girl with lots of personality, but she always looked terrifically well bred, she had lovely shiny hair and whenever you asked Nicole to do something she'd go one beyond what you wanted. She was so helpful and over the weeks I'd seen her deteriorate to the point where her hair was lank, it was greasy, she wasn't as well groomed and I was getting seriously worried about these women. I'd worked with Sandra as long as she'd been at Council. … I was observing these girls getting more and more stressed and it was really worrying me. … So it was my concern about the two of them that prompted me to start trying to put pressure on Rhonda to do something about it. … Because I didn't think it was right that those girls should be left the way they were and, in fact, I actually reached the point where I sent her a memo on Occupational Health and Safety grounds saying, "I think you've got a serious problem and you must deal with it."

Ms Santens herself gave evidence as a witness before our Investigation. She firstly told us about her experiences with Clr Hall before he became Mayor. She has been employed at Council as secretary or personal assistant to the Councillors for about six years now, and therefore had dealings with Clr Hall in this capacity for several years before he became Mayor. She described those dealings as follows:

> I would describe them as difficult. I would describe them as difficult, I suppose, but, you know, often you work for one difficult man and he's been - I mean, he's demanding and can be unreasonable, and I guess, yes, if I had to choose one difficult Councillor obviously Councillor Hall, the Mayor, would have been it. Having said that, I think, being that I had a job to do it was my job to work for him, I feel that I did it to the best of my ability. It was difficult and it was stressful sometimes, and sometimes I felt like I was out on a limb, but it was my job so I did it

Our questioning of Ms Santens continued:

> Mr Bulford: So let's just talk about him as an ordinary Councillor for the moment. Would you say that there were occasions when he could be charming and personable and agreeable?
>
> Ms Santens: Absolutely. Absolutely. There are times when I swing between feeling sorry for him and times when I absolutely hate and detest him, so it's really

difficult for me - - -.

Mr Bulford: Did he ever praise you or, you know, give you credit where credit's due?

Ms Santens: Yes. Yes.

Mr Bulford: You sound a bit hesitant on that?

Ms Santens: It's hard to know whether he's genuine or not. I don't know. I always feel - I mean I guess I take people on face value and I'm easily fooled, but it did seem genuine. He does seem, on occasions - yes, I don't know, to mean what he says. … I just said to you I have had to have a working relationship with this man, and when I have to, when I've got children that I do support, then I do work. And I guess there has been a relationship that I find just a little bit hard now to be here. It is hard for me. And like I say to you, there are times when I hate him and I could kill him, I could strangle him, and there are times when the man seems - he's - he's just normal and he's nice. But I have mostly escaped the criticism that the other staff would complain about. It's not really been my lot. Because of this relationship that I have had to have, establish and maintain.

Mr Bulford: Yes. So he hasn't accused you of inefficiency or losing things or forgetting his appointments?

Ms Santens: Not directly, no. I've just been included in the civic management office as such.

Speaking still of the days prior to Clr Hall being Mayor, Ms Santens also told us:

Ms Santens: Tony would actually call me into the office while he was dressing somebody down just for the effect of embarrassing that person. By - you know, just a secretary, a mere secretary witnessing him being extremely rude.

…

Mr Bulford: He dressed people down when he was a Councillor, did he?

Ms Santens: Yes. Everybody. Everybody except me, pretty much.

Mr Bulford: I didn't know that he did that.

Ms Santens: He would actually call me around so that I could witness it and embarrass me, and of course obviously humiliate the officer.

Mr Bulford: What power would he have had or right would he have had, as an ordinary Councillor, to dress people down?

Ms Santens: My goodness I don't think he needs to be given any power or any right to do it, he just thinks it is his right.

Mr Bulford: Can you remember any particular person who might have been subject to a particularly bad example of what you're talking about?

Ms Santens: Well Ian Glendinning in particular - that particularly embarrassed me. And the discussion was quite heated and I asked if I could leave, I said I'll come back and Tony told - said, "No, I want you to stay". He had asked me to bring my book around and Ian - - -

Mr Bulford: Your perception was that he would call you in deliberately as part of the tactic or ploy of embarrassing the person he was talking to?

Ms Santens: Well yes I think so. I mean obviously I can't be sure, I'm not inside Councillor Hall's head, but that's what it felt like to me.

Mr Bulford: Yes. And the sorts of things he was saying to Glendinning, can you remember what they were?

Ms Santens: No. It was always, you know, that he had no right to do something or that he had overstepped the mark … But there have been other people - I'm just trying to think. I know - I mean he did do it, but often it would be - and I suppose - he would often say comments to me, too, just throw-away comments that - I mean I never commented on or agreed with or disagreed with, but he would often just tell me that, you know, people - they're, you know, guilty of sort of almost criminal type behaviour and - - -

Mr Bulford: Yes, I mean it's been put to us that he's made allegations of corruption and laundering of money?

Ms Santens: Yes, well all that sort of thing he would - just in sort of normal - - -

Mr Bulford: Taking of bribes?

Ms Santens: But he would discuss that with me - or not discuss it, it would be a one way conversation, but would certainly say that sort of thing to me just in the normal course of me sitting down taking dictation from him. Which I felt was, you know, obviously inappropriate and embarrassing.

Ms Williamson also gave oral testimony to us. She told us that she had worked as Personal Assistant to the General Manager for about 12 months. One of her roles was also to act as co-ordinator of the Civic management office area, which is basically a large room lying between the General Manager's office and the Mayor's office (the Mayor's office actually being off a short corridor beside the Civic management office) where the three secretaries sit. These are the women working for the General Manager, the Mayor and the Councillors.

As to her experiences with Clr Hall before he became Mayor, Ms Williamson told us:

I got on with him actually okay. He never - I could never actually say he yelled at me when he was Councillor Hall. He would speak aggressively and - yeah.

On the other hand it was apparently all not smooth sailing. Ms Williamson added:

No, no, definitely not. He had me - he wanted a file. Rhonda had been in the Councillor's office. He was in there one day. He wanted a particular file so she came out and asked me to get it. I went to records and got that file and she said, you know, "Take it into him." I took it into him and then tried to leave where he started talking that he felt very sorry for myself and for Sandra Santens, the Councillors' Secretary because we both worked very hard and we didn't seem to realise that we were working for corrupt people. He then started talking about God … He started talking about putting your faith in God and God will see you through and that's what the residents of Ku-ring-gai do with the Council and the Council are letting these people down. They're not, you know, showing them the way.

Ms Williamson added that "he was just generally unapproachable". Our questioning continued:

Mr Bulford: Did he ever ask for anything nicely?

Ms Williamson: No.

Mr Bulford: It was always pretty demanding and - - -

Ms Williamson: Yeah, there's always an edge in his voice to - yeah, to get things.

Mr Bulford: All right, so what about when he became Mayor, what happened?

Ms Williamson: He just got nastier. Things were shouted, there was always an undertone of - sort of if he'd asked for a file it was always because he was looking for something wrong or looking - yeah. …

Mr Bulford: Was there a real difference in his manner of behaviour?

Ms Williamson: There was definitely … There was also a bit of a build-up to it as well. A couple of months before the election, probably 6 weeks leading up to the election, he was coming in nearly every day.

Mr Bulford: Yes?

Ms Williamson: Because he was getting things - you know files and things. Most of that burden went on Sandra because she as Councillors' Secretary was the one assisting him.

Mr Bulford: Yes?

Ms Williamson: But he was in looking for everything. So for sort of 6 weeks before it he'd sort of come in and say, "Oh, you know, the election, the election and you know when we get back in and you know we're very strong out there and you know when we get back in, oh, you know and would sort of oh" - and rattle off and smile and sort of, you know, and so there was a lead up of 6 weeks where he was in getting a lot of files and, you know, doing a lot of things. … when he was councillor I don't actually think he even had access into our area … Yes, so he used to pass his - he used to just walk up to the door and just put things under the door and then walk away or he'd knock and we would open the door and he would … come in …

As to Clr Hall's conduct since becoming Mayor, Ms Williamson told us:

Ms Williamson: After he became Mayor - well, yeah, I mean he was in all day every day. He would just come in. He insisted that the door between the Mayoral office and our office be kept open and he would just come in and if Sandra wasn't there he'd come to me.

Mr Bulford: Now, when you say he insisted that the door be kept open - - -

Ms Williamson: Yes.

Mr Bulford: - - - did he ask nicely that that would happen?

Ms Williamson: No, he would come in every morning. He would - with the security pass you hold that up and you've got to wait 2 seconds and he wouldn't wait so he'd be pushing at the door to open it before the security had actually clicked off and then he would open it and he'd kick at the door stopper saying, you know, "Keep this door open. You're to keep this door open. I'm the Mayor."

…

Mr Bulford: Did you tell him the reason why the door needed to be closed?

Ms Williamson: Yes, yes, we did.

Mr Bulford: What was that reason?

Ms Williamson: It - our air-conditioning was getting out of whiff. We were in a very still environment, it was very, very humid so we had to actually slide open the glass door to try to get a bit of air in.

Mr Bulford: Had you had instructions from the air-conditioning maintenance people or somebody - - -

Ms Williamson: At first we got an e-mail from Rhonda … telling us to keep the door closed.

We have seen a copy of that e-mail and it corroborates what the witness told us. It is dated 27 September 1999. We have also seen a technician's report on the matter. It corroborates the above evidence.

The evidence of Ms Williamson continued:

Ms Williamson: …Oh, gosh, I could go for hours … he would come in and he'd take things off the photocopier, off the fax machine, off the printer and read them. Actually he might have even done that while he was a Councillor. I can't remember actually but I know that Sandra was printing something for him. He walked towards the printer, she knew that I had printed some - sorry, the Mayor's PA had printed something off and she said to him, "Don't. That's not your's."

…

Mr Bulford: Would you say he was snooping around or something?

Ms Williamson: Yes, yep, he picks things up off the photocopier. If I'm photocopying something he will look at what's coming out in the out tray. … Picks up faxes. He instructed nobody was to use the fax any more. We had like our PR department use that fax. They actually paid for it, it was their fax and he suddenly said, "Nobody's to use this fax but the Mayor." I wasn't allowed to send faxes. … he then asked for a fax to be put in his office which we did and got a phone line in there. We were instructed that no one - the person that put the phone line in no one was to allow - was allowed to know the fax number but I actually had to go to the - - -

Mr Bulford: Nobody was to know the fax number?

Ms Williamson: No, only himself.

However, apparently Ms Williamson had to approach the technician who installed the machine later to get the fax number again because the Mayor had forgotten it but claimed she hadn't given him one.

Mr Bulford: So he's forgotten the number?

Ms Williamson: Yes, he lost the piece of paper that [the technician] had written the fax number on so I had to go and get it from [him].

Ms Williamson added that the fax had never been used, “it's never received or sent a fax”.

Ms Williamson gave other examples:

Ms Williamson:…he'd come in of a morning and he'd immediately say, "There's a car down in the loading dock. Go and have it towed. Have it removed, get them fined. You know, go and find out who it is. Nobody parks in our loading dock." It's known not to park in it but people park in it if they have to - like the people that out in the road have to come and, you know, get the filing cabinet and take it back down to the Depot and people collecting the DX. So I mean I went down there and there was no car there. I mean cars don't stay for longer than 5, 10 minutes in there. It's really not a big issue but it was just that he was so - he came in so frazzled about the fact that there was someone in the loading dock. It was just - a sort of kick start to the day is him coming and immediately screaming that there's a car in the loading dock and we're to have it towed.

Mr Bulford: He would commonly come in with some grievance that required instant attention.

Ms Williamson: Yes, yep, he’d see a meeting going on ---

Mr Bulford: Not just on a one off or occasional basis but regularly?

Ms Williamson: Yep. He'd see a meeting going on in, you know, a meeting room he walks past to get to his office and he'd want to know immediately what that was. … And he'd get very cranky about that. I had an incident a couple of weeks ago about a meeting he had seen. He came in saying, "Why wasn't it in his diary" and I said, "It was in his diary." He then said, "Oh, you never send me my diary" and I said, "Well, I haven't sent it to you for 3 weeks because you have a lap top." I just assumed he was accessing his own diary.

Mr Bulford: When you say "send his diary" can you explain what his diary is?

Ms Williamson: His diary is all his functions, you know, like Mayoral functions and meetings that he's got. We then print it out and fax it ... to his home. … But because I hadn't sent it for 3 weeks because he'd received a laptop, he also had a PC put into his office and he hadn't asked but he was turning up to all his meetings I assumed he was accessing his diary. So when I said, "I'm sorry, Tony, I thought you were accessing your diary because I haven't sent it to you for 3 weeks now" and he said, "No, I never know anything. Nobody ever tells me anything. I'm expected to remember it in my head."

Mr Bulford: And yet it was there for him to get into if he knew what buttons to press?

Ms Williamson: Yes… It's actually a system. So he turns his computer on and once he logs in his name because they were given modems so it logs back into the system. … All he has to do is bring up Lotus notes and boom up comes the diary. … There's a problem with his diary. When he became Mayor none of us were allowed to access his diary. Only his PA.

Mr Bulford: What, in terms of entering - - -

Ms Williamson: Weren't even allowed to look at it let alone enter anything, we weren't even allowed to view it. He took it - he had it taken off the system and only himself and his PA could look at it. Now, because his PAs leave after 4 days I just couldn't run it. I just - I couldn't run it so I rang IT and said, "Don't - I don't need his e-mail. All I need to do is look at his diary. I need to get his diary because the temps keep leaving and I have to keep the office going" and the IT guy made me put it in writing because he wanted to cover himself that he was then giving me access to the Mayor's diary.

Mr Bulford: Did you discuss with the General Manager the need for you to access the diary?

Ms Williamson: No, not that I remember.

Mr Bulford: Nor with the Mayor?

Ms Williamson: No, he wasn't in. He's quite unapproachable, you don't discuss anything with him.

Mr Bulford: But you arranged for it nonetheless?

Ms Williamson: Yep. I mean as office co-ordinator it was my role.

Mr Bulford: Did he find out that you had done this?

Ms Williamson: He did when - what was it? I can't remember how but I remember him faxing something back saying, "What's this all about? Please discuss." I don't know if he had a photocopy of it or something but he sent it through wanting to know why I'd had it. Well, by that stage I mean I've had access to his diary for numerous months. I mean the temps just keep leaving and with them goes the password so it just seems so silly, you know.

Mr Bulford: Are there periods in between temps where you've got to cover?

Ms Williamson: Absolutely. With the temps I have to cover as well. Our temping agencies now won't send us anybody that deals direct with the Mayor. They will only deal through someone dealing with the Mayor and have delegated work given to them.

Mr Bulford: Does that mean you?

Ms Williamson: That means me because nobody else will do it.

We asked Clr Hall about his diary:

Mr Bulford: You were given, as I understand it, there's a diary kept of all the Mayor's and Councillors' appointments and it's circulated to the Councillors so that they know what things the Mayor's going to, subject to confidentiality type of things?

Clr Hall: Well that's the first time I've heard of it.

Later Clr Hall appeared to admit there was a diary system after all saying:

Mr Bulford: All right, so there was a format in place then?

Clr Hall: There was - - -

Mr Bulford: What was that format?

Clr Hall: The format was very unstructured.

Mr Bulford: How do you mean unstructured?

Clr Hall: Well, when I asked for the - my appointments schedule, what was going on, I asked for it to be put on my desk, that wasn't done. I then asked for it to be sent to my home, it was done irregularly, missing out a day or two. When I - when I tried - I couldn't access the computer to look - because it's all electronic, the whole thing's electronic and it's locked.

On the handling of the Mayor's incoming correspondence Ms Williamson also told us:

It was we weren't allowed to read his e-mail or his diary, then the next time we were. We weren't allowed to open his mail, then we were, then we weren't, then we were. Now, I think we're currently not. I can't remember what we're up to of, you know, him not registering his mail.

Her evidence continued:

Ms Williamson: Yes, he'd shout at his PAs. You can hear it because the door's open.

Mr Bulford: Does he shout at you?

Ms Williamson: He has shouted at me, yep. Last Wednesday he was shouting at me about how inefficient - - -

Mr Bulford: But what about, you know, September or October, November. What was happening then?

Ms Williamson: He was shouting at everybody. He was - - -

Mr Bulford: Including you?

Ms Williamson: Yep, everybody.

Mr Bulford: Regularly?

Ms Williamson: Yes, every day. …

Mr Bulford: Did you ever hear the sound of what appeared to be things being thrown around the office?

Ms Williamson: Yes.

Mr Bulford: Like - - -

Ms Williamson: Drawers slammed, the phone was the prime example. He would ring on the phone and slam, ring the phone and slam.

Mr Bulford: Slam it down?

Ms Williamson: Slam it down because the number he was ringing was engaged.

Mr Bulford: It wasn't a question of him hanging up on people?

Ms Williamson: No, no, it was just - - -

Mr Bulford: Just frustration?

Ms Williamson: Just frustration and it would slam every, you know, 10 seconds. It wasn't sort of a, you know - - -

Mr Bulford: So what other sort of noises?

Ms Williamson: The castor on his chairs. You'd hear that, you know, banging and whatever and files like slammed.

Mr Bulford: Was this happening regularly?

Ms Williamson: Yes. Oh the phone - the phone was definitely regularly. The phone was every time he made a phone call.

We asked Ms Williamson about her complaint of 29 September 1999 to the General Manager and why she used the phrasing “intimidation by Mayor”:

Ms Williamson: Well, it was an implied - I just took it as an implied threat. I mean Sandra and I were the only two people in the office. He punched - you know, at the door, kicked the door stopper down and turned around - - -

Mr Bulford: You were frightened by it?

Ms Williamson: Yes. Turned around and said, "If you touch this door I will" - - -

Lastly, we asked Ms Williamson about how it was her written complaints came into being:

Mr Bulford: Now, did you - what caused you go into writing? Was it your own idea?

Ms Williamson: Well, I'd always written down - I mean I say, "I'd always written" but this was - - -

Mr Bulford: But this is the first time you'd lodged a complaint though?

Ms Williamson: - - - yeah. I think it was - I'd go into Rhonda. I mean we've always gone into Rhonda and had a bitch basically like: Guess what the Mayor said to me now? You know, it was just so out there or whatever and Rhonda would sort of say: Well, I can't do anything. It's verbal, I can't do anything. Unless it's in writing I can't act on it. I can't go to him and say: This person has a complaint about it because it's verbal.

Mr Bulford: So she simply said to be able to take the matter further it's got to be in writing?

Ms Williamson: Yeah, yeah. She - I certainly didn't - - -

Mr Bulford: She didn't tell you to write this letter?

Ms Williamson: No, I didn't go in and tell her and, you know, she said: We'd better put that down. It wasn't anything, no, or write this particular one down for the investigation or anything like that, no, no.

Mr Bulford: So at no stage has she ever encouraged you to sort of create complaints? …

Ms Williamson: No, no. I mean if I put a complaint in about every run-in I've ever had with him there'd be hundreds in there because it's all day every day.

Also on the subject of events after Clr Hall became Mayor, Ms Santens told us why she co-signed the complaints to the General Manager about the conduct of Clr Hall, referred to above:

Well obviously Nicole had a lot more to do with the Mayor, because of her role. I had made it plain, and I had to duck and weave a few times to stay out of the firing line, but I did it, but Nicole couldn't do that because it was her role to liaise with the Mayor and with the Mayor's secretary. Nicole is, unfortunately, relatively new and just not used to - well, obviously not used to somebody like the Mayor, and the behaviour is difficult - we see it with each person that - new person that comes in, they're just not accustomed to the - what was really appalling behaviour from Tony, that even appalled me, having worked for him for so long. And - what I'm trying to say to you is, Nicole couldn't handle it, nor should she have had to. I guess I co-signed in support of her.

We went on to ask Ms Santens about the allegations in the memos:

Mr Bulford: So the first memo - let's look at the first memo. The first paragraph says, "I wish to report" and I know the memo - I'll show you a copy of it. The memo's ostensibly from Nicole alone, but it's co-signed?

Ms Santens: Yes. It was - - -

Mr Bulford: And it reads, "I wish to report that the behaviour of the Mayor during the last three weeks has been, both Sandra and myself, feel extremely stressed and intimidated." Are you saying that you did not feel extremely stressed and intimidated, quote, unquote?

Ms Santens: Look, being around somebody behaving the way the Mayor was would be stressful and intimidating for anybody, even if it's not directed at them.

Mr Bulford: Now the level of the stress and intimidation, I mean would you use the words "stress and intimidation" to describe his behavioural pattern towards you over the previous five years?

Ms Santens: No.

Mr Bulford: But one that you learned to manage with and control and live with?

Ms Santens: Well to a certain extent, yes. As I've told you, Thursdays were horrible for me because he'd be there all day. But if - on a general basis - - -

Mr Bulford: So what was the difference when he became Mayor? Did it get worse, more frequent?

Ms Santens: Yes. He became very demanding and - - -

Mr Bulford: In terms of comparison, would you say it was an explosion from one level to a hugely higher level or was it just a marginal increase or what?

Ms Santens: No, I would say - yes, well an explosion. I know about - but certainly it was elevated, considerably elevated. He felt, I think, the importance of being Mayor - - -

Mr Bulford: Would you say that the power had gone to his head?

Ms Santens: Yes, I guess in strictly layman's terms, I guess I'd have to say that.

Mr Bulford: And that he was both using and abusing his position?

Ms Santens: I think so. I think that's a true statement, yes. Yes.

Mr Bulford: So you would therefore say that certainly you personally, by his behaviour in only the few weeks since he became Mayor and the time of that memo, finding it stressful and intimidating, both for yourself as well as empathetically for Sandra - - -

Ms Santens: Yes. For Nicole.

Mr Bulford: For Nicole.

Ms Santens: Yes, I think that's a true statement. Definitely. It was just so unpleasant, I can't begin to tell you. It was, like, as soon as he would appear we were all on edge. I actually put a plant in front of my desk to try and hide. It was just - it was just crazy. I can't tell you.

Mr Bulford: Nothing that you'd ever experienced before to that degree?

Ms Santens: No. No. I once, in another office had somebody who was low on medication and actually hurled abuse, but that was because they had diabetes or something, and Tony - the Mayor appeared to be - it reminded me of that instance. It was so unreasonable. …

Mr Bulford: …You say, "He continually speaks to us in a loud voice and in a manner that is aggressive, belittling and causes intimidation". Do you agree that that is conduct that's not only addressed to Nicole but also to you personally?

Ms Santens: No, I can't really say that in all honesty. …

Mr Bulford: But you also wanted - - -?

Ms Santens: But the behaviour was not directed - - -.

Mr Bulford: to move yourself too, though, didn't you?

Ms Santens: Yes I did. Yes. Absolutely. That's what I'm saying, I did want to move. I did want to be included in any measures that were taken to stop the behaviour. …

Mr Bulford: And was he talking to you personally in a manner that was aggressive?

Ms Santens: I say on occasion yes. Aggressive - he would be over-excited, he would be angry - … Well aggression is probably not the best word.

Mr Bulford: What word would you use?

Ms Santens: I think he was - he was definitely frustrated and angry and trying to get things done and he felt people were being obstructive.

Ms Santens also told us:

Ms Santens: ... No. Tony intimidates me.

Mr Bulford: He intimidates you?

Ms Santens: Constantly. …

Mr Bulford: In terms of what you observed of him talking to Nicole, on the other hand, you would wholeheartedly agree that he's loud to her, that he's aggressive at the higher end of the scale, that he's belittling and that he intimidates?

Ms Santens: He intimidates. How can I put this? Look, I've just said, Nicole is new. Nicole is not used to - and the temps that we've had, they're not used to Tony Hall, they're not used to his behaviour. His way of asking for something certainly could be construed, is the word, what is it - you know, be taken as - as Nicole has described it, and I think anybody who comes from any normal work environment probably would think that.

Mr Bulford: …it's not simply a question of Nicole over-reacting to what was, by normal standards, (indistinct) slightly raised levels of behaviour as opposed to out and out aggression, bullying and so on?

Ms Santens: Look, Nicole is a little bit fragile. I feel - my personal opinion is that she's a little bit fragile. I would have never known that had we not had somebody like Tony Hall to deal with, though. Because on every other level Nicole is extremely efficient and very very good at her job.

Mr Bulford: Yes?

Ms Santens: You know, she does deal with Directors and sometimes they can be a little bit naughty or not all as helpful as they can be with someone new.

Mr Bulford: But she deals with them in her stride?

Ms Santens: She deals with them. Absolutely. So she is super. Super. Good PA. She doesn't handle Tony Hall well. …

Mr Bulford: If I were to say to you that Councillor Malicki had given evidence to say that she had observed Councillor Hall's behaviour towards Nicole as, in her view, being inappropriate, would you agree that Councillor Malicki had in fact had the opportunity to make those observations? Would she have been around, that you can recall, to actually see these things for herself?

Ms Santens: I would think so, yes. Not in the normal course of a day, but Nicole is - stays back on Tuesdays as part of her job, you know, when the meeting's on, so Nicole is often there till 7, and indeed other days too, so I leave at 5.30, 6 at the latest, and Nicole has to stay back, so yes, she would be more, you know, there with the Councillors.

Mr Bulford: Yes. Because I mean Councillor Malicki and Councillor Hall are old foes, aren't they?

Ms Santens: They are, yes.

Mr Bulford: So one thing we have to, as impartial investigators, examine is the possibility that Councillor Malicki might be making this all up as a means of getting back at Councillor Hall. That's why I'm asking these questions?

Ms Santens: Yes. No, look, they are old foes and if you're talking politics I'd be very wary, but Elaine wouldn't do that. I don't believe she would do that. She does everything by the book and she's usually got paperwork to back herself up and she's very careful and she knows Councillor Hall well.

Ms Ann Gabay was the first of Clr Hall's many secretaries to work for him as Mayor, but after only 3 days working for Clr Hall handed in her notice. She was immediately redeployed to work in another part of the organisation in her remaining weeks at Council. She told us that even in that time she observed that Clr Hall's behaviour (when Mayor) had an impact on the other secretaries, ie Ms Williamson and Ms Santens, with whom she shared a room:

> Mr Bulford: What sort of impact would you say it had on them?
>
> Ms Gabay: He made everyone extremely nervous and edgy. He was quite intimidating. He had a very bullying kind of nature. We had security doors in Council that you would be aware of. He would insist that doors be left open, if they weren't left open he'd almost kick it - - -
>
> Mr Bulford: … How did he react in relation to the closing of that door?
>
> Ms Gabay: He was erratic, once again, in his behaviour. Sometimes he would want it closed because he might have a private conversation that he didn't want anyone to hear, or he would complain about the noise that we might be making just going about our normal business. At other times he would be infuriated that it was closed. He just was … furious. Yes. He was very annoyed about it on other occasions, but that particular day he was extremely annoyed.
>
> Mr Bulford: Was he shouting or - - -?
>
> Ms Gabay: He - well in fact I was actually at my desk actually talking to David Lethbridge and he just went for the door. Actually David opened the door. He made a comment that, "Oh, are you my secretary?" implying that I should have got up and rushed to open the door for him and "leave the door open" in quite a loud, intimidating fashion.

3.17.1 The impact on the functioning and location of the Civic Management Area staff

On 25 October 1999 Ms Williamson and Ms Santens sent the following joint memo to the General Manager:

> We do not wish to neglect our duties but we are unable to carry out our work in the current environment.
>
> We have both reached the stage where something must urgently be done to alleviate the stress of the work environment in the Civic Management area.
>
> The Civic Management area has turned into an area of yelling, confrontation, sarcasm, constant comments about our lack of support, our inefficiencies, and supposedly 'losing' things, all from the Mayor. He has on several occasions, invaded our desks, going through our workload, making comments and removing things to photocopy them for himself.
>
> We request, as a matter of urgency, to be moved to a safer, friendlier and calmer work environment, where we are able to carry out our duties without the yelling, sarcasm, and constant interruptions.

In our interview, Ms Williamson told us what prompted the memo:

> Probably the lack of action on the other one. It was just frustration. It was the fact that we'd get in and burst into tears.

Ms Williamson told us that it was her initiative to put this second memo of complaint in to the General Manager.

She later added:

> it was just the atmosphere. It was just the frustration. It was the fact that we came in and wanted to cry or go home. It was just all day, every day. It was just so intense you just couldn't believe what it was like.

We also questioned Ms Santens as to the memo:

> ... this is all quite accurate. ... This is all perfectly true and it did become quite a nightmare even being anywhere near him.

We questioned Ms Williamson about the allegation as to Clr Hall going through their desks:

> Mr Bulford: But I mean isn't there a possible innocent explanation?
>
> Ms Williamson: Well, there - there could be but - - -
>
> Mr Bulford: Because he was maybe he'd lost a pen and he was looking for a pen or - - -
>
> Ms Williamson: Well, there could have been maybe in that incident but not when he was going through my in tray while I was sitting at my desk. I mean he wasn't looking for - - -
>
> Mr Bulford: Literally while you were at your desk?
>
> Ms Williamson: Literally standing - I was sitting at my desk. He was literally standing there. I had my pile of work because by this stage we were just not doing anything so my - I had a massive pile here. He opened up a folder which had all the daily mail.
>
> Mr Bulford: Did you say to him, "Hoy, what are you doing?"
>
> Ms Williamson: No, no, I - - -
>
> Mr Bulford: Did he say what he was looking for?
>
> Ms Williamson: No, he just said it was actually a memo from Community Services seeking approval for the librarians - - -
>
> Mr Bulford: That is what he found or what he was looking for?
>
> Ms Williamson: That was what was first on the top.
>
> Mr Bulford: Yes?
>
> Ms Williamson: And it was seeking approval for some of the librarians to go to Perth for a conference and he said - - -
>
> Mr Bulford: And did he make any comments on that letter?

Ms Williamson: He did, he said, "There is to be no travel without my approval. That must come to me." He said, "It doesn't go to the General Manager" and I just said, "Yes, okay, fine" because that's just the easiest way to deal with him is just say "Yes", "No", "Okay", "Fine, I will do that" and you just don't question him. That was one incident. The next incident he was also standing beside me again. He lent over to the General Manager's in tray, she's got an in tray and a signing tray at the front of my desk. He picked something up, he read it, he put it back and he said, "I want a copy of that memo. Make sure I get a copy of it" and then I put a post it note saying, "Rhonda, the Mayor wants a copy of this" and then when she - you know, I took her daily mail in, you know, an hour later I said, "The Mayor took this out of your tray and wanted to get a copy of it." And she said, "No, what's he doing through your tray" but he got a copy of it anyway. They were - - -

Mr Bulford: So going through the desk was simply going through in trays that were on the outside of the desk?

Ms Williamson: He has gone through Sandra's drawers. I haven't seen him go through my drawers but he has gone through Sandra's.

On further questioning, however, Ms Williamson confirmed that her witnessing of Clr Hall going through Ms Santens' desk drawers was during the period before Clr Hall became Mayor.

The General Manager sent a confidential memo to Councillors on 26 October 1999 telling them about the move and the reason for it – the stress on the two secretaries and related OHS concerns.

However, these measures were impractical and with the standing aside of Clr Hall as Mayor and the apparent calming down of the situation, the General Manager arranged for the secretaries to move back again. This in fact happened a few days after a "truce meeting" between Clr Hall and the General Manager and the two secretaries on 18 November 1999, and the move back was with the agreement of the secretaries.

Mr Bulford: How was Councillor Hall then in the days after you moved back in? Did he honour his promise?

Ms Williamson: He never greatly honoured his promise. I mean he's - he was better but - - -

Mr Bulford: Has it remained at that level ever since?

Ms Williamson: No, no.

Mr Bulford: Or has there been a deterioration?

Ms Williamson: A deterioration, yeah.

Mr Bulford: How quickly did that deterioration occur?

Ms Williamson: You know, I think he was nice for about a week, probably not even a week.

Ms Williamson told us that the General Manager had been on holidays for a couple of weeks over the Christmas and New Year period. When she returned on 4 January the situation was not a happy one.

> Mr Bulford: Now, at some stage in January you went off on sick leave, is that right?
>
> Ms Williamson: Yep. I went in on the 4th to Rhonda and resigned or tried to resign. That was on the Tuesday and I was obviously upset. I came in on the Wednesday because the Acting Deputy Mayor wanted to have a talk with me about what was happening with the office, you know, that - - -
>
> Mr Bulford: That was Councillor Anderson?
>
> Ms Williamson: That was Councillor Anderson, yes, and yes, so I stayed for the rest of the - I went home on the Tuesday afternoon upset, came in on the Wednesday, had the meeting with Councillor Anderson and Rhonda, stayed for the rest of the day clearing things up and then went on leave from then.
>
> Mr Bulford: Right, did you have some sort of doctor's certificate?
>
> Ms Williamson: Yeah, yep.
>
> Mr Bulford: What did that say?
>
> Ms Williamson: Working due to stress.

Ms Williamson said that this was not the first time she had handed in her resignation to the General Manager. She said, "I've resigned about five times". She did in fact resign on 4 February 2000 and has now left Council's employ.

3.18 Conduct towards various Mayoral secretaries and Personal Assistants

Particulars of this alleged conduct were provided to Clr Hall on 14 February 2000 in the following terms:

> It is alleged that Clr Hall has acted in a threatening, aggressive, intimidatory and otherwise inappropriate way towards a succession of PAs or secretaries, mostly temporaries, engaged by Council to work for him since his election as Mayor on 21 September 1999. Most left or refused to return to work before their assignments were up. In each case the Departmental Representatives have been advised that the engagement with temporaries provided by agencies was for a projected period of approximately 6-8 weeks, or until a permanent replacement for the role of PA to the Mayor was appointed.
>
> The alleged conduct of Clr Hall towards Ms Margaret Cameron, Ms Wendy McKenzie (actually engaged by Council as the new PA, but left after only 3 days), Ms Christine Cameron and Ms Ann Gabay (the latter a staff member who worked for the previous Mayor) is particularly noted.
>
> Particulars of the allegations are set out in Attachment 4, comprising a complaint from Ms Carol Logan to the General Manager, together with Appendices I and II provided by Ms Logan to the Departmental Representatives – the first Appendix details the allegations as to the conduct of Clr Hall towards the three persons named, and the second sets out the employment history of all the persons assigned to work for him.

Particulars were also provided in relation to the alleged conduct to Ms McKenzie and Ms Cameron, which are not repeated here.

The information provided to us by Ms Carol Logan, Council's Manager of Human Resources, and the manager responsible, under the General Manager, for engaging secretarial assistants for the Mayor, is that some 14 or 15 secretaries have been provided for Clr Hall in the period between his election as Mayor (on 21 September 1999) and 17 May 2000. The first person was the secretary he inherited from the previous Mayor, Ms Ann Gabay. The next two were temporaries. The fourth was seconded from within Council on a temporary basis (Mrs Piri Stephens). The next three were temporaries. The eighth was Ms Wendy McKenzie, who was hired to work on a full time basis, with Clr Hall playing a large role in her engagement. But she lasted only three days. The next three were also temporaries.

Ms Logan also advised us that all temporaries were engaged on the basis of a 6-8 week booking, or until a permanent replacement was appointed. In other words, no temporary was hired for just a short period of a week or a matter of days. Yet, as can be seen from the following table (an update of Appendix II to the attachment provided to Clr Hall and his legal adviser when particulars of the allegations were given to him), provided to us by Ms Logan, none – except, perhaps, for Ms McMahon – survived for more than a short period, and certainly not for the originally contracted term, and nearly every one left because of problems with Clr Hall:

EMPLOYEE NAME	EMPLOYMENT DATES	EMPLOYER NAME	COMMENTS
Ann Gabay	20.9.99 – 8.10.99 (as noted above, she actually worked for Clr Hall only in the first 3 days of this time)	Ku-ring-gai Council	Unable to develop a working relationship with the Mayor
Margaret Cameron	5.10.99 – 12.10.99	Double R Recruitment	Unable to work for the Mayor due to unpleasant workplace
Carol Gulbin	14.10.99 – 22.10.99	Select Appointments	Unable to work for the Mayor – Mayor requested a replacement.
Piri Stephens	25.10.99 – 9.11.99	Ku-ring-gai Council	Return to substantive position of PA to Director Finance & Corp Services recommended by MHR following conversation with Ms Stephens and signs of stress.
Rouzz Lichaa	9.11.99 – 19.11.99	Select Appointments	Mayor absent during this period. Rouzz left to take a permanent position.
Marie Murtagh	19.11.99 – 30.11.99	Select Appointments	Left due to illness of family member requiring travel to Ireland.
Pam Joscelyne	30.11.99 – 3.12.99	Select Appointments	Assignment ended due to appointment of W McKenzie.
Wendy McKenzie	6.12.99 – 8.12.99	Ku-ring-gai Council	Responded to an advertisement placed by

			KMC for PA to Mayor. Interviewed, selected and reference checked by Mayor Hall. Left after 3 days, resignation letter arrived 10/12/99.
Christine Cameron	13.12.99 – 7.1.2000	Select Appointments	Uncomfortable, unsafe work environment. Bullying, intimidating, demeaning and nasty comments by Mayor.
Melanie Raine	10.1.2000 – 14.1.2000	Select Appointments	Melanie requested to be moved out of PA to Mayor role following incident with the Mayor.
Nicole Williamson/ Lyn Watson	17.1.00 – 25.1.00	Ku-ring-gai Council	Provided secretarial and administrative support to the Mayor during this period.
Skye McMahon	27.1.00 – 12.4.00	Julia Ross Agency	Skye provided secretarial and administrative support to the Mayor until she accepted a permanent position elsewhere.
Ilke Duval	13.4.00 – 14.4.00	Julia Ross Agency	Mayor treated Ilke like she was incompetent in front of others. She was not willing to continue working under these conditions
Joy Risbey	17.4.00 - current	Select Appointments	At 17 May, Joy was currently providing secretarial and Administrative support to the Mayor.

We asked Council's Manager Human Resources, Ms Carol Logan, about the turnover of secretaries:

Mr Bulford: Now this table as to the list of persons who worked as PA to the Mayor. Obviously there's a very brisk turnover. Would you say that, in your experience in human resources in your entire career, you've ever seen the likes of this?

Ms Logan: No.

Mr Bulford: On a scale of 1 to 10 of unusualness, where would you put it?

Ms Logan: 10 -10 being the high end of the scale?

Mr Bulford: Yes. This is an extraordinary situation?

Ms Logan: It is extraordinary, yes.

At least two of the temps lodged written complaints with their agencies, which were passed on to Council and in turn copied to us, about Clr Hall and his behaviour towards them. We sought to contact both with a view to giving evidence in our Investigation, but both were unwilling to do so, wishing not to be subjected to further distress and wishing not to get involved, one of them in quite emphatic terms. In

some respects we can understand this. We decided to respect their wishes for privacy and anonymity and did not press the issue with them.

Ms Logan told us about her difficulties with the agencies:

> Mr Bulford: Have you ever had a situation, ever before of a temporary agency coming to you and saying "we are not providing a person to fill a role working for that particular person anymore"?
>
> Ms Logan: Never.
>
> Mr Bulford: And yet this has occurred twice is that right? Two agencies have said, or it only one agency that refused to provide?
>
> Ms Logan: One agency was specific as to their reasons for being unable to assist Council with further temporaries. The second agency were more ambiguous about their inability to help us.
>
> Mr Bulford: Presumably there's a certain amount of networking amongst agencies so the word gets around does it?
>
> Ms Logan: Correct. And I've quoted in my letter the most recent conversation with Double R who were the actual agency who provided us with Margaret Cameron, a mature and experienced PA, the most recent conversation with them, they had stated to me on the telephone that they had had other agencies contacting them looking for people to fill our PA position. So within the agency industry yes they were networking and in fact trying to force people to fill this particular assignment – according to Double R Recruitment.

We have corroborated the view of the agencies as expressed to us by Ms Logan by sighting a copy of one of their letters to such effect.

Ms Sandra Santens, the Secretary to the Councillors, was in a unique position to observe the behaviour of Clr Hall towards his various secretaries since he became Mayor. Her desk is in the same room where the General Manager's Personal Assistant and the Mayor's secretary sit. Her desk is also closest to the Mayor's office. We therefore asked her, in our interview with her, as to whether she could give us any direct evidence as to his behaviour:

> Mr Bulford: All right. Let's talk about the temps. Sitting in the civic area, did you see or overhear, for that matter, given the proximity of the Mayoral office, occasions on which his behaviour towards the temps was less than what might be considered appropriate?
>
> Ms Santens: Yes. All the time.
>
> Mr Bulford: All the time?
>
> Ms Santens: All the time.
>
> Mr Bulford: Was there any temp to which he did not behave in that manner?
>
> Ms Santens: The current temp that we have, Skye, I feel, and I said to Rhonda only yesterday, I think Tony feels comfortable with … You see, the mistake, I think, that we made was in getting very efficient people in that tried to tell Tony what to do, which they believed to be their role. Now, Tony needs organising, there's no question about it, but he doesn't like being organised.

> And that's why none of these temps have worked. They've been just really too efficient and too good at their job and too determined to do it. And that just immediately - you could just see as each temp came and tried to work for him and organise him, he would just - he just didn't like it. He just couldn't handle it and he would then create a fuss so that you had to get rid of that temp. And now I've noticed that Skye doesn't try and organise him, she takes his instructions and she carries them out, and I've noticed that he's actually treating her pretty much, and I did say this to Rhonda too, as he's always treated me and I can see that there's that little bit of a level of communication. It's working.

As noted above, the first person to work for Clr Hall as Mayor was Ms Ann Gabay. She was a witness in our Investigation. She had previously worked for the prior Mayor, Clr David Dobbin, since March 1999, initially as a temp and then as a permanent employee of Council. We asked her how it was that she came to work also for Clr Hall:

> Mr Bulford: When David Dobbin ceased to be Mayor and Councillor Hall took over, what understanding or arrangements were made regarding you working for Councillor Hall as Mayor? Was it simply assumed that you would continue as PA to the Mayor?
>
> Ms Gabay: Yes. Yes, that was the assumption.
>
> Mr Bulford: Were you happy to do that?
>
> Ms Gabay: I was happy to do it, but I knew what Councillor Hall was like. I didn't look forward to the prospect of working for him, but we felt that perhaps when he was Mayor that his behaviour would change for the better.

We then asked her about her actual experiences with Clr Hall:

> Ms Gabay: Well I started off hoping that things would be fine. It was very difficult to work for him. He was extremely disorganised. He would accuse you of losing invitations, invitations that never arrived at Council because all correspondence, all incoming documents are recorded in Council records. He wouldn't turn up for some of his appointments. I remember on one occasion he had an appointment at 8 o'clock in the morning that he had made himself, and he didn't turn up. When I arrived at half past 8 or whatever, he came later, said why wasn't anyone here to meet his appointment at 8 o'clock. In fact someone had been there (indistinct) in PR or something. … He wasn't very happy with the fact that I didn't take shorthand, although that was well known in Council with the previous Mayor and with him. He was provided with a dictaphone. In fact he was provided with two dictaphones that he refused to use.
>
> Mr Bulford: He refused to use them, did he?
>
> Ms Gabay: Yes. He just would try to make you feel humiliated by the fact that you didn't take shorthand.
>
> Mr Bulford: Incompetent, as it were?
>
> Ms Gabay: Yes. Yes.
>
> Mr Bulford: Now what can you tell us about his diary, for a start? I understand the diary was something that was kept on the computer system?

Ms Gabay: That's right. Yes.

Mr Bulford: And there was a certain amount of on again/off again ability for people to access that, which I think would have occurred in the early weeks when you were his PA?

Ms Gabay: Well I don't really think that was the case. I mean, in order to get into my computer, for instance, and access the Mayor's diary I had to have a password. The other girls didn't know my password. I used to produce a hard copy of the diary at the end of each Friday to give actually to Piri Stephens, who would then coordinate the corporate calendar, which was handed out to all Councillors et cetera so they would know what was going on. When he found out that was the case, then he insisted that that wouldn't happen and that no one would be able to see his diary.

Mr Bulford: Why would he have done that, do you have any idea?

Ms Gabay: He was paranoid, I feel.

Mr Bulford: He just didn't want other Councillors to know what his invitations or - - -?

Ms Gabay: He just didn't want anyone to know anything about what he was doing.

Mr Bulford: Yes?

Ms Gabay: I mean, David Dobbin was perfectly happy with the arrangements that had been in place. It wasn't a problem. There was nothing there that was extremely confidential anyway. The appointments generally were PR things, you know, visiting Rotary, opening this, opening that. There was nothing really confidential.

Mr Bulford: Could there have been stuff that may have been confidential?

Ms Gabay: Not really. I mean, entries in the diary would be discretely put in there in any case.

Our questioning of Ms Gabay continued:

Mr Bulford: ... What can you tell us as to the reasons why you left Council's employ?

Ms Gabay: I left because I knew that he wasn't going to change, that things were going to get worse and I wasn't prepared to put up with him.

Mr Bulford: So the reason you left was Councillor Hall?

Ms Gabay: Yes. Definitely.

Ms Gabay told us that at first she did not tell Clr Hall that she had put in her resignation and added:

Ms Gabay: …he was in a rage when he found out that I had left, and I confronted him about that the next morning.

Mr Bulford: What did he say to you?

Ms Gabay: Well the girls told me that he was in a rage that I had left or had gone, how dare I have the afternoon off, which was about - and I worked through lunch break, by the way, and I confronted him. I told him that I objected to him

objecting to my taking the time off, that I had told people, I had asked for a message - he backed right off.

Mr Bulford: Did he?

Ms Gabay: Yes. He was very nice and said that I can interrupt him any time. But had I interrupted him, he would have been quite rude.

Mr Bulford: So his backing off and - did he apologise as such or - - -

Ms Gabay: Yes, he sort of apologised.

Mr Bulford: But did you feel it was genuine?

Ms Gabay: No. No. No, I did get the feeling then that Councillor Hall was a typical bully in that if you stand up to them, they back off.

Conversely, Clr Hall had this to say about Ms Gabay in our interview with him:

Clr Hall: Gabay gave me a very very resistant attitude to any work for me. I said, "Could I have a cup of tea", to my clients - members of the public were there, she said, "Get it yourself". Not in those words, but the inference was there, "Look, I'm not here to get your" - - -

Mr Bulford: Well could there have been some reason why she was unable to get the odd cup of tea?

Clr Hall: Well she had nothing else to do. She had nothing else to do. She was there for my job. And I wasn't - - -

Mr Bulford: Had you done anything to upset her, perhaps, that she made this statement to you?

Clr Hall: Well, I don't know. I guess it was a situation, rather tense situation that had developed because of the resistance that was coming through the staff situation via the Union directions. I don't know. I don't know what the - I was just trying to do my job, I was new to it and I was endeavouring, as the new Mayor, to get things in order, to give her some guidelines, and she was very resistant.

Despite our seeking further examples of alleged non co-operation, Clr Hall was unable to remember any to assist us.

Ms Carol Gulbin was the third secretary to work for Clr Hall as Mayor. Ms Santens told us about how she observed Clr Hall's behaviour towards her:

Mr Bulford: How would you say Councillor Hall treated her?

Ms Santens: Poorly. He took on a sort of a - Carol was the one that I guess I was referring to when I said these PAs were super efficient. Carol was the most efficient, most assertive, and Tony can't handle, I think - I think it's true to say he simply cannot handle over-efficient women probably …

…

Mr Bulford: … it's my understanding that she's the one exception to the parade of people who've worked for him in that he said she's got to go rather than the other way. Do you know that?

Ms Santens: Yes. He said, and I am quoting, he said, "I don't think I can work with you", because she was too organised for him and even when he was saying, "I can't deal with that" she would say - or he said, "Oh, I don't need to know about that" and she said, "Oh but you do". So she was simply trying to do something that she felt was necessary, that he did have to know something. But you see Tony didn't want to know things if they were - you know, it was something he couldn't do anything about or something he couldn't, you know, handle or if it somehow put him under stress, I think he would just rather not know about it.

Ms Williamson's evidence as to Clr Hall's conduct towards Ms Gulbin was as follows:

Mr Bulford: What sort of person was she?

Ms Williamson: Assertive.

Mr Bulford: So can you just - - -

Ms Williamson: She was very strong - strong willed, you know, very assertive, stood up to him.

Mr Bulford: She stood up to him?

Ms Williamson: Oh absolutely, absolutely. … I know he eventually asked her to finish up. I think he said, "I don't think I can work with you." … She said, "Would you like me to finish up?" He said, "Yes." But she came in the next day to finish everything up and to show him that, you know, she'd finish up but at the end of the week. She was good. We thought she'd be really good to sort of - we sort of - I think it was the lady previous to her, Margaret, was an elderly lady, looked very much like a school teacher and she had actually said to him, "Don't talk to me like I'm an animal." This is while she was taking dictation in his room and she on several occasions said - - -

Mr Bulford: You didn't hear this but she told you about it later?

Ms Williamson: No, she came out and reported it, yeah. But she, you know - - -

Mr Bulford: And what was his reaction to that?

Ms Williamson: She said nothing, he just totally ignored her, didn't sort of go: Oh, I'm sorry or nothing.

Mr Bulford: But she left?

Ms Williamson: Yeah, she found - yeah she had worked - - -

Mr Bulford: She left before she was expected to?

Ms Williamson: Yes, yes. I think Carol was the only one that he asked to finish up. He also asked Christine Cameron - he asked me to finish her up but he never actually said anything to her and I said, "No, I wouldn't finish her up because we were right on Christmas and Sandra was going to be away for the school holidays and I couldn't run the place on my own" and I said, "I need her, Tony." I actually said, "Fine, I will finish her up." I went out. I then went back in a bit later and said, "I cannot finish her up. I need the help" and he said, "You know, you run the department, you do what you have to do" but I will just - - -

Mr Bulford: Have you ever seen any other temp other than Carol and this girl you're just talking about stand up to Councillor Hall?

Ms Williamson: No, no, most of them have come out and been quite distressed. He's, you know, questioned their qualifications.

Mr Bulford: They've cried or just, you know, - - -

Ms Williamson: Yeah, we've had crying. All of us have had a cry at some stage. I probably cry more but that's just me so - - -

Mr Bulford: Does Council provide tissues or - - -

Ms Williamson: No, Rhonda has them in her office. She has a little counselling service happening in there and I have them on my desk and Sandra has them on her desk so … I don't go anywhere to talk about him without tissues.

The General Manager's evidence was corroborative of that of other witnesses. She told us:

Mr Bulford: Looking at the secretaries and the PA's since he became Mayor?

Ms Bignell: Yes.

Mr Bulford: You say you've seen personally instances where he's been shouting or insulting towards them?

Ms Bignell: Yes.

Mr Bulford: Would you say you could count them on one hand?

Ms Bignell: No.

Mr Bulford: You would be unable to count them?

Ms Bignell: It's all the time, like 8 hours a day and I mean 8 hours a day in that civic area.

Mr Bulford: Does he ever put a question to the PA's ever in a measured tone of voice or is he always shouting?

Ms Bignell: If he isn't shouting it's a real put down, you know, like "What are your qualifications," it's a real sort of humiliation.

Mr Bulford: You've heard him say that sort of thing?

Ms Bignell: Yes.

Mr Bulford: Other than them reporting to you that he said it?

Ms Bignell: Yes, "I have to do all my own work myself do I? Nobody's doing my work." This is because he spends just about much of his time out there in the workstation area, which is just near me, the proximity is a real issue.

Mr Bulford: Just outside your door?

Ms Bignell: That's right and there's been days where "I haven't got a PA, I have to be my own PA." Totally irrational. So he sits at the PA's desk and he screams and yells all day. "I'm not getting any of this work done." So I've seen it.

Clr Hall complained to us of the lack of assistance he saw he got from Ms Margaret Cameron. Firstly, he claimed that she spent the best part of the first three days she worked for him being shown how to use Council's computer and word processing system. We suggested to him that if this were so perhaps Council just did not have spare secretaries who could step into the breach. He replied that Ms Santens could have, adding:

> but nine Councillors hadn't given her any work at that stage. There was very little work because they were trying to grapple with understanding how a Council worked. Seven of them didn't have a clue.

Later Clr Hall told us this:

> Mr Bulford: How did you get on with Margaret Cameron?
>
> Clr Hall: I found her to be a very aggressive person. And she - she gave the impression that she knew everything, and when I tested her as to her competence, I found it quite lacking.
>
> Mr Bulford: Is it possible that you might have been aggressive back to her?
>
> Clr Hall: No. I can't say I was aggressive. I was endeavouring to get things done.
>
> Mr Bulford: Were you perhaps frustrated?
>
> Clr Hall: Look, I can't recall on that particular person. I remember how she was very assertive. She demanded she do it her way, as I recall it. That was the person. I mean, I try to picture her now. She was about middle-aged and she seemed very very determined in asserting her authority as PA, as I saw it.

We asked Ms Santens as to what she observed in relation to Clr Hall's relations with his one and only full time employee who worked for him as secretary, Ms Wendy McKenzie, though Ms McKenzie was engaged on this basis only after a previous attempt to get a full time secretary after Ms Gabay left had failed:

> Mr Bulford: Coming back to Wendy, how would you say that, from your own observation, Councillor Hall acted towards her?
>
> Ms Santens: I think he tried very very hard to get it right with Wendy. I really mean that. He did. He was very charming, that charming self that he can be on rare occasions.
>
> Mr Bulford: By this time you were back in the civic area, is that right?
>
> Ms Santens: Yes. I must have been. You know, there was a respect there, the girl was highly qualified - over-qualified, really, and yes, I think that everything was fine until he asked her if she did shorthand and found out she didn't. And even then, I mean he was still - he just said, "Oh, I thought you did shorthand", but I think Wendy - - -
>
> Mr Bulford: Did he say that just in a purely sort of conversational sort of surprised fashion?
>
> Ms Santens: No. No, I think that probably set him off a little bit.

Mr Bulford: More accusatory?

Ms Santens: A little bit. A little bit. Like, "Oh, I thought you did shorthand", so I think he was feeling a bit - again, you know, that frustration that he had all this stuff he obviously wanted to do and this girl was there and didn't take shorthand, and I think that sort of set his blood pressure going again.

Mr Bulford: And, what, from then on he was not treating her very well, is that right?

Ms Santens: No, well she was only there a couple of days after that.

Mr Bulford: Would you say he spoke to her in a patronising way?

Ms Santens: A little bit, yes. He was patronising after that.

Mr Bulford: And what about doubting her qualifications?

Ms Santens: Yes, he certainly made accusations that - he then - as soon as he found out she didn't do something that he wanted, he then started to question the rest of her qualifications and whether she was a suitable person to be there and that sort of thing. He was quite derogatory.

Mr Bulford: Now, how did she treat him? Did she stand up to him and fight back or what?

Ms Santens: Yes she did. Yes, she was - I think she was obviously a bit taken aback, as people are when they, you know, first see the behaviour, witness the - or the recipients of his behaviour, but yes - no, she stated quite clearly that she didn't do shorthand, that it was clearly shown on her resume that she had never said she did shorthand, and that she - I think - I don't know if she said that she felt there might have been a mistake, but - certainly that was - she did defend herself.

In his written reply of 3 March 2000 through his legal adviser, to the allegations as particularised to him on 14 February 2000, Clr Hall had this to say as to Ms McKenzie's situation:

> It is neither the fault of Clr. Hall nor the part-time temp, Ms McKenzie, that there was a falling out over her work productivity and skills. *Responsibility for the unfortunate outcome in this instance rests as much with the person who chose, recommended or appointed the person to the position rather than either Clr. Hall or Ms McKenzie*. [legal adviser's emphasis]

Ms Carol Logan told us about how Ms McKenzie came to be employed:

> Wendy McKenzie responded to an advertisement we ran in the Sydney Morning Herald for the position of PA to the Mayor. Wendy was interviewed by the Mayor, the Mayor did the reference check on her, etc. etc. Which is unusual I have to say. It's not the way I wanted to conduct it. The Mayor was not prepared to follow my process. … When the applications came in I did a short list of the applicants, I provided that to Piri Stephens and I explained to Piri what the process was. Our normal process for any position in the organisation in terms of the short listing and the interviewing process, and setting up of a panel, a couple of people, three people – normally three people. The Mayor was not interested in following that particular process.

Ms Logan said that the Mayor conducted the interviews on his own.

Ms Logan showed us the advertisement that was run when Ms McKenzie applied for the job. Ms Logan told us that Ms McKenzie was one of only two applicants who responded to the advertisement, an even poorer showing than the earlier failed attempt. She told us about the poor showing:

> My view was that the poor showing the second time, only two applicants, neither of which from memory were – my opinion was that it was directly related to the press coverage we had received since the election until the time of the advertising.

The advertisement answered by Ms McKenzie did in fact specify shorthand skills as being an essential criterion, though Ms Logan told us:

> My ability to get somebody with shorthand has been extremely difficult. It's not something – it is a dying art, that's probably the best way to say it.

We have also seen a copy of Ms McKenzie's CV. In it she lists the headings from the essential and desirable criteria obtained from the job description of the job she was applying for. One of those headings quite clearly refers to "shorthand". Under that heading Ms McKenzie did not refer to that as being one of her skills. The mistake is clearly not that of Ms McKenzie, as Clr Hall has submitted to us.

Ms Logan also later told us:

> The issue about shorthand was first raised with David Dobbin. David Dobbin also wanted to have that shorthand skill. The reality was that we weren't able to attract suitably qualified candidates with shorthand. What we did do was use the next best option which was dictaphone. So we had a dictaphone available for the use of the Mayor to access.

Shorthand was not listed as one of Ms McKenzie's skills on her resume. If the Mayor failed to pick this up in conducting the interview and other processes in relation to hiring Ms McKenzie, he is the one to blame, and not her, or Ms Logan or the General Manager.

The resignation of secretary number 13 (see the table above) (Skye McMahon) on Monday 10 April 2000 resulted in a story in the North Shore Times on 19 April 2000, under the banner headline:

WORKER
No 14
RESIGNS

> Ku-ring-gai Mayor Tony Hall has said goodbye to his 14th secretary in seven months – a staff turnover he attributes to "unofficial work bans".
>
> While admitting he was "a bit of a drill sergeant", Clr Hall also attributed the number of changes to the fact that council had a policy of only appointing temporary clerical staff to work with him.
>
> He said he had asked General Manager Rhonda Bignell five times to appoint him a permanent assistant, but to no avail.
>
> Cr Hall said "unofficial work bans" by employees meant he was forced to do many tasks himself, such as making cups of tea.

Cr Hall is currently the subject of a Local Government Department inquiry following claims by staff that he had harassed them.

"I [have to] knock on the doors to get my files," he said.

"I don't get any cups of tea. There's no catering for my visitors.

"I'm a bit of a drill sergeant at times but I am being provoked all the time by unofficial work bans.

"I believe in outcomes, I don't believe in process.

"People ask me to do things, I insist that those things be done."

Cr Hall said when he had to ask five or six times for something to be done "it gets a bit hard to deal with".

He said he parted on good terms with secretary No 14, who was only with council temporarily and left when she found a permanent job.

"She's a nice girl and she's going to be a house manager for a group home," he said.

"We exchanged gifts and there was friendliness – she's a great kid."

Cr Hall said that with all the pressures of being mayor, "I'm resigned to enjoying life outside council".

A council representative said Ms Bignell did not comment on staff matters.

The General Manager made the following submissions to our Investigation in relation to the North Shore Times press article and the statements attributed to Clr Hall:

My complaint is based on misinformation apparently provided by the Mayor to the media on the staffing issue of the Mayor's PA. A number of statements reportedly made by the Mayor are misleading or incorrect. …

The inaccuracies I point out are:

- There are no "*unofficial work bans*".
- There is no policy of only appointing temporary clerical staff to work with him.
- Catering is available to the Mayor and his visitors. All he has to do is ask.
- There is no evidence that he has to ask "five or six times for something to be done".

My previous submission has pointed out that the Mayor asks a number of people to do the same thing which leads to chaos.

A sweeping statement such as this seems only aimed at discrediting staff.

Skye McMahon (no. 13) is the P.A. to whom he is referring in the article. Skye lasted longer than any others, 11 weeks, however, every day Skye had at least one "incident" with the Mayor which upset her, or stressed her.

She was in tears on a number of occasions during her time here, including the day she advised me she was resigning, Monday, 10 April 2000.

One of the reasons, I believe, that she lasted that long is because the Mayor was not coming in as much, so her main contact with him was by daily phone calls. However, most phone calls with him caused some form of reaction. The saving grace was that the

other Civic Management Team (Councillors' Secretary and the General Manager' P.A.) were able to provide morale support to Skye. She would continually advise that he was rude, or irrational, and, as previously stated, was often in tears.

The Mayor should not be making comments in the media about Skye, especially without her knowledge. He gave her a "mug" as a present when she left which she thought strange. There was no exchange of gifts. She said to me that when she shows the mug to her Mother, her Mother will laugh – because she (Mother) had been hearing of Skye's encounters with him each night at home.

The fourteenth Mayoral P.A., Elke Duval, commenced on Thursday, 13 April 2000. She advised on Friday, 14 April that she was not coming back. Like the preceding P.A.s, she found the same behavioural problems unacceptable.

The fifteenth P.A., Joy Risbey, commenced work on Monday, 17 April 2000.

General Comment

The Investigation is fully aware that every effort has been made by the General Manager to provide the Mayor with secretarial support. The problem is the Mayor, his attitude and his behaviour towards each P.A.

The General Manager and Council's responsibilities are to provide a safe and healthy workplace. However, the workplace environment in the Civic Area is an unhealthy and highly stressful one for those staff in Civic Management.

It is impossible for me, as General Manager, to knowingly advertise the position and knowingly recruit someone from their present position to a job that is a recorded Occupational Health & Safety risk area.

Duty of Care

All employers are required under the Occupational Health & Safety Act 1983 to accept a duty of care for the health and safety of all people in the workplace. Implementing duty of care requires everyone in the workplace to be aware of potential hazards and take steps to prevent workplace accidents, injuries and illness.

The duty of care principle requires all employers to ensure the health, safety and welfare of employees and others in the workplace.

Every effort has been made to meet the duty of care principle However, it is apparent from feedback both written and verbal received and a workers compensation claim for workplace related stress, that the impact Councillor Hall has had in the Civic Management section has resulted in significant OH&S issues for this organisation.

As the Investigation is aware, a full recruitment process was carried out and the Mayor selected the preferred candidate. That "permanent" Mayoral P.A. lasted only a few days, citing, like all those before her, the problems of the Mayor's behaviour.

That exercise cannot be repeated given the existing circumstances as it is clear from the track record that every P.A., whether permanent or temporary, has complained of the same unacceptable behaviour pattern.

We are now at the stage where agencies will not provide Council with temporary personnel. (It should be noted that these temporary staff have been highly skilled and widely experienced, including some who have been P.A.s to CEOs of major private sector companies).

> In the North Shore Times article, the Mayor has distorted the facts and has put his own "aggrieved" spin on an issue which is caused by his own behaviour – he will not accept or acknowledge this.
>
> I have not made any comment to the media on this matter, despite some pressing telephone calls from the North Shore Times. I made a commitment to the Investigation, and, separately, to the Deputy Mayor, Cr. Bennett that I would not make any statements to the media on matters relating to the Investigation.
>
> I have honoured that commitment, and will continue to do so …

We entirely agree with the General Manager and the evidence before us in our Investigation completely supports her in our view. We find the statements made by Clr Hall about Ms McMahon to be quite inappropriate both in terms of his apparent patronising of her and in terms of what is an appropriate and professional thing for a person in Clr Hall's position to have done. This sort of conduct is both demeaning to and likely to bring Council and the position of mayor in particular and local government in general into disrepute.

Ms Williamson also gave us the following information, and was talking initially in terms of the time when Ms McKenzie had come to work for Clr Hall:

> Ms Williamson: … by that stage he'd had quite a few temps and he'd actually stopped even introducing himself to them, hadn't taken them into the office and said, you know, "I'd like you to work this way or I'd like a cup of tea at 9.00" and he used to demand that we got a cup of tea at 9.00 and 3.00 every day. When he sat down with Sandra and I he said, "I don't expect you to ever make coffee or tea for me, that's terrible." But yet that's what he'd been doing up until then and if we didn't bring it in at 9.00 he was angry. Even if he had a meeting and we didn't actually just want to walk in with one cup of coffee for him and none for his visitors he'd actually come out and say, "Well, nice to have my 9 o'clock cup of tea." You know, we just used judgment - - -
>
> Mr Bulford: It was always sort of a sarcastic sort of comment?
>
> Ms Williamson: Oh yeah, yeah.
>
> Mr Bulford: Or a sarcastic way of delivering them?
>
> Ms Williamson: Yep, he doesn't now introduce himself to the temps. He doesn't ask them how he'd like things run. He doesn't do anything now. He doesn't even attempt to get to know them or anything, doesn't explain procedures, nothing.

Ms Logan was also asked by us in our interview with her as to what steps the Council might still be pursuing to try and get the Mayor a permanent secretary. She told us:

> It's a bit of a dilemma for me in terms of my position as a manager in the organisation and being the human resources manager in terms of my responsibilities under the Occupational Health & Safety Act. It's very difficult for me to put a temporary person, let alone a permanent person, into a position where I fear the environment is not conducive to us being able to provide a safe and healthy workplace which considers the welfare of our employees, or in fact visitors to the workplace. And you might couch the temporary people as visitors. Clearly they're working for us but they're not our employees. So there

> are a couple of dilemmas for me. First is my obligations under the Occupational Health & Safety Act. The environment that is apparent in terms of that particular work area and the third issue is my ability is to attract somebody into that role. We didn't get an overwhelming response when we advertised it even before the issues became apparent in the press.

Clr Hall's written reply to the allegations about his conduct towards his secretaries included the following comments:

> To the extent that Clr. Hall allowed the frustration and pressure of his position without adequate assistance to cause him to adversely comment in relation to Ms McKenzie or to any of the other secretarial employees, then he sincerely regrets this. However, he had been placed in this position by those who were responsible for selection and appointing of secretarial staff. … Clr. Hall has resigned himself to the fact that he now has to type much of his own correspondence. [Clr Hall's emphasis].

We are firmly of the view, based on the probative evidence before us, that it is Clr Hall who has acted in a most inappropriate manner towards those persons whom the General Manager has provided to assist him with secretarial duties.

3.19 Conduct on Active Australia Day

The following particulars were provided to Clr Hall on 14 February 2000 of this alleged conduct:

> This function took place on Sunday 10 October 1999 outside the Gordon library in the forecourt area, and in a market area in the Wade Lane car park.
>
> It is alleged that both privately and publicly in the presence of Council staff and the community Clr Hall stated to staff members Joanne Sainsbury and Graham Wright and others that neither he nor the Councillors had been informed of the day's activities, both in terms of where and when it was being held, when in fact such information had been given to him on a number of occasions. These statements are alleged to have been repeated in a later address to those members of the community present, after Clr Hall had requested that he be allowed to make a public address. In this speech he stated that he had only been able to find out what was going on after telephoning the General Manager on both the Saturday and the Sunday.
>
> He further allegedly said that even if staff had so informed him they had failed to ensure that the information was given with sufficient warning or priority, given the large volume of Council paper work he and the Councillors receive each week. It is further alleged that Clr Hall stated or inferred that although Council's Community Services group had organised the event the Communications group should have been in charge, though he added that the latter was facing an audit the following day [see Ms Leafe's evidence]. The audit is seen by relevant staff as a threat and an act of retribution by Clr Hall on gaining office as Mayor to staff in this group for allegedly favouring particular Mayors and Councillors in the past.
>
> Given that there was no requirement or need for Clr Hall as Mayor to make any public speech or address at this function, given the intended low key nature of the event, involving more a question of community participation than a presentation by Councillors or staff, these alleged statements were viewed as both threatening and unnecessary and more importantly as containing an express or implied slur on or criticism of the staff and the efforts those involved were putting into the occasion. The suggestion, moreover, is that if anything at least in a public forum such as this staff should be encouraged rather than berated by persons holding public office, such as Clr Hall as Mayor. There was

alleged to be no thanking of staff and members of the community for their participation in the event, as might have been expected from the Mayor as leader of the elected Council, but instead only this criticism of staff and the organising of the event. What was said was viewed as inappropriately damaging the Council's image and reputation.

Clr Hall is also alleged to have spoken to a person in the market area and, apparently without realising that this person was a staff member, again criticised staff and the organising of the event. When told by the staff member, Margaret Cogle, that she was a Council employee, Clr Hall is alleged to have made a gratuitous and incorrect comment that she was getting paid "exorbitant overtime for the day" and questioned her in a threatening and demeaning way about her advice to the Mayor that she was in fact not being paid for the day, and was by arrangement with Council management intending to take time off in lieu.

It is further alleged that during this conversation Clr Hall was introduced to the husband of Margaret Cogle and her family. Margaret's husband, Graham Cogle, was then allegedly told by Clr Hall that Council had dispensed with 120 positions and asked Mr Cogle did he realise how much stress that was putting on his wife. This information is again alleged to be untrue and misleading and resulted in unnecessary stress, uncertainty and concerns being imposed on this and other staff members and members of their families.

The Departmental Representatives have been provided with a copy of a memo of 1 October 1999 to the Mayor and Councillors informing them of the event. In the conversation that Clr Hall is alleged to have had with staff member Graham Wright outside the Library (Mr Wright was the co-ordinator of the events at this location), Mr Wright is alleged to have told Clr Hall about this memo and that it had been signed by the Acting Director of Community Services. Clr Hall is alleged to have replied that he did not care who signed the memo and then made a comment about the amount of work that Councillors had to undertake and that it needed to be prioritised. Clr Hall then allegedly asked Mr Wright how long he had been with the Council and when told how long Clr Hall made a statement about elected members and how they ran the Council, not staff, informing Mr Wright that he "would not get very far in the Council if he did not understand this".

These alleged incidents have been the subject of several complaints to the General Manager, but we have not been given permission to provide copies to Clr Hall, though we understand that Clr Hall is alleged to have copies already in his possession, those copies having provided to him by the General Manager.

It is further alleged that arising out of one of the complaints, Clr Hall approached staff member Virginia Leafe after he had seen it and said "I am not impressed with you". When Ms Leafe questioned Clr Hall as to why he said this, Clr Hall is alleged to have said that it was because of the complaint and that if she had any more complaints she should submit them in a statutory declaration. It is further alleged that comments of this nature were addressed to a number of other members of staff, whose identities are at this time not known to the Departmental Representatives, as Ms Leafe is alleged to have received a number of phone calls from such persons who were sufficiently so intimidated as not to want to put complaints into writing. [See elsewhere in this report re the allegations]

Clr Hall, through his legal adviser, provided various responses and arguments in respect of these particulars.

First, Clr Hall indicated that he was providing a "qualified" reply considering it was based on the hearsay of Ms Laurel Vaubell. Our views on this matter are set out at section 2.8 of this report. We accordingly interviewed and obtained evidence from those directly affected by the conduct, as well as witnesses to that conduct. We did interview Ms Vaubell, but her evidence on the matter was treated and considered in this light.

It should be noted that we did not identify Ms Vaubell as a complainant. The suggestion, therefore, that there was a complaint from Ms Vaubell on the matter is one that emanates from Clr Hall.

The next aspect of Clr Hall's response was to admit making reference to his preparedness in his speech. In his reply it is stated that:

> He recalls attending the function referred to and making reference to his unpreparedness during the course of his speech. … the Mayor's response to this discourtesy may have reflected in his public comments …

Indeed, we have noted, from listening to the tapes of the meeting, that Clr Hall again harped on the matter during the course of his long and rambling speech to the Councillors at Council's meeting of 19 October 1999, when Council was considering a revised organisational structure. Therefore the fact that Clr Hall complained about his lack of preparedness and his blaming it on the staff is well and truly proven, just by his own evidence.

The issue to be considered is whether the staff were in fact to blame for the lack of preparedness, or whether the problem lay with Clr Hall himself. In our view the probative evidence before us demonstrates without doubt that Clr Hall was the one to blame for his own predicament.

The documentary and other evidence before us proves that Clr Hall had been given more than ample prior warning and advice from staff about this function.

We start with, and in some respects really need go no further than, a memo of 1 October 1999 addressed to Clr Hall and each of the other Councillors, individually by name. We note that in the debate on 19 October 1999, Clr Malicki interjected that the Councillors had been told of the event.

There is no evidence to suggest that the Mayor did not get his copy of the memo. While the Mayor may seek to argue that his appointments and diary, as well as his filing and so on, were in disarray, and that this is due to the failure of the General Manager to provide him with adequate secretarial assistance, such arguments are, on the probative evidence before us, rejected. See sections 3.17 and 4.8 of this report. He too was to blame for any problems he was encountering on those fronts.

The memo of 1 October quite clearly explains just what Active Australia Day was about, and just what sort of a function, if function be the right word to describe the day's activities, it was. There was no formal invitation for Councillors, or for that matter the Mayor, to attend, nor was it suggested that they should do so. There was no indication that it was a day for speeches from anyone, let alone the Mayor. The memo provides:

> Active Australia is an initiative of the Australian Sports Commission.
>
> Active Australia Day will be a national day to celebrate the importance of participating in physical activity. It will be a call to all Australians to get up and be active.

Active Australia Day seeks to:

- Promote the message that activity can be fun
- Encourage those people who are currently inactive to be active
- Encourage people to keep at it
- Provide information about the opportunities that are available to the community.

As part of the national day, Council staff have developed a program of demonstrations to be run in conjunction with the YMCA, Northern Sydney Health and other community organisations.

The program will take place in the area directly in front of the Ku-ring-gai Library on the Pacific Highway, Gordon. The program will include a variety of activities including Tai Chi, gentle exercise, dance aerobics and gymnastics and will run from 11.00 am until approximately 1.20 pm.

In addition to the demonstrations, Council stall [sic] will also distribute information about physical activity and the Active Australia initiative from a stall in the Gordon Rotary Market.

Attached is a copy of the Active Australia Day program of demonstrations. For further information please contact Ms Laurel Vaubell…

The memo was issued under the joint names of Mr Danny Houseas, then Acting Director Community Services, and Ms Vaubell. It was clearly a memo for the information of the recipients, and required no action on their part.

Ms Vaubell's evidence about Active Australia Day amplifies on and is to the same effect as the above memo. We also interviewed Mr Danny Houseas.

This leads us to Clr Hall's next argument in his response of 3 March 2000 to the allegations as particularised to him. It was put to us that:

> The suggestion that "*there was no requirement or need for Clr. Hall, as Mayor, to make any public speech or address at this function, given the intended low key nature of the event*", is **incorrect**, having regard to the Statutory responsibilities of the Mayor to carry out the civic and ceremonial functions on behalf of the Council. [Clr Hall / Mr Dunn's emphasis].

This argument is in our view quite untenable and puts the role of the mayor in local government at too high a level.

Section 226 of the Local Government Act 1993 does certainly provide, at dot point 4 of that section, that the role of a mayor is:

- to carry out the civic and ceremonial functions <u>of the *mayoral* office</u>. [Emphasis added]

There is, it will be readily noted, no reference at all to civic and ceremonial functions of "the Council", or even "on behalf of the Council", in these words. To suggest that one person only, namely the mayor of a council, is the only one having power and/or responsibilities to carry out such functions on behalf of a council is in any event patently impractical and absurd.

Furthermore, ceremonial functions "of the mayoral office" only means, we have no doubt, such ceremonial functions as need and are appropriate to be carried out. Nothing in section 226 gives to the Mayor alone the full or even final decision as to what pomp and ceremony he may wish to participate in. Nothing in that section, or elsewhere in the Act, gives the Mayor any unilateral right to decide when and where speeches will be given.

In any event, if he wanted to give a speech at such a "low key" function, the sensible course would have been, on receipt of the memo, which was distributed a full 10 days before the function was to occur, to raise the matter with the General Manager and through her the responsible staff, to discuss the proposition and the practicality and need for this with them. There is no suggestion from Clr Hall, or in the evidence before us, that this took place. We do not agree with Clr Hall's legal adviser's suggestion that:

> Even accepting that there had been some written memorandum previously circulated with general correspondence to the Mayor and Councillors, *there was in fact a quite separate requirement on the part of staff to discuss the organisation and holding of this civic public function* (low key or otherwise) *with the Mayor*. [Mr Dunn's emphasis]
>
> …It was a slight to the office of Mayor and to Clr Hall for staff not to have extended to him the courtesy. Indeed, it is submitted that it is normal and proper for such consultation to occur *at the proposal stage rather than as an afterthought* after the function had been organised and arranged. [Clr Hall/Mr Dunn's emphasis]

While this may be so for some functions, we do not consider it so for this one. As Ms Vaubell indicated to us, this was not even a function that was particularly Council's.

The evidence supports a conclusion that Clr Hall apparently, at least by the day, was unaware of, or more likely had simply forgotten, the day's events.

The General Manager told us of several phone calls she had starting at 9.00 am on the Saturday morning, when Clr Hall ostensibly rang her at home to find out what was going on that day, apparently because he had not been provided with information about the matter. The General Manager told us that this was not so, and the evidence, as we have indicated, confirms that. She then had to spend time ringing no less than two staff members, as she was not allowed, on the Mayor's instructions, to have access to his diary. She finally rang him back, only to get the impression that he knew all along what was on. She told us that he:

> wanted to know if the staff were going to make announcements at Active Australia [and that] there'd be … serious consequences if the staff were going to compere [the day's events].

She said that the Mayor threatened her over this.

We shall now deal with the allegations as to what, apart from Clr Hall's speech, took place during the day.

As to the other players named in the particulars above, in this regard, we interviewed Mrs Margaret Cogle and Mr Graham Wright about the matter. Their evidence

confirmed the details set out in the particulars. Mr Wright told us that he had co-ordinated the day's activities. Mr Wright told us that when he had approached Clr Hall on his arrival he had been virtually ignored. He said that Clr Hall's speech, relayed over loud speakers, had left him feeling "ridiculed" and humiliated.

Mr Cogle was not available to be interviewed, due to illness. We accept the evidence of his wife as to what was said by Clr Hall to him and its interpretation by and effect on him. That interpretation is not consistent with that put to us by Clr Hall. Ms Joanne Sainsbury was not a witness, on her own request, and again we felt that there was nothing to be gained by compelling her appearance before us.

Mrs Cogle told us that she had been working at the Council information stall in Wade Lane. She described how the Mayor approached her at that stall and in a conspiratorial manner said to her, "Oh isn't the Council doing a terrible job, they're so disorganised." Her immediate reaction, she said, was to laugh, as she was one of the Council employees and he obviously had not recognised her. She said she then identified herself and Clr Hall commented to her that she was getting exorbitant overtime fees, to which she replied she was not. Mrs Cogle told us that she believed Clr Hall was insinuating she "was only there because I was getting these huge big amounts of money." She went on to say to us that she resented the fact she was giving up her Sunday helping her teammates and that Clr Hall was inferring she was just there earning big money. She described his conduct as "being slightly aggressive".

Clr Hall was then introduced to Mrs Cogle's husband and referred to the recent dismissal of 120 staff from Council and asked did he appreciate how much stress that was putting upon his wife. When specifically asked Mrs Cogle stated that as a result of these comments by Mayor Hall she began to wonder if there were in fact plans to remove 120 staff members from Council.

Clr Hall denied to us using the word "exorbitant", when asking or commenting to the staff about overtime. He said the words used were "there was enormous Council resources spent that day". In our view these words really convey the same implications and criticisms ie that Clr Hall was somehow accusing the General Manager of wasting Council resources, and accusing her staff of complicity in that waste.

Any legitimate concerns Clr Hall may have had over staff matters should have been raised at the appropriate time and in the appropriate way with the General Manager. It is inappropriate to fling accusations around to the startled staff in the public arena.

Council as a whole (and certainly not for the Mayor unilaterally) should determine as Council policy that such functions should or should not occur. It then needs to justify its decision to the community, if Council is so minded. It is for the Council to address the matter with the General Manager as part of the proper contractual performance review mechanism and process if it has such concerns. The *General Manager* is accountable to the Council as a whole for her performance and that of her staff in carrying out Council's lawful decisions and policies and providing the services and so on that Council lawfully determines to provide to the community.

The General Manager told us:

> He has been absolutely infatuated with time in lieu ever since that. You will see memos there, "Time in lieu is a waste," he's brought it up in Council meetings and so on. I have written back to him, and you've probably got a copy of it saying that it's an Award provision.

Speaking of his conversations with Mr and Mrs Cogle, Clr Hall further sought to maintain that:

> Clr Hall denies the interpretation placed on that conversation. Clr Hall states that he was in fact attempting to be sympathetic towards Mrs Cogle in essentially praising staff efforts for working on a Sunday despite the occasional difficulties and stress encountered in Mrs Cogle's position. Again it would seem that the "**declaration of war**" signalled by the General Manager's actions meant that there was a degree of extreme sensitivity even felt by Mr Cogle which led to an over-reaction to the Mayor's speech and conversation. [legal adviser's emphasis]

To label, in that emotive way, the steps taken by the General Manager to seek legal advice on certain aspects of the Mayoral Minute, as a "declaration of war", whether the words be put in boldface or not, is, on the probative evidence and legal reasoning, quite unwarranted in our view. To seek to involve staff members and moreover members of their family in that supposed "declaration of war" is we consider indefensible.

A general proposition put forward by Clr Hall / Mr Dunn was that:

> … it is nevertheless considered that the complaint as particularised has been exaggerated.

In support of this proposition two further points were sought to be made. It was first argued that no account had been taken of what else the Mayor also said on his speech. Irrespective of its relevance, if the rest of the speech went on to say things that overrode or even down played those attacks, we have no evidence of this, and it was quite within the rights and opportunity of Clr Hall to put any such evidence, if it existed, before us. None was provided.

The second point was put in the following terms:

> The staff involved as at 10th of October 1999, *would have been conscious of the negative and public challenge by the General Manager to the elected Council's authority in respect of Council's resolution of the 28th of September 1999*. Accordingly this may have generated a degree of sensitivity and over-reaction by both the staff and the Mayor to their respective roles, reflected in the comments on both sides at this time. [Clr Hall/ Mr Dunn's emphasis]

Firstly, there is an admission by Clr Hall that he had been over-sensitive and had over-reacted.

Secondly, we believe that the evidence before us generally in this Investigation certainly supports a conclusion that the staff, including the General Manager, were by the mere election of Clr Hall to office as Mayor, at the head of a faction of Councillors who were apparently convinced that the staff were not acting in the

public interest, and indeed against it, and who were "going to put the staff in their place", quite clearly and understandably apprehensive and touchy, or if you like "sensitive", about every manifestation of moves in such directions.

Accordingly, they were justified to be concerned, given the history of Clr Hall's dealings with staff and the ambit of the powers that the Mayoral Minute sought to give to the Mayor and Councillors at the expense of the General Manager and her staff. This is one very important reason, we believe, why it has been necessary to consider events prior to Clr Hall's election as Mayor in this Investigation, in order fully to understand what was happening at Council, and to be able to form any judgement on them.

It is acknowledged that in many of the instances of incidents involving Clr Hall that have generated complaints against him, the instances, viewed in isolation, are seemingly trivial, and the uninitiated outsider may well wonder "what all the fuss is about". But, we are firmly of the view that each instance must not be examined and judged in isolation. When considered in the context of the whole story and picture, they may well take on quite a different light. That is the case with many of the incidents and complaints we have examined.

The events of Active Australia Day, on the other hand, are not necessarily such that they have to be considered in that context before it could be said that Clr Hall's conduct, on balance, was in any way inappropriate or that the reactions of staff were, on balance, quite understandable and justified. We consider, on the probative evidence before us, that those events viewed in isolation still lead to that conclusion.

To attack and denigrate the staff, who had clearly put a lot of effort into the exercise, and were willingly working out of hours, and not being paid overtime (just relying on time in lieu arrangements agreed with their superiors - such arrangements are we think purely operational matters for the General Manager to decide, within the confines of any legitimate Council policy on staffing matters), in the public way Clr Hall did on the day, and again at Council's meeting of 19 October, a few days later, is we consider quite unfair, unjustified and inappropriate. Staff were quite rightly upset over the exercise and quite within their rights to raise concerns or complaints with the General Manager or their superiors in the staff hierarchy.

Clr Hall's proven conduct in relation to Active Australia Day is conduct not befitting his office and likely to bring both he, the Council and local government in general into disrepute. It is, along with all the other proven allegations over his conduct, clearly a matter that arises under Council's Code of Conduct, and therefore one that is for Council to determine what action, if any, should be taken over the matter.

The last issue to be dealt with here is to note that Ms Virginia Leafe, Council's Corporate Communications Executive, did put in a complaint to the General Manager over the Mayor's conduct on Active Australia Day, and moreover consented to our providing a copy of her complaint to Clr Hall as part of particulars provided by us to him as to the allegations against him. We noted above Clr Hall's comment, through his legal adviser, that Clr Hall was responding to the complaint on a qualified basis "considering it was based on the hearsay of Ms *Laurel Vaubell*".

Ms Leafe gave evidence that it was her idea alone to put in a complaint and that it had not been created as a result of any input or pressure from Ms Bignell.

Ms Leafe's evidence to us was that she too was not present at the Active Australia Day function, so to that extent anything said by her as to what occurred at the function itself is also hearsay, but again we have considered any such evidence on the same basis as that of Ms Vaubell.

On the other hand, Ms Leafe was personally involved in some aspects of the matters alleged. She told us that she was involved in the phone calls made to and from various players as a result of Clr Hall's insistence on the Saturday morning that he had not been told what was going on, and as a result of his demands to know what the arrangements were. She told us in this regard that the General Manager had telephoned her to clarify the situation and to ask what the Mayor had been told about. Evidence from the General Manager, noted above, again direct and not hearsay evidence, corroborated this.

This establishes that the Mayor's demands and queries set off a chain of events resulting in a number of Council staff having to spend at least part of their weekend putting out and dealing with the brush fire started by Clr Hall. If Clr Hall had been properly organised himself and – even if it is correct to say that despite being disorganised himself he is entitled to place full reliance and blame on the level of secretarial assistance provided to him – if his conduct had not chased all his secretaries away, then all these resources would not have been wasted as they were. It is clear that the dislocation caused by Clr Hall on this occasion has been quite considerable, and unnecessarily so.

3:20 Conduct at Council's Access Committee meeting

The following particulars were provided on 14 February 2000 to Clr Hall:

> This meeting was on Thursday evening 7 October 1999. The conduct is alleged to have taken place both in the meeting and later in the Mayor's office.
>
> About half an hour to an hour after this meeting commenced, it is alleged that Clr Hall entered the meeting and, in the presence of staff members and members of the community, accosted the convenor of the meeting, staff member Darleen Taylor, and asked to see her outside. Before leaving Clr Hall is alleged to have removed a tray of sandwiches from the table, without making any request or comment, and then given them to Councillors working in the Executive Services area.
>
> Clr Hall then allegedly led Ms Taylor to his office and once inside asked her to explain "under what authority she was holding the meeting". His tone was allegedly abrupt and aggressive. Ms Taylor explained that it was an Access meeting and that these were held on a bi-monthly basis. Clr Hall then allegedly repeated his original question to her and told her he had dissolved all Committees. Ms Taylor explained that she was not aware that this had occurred, to which Clr Hall is alleged to have replied "Didn't you read my Mayoral Minute of 28 September?" Ms Taylor said that she had read the Minute, but that she had not understood that this was the intent or result of his new Committee structure. She said that she had checked with her Manager before the meeting about the Councillor appointment to the Access Committee and had briefed the Committee about this.

> Clr Hall then allegedly demanded a full report on his table the following morning to explain how this had happened. Clr Hall then asked if this would be possible and Ms Taylor replied "fine", making it clear from her viewpoint in her tone of voice that she was not happy with the request. Clr Hall then allegedly asked if this was a problem and Ms Taylor told him that she felt she had already explained what had happened and that she had not acted belligerently, but in good faith, and could not see the point of writing it down, to which Clr Hall allegedly raised his voice and reminded her that "what she needed to understand was that the staff did not run this organisation, that he did because he was the Mayor". Clr Hall then allegedly said that he was now going to inform and dissolve the Access meeting.
>
> It is alleged that Clr Hall returned to the meeting room and said that the meeting was "illegal" and that it should conclude. He is alleged to have explained to those present his rationale for dissolving the meeting (he was the Mayor and ex officio chair of all Committees and that this and all other Committees had ceased to exist at the date of the last election) and asserted that it was another incident of staff exceeding their authority. One of the complaints made available to the Departmental Representatives on this matter describes this as "an embarrassing tirade". Council's Manager Development Control, Mr Eugene Sarich, is alleged to have asked Clr Hall if the group could be a sub-committee of the Access Committee which then reported its minutes to the main Committee. Clr Hall is alleged to have replied that there was no authority to do that and that Mr Sarich should know better.
>
> Ms Taylor is alleged to have publicly been brought to tears by the distress and embarrassment of Clr Hall's behaviour.
>
> Clr Hall allegedly made reference to the fact that he could make the Committee pay for the sandwiches because there was no authority to hold a meeting and thus use Council resources, but that he would not. He then went on allegedly to say that since the Access Committee did not exist its members could not participate in the Community Fair, nor could they co-ordinate an already planned activity in recognition of International Day for Disabled Persons.
>
> These alleged incidents have been the subject of several complaints to the General Manager, but we have not been given permission to provide copies to Clr Hall, though we understand that Clr Hall is alleged to have copies already in his possession, those copies having provided to him by the General Manager.
>
> It is further alleged that arising out of one of the complaints, Clr Hall approached staff member Darleen Taylor on 21 October 1999 in the level 3 conference room and asked what she was doing. She explained that she was hosting a Social Planners Network meeting, and it is alleged that Clr Hall then asked whether that was what the complaint was about. Ms Taylor allegedly then attempted to avoid this line of questioning, until Clr Hall allegedly asked her directly whether she had complained about him, to which she replied that she had. It is alleged that Clr Hall then walked out of the room, back through the meeting room and slammed the door as he left.

In our interview with her the General Manager told us about the Access Committee:

> That's a Committee that advises Council on disability matters, so that access for disability, designed footpaths and disabilities on building and so on.

She said it had been in existence before the life of the current Council.

Clr Bennett gave us evidence of what she saw or overheard in relation to this incident:

> Clr Bennett: …I was doing some work at the desk in the open meeting room which is

> next door and the doors to the Committee meeting room, where the people were meeting, were actually open and I could hear what was going on. I honestly didn't think at the time that it was particularly over the top and whilst there were several incidents that I had observed that had been very distressing, and I know that Councillor Anderson shared those concerns, this one wasn't one of them and I really - it wasn't clear to me. It was [not] clear to me that there was a problem.
>
> …
>
> I could hear very clearly because the rooms are next to one another, the doors were open and the Mayor, he wasn't shouting, but his voice wasn't soft either. His voice does carry so I could hear what was being said and I didn't really think it was particularly over the top.

Clr Bennett said that she thought that "people's noses were significantly put out of joint and it was extremely indiscreet and handled very badly" by the Mayor. She agreed that there were better ways to handle it. In this regard she believed that if the Committee was no longer functioning but people were still attending, then "the appropriate thing to do was to speak to the staff afterwards, clarify the position and, if necessary, send letters out and apologise".

Ms Taylor gave oral evidence to us supporting the particulars set out above. She confirmed to us that after she had opened the meeting the Mayor had come in and publicly demanded to know under what authority she was holding the meeting. She was summonsed to his office, out of the meeting, in the presence of staff and members of the community, to explain. In the Mayor's office she was told by him that she needed to understand that the staff did not run Council. Her attention was drawn to the Mayoral Minute of 28 September 1999. Ms Taylor told us that this was all said to her in a "seething, aggressive and loud voice".

Ms Taylor confirmed to us that she and Clr Hall went back into the meeting room where Clr Hall told those present to leave. She said that the reaction of members of the community to this and Clr Hall's whole manner and behaviour towards Ms Taylor was "You've got to be joking". Ms Taylor also told us that after Clr Hall left she burst into tears and had to be consoled by a number of persons.

Council's Mr Danny Houseas was present at the meeting and his evidence corroborated that of Ms Taylor. He had a confrontation with Clr Hall over the supposed legality of the meeting, and told us that Clr Hall had produced a copy of the Mayoral Minute and waved it in his face.

Council's Mr Eugene Sarich was also present at the meeting and his evidence corroborated that of the other witnesses.

At section 6.12 of this report we have considered generally the status of these sorts of Committees under the Hall Council, given in particular the Mayoral Minute of 28 September 1999 and what it said about Council's Committee system. Our conclusion is that neither the Mayoral Minute nor the September 1999 Council elections abolished Council's subsidiary Committees or community consultation groups or forums. They therefore continued in existence. Even if Clr Hall thought otherwise, he was legally incorrect about that. It was not appropriate for him to have

purported to dismiss the staff, and members of the community, and send them home in the way he did. We agree with Clr Bennett's comments on this.

Ms Taylor gave evidence to us also of attempts, with the approval of Clr Hall, to recommence meetings of the Access Committee in early February this year. She had some difficulty in getting sufficient numbers of people to attend and the first meeting lapsed for want of a quorum. However, she told us that the problem was the time of the year and the business of those expected to come, rather than any reaction to Clr Hall's behaviour in October 1999. We also understand that Clr de Vulder had been appointed by Council to chair these reconvened meetings, but that he had, for reasons which were not known, failed to turn up to the February meeting of the Committee.

3.21 Clr Hall's allegedly having demanded the premature public release of studies in relation to the Residential Housing Strategy

Mr Steve Kourepis, who had taken over from Mrs Lynne Swift, after she left Council's employ, as the Acting Manager Urban Planning, had written a memo to his boss, Mr Chris Young, on 21 February 2000, which at Mr Kourepis's request was referred to us for the purposes of our Investigation. The memo appeared to raise concerns over Clr Hall having telephoned him at approximately 2.00 pm on 15 February 2000 about releasing to the public various "Base Studies" connected with Council's review of its residential development strategy conducted through its Residential Development Strategy Task Force and its Sub-Committees. The implication appeared to be that the Base Studies were being released prematurely.

The Studies were the Transport and Traffic Base Study and the Heritage/Neighbourhood Character Base Study.

The memo also ended with the following:

> He also stated, if I did not want him as Mayor, I should say so. I replied that I had not made any comment to that effect. I was surprised with his comments.

In our interview with Mr Young, he told us that the first-mentioned Study was only a draft report arising out of that Study and that it had been before the Sub-Committee dealing with that aspect of the Residential Development Strategy, the Steering Committee for the Traffic and Transport Study. Clr Hall is the Chairman of that Committee. The draft report, so Mr Young told us, had, on the other hand, not yet gone to the full Council.

Mr Young told us that Clr Hall had in fact sought some changes to the draft report. It had first gone to him in late January 2000 as a "very rough draft", in accordance with the "concept … that the Chairman of the Steering Committee would see a draft of the report, and this happened in all the Committees". There had apparently been a meeting with GHD (Gutteridge Haskins and Davey), the outside consultants engaged by Council on this Study, at a meeting of the Steering Committee on 1 February.

Mr Young said that there was no resolution passed at the meeting to publicly exhibit the draft. He explained that the outcome of the meeting was that GHD undertook to take on board all the points raised and discussed at the meeting and add them to the report. This subsequently occurred – that is to say, so we understand, *after* the meeting of the Steering Committee.

We must say that the progress of the draft Study report is not entirely clear to us from the evidence. There is some indication that there was a meeting of the Task Force itself on 14 February, the day before the telephone call from Clr Hall to Mr Kourepis, but just what may or may not have been decided on the issue of release of draft reports to the public is not clear. We note in this regard the following paragraph from Mr Kourepis's memo:

> He raised a question as to why wasn't the Draft Transportation/Traffic Study report on public exhibition, as he could not follow the discussions that took place at the Residential Development Strategy Task Force Meeting of 14 February 2000.

Likewise, whether or not that meeting, or for that matter the Steering Committee itself, saw the amended draft report then or before it was released is not clear.

Mr Young did draw our attention to a recommendation of the Task Force on 29 November 1999, some two months before even the production of a rough draft, which provided:

> That Council release copies of the various Draft Base Studies, as they are received, on the Council's website and in the Council Libraries.

This resolution, or rather recommendation, as it must it seems to us to have been (as to which see the discussion at section 3.22.2 of this report), was presented to the Council for confirmation on 14 December 1999.

So, certainly we have a *Council* resolution to release. If there had not been there would have been a major concern here. But nonetheless we still have concerns at the wisdom of Council writing a blank cheque in this way on such an important matter. Decisions of that magnitude should for accountability and transparency reasons, unless the subordinate body is given clear delegated decision making authority (and there is no evidence of that here), be made by the full Council and on the basis of evidence and materials and advice before it that have a sound foundation.

The whole process undertaken by Council into the Residential Development Strategy is one that causes us considerable reservations. We recognise that Council was under some pressure from the Minister for Urban Affairs and Planning and his Department to meet deadlines, which we understand to have been 31 March 2000. But such deadlines are no excuse for not undertaking a proper, rigorous, accountable and transparent process.

The General Manager's advice to us was that Council delivered the draft Strategy to the Minister and his Department on the deadline date. But it was even then still a draft and delivered with advice that it was only then going on public exhibition. Therefore, what was delivered to the Minister and his Department was a document

that had not undergone a full public consultative process. Meetings of the Task Force and of the Steering Committees were, we are advised, open to members of the public to both attend and participate to some extent in.

Our understanding is that in those circumstances the Minister and DUAP are not prepared to consider what has been presented to them. DUAP's advice to us was that the Minister's requirements as to what had to be done by 31 March were quite clear. This was to present, for the consideration and approval of the Minister, a stategy report endorsed by both Council's co-ordinating consultants and Council itself, after a public exhibition process had been completed.

What has happened smacks of undue haste and lack of proper consultation with the public. There is a distinct danger here that Council is going off half-cocked. This is even worse when it is considered that the majority Trust Councillors were elected with the central task or platform of attending to the production of a satisfactory Residential Development Strategy and with a proper public consultative process being undertaken.

The General Manager told us that those persons who attended meetings of the Task Force and its Steering Committees in the public gallery were observed to be largely members of the Trust. This is not due public consultation. Nor is putting semi-complete and potentially incorrect and misleading reports on aspects of the Strategy from Council consultants on Council's website and in its libraries adequate and proper public consultation. The position is not ameliorated by the fact, advised to us by Council in its corporate response to the final draft of this report, that what was placed on Council's website was clearly marked as being only a draft.

We asked Mr Young about the matter:

> Mr Bulford: In your view as the Director responsible, would you say that those study reports were in a fit state such that they were complete and ready to go on public exhibition?
>
> Mr Young: The traffic one - the traffic one still had a number of omissions and we're still arguing about that, so, no.
>
> Mr Bulford: Right. So in your view it's not ready to go?
>
> Mr Young: No. But it's gone.

He also told us that notwithstanding that the consultant engaged on the Heritage Study "had a concern about releasing" that Study report, it too had gone and was therefore being released prematurely.

We put the following to Mr Young in our interview with him:

> Mr Bulford: I mean, if there was a resolution - I mean, normally Council documents, in your long experience as a Director, which go on public exhibition, that sort of process doesn't happen until the committee that's responsible for the matter puts a - makes a decision, makes a resolution that that be so and a recommendation - the committee would normally express, as I understand it,

> a recommendation to the full Council, the report of that committee would go to the next meeting of the full Council, Council then adopts that recommendation and says, "Yes we resolve that this report or this policy document" or whatever it is, "is fine and we resolve that it go on public exhibition". I'm looking to find whether that has occurred such that it was then the case that it was quite in order for Councillor Hall, as either the Mayor or the Chairman of this Steering Committee, to say to Steve Kourepis, "Shouldn't you be putting this report on public exhibition"?
>
> Mr Young: Yes, I understand that is the normal method that would occur. However, since this Council has been elected, the Mayor and a group of the Councillors have introduced a process that they call continuous disclosure … [which] basically means that when a report is received they make it available to the public. That has concerned us …

And later:

> Mr Bulford: So you'd say that what's happening is that things are going off half-cocked here, are they?
>
> Mr Young: Very much so. The normal procedure would be as you have said, to get the draft, analyse it, raise the issues to see whether or not there can be issues that can be misconstrued by the public et cetera, and then have the Council decide on that.

On the aspect of "continuous disclosure", Mr Young was asked whether it was just a de facto practice happening without due authority:

> Yes, that's right. And that's been happening with each one of the studies. … I think it's - I think it probably is the Mayor acting unilaterally, but I also think it's the other Councillors in those particular Steering Committees have certainly acquiesced or agreed with the methodology, and that they're reacting to a resident action group.

It is entirely unclear to us what "continuous disclosure" means or entails, notwithstanding Mr Young's brief explanation of it. We asked him to advise us when Council might have adopted the policy of "continuous disclosure" as a policy of Council. He was unable to provide us with other than a few sketchy references to this concept in various minutes. Council needs to take action to review its alleged policy in this regard, and in so doing, if it is to be maintained, that policy should be clearly set out and should flesh out what is entailed in the concept. Any such policy may need to be introduced with due public consultation as to its desirability and terms.

In its corporate response to the final draft of our report Council sought to defend its public consultative processes in relation to the Residential Development Strategy. A brief overview was provided to us in respect of the measures taken. But the fact is that not only is this disputed by at least one Councillor, it is more importantly questioned by the General Manager and her senior staff and the information provided to us both by Council and by the General Manager gives us no reason to change what we have said on this matter. As we have indicated, however, at section 6.12 of this report, we do not propose to canvass this issue fully in this Investigation and this report, the matter of the adequacy of public consultation on the Strategy

being ultimately one for the Minister for Urban Affairs and Planning and his Department.

We make no finding in relation to the trivial issue of the alleged outbursts on whether or not Mr Kourepis wanted Clr Hall to be Mayor.

3.22 Conduct of Clr Hall at a meeting of Council's Transport & Traffic Steering Committee

The particulars provided to Clr Hall on 14 February 2000 were as follows:

> This meeting took place on 21 October 1999.
>
> It is alleged that Clr Hall rudely asked Chris Young, Council's Director Planning & Environment, to leave the meeting 5 minutes after he arrived as he was not needed. It is further alleged that on the first occasion Ms Lynne Swift asked to be excused, in order to be able to circulate amongst two other steering Committee meetings that were being held concurrently, Clr Hall refused. It is alleged that on at least three occasions Clr Hall said to consultants GHD that if they did not get the assistance they need from staff then they should let him know straight away and the staff would be sacked. It is further alleged that Clr Hall claimed the minutes of the previous meeting should be retracted and were wrong, disputing many of the details of what had been recorded and the way in which they were written. This recording had been done by Council's Meredith McIntyre. On this occasion, therefore, after these allegations had been made she ceased to record all but the major issues and directions, only to find that Clr Hall allegedly asked her if she had taken notes on all that had been discussed. She replied that she had not taken down the detail and he is alleged to have replied "Well why are you here if you're not going to take down what's said". Ms McIntyre then said "Would you like me to leave?" and Clr Hall then allegedly said "Well maybe you should". When Ms McIntyre could not find the location of two streets on a map Clr Hall is alleged to have said "What are we paying you for?"
>
> It is further alleged that Clr Hall made unfounded and defamatory allegations of misleading Council and of corruption against John Begley, as to which see Attachment 7.

3.22.1 Conduct towards John Begley

Attachment 7 was a copy of a memo dated 25 October 1999 from Mr Begley, one of Council's Traffic Engineers, to the General Manager lodging a complaint about the conduct of Clr Hall at the meeting. Relevant parts of that memo state:

> I was subjected to a tirade of abuse which I found intimidatory and objectionable. [this was over discussions of traffic calming devices] …
>
> Cr Hall was informing the traffic consultants at the … meeting about various developments which are occurring on Mona Vale Road / Ryde Road. He proceeded to tell the consultants that he knew that an officer was taking bribes (he was pointing at me as he was speaking) from Australia Post and that is why Council approved the development. He stated that the officer (still with his hand pointing at me) had deliberately withheld documents from the RTA and Police in relation to the development. He then stated that he would have this matter and the officer investigated by ICAC. There was no doubt in my mind, that the Mayor was referring to me as being the officer concerned. I found his comments abusive, intimidatory and offensive.

In addition to the common responses noted above concerning the allegations about Clr Hall's conduct towards Mr Young, Ms McIntyre and Ms Swift at this meeting (noted below), Clr Hall also offered the following reply to the allegations as to his conduct towards Mr Begley:

> Clr Hall denies that he made any allegation of impropriety directed at Mr Begley. Clr Hall admits that he may have spoken inappropriately to Mr Begley during the course of the meeting. Clr Hall recalls having criticised Mr Begley for some lack of detailed knowledge of a map that had been produced. *On reflection this criticism may have been unfair and may have been brought about by extraneous factors not connected with Mr Begley*.

The General Manager told us that Clr Hall (as a Councillor and as a resident) had been a very vocal and vigorous opponent of the Australia Post development application for the site. The General Manager told us that she had never forwarded the matter to the Independent Commission Against Corruption because "there was no details given and I have to say it is what Councillor Hall has been saying about staff for a long time." The General Manager also indicated that, to the best of her knowledge, no other person, including Clr Hall, had forwarded the matter to the ICAC.

She also explained how Mr Begley's memo to her of 25 October 1999 had been included in the package of complaints removed from the Councillors' tables by Nicole Williamson, on Clr Hall's instructions, before the Council meeting of 26 October 1999. The General Manager then told us that shortly after this the memo was quoted in the press, providing details of the bribery allegations made against Mr Begley. We have been provided with a copy of an article which appeared in the Advocate on 4 November 1999, containing quotations taken directly from Mr Begley's memo.

In fairness to Clr Hall, it should be noted that the Advocate also indicated that when Clr Hall was approached in relation to this matter "he denied that any of these things happened. He said he couldn't recall what happened at the meeting and there were no minutes taken."

However, during the course of this Investigation the Begley allegations were corroborated by other witnesses. Considering this fact, together with the vagueness of Clr Hall's denial to the Advocate newspaper, we have no difficulty in finding that Clr Hall did in fact make the allegations of bribery, as described by Mr Begley.

During our interview with the General Manager she also explained to the us that the Communications, Electrical and Plumbers Union ("the CEPU") had become aware of these allegations by Clr Hall, which by their very nature, cast aspersions upon its members. She went on to explain how during the two days prior to 15 February 2000, the Union had placed a black ban on the Post Office site at West Street, Pymble until Clr Hall apologised and withdrew the allegations.

We have been provided with a copy of an article which appeared in the North Shore Times on 1 March 2000 indicating that on 16 February 2000 Clr Hall had forwarded a letter to the Minister for Urban Affairs and Planning, Dr Andrew Refshauge, in which he had claimed:

> It would appear the council acted contrary to the EP and A Act in the matter and certain officers did not follow planning assessment requirements.

We have examined a copy of the letter and it is clearly critical of staff in a number of respects.

Further documentary evidence indicates that Council formally considered the development application for 3 – 5 West Street at its meeting of the Planning and Environment Committee held on 14 March 2000. As part of those considerations, reference was also made to Clr Hall's allegations about Council staff, as detailed in his letter of 16 February 2000 to Dr Refshauge and as pronounced by him in the Traffic and Transport Steering Committee meeting of 21 October 1999.

Records relating to this meeting of 14 March 2000 indicate that Councillors had previously expressed their concern at these allegations at the meeting of 7 March 2000. On 14 March 2000 the Council resolved as follows:

> B. That Council notify the Hon Dr A Refshauge MP, Deputy Premier and Minister for Urban Affairs and Planning of Council's determination of this application.
>
> C That the letter by the Mayor, Councillor Hall dated 16 February 2000 to the Hon Dr A Refshauge MP, Deputy Premier and Minister for Urban Affairs and Planning be withdrawn and the Mayor write to the Minister informing him that the letter has been withdrawn.
>
> D That Council write to the Communications Electrical and Plumbers Union advising it that the matter has been resolved and the Mayor's letter to Dr A Refshauge MP, Deputy Premier and Minister for Urban Affairs and Planning shall be withdrawn and any allegations in relation to the application are unsubstantiated, and that the Mayor write to the Minister and withdraw his letter.
>
> E That Council send a letter to staff through the General Manager advising them that the matter has been determined and Council has resolved that the Mayor write to the Minister, Dr A Refshauge MP, Deputy Premier and Minister for Urban Affairs and Planning and the Communications Electrical and Plumbers Union advising that his letter dated 16 February 2000 has been withdrawn and Council has resolved that the allegations are unsubstantiated.

Despite the fact that the resolution was essentially formulated in accordance with a number of verbal undertakings given by Clr Hall during the course of the meeting, he was recorded as the only Councillor to vote against the motion.

It should also be noted that, at the Environmental & Planning Committee meeting of 29 March 2000, Clr Hall indicated that as yet he had not written the letter of retraction. As at the time we finalised our initial draft of this report the letter of retraction had still not been prepared.

On 14 March 2000, Clr Hall forwarded another letter to Dr A Refshauge which was also critical of the performance of Council staff in relation to another development application concerning 692B-694 Pacific Highway, Killara and the application of SEPP No. 1. The letter stated:

> I welcome your announcement of an inquiry into the misuse of SEPP No. 1 and would appreciate your formal notification and how we can help in due course.

In the meantime I enclose a copy of a staff report for a commercial development (DA 332/99) at 692B-694 Pacific Highway, Killara which exceeds the Council's LEP 100 in height limit by 38.

I am concerned that in this example:

(a) The DA was assessed by an outside consultant without any confidentiality sanction imposed on the firm for consideration of the Environment & Planning Committee on 22 February 2000 (copy enclosed)

(b) As a result of that Committee's resolution, the delegated authority report of 7 March 2000 (copy enclosed) was not signed by that consultant.

(c) There was no reference to the quantitive variation from the planning scheme instrument's development standards.

There clearly needs to be established a set of principles to guide councillors in using SEPP No 1 with caution. Variations up to 70% of development standards have been approved by previous councils in Ku-ring-gai.

I would be grateful for your responses to the above at your earliest convenience.

It is obvious this letter caused some consternation when its contents became known to others within the Council. On 17 March 2000 the General Manager forwarded a memo to Clr Hall, copies of which were circulated to all Councillors, in which she indicated that his letter did not accurately reflect Council's view and past decisions on the matter. She also commented that the letter represented a breach of protocol and that, in light of Council's discussions and resolution of 14 March 2000 concerning such letters, the issue was one to be resolved by Council.

On 23 March 2000, and also in response to Clr Hall's letter of 14 March 2000 to Dr Refshauge, Clr Graeme Anderson prepared a notice of motion in which he commented upon the negative impact such criticism has upon the reputation of Council as a whole and upon Council staff in particular. In Clr Anderson's view, such public humiliation "can only lead to an attitude of deferring decision-making rather than make the headlines with a Minister on an alleged mistake."

Clr Anderson indicated his intention to move a motion that :

1. The Mayor, Tony Hall, is prohibited from writing letters on Mayoral, Councillors or Council letterheads to the Press or any State or Federal Government Departments, Ministers or Officers that in any way infer or claim that Council's Planning or Environmental Control processes or Staff have operated in a defective or unprofessional manner without the prior approval of Council.

2. Council apologises to the Staff for the Mayor's letter of 14 March and advises Staff formally of this motion designed to prevent future similar incidents."

After reading the intended motion, Clr Hall informed Clr Anderson that he had received legal advice that the motion was unlawful and that he intended to rule it out of order. Clr Anderson subsequently requested the General Manager to seek legal advice on the matter and on 28 March 2000 a request for advice was forwarded to Abbott Tout, solicitors. The response received from Abbott Tout provided brief

commentary upon the proposed notice of motion but essentially advised that it was not out of order.

Clr Bennett apparently had concerns with the form of Clr Anderson's proposed notice of motion. On 28 March 2000 Clr Bennett informed the General Manager of her proposed amendment to Clr Anderson's notice of motion and requested the General Manager to seek legal advice as to the lawfulness, or otherwise, of that amendment. The advice was that it was not out of order.

In any event, on 29 March 2000 Council's Environment & Planning Committee adopted the amended notice of motion proposed by Clr Bennett and seconded by Clr Anderson. Council ultimately resolved:

> That no councillor, including the Mayor, shall raise issues relating to the conduct of staff on official letterhead or by any other means whatsoever with any agency, official, government department, Minister of the Crown or the press until such allegations have been dealt with strictly in accordance with Council's Code of Conduct.
>
> Where the issues raised relate to the conduct of staff, the General Manager shall report to Council on the matter and further action involving external bodies as referred to above shall be taken strictly in accordance with any resolution of the Council.
>
> The above procedures are adopted insofar as they are not inconsistent with any Act of Parliament.

On 13 April 2000 Clr Little prepared a notice of motion which detailed his concern regarding the appropriateness, relevance and accuracy of the contents of the letter written to Dr Refshauge on 14 March 2000. Essentially, Clr Little claimed that comments made by Clr Hall in that letter and in a related memorandum of 17 March 2000 were inappropriate.

At the ordinary meeting of Council held on 18 April 2000, Council formally adopted Clr Little's notice of motion, and Council's resolution was:

> A That Council expresses concern regarding the appropriateness, relevance and accuracy of the contents of the letter written by the Mayor to Dr Refshauge, Deputy Premier and Minister for Urban Affairs and Planning, on 14 March 2000.
>
> B. That the Deputy Mayor is authorised to write on behalf of Council to Dr Refshauge that:
>
> (a) the staff report for the commercial development (DA332/99) at 692B-694 Pacific Highway, Killara was accepted by Council substantially in the original form.
>
> (b) the development has been approved by a full meeting of Council, and
>
> (c) the letter written by the Mayor does not reflect the views of this Council and were the Mayor's personal views only.
>
> C. That Council apologises to staff for the Mayor's letter referred to above.

It is also noted that at the same meeting Council considered a notice of motion proposed jointly by Clrs Bennett, Anderson and Roach, which concerned the removal of Mayor Hall as Council's delegate to the Ku-ring-gai Traffic Committee. During discussion of this matter a number of Councillors expressed concerns and/or commented upon Clr Hall's apparent failure to act in accordance with Council's previous resolutions concerning the issue of the widening of Killeaton Street, St Ives and his misrepresentation of Council's view on the matter.

Findings

The evidence detailed above reveals the lengths to which Clr Hall is prepared to go in order to achieve his own ends, in this case relating to the outcome of two development applications concerning properties situated at 692B-694 Pacific Highway, Killara and 3-5 West Street, Pymble, respectively.

He accused a Council staff member of receiving bribes and providing false/misleading information to police and the RTA, making these accusations in a Council Committee meeting in front of external consultants. There is no evidence that Councillor Hall has pursued these allegations, nor has he provided any further substantial details.

He has forwarded letters to Ministers of the Crown in which he is critical of the performance of Council staff without first affording staff members the opportunity of responding to such criticisms, in accordance with principles of natural justice, Council's own adopted Code of Conduct and Council's policy concerning interrelationships between councillors and staff,

Clr Hall has to date disregarded, or acted in contravention of, Council's formally adopted resolutions.

The impact of such actions is amplified by the repercussions of its subsequent reporting within the media, which we believe that a public official with the experience of Clr Hall should have anticipated would occur.

A further issue requiring consideration is the adequacy of Council's responses to Clr Hall's actions. The first point to be made is that the effectiveness of those responses is limited somewhat by Clr Hall's preparedness to disregard Council resolutions in pursuit of his own ends.

On 29 March 2000 when Clr Bennett introduced her amended notice of motion, as detailed above, there was considerable discussion amongst the Councillors and criticism by several Councillors as to the appropriateness of the motion and, in particular, the extent to which it was inconsistent with individual duties and responsibilities imposed under the provisions of the Independent Commission Against Corruption Act 1988 and the Protected Disclosures Act 1994.

To suggest, as Clr Hall attempted to do at the meeting of 29 March 2000, that Councillors could not be expected to know when such inconsistency occurs is not a plausible argument. Within the specific circumstances of this particular issue, it is

not unreasonable to expect Councillors, as elected public officials, to know and apply the law. They are moreover legally required to do so.

On balance, we do not believe the criticisms or concerns noted above are justified. The issue is largely overcome by the inclusion of the last paragraph, which provides that Council's resolution is only applicable insofar as it is not inconsistent with any Act of Parliament. But, we must stress that, under section 11 of the Independent Commission Against Corruption Act, there is a clear statutory duty on public officials, such as a mayor of a local government council, to report to the Commission "any matter that the officer suspects *on reasonable grounds* concerns or may concern corrupt conduct". We have italicised the fore-mentioned words to emphasise this important qualification. An issue does arise as to the extent to which Council's requirement that, before alleged or suspected corruption is reported, it must be examined under Council's Code of Conduct, implying a full process in that regard, may go too far, but we express no concluded views on that.

3.22.2 The conduct toward Chris Young

We have examined the allegations as to Clr Hall's conduct towards Mr Young from two perspectives. First, whether it was fair, reasonable and appropriate for Clr Hall to have done what he did (Clr Hall does not dispute he asked Mr Young to leave). Second, from the viewpoint of whether what he did was lawful.

Mr Chris Young, Council's Director of Planning and Environment, told us about the role of the Traffic and Transport Steering Committee:

> Following the Residential Strategy Task Force, Council had engaged consultants to undertake four base line studies for their residential strategy. Traffic and Transport was one. The Task Force had appointed a Councillor as a chairman of a steering committee for each. Councillor Roach was the Chairman for Infrastructure, Councillor de Vulder for Heritage and Neighbourhood Character … and Councillor Little for Environment, and Councillor Hall nominated himself as Chairman of the Steering Committee for Traffic and Transport. He has a particular interest in traffic and transport.

These appointments were made at the Task Force's meeting of 11 October 1999.

The Mayoral Minute of 28 September 1999, which set up the Task Force, had quite unclear details as to the staff membership of the Task Force. It was stated that "initially" the staff members would be the General Manager, the Director Urban Environment (Mr Chris Young's title of the time) and "Deputy Director" – whoever or whichever Deputy that might be. The amendments made by Council's resolution of 5 October 1999 added the words "Urban Environment" to this last description, so that at least was finally cleared up. It is clear, therefore, that the decision and will of the full Council was that Mr Chris Young (or rather the person holding his position) should be a member of the Task Force, even if this was to be "initially". Any change to be made to the decision of Council in regards to Mr Young being a member seems to need to be effected by a resolution of the Council, except to the extent that Council resolved to delegate this to the Task Force itself, or for that matter to anyone else, such as the Mayor. No evidence of any such delegation was provided to us. The Terms of Reference of the Task Force in the Mayoral Minute were sketchy to

say the least. There is, therefore, also perhaps a question as to the authority of the Task Force in this regard.

We note Council's advice in its corporate response to the final draft of this report that measures have now been taken, following a consideration of the questions raised in this report as to the terms of reference of the Task Force, to review and revise those terms of reference or charter.

Our advice is that the staff membership of the Task Force actually went further and additional appointments were formally made at the meeting of the Task Force on 11 October.

It is noted that the minutes of the meeting of 11 October of the full Task Force record Mr Young as an attendee. There is no suggestion at that time by Councillor Hall that he was not entitled to be there. The allegation against Clr Hall is that he told Mr Young to leave a meeting not of the Task Force itself, but of its sub-group, the Transport and Traffic Steering Committee, which took place on 21 October 1999.

As to the meeting of 14 October, Mr Young told us:

> He asked me - first off he told me that I - obviously I had better things to do and that he didn't want to delay my time there and that I could go. And I replied that as I had the overall responsibility for the strategy, I had expertise in traffic, I was particularly concerned to be there.

Our questioning continued:

> Mr Bulford: So what did Councillor Hall say when you told him that?
>
> Mr Young: He continued to tell me that I had better things to do and I should leave and I said no I was - - -
>
> Mr Bulford: And how would you say he made those statements? Was it in a conversational manner?
>
> Mr Young: No, it was fairly blunt and directorial. He was seeking me to leave and - - -
>
> Mr Bulford: Did you leave?
>
> Mr Young: No I did not.
>
> Mr Bulford: What did he do?
>
> Mr Young: When he saw that I wasn't going to leave he continued on with the meeting.
>
> Mr Bulford: So he just let the matter rest?
>
> Mr Young: He let the matter rest, yes.

As on 14 October, so on 21 October, Mr Young was not the only member of staff, not formally a member of the Steering Committee, who was present. There is no evidence that Clr Hall as Chairperson sought to evict or otherwise suggest that any other member of staff or other attendee should leave or that his or her presence was not needed. It is noted that Ms McIntyre was present at the meeting. She was not a

member of the Steering Committee. She was not asked to leave. Similarly, we note from the minutes of the meeting that Mr Peter Edwards, described as the "Mayor's Consultant" in the version approved by Clr Hall, was also present. He was not a member, and he was not asked to leave. Likewise, two representatives of external consultants, GHD, were also present. They were not members; they were not asked to leave.

Mr Young, as the Director in charge of the sorts of issues that the Steering Committee was dealing with, clearly had an important functional and staff advisory role to play in the proceedings of the Steering Committee. Mr Young told us:

> The reason that I attended those was because I had the overall carriage of the total Residential Strategy; … secondly I'm a qualified traffic engineer, one of the few on Council.

Speaking of the meeting of 21 October, Mr Young also told us:

> …The two members of staff, Mr Begley and Ms McIntyre had said to me that they were concerned. It was a similar situation to the Cowan Catchment Management memo, that they were concerned that should they be left alone without a senior officer there, then they would be intimidated.

Our questioning as to the events at this meeting continued:

> Mr Bulford: And would you say that that was a polite request?
>
> Mr Young: No it was certainly much more confrontationalist than the previous week and when I stood my ground again he became more vehement and - to the extent that I then did leave. And I felt concerned about the staff that were left.
>
> Mr Bulford: But you did stand your ground initially?
>
> Mr Young: Yes I did.

This evidence was corroborated by the testimony of Ms McIntyre and Mr Begley to us. Mr Begley that told us that after Mr Young had been ordered to leave the meeting, he had considered following suit, but he stayed because he was concerned over leaving Ms McIntyre on her own. Ms McIntyre told us that Clr Hall was extremely disparaging of the minutes she had made of the previous meeting and in doing so raised his voice and threw the minutes onto the table. She said that Clr Hall was aggressive and confrontational to her.

Ms Swift's evidence to us also corroborated that of other witnesses. She told that she left Council's employ on 8 November 1999. She said that Clr Hall was very abrupt and dictatorial to Mr Young at the meeting of 21 October. She told us that the whole way the strategy had been organised was very unclear. Her own role as co-ordinator had not been made clear to her. She became very dissatisfied and this caused her to decide to leave her job. Clr Hall's behaviour towards her, she said, was the last straw.

The above shows the practical reasons as to why Mr Young should have been there and why he should not have been embarrassingly asked to leave in the presence of

those other attendees at the meeting whose presence the Mayor was apparently prepared to tolerate. The legal situation follows.

The Task Force, as set up in the Mayoral Minute of 28 September and as amended in the resolution of Council of 5 October, was only described in those terms. The word "Committee" does not appear either in its title, or in the description, such as it was, of its intended functions. The Mayoral Minute records that the Task Force was "to report to the Council's relevant Principal Committee", without making it clear which Committee that was. But these words do not mean that the Task Force was not in fact a "committee" of the Council.

Clause 33 (1) of the Local Government (Meetings) Regulation 1999 provides that a council may, by resolution, establish such committees as it considers necessary. Clause 34 goes on to provide that a council must specify the functions of each of its committees when the committee is established (our emphasis), but may from time to time amend those functions.

Clause 11.7 E of Council's Code of Meeting Practice of September 1999 goes on to provide:

> Charters of Responsibility for each of Council's Committees shall be adopted by Council and reviewed within 12 months of a Council general election.

All that the Mayoral Minute provides on these scores is to say (the Mayoral Minute having been the product of Clr Hall apparently without any input from anyone else):

> The Task Force shall have power to use the open policy forum to consult regularly with the residents' reference group to be established shortly. …
>
> Initial Tasks:
> * Residential Strategy
> * Exempt and Complying Controls
> * Development Controls / Reviews
> * SEPP No. 5 Proposals.
>
> The convenor may include further planning issues considered contentious and appropriate for consideration and report by this Task Force.

The "convenor" is the Mayor, Clr Hall. These Terms of Reference (or "Charters of Responsibility"), if you can call them that, are hopelessly inadequate and unclear. Council needs to address this, if the Task Force / Committee is to continue to have a role to play and to exist.

One of the worst aspects here is that it is no where said whether this body is charged purely with the task of consulting with the community and/or reviewing policy matters etc on the residential development strategy, required to be put in place by Council to meet its SEPP No. 35 obligations, and/or making decisions. These basic things need to be spelt out, at the very least.

We note that clause 11.7 D of Council's Code of Meeting Practice of September 1999 provides:

> Only Committees with specific delegations in accordance with Section 377 to carry out functions on behalf of Council may resolve matters. Other Committees may only make recommendations to Council for consideration.

The General Manager's advice to us is that the Task Force has in practice been only making recommendations to the full Council. However, it is necessary to clarify the powers and delegations, if any, of a Committee. Our advice from Council is that there are no rules for the conduct of meetings of this body. Council should address this situation.

Clause 38 (1) of the Meetings Regulation provides that "each committee of a council may regulate its own procedure". Furthermore, that clause is replicated in clause 11.7 of Council's own Code of Meeting Practice. Good management practice requires that the Committee should do so. See, for example, the Ombudsman's Guidelines entitled *Good Conduct & Administrative Practice* of January 1995 at page 5, paragraph 2.2.1.

There is no suggestion that Mr Young was being evicted from the meeting because of any disturbance or disorderly conduct, so provisions of the Local Government (Meetings) Regulation covering such eventualities are of no assistance here.

Likewise for sub-committees like the Transport and Traffic Steering Committee. Legally the position, so we understand it, is that sub-committees are not formally bound either by the Meeting Regulation or Council's Code of Meeting Practice. Sub-committees can make their own rules. Frequently, however, in practice, sub-committees adopt all or some of the Council's Code of Meeting Practice. The point here is that there is no evidence of *anything* being done at this Council.

The rules for the conduct of meetings of the Task Force, and of its Steering Committees, should make it clear who is entitled to attend meetings and in what circumstances persons in attendance, be they Councillors, members of staff who are formally members of the Committee, or otherwise, or members of the public, may be removed from or asked to leave the meeting. We consider in this regard that the rules should provide for a right for a member of the Task Force to attend meetings of its Sub-Committees, or Steering Committees, in the same way that clause 36 of the Meetings Regulation provides that a Councillor, who is not formally a member of the Committee, "is entitled to attend, and to speak, at a meeting of the" Committee.

In the absence of written rules or a code of meeting practice applicable to the Steering Committee, it is not clear whether or not Mr Young had a right of attendance, and conversely whether or not Clr Hall had any right or justification to question his presence and request him to leave.

We note in this regard that the minutes of the meeting record:

> The Mayor requested that Director Chris Young leave the meeting as he is not required.

We do conclude, however, that it was not appropriate for Clr Hall to have done so, and that it could well be perceived by both Mr Young and any other reasonable observer to have been a slight and embarrassment to him.

In his reply to the allegations particularised at the commencement of this section of our report, Clr Hall denied "any rudeness to staff". He also maintained that he "did suggest to Council staff, *four* members of whom were present at the start, that it did not appear the Committee required *all* of them to remain, particularly since some of them had other meetings to attend at the same time" (Clr Hall / his legal adviser's emphasis). Clr Hall provided no evidence or information as to the identity of the four persons concerned. There is nothing in the minutes of the meeting in question to corroborate that that many staff turned up. Nor is there anything in the evidence given to us by our various witnesses to corroborate Clr Hall's propositions. The sworn testimony of Mr Young, and the other witnesses is not to such effect. We are unable to accept Clr Hall's propositions accordingly.

Our conclusions are not lessened or changed by the evidence to us from Mr Young that after 21 October he had not been challenged as to his presence any further by Clr Hall. He told us that Clr Hall appeared to be accepting his presence and the need for it, adding that only a week or so before our interview:

> Yes, and indeed what he has said now is that I'm the one who's controlling it and that he has no control over it at all, all he is is the Chairman of the Committee and I'm the one who has to take full responsibility for it.

"By way of further explanation" to Clr Hall's responses as noted above, it was put to us by Clr Hall, through his legal adviser, that "revelations" (see section 3.11 of this report) at a meeting which took place at a meeting which preceded the Steering Committee meeting, and the "way in which it was delivered caused him to be upset. *Unfortunately, he remained upset when he attended the above meeting*. In retrospect Clr Hall clearly over-reacted to matters that took place at the Traffic Steering Committee meeting … *It goes without saying however that the conduct of the General Manager is also implicit in having created the situation that occurred*" (emphasis of Clr Hall / his legal adviser).

We find this an unconvincing explanation.

It is also unsatisfactory. The theme of seeking to pin the blame on the General Manager is oft-repeated in Clr Hall's submissions and replies to us. As a Mayor and Councillor and person holding public office, and as Chairperson of the meeting, a meeting attended not only by staff, but also outsiders, ie consultants to Council, and likely members of the public as well, it was incumbent on Clr Hall to keep his temper and upsets and behaviour in check and behave with decorum and propriety.

That Clr Hall also extended "his apology to Mr Begley and to others who were in attendance at this meeting" is noted. It does not mean that the behaviour was not deplorable and should never have happened in the first place.

We also take this opportunity to note a further matter for grave concern. The evidence to us is that Clr Hall, at meetings of the Task Force, has declined to allow Clr Elaine Malicki to attend and speak *qua* Councillor. She has apparently been forced to the artifice of attending as a member of the public and to seek to speak in that capacity. This is extraordinarily demeaning and unnecessary. It is moreover in

blatant disregard of clause 36 (1) of the Meeting Regulation and of the principles foreshadowed in clause 11.6 of Council's Code of Meeting Practice. Such conduct and practices must cease immediately.

3.22.3 Conduct towards Lynne Swift

The minutes of the meeting of 21 October 1999 merely record that:

> Lyn Swift was excused from the meeting to go to the other 2 steering committees.

The reply of Clr Hall, through his legal adviser, to the allegations as to his conduct towards Ms Swift was to say:

> Clr Hall in fact suggested that perhaps Mr Young could return to take her place if she had to leave. There was no denial of her leaving, but rather a request in that regard.

The "further explanation", admissions and apologies noted above in relation to the conduct of Clr Hall towards Mr Chris Young at this meeting also apply vis a vis Ms Swift, and also Ms McIntyre and Mr Begley.

Mr Young's testimony to us was that Ms Swift had made it clear to him, as her boss, that the reason for her resigning and leaving Council was Clr Hall. He said that he did not think that had been expressed in her written resignation, but that he believed that she did not do so because of concern over "repercussions".

3.22.4 Conduct towards Meredith McIntyre

In addition to the common responses noted above concerning the allegations about Clr Hall's conduct towards Mr Young and Ms Swift at this meeting, Clr Hall also offered the following reply to the allegations as to his conduct towards Ms McIntyre:

> Clr Hall simply questioned … [the] accuracy [of the minutes] in certain respects, as he was entitled, being the Chairman. With regard to Ms McIntyre ceasing to record all major issues and directions, Clr Hall states that if she had so responded, then that had been done without any reference to him.

We do not think that the complainants sought to suggest that Clr Hall as Chairperson could not raise questions as to the accuracy of any minutes. The point at issue is how he went about it. The reply clearly fails to indicate any form of awareness by Clr Hall that there were appropriate ways in which he could make his concerns known. We find that he did not act appropriately.

3.23 Further conduct towards John Begley

We shall now deal with an additional allegation of conduct by Clr Hall towards Mr Begley.

In a memo of 11 February 2000 from the Director Planning & Environment, Mr Chris Young, which in his interview with us Mr Young described as a letter of complaint to the General Manager about the conduct of Clr Hall, Mr Young referred to a conversation he had with Clr Hall at 9.30 am that day in which the Mayor sought to raise concerns about the choice of consultants to be engaged by Council in relation to the EIS for the Chatswood to Parramatta rail link. In that memo Mr Young stated that Clr Hall, during that phone conversation, "made a claim that the Traffic Engineer Mr Begley was deliberately concealing facts from Council" in relation to the matter, namely that a proposal back in 1994 for a high level road bridge in the area had previously been refused by Council. In the memo Mr Young went on to note that he pointed out that Mr Begley was not the engineer working on the project, but Clr Hall persisted in his allegation against Mr Begley, demanding to see the file that day. Mr Young noted that he had asked Mr Begley if he knew anything about a proposal in 1994, and the reply was in the negative. The engineer in charge of the project was also asked, and his reply was the same. Mr Young noted in his memo:

> I am concerned that the Mayor, with a small piece of information quickly accuses staff members and particular staff members of such behaviour.

In our interview with Mr Young he told us that he could not recall any such proposal as was alleged by Clr Hall. Mr Young had been in this senior position (by various titles) for some 20 years. Mr Young added:

> Mr Begley certainly - may have been at Council at that time. I subsequently learnt that he may not have even been in the country at that particular time. And I was concerned that once again there was a very tenuous link to something and that Councillor Hall immediately focused on a particular staff member, in this case Mr Begley and maybe another staff member in another matter, and has this concept that there is a conspiracy theory working against him.

Mr Young also told us that he made enquiries and as a result determined that Councillor Hall's proposition was totally without foundation. He then put a complaint into the General Manager.

Mr Young also advised us that it was his idea to put in the complaint and that it had not been encouraged or otherwise initiated by the General Manager.

The above additional instance of the conduct of Clr Hall to or in respect of Mr Begley, coupled with the conduct towards Mr Begley at the meeting of the Transport and Traffic Sub-Committee and its aftermath – the latter being considered at section 3.22.1 of this report – demonstrate a sustained campaign of unjustified and unwarranted attacks by Clr Hall on the integrity of Mr Begley.

3.24 Conduct towards Bill Bright and others

We deal with this employee and his relations with Clr Hall at this part of our report, given the relationship with the matter of conduct towards Mr Begley – both involve allegations made by Clr Hall of corruption on the part of these two employees.

The following particulars were provided to Clr Hall on 14 February on this issue:

> It is alleged that on very many occasions, the dates of which are at this time unavailable to the Departmental Representatives, Clr Hall has in the sight or presence of Mr Bill Bright, Council's Business Service Co-ordinator, stopped and stared at the latter as if he was some sort of sub-standard human being. The relationship in this regard between Clr Hall and Mr Bright is understood by the Departmental Representatives to be coloured by and to go back and be related to conduct of Clr Hall towards Mr Bright which occurred on a number of occasions before the Mayoral election of 21 September 1999, and concerning allegedly defamatory imputations and allegations made by Clr Hall against Mr Bright in relation to grey hound racing, grey hound ownership and the laundering of money.
>
> It is further alleged that Clr Hall has consistently requested voucher information from Mr Bright relating to the purchase of motor vehicles, which have under protest been supplied to Clr Hall, only to have Clr Hall request the same information a few days later.
>
> A related complaint or allegation is that on 29 October 1999 Clr Hall had delivered to him at the Mayor's office a set of keys to the Council Depot by Council Storeman, Mr Barry Watson. This took place at approximately 3 pm. It is alleged that on arrival Mr Watson was rudely greeted with the question "Where is the map?", to which Mr Watson replied "What map?". It is alleged that Clr Hall replied in an excessively loud tone of voice, "The map of the Depot, get Bill Bright to get me a map", and then threw the keys in a threatening manner onto his desk.

Clr Hall simply denied the allegations and made no further comment.

Mr Bright is Council's Business Services Co-Ordinator. He has worked at Council for five years. One of his responsibilities in early 1999 was to act as Council's Purchasing Co-Ordinator.

In our interview with her the General Manager provided some background suggesting that it went back to the Homebush Pet Expo in 1998. Mr Bright's wife was a Council dog control officer and attended Council's stand at the Expo. Clr Hall was, at that stage, in a company that was selling "doggy do bins". The General Manager said that "he muscled his way in, wearing his Councillor badge" and "set up his doggy do stand in the middle of the Council" stand. She added:

> …It was so bad, he was so bad with our staff, with all of the other Councils' staff. They ended up actually having to get security guards to take him away. They actually had him removed from the premises. Now, he's never forgiven Margaret for that. … Margaret has now left the Council … So he transfers his hatred of Margaret to Bill and he's been pursuing Bill, he's been saying things about Bill … So he just pursues people, all the way through.

The evidence given to us is that Mr Bright does in fact own four greyhounds, trains and races them.

The General Manager told us how the whole corruption allegations started. She said that she had received a telephone call from the Executive Officer of the Northern Sydney Regional Organisation of Councils ("NSROC") on 2 July 1999, reporting on a phone call that she in turn had had with Clr Hall. It was alleged that Clr Hall had accused Mr Bright of corruption not only in relation to greyhounds and the laundering of money, but also in relation to certain purchasing arrangements that

Mr Bright had organised through NSROC for the benefit of Council. The General Manager reported the matter in writing to the then Mayor, Clr David Dobbin.

Mr Bright was a witness in our Investigation and confirmed the details set out in the particulars quoted above. He told us that this staring had taken place on various times in various places in the Council offices. He said that Clr Hall did not speak to him on those occasions. We are satisfied on the evidence that Mr Bright did feel that Clr Hall was looking at him in the way described.

In consequence of the allegations Mr Bright consulted his lawyers and threatened legal proceedings.

While the "staring" incident is in itself a minor event, it has to be considered in the context and we take it to be part of Clr Hall's apparent unwarranted campaign of vilification and inappropriate behaviour towards this staff member. In this it is similar to Clr Hall's behaviour towards other staff members and corroborates what other witnesses (whose evidence is noted at various places in this report) have told us about Clr Hall's propensity to level frequent corruption allegations against members of staff. A perusal by us of Department of Local Government files also confirms this.

The allegations as to information requests are considered along with those given to numerous other staff at section 3.30 of this report. Those as to keys and the map to the Depot at section 6.5 of this report.

3:25 Conduct of Clr Hall at Council's Social Plan Community Think Tank meeting

These particulars were provided to Clr Hall on 14 February 2000:

> This meeting took place on 8 October 1999.
>
> It is alleged that Clr Hall insisted on opening this consultation meeting which was attended by both staff members and members of the community. It is understood that while briefing notes for his speech were requested and prepared Clr Hall did not use them, and instead it is alleged that he chose to open the meeting by saying that he did not agree with social planning and never has, that he sees social planning as a form of "social engineering", and that the social plan was a "construct of CMT which are paid, unaccountable bureaucrats of this organisation, who had a 'yes minister' approach to local government". He is alleged to have continued that while the consultation would seek the views of the people about the ideal community and how to develop it, everyone needed to be constrained by his views on what are the two important values for this community, individual rights and individual responsibility. He is then alleged to have said that while the consultation would ask people to identify what are the important issues for the community, the participants needed to be aware of the fact that this Council had only two priorities, housing and roads.
>
> It is alleged that this opening was very destructive to the consultation process and was unnecessary. The message that Clr Hall delivered is alleged to have been in direct contrast to the aim of the meeting and to the messages of the guest speaker and Community Services staff.

The Department of Local Government's recently released Guidelines entitled *Management Planning for NSW Local Government* (February 2000) contain the following advice in relation to social planning:

> The Local Government (General) Regulation provides for councils to implement the State Government's social justice principles through the achievement of three key objectives:
>
> 1. To improve councils' ability to take into account the range of needs within their communities when they are formulating their management plans.
> 2. To assist councils provide or advocate for appropriate or accessible services or facilities for the benefit of their communities.
> 3. To increase the community's ability to monitor councils' efforts to address the needs of the local community over time.
>
> The regulation requires all councils to develop a social/community plan and include statements about the access and equity activities planned or undertaken by council, in their management plan and annual report.
>
> The information and adopted recommendations arising from the social plan provide a good starting point for the council and the community to gain a strategic overview of its local area and the broad range of key issues facing it. This information can help council to determine the strategic directions for its management plan and other council business unit operational plans.

Social planning is, therefore, a requirement legally binding on Council. Councillors are therefore expected to ensure that Council meets those requirements and uphold the law.

In addition to the legal requirements to have a social plan, the General Manager told us that it was in fact in the Council's Management Plan for the year in question that Council proceed with having a social plan, so what the staff were doing was merely implementing a binding Council decision in setting up the Think Tank and having meetings of that consultative group. A decision of the previous Council is binding on a new Council until such time as the new Council takes appropriate action to reverse it, subject to it being lawful to do so. There is no evidence of any such move here.

Likewise, while under the Act a management plan is not strictly speaking legally binding on Council in terms of having slavishly to comply with its forecasts and projections, it is clearly the intent of the Act that the plan once adopted with community involvement and approval should be adhered to as much as possible. Section 407 of the Act contemplates that the General Manager should report on a quarterly basis to Council on the extent to which performance targets in the plan have been achieved during the year. And section 428 provides in turn for annual reports to the community on such matters. This is all part of the system of accountability provided for in the 1993 Act.

Clr Hall agreed in interview with him that he had been provided with speech notes for this meeting by a member of staff, but that he did not use them. He denied that he had used the words "social engineering". We have inspected a copy of the memo to him on 6 October 1999 by Mr Danny Houseas, the Acting Director Community Development at the time, under cover of which extensive speech notes were so provided.

We also note that a comprehensive report on social planning went to Council at its meeting of 5 October 1999, only days before this incident. For some reason, however, this report was not fully considered until November or December.

Ms Carol Logan gave evidence to us as to the "significant anxiety" caused to the staff member who facilitated this meeting. Part of Ms Logan's job as Manager Human Resources was to deal with such matters. Ms Logan told us that the staff member in question indicated to her:

> that she was very reluctant to conduct meetings if this was going to be the course of events, if this was going to occur in the future. In terms of Council's ability to do the things that it needs to do with the community, from that staff member's point of view what she recounted to me was that these are the bread and butter issues for Council, how can we do this efficiently and professionally, if this behaviour is going to be repeated.

Social planning is a requirement of the law. As a Councillor, and particularly as Mayor, he is expected to uphold the law, and to set a proper example. Furthermore, what he did and the impact that it had on members of the community who had come in all good faith to participate and to contribute to the consultation process that Council was quite properly engaging in, flies in the face of one of the key purposes of local government as set out in section 7 of the Local Government Act 1993, namely "to encourage and assist effective participation of local communities in the affairs of local government".

3.26 Clr Hall's behaviour over his complaints about problems with waste removal along Mona Vale Road, St Ives

The particulars provided to Clr Hall on 14 February 2000 on this allegation were as follows:

> The alleged conduct of Clr Hall towards staff has led to a number of complaints to Managers and other senior officers within Council. It is alleged that in the Urban Infrastructure group staff concerns over the abrupt, rude, demanding (everything is urgent and requires a reply "now"), abrasive and threatening and condescending attitude and conduct towards staff came to a head with a specific incident over waste removal (understood to be broken glass) along Mona Vale Road. This latter incident was seen by staff in this group as the "straw that broke the camel's back". Staff who were subjected to the alleged conduct over this incident were Ian Canham, Colin Wright and Bill Bright. In addition it is alleged that Ms Vanessa McDonald of Council's garbage contractor, Collex, was also subjected to such conduct. [Conduct towards a contractor or employee of a contractor is considered by the Departmental Representatives to be, like that towards members of the public, conduct that may be examined in the course of the Investigation pursuant to paragraph 4 of the Terms of Reference.]
>
> The conduct over the Mona Vale Road waste collection issue is alleged to have occurred in a series of phone calls from Clr Hall towards the relevant persons on 7 October 1999. It is alleged that Clr Hall asserted that there was broken glass at a particular location on Mona Vale Road. The site was visited by a Council supervisor, Mr Colin Wright, but no evidence of the glass was found. It is alleged that rather than go through the Manager involved, Mr Canham, Clr Hall chose to personally telephone Mr Wright and Ms McDonald over the matter. It is alleged that the conduct and demeanour towards

them over the phone was confrontational, abusive and rude. It is also alleged that Clr Hall acted objectionably in talking to Mr Bright about the matter.

Clr Hall's response, during our interview with him, to these allegations was that his concerns were supposedly over glass not on Mona Vale Road, but at a tip near the Garigal National Park, on the eastern boundary of Council's area. However he proceeded to relate to us another incident which occurred at this tip at a time before he became Mayor, and it was not clear to us what relevance this had to the matter at hand.

In our interview with him, we asked Mr Canham about the matter:

Mr Canham: Well we got a phone call from Councillor Hall about it and he was complaining at the time also about the waste services starting at 5.30 am and, "I know they start at 5.30 am because I walk my dog and I go walking of a morning and see them starting at 5.30, and they're not allowed to do that, they've got to - they're under curfew until 6 am, and I want this glass cleaned up", and I said, "Well" - you know, I - - -

Mr Bulford: Did he say where this glass was?

Mr Canham: On Mona Vale Road.

Mr Bulford: Did you ask him for information?

Mr Canham: I asked for a specific location so we could get it cleaned up, he said, "Don't worry about it, you'll find it. You'll see it there." Well I rang the waste services and they had already been - sent a team out to clean it up, this was through Vanessa [McDonald], and in fact they couldn't find a lot of glass there but they found some, and what had happened is some of the larrikins overnight had emptied all the recycling waste out onto the roadways and tipped bins upside down and - so the garbos had actually done most of the clean-up.

Mr Bulford: …it was the Collex people who did the clean up?

Mr Canham: Yes. Initially. Yes.

Mr Bulford: What would you say if I told you that in fact this morning Vanessa has told us that the Collex people did not do the clean up?

Mr Canham: I can only go on what she told me.

Mr Canham insisted that to the best of his recollection Collex had told him that they were aware of the problem and that they had themselves cleaned it up. Mr Canham added:

…what's more, I actually sent Colin Wright out to the site and asked him to have a look at it to see what the problem was, if there was a problem. He reported back to me that there was - as always, if there's broken glass, you get a bit of glitter, but he drove up and down Mona Vale Road, the full length of Mona Vale Road, on both sides - - -

Mr Canham confirmed that Clr Hall had complained about glass between Killeaton Street and Ayres Road and not near the tip. He did say:

…either the next day or the day after he came back and said, "You haven't cleaned up that glass yet, Canham" and I said, "Well, hang on, you know, what are you talking

about?" "The glass from the other day. It's still there." I said, "All right". So I sent Colin out again.

A memo, dated 12 October 1999, and issued under Mr Canham's name, but actually prepared by Mr Colin Wright, one of the employees reporting to Mr Canham, said, as to the relevant part:

> The matter concerning glass on the medium strip [sic] on Mona Vale Road is noted however a drive by inspection in both directions today indicates no residual glass upon the medium strip between Ayres Road and Killeaton Street St Ives.

Mr Colin Wright gave oral evidence to us and he told us that he was the one who conducted the inspection whilst he was driving past on the way to and from another appointment. He said that he saw no evidence of glass.

Our questioning of Mr Canham continued:

> Mr Bulford: … Did you talk to Collex again about the matter when Councillor Hall followed it up for the second time?
>
> Mr Canham: I rang Vanessa again and said that Councillor Hall was still complaining about the glass, could - next time she had her people out there could she check it out. I said, "I've had Colin out there and I can't find any glass - or he can't find any glass, therefore as far as I'm concerned it really doesn't exist, but just check it out anyway".

Ms Vanessa McDonald of Collex was requested by us to give evidence to our Investigation. She seemed convinced that her people had not cleaned up any glass – she told us it would not have been Collex's responsibility to pick up that glass in any event - and she told us that she had received no phone calls from Clr Hall over this alleged incident. Likewise, Mr Wright put it to us that he had not been telephoned by Clr Hall.

Now, there is one further aspect of this affair that we need to deal with. Mr Canham gave us evidence that both Mr Wright and Ms McDonald of Collex had complained to him that Clr Hall had contacted them direct about the alleged glass, and had allegedly spoken to them in a rude, confrontational and abusive way. In fact his evidence was that this took place on more than one occasion. He said they told him that they were "sick and tired of [Clr Hall] contacting them". The concerns in this regard were apparently what prompted the complainant to lodge the complaint about the affair.

Yet, in our interviews with both Mr Wright and Ms McDonald, as we have noted, they categorically denied that Clr Hall had contacted them. We put this to Mr Canham in our interview with him, but he maintained his position.

The result is that we have conflicting evidence from these witnesses as to this aspect. Each of the witnesses gave us no reason to doubt his or her evidence. We are therefore unable to make any findings on this aspect. We do find that Mr Canham at least was stressed by the matter.

3.27 Clr Hall's complaints and demands relating to the Mayoral car and the implied criticism of various Works staff

The following particulars were provided to Clr Hall on 14 February 2000, under the heading "Conduct towards Roger Dixon":

> It is alleged that on 4 November 1999 an encounter took place between Clr Hall and Council's Fleet Administration Officer, Roger Dixon, in the car park at the Council offices. Mr Dixon had gone to the Council offices on the instructions of Council's Brian Mazur, with a view to handing an accident claim form in to Ms Piri Stephens so she could give it to Clr Hall. This was over minor damage that had been noted to a vehicle (numbered in the Council fleet as PN 1271) – the damage was to a wheel arch – that had been used by Clr Hall. In order to get to the offices Mr Dixon was given a lift by the Mayoral driver, Mr Mike Drysdale, and on arrival in the car park they found Clr Hall standing near his car. As Mr Drysdale was parking the car and Mr Dixon was alighting, it is alleged that Clr Hall came up to the side of the vehicle on which Mr Dixon was and asked him "What's that?", pointing to the form that Mr Dixon had in his hand. Mr Dixon replied, "That's the claim form" and Clr Hall then allegedly said, "Who are you and where are you from?" Mr Dixon told him his name and that he was from the Council workshop. It is alleged that Clr Hall then raised his voice and in a menacing manner said, "How dare you hand me an accident form in that manner, without going through the correct procedure". Clr Hall is then alleged to have told Mr Dixon to send the form through the correct channels and with a memo.
>
> It is further alleged that Clr Hall then became more agitated and started to complain/tell Mr Dixon about the state of the brakes on the Mayoral Statesman and, pointing to copies of invoices or documents from the dealers, he commenced to itemise the alleged problems encountered with the car and pointed to an entry regarding the brakes and said "Why should I be given an unsafe car?" Clr Hall is then alleged to have asked Mr Dixon to come over to the Statesman and pointed to some damage on the rear bumper bar. He then allegedly said, "I have been accused of damaging the car". Mr Dixon replied, "No you weren't, this was already noted". What is alleged to have been said is alleged to have been made in a very menacing and intimidating tone.
>
> It is further alleged that the two went to the front of the car and Clr Hall pointed out some damage on the front bumper bar. Mr Dixon said that he was not aware of that. Clr Hall then allegedly said, "Don't you look at cars before you hand them over?" and proceeded to ask Mr Dixon for details of all accident repairs for this car and the last two Mayoral cars. Clr Hall then allegedly said that he was the Mayor and it was unfair that he could not have a drink at social engagements because he did not have a driver. Mr Dixon replied that he also could not drink and drive.
>
> The conversation then continued with Clr Hall allegedly regularly reminding Mr Dixon that he was Mayor. The conversation ended and Clr Hall walked away and up the stairs. Mr Dixon also started to proceed in this direction as he had also gone to the Council offices on another matter, namely to collect some files from records. Clr Hall then allegedly said, "Don't come with me, I don't want you in here". Mr Dixon replied that he needed to go to the office, and Clr Hall allegedly said, "okay".

Further particulars in relation to the alleged state of the Mayoral car are also set out at section 3.3 of this report.

3.27.1 State of cleanliness and repair of the Mayoral car

We will first deal with Clr Hall's concerns about the cleanliness and safe condition of the Mayoral car.

The Daily Telegraph article, as referred to in the last-mentioned set of particulars, provided, in so far as it related to the car:

> Mr Hall told The Daily Telegraph last week that the $50,000 five-litre Holden Caprice he was given as mayor was unsafe. "The car had shot brakes, the air conditioning didn't work and it had been left under a tree and was dirty" he said.

In our interview with Clr Hall we asked him if what was attributed to him in the article was a correct statement of what he had said to the reporter. He said that at least as far as what was in quotation marks it was.

The response of Clr Hall to the allegations over the state of his car was to point to an invoice from Sundell Holden and to a memo from the General Manager as being supportive of his assertions as reported in the press. However, the evidence does not support this assertion.

In our interview with Mr Canham, he confirmed to us the details as to matters relating to conversations he had with Clr Hall about the state of the car, as set out in the particulars quoted at section 3.13 of this report.

Mr Brian Mazur, Council's Manager in charge of the Council vehicle fleet told us:

> This particular car we took off the previous Mayor. We had the car, it was serviced at 10,000 kilometres because it was due. It was washed, cleaned, prepared to be handed over to the Mayor. … I know it was washed because I saw it being washed …

He also told us that the car had been washed in the morning of the day it was handed over, but he agreed that there might have been a lapse of a couple of hours before it was delivered to Clr Hall. He said that it had been parked out in the open in the Depot, but it was not under a tree. He therefore said that it was "not possible" in his view that there could have been dirt on the car.

The General Manager told us:

> He was screaming about his car, "They gave it back to me dirty." I said to him, "Where was it dirty?" - "There was a speck of dirt in the boot." So that was his dirty car.

Our questioning continued of Mr Mazur:

> Mr Bulford: Did you inspect the car after the Mayor had raised his concerns about the state of the car?
>
> Mr Mazur: No, he wouldn't let us have the car. There is a procedure which everybody follows if there's a problem with the vehicle and the procedure is that they report to us that there is a fault or something that needs to be fixed. We then have a look to see whether it's a warranty item or whether it's something that we have to do ourselves. We then make the appropriate - call the appropriate dealer or so, book it in for warranty. In this particular case we

> actually didn't get any warning. All we got was a letter from the Mayor saying that the car was dirty, that the air-conditioner didn't work and that the brakes were dangerous or words to that effect. …
>
> Mr Bulford: …as I understand it the first that council staff knew there was a problem was they read it in the Daily Telegraph on Monday, 25 October, is that right?
>
> Mr Mazur: That's right, that's right.
>
> Mr Bulford: Did you see that article?
>
> Mr Mazur: Yes, I did.

Mr Mazur's response to the allegations in the article as to the state of the brakes and the air-conditioner was:

> Well, I can't comment about the air-conditioner because if there was a problem which in any car there could have been a problem. It was a matter of saying, "The air-conditioner doesn't work." We would have sent it out for warranty, it would have got fixed. So I can't - if it was working - well, it wasn't working. There was nothing that we could have done. As far as the brakes are concerned - it was just a straight out lie, it was a straight out lie. The car had only done 11,000 kilometres. The brakes - our worst brakes get replaced at 20,000 ks. This car had no problems with the brakes whatsoever.

The documents from Sundells and the other dealer mention in one case the car having about 40 per cent wear in one brake lining and 30 per cent in another. Mr Mazur was asked whether this suggested that the brakes are not going to work properly and his response was:

> Well, he can't possibly be saying that the brakes are less than half worn, less than half worn so you have more than half the brakes still there.
>
> …my point is that it really doesn't matter whether it's 80 per cent worn. That is really not the issue. The issue is whether the brakes were safe and whether they worked and those brakes were safe and those brakes did work and there was no problem with the vehicle.

We interviewed a number of members of staff about the allegations over the state of the Mayoral car. These included Mr Rex Willard, Mr Roger Dixon and Mr Michael Drysdale.

Mr Willard told us how the car had been detailed before it was handed over to Clr Hall and that he had personally inspected the car before it was handed over. He said that he saw no dirt on it. We spoke to him in some detail over various invoices that had been copied to us that had been issued to Council by Sundell Motors and which had reports in them on the state of the brakes and airconditioning. His evidence as to the interpretation of the information for a layperson as to the state of the brakes corroborated that of Mr Mazur. Likewise the evidence of Mr Dixon.

Mr Willard also told us that he found he was the butt of jokes from his peers outside Council over the incident. We asked Mr Mazur about the matter:

> Mr Bulford: Is this sort of thing both to you and to Rex from what you hear from Rex telling you still happening today or has it largely withered away?

> Mr Mazur: Well, no, from time to time there's still mention made about giving cars with faulty brakes and I guess in our industry that's not the sort of thing that you want people to joke about.

Mr Drysdale had driven the Mayoral car before it was handed over to Clr Hall. He told us that he had not found any problem either with the brakes or airconditioning.

The state of the Mayoral car, an issue figuring prominently in the Daily Telegraph article of 25 October 1999, led to considerable concern on the part of a number of members of staff who felt that they were being accused by Clr Hall of not only providing him with a dirty car, but an unsafe car. The MEU became involved and in particular with the union organiser for the area, Mr Graeme Kelly. Mr Kelly was a witness in our Investigation. Mr Kelly had been the author of an official complaint from the MEU to the General Manager. This was in a letter of 25 October 1999 in which he raised various issues, including the car issues. As to these the letter stated:

> The Union has serious concerns that it may be interpreted that the allegations of the vehicle being unsafe are as a result of shoddy workmanship by Council's mechanics. The Union seeks clarification as to whether the Mayor alleges that our mechanic is responsible for the state of his vehicle or are they a fault of the Holden Motor Vehicle.
>
> An urgent response to that issue is sought within twenty-four hours.
>
> In respect to the vehicle being dirty the Union suggests the Mayor get a bucket of hot water and soap and wash it himself like any employee of Council on leaseback or any employee with their own private motor vehicle would be expected to do.

In our interview with Mr Kelly we asked him about the Union's concerns as set out above. We had been talking to him generally about the MEU letter of 25 October and the General Manager's written reply to that letter on 26 October (see section 3.33 of this report) and he told us that he had been satisfied with her response, in so far as she had addressed the two key concerns of the Union. One of these concerns was in relation to the Council mechanics. He said:

> What I was very concerned about was the mechanics at the Ku-ring-gai Council I regard as being some of the best in the industry. Very dedicated. They work a long rotating shift arrangement and there is very few councils within metropolitan Sydney that work rotating shifts, so they give a very good service. And they go to a lot of trouble to make sure that Council vehicles are in very good condition. So much so that I understand that the vehicle in question, the Mayoral car, had been inspected by external sources that confirm work - whatever had been done by both external providers and internal providers was up to standard. The log books were okay and the allegations I felt were very, very damaging to those particular people and they rang me with serious concerns, one of leadership and in fact wanting to go on strike.

3.27.2 Owner's or service manual demands

The allegations here are basically that Clr Hall upset quite a number of members of staff, kicking up a fuss over wanting the service manual for his car, over a number of days. The number of staff who got embroiled in this charade seems extraordinary.

It was Clr Hall's proposition to us that he was not aware that there was only one document. He had been calling for the service log book. He said, however, that Mr Canham was aware that there was only one book, and the implication is therefore that Mr Canham was the source of all the confusion and ensuing problems.

In his sworn testimony to us as part of our Investigation, Mr Ian Canham testified as to the accuracy of the conversations of 15 and 19 October 1999, as set out in the particulars provided to Clr Hall and his legal adviser, quoted at section 3.13 of this report.

Mr Brian Mazur also told us about what happened on 15 October 1999:

> I was on my way back from Canberra on that day and Councillor Hall had actually rung me but my mobile was outside the range so he only left a message on my message bank regarding the owner's manual and the service manual for his Caprice and I tried to ring him back on the way back from Canberra but I couldn't for whatever - just couldn't connect or he wasn't there. I know that I didn't speak to him, however, what I did do was I spoke to just about everybody else to try and satisfy the request.

Mr Canham told us, "he'd been carrying on for weeks about an owner's manual and he had it in the car all along". Mr Mazur's evidence was that it was on the back seat. He noted a memo from Clr Hall which said that he had checked the "owner's manual". Mr Mazur told us that the service manual and the owner's manual are one and the same.

We interviewed a number of members of staff who were caught up in the log book saga. Their evidence was corroborative of various aspects of the evidence of staff on this matter.

It is on the other hand not completely clear from the evidence as to who was responsible for the lack of communication or understanding between Clr Hall and the staff over the log book or service manual. The strong inference is that it was Clr Hall. What is clear however is that Clr Hall did by his repeated demands to staff for the book act improperly to them.

3.27.3 Clr Hall's failure to deal with accident damage to his Mayoral car

Mr Mazur told us that shortly after the Mayor took the car the staff noticed that there were a number of dents in the car that they hadn't previously seen.

He told us that these were on the front bumper bar and stressed they were dents and not just marks or scratches which would have merely been noted and not fixed. There was some damage at the back of the car, but this had been noted before and had occurred before the car was handed over to Clr Hall.

Accident claim forms had been prepared in relation to the dents on the front bumper bar, as well as in respect of damage to another car, a Fairlane, that the Mayor had borrowed whilst his Mayoral car was out of service. That is, there were two forms which needed his signature as the driver of the vehicles before insurance claims could be made and the repairs fixed with the approval of Council's insurers.

Both Mr Roger Dixon and Mr Michael Drysdale gave evidence about the attempted delivery by the former to Clr Hall of accident claim forms, as noted in the particulars provided to Clr Hall and set out above. Their evidence confirmed the facts as so set out and each corroborated the evidence of the other. It is clear to us that Clr Hall did act as alleged towards Mr Dixon.

We note that Clr Hall's written response of 3 March 2000 was as follows:

> In retrospect he realises that Mr Dixon was only doing what he was asked to do by a senior officer. If he had any criticism to offer [as to the way and place in which the forms were handed over – in the public car park under the back of the Council offices] it would have been more appropriate to have made that criticism to the senior officer rather than to Mr Dixon. *To the extent that Clr. Hall's response and demeanour was inappropriate at the time, he apologises to Mr Dixon*. [Emphasis is that of Mr Dunn / Clr Hall]

At the time of our interview with Mr Mazur (29 February 2000) he told us they were still waiting for Clr Hall to deal with the forms which had been submitted to him, despite a number of reminders sent to him. Mr Mazur told us that most of the forms had already been filled out for the Mayor (a similar procedure to that followed in relation to an accident involving the General Manager's car) and all he had to do was fill in a few sections marked for him and sign them. That he did not do so is clearly unacceptable, and it seems such a trivial thing for Clr Hall not to have responded to.

The evidence indicates that the only response received from Clr Hall and apparently generated by the requests to him was a demand by Clr Hall for information as to the entire accident record for not only this car, but the two previous Mayoral cars.

In our interview with Mr Canham he told us about an incident which occurred on 4 November 1999. He said that he had been in a meeting with the General Manager in her office when, without any knocking on the door, Clr Hall barged in. He told us that Councillor Hall wanted more information about the Mayoral car including invoices and the accident reports for the previous few years. He added:

> I provided the information and he's screaming that it wasn't true information. I said, "Well it is, it's straight off the records. It's off the file", you know. "You've had a look at the file". In fact he claimed that he hadn't looked at the file. … So he had checked the file, then checked with me to see if what I could come up with was exactly what was on the file, I guess, and unfortunately I came up with the same information.

Mr Canham provided a contemporaneous file note he made of the incident, which corroborates his oral testimony to us.

Mr Mazur also told us:

> … and then straight after that we started to get requests for accidents, information about the General Manager, her car.

All this in our view was an unnecessary over-reaction. It may have been one thing to contact the General Manager or the relevant staff through her if Clr Hall queried whether the damage that was the subject of the claim forms was due to him or someone else. But this response was another matter.

Mr Mazur confirmed that it was not necessary to have previous accident history of the car to fill in the insurance claim form. We asked Mr Mazur as to what was the outcome of the Mayor's failing to fill in the forms:

> …Roger Dixon signed the form. We'd basically put down that the accident happened - unknown third party - and we sent it away.

Mr Mazur added:

> …we had no choice with that because the bumper bar was starting to hang off and we would have had to remove the whole front of the car to make it roadworthy.

This is an unsatisfactory result. It was unfair and improper for staff to be placed in a situation, created by the Mayor, where they may have been subjecting themselves to risks of complicity in questionable or improper claims and so on being made to Council's insurers.

3.28 Clr Hall's general mistrust and suspicions about staff; press leaks

The evidence is that Clr Hall has by various means, direct and indirect, overt and otherwise, made it clear that he mistrusts the staff and has a view, which he sought to put to the Councillors, with success in the early weeks of his Mayoralty, it seems, that the General Manager and her staff were obstructing or likely to obstruct, deliberately, the Councillors from carrying out their electoral mandate. The issue of obstruction is dealt with at section 4.4 of this report. Reference should also be made to the evidence as to Clr Hall's conduct towards Mr Ian Glendinning and his staff in the development approval area.

Suffice it to say for present purposes that we have at section 5.1 of this report, dealing with Clr Hall's relations with his fellow Councillors, made a number of observations which are equally applicable in the present context. The bottom line is that staff should not be criticised simply for doing their jobs in a professional way and in accordance with the law.

Clr Hall has also suspected and accused the staff of leaks to the press. Various allegations of that nature were made by Clr Hall and his legal adviser to us for the purposes of this Investigation, in particular levelled against the General Manager. Clr Bennett gave us evidence about the matter:

> The Mayor was of the view, which he articulated many times, that the staff selectively leaked and that they had a close working relationship with the local press, which

> incidentally was immensely hostile to us and still is, and that they would take any opportunity that they could to destroy us.

Adding:

> My experience of Local Government is that all parties leak like sieves. I know that the Mayor leaks, I suspect that some of the other Councillors leak and it would not be beyond the bounds of possibility that some of the staff leak.

Asked whether she fed information to the press she said:

> I'm terrified of the press, I don't go near the press, believe me. Ask the local journalists.

We propose to make no findings on the question of "leaks" to the press. Any pursuit of such matters is likely to be impossible and unproductive. It would be a task that would considerably and unnecessarily widen the scope and length of our Investigation. We have noted the admission from and evidence relating to information provided to the press by Clr Malicki at section 4.6 of this report. We do not mean to suggest that she was responsible for the leaks.

The only other point we wish to make is that the evidence is that Clr Hall has himself been responsible for providing a good deal of information to the press, not all of it accurate or appropriate. The comments of Clr Malicki and Clr Bennett are noted elsewhere. We have also noted that a story in the Hornsby Advocate of 23 December 1999 mentions Clr Hall as having provided to the paper "a number of letters about the incident from his lawyer, Ms Bignell's lawyer and Mr Anderson … on December 14". The incident is the issue of the pursuit by Clr Hall of the General Manager over a motor vehicle accident in which she was involved on 19 July 1999. The letter from Clr Anderson was his ultimatum to Clr Hall to back off and leave the General Manager alone over the matter. This is all considered further at section 4.7 of this report.

3.29 Clr Hall's confronting of staff over their complaints

Particulars of these allegations are set out at section 3.19 of this report as part of the general allegations as to Clr Hall's conduct at Council's Active Australia Day promotions and function.

Ms Virginia Leafe gave evidence to us that Clr Hall had approached her over her having lodged a complaint with the General Manager about his alleged conduct on Active Australia Day (see section 3.19 of this report). We asked her for more information:

> …I went into his office, and I can't recall the reason and I don't recall the date, and he said to me, "I'm not impressed with you"…

> …I think he was at his desk writing, he rarely - he never eye contacts you, he can't do that, I don't believe, and he said, "I'm not impressed with you" and I went, "How so?" or "Why?" and he said, "Because, you know, you put in a complaint about me and next time you do that, you put it in statutory declaration form". And it was like that…

> …it wasn't shouted.
>
> …it was threatening, absolutely it was threatening. Like, "You put it in statutory declaration". What does that mean? I mean, it means he doesn't believe you or - why would I make something like that up? I mean, for Heaven's sake.

She told us that she could not really remember or be sure if Clr Hall ever pursued the issue with her again. However, our impression from Ms Leafe's evidence to us is that this incident had no lasting intimidatory effect on her.

On the other hand she also told us:

> I guess that other staff around that time were worried that if we were talking about - saying that they didn't really want to put things on paper, they were a bit worried about that, I guess people are worried that maybe - it won't be good for their career. I don't have that attitude.
>
> …They felt intimidated. And I know that people - and it was my opinion, really, to say that - to put it on a statutory declaration you have to go and do all that, it just makes it harder for people to say what they want to say and it's just another barrier. And that was my issue with that.

The demand for a statutory declaration is a line that, on the evidence before us, Clr Hall and his legal adviser have pursued over time. See for example both the demands to the General Manager when she was trying to deal with the complaints about Clr Hall (at section 4.6 of this report) and the more recent comments from Clr Hall and his legal adviser in relation to the allegations as to Clr Hall's conduct towards Mr Ian Glendinning (at section 3.14 of this report).

The other person whom Clr Hall is alleged to have spoken to about complaints was Ms Darleen Taylor. Her evidence to us was that it was a very low key approach and that it did not unduly upset her. Nonetheless it was not appropriate for Clr Hall to have spoken to her at all about the matter.

The General Manager also told us that many staff had approached her and indicated that they were not prepared to put in formal complaints for fear of retribution. There was a general fear amongst staff apparently. She told us that she knew of several staff who likewise were choosing not to come forward for the purposes of our Investigation. We ourselves found a similar response from some persons whom we had been advised were witnesses to incidents reported to us and whom we had therefore contacted to give evidence to us.

We note that section 20 (1) of the Protected Disclosures Act 1994 provides:

> A person who takes detrimental action against another person that is substantially in reprisal for other person making a protected disclosure is guilty of an offence.
>
> Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

The concept of "detrimental action" is one defined in section 20 (3) in a very wide way. It includes action causing, comprising or involving intimidation or harassment, amongst other elements.

While the evidence indicates that there are only a couple of proven incidents in which Clr Hall has mentioned the fact of complaints having been lodged by a staff member in that person's presence, the evidence is also that none of those persons was particularly intimidated or phased as a result. Nonetheless, the fact is that this was an issue that was raised with us as a point of concern. We are inclined to the view that it was inappropriate and unwise of Clr Hall to have made any mention, in any way, of such complaints to the person concerned, given the potential for this to be construed as "detrimental action".

3:30 Clr Hall's repeated and unreasonable demands for information and documents

In this section of our report we wish to bring all that evidence together and deal with other general evidence which establishes the allegations of the adverse impact Clr Hall had in such matters on the staff, and Council's resources generally.

We asked Clr Hall in our interview with him whether he would agree that he made a lot of demands for information and documents:

> I don't think I issued a lot of requests apart from undertaking my civic role as a Councillor and I have been exonerated for doing so at the election of September 1999. People saw me as questioning the organisational operation, financial management of the Council and its administration in a proper and constructive way.

And later:

> I rely on my experience as a former public servant and a policy officer in the Premier's department to get some answers and if the questions were - if the answers were evasive I continued to ask the same question. And if I didn't get anywhere I put them up as questions without notice or motions - notices of motions and I - I did that in a very diligent way which has been rewarded - I have been rewarded for doing so by being re-elected four times in this ward of St Ives.

We have noted at section 3.13 of this report, above, the evidence of Mr Ian Canham, Council's former Group Manager Operations, in relation to Clr Hall's repeated demands for the same information and his frequent pursuit of different persons, successively, over the same information or requests.

Evidence of that nature was corroborated or repeated by a number of witnesses before our Investigation, some of whose evidence in relation to their personal experiences and encounters with Clr Hall is considered elsewhere in this report.

The General Manager told us that as soon as Clr Hall was elected Mayor:

> He just went on the rampage. From day one. … Absolutely went berserk. That week I'd say it probably it really went even more berserk after the 28th, so he had the Mayoral Minute that he got up which had given himself access.

Mr David Young, Council's former Acting Director Open Space & Infrastructure, told us, in response to a question about the volume or nature of requests for information he may have experienced from Clr Hall:

> Prior to April, so this is only in the Parks area he didn't often ask for information that I needed to provide, except I recall one or two particular types of information that he must have asked me for 20 times in the first 4 years I was here and I provided that information on the first occasion. I simply gave him copies of the same memo over and over again.

Much of the questioning and requests for information apparently related to the St Ives Showground. Mr Young told us:

> He believed he had some special knowledge of the Crown Lands Act and, as a result of that, he felt very confident in asking technical questions about what you should and should not do.

We asked him:

> Mr Bulford: Was his knowledge one that was accurate?
>
> Mr Young: No it wasn't.
>
> Mr Bulford: Did he ever acknowledge that his knowledge wasn't accurate?
>
> Mr Young: No, he didn't, he acknowledged that the advice I gave him on the first couple of occasions was correct, at the time I gave it to him, and then went away and a few months later he'd come back with the same sort of question, through a different forum, it wasn't always directly to me. It may have been a question in Council, it may have been a memo to the General Manager or to the Mayor but it always came back to the same point so I'd trot out my memo again explaining how it really works.

Mr Chris Young also gave evidence to us of Clr Hall's repeat requests frequently for the same information or copies of the same documents he had already been provided with. In many instances the volume of paper work being duplicated was quite considerable he said, and he indicated that in his view this was resulting in increased costs to Council. Increased costs to Council means increased costs to the community.

We asked Ms Sandra Santens, the secretary to the Councillors, and who had had some six years of experience in working for Clr Hall, about the issue:

> …A lot of requests that weren't always well received. And that were duplicated over and over and over again from year to year to year. And then when he became Mayor, he just dragged out these old files of all the stuff that I'd typed and re-submitted them all. But of course they had to be answered once he became Mayor.

She added:

> …Nothing slips Councillor Hall's memory.
>
> …He's a very astute man, he's a very clever man, he's a very good politician. Very good. And, no, I think it was - I had the feeling it was - well, he would just keep - if he didn't like the answer that he got he kept asking the question.

We put it to her that we have also been given information which suggests that he loses things or he forgets appointments and that he forgets that he has actually asked for a certain piece of information once before. She responded:

> …No, I'm sorry. I can't agree with that. I think often Councillor Hall would ask for information, and probably give it to residents, to people, he would supply - I mean I don't know, so this is my assumption, but never - I would never agree with you that he's forgotten that he asked for it or that he's - he would misplace - he probably might misplace things, but I think often it was information for residents that, you know, there would be correct ways that residents would have of asking for things and often they may have to pay for information, and I'm not talking about Freedom of Requests information, I'm just talking about general things that they might - general information - - -
>
> …occasion he may lose things but not to the extent that everything went missing all the time. I would find that - no, I don't think so.

Ms Santens agreed that Clr Hall would often make demands for reports late in the day and the report had to be on his desk the next day.

Mr Brian Mazur told us about the very large volume of demands for documents and information that he used to have to cope with in his position before Clr Hall became Mayor. He said that on average they came in about one every fortnight, though at the time of the resignation of Mr Bruce Tucker he said that he had "quite a number of requests being sent and they all seemed to be hitting my desk pretty much at the same time".

He said that this was about the time that questions were being asked by Clr Hall about a Citroen Xantia car allegedly belonging to Council. We note that a Mr Bernie Smith of St Ives had written to Clr Hall on 7 April 1999 raising certain concerns over the vehicle, so what Clr Hall was asking certainly had its origin in a request from a resident for assistance, so that to some extent he was discharging his ordinary Councillor's role under section 232 (2) of the Local Government Act 1993. The problem, however, is not so much in the first seeking of information or the first question, as in the repeated demands.

Mr Mazur told us, however, that the volume of such requests "noticeably" increased or "at least doubled" on Clr Hall becoming Mayor. He added that some of the requests showed that "in fact some of the statements that he had made that he actually wanted to go back and revisit some of the things that he requested as councillor". This apparently occurred "almost within a week or so" of the Mayoral election. The requests were on the Council "motor vehicle policy, sales, disposal, the whole bit". Mr Mazur acknowledged that there was a lull in the requests, but agreed that this occurred during or around the period Clr Hall stood aside as Mayor.

Mr Mazur summed up the impact that Clr Hall's demands for documents and information was having in the following terms:

> … you'd need to talk to my wife about that because she was the one that kept saying that I'm a little bit stressed, that I'm irritable, that I'm short tempered and so on…He often asked the same question…On a number of occasions he would say things like, "No, he doesn't necessarily believe what I've said" or he would turn around and say, "Look, this doesn't really answer what we've asked. So let's do it again" like this one. "Now, this is not addressing the residents' concerns. Please review the matter and advise" so we've just spent time giving him one answer. He didn't like it so we're back to doing it again. These sort of requests where these are straight out operational requests and this is to do with the garbage fleet…This is also very time consuming because I know what the

> answers are to these questions and I give him the answers…there's constant innuendo from the Mayor that (a) we're corrupt, that (b) we do things that are underhanded…He's always adversarial, he's always there with the idea that I've done something wrong and therefore he needs to find out what it is that I've done wrong and if he can't do it in this then he goes looking for something else …

This evidence mirrors the evidence of other witnesses.

3.31 Concerns over the appointment of various consultants to assist Clr Hall when there were staff already whose roles were to attend to these tasks

A number of witnesses have raised concerns with us about the alleged over-use of consultants by Clr Hall and his Council. Those consultants are said frequently to be colleagues or friends of Clr Hall. This raises questions as to possible conflict of interest on the part of Clr Hall, and other issues.

In this section of this report we deal with two such consultants, Mr Peter Edwards and Mr Peter Walker. Elsewhere in this report we deal with the engaging of consultants in the development consent and related Land and Environment Court appeal area.

What Council must appreciate is that the demand or approval by Council for the appointment of consultants comes at a cost. A cost to the services that Council might otherwise provide to the community out of its limited budget. And therefore a cost to the community.

The Councillors need to be mindful that they have a large professional staff employed because of their specialist expertise in their particular fields. The Councillors need to ensure that the engaging of consultants does not unnecessarily duplicate and waste those resources, resources that come at a large payroll and other on-cost to Council.

3.31.1 Peter Edwards as the Mayor's personal traffic consultant

At its meeting of 11 October 1999 Council's Residential Development Strategy Task Force resolved to recommend:

> That Council appoint Mr P Edwards of Edwards Traffic Consulting to assist the Task Force in Traffic and Transport matters.

That recommendation was adopted on 18 October 1999.

It seems, however, that discussions with Mr Edwards had been taking place some days *before* this. There was apparently a meeting of 6 October 1999 between he, the Mayor and the General Manager in relation to Mr Edwards' proposed involvement with the Traffic and Transport Study for the Residential Development Strategy.

That Study was itself only recommended by the Task Force at the same meeting of 11 October. Certainly Council had by its resolution of 28 September 1999 (in relation to the Mayoral Minute of that date) resolved that there should be a residential strategy undertaken by the Task Force, "with necessary staff support", mention of "consultants" being conspicuously absent from the terms of the Mayoral Minute, as adopted by the Councillors. Likewise, the Mayoral Minute is silent as to whether the Strategy should be undertaken by means of specific detailed studies, or for that matter generally as to how it was to be achieved. Those details were not forthcoming until the later recommendation, of 11 October, of the Task Force itself.

On the other hand, the very next day after her meeting of 6 October 1999, the General Manager wrote a letter to Mr Edwards which purports to appoint him, that appointment to take place immediately, to undertake the roles discussed with him. The short letter was as follows:

> At a meeting with yourself and the Mayor yesterday, 6 October 1999, the Mayor requested your assistance with the Transport Study for Ku-ring-gai in relation to the Residential Development.
>
> The arrangement as discussed with the Mayor, is for you to work today (7th October) for orientation / background and assessment. On Friday 8th October, you will be involved in the presentation and summary of the Transport Study with the Councillors.
>
> Your fee has been accepted at $55 per hour.

The General Manager also wrote on the same day to the Mayor to tell him that the appointment had been duly made and on the terms as specified in her letter to Mr Edwards.

The General Manager was one of the various persons who drew to our attention the issues and concerns as to Mr Edwards' position and role. She told us:

> Here I am, back up against the wall, it's all wrong and all the rest of it, but here we go. I wrote a letter to Peter Edwards and I said, "This is to engage you to attend a meeting on Thursday such and such and Friday such and such." … Well when the Mayor got sight of that he just went into a rage." This isn't what I said. I said you are to engage him as a consultant, it's not for 2 days." … It was me as General Manager trying to control something that was getting out of control, trying to work out how I was going to manage it.

We have seen no evidence that the General Manager had delegated to her a general power to engage consultants. We also express no view as to whether it was legally possible for the elected body to provide retrospective authority to or ratification for what the General Manager did on 7 October, by its resolution of 18 October. However we consider that it was not good management practice for Mr Walker to have been appointed when he was, before the elected body had made a determination on the matter.

While it may have been appropriate to commence to put in place arrangements for the appointment of a consultant, this should not extend to the formal engagement of the consultant before a resolution is in place.

There are other obvious weaknesses in the selection process including the lack of quotes from competing consultants, any assessment of the other consultants to determine the best person for the job and whether the rates quoted were competitive and provided the best value for Council and its ratepayers.

The evidence suggests that the consultant was chosen by Clr Hall because of a long standing friendship. This is not likely to achieve for Council and its ratepayers a result that is open and transparent and free of doubts as to matters of probity, as is required by the Act and various Independent Commission Against Corruption and other publications on such matters. The fact that a formal tendering process was not required by section 55 of the Local Government Act 1993 is irrelevant.

The consultant wrote to the General Manager on 11 October 1999 regarding his arrangements, stating:

> I refer to your letter of 7 October 1999 and confirm that its contents reflect the discussions held with the Mayor and yourself. …
>
> According to the Mayor, my input is required at ongoing steering committee meetings, to be held every Monday and Thursday afternoon, for the next month or two.
>
> In claiming fees for this work (at the rate of $55 per hour) …

This letter clearly flags a commission that went beyond the contract that was created by the General Manager's letter of 7 October. While the letter happens to have been issued on the same day that the Task Force passed the resolution noted above, there is no evidence that has been put before us to indicate that any further or amending written contract was entered into for this greater role. Yet, the evidence is that the consultant purported to perform it, and was paid for his time and expenses. This is a matter of grave concern. In addition the other probity and transparency issues considered in relation to the appointment effected by the 7 October letter also exist.

From a review of the tapes of Council's meeting of 19 October 1999, we noted that, in reporting on the work of the Task Force, Clr Hall commented that he had been appointed the Chair of the Ku-ring-gai Traffic Committee. He noted that he was being "supported by Peter Edwards of Edwards Consulting". He then went on to add that Mr Edwards would "act as Acting Chairman when I am not available". Just what power or authority Clr Hall had to have Mr Edwards so appointed, if he was so appointed, is far from clear to us.

We do note, however, that in our interview with Clr Hall he confirmed to us that he had offered to Council to reimburse it for the cost of time Mr Edwards may have spent on Traffic Committee matters. The General Manager will need to follow this up, if she has not already done so. While we note that Mr Edwards may have been paid by Council already, Clr Hall reiterated to us that his offer still stands if it becomes relevant. We think it is relevant.

We asked the Director responsible for traffic matters, Mr Chris Young, about the consultancy issue:

> The issues that concerned us were the fact that basically out of the blue Councillor Hall had appointed his own Traffic Consultant.
>
> …we had been concerned that information - the Mayor would request information and then he would give it to Mr Edwards to give a report back on and Mr Edwards doesn't give a report to us, if he does give a report. And I don't think we've seen too many. We've seen one letter, I think, maybe two at the most. He gives his information back straight to the Mayor. And then it principally came to light, I suppose, when we started to look at the bills that were coming in.

Mr Young had concerns that they were not receiving anything back from the consultant and they had no control over what was happening as it was the Mayor that was directing him. He brought the matter to a head by issuing a memo to the General Manager on 8 November 1999 stating that in the circumstances it would be appropriate for the Mayor to authorise payment and verify the work done. Mr Young added that initially Clr Hall refused to sign off the payments but ultimately he did when they started to question the travel matters.

As the resolution of Council engaged the consultant to the Council, and not to the Mayor, it is of concern that Clr Hall has proceeded to act as he has in this matter. This is in breach of Council's resolution and what has occurred is moreover of concern in terms of transparency and probity. It is also another proven example of Clr Hall having improperly exceeded his role and powers as Mayor and having thought that he was more or less running Council as his personal fiefdom.

We recognise that staff may have been under some pressures from Clr Hall, and the consultant himself, for prompt payment to occur. In this regard, Mr Chris Young told us of at least one occasion on which Mr Edwards had telephoned him chasing payment of outstanding accounts. However, if there is a question as to payment being properly due then they needed to examine it fully and be satisfied without doubt that it was in order for the payments to be made. The evidence that we do have leads us to believe that that level of satisfaction was not achieved in many instances.

We note that the only written contract, if it could be called that, that existed with Mr Edwards appears to be encompassed in the very short two paragraph letter that the General Manager wrote to Mr Edwards on 7 October, which we have already referred to above. That contract was to perform work only on 7 and 8 October. Work has continued on an expanded basis since with no written contract in place to cover it. Bills have been rendered by Mr Edwards for that work. The 7 October letter only speaks of Mr Edwards fee being $55 per hour. No mention is made of any right to charge for costs and expenses, let alone as to whether or not travelling time can be billed. Yet these have been billed and the issue of the claims for travelling time has been brought to our attention by various witnesses in particular as being a cause for concern.

The claim for travelling time has been inevitably a matter of dispute between Mr Edwards and the Council, and at the time of our interview with Mr Chris Young it had still not been resolved. Yet, we understand that payments have ultimately been made of the accounts which claimed reimbursement for this.

On 19 January 2000 Mr Edwards wrote direct to Clr Hall regarding his claim for reimbursement for travelling time. He argued that he could not really do the work for Council if he could not charge travelling time. It was said to be a question of "the professional time that could otherwise be productively used on other work". He added, "it would be different matter entirely if I was charging a flat fee of say $350 per meeting".

Clr Hall wrote a handwritten note to Council's Director Finance & Corporate Services, Mr Darren Condon, on 9 February 2000 which said:

> This is a reasonable explanation – would you kindly arrange for payment to Mr Edwards.

The consultant's bill just for December 1999 claimed travelling time of some 9 ¾ hours. At $55 per hour this comes to just over $500, a not insubstantial sum. Travelling time is claimed in bills for other months as well.

Mr Young told us that the flat fee of $350 per meeting is along the lines of what is being charged by other consultants, and that Mr Edwards would be aware of this having been present when such information was discussed. He added:

> Well I would have thought that what happens normally with consultants is that if the rate is too low they would seek to re-negotiate it.

There has apparently been no open move to do this.

Mr Young, along with other witnesses, also questioned whether Mr Edwards was actually making any real or useful contribution to Council and the Task Force, though he did concede that occasionally he did ask "meaningful" questions.

In view of the administrative concerns expressed by a number of witnesses, the General Manager should consider a review of Council's general practices for authorising such payments, if necessary with the assistance of its external auditors or other appropriate independent third party.

The General Manager told us that she had sought to raise her concerns about the work done by Mr Edwards and his bills with the Chairman of Council's Finance Committee, then Clr Anderson. However, she said that he had told her to stay away from raising the matter as it was "too sensitive", ie with Clr Hall. She said that she has also raised the matter with the Deputy Mayor, Clr Bennett.

Another key aspect of Council having, through its Mayor, Clr Hall, engaged Mr Edwards as consultant is that these costs had not been budgeted for in Council's approved Management Plan and budget. The money, therefore, has to be found from Council's existing resources, at the likely expense of other projects and priorities and services that might otherwise be pursued or provided for the benefit of the ratepayers and the community. Mr Young told us that this also was the case in relation to the other various consultants engaged, as envisaged by the Mayoral Minute of 28 September 1999, for the purposes of the Residential Strategy.

3.31.2 Peter Walker as public relations consultant to the Mayor

On 19 October 1999 the Councillors considered a proposed *Policy for the Payment of Expenses and the Provision of Facilities to Councillors*. Council resolved at this meeting to approve the proposed Policy and to place it on public exhibition, as required by section 253 of the Act. Such a policy cannot actually be adopted, and therefore cannot come into effect or be acted on, until after a minimum public exhibition period of 28 days.

The draft policy provided for the Mayor's "facilities" to include "a public relations officer and a part-time protocol officer". The language as to the logistics of appointment is unclear. The draft, as approved by the Council for public exhibition, provided:

> The persons to be appointed to be approved by the Mayor in conjunction with the General Manager …

It is not clear if these words provided for such persons to be appointed only after the General Manager had consulted with the Mayor on the appointment and obtained his approval to the appointment. This seems to us to be the more likely interpretation, given in particular that under the Act it is the General Manager who has the statutory responsibility for the appointment and dismissal of staff. The interpretational difficulty arises due to the order in which the titles of General Manager and Mayor are referred to and due to the juxtaposition of the words "to be approved by" and the words "in conjunction with". In any case the provision seems to us to give to the Mayor an effective veto on or control over the appointment. This seems to us to go too far in terms of what the Act contemplates in terms of the statutory responsibility for the appointment and dismissal of staff. It is one thing for Council to decree, as a matter of policy, that in hiring such personnel, who are to work closely with and for the benefit of the Mayor, the General Manager should consult with the Mayor, but it is another for Council in effect to pass full control to the Mayor on this staff operational issue.

Obviously it is sensible for the General Manager to ensure that she only appoints someone to work closely with the Mayor whom the Mayor is happy with and can get on with. But this can be managed by legally leaving the full uninhibited control over the appointment with the General Manager, and merely having her accountable to the elected body, and through that body indirectly to the Mayor (assuming he has the numbers amongst the elected Councillors), via her performance appraisal process.

Lastly, we note that if the General Manager only has to "consult" (as required by section 337 of the Act) on the appointment of *senior* staff, and there is no evidence to suggest that the public relations officer and protocol officer were senior staff, then it seems inconsistent for the General Manager to have to go further in relation to such more junior officers.

We take this as but another example of inappropriate incursion by the Mayor and Councillors into the role of the General Manager on staff matters – see section 6.6 of this report.

Mr Walker was in fact never appointed by the General Manager to the role of Public Relations Officer. Yet the evidence is that he purported to exercise that role on at least one occasion. This was in relation to Clr Hall's press release of 7 November 1999 announcing his decision to stand aside to allow Council to order an inquiry into the complaints by staff about him. This aspect is considered at section 6.3.2 of this report.

However, as early as the meeting of Council's Residential Development Strategy Task Force on 25 October 1999, only six days after the section 252 policy was considered, Clr Hall was apparently acting and speaking as though Mr Walker had in fact been already duly appointed. Clr Hall was clearly misleading his fellow Councillors and others present at the meeting. So far as we are aware, the General Manager was not present at this meeting, so she was not in a position to speak up and correct this error.

Clr Hall made this announcement:

> The General Manager has appointed Mr Peter Walker, Managing Director, Walker Public Relations, Chatswood, - communications audit … [he then purported to read from a letter of 22 October 1999 appointing Mr Walker to conduct the audit] Mr Walker will also have the job of assisting my public relations, as Public Relations Officer, and to in fact prepare a newspaper type communications tabloid document to go to all residents on a regular basis. …

The General Manager provided evidence to us to corroborate that Mr Walker was appointed on, or notified by her about this in her letter of, 22 October 1999, but only to conduct the proposed communications audit. Mr Walker provided to the General Manager a copy of his curriculum vitae, but this appears not to have occurred until after he had been appointed, as she only noted its contents by initialling the copy on 1 November. He had on 15 October 1999 provided to the General Manager a full written proposal as to the audit and its scope, but there is no evidence, at least from the terms of that letter, of his having provided his CV to the General Manager at that stage.

The General Manager told us this about the way Mr Walker was appointed to do the audit:

> The Mayor and General Manager I think were delegated to employ the person… normally I'd call for expressions of interest or at least do something but the Mayor said, "I've arranged for two people to come in," or "You arrange," I can't remember whether I had to arrange it. He had two names [she named the two people]. He said, "You arrange for them." So I don't know whether I did or his PA did. "They're coming in so we'll interview them." I mean it's just a sham even saying the General Manager would be involved because it was him dominating the whole time. So anyway, he interviewed Peter Walker. At that stage there was no declaration [of interest] and as it turns out these two were buddies from 30 years ago when Peter Walker used to work in Parliament as a Private Secretary or something, press officer or something, where Hall was. So there was no mention that I've actually got a conflict of interest of or anything. So I interviewed Peter Walker …

In his oral testimony to us Clr Hall confirmed that Mr Walker is a friend of 30 years' standing.

We have noted elsewhere in this report that Ms Leafe raised concerns with the General Manager on 9 November 1999 as to a possible conflict of interest on Mr Walker's part with his conducting the audit. On 10 November 1999, Mr Walker wrote the following letter to the General Manager:

> In view of the current enquiry into the behaviour of the Mayor towards staff I believe it would be appropriate to at least postpone the communication audit which you have appointed me to undertake.
>
> I believe the atmosphere created by the complaints within the community and amongst staff and the nature of the enquiry itself is not conducive to obtaining a fair and accurate audit of the Council's communications at this time.
>
> I therefore request that the audit be postponed until the enquiry has been resolved.

The General Manager also told us:

> Walker came in and thought he'd better confess up to me and he said, "Actually Tony and I've known each other for about 30 years. He always was a so and so and he hasn't changed. I can't work for him, this is really embarrassing, I'm not comfortable with any of this." I said, "I'm glad you came in Peter because I've got a real issue with you now doing the communication audit when you are so clearly working for the Mayor as well. There's no independence there." So he actually withdrew from the communication audit and told the Mayor that he wasn't going to work for him any more. He went to tell Laura Bennett as well and he had a long talk to Laura saying he was going to stand down and not be the public relations consultant, but he chalked up some costs and which the Council has paid, which I've approved because it's a bit of an invidious situation.

And:

> Mr Bulford: So it was Walker who terminated the relationship with Council, rather than the other way around?
>
> Ms Bignell: Yes, I mean I think my letter might say it's terminated but he actually came to me and said, "I want out."

On 11 November the General Manager replied to Mr Walker indicating that she had discussed the matter with the Deputy Mayor (who of course at that time was actually Acting Mayor) and it was agreed that the audit should be postponed, as he suggested.

Clr Hall, however, sought to put a different gloss on Mr Walker's departure:

> …the person who the General Manager and I appointed to do the audit, and who was an extremely competent person, we found out, because I had - I had known him as well in other spheres, he was a journalist, understood the communications process, he found he couldn't work with the staff, they had resisted him.

Clr Hall's evidence is not consistent with the documentary and other evidence.

On further questioning Clr Hall did concede that the question of Mr Walker's conflict of interest was "one of the reasons, perhaps, why he resigned".

The evidence is that the audit never restarted. We asked the General Manager to check Council's records as to whether any interim recommendations or comments

arising out of what work Mr Walker may have done was communicated in writing to the Council, but she told us that she found none.

We also asked Clr Hall as to why the communications audit, as approved by Council from his Mayoral Minute of 28 September 1999, had not been conducted:

> I had no opportunity at all because the Communications Officer made it quite clear she did not want her area interfered with. And the General Manager supported her.

On further questioning he added:

Regrettably, events [his standing aside on 7 November] had overtaken that whole process…

And finally he added:

> …I had then found I had not the entire support of those seven numbers. So I did not pursue it any further.

The problem with leaving things in limbo like this is that it means that Council's decision that there should be such an audit remains in place, and needs to be addressed and complied with by the General Manager. We recommend that Council review the matter at its earliest convenience and determine what if anything it wants to be done about the proposed audit.

3.32 Clr Hall's periodic expressions of contrition and promises to reform

Clr Hall told us:

> I, however, made a clear, precise and unequivocal statement publicly on 21 September when I became Mayor that we put everything behind us and we start off as a partnership. Mayor and General Manager. Sir, it's in writing. I said it publicly and I meant it from the heart.

We have noted at section 3.11 of this report the evidence that Clr Hall demanded a meeting with the Directors on 15 October 1999 and that the General Manager said that she should be there also. The meeting took place at 2 p.m.

Clr Hall told us in our interview with him that he recalled the meeting and that:

> All I can recall was it was to develop a bridge, a relationship back with the Directors.

The General Manager gave us access to confidential diary notes she had made as to how the meeting went. In our interviewing of various persons who attended that meeting we sought their evidence as to what happened. In all cases it largely corroborated what she had told us.

Clr Hall told us he could "not recall" opening the meeting with asking about David Young's resignation, nor as to whether Mr Glendinning was the first to break the silence (Clr Hall said "Ian Glendinning was very aggressive that afternoon. That's all I can remember.").

We interviewed a number of the Directors who were present at this meeting to get their versions of what happened. One of these was Mr Ian Glendinning. He told us that the Mayor at the beginning of the meeting asked those present at the meeting to tell him why David Young was leaving and he did confirm that he broke the silence. Asked if he said words to the effect, "We all know why David is leaving and we all would if we could, Mr Mayor. You never listen, you shout, you intimidate, you are rude", Mr Glendinning said:

> That sounds like me.

Mr Glendinning confirmed that the Mayor responded by saying, "Oh, I'm sorry". When asked whether he thought he was genuinely contrite, he said:

> No, not really. Not in my judgment. I mean we got chapter and verse about his grandfather fighting in the First World War and his family history in Ku-ring-gai and all that sort of stuff.

He added:

> …He went off - one of these stories about all this and we were all looking at one another saying, "What the hell's going on here?", attempting to apologise to us about all the things that he'd done in the past, and when, like, within an hour he was carrying on, raving on about something else as if this thing had never happened. It was just absolutely - a pathetic approach.
>
> …You know…for me it was just all an act. Just all part of the process. A bit like, as I said in the beginning, the Jekyll [and Hyde process].

Mr Canham's evidence confirmed that the Mayor asked them to tell him why David Young was leaving and that Mr Glendinning broke the silence. He said:

> Well he came in as if butter wouldn't melt in his mouth, you know, and all apologetic and wanted to be friends with all the Directors and he was very sorry the way things were going and he just wanted to get on with doing the business of the day and Ian Glendinning said, "Well hang on, let's be honest with you, Mr Mayor. None of us want to be here. If we had another job we could go to we would go tomorrow. We're sick and tired of your behaviour".

Mr Canham said that the Mayor's response was as follows:

> "Yes, yes, we will - I will", you know, "You know, let's bury the hatchet, let's get on with it. Let's get this show on the road".

We asked him whether the Mayor did mend his ways in that way after that time. He responded:

> Well I … got a phone call from the General Manager and he wanted to know information on cars, and so she patched me through to him and he started abusing me…

Mr Canham's evidence was that this occurred about 20 or 30 minutes after he had left the above mentioned meeting.

Mr Chris Young's evidence corroborated that of his fellow Directors and that of the General Manager.

The General Manager also gave us extensive information in her written submissions to us about a “truce meeting” she had with Clr Hall on 18 November 1999 (ie two days after he resumed his duties as Mayor) at a restaurant at St Ives Shopping Centre. She said that Clr Hall had been quite contrite and said a lot about working together and changing his ways.

Clr Hall confirmed in his oral testimony to us that he had met with the General Manager on 18 November 1999. Clr Hall told us he had said to the General Manager earlier that day when suggesting they meet:

> "Look, you know, we need to sort out the problems in the civic management office and my - and my work problems and work together". And I was endeavouring to be as conciliatory as possible.

He also told us what he had said to the General Manager in his car on the way to St Ives Shopping Centre:

> Mr Bulford: Do you recall having in the car said that things were affecting your health and the General Manager's and you needed to work together and get the matter resolved?
>
> Clr Hall: Look, I may have said that because it was a natural thing to say, if I recall, you know, this - well, I may have mentioned, you know, the stress of being Mayor and the stress of General Manager, takes a toll on both of us, let's - let's try and arrange some kind of mutual arrangement to work our differences and get the - the ship on - on course.

Clr Hall told us that he felt that the General Manager:

> was genuinely trying to work towards a - a co-operative working arrangement as well.

Clr Hall agreed with us that he had said that he knew his behaviour was upsetting people. Much of what the General Manager had submitted to us in writing that Clr Hall had said he told us he could not recall. He denied that he may have said anything about acknowledging that he had stepped beyond the boundaries of his role as Mayor, or admitting that he was rude to people, or that the General Manager had told him that his conduct was impacting on staff such that they were avoiding him. He said that he could not recall being told by the General Manager that she was having to spend all her time putting out bush fires created by him, rather than being a general manager.

Clr Hall summed up his response to our questions on these issues as follows:

> Well, again those conversations may have been in the fulsome, frank - as I saw it - friendly discussion and I never took any notice of what I said or what was said, and I'm surprised how detailed the General Manager's notes are on this. It's a clear indication to me that she had no - no thought of reconciling the situation as at that time to do such a thing.

On the return of Clr Hall and the General Manager to the Council offices a meeting was arranged with the secretaries, Ms Williamson and Ms Santens, to be attended by Clr Hall and the General Manager.

Ms Williamson's evidence was that Clr Hall just kept telling them that his behaviour was going to change. She confirmed that it was a pretty heart to heart chat and that:

> he said that he'd fallen to the Preservation Trust off his own back and now they had turned against him and it had made him realise that his behaviour was inappropriate…
>
> …He then came up - after the 2 hour meeting I was at Sandra's desk and we were talking. He then came up…and said to Sandra and I… he started talking …and then he said, "Thank you so much for moving back into the civic office" because we decided at the meeting - I said, "I can't run the office not being together."

She said she moved back a couple of days later and she said:

> …he [Clr Hall] said, "Thank you for moving back in and giving me a second chance." And I said, "Well, Tony, we will see how it goes" and he said, "No, Nicole, Sandra and Nicole you must believe me this is long term. This is not a short term change. I've seen the light."

We asked Ms Sandra Santens about the meeting:

> …Well Councillor Hall ate humble pie pretty much from about 3 till about 5.30. I mean, he was - he was obviously very sorry. … pretty much Tony held the floor the whole time. He and I were the only ones that did talk. Because I - having worked with him for so long, I can actually say things to him that maybe others can't, or that he won't take so readily, and whilst I didn't want to, I felt that I had been asked, so I thought I would. So I went for it and I told him he'd been abominable…
>
> …At the end of the day I found that Nicole didn't say very much at all, and Rhonda said absolutely nothing. I think she had had her meeting with Tony and just stayed in the background.
>
> …
>
> There was so much said. I can remember it all but basically it was Tony Hall eating humble pie from - almost the whole time we were in there. I had my say, I told him that he was impacting on my job, that I couldn't do my job, that I had nine Councillors, it was all on a huge learning curve except for Malicki, and so I was really busy. I didn't have time - and I had to fill in - fill the gaps with the Mayor's PAs, who were all temps, and that we were losing staff and it was all just getting a little bit too hard. I had to chase up correspondence that he would lose or that obviously was just in his office, this back-log of stuff that wasn't being processed, because I think Tony thought that he could do it all or that he didn't trust us, so nothing was actually going through the normal channels, and it was obviously impacting on me and that I had to sort of try and pick up the - or you know, do a lot more research for him than I would otherwise - well, normally - shouldn't have had to do at all. But even with a normal Mayor, if it was a temp you would obviously have to help, but - yes, with the way things were it was just hard and, yes, I - so I told Tony all that. I said, you know, that - "Your behaviour is impacting on me, it is making my job much more difficult and correspondence is not being registered and then I've got to run around and find things and what-not", and yes, you just felt like the whole Council was falling apart.
> …
>
> …he said that he was really sorry and that he knew that he was over the top - or, I can't remember how he said it, but he knew that his behaviour was unacceptable but sometimes he would get frustrated because he couldn't carry out the things that he wanted to do or that it wasn't happening fast enough. That sort of thing.

Clr Hall told us that he could not recall the sort of things he said at the meeting with Ms Williamson and Ms Santens. He said:

> …I was not getting the service that I felt I should have as Mayor and certainly there was a resistance from the staff, whether - but what I gathered during the conversation, it was a bit contrived. I got a very warm feeling from the generosity of the two ladies, they were very, very warmly disposed to helping and making it work, very well disposed. Sandra and Nicole…
>
> …I was in a conciliatory mood and if I have offended them at any time, words to that effect, please - please accept my apology, we must get on with the job. I was bending over backwards to make a - an opportunity that had been - the door had been opened, an opportunity to work. And they too responded in like kind.

Clr Hall also told us:

> Mr Bulford: Did you make some reassurances or do you recall making reassurances to Sandra and Nicole that the -that you were going to change your behaviour and that it was not a short term change and that you thanked them for giving you a second chance. Words to that effect?
>
> Clr Hall: Oh, I suppose I - I think I said words along that line …

We also asked Ms Santens the following:

> Mr Bulford: So did you feel that he was genuine at the time anyway?
>
> Ms Santens: I did. Yes, I - yes.
>
> Mr Bulford: But had you seen any evidence, from when you walked out of that meeting and to the present day, where he stuck by what he said at that meeting?
>
> Ms Santens: I've seen him trying to.
>
> Mr Bulford: How - what makes you think he was trying to? What signs were there?
>
> Ms Santens: Just his way of - his way of chastising, should I say, the staff. I can see that he's trying not to be severe, not to be - you know, not to be aggressive. You can see, you can just see. I mean it's all on his face and you can see that he's trying.
>
> Mr Bulford: And yet it's been put to us that within a couple of hours of that, he was back to his old tricks, if I can use my words?
>
> Ms Santens: Well yes, well that's true. I mean, he - if there's something that upsets him, he seems to forget it all. I'm just saying that he - you could see that he tries sometimes, but then he - he seems to throw caution to the wind and just charge ahead full steam, as if he can't help it.

Ms Santens also proffered the following view as to why the Mayor was apparently so contrite and apologetic on this day. She felt that he had been confronted by his fellow Councillors who had told him he needed to do something about his behaviour. She formed this view having overheard an argument the night before between Clr Hall and a number of Councillors in the corridor between the Mayor's office and the Councillors' room.

In his written submissions made through his legal adviser in response to the allegations particularised to Clr Hall on 14 February 2000, it was put by Clr Hall that the relationship with the secretaries had been "cordial" thereafter. But in our interview with him Clr Hall admitted that there may have been "ups and downs".

In the press release issued by Clr Hall on Sunday 7 November 1999, announcing that he was standing aside to permit Council to secure an independent investigation into the complaints against him, he made the following statements:

> I am aware that sometimes my behaviour may seem abrupt because of my frustration's at getting the job done as quickly as possible.
>
> I apologise to staff for this and anything I have done which has contributed to staff unease that has resulted in complaints about me.

Yet, when Clr Hall returned to his office only days later the same old story of harassment and so on of staff continued, albeit perhaps, at least on occasions, at an abated pace. See section 3.38 of this report.

We asked Clr Bennett in our interview with her about her perceptions as to Clr Hall's reasons for and genuineness in these meetings with the General Manager and the senior secretarial staff. She concluded by saying:

> The Mayor didn't want an Inquiry.

3.33 The concerns and involvement of the MEU – Occupational health and safety issues

We have already noted at various sections of this report that the union covering many of the Council staff, including some senior staff, had quite early got involved in matters at Council following the election of Clr Hall as Mayor and in particular following the introduction and passing of his Mayoral Minute on 28 September 1999. That union is the Federated Municipal and Shire Council Employees' Union of Australia, New South Wales Division, or "MEU" for short. The union organiser assigned to Council at this time was Mr Graeme Kelly.

The first outward expression of concerns of the MEU arose as early as 1 October 1999, only a couple of days after the Mayoral Minute was passed, and these related to the powers granted to the Mayor in that Minute. These powers gave rise to grave concerns on the part of the MEU in terms of their impact on their members. These issues are considered in more detail at section 6.2 of this report.

Matters escalated to the extent that on 7 October 1999 the MEU resolved that its members should not contact Clr Hall in relation to certain matters, which the MEU notified to its financial members and to Clr Hall the same day. Clr Hall has consistently incorrectly described the MEU measures and the actions of staff in following them as "work bans", in particular in comments to the press, thereby quite improperly suggesting that they had a status higher than they really had. It is true that the word "bans", whilst not used in the notice of 7 October itself, is one that has

been used by the MEU – see for example the letter of 25 October quoted below. But the nature of those bans was limited. Again these issues are examined at section 6.2 of this report.

The complaints of staff about Clr Hall's conduct and the occupational health and safety ("OHS") issues entailed in them were taken up by the MEU at a meeting with Clr Hall on 18 October 1999. A good deal of that meeting dealt with issues arising out of the powers granted to the Mayor in the Mayoral Minute of 28 September, as to which see section 6.2 of this report. We asked Mr Kelly about the former issues and what was said about them by him to Clr Hall at the meeting. Speaking from file notes he had made for himself on or shortly after the meeting, he told us:

> [Clr Hall] He dismissed them. He didn't believe them. He wanted to - he wanted copies of those complaints and we weren't prepared to give him copies, but I understand the General Manager had indicated that she had done that or was in the process of doing that. Okay. We also raised with him in those complaints re the Mayor's behaviour, the confronting nature of his staff. We raised with him screaming at senior management, which we felt then was passed down to the staff, not in as much as the management that had been screamed at, would scream at the staff, it had that, if you like, effect of morale and those sorts of things, being damaged, when the staff knew that their managers were being treated in the manner that they were being treated. We talked about the Australia Day issue, where it was - and there is some documentation on that, where it was that the Mayor turned up, I understand that would've had to have been before he was the Mayor, turned up and abused staff in front of the public. I raised the issue of the yard meeting on Monday morning where I did indicate that we weren't invited, and reference was made to the relationship with Graeme Kelly, which I've spoken about, that, we - you know - I was concerned about what he'd indicated to us, to everybody, that he knew me personally. I also - there was a meeting - we spoke about a meeting of Directors on the 15th of the 10th '99 at 2 p.m. and there was some concerns raised by the Mayor that the MEU had, in some way, leaked some sort of a notice about that to the press, and we also indicated that that wasn't particularly true, and we talked about the Joint Consultative Committee restructuring process, and their obligations under Clause 28 Workplace Change and Redundancy about where they had a duty to notify. We talked about the Mayoral Minute inasmuch as the unrestricted access.

The concerns of the MEU really took flight on 25 October 1999 in response to contacts from its members following public statements by Clr Hall, reported in the Daily Telegraph of the same morning, in which Clr Hall appeared to blame Council staff for the allegedly unsatisfactory and moreover unsafe state of the Mayoral car provided to him by Council. These issues are considered at section 3.27 of this report.

The MEU issued a letter to the General Manager on the same day. The central thrust of the letter and its main concerns are dealt with here. The key parts provide:

> The Union is very concerned to read the article in today's Daily Telegraph, page 8, reporting the publicised feud between the Mayor and yourself, the General Manager.
>
> Further concerns relating to that article are in respect to staff who are members of the MEU again being dragged into the obvious disagreement between both yourself and the Mayor.
>
> …

> In closing the Union reminds both the General Manager and the Mayor and Council of their obligations under the Occupational Health and Safety Act Section 15 "Employers to Ensure Health and Safety of their Employees at the Workplace". As a consequence of the feud and recent actions of the Mayor the Union places Council on notice that employees have notified the Union of occupational health and safety matters relating to stress and anxiety as a result of this ongoing debacle.
>
> The Union further notes that individuals of staff at Council and Council have notified WorkCover NSW will be notified in due course as to the nature of those complaints. WorkCover NSW Inspector Mr Bruce Marshall has contacted MEU Official Graeme Kelly regarding some of those concerns.
>
> Your urgent response to these matters is required within twenty-four hours as to what you as the General Manager and furthermore what Council intend to do to rectify these problems.
>
> If no response is forthcoming the Union will be left with no alternative but to call mass meetings of all MEU members for their determination of what action is necessary.
>
> Finally the Union reminds Council that the bans placed by delegates of the MEU on discussions with the Mayor regarding any staffing issue are still in place.

The letter was issued under the name of Mr Brian Harris the General Secretary of the Union, but Mr Kelly told us that he had in fact issued the letter on his behalf.

The General Manager told us in our interview with her that there never had been a feud, that it was something the press seemed to have concocted and that there was no question of a power struggle between she and Clr Hall. We are not sure that third parties would necessarily see things in this light. The "power struggle" was merely a matter of the General Manager seeking to stand her ground as to her undoubted statutory powers under the Local Government Act 1993.

Mr Kelly was a witness before our Investigation and by way of background to the issue of the letter he said that after the elections in September and the Mayor's appointment he had received a number of complaints from local union delegates about issues that were taking place at Council. They ranged from a number of concerns with some of the actions of the General Manager and some of the actions of the Mayor at Council.

In relation to his concerns with the General Manager, they were about her obligations in regards to occupational health and safety, providing a safe workplace and safe work environment and also about the General Manager's role in terms of the day to day operation of the Council.

He was asked whether the sort of letter he wrote to the General Manager was written very often. He responded by saying:

> As I said I've been an official for some 10 years and it would have been one of two occasions that I've had to write a letter of such content.

We asked him:

> Mr Bulford: So, it was a pretty serious thing then that caused you to have to write such a letter?

> Mr Kelly: Very serious.

Mr Kelly told us about his contacts with WorkCover, mentioned in the letter of 25 October:

> Mr Kelly: I had … entered into conversations with Mr Marshall about the obligation of the organisation to provide a safe healthy work environment as per the Act. He indicated to me that he would - initially he was reluctant to go out to Council. My understanding of events was that he finally did go out there to make some formal investigations.
>
> Mr Bulford: Did you have a report back from him that caused you to have that understanding?
>
> Mr Kelly: My understanding was that he was telling the union that we needed to pursue it through other avenues such as a Departmental investigation, through our workplace consultative committee and those sorts of things, yes.

We should note that the timing of the MEU letter relative to other important issues and events needs to be understood. The General Manager had issued her first written notification to Clr Hall of the staff complaints about him on 14 October, eight days *earlier* (see section 4.6 of this report). In it she had already flagged to Clr Hall that the key driver of her concerns for staff in relation to his conduct was Council's responsibility to be a 'responsible employer' under section 8 of the Local Government Act 1993 *and* Council's OHS obligations under the OHS Act. We concur.

Her next written notification to Clr Hall about staff complaints, further complaints as well as the existing ones that he had not responded to, was the next day after the MEU letter, namely 26 October. In that memo she again stressed the OHS concerns. Given the exhortation in the MEU letter to both she and the Council about the OHS issues, it is understandable that at least one of her reasons for seeking to copy that letter to the other Councillors was this.

The General Manager in fact wrote two memos to Clr Hall and the Councillors that day on the matter of the complaints. The shorter of the two, and the more important for present purposes, was in fact headed "Staffing Issues – Mayor / Councillors Role". Relevant parts of that memo stated:

> There are serious OH&S issues that are becoming critical if Council is to provide a safe and healthy working environment for the staff. …
>
> I have now been put on notice by the Municipal Employees Union (attached) about this issue with a response required by the MEU today. I have now enclosed the response for the Mayor's and Councillor's information. …

Ms Bignell was quite right to notify, or rather to seek to notify, the Councillors about this at this time and in this way. Indeed, in her letter to the Union she noted in relation to the OHS issues that Clr Hall had provided to her the following comments:

> As the MEU letter has requested a response from you, I would appreciate your reply to the Union be referred to the Council at its next meeting on Tuesday, 26 October 1999, presumably as a Staff Committee report.

That she was prevented from getting her message to the Councillors is not her fault, and was the deliberate work of Clr Hall, for which he must be resoundingly criticised. This is dealt with further at section 4.6 of this report.

We asked Mr Kelly about what response he got from the General Manager to his letter of 25 October. In addition to the written reply, which we will consider in a moment, he told us he had received many telephone calls over a period of some one and a half months - it was nearly on a daily basis.

The General Manager issued a lengthy written reply to the MEU on 26 October, within the deadline they had demanded. This was the letter attached to the memo of the General Manager to the Mayor and Councillors noted above. The other part of that letter, for present purposes, provides:

> I have received a number of written complaints about the Mayor's behaviour towards the staff and the stressful impact that this behaviour has on the health & well-being of the staff.
>
> I have informed the Mayor in a memo dated 14 October 1999 on a confidential basis of individual staff complaints, the impact on the staff and the Council's OH&S responsibilities.
>
> I asked the Mayor to consider the issues raised by the staff and Council's OH&S responsibilities, and to respond to me on the issues raised. I have not had a written response on this matter from the Mayor to date.
>
> I have since received further complaints about this behaviour signed by four individual staff members. I have provided the Mayor with copies of these, requesting that as the OH&S impact on the staff is very serious, this matter must be addressed as a matter of urgency.
>
> An immediate and urgent issue on OH&S basis is the two Civic Management staff … These two staff yesterday have requested immediate relocation from the Mayoral area, away from "intimidation, yelling, confrontations and sarcasm" to a "safe, friendly and calm workplace".
>
> As the welfare of these two staff is a matter of urgency, I have arranged their immediate relocation to try to eliminate the stress of their current environment.

The relocation issue is considered at section 3.17.1 of this report.

Mr Kelly said that he was happy with the General Manager's reply as the two staff members that had been "harassed by the Mayor" were to be moved away and the General Manager had said "As the welfare of the two staff is a matter of urgency I have arranged their immediate relocation to try to eliminate the stress of the current environment." Mr Kelly concluded his oral testimony to us be re-iterating that:

> from the MEU's point of view, the well-being and the safety in terms of the Occupational Health and Safety Act, Local Government Act and the State Award, the well-being of our members is of paramount importance to us.

3.34 Impact on Council staff generally

We interviewed both the General Manager and Ms Carol Logan, Council's Manager Human Resources, as well as other witnesses, to understand and obtain evidence as to the impact Clr Hall's conduct was having on staff generally. That impact has a number of manifestations, which we will now consider.

3.34.1 Staff morale

Ms Logan gave evidence to us of the impact events at Council were having on staff since September 1999:

> Since the September election what I have become aware of, through discussion with employees, is a level of anxiety in terms of their employment at Council and the implications of the direction that the new Council has been taking, the attitudes towards the staff members of Council that have been articulated in the press by some of the newly elected Councillors … and in Council Chambers …

Speaking of Clr Hall's conduct in relation to such events as Active Australia Day, Water Week and so on, as well as in relation to tasks such as the social plan, the General Manager told us:

> They work on a project, he is fully informed, like all the Councillors, they get really excited and usually, if it wasn't him - I mean another Mayor would tell them what a great job they've done and all the rest of it. So, they get there and they are terrified for when he's going to get there and what he's going to do.

3.34.2 Staff counselling

Ms Logan told us about Council's Employee Assistance Program:

> We have introduced an Employee Assistance Program, which is a confidential service which employees can access for the purpose of counselling, their family members may also access that counselling service. It's provided by an external consultancy firm with trained psychologists who undertake the counselling of staff members for work or non-work related issues. As I mentioned the service is strictly confidential.

She told us that employees can either access the counselling service direct, in which case Council would not know they had done so, or via her Department. Ms Logan told us, however:

> Council does receive a quarterly report outlining in general terms the sorts of issues that have been raised through the counselling process, how many employees have accessed the counselling service by department, the individual's name is never divulged unless the individual employee, as I said earlier, wants Council to be aware of the issue they've been discussing.

Confidential evidence has been provided to us as to the numbers of staff who have accessed the counselling service and the cost to Council, but not of any details as to persons involved. It is clear that the situation under Clr Hall and his Council is unsatisfactory. The utilisation rate of the service jumped considerably after

September 1999. Fifty to sixty percent of those persons using the service cited that they were there directly or indirectly because of Clr Hall.

3.34.3 Staff avoiding contact with Clr Hall

Mr Chris Young in his interview with us told us:

> I suppose only from the point of view that really the difference in working with Councillor Hall as Mayor and other Mayors that I've worked with, that we've always - regardless of particular Mayors' views, we've always been able to establish a very good working relationship where there has been some trust and that you're prepared to go and talk to the Mayor of the day and discuss issues that you may be aware of that come up, which I think is a normal working relationship with a Mayor. In this instance with Councillor Hall that's not there and most staff are very concerned about even delivering something to him because of the - you know, if they go up they fear that they're going to get - going to get a serve over something.

He told us that he was amongst the staff having that attitude, adding, "I certainly don't feel like putting myself through a particular emotional battle with him to, you know, just to go and give him something …". He agreed that this was generally impeding orderly and reasonable communication and working on a daily basis on the part of the staff with the Mayor.

Ms Sandra Santens told us that a lot of staff were frightened because of Clr Hall and adding:

> …they certainly would go to great lengths to avoid it. They would hide outside of the office and ask, "Is he there?" you know, and generally just people did not want to come into any sort of contact with him, so I mean he was accusing the staff of, you know, being obstructive, but it wasn't that, it was just that they couldn't communicate with this man on any level and so I think they just gave up.

She also agreed that it was part of the obstruction viewpoint, because they were frightened to talk to him.

Ms Williamson's evidence was to the same effect:

> The staff are too scared to come into the area. They ring us to see if he's in before they come up to bring plans to be signed by Rhonda and things like that. They won't actually take something into him. If they need a signature they always go to the secretary to sort of go, "Can you take this in?"

Ms Virginia Leafe, the Manager in charge of Council's communications unit, told us that her staff wouldn't deal with Clr Hall as Mayor, and that she had to do so herself, rather than delegate minor matters to them. She told us that this had nothing to do with the MEU bans. It was because her staff were "intimidated" by him.

3.34.4 Staff wishing to be relieved of their duties in attendance at Committees and working groups

The key instance here is the Cowan Catchment Management Committee. Particulars of the allegations against Clr Hall in this regard were provided to Clr Hall on 14 February 2000 in the following terms:

> It is alleged that the behaviour of Clr Hall generally, and in other arena (in particular, for example, at meetings of the Residential Development Strategy Taskforce and the Transport & Traffic Steering Committee), has resulted in the refusal of staff to attend meetings of the Cowan Catchment Management Committee if Clr Hall is also present. See the memo co-signed by three officers at Attachment 6.
>
> It is further alleged that both Mrs Joanne Scarsbrick (Chairperson of the Committee) and Mr John Garran (Deputy) spoke to Clr Hall about this position and found this an unpleasant experience. Their concerns were reported to staff officers. Mrs Scarsbrick spoke to Clr Hall in the Council Chamber and Mr Garran spoke to him over the telephone.
>
> It is noted that since 31 December 1999 this Committee has ceased to exist.

The three officers were Mr Guy Paroissien, Mr David Young and Mr Chris Young. Mr Paroissien told us that he was in fact the author of the memo. He told us about how the memo came into being:

> …When the Mayor was elected Mayor - there have been - I think it's fair to say there was a fair bit of angst in the organisation post the election result, that obviously the Mayor would be - that Tony Hall would be elected Mayor, and that given his history of fairly aggressive behaviour towards staff, that there'd be - and the fact that he'd been on the wrong side of the numbers for the previous Council and Councillor Dobbin had admonished him pretty severely a few times in public in Council, that there would be some retribution, or, you know, that he'd probably give staff a pretty hard time.
>
> …there was a feeling of angst or concern, nervous anticipation amongst the staff. And when - some of the staff had been exposed to it directly and others had heard, obviously when staff are bullied by a Councillor, they don't necessarily keep that to themselves, they might talk to their workmates about it if they're particularly upset.
>
> …And so staff were aware, either directly or indirectly of the sort of behaviour that Councillor Hall had been exhibiting over time.
>
> …Councillor Hall had nominated himself to the Cowan Catchment Management Committee, and two staff who were involved in going to those Committee meetings, Ian Taylor, who's the drainage engineer, who worked in a different Department, he worked in Infrastructure and Open Space for David Young's Department, and Louise Hardy, who worked for me, she was a direct member of my team, came to me and said they were really scared about going to the meetings, they felt they'd be bullied and intimidated and belittled in a public forum, and they didn't wish to attend.

Asked whether he was aware of a particular incident between Councillor Hall and Louise Hardy at the St Ives Show, he said:

> Absolutely, yes. Yes I was. Because I'd just not long before that become responsible for Louise and the other members of the Environmental Policy team and it had only been a matter of weeks before I'd taken responsibility for the team …

Mr Paroissien added:

> having been on a committee with Councillor Hall for a long time in the past I knew what his behaviour was like and whilst I may personally be able to cope with that it didn't necessarily mean it was right, nor should staff necessarily be exposed to it, and I felt as a manager responsible for Louise that I shouldn't expose her to that situation …

He also told us he had not discussed the memo with the General Manager before he wrote it and she had not asked him to write it.

Mr Chris Young told us why he had signed the memo. It related to his concerns for his staff member, Ms Louise Hardy. It is noted that in our 14 February 2000 Statement of Particulars to Clr Hall, under the heading "Conduct towards Louise Hardy", we stated:

> An earlier, pre-Mayoral election of 21 September 1999 incident concerning Clr Hall's conduct towards Ms Louise Hardy, Council's Senior Environmental Projects Officer, on 14 March 1998 at the St Ives Show is well documented in Council files and records, having led, so the Departmental Representatives understand, to an April censuring of Clr Hall by the then Council pursuant to its Code of Conduct. This incident and those details are to be considered by the Departmental Representatives as part of the Investigation by way of background to the nature of Clr Hall's current relationship with Ms Hardy. It is considered, as previously advised to Mr Dunn, that this may occur pursuant to paragraphs 1 and 4 of the Terms of Reference.

Mr Chris Young's evidence was that the staff in his area had discussed the matter with him prior to putting the memo together. They had discussed some of the issues that they thought may have been a problem. They asked him whether he would be prepared to sign a memo to the General Manager and he said yes he would.

He also told us this in relation to his concerns for his staff member, whose previous experiences with Clr Hall he was "well aware of":

> Mr Bulford: So her concerns in relation to the Cowan Catchment Committee had some basis to support them, in your view?
>
> Mr Young: Yes, and very much from the point of view that the - that by going there as a delegate without a senior officer - another senior officer there to assist them or to sort of be in defence of them was something that they were concerned, you know, would occur, and they would be left basically defenseless.
>
> Mr Bulford: Vis-à-vis Councillor Hall?
>
> Mr Young: Yes.

Mr Young told us that neither the General Manager, nor anyone on her behalf, had approached him to issue the memo or co-sign. In signing the memo and delivering it himself to the General Manager, he told us that he anticipated that it might be provided to Clr Hall, given his awareness of natural justice requirements.

Mr Young also gave evidence to us that his key reason for concern about being ordered out of the Transport and Traffic Steering Committee meeting of 21 October 1999 was that he would be leaving his junior staff defenceless to deal with Clr Hall. See also section 3.22.2 of this report. The junior staff also gave evidence to us to corroborate that they too had similar fears and concerns.

Mr David Young told us that he had co-signed this memo because of concerns raised with him by one of his staff members, Mr Ian Taylor. He added:

> I can remember having a discussion with Ian Taylor about a meeting that he had been at and Councillor Hall had been there and, from what I can recall, he was just explaining how - I can't remember the detail but it was basically Ian who convinced me in his discussion that it was unsuitable for him to be in a forum where Councillor Hall was because he was either having his credibility challenged or he wasn't allowed to say anything or his position, as a staff member, was being denigrated.
>
> …Chris Young actually came around to me at some point on that day and said, "Louise Hardy had the same sort of problem" and did I think that our staff should be subjected to that, which I didn't. He asked me whether I'd co-sign that document.

While Mr Young said he had no personal experience of Clr Hall's behaviour at that Committee, his own experience with the Traffic Committee led him to give credence to Ian Taylor's advice to him. He added:

> …Ian Taylor is a very professional person. From the time I knew him he wasn't the sort of person who would make anything up or exaggerate and because of the sort of - not just Councillor Hall, but it's difficult for junior staff who aren't exposed to Councillors all the time to deal with them at any time.

Mr Paroissien's evidence to us was that despite the fact that this Committee has had some meetings, neither of the staff who might otherwise have attended, provided Clr Hall was not present, had in fact been to any such meetings. Mr Chris Young told us that to the best of his recollection there had been at least one meeting where staff did not attend because of the likely attendance of Clr Hall. The Committee was, however, according to information provided to us by Mr Chris Young, shortly after the issue of the joint memo reformed into another Committee, with Clr Little being Council's delegate to it and staff members participating in its proceedings.

These developments do not detract from the fact that Clr Hall's conduct clearly had or had the potential to have an adverse impact on the ability of Council and its staff to provide the services and fulfil the roles and responsibilities it was expected to provide. Mr Chris Young told us:

> The subject matter of that was the mood of the organisation at that particular time.

The evidence moreover is that what was happening vis a vis the Cowan Catchment Management Committee was a more widespread phenomenon at Council. We have already noted the evidence of Ms Logan in relation to the reluctance of a staff member to continue involvement in community liaison groups. Ms Logan gave us evidence about other incidents:

> Yes there have been other issues of staff members that have been involved in traffic committee issues, and certain allegations or perceived allegations made by the Mayor directed at an employee – the perception of the employee was, "the Mayor was saying I was doing something corrupt". That employee came to speak to me about it. The result of that clearly was that that employee wished to withdraw from what was a fundamental part of his role here at Ku-ring-gai Council because of these feelings of intimidation,

> uncertainty, about how the Mayor was going to respond in a particular meeting or in a given situation towards the staff members.

Ms Logan said that all these situations arose merely out of the conduct of one Councillor at Council, that is to say, Clr Hall as Mayor. She also told us of the contrast in that regard with what had happened in the life of the previous Council, as to which see section 3.5 of this report above.

3:35 Impact on Council's ability to recruit staff

We have already noted at section 3.18 of this report, above, the General Manager's advice to us as to the difficulties Council is having in securing secretarial assistance for the Mayor.

Ms Logan also told us about the impacts on Council's ability to recruit staff. Speaking of the four senior staff of Directors' positions that when we were interviewing her on 18 February 2000, were in the process of being filled (a recruitment process that had actually started in August 1999), she told us that the publicity to the MEU bans and what generally was happening at Council had impacted on the willingness of potential recruits to come forward.

We examined the issue as to whether Clr Hall was a key factor in any staff resignations since he became Mayor. Other than those considered elsewhere in this report, such as the situation in relation to Mr David Young and Clr Hall's secretaries, our advice from Ms Logan was that she had no formal or first hand evidence that people were necessarily leaving because of Clr Hall. She told us that staff voluntarily participated in a system of exit interviews, but whilst the situation at Council generally came up in a number of those interviews, none specifically cited Clr Hall as a reason for leaving Council's employ.

She said that the statistics for the last quarter of 1999 showed a significantly adverse trend and likewise for the first two months of 2000. In respect of the development control area which seemed to be prominent she confirmed that it could not be said with any degreee of assurance that Clr Hall was a factor but added:

> …if you look at the numbers 1998 quarter over 1999, we have two in 1998 and in the same period of 6 in the same period 1999. In the first two months of this year, we have up to 7 resignations – that's just in a two month period. The trend is clearly of measure.

During the course of our Investigation we received on 2 February 2000 a letter drawing our attention to and expressing concerns over a number of resignations in Council's Development Control Department. We asked the General Manager about this in our interview with her and she confirmed there had been seven resignations in that Department in the preceding eight weeks. She said these included "a couple of team leaders and they're quite senior people".

Ms Logan also told us:

> From an organisational perspective, the implications of a turnover this high is very significant in terms of continuity, service delivery, cost of replacement, cost of training, so

> clearly for an organisation that doesn't make money, the staffing implications are significant in economic terms. Let alone the morale that that sort of turnover, the impact on morale that that sort of turnover has. … If this trend continues we are looking at a significant loss of experience, knowledge, ability and we're looking at significant costs to replace those people. So that sort of turnover is not sustainable for any organisation.

3.36 Impact on Council's ability to provide its services and other functions to the community

Ms Nicole Williamson's evidence to us was:

> I mean the office at the moment has ground to a halt and it's still that way now. Nothing is happening. I mean it's - yeah, we're just not actually doing anything. We're not responding to people's letters, phone calls, nothing because it's just - it's just so disruptive. I mean the fact that we've got temps in all the time, you know, doesn't help.

We take Ms Williamson's evidence to apply purely to the situation of handling of Mayoral correspondence and so on in the Civic Area, and not to Council's functions or other areas of its office generally.

At the close of his interview with us we invited Clr Roach to make any further comments he felt should be put to us and he added:

> Councillor Hall has been very critical of - has been making out that certain types of information have got to the media. What Councillor Hall has got to realise is that he's got to follow the Local Government Act and if we have minutes - if we have a memo which is part of our business papers, under the Local Government Act they should be - there is a set procedure to make those minutes confidential. … Now if those procedures aren't followed … and we're in a position at Council where the Council itself, where there is not - where the conduct of the Mayor has got to the stage where there is a break-down in the Council as a result of the - Councillor Hall and his attitude to the General Manager. And that goes on for some time, so that in fact the functions of the Council aren't working, and that we've got problems with unions and all sorts of things that are going on, and there appears to be a major crisis which is about to occur, and the other problem is that, you know, you get good staff leaving these Councils, which we've got at Ku-ring-gai Council now, and it's up to Councillors to actually do something about it, and what - Councillor Hall being concerned about particular memos going out to the press and the media, Councillor Hall has left himself wide open … So I just thought I'd cover that so that if he starts - if - there's a few of them that have been running around saying that Councillor Hall's been hardly done by, but in fact it's important for things like this Investigation to take place so that we didn't have a continuance of what had been going on in the Council, and even the aftermath now is that we've actually lost, at Ku-ring-gai Council, some extremely good staff that have been built up over many many decades - over many years, and these people are invaluable because when a problem arises they know what the history of it is. If we keep - we've lost six or eight members in our development staff people at the Council. When items come up there's no depth of expertise in the Council, so it's all very well for Councillor Hall to come in and say, "I'm going to clean up the Council". What he's done is cleaned out all the good people in the Council. And that becomes a problem. And I think that I've actually been very impressed with the way that Rhonda Bignell's behaved.

Ms Virginia Leafe gave us the following evidence as to how she saw Clr Hall's behaviour as impacting on Council:

> Councillor Hall creates a situation - a dysfunctional situation in which work is sometimes very hard to do…I get very angry about what's going on because there's some excellent projects this Council could get on and deal with, and for Rhonda's sake too, I mean it's just like this stuff is just like engulfing us all. Councillor Hall's complaints about the most trivial things…I spent two whole days chasing up an issue in the media that he had placed in there. And I took two days where I've got, like, a lot on, running around chasing files, talking to staff, trying to get a picture of what was going on, based on something that's not true.

On the other hand, Mr Chris Young told us that whilst the Investigation was "certainly … occupying a bit of [staff] time" the daily tasks and functions of Council were still being looked after.

3.37 Impact on the ability of the General Manager and her Corporate Management Team to manage the Council organisation

The General Manager's evidence to us was that even as of 10 November 1999, when she was meeting with Clr Bennett and others over the allegations she had been confronted with as to her own performance, she had told Clr Bennett:

> I'm not being able to be a General Manager, I'm a counsellor to the staff who are ongoing in coming to see me because they've been abused by the Mayor. My office is like the Ku-ring-gai Counselling service and this issue must be resolved.

And later the General Manager told us, speaking in general terms:

> It's almost impossible for me to be a General Manager, it's more somebody that's got to manage the Mayor's business.

Ms Carol Logan also gave evidence as to the impact of Clr Hall since he became Mayor on the Council Corporate Management Team:

> At a professional level [the General Manager] is unable to actually undertake the role of general manager. She is unable to devote her attentions and energies to the organisational issues which are very much her domain and responsibility under the Local Government Act…there was a level of anxiety that if the Corporate Management Team met that the Mayor would somehow become involved in those meetings, disrupt and interrupt the meetings. Perceived or otherwise that was the general view, so there has been a disruption to the normal functioning of that management group, and particularly the General Manager, who again was trying to manage what was a difficult period particularly in the immediate weeks after the election when there were a lot of issues in terms of staffing issues, staff committees and other committee structures as well as the organisation structure, that were volatile.

We also sought Ms Logan's views, an expert with many years' experience in management of human resources Departments at the local government level, both in New South Wales and in Queensland, as to whether any general manager could have done better than Ms Bignell in all the circumstances. Her carefully considered reply was:

> There are so many dynamics, I think not. I think not given the difficulty, given the 13 years of history of this individual – no, I probably think not …

3.38 Clr Hall's behaviour since the moves to start a Council Inquiry process and since our Investigation was called

A number of witnesses gave evidence that in their view and observations Councillor Hall appeared to be on his best behaviour since the Council initiated Henningham Inquiry process was commenced and in particular since this Investigation was announced on 13 January 2000.

The General Manager said that there was a difference between the conduct of Clr Hall towards staff in meetings, depending on whether the meeting was in open or closed session – the latter being where the public is excluded. She said:

> He's putting on an act in front of the public at the moment because quite a few people are coming to see the behaviour of the Mayor towards the staff.

As for herself, she told us that she felt Clr Hall had been deliberately avoiding her, not ringing her and only communicating in writing or by fax. At least this was the situation up until the time of our interview with her on 14 February 2000.

Ms Williamson told us that Clr Hall "doesn't yell as much" and that he has "not being in the office all that much" which reduces the opportunity for problems to occur.

Some of Mr Chris Young's evidence is at section 3.12 of this report and is to the same effect. He also told us that "there was a change for a short time". The "most intense period" was prior to the Henningham investigation being considered. He said:

> And then there was a short time where things became less intense. But then from my point of view they reverted back fairly quickly to what they had been before that time frame, and then they've reduced again lately.

Ms Sandra Santens evidence on the matter was:

> …Yes, I would say his behaviour, for him, is exemplary.
>
> …I think he still has lapses, but he wouldn't see that. I mean he would think that he's on his best behaviour, which he is.
>
> …I don't think it's the real him. I think it's controlled and…you just get the feeling that he could explode at any time anyway, no matter how nice he's being.

Mr Graeme Kelly of the MEU made the following comments to us:

> I believe that the Mayor is a wolf in sheep's clothing at the moment. That whilst he's under investigation, whilst he is under scrutiny, he will possibly continue to display a sense of fairness and concern and act appropriately. I believe, if he remains in a position, he will revert back to his former tactics. He has a long history in respect to his abuse of the staff. It is not as if the MEU has gone out and actively campaigned against the Mayor to try and bring him undone so to speak. All of the things that have been discussed and raised by the MEU on behalf of the members have been at the request of the membership as a result of the actions of the Councillor at the time and then thereafter the

September elections. And certainly from our point of view, we would like to see the matter come to some appropriate finalisation, whatever that is, with an emphasis that our members can work in a friendly and occupational health and safe environment.

3.39 General conclusions regarding Clr Hall's conduct towards staff

The overwhelming evidence encountered by us in our Investigation shows quite clearly that the complaints against Clr Hall are proven.

His conduct towards staff has been manifestly inappropriate and is not conduct consistent with either his statutory roles and responsibilities as Mayor or Councillor, nor with the standards of behaviour demanded by Council's Code of Conduct. Nor is Clr Hall's conduct befitting what, in our view, the community can and should expect of a person holding public office.

The evidence also shows that whilst Clr Hall's conduct towards the General Manager and many Directors and senior staff was inappropriate, most of them managed to develop coping mechanisms. That is not, however, to excuse Clr Hall's conduct in any way. But it is a different or more serious matter, when it comes to his conduct towards more junior members of staff. They have equally been subjected to inappropriate and unacceptable behaviour. Clr Hall's conduct, moreover, is considered all the more reprehensible, given their inability in most cases, because of their more junior position in the Council organisation, and in many cases because they have not known Clr Hall for as long, to be able to fend for themselves and to speak up and tell him to behave, or simply to ignore his onslaughts and get on with their jobs.

Clr Hall's conduct towards the General Manager and her staff is shown to be rooted frequently in long held animosities and causes or beliefs held by him. It is plain that the attempts of past Councils to curb and manage him caused Clr Hall deep personal anger and grudges. He saw his way to putting that to rights, in his view, when he was swept to power at the forefront of a group of well meaning but totally inexperienced people.

At Part 4 of this report we will deal with this further. Suffice it to say at this point in our report that we have found, on the evidence before us, both in terms of Clr Hall's own words to us, plus those of the more forthright and candid of those Councillors whom we interviewed, that, in those Councillors who were first elected to Council at the September 1999 Council elections, we have a group of new and totally inexperienced Councillors who were, in the early months following the election, all too willing not to question but to follow Clr Hall. They accepted what he told them, with most unfortunate consequences for the General Manager and her staff, for themselves and the people of Ku-ring-gai. Were it not for these people it is likely that Clr Hall would not have been able to get away with what he has done.

The evidence shows that whilst the scale of Clr Hall's behaviour since the September 1999 elections has been many times greater than before, it is

nonetheless merely a continuation of the sorts of things he has done for many many years.

As early as 1989 a previous Council adjudged his behaviour to be unacceptable and sought to manage that behaviour by placing restrictions on his ability to deal with staff, other than through the General Manager. Those restrictions have been reaffirmed over the years, particularly in early 1999.

The evidence is that these restrictions have not in fact been totally successful, though they have at the very least acted as some sort security blanket to the staff. The very fact that Council was prepared to deal with Clr Hall provided a great moral support to the staff so that they could get on with what they are there for and were employed to do in the first place, namely manage the organisation and provide to the community the services and regulatory, planning, health and other regimes that an ordered and modern Western society expects and needs.

It now remains for the present Councillors to decide for themselves what actions they will take to manage the situation, as it is their responsibility to do.

It is for them to take such action as they deem appropriate, pursuant to Council's Code of Conduct and related policies and procedures. Neither the Minister, nor the Director General and the Department of Local Government have power to do that for them.

A range of options are open to the Councillors, from limiting the delegations to the Mayor, removing him as delegate of Council to relevant forums or bodies, and so on. Likewise, restrictions along the lines of those previously in place may be reintroduced. However, in so doing, Council will need to be mindful of ensuring that any such restrictions are fair and reasonable, and consistent with the considered views of such regulatory bodies as the NSW Ombudsman. The Ombudsman's *Dealing with Difficult Complainants*, issued in September 1998, and recently re-issued in a compendium volume with other related publications, plus the Department of Local Government's and the Independent Commission Against Corruption's *Under Careful Consideration*, will all need to be considered in this regard.

Whatever measures the Councillors do or do not take, they will themselves in due course be judged for what they have or have not done, as the case may be.

PART 4

4. CLR HALL'S ALLEGATIONS AGAINST THE GENERAL MANAGER AND OTHER STAFF

Paragraph (2) of the Terms of Reference of this Investigation required us to investigate and report on Clr Hall's allegations about the conduct of Council's General Manager, Ms Rhonda Bignell, and other Council employees.

4.1 Obtaining of particulars from Clr Hall re his allegations

We sought to obtain particulars and clarification from Clr Hall as to just what concerns or allegations he considered required to be examined pursuant to this paragraph of the Terms of Reference. He provided those to us in writing through his legal adviser on 20 January 2000. All allegations were limited to allegations against the General Manager. We note nonetheless that from time to time thereafter some allegations have been levelled or sought to be levelled at other members of staff, but whenever we sought particulars of these we found Clr Hall and his legal adviser provided no information and evidence and largely sought to back off or leave vague innuendos floating on the basis of a suggestion that would have entailed us going on a fishing expedition. We made it quite clear that in the same way Clr Hall peremptorily demanded and insisted on particulars being provided to him about the allegations against him, we needed such particulars from him as to his vaguely formed accusations, before we would be in a position to treat other persons equally to him and give them the natural justice opportunity of responding to those allegations.

4.2 The provision to the General Manager of particulars of Clr Hall's allegations against her

In due course we received consent from Clr Hall through his legal adviser to provide to the General Manager a full copy of all materials provided to us by way of particulars of the allegations against her and any materials provided in support. Those were provided to her and her written response received on the issues.

4.3 Some general comments on Clr Hall's complaints about the General Manager

We should note that what particulars and arguments or submissions in support were so provided by Clr Hall and his legal adviser were frequently expressed in emotive language and presentation. Likewise, what is complained about is frequently not clearly or concisely expressed. In the following sections of this part of our report we have adopted headings which we believe adequately describe what it is that is complained of or is alleged to our understanding.

There is one part of the complaints and allegations that we have in fact considered in another Part of this report. It was generally alleged that in a number of respects that the General Manager had failed to discharge both legal and seemingly moral duties of disclosure to Council on a number of matters. All have been dealt with, where they entail matters that in our view are matters of substance, at various parts of this report. Paramount amongst such matters is the question of alleged failure to effect adequate disclosure (whether just to Clr Hall or to the Council as a whole is not clear) on staffing matters – in particular the circumstances relating to Mr Young's departure from Council, the payments made to him on his departure, contracts of senior members of staff and their various entitlements and so on. The issues as to Mr Young are dealt with at section 3.11 of this report, as they are very much linked with the complaints as to Clr Hall's behaviour to and about him. The issues as to other information on staffing matters are considered at section 6.6.2 of this report.

4.4 Allegations that the General Manager and her staff obstructed the implementation of decisions of Council and the will of the electorate and the community

Section 335 (1) of the Local Government Act 1993 provides:

> The general manager is generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council.

It is clear, however, that this means the lawful decisions of the Council.

Our view in this regard is expressed regardless of whatever may be stated in the General Manager's employment contract with the Council. We have been provided with a copy of that contract. Interestingly clause 4 of the contract, which sets out the responsibilities of the General Manager, provides, inter alia, that she must:

> (a) comply with **lawful** Council resolutions and adopted policies; [emphasis added]

The evidence before us shows that it has been a recurrent theme of Clr Hall and his Mayoralty that the staff, led by the General Manager, are constantly obstructing the implementation of decisions of the Council and the will of the electorate and the community.

We asked the Deputy Mayor, Clr Laura Bennett, who was Clr Hall's running mate as an endorsed Trust candidate at the September 1999 Council elections, whether this theme was part of the manifesto of the Trust. She replied, "It was indirectly and it was certainly interpreted in a number of meetings that I attended". We went on to ask her about these meetings:

> Mr Bulford: This question of the staff - I think the theme, and please correct me if I'm wrong in this, the theme was that the staff were really sort of seen to be protecting their own interests and standing in the way of the interests of the community?
>
> Clr Bennett: That's correct.

Mr Bulford: Was that a theme that was prominently pushed by Councillor Hall in speeches at these sort of functions?

Clr Bennett: Yes it was. It was, for instance, a theme that was used in a speech to the St Ives Progress Association. I also spoke at that meeting.

Clr Bennett went on to tell us that the issue of the supposed attitude of the staff and the residential strategy were "intertwined" adding, "there was a strong feeling that the staff had driven the agenda for the previous residential strategy. Or at least had a significant role in driving it".

In the course of asking Clr Bennett about the alleged challenge by the General Manager to the Mayoral Minute of 28 September 1999, to be considered at section 4.4.1 below, Clr Bennett told us:

Mr Bulford: Coming back to this meeting [of 29 September 1999] where the Mayor raised with the General Manager his concerns over her having sought legal advice, do you recall whether before you and he went to see the General Manager, that the Mayor said anything to you about his concerns?

Clr Bennett: Oh yes, the Mayor was very eloquent on this on a number of occasions. Again I can't remember the timing but these were themes that were constantly reiterated and if it was a question of a meeting with a particular staff member, and that includes the General Manager, then invariably a discussion of these themes would precede any meeting. So, the General Manager's desire to be obstructive, to maintain control, to shut Councillors out, was a constant theme and, although I have no specific recollection of what occurred before that meeting, it would be a highly unusual occurrence for that sort of conversation not to occur beforehand.

Mr Bulford: Would you say, with the benefit of hindsight, that it was a bit of an obsession on the Mayor's part?

Clr Bennett: Yes.

Mr Bulford: Would you say, with the benefit of hindsight, that it was a bit of an unjustified and unfounded obsession on his part?

Clr Bennett: I'd have to qualify an answer to that.

Mr Bulford: Please go ahead.

Clr Bennett: This is an analysis that I've only come to fairly recently. It's my belief that difficulties with the last Council led to an unnecessary politicisation of the role of the staff and that this occurred in two areas. It occurred with respect to the residential strategy and it also occurred with respect to what was then our Development Control Unit. Because the previous Council was not particularly proactive in policy, because it didn't seem to be very responsive to the residents and didn't seem to take the initiative, it often appeared to those outside the Council that, effectively, Council was run by the staff and I think that created an atmosphere conducive to those who sought to use the Council staff as a political target.

Mr Bulford: Yes?

Clr Bennett: There was also, I think it has to be accepted in Ku-ring-gai, that one of the unfortunate effects of what is known as DCP38, which is a primary planning

document for single dwellings, which is the predominant form of development in Ku-ring-gai, one of the effects of that, and it was deliberate, was that it vested a great deal of discretion in Development Control Officers. That's the way the document was written and that was done deliberately to increase the power of Officers to negotiate acceptable outcomes.

Mr Bulford: Those would be staff members?

Clr Bennett: Those are staff members. The difficulty with that is that this involves the Officers basically in extensive negotiations, both with applicants and objectors and also, in the eyes of the community, as taking responsibility for outcomes. It's my belief that the vesting of that amount of discretion through that sort of planning instrument has had a very negative effect in terms of public perceptions of Council because most people's primary involvement with Council, or the most charged involvement they have, is through Development Applications, and therefore the most charged involvement they have with staff and that colours everything. It's my belief that in itself, combined with a residential strategy effectively created what was an opportunity for a backlash against previous Council policies, and there was one, and that backlash was aimed substantially at the staff and a number of previous Councillors, but the backlash was facilitated by the unintended effects of a number of things.

Mr Bulford: You have spoken in terms of the public perception and you've mentioned that the public perception is in terms of the staff controlling things. Having been at Council, as a Councillor for some months, absent the Development area where presumably under the existing LEP's and so on or planning instruments to use the generic term, where there may be certain discretions and powers to staff, would you say it's true, in fact, that the staff run the place?

Clr Bennett: I would say that the staff, and here I'm really referring to the Directors, and I suppose the General Manager, I would say that the staff have varied enormously in the willingness that they have expressed in terms of working with Council. … Any generalisation is false here.

Clr Bennett, however, gave no specific examples at this part of the interview of the less than full co-operation by some members of staff to which she referred. Her later comments in respect of Mr Ian Glendinning and Ms Alison Pattinson are considered at section 4.4.2 of this report.

At section 3.3.1 of this report, we noted the evidence of Clr Little that in the first three weeks of Clr Hall's Mayoralty he had not been happy with the behaviour of Clr Hall towards staff, and had spoken to him about it. He explained that Clr Hall appeared to have been under a great deal of stress in the early weeks, caused by his view that the staff were not co-operating with him.

Ms Sandra Santens, the Councillors' Secretary, who had worked for Clr Hall as an ordinary Councillor for many years, told us in our interview with her about her hearing Clr Hall expound his thesis of conspiracy and obstruction on the part of staff. She said however that she had not seen any indication of staff, including the General Manager, acting in a way to show that in fact there had been a conspiracy or obstruction.

As we have noted in the context of our examination of concerns on the part of staff about the general mistrust and suspicions of Clr Hall regarding staff (see section

3.2.8 of this report), we have in dealing with Clr Hall's relations with his fellow Councillors, made a number of observations which are also equally applicable in the context of or in relation to the issue we are now examining. It is but another aspect of the same issue considered at section 3.2.8 of this report. The bottom line is that staff should not be criticised simply for doing their jobs in a professional way and in accordance with the law.

We are also firmly of the view that it is equally clear that it is part of the inherent duties and responsibilities of the General Manager to ensure that Council is acting in accordance with the law and in accordance with Council's own planning schemes and adopted policies and procedures. If she perceives that this may not be so she is entitled, and indeed obligated, to speak up and say so to the elected Councillors, or to the Mayor, as the case may be, and in cases of doubt she is entitled, and indeed obligated, to seek legal or other appropriate advice on the matter. To criticise her for so doing is quite wrong and out of order.

It is at the very heart of the complaints and attack of Clr Hall about and against the General Manager, Ms Rhonda Bignell, that she has done so. It is at the heart of the poor relations between Clr Hall and Ms Bignell. It is quite unjustified, and it is Clr Hall who is to be resoundingly criticised, in our view, for taking this line, not Ms Bignell.

We are pleased to note the following comments by the Council as a corporate body, issued through the new Mayor, Clr Bennett, when commenting on the final draft of this report:

> Council rejects the practice of preventing staff members from speaking in Council meetings by the Chair. The chairs of the Principal Committees in Council did not follow this practice. Councillor Keays, Councillor de Vulder, Councillor Anderson and Councillor Bennett facilitated staff participation in Committees and the chairs have worked closely with the relevant directors.
>
> At the first Council meeting of the new Mayor's election, 12 September, the General Manager and Directors were permitted to speak and provide information to the Council. A number of Directors informed the General Manager later that they found the meeting to have been a "very good" meeting, the difference being noticeable.

4.4.1 The General Manager's alleged challenge to the Mayoral Minute of 28 September 1999

The key aspect or issue which is at the heart of Clr Hall's complaints and attack against the General Manager for allegedly failing to implement Council decisions is in relation to the Mayoral Minute which he introduced and which was supported by the majority of the Councillors on 28 September 1999, and which set the scene, so Clr Hall planned, for the way in which his Council, that is to say Council under his Mayoralty and tutelage, was to discharge its role and perform.

Clr Hall told us:

> … on 28 September, issuing that Mayoral Minute which had had the imprimatur of my colleagues the night before, I then lost my trust in the General Manager. I simply could

> not believe that a Council, having made a resolution, could have it challenged as being ultra vires that night.

It is clear from the evidence that immediately after the meeting of 28 September, that is to say in the middle of the night, the General Manager sent off faxes to Pike Pike and Fenwick, Council's solicitors for some matters, and to the Director General of the Department of Local Government, raising concerns as to whether certain aspects of the Mayoral Minute were beyond power, ie *ultra vires*. The issue in this Investigation is as to her right to do so.

We have absolutely no doubt that the General Manager acted fully within her rights and powers and quite properly in this matter.

As previously mentioned, while section 335 (1) of the Local Government Act 1993 imposes a statutory duty on the General Manager to implement Council decisions, this only means *lawful* decisions. If any aspect of the Mayoral Minute was *ultra vires*, it was unlawful.

There is abundant evidence to indicate that there is no doubt that certain aspects of the Mayoral Minute were so ultra vires or unlawful. Legal opinions from various persons confirm that. See section 6.5 of this report for more detailed examination of this.

The evidence is that Clr Hall, in his rage at the apparent insubordination or effrontery of the General Manager to challenge his pivotal Mayoral Minute, went to extraordinary lengths to attack and rein in the General Manager over her faxes and other moves. His conduct in that regard was both unjustified and inappropriate.

The General Manager's fax to Pike Pike and Fenwick reads as follows:

> I believe that we experienced an 'ultra vires' night tonight.
>
> I have attached the letter I have just sent to the Dept of Local Government.
>
> This is urgent, as I believe, that the resolutions re staff, operations management, Mayor's additional powers are unlawful.
>
> Please advise me urgently.

There was no question of the General Manager being clandestine in this. The next day she sent a memo to Clr Hall:

> Following the adoption of the Mayoral Minute last night, I am taking the steps required to commence implementation.
>
> I am also obliged to point out that there may be problems with some aspects of the resolution in relation to the Local Government Act, 1993. These include the staffing role of the General Manager; the general role of the General Manager; the general staffing role of the Mayor and Council; and Council selecting members of staff to sit on Committees.
>
> I am seeking advice on these issues and will provide that advice as soon as possible.

This memo is we consider a professional and considered communication. There was nothing improper, insubordinate or challenging or confrontational in it.

The Mayor's response was to summons the General Manager to his office. She received a dressing down. She was issued warnings. Clr Bennett was present at this meeting. This is quite clear from the evidence.

A handwritten note by the Mayor to the General Manager of the same date includes the following passage:

> You have now jeopardised the Council's reputation by opposing the Council in the manner outlined & I warned you at our later meeting at 2.30 pm today in company with the Deputy Mayor that you should withdraw the instructions to Pike Pike & Fenwick.

The General Manager told us about these "warnings":

> …the Mayor was under the impression, and still is, that I'm an Award employee and three warnings and you're out, and I'm not.
>
> …but I'm a Contract employee and what my performance thing is you've got your performance measure and you haven't measured up to them, you've only achieved less than half so, therefore, bye bye.

We asked Clr Bennett as to her recollections of the meeting of 29 September. She replied:

> …I certainly do have some recollection that it was put to the General Manager by the Mayor that it was inappropriate for her to be sending, how can I put it, to be challenging, to be using Council lawyers to be challenging the legality of the Mayoral Minute.

She added that the Mayor delivered his message "very aggressively".

Later, Clr Bennett told us that, "I really can recall very little detail of that particular meeting", but added:

> Councillor Hall gave the General Manager several warnings. I don't honestly recall whether it was at that meeting or not but various forms of threats were used against the General Manager and several other staff.

The evidence establishes that the General Manager did promptly withdraw the instructions. She did this in the face of considerable pressure and threats from Clr Hall.

One of the aspects of the Mayoral Minute that the General Manager told us had caused her particular concern was in relation to the establishment of a Staff Committee. In this regard the Mayoral Minute, as presented and approved on 28 September 1999, provided that:

> **Staff Committee – Exception**
>
> All matters pertaining to the employment of staff, their contracts, working conditions etc. including those of the General Manager will not be delegated. The General Manager shall after consultation with the Mayor, report in writing to a staff committee of the Council with appropriate confidentiality safeguards. Where the General Manager is personally

> involved the Manager Human Resources shall report to the staff committee. This reporting will include the General Manager's annual performance reviews.

In his written submissions commenting on extracts of our draft report which had been provided to him, Clr Little noted that the above provision "had wording contrary to S335 of the Local Government Act 1993 (Functions of General Manager). This error created a lot of unnecessary friction with the General Manager and staff".

This provision was amended on 5 October 1999 by Council's resolution of that day. The word "policy" was inserted between "all" and "matters" at the beginning of the paragraph. Clr Hall's Mayoral Minute of that date contemplated that the last sentence should stand as is, but it was not approved by the Councillors and was removed.

Clr Hall told us in our interview with him that he could not remember whose idea it was to insert the word "policy" and that it had been his intention to have it in all along, saying:

> I've forgotten. Well, I'd left it out, not deliberately, accidentally.

Clr Bennett gave us further evidence about her meeting with Clr Hall and the General Manager on 29 September 1999:

> … the Staff Committee, yes you're right, that was it. I knew there was something, yes the Staff Committee came up. This was something the General Manager argued very strongly, that this provision here effectively crossed over into her operational - -
> …
>
> …on the basis of what she had said I went away and amended, or wrote in a provisional amendment, and my recollection is that I stuck the word "policy" between "all" and "matters." You would have to check that.

Clr Bennett said that it was "most definitely" her idea to amend that clause by inserting the word "policy". When asked to comment on our understanding that Clr Hall put the position that he intended to have the word "policy" there all along and that it was simply a mistake that the word had been omitted, she merely responded by saying:

> Rubbish.

The Staff Committee met for the first time on 2 November 1999. It met again on 30 November. Any Councillor, or perhaps two Councillors, could have precipitated a meeting of that Committee at any time, so to that extent it could not be said that there was a failure on the part of the General Manager to implement Council decisions because of the lack of meetings of that Committee. We do note, on the other hand, that Council's organisation structure as proposed by General Manager in her reports to Council's meetings of 12 and 19 October 1999, omitted reference to that Committee in the diagrammatical representations she presented of the proposed structure. The Committee is included in the Mayor's rival version, which Council adopted. However, we note that there had been a meeting with representatives of the MEU on the previous day – 18 October - attended by both Clr Hall and the General Manager. The question of the role of the Councillors as envisaged by the

terms of reference for the Committee in the Mayoral Minute were on the agenda of concerns at that meeting. Both Clr Hall's memo of the same day and the General Manager's of 19 October noted the concerns about the dichotomy of the roles of the Councillors and the General Manager on staffing matters and acknowledged that the issue needed to be clarified. Our conclusions regarding the appropriateness and role of a Staff Committee and of the involvement of Councillors in staffing matters are set out at sections 6.6.3 and 6.6 of this report.

Clr Hall seemed to think that the General Manager had also sought to involve, a consultant solicitor [identity known] in providing legal advice to she or Council on the legality of the Mayoral Minute. On the evidence before us we are satisfied that this is not so. The consultant solicitor had been used by the General Manager in the time of the previous Council to provide consultancy advice on certain matters. He is also a colleague that the General Manager uses from time to time for informal discussions and as a sounding board for ideas. This is at no cost to Council. Quite how Clr Hall got the consultant's name as being involved in the alleged insubordination of the General Manager in seeking to challenge the Mayoral Minute is not clear. The General Manager told us that at about this time she had sent some materials to the consultant for his information and that she had left these on her desk one night when she went home. They were missing the next day and have never been located.

The General Manager told us that she had, in view of the signposts that her own contract and position might be challenged once and if Clr Hall got into office after the September 1999 Council elections, taken the precaution of already talking to Mr Chris McArdle of Phillips Fox, to be on standby if needed as her own personal legal adviser. Mr McArdle was not involved however in advisings on the legality of the Mayoral Minute. His role was in relation to the November events relating to the allegations against Ms Bignell as to her performance. See section 6.18 of this report.

In all the circumstances we do not consider this to be a proven example of the failure of the General Manager and her staff to comply with section 335. We therefore find Clr Hall's complaints and allegations on this account unproven and unfounded.

4.4.2 Some evidence of lack of co-operation by some staff

Clr Bennett, in our interview with her, gave evidence about what she saw as early manifestations of lack co-operation by staff with the new administration. She named Mr Ian Glendinning, Council's Director Environmental & Regulatory Services, and Ms Alison Pattinson, the Director of Community Services, in this regard.

However, in our view, Clr Bennett's evidence must be tempered by the fact that, on her own admission, in the early days of which she spoke of such lack of co-operation she was still influenced by Clr Hall and still had a pre-conception as a result of staff obstruction. This must in our view colour her perceptions as to the conduct of the staff so named. There is also the fact that the occasion which Clr Bennett spoke of was when Clr Hall had been elected Mayor and she Deputy Mayor, and the General Manager was taking them around to meet the Directors. The evidence in this

Investigation clearly shows that the mere election of Clr Hall as Mayor in itself had an immediate and adverse impact on staff, and it may well be the case that staff were in these early days wary and on edge, and perhaps even slightly antagonistic towards Clr Hall. Particularly those staff who had experienced a history of Clr Hall's difficult behaviour towards them, such as Mr Glendinning. If, therefore, to some extent staff were stand-offish or "petulant", this is understandable.

The way Clr Hall sought to bring in his Mayoral Minute and its content was a classic case of how not to do it from an industrial relations and people handling viewpoint.

Clr Bennett's evidence about the introductory meetings with she and Clr Hall was as follows:

> … two at least out of the five Council Directors had behaved extraordinarily badly in the interviews with the Mayor that I attended and that, in fact, they initiated this bad behaviour, because he was, actually, on his best behaviour.
>
> …
>
> Glendinning was very hostile and aggressive to start off with and the Mayor was very quiet and laid back and actually took quite a bit, and that confirmed in my eyes the Mayor's interpretation of what was happening.

The General Manager's evidence to us was that she did not agree that Clr Hall was on his best behaviour or charming at these meetings. She noted that Clr Hall's behaviour had resulted in complaints to her from all the Directors.

Clr Bennett said that Ms Pattinson "wasn't aggressive, she was petulant". However we are not prepared to make any findings against Ms Pattinson in this matter. We should add that she was not called as a witness before us and had no opportunity to answer any such allegations – and given that Clr Bennett did not provide any particulars of her allegations to us we were not in a position to pass them to Ms Pattinson for comment. We note that the General Manager thought it "unfair" to say that of Ms Pattinson.

So far as Mr Glendinning was concerned, Clr Bennett said that she knew some of the history of his relations with Clr Hall and acknowledged that "it's far more extensive". However, she was not convinced that it totally explained his behaviour. She said:

> …it's my belief that the appropriate thing for Officers to have done, as Officers such as Mr Condon and Chris and David Young did, was no matter what the background to, at least, give the benefit of the doubt, behave professionally, assume things could be different and if they turned out not to be different to deal with it at that point in time.

The interview continued:

> Mr Bulford: …with the benefit of hindsight maybe it was inappropriate that he did but perhaps if you knew the full story you'd be a bit less judgmental?
>
> Clr Bennett: I think that's the case. I should say however - - -
>
> Mr Bulford: Not you personally, anybody?

Clr Bennett: Well I think that's the case but I did even before the Mayor stood aside, I did go to Mr Glendinning and say, "I understand you have problems with your Department in terms of your resources. I'm not out to get anyone, I want things to work."

Mr Bulford: Was that fairly soon after this - - -

Clr Bennett: No, I'd say it was roughly halfway through the period. This is certainly not something I would have done in those first few weeks, I wouldn't have felt confident, but I went and I said, you know, "If there are things that Council can do to make your job easier and more doable then can you indicate them to me because I will follow them up." I got no positive reaction at all.

Mr Bulford: So he was still hostile to you, would you say?

Clr Bennett: Probably less hostile to me than any of the other Councillors with the exception of Councillor Malicki with whom he's had a good working relationship for a number of years.

Clr Hall gave us evidence in our interview with him about this meeting with the Directors saying that when he became Mayor he had spoken to the General Manager and specifically said, "I would like to walk around to the staff and meet the staff informally". He said that her response was:

She denied it. She said, "You'll meet the Directors formally first", and I said, "Well I would have liked to have had the opportunity to walk around and meet the staff, as a new Mayor", she said, "No, it's denied".

…

…I said, "Well, then, could I see the Directors?" She said, "Yes, one at a time with me present".

The General Manager's evidence to us corroborates that these requests were made, but not the denials.

In our interview with him, Clr Hall sought to suggest that an instance of staff not implementing Council policies was Mr Glendinning's reaction in relation to a proposed Development Control Unit – a policy initiative Clr Hall sought to bring in to deal more effectively, in his view, with the large number of development applications coming before Council and taking up a very large percentage of its time. Clr Hall said:

And that Development Control Unit was to be a - to give a strong emphasis on the officers dealing with the controversial developments, and there were a lot. And this was resented by Mr Glendinning enormously. He even wrote a minute against it, saying he was not prepared to - not prepared to implement it…

Clr Hall viewed this as "resistance to implementation of policy".

The evidence is, however, that whilst the matter of a DCU came before Council's Policy and Strategy Development Forum, or Committee, on 19 October 1999, the resolution of the Councillors was:

That consideration of the matter be deferred until the next Ordinary Meeting of Council with appropriate amendments.

The General Manager has advised us that the matter was deferred, and this occurred a number of times, the reason being that Council decided to postpone the issue until after the residential strategy, its primary project, was dealt with. It has still not been addressed and Council has passed no resolution adopting this concept as a policy. There can be no failure to comply with a policy that has not been adopted. In any event as verified by us, Mr Glendinning's memo merely set out both the pros and cons of such a concept for the benefit of the Councillors. Clr Hall's attack on Mr Glendinning on this aspect is, on the overwhelming documentary evidence, therefore not proven. Other attempts to denigrate and undermine Mr Glendinning are noted at section 3.14 of this report.

It is noted that the Mayor's model for the DCU contemplated that the Council would itself nominate a senior staff member to head this unit. We think it questionable whether that can be properly done except by and through or with the consultation of the General Manager. There is a question of the consistency of such an approach with the statutory requirements in the Act as to delegations being made by the Council to the General Manager, who is herself then the one to delegate to the staff.

Also, the Director nominated was not the position held by Mr Glendinning, the Director whose responsibilities and expertise covered such matter, but a different Director, who at the time was Mr David Young. As previously noted, Mr Young had concerns about being asked to do something by Clr Hall that he neither had the expertise, or the time and work capacity, to attend to.

Clr Hall put it to us that both Mr Glendinning and the General Manager had been involved in and were guilty of failing to implement decisions of Council in relation to the auditing of or checking up on compliance with the terms of development and other approvals granted by Council. This is also a matter that was considered at the same meeting of 19 October, the tapes of which we have listened to. Clr Hall put his allegations in the following terms:

> It was adopted but it's been resisted. They went and got a legal opinion to say that it was too vague and loose, from Abbott Tout. Unbelievable.
>
> …[the solicitors] made some general excuse about it. And that's what they hid behind. General Manager gets a legal opinion on anything I do. It's an enormous cost to the community.

Asked whether he was suggesting that the General Manager has no mandate to get legal opinions on matters, he said:

> I think it's - she does not take a strong administrative role that in her position she'd be able to make those administrative decisions or advice, give advice without resorting to a legal opinion. A legal opinion is really a last resort, in my view.

We do not accept Clr Hall's proposition and find this to be another case of an unsubstantiated and unproven allegation on his part.

While the Council did make a decision on the proposal to set up an audit or review panel of "five (5) persons with building and/or architectural experience" to undertake this role, the minuted decision of the Councillors was also that:

> The Council to seek prior urgent legal advice about the audit proposal before implementation.

It is clear, therefore, that what Clr Hall accuses the General Manager of doing, as an example of failure to comply with or of obstruction of Council decisions was quite the opposite.

At the close of our interview with Clr Coleman, in response to our invitation to him to raise any matter with us that fell within the Terms of Reference of our Investigation and which he might feel he would like to talk about, he sought to table copies of a number of letters from members of the community, expressing concern about various development applications or such like and as to the role of staff in them. However, we must point out that such matters are outside the Terms of Reference. It is not within the Terms of Reference for us to re-examine or re-open past decisions of Council or of officers of Council made under delegated authority.

There were 4 such letters. The first was from a Mr T Gallagher, a member of the Trust, addressed to Clr Coleman and dated 14 November 1999, the second a letter of 9 February 2000 addressed to the General Manager and from a K S Reid, but copied to all Councillors, the third a letter of 15 November 1999 addressed to Clr Coleman from a Mr C Carr and a Ms G Smart, and the fourth a letter of 23 November 1999 addressed to Clr Coleman from a Mr Fred Whisby, seemingly (as the handwriting is not clear) on behalf of a F Vohralik. We have found it necessary to identify the letters having regard to the fact that in his reply to us, following our having provided him with an extract of this section of our draft report, Clr Coleman appeared to be confused as to which letters he had tendered to us.

Apparently Clr Coleman sought to raise these concerns as evidence of lack of co-operation of staff which appeared to cause a frustration to him as a councillor. He put it to us that this frustration arose because what he was told by staff allegedly differed from what frustrated residents were allegedly telling him.

We asked if he had taken any steps to draw these letters to the attention of the General Manager or any member of her staff, but to our surprise the answer was, except in one case only, in the negative. The one case being the letter from or on behalf of Mr Vohralik. In this case Clr Coleman spoke on a number of occasions to Mr Ian Glendinning, the Director in charge of these matters, and other persons. He told us that the resident who wrote the letter was an objector to a development application, but that in the result a compromise had been reached between the developer and residents, with the assistance of Mr Glendinning and his staff, so clearly this matter was addressed, and a satisfactory outcome reached. The example, therefore, hardly supported the thesis which the Councillor sought to put to us.

He told us that the Carr and Smart letter he had not referred to the General Manager because in his view "the whole issue was finished with". Yet as the complaint was

one which he conceded related to the conduct of staff we would have thought that the correct thing to do was nonetheless to refer the matter to the person who is responsible for managing the staff, i.e. the General Manager. Frustrations on the part of members of the public at their dealings with staff are not going to be managed or resolved unless the matter is drawn to the attention of the General Manager for action, as appropriate.

If a Councillor, whose undoubted duty is to "represent the interests of residents and ratepayers" (see Local Government Act 1993 section 232 (2) dot point 1), fails to take any action in response to representations made to him or her from a resident or ratepayer, then it is clear that that Councillor is failing adequately to perform his or her duty as a councillor. Council should have in place at least a practice for dealing with complaints and the Councillor should have been aware of this. If in doubt, questions should have been asked of his fellow Councillors, such as Clr Hall.

In the case of the Reid letter, it was one, as noted, that was written in the first place to the General Manager and merely copied to all the Councillors. The Councillor told us that that was why he personally did not follow it up with the General Manager, which is fair enough in one respect, but we would have thought that he owed it to the resident who bothered to copy the letter to him to demonstrate that he had sought to do something about the matter and report back to the resident accordingly.

Moreover, the Councillor told us that it was a matter that had actually come before the full Council for decision, the Councillors having the benefit of the resident's letter before them. He told us that Council had resolved to take certain action, but that it was not what had been recommended in the staff report to Council, a report which apparently emanated from Mr Glendinning and his staff. It is certainly the case that as a matter of law Councillors are entitled to take a decision that is contrary to staff recommendations, though they must ultimately be accountable for their actions in this regard. For example, if their decision were ultimately overturned by the Land and Environment Court on appeal, and attendant legal costs were incurred by Council, at the expense of Council's ability to provide other services out of its budget to the ratepayers and the community, the elected body has to be answerable to the community, ultimately at the ballot box.

But the fact that staff may make a recommendation that is not liked or agreed to by the Councillor is not to the point in so far as the Terms of Reference of this Investigation are concerned, let alone the proposition that we understood Clr Coleman to be putting to us. This is no evidence of lack of co-operation by staff. Again, if you don't like the message, don't shoot the messenger.

Lastly, the Gallagher letter was one written to Clr Coleman at the time Clr Hall had stood aside and the writer put it to Clr Coleman that if Council resolved to hold an inquiry into the allegations by staff against Clr Hall that was being mooted at the time, he wanted to have an opportunity to bring to the attention of the inquiry concerns about the alleged lack of courtesy shown by staff to residents of the Council area. However, conduct of staff towards members of the community is a matter that is outside the Terms of Reference of our Investigation, and this letter is therefore neither relevant to our Investigation nor a letter that supported the thesis of Clr Coleman that we understood he was putting to us.

4.4.3 The evidence to the contrary – evidence of the co-operation of the General Manager and her staff

Clr Bennett's evidence about her early dealings with the General Manager after the elections was that the General Manager had called her, congratulated her on her election and invited her for "a cup of coffee". Clr Bennett said that she initially accepted the invitation, but that she subsequently rang back and cancelled. Her reason for doing so was:

> Councillor Hall said it was divide and conquer and that we should deal with the General Manager as a Body.

The General Manager told us that she had extended similar invitations to all Councillors, including those re-elected. Clr Anderson was the only Councillor who actually ended up taking her up on her invitation. She told us that she made no attempt to follow her invitations up as she felt that "the ball was in their court".

The General Manager also told us:

> …I rang the Mayor and I said, "Congratulations on your win, looking forward to working with you." I mean he didn't really have to come in and have a cup of tea because I've only ever had one session with him when I first joined and that was, sort of, enough.

Clr Hall's evidence corroborated that of the General Manager as to her contacts with him.

Clr Bennett, on the other hand, told us that her relationship with the General Manager "changed considerably" over time. She said that she had had a perception that the General Manager sounded very warm on the phone, however "at the time [she] construed that as manipulation".

We spoke to Clr Anderson about his initial contacts with the General Manager after he was elected and he confirmed that he had received a telephone call from the General Manager shortly after the declaration of the poll to congratulate him. He added:

> …I seized that opportunity. I said, "Rhonda, I would like to see every square foot of the premises." She said, "Right, turn up tomorrow morning." So I turned up at 10 o'clock and we went through to 2 o'clock and we covered every square foot and I met every employee of the Council.

He described her as "100 per cent frank and open, that was when I started to respect her". He added:

> She was absolutely 100 per cent open. I've been made boss of companies and I could not have had a better introduction, it was excellent. Unfortunately I don't think any other Councillors adopted the same approach.

Clr Little also told us that he too was invited in by the General Manager just after the declaration of the poll, but that due to being "busy" he did not take up the invitation.

When asked if the General Manager was co-operative towards him as a new councillor in the early weeks, his reply was:

> I think she was - she showed a friendly demeanour, yes.

The evidence from Clr de Vulder was along the same lines.

Likewise, Clr Coleman gave evidence that the General Manager had called him and invited him for tea just after the declaration of the poll, but said that he had not been able to attend due to work commitments. He said the General Manager's approach over the phone had been friendly.

Clr Roach told us that he received a telephone call too from the General Manager to congratulate him on his election, but claimed not to have received an invitation to tea.

4.5 Allegations that the General Manager was instrumental in the manufacture of or drumming up of complaints about the conduct of Clr Hall

In his written submissions, through his legal adviser, to us Clr Hall alleged:

> Coincidentally, or perhaps not coincidentally at about this time [28/9/99], staff complaints against the Mayor surfaced for the first time. …In the light of the above it is submitted on Cr. Hall's behalf that the surfacing of the complaints which are now the subject of the Terms of Reference (1) was not coincidental but was part of a deliberate and orchestrated campaign against Cr. Hall, possibly provoked by Mayoral Minute 707 of the 28th of September 1999 and/or possibly by antagonisms held against Councillor Hall predating his election to the Mayoralty.
>
> The General Manager of the Council and/or Council staff saw Cr. Hall and Mayoral Minute 707 presented on 28 September, 1999 as a threat to the status quo at Ku-ring-gai Municipal Council and its industrial Union the MEU. Having attempted first to raise a legal challenge by seeking legal advice funded by the Council which initiative was challenged and withdrawn, the General Manager then in concert with the Industrial Union which proceeded to raise a threatened industrial dispute, oversaw the making of personal complaints against Cr. Hall by her staff. Insofar as the General Manager was involved in this exercise, namely in the co-ordinating and timing of these complaints, she departed from the normal and proper conduct of a public servant and placed herself in the political arena. Complaints that have been raised and are now to be investigated must also be seen in this context as part of a political tactic by the General Manager. It is submitted that whilst this does not as of itself answer the individual complaints – it does in some cases at least diminish them and also places the conduct of the General Manager under complaint and scrutiny.

Having regard to these allegations we made particular point when every complainant whose complaint had been referred to us came before us as a witness in our Investigation to ask that witness whether or not the complaint had been produced as a result of a request or any pressure from the General Manager. Without exception, the answer was a complete and unqualified negative.

As a number of those witnesses were persons whose complaints may be protected by the Protected Disclosures Act 1994, and had not consented to their identities being disclosed or to their complaints being copied to Clr Hall and/or his legal adviser, we do not propose to set out in this report the responses of those particular witnesses in this regard.

However, other witnesses had agreed to going public and having their complaints copied to Clr Hall and his legal adviser. We have noted at section 3.17 of this report evidence of Ms Nicole Williamson on this issue. Whatever the General Manager may have said to her about not being able to action complaints that were oral is not considered by us in any way to be evidence of so-called drumming up of complaints by the General Manager.

In our interview with Mr David Lethbridge we asked him about his role, as we had some suggestions made to us that he had been going round the staff asking who wanted to make complaints. However, it turned out that this was in the context and at the time of the proposed Henningham Inquiry process:

> Mr Bulford: Did you go around staff asking as to who might have issues that they might want examined by Henningham?
>
> Mr Lethbridge: I did not, no. No, I didn't ask the staff did they have any issues that they wanted to - did they have issues? I went around the staff and asked them was there any member of staff that wanted to address or speak to Bill Henningham and from that I compiled a list. That actually came from Bill Henningham via the General Manager - - -
>
> Mr Bulford: At his request?
>
> Mr Lethbridge: His - from what I understand it was his request to Rhonda saying, "Can you please get someone to get a list of names for me of who would like to speak to me about issues."
>
> Mr Bulford: And the person who asked you to do this exercise was Rhonda herself, was it?
>
> Mr Lethbridge: Rhonda. Rhonda said, "Can you organise a list of people that want to nominate themselves to speak to Bill Henningham as he has asked me to compile a list".
>
> Mr Bulford: All right, yes.
>
> Mr Lethbridge: So I just went around and I passed the word around to everyone, "If anybody would like to speak with Bill Henningham please put your name on the list. I can't guarantee he will speak to you but I need your names … ".

Many witnesses also told us that Mr Lethbridge had approached them about complaints, but all who did so corroborated Mr Lethbridge's own evidence as to the circumstances of this.

We asked the General Manager about the allegations of drumming up complaints and whether she encouraged staff to put complaints in writing. In interview, she said:

> I had a number of staff members come to me and they'd say, "Can you fix something, can

> you do something." Some of them just put it in writing, others I said, "Do you want to put it in writing." I didn't force anyone to put it in writing but I said, "Do you wish to put it in writing." You see the thing is I can really only act on something in writing. For me to go to him would have been impossible, saying, "So and so said this about you."

In the result we have found absolutely no evidence to support Clr Hall and his legal adviser's submission or allegations. We might add that Clr Hall provided no evidence to us whatsoever to support those allegations. The whole affair is therefore quite clearly a case of trying gratuitously to besmirch the General Manager, as are the other complaints that Clr Hall particularised to us through his legal adviser for the purposes of paragraph (2) of the Terms of Reference. This is to be deplored.

4.6 Allegations as to the way in which the General Manager dealt with the complaints about Clr Hall

It was the submission of Clr Hall through his legal adviser that the General Manager failed to implement the requirements of Council's Policy on the *Provision of Information and Interaction between Elected Members and Staff*, adopted on 2 June 1998.

We have at section 3.1 of this report quoted from various parts of that Policy, which remains binding on the present Council and Councillors unless and until amended or revoked by resolution of the present Council.

It is noted that certain parts of that policy document may be inconsistent to some extent with parts of the Mayoral Minute of 28 September 1999, as amended on 5 October 1999. The mere fact that Council has adopted the Mayoral Minute, by resolution of the Councillors, does not mean that ipso facto the policy document is accordingly amended or replaced. If it is the will, therefore, of the present Council that the policy document be amended as to all or any extent of the inconsistencies with the Mayoral Minute, then it will be necessary for appropriate resolutions to be passed. Council needs to address this issue at the earliest opportunity, to avoid any ongoing problems and lack of clarity as to what Council's policy intentions, and the ground rules, are.

There are also certain difficulties in relation to this Policy already identified in legal advice of 23 November 1999 from Abbott Tout, Council's solicitors. The key one for present purposes is that clause 7, which sets out the rules or procedures for dealing with complaints about Councillors and staff, is silent as to what happens in relation to a complaint *against the Mayor*. Clauses which require that complaints against Councillors be reported to the Mayor and to the next meeting of Council are clearly inappropriate and incapable of being complied with in relation to complaints where the Mayor is himself the subject of the complaint. We consider the Abbott Tout advice and this issue in more detail later in this section.

To some extent, therefore, if one were simply to go by reference to Council's documented policies and procedures on these matters, it is difficult to form any concluded views as to whether the General Manager in this case did or did not act

within the required procedures laid down by Council when dealing with the various complaints against Clr Hall.

But, we are inclined to follow the approach of Abbott Tout, and therefore to examine whether the General Manager has nonetheless complied with the underlying principles and intent of the documented policies and procedures. Moreover, we believe the matter also needs to be examined by reference to any overriding principles of the law, such as in relation to natural justice, as well as from the perspective of procedural fairness and reasonableness.

If we adopt that approach, which we consider is the only practical and proper course that can be followed, then it seems to us that the General Manager can not be criticised for the way in which she proceeded, contrary to what has been put to us by Clr Hall and his legal adviser.

The evidence before our Investigation establishes that the General Manager undertook the following steps to deal with the complaints about Clr Hall.

The evidence available to us shows that the first manifestation of concerns about Clr Hall's conduct post his election as Mayor was the resignation of his initial secretary, Ms Ann Gabay, on 24 September 1999. The first complaints closely followed. On 29 September the General Manager received a complaint about problems over the door into the Civic Office area, where the secretaries sit, noted at section 3.17 of this report. A written complaint on another issue was also received by the General Manager the same day.

28 September was the seminal day of the introduction and passing of the Mayoral Minute. It is fair to say, we think, that the time and attention of the General Manager was wholly consumed in the next few days, at the very least, with the fall out from that, as well as Clr Hall's challenges to her over her alleged insubordination for having the temerity to question the legality of the Mayoral Minute. It would be too much for the General Manager to be expected to have formally dealt with the complaints over this period.

More complaints, oral and written, however, poured in over the next few days, not the least the concerns and demands of the MEU over the powers granted to the Mayor under the Mayoral Minute, in so far as they impinged on the lawful powers and role of the General Manager under the Act.

Referring to what was happening at this time the General Manager told us she had not attempted to speak to Clr Hall yet about the complaints coming in about him, adding:

> … they were coming in. You need to - it's really hard to imagine the environment of this fellow screaming, shouting, 8 hours a day in your face, all day, in the office. He wasn't somebody, and I have to reiterate, that you could go and sit down and discuss anything with.

Matters appear to have really erupted and come to a head with the announcement, on 14 October 1999, to Clr Hall and his fellow Councillors, of the resignation of

Mr David Young. That triggered an unrelenting pursuit by Clr Hall of the General Manager over the matter, and according to the evidence before us, apparently triggered a number of separate incidents with staff due to Clr Hall's upset and turmoil over Mr Young's resignation, or perhaps the press reports that it was connected with his conduct towards Mr Young. Those incidents gave rise to further complaints.

So, also on 14 October 1999, the General Manager wrote to Clr Hall (alone) the following confidential memorandum:

> It is with regret that I am obliged to bring this matter to your attention. I do this because Council has a responsibility to be a 'responsible employer' (S.8 Local Government Act, 1993) and Council's obligations for the 'safety, health and welfare of all employees' under the Occupational Health & Safety Act, 1983. It should be noted that these OH&S obligations refer to both the physical and mental safety, health and wellbeing of Council's employees.
>
> With the election of the new Council and the new Mayor, the staff and I made, and continue to make, a genuine commitment to working together with the Mayor and Council positively and harmoniously as a team to achieve Council's objectives for Ku-ring-gai.
>
> Even though there has been a history of documented problems over many years relating to your behaviour towards staff, we all agreed to embark on a new beginning in the way that we all related. Since the election of the Council and your election as Mayor, the staff have carried out that commitment. However, unfortunately, serious issues relating to your behaviour towards staff have occurred from the outset.
>
> I have had an on-going stream of verbal complaints from staff about how you treat them – principally, rudeness, abrasiveness, accusations, speaking over them, and shouting at them. Many of these staff have expressed concerns about putting their complaints in writing because of their concern about possible retribution.
>
> However, I have received some written complaints from staff, which, in a genuine attempt to positively address the problem, I bring to your attention. I also provide these to you on the basis that there will be no retribution against these staff members. [General Manager's emphasis]
>
> … It is essential that the problem is addressed as a matter of urgency, as Council is not meeting its legislative obligations to its employees. …
>
> I would welcome your response to the issues raised, and welcome a resolution to these behavioural issues, so that we can all positively work together.

Now, the principles of natural justice, if we just concentrate on the policy requirements, would demand that the General Manager notify Clr Hall of the allegations against him, and permit him to comment, before she considers the matter further and before the matter is taken into either the public arena or notified to the rest of the Councillors. We have no doubt that these objectives are met by this memo. One might quibble about the particular choice of certain words, if one wished to be pedantic, but the overall impression and content of the document is that it achieves the ends needed.

Shortly after he received the memo of 14 October from the General Manager Clr Hall summoned her to his office. Clr de Vulder was present. The General Manager told us:

> I would have to say by this stage I was dreading having to go into his office. I thought he was alone because they were just horrendous that I'd have with him. There'd be nothing to me being there for an hour and him shouting, screaming, "You haven't done this, you're in breach of your contract," and all that. Anyway Councillor de Vulder was there which I probably was a bit relieved to actually see another person in the room and then that's when he [the Mayor] said to me, "Why's David Young resigning," and I replied, "He's not making his reasons public." He became very threatening and said, "You tell me why he's resigning," and I repeated David wasn't speaking publicly about it. Then he demanded to see David's Contract and I said, "No you can't because it's a Contract between myself and the employee, not the Mayor," and he became ruder and threatened - that's when he said if I didn't give it to him he'd put up a Mayoral Minute. I responded, "It's over the boundary of the Mayor's role." He's shouting and screaming … and that's when he held up my memo with the staff complaints, two fingers like that, and he said, "I'm not very impressed with these." I said, "We've got to address it, there's a problem, I'd be happy to talk about it."

We asked Clr de Vulder about his recollection of events at this meeting, which he confirmed he was present at:

> Mr Bulford: Do you recall anything else that was then said to the General Manager?
>
> Clr de Vulder: No….
>
> Mr Bulford: You cannot recall any discussion at this meeting between the General Manager and the Mayor over the question of staff complaints? The issue of staff complaints at this Council is one, surely, that you're aware of?
>
> Clr de Vulder: Yes.
>
> Mr Bulford: Would you say it is a matter that has taken on some prominence?
>
> Clr de Vulder: Yes, what I'm saying is I don't recall being anywhere where these allegations have occurred, or when those allegations have occurred. I don't recall being present at any of them.

We did not take Clr de Vulder's evidence as indicating in any way that the General Manager's evidence cannot be believed.

In our interview with Clr Hall on 30 March 2000 we sought to ask him whether he recalled the meeting and whether he could recall each of the things it was alleged was said, but with his legal adviser intervening demanding that these matters be particularised – which we explained we were doing when we asked the questions – which required a simple yes or no as to whether he did or did not recall what we put to him – Clr Hall declined to reply.

We returned to the matter when we resumed our interview with Clr Hall on 6 April 2000. After being presented with a very long submission from Mr Dunn, which interrupted our attempted questioning of the witness, we finally managed to get a response from Clr Hall:

> Mr Bulford: … Councillor Hall, your solicitor has indicated your concession, as I understand it, that you certainly became frustrated in relation to the General Manager's denial of - or refusal to comply with your demands for telling you the reasons why David left, and for access to David's contract I think is - would you agree with that? You were frustrated?

Clr Hall: I was not frustrated so much as shocked. I was shocked to know - - -

Mr Bulford: Well, frustrated was the word that your solicitor's just used, as I understand it, on your instructions.

Clr Hall: The frustration came after - after, sir. The frustration came when I - when I couldn't get an answer as to why would this senior officer which had - who had two portfolios, both open space and infrastructure and who I admired for his - his excellent policy analytical work - because he was the best policy analyst we had in the Council. Why would he suddenly up and go? Why did he resign? General Manager, please tell me. Why did he want to go? What was the reason for it?

Clr Hall went on to maintain that it was not at this meeting, but later when he spoke personally to Mr Young shortly before he did actually depart, that he knew that Mr Young did not want to express his reasons for leaving, or to have them publicly discussed. This assertion fails to fit with the clear documentary and other evidence before us.

Clr Hall was asked by us if he had repeated his demands at this meeting with the General Manager and Clr de Vulder to be told the reasons and as to whether each time he repeated his question he may have done so more forcefully than before. His initial reply was to deny this, and to seek to go off at a tangent to other occasions or events. We brought Clr Hall back to the point:

Mr Bulford: Let me repeat my question, Councillor, which with respect you're not answering. I'm merely asking you in repeating your demands for this information did you not put it more forcefully because of your frustration at the denial in the first instance from the General Manager?

Clr Hall: That may be so and it's for this reason. The General Manager does not reply to any request. It's a frustrating one-way conversation.

Mr Bulford: In repeating your demands more forcefully would you agree that you may have raised your voice?

Clr Hall: Oh, I can't recall.

Our questioning continued:

Mr Bulford: … it's alleged you said, "I'm not very impressed with this". Do you recall whether you said those words?

Clr Hall: Yes, yes, I think I did say those words.

Mr Bulford: And did she say to you in response, do you recall whether she said to you in response, "I am happy to talk to you about it but there is a serious problem with your behaviour towards staff"? Do you recall her saying words to that effect?

Clr Hall: I can't recall. I can't recall.

Mr Bulford: Do you recall saying to her that the problem is "you and I"?

Clr Hall: I think the - that was certainly my feelings along those - at that time. I felt that we - - -

Mr Bulford: Do you recall her saying, "No, it's about your behaviour to the staff"?

Clr Hall: I'll answer it this way. She kept saying that on many occasions. Now, she may have said it on that occasion, I can't recall, but she did say that on many occasions, not just once.

Clr Bennett told us that Clr Hall had at quite an early stage, after being given copies of the complaints by the General Manager, shown them to her. She added:

Mr Bulford: When he showed them to you this was in the context of they were trumped up?

Clr Bennett: Trumped up, yes.

Mr Bulford: You saw a dozen odd complaints, is that correct?

Clr Bennett: I did and I skimmed them.

Mr Bulford: Given the volume, the number of complaints, did you not think that there must be an element of smoke and fire?

Clr Bennett: No, that wasn't my problem. My problem was that some of them seemed very very thin.

The following day, 15 October 1999, there occurred the meeting, demanded by Clr Hall, with the General Manager and her Directors or equivalent senior staff, at which the issue of his conduct towards staff came up and during which Clr Hall apologised and said he would mend his ways. This is considered in more detail at section 3.32 of this report. However, barely had that meeting finished when Clr Hall was back to his old tricks.

Clr Hall also told us that at the meeting:

I was in a very apologetic mood in a sense that I wanted everyone to work together.

On Monday 18 October there was a meeting between Clr Hall, the General Manager and various persons, including representatives of the MEU at Council's Depot. At that meeting, as established by the evidence before us (see section 3.33 of this report), Clr Hall apparently refused to acknowledge that there was any problem with his behaviour towards staff, despite his acknowledgments and so on the Friday before.

Clr Hall's inappropriate conduct towards staff, including the General Manager, continued over the next days.

A further sign of response from Clr Hall to the complaints about him reported by the General Manager to him in her 14 October memo seems to have occurred on 20 October when Clr Hall demanded to the General Manager that she produce to him copies of complaints about him going back to March and April. When these were not produced quickly, she was accused of being obstructive.

The evidence establishes that on 21 October Clr Hall at least appeared to acknowledge that there were complaints to him by confronting Ms Darleen Taylor about her allegedly having lodged a complaint about him to the General Manager.

The same day Clr Malicki weighed in with a memo to the General Manager about her concerns that the conduct of Clr Hall was having on the secretaries occupying the Civic Management office area. That day, too, a reporter from the Daily Telegraph contacted the General Manager scenting a story about conflict at Council.

On the following day, 22 October, the General Manager spoke to the Mayor and appealed to him to speak to her civilly, rather than shouting all the time, but he accused her of shouting at him and not wanting to work with him, which she denied.

On 25 October the story of the "conflict" or "feud" at Council between the Mayor and the General Manager broke in the Daily Telegraph. That led to the immediate demands of the MEU raising OHS concerns with the General Manager. 25 October was, it seems, a particularly black day for the General Manager, with so much happening around her ears, all of it largely to do with Clr Hall. It included the release by Mr David Young of his advice that the conduct of Clr Hall was indeed a factor in his decision to leave Council. It was also the day of the confrontation between Ms Virginia Leafe and Clr Hall.

The next day the General Manager took steps to relocate the secretaries in the Civic Management office area away from Clr Hall, so that at least that aspect was managed. She told the Mayor and Councillors about this in a confidential memo the same day. She also wrote a confidential memo to Clr Hall about the MEU and its bans on staff contact with him over staffing matters, to which he replied suggesting that her "management style" was the cause of the bans. She immediately responded and rejected this as inappropriate. Also on this day Clr Hall was demanding information on termination payments to Mr David Young and that his allegations about the Mayor's conduct should be put in a statutory declaration. Mr Young declined to do so (and he was correct in this).

There is also evidence that Clr Hall did speak to the General Manager on 26 October to demand generally that the staff complaints about him should be documented by means of statutory declarations. Her reply to this was in her memo to Clr Hall of 28 October, as to which see below.

The General Manager told us:

> I was at the end of my tether, I tried to talk to him about it, he was insisting on stat decs, he was ignoring it and wouldn't accept it. … So I wrote the next lot to him and I thought, "I'm going to go to the next step of the Code of Conduct, the Provision of Facilities."

She also told us:

> I was really looking at trying to get to the Councillors to try and get them to solve the problem themselves. Hoping it wouldn't have to go to a Council meeting.

So, the General Manager on 26 October also issued her confidential memo to the Mayor and Councillors about the real reasons for Mr Young's resignation and more

importantly for present purposes her further confidential memo to Clr Hall regarding the additional complaints received since 14 October and formally chasing a reply to that memo. Her memo said:

> It is with regret that I attach documentation relating to issues raised by staff about the Mayor's behaviour towards staff.
>
> I have previously raised the matter with the Mayor on 14 October 1999.
>
> There are serious OH&S issues that are becoming critical if Council is to provide a safe and healthy working environment for the staff.
>
> I am fully aware of the responsibilities of the General Manager to bring this matter to the Mayor's attention, which I have done on 14 October 1999.
>
> I have now been put on notice by the Municipal Employees Union (attached) about this issue with a response required by the MEU today. I have enclosed the response for the Mayor's and Councillors' information.
>
> It is with regret that I am forced to raise this issue with the Mayor and Councillors, however, if the situation remains unchecked, then there is potential liability on elected members in this matter.
>
> We all hope the issue of behaviour towards staff can be resolved as quickly as possible.

The same day General Manager also issued a second confidential memo to Clr Hall, this time copying it to the other Councillors, about further complaints received. She referred to the 14 October memo and noted that she had not yet received a response. She gave him particulars of the complaints and of the sort of behaviour complained about. She also gave him copies of the new complaints. And she ended her memo with:

> As with my memo of 14 October 1999, I seek your response to these complaints.

At 6.23 p.m. on 26 October 1999 the General Manager's Personal Assistant, Ms Nicole Williamson, sent the following e-mail message to her boss, who was out of the Council offices on Council business at the time:

> At 6 pm on Tuesday 26 October the Mayor called your office and I answered the phone.
>
> I explained you were on a site visit with another councillor, but were contactable by mobile phone.
>
> He asked if I had the envelopes to the other councillors. I said they had already been distributed.
>
> He asked me to retrieve them immediately and take them all to his office immediately. I said fine. He said that there was such a thing as natural justice. …

The message went on to advise that she had not been able to retrieve all the copies, and explained whose copies those were.

In our interview with Ms Williamson she confirmed the details in her e-mail. We then asked her about her having collected the papers relating to the complaints about Clr Hall:

Ms Williamson: I rang Rhonda and said, "What am I supposed to do?" And she said that I'd, you know, have to go and collect them.

Mr Bulford: You proceeded to do that?

Ms Williamson: I didn't get all of them.

Mr Bulford: You went back into the Chamber. Was anybody in the Chamber at the time?

Ms Williamson: Yes, Councillor Malicki and she was talking to a staff member but I can't remember who it was but I didn't retrieve three of the copies but then I believe he then got - - -

Mr Bulford: Three or - - -

Ms Williamson: It was three but he then got one of the Councillors to give their's back to him.

Mr Bulford: So he collected that one personally?

Ms Williamson: Yep - yeah, yep so - - -

Mr Bulford: What did you do with those copies that you retrieved - that you - - -

Ms Williamson: Rhonda had told me not to take them back into him so I took them back into my office.

Clr Malicki's evidence as to what happened on the night of 26 October 1999 in terms of the Mayor's attempt to thwart the General Manager dealing with the complaints about the conduct of the Mayor in a proper way and the difficulties that otherwise she was having was as follows:

Clr Malicki: I usually get there early and I'd opened them [her business papers] and I'd had a look and I thought, "Yes I know about these," I'd discussed it with Rhonda. I mean everyone was talking to one another because it wasn't very pleasant what was happening.

…

Mr Bulford: You saw her actually going around collecting them?

Clr Malicki: Yes, she took mine.

Mr Bulford: What did you do when that happened?

Clr Malicki: She took mine and I said, "What are you doing," or something along these lines, I can't remember the detail exactly. She said, "Oh the Mayor's instructed me to collect these," and she had, you know, quite an upset look on her face and I said, "It's addressed to me," and I took it back from her. She said, "Oh all right."

Mr Bulford: What did you then do with those papers?

Clr Malicki: I took them straight downstairs and put them in the boot of my car.

The interview continued:

Clr Malicki: A little while later, and I think she collected almost all of them, a little while later I was back because I knew what was happening, you know, he tried to get them back, the General Manager had wanted us to have them. She'd discussed with me a number of times how she was trying to get this information to the Councillors because I said to her, "Look Rhonda, if you've got complaints we should know about them."

Mr Bulford: Yes?

Clr Malicki: In fact I was making her life a bit difficult because the processes weren't being followed.

Mr Bulford: Can you perhaps just pause there and explain to us how it is you felt that processes were not being followed. I mean what processes are you talking about?

Clr Malicki: The fact that there were a lot of complaints made it possible for us to deal more officially with Councillor Hall's behaviour…

And later:

Mr Bulford: So why did you feel that those processes were not being followed on this particular occasion?

Clr Malicki: I feel - I think Rhonda could have tried a bit harder. Rhonda's always tried to accommodate Councillors as well as she can. She's a very pleasant lady to deal with and so on and she's very accommodating and whilst she certainly was trying to do things the right way she didn't want to create a real problem with it. I'm not explaining this very well but I knew there'd been complaints from various sources, you hear these things, and I'd contacted her a couple of times and said, "Look you must get these things out to the Councillors." She told me how she had tried to do that...

Clr Anderson gave evidence to us that he himself also observed the collecting up of the papers representing the General Manager's attempt to report the concerns over the conduct of Clr Hall to the Councillors on the evening of Council's meeting of 26 October 1999:

…I had already opened mine, skimmed it and put it on my desk upside down, so I was aware of the letter, yes. I physically saw the letter from Young, David Young. I visually saw that one, that's the one that impacted on me. I can remember the last paragraphs and I saw some of the other letters and thought, "I'll read that later."

…there was Councillor Malicki and myself only. Somebody came in, and I'm pretty sure it was Nicole came in and sort of went around the folders, then there was a pause and then the Mayor stormed in.

…[the Mayor] demanded my papers back. I said, "What is it?". "Oh", he says, "there's something in there wrong, it's got to be fixed. That's not right."

…So I gave it back to him. He went to Malicki and she denied ever having received a cent and just stared him out. Councillor Roach told me later that somebody had been through his papers because he knew how he left his papers and they'd been moved while he was in having dinner. I asked the Mayor several times later to get those papers back and each time I was denied, I was told they'd been destroyed, et cetera. To me it's a very basic issue in this whole matter because, if due process had been followed, we could be in a different area altogether.

We also asked Clr Roach about the matter, but he told us that whilst he had arrived at the Council Chamber at about 4.45 p.m. that afternoon, he had gone into another meeting, after just briefly going through his business papers as set out in his position in the Chamber. However, he did not notice any package relating to complaints about the Mayor, and he did not witness Ms Williamson carrying out the Mayor's instructions to remove those envelopes from the papers of the Councillors.

One of the documents provided to us during the course of our Investigation was a memo from Clr Malicki to the General Manager dated 26 October 1999. The document is handwritten and done on a pre-printed form. It reads:

> Subject: Staff Complaints Against the Mayor
>
> When are Councillors going to be informed of the complaints against the Mayor as the Act requires?
>
> cc Mayor & Councillors
> MEU representative
> NS Times
> Advocate

In our interview with Clr Malicki we asked her as to when during the day this went, and if it was before or after Council's meeting of that night. She told us, "That would have been written during the meeting", and that it had been faxed off to the General Manager that night. We questioned Clr Malicki about whether she had sent a copy of the documents to the media but she could not recall all the details. She said:

> …I simply can't. It was certainly an issue with staff as well. This was really starting to build up, you know, they'd observed his behaviour in meetings and so on. I may well have done that to push it, to get them contacting the General Manager again to put pressure on.

She added:

> I have sent to the papers, and I don't know around what time, but I had sent material I had from way back. I don't send confidential documents to anyone, I don't do that. I've got a really strong, I believe strongly in confidentiality and I won't do it. The Act says I shouldn't and I don't...

She said that she had only ever sent non-confidential material to the media.

> …My material was only ever non confidential but from my file, I've got files on him that are quite thick. I mean going back the man's had an incredible history but I know, in fact I don't know whether you've got this stuff, but there are all sorts of things he got up to over the years and there's just a whopping great lot of documentation.

Towards the end of our interview with Clr Malicki she added:

> I've always had, as I said, a very good relationship with the press and I find they're very useful for pushing an issue. I think the public have to know what's going on, they must know what's going on, on things like Councillor Hall and the way the Trust Councillors have been treating Council, so I most certainly use them for that, to draw attention to what's going on and to try and put pressure on for change, because that's what I see their role as being and I must say I think our local people are pretty accurate so I'm fairly happy with them.

We should note at this juncture that Clr Malicki followed up her concerns over the complaints and Clr Hall's conduct by bringing the matter formally to the attention of the Department a few days later.

Further steps were taken, nonetheless, even after her thwarted attempts to bring the matter to the attention of the Councillors, given the refusal of Clr Hall to deal with the matter and the pressing demands of the MEU and others such as Clr Malicki, by the General Manager to follow through with Clr Hall the matter of the complaints against him. She wrote to him on 27 October, the very next morning after the meeting of 26 October and its events, chasing a reply to her 14 October memo and notifying him of the rising concerns of the MEU.

Another memo went from the General Manager to Clr Hall the next day, 28 October 1999, again on the subject of complaints received against him. As to relevant parts this memo said:

> You have now demanded that these complaints be re-written as statutory declarations by the staff.
>
> I can advise you that the complaints by staff are written in a clear and cogent way, outlining the issues of concern. Staff are not required to make a complaint in a statutory declaration format, nor are the staff who have complained required, in any way, to re-write their complaints in a statutory declaration format.
>
> To demand that the complaints by staff are returned to them for re-writing is not a reasonable employer request. There is nothing in the Award and Grievance Procedure that requires staff to fill out statutory declarations when lodging a complaint. The request for a statutory declaration can be construed as intimidatory. The complaints have been lodged properly.
>
> Therefore, I advise you that you [sic] request is not a reasonable employer request and the complaints stand in their original form.

We agree.

On 19 November 1999 the General Manager advised the Councillors that no response had been received to this memo.

The General Manager told us about a meeting she had with Clr Hall and Clr Bennett on 1 November 1999. The meeting was actually about the need to address the backlog of correspondence with the Mayor, most of it relating to matters that were the subject of appeals to the Land and Environment Court over development applications. Apparently the failure of the Mayor to process this correspondence was delaying the giving of essential instructions to Council's solicitors in the cases. During the meeting the General Manager tried to bring up the complaints with Clr Hall. Clr Bennett told us in our interview with her that this had happened.

The General Manager's evidence to us was:

> I said words to the effect, "Why don't you address the real problem? The Mayor's behaviour towards the staff." He said, "What do you mean?" I said, "It's the shouting at

> staff, you abuse the staff, harassment of staff." Then he said, "I do not, that's all fiction," and he threw it at me.

Clr Bennett's evidence confirmed that Councillor Hall's response was to deny the allegations and to refuse to discuss them. While she did not deny that it happened, she could not recall whether there was any suggestion that the General Manager had made them up.

On 1 November the MEU wrote another letter to the General Manager demanding to know what action had been taken by her in view of their OHS concerns.

On the same day, Clr Hall handed to the General Manager a memo in which he asked if she was adhering to the Award dispute procedure regarding the complaints over his conduct. This Award is, we understand, the Award covering the terms of employment of certain members of Council staff. As such we fail to see the relevance of the point Clr Hall was apparently seeking to make, other than to note that this was clearly another attempt at obfuscation and delaying tactics on his part. The Award only applies to the lodgement of a grievance to the MEU and where the MEU handles the matter. The General Manager, not the MEU, was undertaking the current process.

Clr Hall's memo also stated that he needed an answer to this question before he could reply to the General Manager's memos of 14, 26 and 27 October. The General Manager responded straight away and explained the process she was following.

It is also relevant to note that steps taken by Clr Hall, through Clr Bennett, in pursuing the General Manager over alleged deficiencies in her performance also took real flight on 2 November 1999, as to which see section 6.18 of this report. There is a clear inference of retaliation, with the evidence suggesting that this retribution was in fact long planned and not just prompted by the attempts of the General Manager to deal with the complaints of staff post 21 September 1999 – see the evidence of Mr Graeme Kelly of the MEU in this regard at section 6.2 of this report.

The attacks by Clr Hall on the General Manager continued on 4 and 5 November, with, amongst other things, issues being raised as to continued alleged denial of access to the Council offices, as to the circumstances of the purchase of all the motor vehicles which were provided by Council to her, and accusations against her of breaking the law on something apparently to do with the garbage service.

On Sunday, 7 November 1999, Clr Hall was confronted at his home and made to agree to step aside, with this being the subject of a press release issued the same day, but with Clr Hall somehow getting in the last word on that by ensuring that the press release went out without reference to the Councillors or the General Manager and her staff. The press release took the opportunity for a swipe against the General Manager. The release contained the following paragraphs:

> With the support of Council Cr Hall has initiated a number of investigations into Council's management.

> "These investigations include an inquiry by Blake Dawson Waldron into irregularities in Council's administration of the tendering process of its waste and recycling services and an investigation by Price Waterhouse Coopers into the administration of the purchase and disposal of the Council's motor vehicle fleet," he said.

The standing aside by Clr Hall and the moves thereafter by Council itself to initiate the Henningham Inquiry process in our view really superseded any issue of the procedures followed by the General Manager in relation to the complaints. The matter was now out of her hands.

We should note, however, that on 16 November 1999, a week after Council, on the initiative, so we understand, not of the General Manager but of Clr Bennett, had started the Henningham Inquiry ball rolling on 9 November 1999, Mr Robert Dunn appeared officially on the scene as Clr Hall's legal adviser in relation to the Council contemplated process. A letter was faxed that day by the legal adviser to the Deputy Mayor (copied to the General Manager) and a further two letters to the General Manager herself. The former was the letter announcing, amongst other things, Clr Hall's intention to resume his Mayoral duties.

The bulk of that letter sought to argue that the terms of Council's Policy entitled *Provision of Information and Interaction between Elected Members and Staff* needed to be followed by Council, and "should have been followed from the outset". As to what the Council was contemplating, the letter clearly acknowledges that Council had it within its power to refer the matter "to an appropriate investigative body".

Clr Hall's adviser went on to put the proposition that:

> our client as the person in respect of which a complaint has been made has the right:
>
> (a) to be informed of the exact nature of the complaint and to receive a copy of the General Manager's report of her preliminary investigations of the complaint;
> (b) to be heard in response to these complaints by himself or his appointed representative prior to Council's decision; and …

As already stated, we consider, without necessarily agreeing with all that the adviser so put, that the General Manager had complied already with the first part of paragraph (a). That she had not produced a report, having first made preliminary enquiries, which enquiries she had made at least of the complainants, was entirely due to the interference and non co-operation of Clr Hall. The General Manager therefore, in her actions on 26 October, had done the next best thing that she could have done in all the circumstances, that is to say, to draw the matter, confidentially, to the attention of the Councillors, which is what she was required to do under the Policy.

We note, in any event, that by memo of 19 November 1999 to the Mayor, Deputy Mayor and Councillors, the General Manager reported to them on all the steps she had taken so far in dealing with the complaints, as well as on the Mayor's responses, or lack thereof. In that memo she acknowledged that the Policy did "not specifically refer to alleged breaches of conduct between the Mayor and staff", but advised that she had "adhered to the procedures outlined in the Code of Conduct for elected members". A formal report, also dated 19 November, was produced by the General

Manager to the Councillors for the purposes of their Extraordinary Meeting of 23 November, at which they formally considered the matter of the complaints against Clr Hall, and resolved that there be an independent inquiry undertaken by Mr Henningham.

The next day after receiving the letters from Clr Hall's legal adviser, the General Manager sought the first of various advices from Mr Dick Graham of Abbott Tout, solicitors, on Council's behalf, as to the process to be followed in relation to the complaints. Mr Graham's advice of 23 November, received by the General Manager before Council commenced its extraordinary meeting of that evening, includes the following advices:

> Absent a specific provision in the code as to the procedure to be followed where the Mayor is the subject of the complaint it seems to us that the appropriate procedure is for the matter to be investigated by the full Council …
>
> The code of conduct requires you when the matter involves a Councillor to report the matter to the Mayor and to the next Council meeting (clause 7.2.2). In the circumstances in this case you can hardly "report the matter to the Mayor" however, the matter has been reported to the Council.
>
> The provisions of clause 7.2.5 of the code have been noted and it is our understanding that preliminary enquiries to establish the facts have been undertaken and that you have discussed the matter from time to time with the Mayor.
>
> We do not believe that Council in proceeding as it has (and if it adopts the motion … this evening) would be seen to be acting outside the spirit of the code. While technically there may have been some non-compliances with the procedural aspects thereof the code, as noted, is technically silent at the same time as to the procedures to be followed where the complaints involve the Mayor. …
>
> The code is an advisory document only and has no statutory effect. We believe, as noted above, that the Council would not be construed as acting outside same were it to proceed in the manner proposed in the motion which is apparently before the Committee tonight. …

We agree.

One of the key things to come out of the overwhelming evidence before us is the extent to which Clr Hall not only obstructed the General Manager in her attempts to deal with the complaints about him in so far as he got the memo of 26 October whisked out of the sight of most of the Councillors, but also the fact that he continually, with one or two blips when he seemingly acknowledged there was a problem, apologised and promised to reform, only to manifest his recidivist tendencies moments later, refused to acknowledge there was a problem, seeking to suggest it was all trumped up and imagined by the General Manager. That is to say, to shift the blame to her. So too by his submissions to our Investigation.

If Clr Hall genuinely believed in this hypothesis, then he was clearly deluded. If he deliberately and knowingly obfuscated by this means, then his conduct is all the more reprehensible.

Clr Bennett confirmed to us in our interview with her that "the Mayor was refusing to deal with the situation at all. He had decided that it would all, somehow, go away". The questioning continued:

> Mr Bulford: Did he ever suggest it was all a figment of Rhonda Bignell's imagination or it was a plot by her?
>
> Clr Bennett: "Trumped up" is the sort of expression he would have used, yes he did.
>
> Mr Bulford: So he just refused to believe that there was a problem?
>
> Clr Bennett: He refused to believe that there was a problem but it has to be said that there was a growing - as the Councillors, a number of the Councillors, not all the Councillors, and I'm talking here about the KPT endorsed Councillors, as a number of the Councillors came into Council more and more often and witnessed the Mayor's behaviour to staff - - -

It seems that Clr Hall has right down to the last in this Investigation maintained such a line in relation to the complaints against him. We have noted at various sections of this report, above, when considering the various complaints and allegations, and Clr Hall's responses to them, that such responses often entailed denials and, moreover, unsubstantiated and gratuitous attacks on the persons involved in making the complaints, or in the incidents complained of. Such attacks have included suggestions that the staff over-reacted, or were exaggerating or even making the allegations up in a misguided sense of loyalty to other staff or their superiors in the staff hierarchy. We have in all cases found such counter-allegations on the part of Clr Hall to be unfounded in the circumstances and therefore unproven.

It cannot be stressed too much that the overwhelming evidence was as to the state of virtual siege that the General Manager found herself under in the first weeks of Clr Hall's Mayoralty. She had to have someone to go to. It was not a battle that anyone could have been expected to fight alone. That she turned to her own personal solicitors for assistance, that she turned to the Director General of the Department for advice, that she sought, in virtual desperation, to turn to an up to now hostile group of Councillors, is all natural and understandable.

Another issue which we examined in considering the way the General Manager handled the complaints from staff about Clr Hall is the extent to which she acted properly and lawfully in providing copies of the complaints to him. She had attached copies of an indeterminate number of complaints from an indeterminate group of complainants to her memo of 14 October 1999 to Clr Hall.

We have noted at section 2.3 of this report the fact that many if not all of the complaints referred to us appeared to be complaints to which the provisions of the Protected Disclosures Act 1994 apply. One of these provisions is section 22 which, except in limited circumstances, requires that steps be taken to protect the identity of the complainant.

In our interviews with the various complainants we asked them all a number of questions with a view to determining to what extent they were aware that their complaints might be passed on to Clr Hall and to what extent, if any, they had given their informed consent to that happening. The responses were varied. Most told us

either that they had in fact consented or at least were aware of the likely possibility that their complaints would be shown to Clr Hall and that they had no problems with that occurring. A number, however, expressed concerns. We have also noted at section 2.3 that many of the complainants would not agree to our providing copies to Clr Hall either, for the purposes of providing to him particulars of the allegations against him that we were to investigate pursuant to paragraph (1) of the Terms of Reference of our Investigation.

Mr Guy Paroissien, whose complaint is considered at section 3.34.4 of this report, for example told us:

> I remember saying to her - I gave her the copy of the memo and I actually said to her, "I'm happy for you to give this to Tony because I believe the only way we're going to solve these sorts of issues is to sit down and say" - and I said to her, "I'm quite happy to go and talk to him because I believe the only way we're going to solve this is to sit down and talk to him and say, 'Look, your behaviour is going to result in a break-down between staff and the Council and we've got to be able to work together'." And from memory I offered to her that I was happy for her to give it to him and I actually wanted her to discuss it with him.
> …
> Shortly after that there was a break-down where we didn't have that opportunity to discuss things like that with Councillor Hall with - the situation deteriorated further into the [proposed Henningham] inquiry and everything else…

It therefore seems to us that there is at least in respect of some complainants an issue as to the way the General Manager handled their complaints, and this is something which we consider that she should bear in mind in the future in the event that further complaints are received by her on matters and from complainants to which the provisions of the Act potentially apply.

4.6.1 Clr Hall's concerns over the way the General Manager handled complaints from staff over an incident involving Clr Little

Apparently in response to issues raised by Clr Malicki, a journalist contacted Clr Little, as Chairman of the Steering Committee dealing with the environmental aspects of the Residential Strategy being pursued by Council, for comments, and as a result on 17 February 2000 a story appeared in the Advocate under the headline:

Study based on phantom roads

> A question mark hangs over the integrity of Ku-ring-gai Council's residential study after it was revealed one of the baseline studies was based on roads that did not exist. …
>
> Chairman of the committee responsible for the environment baseline study Councillor Andrew Little, blamed staff for the mistakes which were also made in Gordon ward.
>
> "Corrections will be going in the final version – they are problems you won't pick up unless you are a local," he said. "One problem we have is most of the (council's) staff don't live here. It's been a nightmare for us in terms of being able to communicate with the community – the staff aren't good at it."
>
> Mr Little said the information they used was from council data bases.

> He said there needed to be a review and the staff should be removed. …

Staff member Mr Anthony Milanoli gave evidence to us about a phone call he received from a member of the community, prompted by the story it seems, accusing he and the staff of having a problem in being involved in relation to a proposal to rezone land that was on public exhibition, when they did not live in the area. He took his concerns up with his boss, Mr Chris Young. Ms Virginia Leafe, Council's manager in charge of media relations, had also picked up the article and drawn it to the attention of the General Manager and the Director in charge of planning matters, i.e. Mr Chris Young. Ms Leafe's evidence on this is quoted at section 5.3.1 of this report.

All this caused an immediate response from Mr Young, who, on the same day the report came out, wrote to the General Manager raising concerns about Clr Malicki having started the rabbit running in the first place by bringing up the phantom roads issue. He pointed out that the study produced its own "maps based on a number of criteria related to environmental sensitivity not potential or existing zoning" and that the maps used by Council were deposited plan maps, that is to say subdivision maps registered with the NSW Registrar General. He went on:

> All of this is of minor relevance in comparison to the comments made by Councillor Little in the media regarding Council staff. [he referred to the statement about the staff not living in the area] On behalf of the staff involved in the Residential Strategy I object most strenuously to this statement and seek from Councillor Little a **public apology** and **full retraction**. [Mr Young's emphasis.]
>
> Firstly, where a professional officer lives is irrelevant. It would also go against the principle of merit to employ someone on the basis of where they live. Staff position descriptions do not state that living in the area is part of the essential or desirable criteria. The fact is that staff spend more time working in the area than many residents and know the area and its problems in detail.
>
> What surprises staff even more is that Councillor Little has on many occasions praised the staff for all the work and detail undertaken for the Strategy. …
>
> Staff are concerned at this call for removal, particularly based on such misinformation and slurs contained in this article. If "removal" relates to dismissal of staff, this would raise significant industrial issues.
>
> Staff will not accept being scapegoats for inability of Councillors to make decisions nor for populist or political decisions.
>
> Staff see this attack as the first round in a scapegoat exercise. … The Council's initial distrust of staff ability and motives has meant that much of the responsibility for all the projects now lies with the Councillors. …

The memo continued with further equally strong language and expressions of outrage and concern.

Clr Little expressed, in his comments to us in respect of an extract from our draft report relating to this section that was provided to him, concerns that no one saw fit to contact him about the accuracy of the comments attributed to him in the paper before staff went to see the General Manager, went into print with their complaints

and took the matter up formally in the way it was. He was particularly concerned that Ms Leafe had apparently spoken to the journalist about the matter (her evidence on this is noted at section 5.3.1 of this report), but not sought to speak to him. Whatever might be one's personal views as to how best the concerns of the staff and their senior managers might be followed up, the fact is that it *was* appropriate for Mr Young, Ms Leafe and other concerned staff to take the matter up with the General Manager, the head of the Council staff, who could, in accordance with the procedures and policies that Council itself had adopted and laid down, take the matter further in the appropriate way. It would not have been appropriate for staff themselves to accost the Councillor over the matter direct.

Clr Little's proposition to us in his written submissions was that there had been a breach by staff of provisions of Council's Code of Conduct which require all Councillors, Council staff and delegates to ensure "equitable treatment of people and situations", and in particular to "take all reasonable steps to ensure that the information upon which decisions or actions are based is factually correct and that all relevant information has been obtained". While we can understand where Clr Little is coming from on this, we think he is really misapplying and taking out of context a provision of the Code designed to ensure that their formal decisions on matters such as the consideration of development applications and so on have a proper foundation. We do not take this provision as governing or qualifying the clear provisions of other parts of Council's Code and policies dealing specifically with how complaints about the conduct of Councillors and others should be dealt with.

On receipt of the memo the General Manager referred the matter to the Mayor, as she was required to do in accordance with clause 7.2.2 of Council's Policy on the Provision of Information and Interaction between elected members and staff, which we have already noted is in fact a separate document or policy or procedure, separate that is from the Code of Conduct proper. Clr Hall asked the General Manager to fax a copy of the memo to Clr Little, which she duly did on 18 February. Clr Hall sent a memo to her seeking advice as to what procedure was required to be followed "to progress this serious matter". She provided a written report to the Mayor and Deputy Mayor the same day, though that memo does not formally advise as to the process that needed to be followed, as Clr Hall had requested. In it she told of having immediately received, on 17 February, a "deputation of representative staff" who raised a number of "matters of deep concern", which she outlined. She concluded her analysis of the situation by saying that she thought that it was "highly inappropriate for a Councillor to make such comments in the press" and that Clr Little had "no authority to speak on staff issues". She said, "There is a process for raising issues of concern. Cr Little's statements to the media breaches that process." She concluded by saying, "As General Manager, I share the staff concerns listed above."

There is every indication from just the terms of the General Manager's memo that at the time she wrote and despatched that to the Mayor and Deputy Mayor she had not contacted Clr Little to formally seek his response to the allegations. However, we note that clause 7.2.5 of the Policy would require that she do so, not so much before she reports the matter of a complaint about a Councillor under the Code of Conduct to the Mayor, but before she reports it to the full Council. It is clear from clause 7.2.2 of the Policy that on receipt of allegations as to the conduct of a Councillor the General Manager has two separate reporting obligations, one to the Mayor,

presumably merely by way of an initial alert of the fact that there has been such allegations received, and a second one to the Council at its next meeting. Clause 7.2.5 applies, in our view, only to the latter.

Clr Hall fired off a further memo to the General Manager. He noted that she had not replied to his instructions for advice as to the process to be followed. However his next statement indicates clearly that he knew full well all along what that process was (after all he had been subjected to the same process only months before and questions had been asked by him about that process):

> I note that in writing to me you have taken the first step in accordance with the abovementioned policy and your next requirement is to bring a formal report to the next Council meeting.

He reminded the General Manager about the need to consult with Clr Little. The evidence is that she proceeded to do so. The memo from Clr Hall went on to admonish the General Manager for being "the mouthpiece of the staff". He accused her of "simply … embrac[ing] the remarks or complaints of staff members and deliver[ing] them in the role of 'prosecutor' or 'defender of the staff' ". The General Manager told us that she took offence at the tone of Clr Hall's memo and said that some of the allegations in it about her were incorrect.

The General Manager advised us that she met with Clr Little, in the presence of Clr Bennett, at 10.00 am on 21 February. It was Clr Little's claim that he had been misquoted and quoted out of context. She went on to tell us that she arranged for Clr Little, plus she and the Deputy Mayor, to meet with a "representative staff group (approximately 20 people)" that day. She told us that that meeting led to a resolution of the matter, with the staff apparently accepting Clr Little's explanation and Clr Little agreeing to write a letter to the Editor to correct that situation. We understand that a draft of the letter was in fact brought to the meeting, but that some staff were not happy with it and that some changes were to be made as a result. The General Manager and the Deputy Mayor also sent a joint letter to the Editor the same day.

In his written submissions to us, commenting on this part of our draft report, Clr Little noted that his attention was only drawn to the existence of the press article when the Mayor showed him a copy of the General Manager's first memo. He added:

> The Mayor was keen to get involved but I asked him to leave it with me. This was a storm in a teacup that arose from a genuine error in reporting or a desire by the reporter to sensationalise the issue. Either way, the Residential Strategy was on a very tight schedule and it was in the community's interests for the whole affair to be closed off quickly. To have the Mayor raising procedural issues at this stage would only have created more problems.

In our interview with Clr Little we had asked him a number of questions about his recollections as to the incident and how it was handled by the General Manager:

> Mr Bulford: All right. Well, what happened - can you tell us in your words what happened in - following that press report in terms of concerns being raised by the staff and processes undertaken by the General Manager?

Clr Little: Well, I must admit I was very surprised when I first came across that. I was very irritated by it and I thought well that's going to have to be corrected, and I did mention to the General Manager to - I think that the - you know, I disagreed with the - the tenor of that document and - - -

Mr Bulford: Did you contact the General Manager yourself about the matter or was it she who contacted you?

Clr Little: Look, I can't be clear on that one.

Mr Bulford: Well, it was only a couple of weeks ago wasn't it?

Clr Little: I spoke to the General Manager about it. She didn't - she didn't contact me directly about it, I don't believe she did.

Mr Bulford: Well, how did she - how did you get into contact with the General Manager?

Clr Little: Now, I'm just wondering whether the Mayor mentioned that with me and raised the matter with me. He might have done that.

Mr Bulford: What role - what role did the Mayor have in all this?

Clr Little: Well, I believe the General Manager wrote to the Mayor about it and - --

Mr Bulford: But you can't be sure.

Clr Little: Well, I can't be sure actually because there was a document in writing to the Mayor which he showed me. And I said, "This is just nonsense". And the General Manager - when I - when I went out of that office the General Manager happened to be around somewhere there and I said with regard to that matter - I said that I deny that what's - that the report's quite (indistinct).

Mr Bulford: And what did she say to you?

Clr Little: Nothing.

Mr Bulford: Nothing at all?

Clr Little: Nothing at all.

Mr Bulford: She just walked away?

Clr Little: Well, just a moment. She might have said "We'll see about that", no she might have said something "We'll see about that", something of that - I can't remember exactly.

Mr Bulford: So, just what - half a sentence with "we'll see about that" at the end of it was it?

Clr Little: Yes.

Mr Bulford: Did you hear any more on that matter?

Clr Little: Well, we went actually - ironically we had a - we had to go out that afternoon, the General Manager, myself and someone else, we had agreed to inspect some properties and that matter wasn't even brought up during that. I mean I was in the car with her, she didn't bring up the matter. The next I heard about it was a written comment to me - you will have that probably somewhere there - with a whole series of statements about I had done this and I had done that and I was - - -

Mr Bulford: Who was that written comment from?

Clr Little: Sorry?

Mr Bulford: Who was that written comment from?

Clr Little: From the General Manager.

Mr Bulford: What, a memo to you was it?

Clr Little: A memo to the Mayor, I believe, with a copy to me but I could be wrong. She might have actually also given me a copy without - and you know to me, she might have actually also - it was the same wording that went to the Mayor so it might have been to me - - -

Mr Bulford: So, what happened when you got this memo?

Clr Little: Well, I was surprised by it because it irritated me in terms of how it was worded. It was worded in the words of - as if I had done - said these things as opposed to allegedly said and I was a little bit irritated by it actually.

Mr Bulford: And did you express that irritation to anybody?

Clr Little: No, I didn't. I'd expressed it to the General Manager when I saw her on Monday.

Mr Bulford: Sorry, I thought you said no you didn't.

Clr Little: Sorry?

Mr Bulford: Did you express it to anybody and your answer initially was no. You're correcting that are you?

Clr Little: Oh sorry, okay. No, I did express - I correct that - I expressed my irritation to the General Manager when I met her on Monday - the following Monday.

Mr Bulford: And how was it that you met her on the following Monday, was that - - -

Clr Little: I called a meeting. I asked to see her on Monday to discuss the matter and how I wished to deal with it.

Mr Bulford: All right. And what did you - what did she say to that?

Clr Little: Well, she agreed so we met at 10.30 I think on that Monday.

Mr Bulford: Just the two of you?

Clr Little: No, I had Councillor Bennett with me as well.

Mr Bulford: And what - what discussions took place at that meeting?

Clr Little: Well, the discussion was how I would deal with the matter. The context in which the telephone conversation occurred, I gave her a written statement about that. I gave her a written statement about how I wished to reply to the article and I wished to also see the staff to explain my point of view and to apologise to the staff for any embarrassment that it might have caused them. Because in fact I was quite concerned that these staff had worked with me closely on that committee and quite frankly I found the whole thing an embarrassment.

Mr Bulford: Right. This written statement, did Councillor Hall assist you in the preparation of that statement?

Clr Little: No. No.

Mr Bulford: It was entirely your own work?

Clr Little: Yes.

Mr Bulford: All right. Did the General Manager - you presented a copy of this written statement to her at this meeting?

Clr Little: Yes, I did.

Mr Bulford: Right. Did she make any comment on its contents?

Clr Little: She was agreeable generally with it.

Mr Bulford: Well, "generally" presumably means that there were bits that she didn't agree with. Is that right?

Clr Little: No, I don't think there was anything she disagreed with. I think there might have been something that she wanted clarified a little bit more.

Mr Bulford: All right. Did she tell you what it was that she wanted clarified?

Clr Little: She probably did but I think that was sort of brought out at the meeting with the staff I had later. So I'm not going to say that she did it or it came out of the meeting I had with the staff.

Mr Bulford: All right. So, what happened after this meeting, just the three of you; Councillor Bennett, yourself and the General Manager? What was the next step?

Clr Little: Well, we agreed to - the next step was to - I wished to meet with the - Chris Young who was the Director of Environment Planning, his staff who were involved - I mean we were involved - excuse me - we were involved in the environment studies and the residential strategy, so all the staff involved in that I wished to meet because I believed that they had a, you know, a right to have an explanation to this.

Mr Bulford: And did that meeting take place?

Clr Little: Yes, it did. Within 10 minutes of me meeting with the General Manager.

Mr Bulford: That same day?

Clr Little: Yes, straight after. I think I was surprised at the meeting because what surprised me was in fact the breadth at which the staff were involved in this. I mean I was expecting the staff that I'd dealt with would naturally have an interest in it but it was much broader than that.

Mr Bulford: Did they explain to you why there was this assembly of people?

Clr Little: Yes, it became apparent to me why there was an assembly of people.

Mr Bulford: And why was that?

Clr Little: Well, it was an interesting one because they took objection to the statement in there that the staff did not live in the area. And that was a rather intriguing thing because in fact it happens to be true that the - I guess Ku-ring-gai Council because of the cost of land and the housing in Ku-ring-gai is so high, we would have a higher proportion of staff that don't live in the area relative to other areas. And I believe that this was a sensitive issue to them. And it was quite clear that this was a - - -

Mr Bulford: What, sensitive - - -

Clr Little: It's what I call a pre-existing wound, you understand.

Mr Bulford: What, so you feel they carried some resentment that they couldn't afford to live in the Council area?

Clr Little: No, I don't think it was resentment. I think what's happened is, as some of them said to me, they said you know they get calls from the residents and that's a common statement, "well you don't live in the area, what would you know", and that was the pre-existing wound that that had opened up obviously. It was something I wasn't aware of.

Mr Bulford: How would residents - how would residents know that they didn't live in the area?

Clr Little: Well, that's an interesting point. That's a very interesting point. I don't know. It was something that - - -

Mr Bulford: I mean was this - you're referring there to "they get calls", was this not reported to you that there was one instance of a member of the community ringing a staff member involved and raising the question of where he or she lived and wasn't that one instance all that was reported to you at this meeting or an earlier meeting?

Clr Little: It could have been. I couldn't be as specific as that. I know the issue was raised, whether or not it was one issue or whether or not it was raised by several - - -

Mr Bulford: But you're putting to me that it's an across the board problem with members of the community raising this as a concern all the time.

Clr Little: I had the impression - no, just a minute, get that - I think you've got that wrong. I had the impression from that meeting that that was a common gripe from the staff. This was the first time I'd come across that idea, that that would be a problem for them but it just seemed to be a sensitive issue and as I said - I said this is clearly a pre-existing wound that needs to be corrected.

Mr Bulford: What did you think about their - what did you think about their sensitivities on that score?

Clr Little: Well, clearly if it was an issue with them it had to be addressed, like anything.

Mr Bulford: Did you feel that they had any right to be sensitive on that?

Clr Little: Well, they were and you have to take into account people's sensitivities. If people are sensitive about the issue - - -

Mr Bulford: I'm asking you - I'm asking you did you feel that they had a right to be sensitive?

Clr Little: I can't comment on that whether or not I feel they have a right, of course they do. They have sensitivities and that's - - -

Mr Bulford: But surely you have a view on the matter, Councillor.

Clr Little: Sorry?

Mr Bulford: Surely you have a view on the matter? I'm simply asking you for your view on the matter, I'm not asking you for the facts as to whether they are or are not sensitive. I'm asking you that if they were to express that sensitivity whether you would understand and agree with it or whether you disagree with it?

Clr Little: I understand it. I understand the sensitivity.

Mr Bulford: Would you agree with it?

Clr Little: In some cases, yes. I think I would have to agree.

Mr Bulford: But in other cases you wouldn't agree?

Clr Little: I didn't say that. Well, you're drawing the analogy - you're drawing - - -

Mr Bulford: You said in some cases I would have to agree. It therefore follows a fortiori does it not that in other cases you would not agree? Or do you wish to correct your answer to the earlier question?

Clr Little: Okay. I'll correct it. I agree.

Clr Little: Have you - at this meeting with the staff was the terms of your proposed letter to the editor, I understand it, of the Advocate, was that circulated to those members of the staff present at the meeting?

Clr Little: I believe it was. I believe so but I can't be certain. I believe it was.

Mr Bulford: But you were present at the meeting?

Clr Little: Yes, I know. I had the impression it was but that's a detail that I couldn't be sure of.

Mr Bulford: Well, how do you have the impression that it was. Did you see them have it or did you hand out copies or did they all appear to have paper in their hands when you went in?

Clr Little: I - I believe that someone actually did copy those and hand it out, but look that's my recollection of it and I can't be certain of that. I just want to make that clear, I can't be certain of that. I - I have a feeling that that happened but I'm not certain.

Mr Bulford: Did members of the staff make comment to you as to the content of that draft letter?

Clr Little: You mean at the meeting?

Mr Bulford: Mm.

Clr Little: No, I can't remember (indistinct)

Mr Bulford: They were all happy with it?

Clr Little: I think they went back to that article more than - - -

Mr Bulford: No, I'm asking you whether they were happy with the draft document which you proposed to issue to the editor?

Clr Little: I think they wanted - there was an issue that was raised that was added in that wasn't in that document and that arose - - -

Mr Bulford: What was that - what was that issue?

Clr Little: Have you got the article and I could tell you? The reply - have you got the reply and I could tell you what it is but I - - -

Mr Bulford: No, I don't have the reply.

Clr Little: I'm sorry, well I can't be specific about what it was but there was something I added in as a consequence of that meeting.

Mr Bulford: But you can't remember what it was?

Clr Little: The - well, I'd be guessing.

Mr Bulford: All right. Have you in fact issued a letter to the editor?

Clr Little: Yes, I did.

Mr Bulford: When did that happen?

Clr Little: Well, that happened straight - well, within a few hours of that meeting.

In his much later written submissions in respect of a draft of this section of our report, Clr Little sought to describe to us the sequence of events, in particular as to how the concerns about the press statements attributed to him were dealt with. Much of what he said is certainly consistent with parts of his earlier oral testimony to us, but his written submissions appeared to us to be putting a gloss on matters which did not strike us as being so, from the information given to us in the interview at the time. This is that he was somehow the one who took the initiative to right the problems arising out of the press article. This gloss does not seem consistent with other probative evidence before us.

In our view, moreover, the general tenor of the replies to our questions as quoted above, Clr Little's inconsistent answers and need to correct himself when challenged on these, his admitted lack of clear recollection of events that were only a matter of a few weeks old, and his general demeanour throughout his interview with us, all lead us to seriously question the reliability of a good part of his evidence before us. Likewise, we have in the circumstances, some difficulty in accepting the version of events he put to us in writing some nearly six months later, when he provided to us his comments in relation to a draft of this section of our report.

Clr Little's replies in his interview with us, in particular occurring as it did only a couple of weeks after this incident happened, in many respects demonstrated too a manifest lack of awareness and understanding of the undeniable problems at this Council in terms of Councillor-staff relations and the need to do something about it (see also elsewhere in this report). What the Councillor put to us in his later written submissions also reinforced this view. He said (commenting on some of the

evidence of Ms Leafe as to the staff responses to seeing the press article, quoted at section 5.3.1 of this report):

> In fact from the Councillors' perspective the Residential Strategy was progressing well and we were pleased with the work of the staff and often told them so. That such a divide existed between the perceptions of Councillors and staff I was not aware of until reading your [extract of this and the other section of our draft report]. On reflection I have no doubt it is as a result of some of the policies the General Manager has in place with regard to councillor/staff interaction.

The proposition put to us in the last sentence is something that no one had put to us before in this Investigation. The overwhelming evidence in the Investigation would not appear to support it. But if the Councillor has concerns about aspects of Council's Code of Conduct and/or its Policy on Councillor and staff interaction, and has the support of sufficient of his fellow Councillors in the matter, it then becomes a matter that he needs to raise in the appropriate way and for the Councillors as a whole to deal with, if they are so minded. However, Councillors should be mindful of the fact, as noted elsewhere in this report, that the Policy that Clr Little seeks to criticise is modelled closely on the suggested model policy recommended by both the Department of Local Government and the Independent Commission Against Corruption in their joint publication *Under Careful Consideration*, to which various references have been made throughout this report.

As is noted above, it was put to us by the General Manager, and this is supported by the evidence, that as a result of her dealing with the matter, in the way it was handled, the problems were sorted out. A letter of apology and correction was sent by Clr Little to the paper, as well as a joint letter from the General Manager and the Deputy Mayor, Clr Bennett. This last-mentioned letter acknowledged that the meeting with Clr Little and representatives of the staff on 21 February had been "positive" and that "the staff representatives accepted Clr Little's explanation that the statements had been taken out of context or misconstrued in the article". The letters were published, with the Editor appending the following note:

> The Advocate accepts there may have been a miscommunication between Clr Little and the journalist concerned.
>
> We regret if the report caused any distress to Council staff.

Nonetheless, the whole affair should be taken as a salient reminder to all Councillors of the need to manage the situation properly, to think before they speak and act, and to remember that they are responsible for ensuring that Council is a responsible employer.

It is also unclear to us what delegations and authorities, if any, may have been given to Chairpersons of Council Committees to speak to the press on behalf of Council on matters relating to the work of those Committees. Council needs to address this issue.

4.7 Allegations in relation to insurance claims arising out of a motor vehicle accident involving the General Manager

On 8 December 1999 Clr Hall came into the General Manager's office and handed her several memos. Each had extraordinarily long titles set out in bold face and capital letters, and in a way which clearly was likely to be considered arresting, confronting and threatening. One of the titles was as follows:

> **REVIEW OF DELEGATIONS AND RESPONSIBILITIES AS GENERAL MANAGER TO THE COUNCIL. IN PARTICULAR IN RELATION TO YOUR DILIGENTLY EXERCISING DELEGATIONS AS SPECIFIED FROM COUNCIL FROM TIME TO TIME AND TO AVOID REAL OR APPARENT CONFLICTS OF INTEREST AND REPORT THE REASONABLE APPREHENSION OF SAME TO COUNCIL**

The main paragraph of the memo read:

> Could you advise me whether in the past six months there has been any situation in respect of which you may have had an apparent conflict of interest and the circumstances of such. In particular, would you please advise me of whether in the course of use of your motor vehicle, any motor vehicle accident occurred and, if so, whether any third party was involved and whether you had any relationship with that third party also. In relation to any insurance claim which may have arisen from such or similar circumstances would you kindly make available to me (or arrange for the appropriate officer to make available to me) Council's file in relation to such circumstances and advise me of any other relevant facts.

The General Manager told us about how the memo was delivered to her:

> He came into my office and sat down and now I see it as a sort of pretence that he has, a way he acts I suppose when he's up to something. He asked me about a couple of other things and then he said, "Here's a couple of memos for you." About 2 or 3 days beforehand - one of them's about the car accident and one of them's about time in lieu, but a couple of days beforehand he said, and this is the way he goes when he's really up to something. He said, "Your car," because he'd been wanting my car requisitions and somebody stealing $6,000 and all the rest of it. He said, "You've had a car accident, ... the insurance on your car." I said "Yes" and it was covered at the time because obviously it's an issue for me that's hard to talk about, especially him poking in it, and I said, "It's all been dealt with. Why bring it up now, 4 or 5 months later?" "Oh nothing, as long as everything's okay, that's fine." So then he came into my office on the 8th and he just had got these memos. I don't know which one I saw first and I had to work out what all of this was. It was actually the car accident one that got to me and I said, "Why are you bringing this up again? You know how distressing it is." I have to say at that stage I got a catch in my throat or a lump in my throat. I looked out the window because I thought, "I'm not going to let him see that upsets me". "I'm your supervisor." I said, "You are not my supervisor."

Timing wise, relative to other contemporary events at Council, on 30 November 1999 Clr Hall had seen the attempts to get at the General Manager over her performance come to nought (see section 6.18.4 of this report). And on 1 December 1999 Clr Hall had been approached about signing accident claim forms relating to his own Council provided car.

We spoke to Mr Brian Mazur, the Manager in charge of Council's motor vehicle fleet, about the handling of the insurance claim for the damage to the General Manager's vehicle. He said:

> The whole accident was handled the same way we would handle any accident at all…

Asked whether there was any special treatment because it was the General Manager, he said:

> …The only thing that might have been construed as special treatment was that she was going away. She was actually going to be away for a period of time.
>
> …That gave us an opportunity to have the car repaired within that period of time so that when she comes back the car's ready…

Mr Mazur confirmed that the General Manager kept out of the process "totally" and "absolutely", other than filling in part of the claim form. Mr Mazur's evidence corroborated that of the General Manager to us. She categorically denied any involvement in the matter, other than to fill out that part of the form she completed.

We then examined the claim form copies that we had with Mr Mazur and asked him about these:

> Mr Bulford: … We've got here next in the order of documents a SGIO motor vehicle accident claim form. What can you tell us about the handwriting in the filling in of that form?
>
> Mr Mazur: Well, Roger [Dixon] filled out the statutory things that he would normally fill out which is basically our address, details about the car and so on.
>
> Mr Bulford: You recognise the handwriting as his?
>
> Mr Mazur: Yes, yes, I do. Then over the page there's the description of what actually happened and that's in a different handwriting. This is not Roger's.
>
> Mr Bulford: You would recognise it as Rhonda Bignall's handwriting, would you?
>
> Mr Mazur: I would - I would expect. I have no idea. All I know is that she signed it.
>
> Mr Bulford: It's certainly not Roger's?
>
> Mr Mazur: It certainly isn't Roger's handwriting, yes.
>
> Mr Bulford: But you recognise her signature?
>
> Mr Mazur: Yes, I do, down the bottom, yes, and the diagram.
>
> Mr Bulford: Okay. Well, let's move on from that. One thing I want to ask you. On this form, I've had a close look at it, there's nothing in there in terms of space provided or the nature of the notes or questions if you like as to the information that's requested in a particular box or part of the form to say that you need to disclose the fact that you may have been related to the owner of the other car.
>
> Mr Mazur: The insurance company is not interested in that at all. That is not something that they would ask. Once our vehicle is insured it is insured for certain risks and those are collision with another vehicle or collision with anything else.

Mr Mazur put it to us that in his view it was not relevant to tell the insurance company about any relationship between the General Manager as the driver of one of the vehicles involved in the accident and her husband as the owner of the other vehicle. He said:

> …I don't think anyone even took that as a necessary statement to make.

We have considered so far the question of disclosure of a *relationship* between the driver of the car insured with Council's insurers and the owner or driver of the other vehicle. As noted in our question to Mr Mazur, we had examined the claim form which was copied to us and noted that in section 19, on the second page or reverse side of the form, that is to say, on the evidence before us, the page or side filled in by Ms Bignell, there is a question:

> Is the other **driver** *known* to you? [Our emphasis]

The person required to complete the form is invited to mark two boxes, labelled "Yes" and "No", and beside the latter, on the same line, is the additional word and punctuation mark "How?".

This part of the form, on the copy provided to us, is one which bears the General Manager's distinct signature at the foot of the form, as identified by Mr Mazur to us, and checked by us against countless copies of correspondence we have been provided with that have been signed by her. On that part of the form the box labelled "Yes" is clearly ticked.

We have made extensive enquiries with the insurance company, SGIO Insurance. They have provided to us a complete copy of all relevant documents on their file. We have closely examined these and compared them with both what we have been provided with from Council, as well as with documents sourced to Clr Hall's legal adviser.

It is clear from those documents that the version of the claim form we were examining with Mr Mazur and which had been provided by Council to us from its files was exactly the same as that sourced to Clr Hall's legal adviser and which had been received by the insurer.

It is therefore abundantly clear on the evidence before us that the insurance company was informed by Ms Bignell that the driver of the other car was *known* to her. There is no evidence of any attempt to hide that fact or otherwise mislead the insurer.

Now, on this version of the form, we also note that despite the additional request "How?" that information was not provided. The form was left blank at this section. It is a matter of speculation as to whether if this information had been completed and provided it would have revealed not just "knowledge", but also a familial or marriage relationship.

We put, in writing, the following series of questions to the insurer:

1. Was it material to the acceptance by your company of the risk under this insurance policy that it be disclosed to you that the owner and/or driver of any vehicle that might be insured by your company under the policy issued by your company might be related by marriage to or be in a de facto relationship with the owner and/or driver of any other vehicle that might be involved in an accident giving rise to a claim under the policy?

2. Was it material to the *assessment* of any claim under the policy that the fact of such a relationship be disclosed to your company prior to any acceptance by your company of the claim?

3. Was it material to the *payment* of any claim under the policy that the fact of such a relationship be disclosed to your company prior to any acceptance by your company of the claim?

4. If the answer to Question 2 is Yes, where or how would it be expected that this information be disclosed and, if in the accident claim form, where?

5. It is understood that one of the answers sought in question or part 19 of your company's accident claim form is in relation to whether the other driver is known to the person completing the form, and if so, how – would it be expected or required by your company, prior to any agreement to accept the claim, that a relationship of marriage or a de facto relationship would be disclosed in that part of the form?

6. Please advise if such a relationship was in fact disclosed to your company either in that part of the form, or by any other means.

7. If the relevant part of question or part 19 of the form was not completed, please explain whether that would impede or preclude further processing of the claim.

8. What steps would your company normally take to obtain the missing information prior to processing and accepting the claim?

9. Did your company take any such steps in this case?

10. If not, and the relevant part was not completed, please confirm that the claim was paid nonetheless.

The insurer's written replies, using our numbering, were as follows:

1. No

2. Yes

3. Yes

4. The answers provided to question 19 of the Motor Vehicle Claim form would indicate a relationship, if any, between the insured and other parties involved in the subject Motor Vehicle Accident.

5. The answer to Qn 19 is in 2 parts. The first presents the question as to whether there is a relationship. The second part asks for the nature of the relationship.

6. No

7. Not necessarily

8. It would depend upon the situation. Where the relationship is obvious (i.e. surnames being the same, both vehicles being owned by the same company etc) this would in most cases be identified with or without question 19 being fully particularised. This Question is sometimes misinterpreted, the answer being indicated as "yes" but in fact "known" is taken to be an interpretation of "have you identified the other driver".

9. This incident appeared to be a straighforward claim. It appears as though the answers to Question 19 were not pursued beyond this stage.

10. The claim was paid.

If the insurance company wished to take the matter further before it processed, and paid, the claim it was for it to do something about it. The evidence is that it did not. That is not a matter for which any blame or responsibility can be sheeted home to the General Manager. That is a matter for the insurer to examine, if it is so minded.

There is, however, an additional factor, which Clr Hall's legal adviser apparently became aware of by making extensive enquiries himself to the insurer at an early stage in our Investigation. He advised us about having made these enquiries by telephone, and this was confirmed to us by the insurance company. This factor is that the insurer apparently received two versions of the form. Moreover, it apparently processed the claim relying only on one of those. This information was confirmed by the insurance company.

This different version, as to the second or reverse side, is actually completed in some respects differently from the other. For a start, it seems to us that while the bulk of the handwritten information is completed by the same person in each case, namely Ms Bignell, there are in some respects additional items of information in the second, and in other respects not as much. And the two forms or versions were clearly filled in at different times, because certain details of the handwriting are different. However, let us make this clear. We find nothing sinister or inviting question or need for further examination in this. The second version is, moreover, one that was not completed with Ms Bignell's own signature but signed on her behalf by, so it would appear, Mr Dixon. Again, we find nothing untoward in this.

The key difference in the content of the two versions for present purposes is the fact that the boxes we have been talking about in section 19 of the form are in the second totally left blank. That is to say, if the insurance company relied on this version in processing the claim, and we understand that to be the case, it in fact had no advice as to whether the driver of the other vehicle was "known" to the person filling in or signing the claim form. But, as we have already stated, if that was a vital ingredient in any decision whether to accept the claim and pay it, then it was for the insurer to speak up on the matter, and to say that it would not process the claim further until that information was provided to it. The evidence is that it did not do so. That is again not a matter for which Ms Bignell, or for that matter any member of Council's staff, can be held to account.

There is an additional twist to this saga here, one that Clr Hall was well aware of. The other car was *owned* by Mr Gerald Edmunds, the General Manager's husband. The General Manager told us, however, that the car was <u>not</u> being *driven* by Mr Edmunds at the time of the accident (Mr Edmunds was a passenger in her car). It was in fact being driven by Council's employee Mr Michael Drysdale (part of his

duties at that time also being the driving of the Mayoral car), by arrangement with all concerned because of the state of stress that Mr Edmunds was in. The fact that Mr Drysdale was the driver was clearly disclosed in the claim form.

The evidence is that the accident occurred on 19 July 1999. Because of the news he had received, Mr Edmunds was not in a fit state to drive his or any car. The accident occurred at a time when the General Manager and her husband had received an urgent telephone call about a serious accident to his son and that he might not live. This accident had occurred in Perth, Western Australia, and Ms Bignell and Mr Edmunds were rushing, in a state of some distress, to a plane to be by his bedside. Sadly, in fact they did not make it in time. Therefore, if the full information which the form admittedly, at least on one interpretation of the questions, invites the person completing the form to give, was actually given, it still would *not* have brought to light the relationship between Ms Bignell and Mr Edmunds, given their use of different surnames, and given more importantly that the *driver* was not Mr Edmunds in any event.

So much for the claim for repairs to the General Manager's own car. Another aspect of the accident was the damage to the other car and the fact that it was used by Mr Edmunds for business purposes.

Mr Ian Canham, the Council Manager in charge of matters relating to its vehicle fleet, told us about the circumstances of two versions of a letter under the name of Mr Edmunds, in which claims for demurrage or for reimbursement of the cost of hiring a substitute motor vehicle were made to Council's insurers, given Council's vicarious liability for any damage for which its employee, the General Manager, was responsible:

> Mr Bulford: I want to ask you now, Ian, about the issues arising out of Rhonda Bignell's car accident on the day that her son died, or step-son?
>
> Mr Canham: Yes.
>
> Mr Bulford: ... Gerald Edmunds, Rhonda's husband, made a claim for reimbursement of car hiring costs while his car was being repaired?
>
> Mr Canham: Yes.
>
> Mr Bulford: Did Rhonda say to you at one stage, "I don't" - I mean what - did she speak to you in terms of her involvement in the insurance process claim as a driver for the Council's car or her husband's car?
>
> Mr Canham: The only conversation I had with the General Manager on the total accident was regarding her vehicle, and all I wanted was I wanted her to fill out the accident report on her vehicle.
>
> Mr Bulford: Right. Which you got her to do?
>
> Mr Canham: Which she'd duly done.
>
> Mr Bulford: Did she say something about, "Can you deal directly with Gerald, I don't want to get involved"?
>
> Mr Canham: Yes. Which is quite - which is quite normal. I mean, we don't expect the

driver of our vehicles to get involved in the insurance matters with the third party.

Mr Bulford: With the third party. So you dealt with Gerald Edmunds?

Mr Canham: Yes. Yes.

Mr Bulford: Now, there were two letters that he wrote - - -

Mr Canham: Letter of demand.

Mr Bulford: Or there were two versions, it appears, of the letter?

Mr Canham: Yes.

Mr Bulford: And I'll show you here. There's a letter on 23 July which has been typed up, but it shows that it was typed by Gail Goff. Can you explain to us how it was that Gail was typing a letter on behalf of Gerald?

Mr Canham: Because he was in Western Australia at the time, he was in great distress because he'd just lost a son, and it's nothing new that I wouldn't do for any other third party. I mean, we're there to help the citizens of the Municipality and sure it's a claim against Council insurance, but I mean, under the circumstances you've got to show a little bit of compassion for the circumstances.

Mr Bulford: Did Gerald dictate that letter or is it one that you drafted simply for him to sign?

Mr Canham: I drafted it. I drafted it, sent it over to him for his approval to sign.

Mr Canham said that Mr Edmunds faxed the signed version back with some corrections relating to the registration number and the date.

The interview continued:

Mr Bulford: …Now there appears to be another version of that same letter?

Mr Canham: Yes. Signed by me…

Mr Bulford: Can you explain how that came to occur?

Mr Canham: Well what we wanted to do was get the process going. There was two vehicles to be repaired. I knew that they would be back within a week or a fortnight, and we wanted to get the vehicles repaired. And provide a service. I mean that's the name of the game.

Mr Bulford: But this is the same letter as the other?

Mr Canham: Yes.

Mr Bulford: Does this mean that the one that he signed was not actually sent off or used?

Mr Canham: Yes. That one was used. That overruled this one here. That came back with the corrections on it, Roger Dixon processed that one.

Mr Bulford: …So the one that you signed on his behalf - - -

Mr Canham: Went on file…

In the result, we accept fully the evidence of Mr Canham and Mr Mazur, as well as the General Manager, on these matters. We find absolutely nothing untoward or improper in the way the General Manager acted in this matter, or in the way the insurance claims were prepared and lodged by Council staff with Council's insurers. If the insurance company has any concerns about the circumstances of the claims and their payment, then that is a matter for the insurance company. We note in any event that the insurance company accepted the claims, and paid them without question.

The evidence is that Clr Hall went to extraordinary lengths to pursue his concerns or beliefs that something was supposedly wrong and that the General Manager was involved in it.

We have noted at the commencement of this section Clr Hall's memo to the General Manager of 8 December 1999. She replied the very next day by memo, relevant parts of which are as follows:

> You are fully aware that our son was killed on 19 July 1999. You are also aware that I was involved in a minor car accident as my husband and I were attempting to make our way to the airport as a matter of urgency with the assistance of Michael Drysdale, Council's Corporate Support Officer, to catch a plane interstate so that we could reach our son before he died.
>
> My minor car accident was duly reported on the day to the responsible Council officer, Group Manager Operations, Ian Canham, who is responsible to oversee the management of Council's fleet operations.
>
> I also reported the accident to the Mayor of the day, David Dobbin, and the Group Manager Corporate, Darren Condon on my return from interstate following our son's funeral.
>
> I informed those officers and the Mayor that I would have no involvement with the insurance claim/repair process. It was handled under Council's normal operating procedures by Group Manager Operations, Ian Canham.
>
> I had no involvement in the repair/insurance process other than to fill in an accident report form for my car as I am required to do.
>
> There has been no conflict of interest or misuse of the General Manager's delegation. The process was completely transparent. …
>
> If it is the intention to commence an 'investigative' re-opening of this matter, ie a minor accident which occurred on a most tragic and distressing day for my husband and I – and probably caused by the high distress of the moment – then I believe that this is nothing short of harassment of the General Manager.
>
> I invite all Councillors to view the accident report file, if they wish, so that they can see the transparency of the accident report process. I also ask Councillors that, given the highly distressing events of that day for myself and my husband, that we do not have to relive those tragic events through the guise of unfounded suggestions that the General Manager may have had a conflict of interest in the matter. …

This memo, unlike that of Clr Hall to the General Manager, was copied to all the Councillors. We accept that there was good reason for this. It must be remembered

that the Henningham process was about to get underway and the Councillors were at that time considering what to do about the complaints regarding the behaviour of the Mayor towards Council staff. The General Manager is as much a member of staff as any other Council employee. The General Manager told us the following about why she made that disclosure:

> He was accusing me of having a conflict of interest so rather than it just be a him and I backwards and forwards I thought, well the other Councillors should be aware of the facts and I think that's the one I've said they can have a look at the file, whatever. I just wanted them to know it was open if they wanted to have a look at things.

We also note that the General Manager's reply appears to fully answer all the queries raised by Clr Hall. And notwithstanding, or perhaps as a result of, the request for compassion, Clr Hall proceeded unrelentingly to pursue the matter.

It appears that at on either 8 or 9 December the General Manager went to her lawyer, Mr Chris McArdle of Phillips Fox, about the matter. This resulted in a letter of demand that Clr Hall cease his pursuit. The letter was sent to Blake Dawson Waldron, the firm which had been engaged to assist Clr Bennett and others in relation to the performance allegations, but was sent on to Council.

Clr Hall sent the following letter to the General Manager on 10 December, a memo which does not purport to acknowledge the letter from Mr McArdle:

> Although I can fully understand and sympathise with your reaction to my enquiry – given the unrelated sad circumstances to which you have referred – I have to point out to you that I was COMPLETELY UNAWARE [Councillor Hall's emphasis] that those circumstances had any relationship to any car accident.
>
> I deny having in any way harassed you or repeated my request as you allege. As the Memorandum itself suggests it was put on a formal basis along with other matters which are fully within my role and duty as Mayor to be assured of.
>
> Again whilst I am fully sympathetic to the circumstances you have related and sorry that my unwitting enquiry has been interpreted by you in this manner – nevertheless I am equally sorry to note that you have chosen to respond to my confidential enquiry to yourself alone, not copied to my colleagues, on a non-confidential basis. I find that extremely difficult to understand given your stated wish that the matter be not brought up and one would have thought your desire for confidentiality. Needless to say I presume that the publication which has now occurred was quite deliberate on your part, particularly when one considers that your previous Memoranda dealing with harassment complaints was [sic] published far and wide. …
>
> In any event would you please advise me formally and on the record if during the last 12 months of the performance of your Contract there have been any circumstances arising in which you have or should have made any declaration of interest because of the involvement of any third party family member?

In our view, Clr Hall's memo of 8 December was written in terms which make it clear he was well aware of a car accident.

The above memo was copied by Clr Hall to all the Councillors. We note that the 8 December demand was for advice about conflicts going back 6 months. This latest missive upped the ante to 12 months.

Clr Malicki sent a copy of the memo back to Clr Hall with the note "Tony, This action of yours disgusts me!" handwritten on it.

Clr Hall demanded to see the whole file relating to the accident claim. He was given a photocopy of the lot. He claimed that it was not the real file. [It is noted that he wrote to the General Manager, copying the Deputy Mayor and all Councillors, as well as joining into the loop the Acting Director Operations Infrastructure, on 12 December noting that he had seen a copy of the file, as supplied by the latter. He made his demand for the file itself to be delivered, but indicated that he did not press his claims in the last paragraph of his letter of 10 December.] He was given the original. The only difference, so Mr Mazur told us, between what Clr Hall was given on these two occasions was the manilla folder round the latter. Clr Hall still claimed that the photocopied version was missing a letter. This was in fact, according to Mr Mazur's evidence to us, a memo from himself to the Deputy Mayor. It had not got copied onto the photocopied version of the file by the time it was given to Clr Hall because the original of the memo was still caught up in the Council document movement system.

On 13 December 1999 Clr Anderson (who was at this time the Acting Deputy Mayor, in the absence of Clr Bennett overseas) wrote the following terse and impassioned plea to Clr Hall:

> This persistent persecution of Rhonda over the car accident must now cease.
>
> She has requested my intervention and I must now act to warn you that if the subject is raised by you once again with her in any direct or indirect form I will arrange for the matter to be handled as a case of harassment. I do not know my powers but am willing to find out by taking it to the highest level I have to.
>
> I and I am sure other Councillors are not willing to stand back and by non intervention condone this behaviour. You are involving us in your actions. You may think you are following a legitimate purpose, but from where I stand it is over the limit.
>
> I have stood by and awaited the matter to cool down, but you will not let it go. I can only believe that you are endeavouring to drive her into a nervous breakdown, and this is the worst type of harassment.
>
> I have personally viewed the files in detail and find nothing out of order. You well know that, despite your innuendo, Rhonda left Sydney on the night of the accident and arrived in Perth the next day. Your attempt to make something of the differing dates is unbelievably petty.
>
> I have advised Rhonda not to let the files leave Council's possession in case they get lost.
>
> I have advised her not to answer any question raised in any of your memoranda, as any answer will lead to more questions on a matter she wants to get out of her mind. She is entitled to go on vacation without this hanging over her.
>
> I do not want to discuss this with you but can only suggest it is treated as closed permanently by the three of us.

The General Manager told us that she had not actively sought out Clr Anderson's assistance.

Clr Hall sent copies of the correspondence on 14 December 1999 to the Advocate. The paper printed a story on 23 December – see section 3.28 of this report.

On 6 January 2000, maintaining that there was still another Council file on the matter to which he had not been given access, Clr Hall put in a freedom of information application. He really got no more than he had already got.

Prior to this, on Boxing Day, 26 December 1999, he had been interviewed on radio over his allegations about the General Manager's alleged conflict of interest in the matter. This was reported in the Advocate of 6 January 2000.

On 13 December 1999 Mr Dunn, Clr Hall's legal adviser wrote a letter to Department of Local Government raising a number of concerns about the General Manager, on behalf of Clr Hall as his client. These concerns extended to the accident and insurance claim. In a lengthy dissertation Mr Dunn raised some six questions which he saw as arising out of the correspondence he copied to the Department. The questions asked such things as whether the insurance company was aware of the relationship between Ms Bignell and Mr Edmunds; and "how was it that two Council employees also came to be involved, one as the driver of Mr Edmund's vehicle and the other as a "witness" mentioned on the insurance claim form". Just what putting those words in quotes was meant to suggest one can only speculate – one inference is that the person so named was not in fact a witness, an extraordinary and far reaching thing to suggest. The witness referred to was Ms Nicole Williamson, the General Manager's Personal Assistant.

We further find the whole pursuit of these issues by the Mayor, Clr Hall, to be grossly improper. We do not seek to suggest that, if there were indeed evidence establishing a prima facie case that warranted further examination, rather than mere speculation and a witch-hunt, it may not have been proper to make reasonable inquiries and to draw the matter to the attention of the relevant authorities in the proper way – but the evidence before us shows that this was far from the case.

The harassment of Ms Bignell on the matter was quite calculated to have an immensely upsetting effect on her, in all the circumstances of the tragic death of her stepson, and the evidence shows that Clr Hall was well aware that it was having that effect. For him to have pursued the matter in the way that he did is, we consider, absolutely abhorrent and to be resoundingly condemned.

In our interview with Clr Malicki she told us about her personal observations of the impact that Clr Hall's pursuit of the General Manager over this issue was having on Ms Bignell:

> Clr Malicki: It was just like putting a knife in this woman and twisting it. It was an horrific situation and as I've said here I've worried about telling you this because it's very feminine and Rhonda is not a weak woman but she was at a school function, I'm a casual teacher and she happened to come to a function at that particular school, and it was either on that day, or the day after, Tony had started the harassment on this particular accident, and she actually broke down and cried when we were standing around in the courtyard having a cup of tea. So, I took her into a room and sat her down and talked

to her, but it was over this. Now, I've never seen her cry before or since, but he'd upset her to that point.

Mr Bulford: Yes?

Clr Malicki: As I said she's a strong woman.

Mr Bulford: Yes?

Clr Malicki: She hasn't cried, even the day she was telling us about her stepson's death and so on, she didn't cry, you know, she's very strong, she's not a crier, where I am.

Mr Mazur summed up the view of he and his staff on the matter at the close of our interview with him:

> One couldn't help but feeling that we were not just under scrutiny but the thought of that we were actually lying or doing something illegal or something underhanded which basically makes it very - very awkward because it just means every time you go to answer something you kind of feel - you don't feel comfortable. You feel that you're always in the breech, that somebody is just sitting there looking over your shoulder all the time watching for every single mistake that you make. Now, in this particular case we didn't make any mistakes but I suspect that somewhere down the line we may have, somewhere else and it just makes it so very, very stressful when you take all that into account.

4.7.1 Clarification as to Clr Hall's allegations

During our investigation we sought to clarify just what it was that was being alleged in relation to the General Manager and the insurance claim arising out of her car accident.

Clr Hall's legal adviser wrote to the Department on 13 March 2000 "to make you aware of certain serious matters that have just come to the writer's attention" concerning the insurance claim. It was put that the claim form was "*manufactured and contrived*" [his emphasis] and he made reference to various advices as to the contents of the form received from the insurer. He particularly noted:

> 6. The Insurer advises that if the relationship of the parties had been disclosed on the Council Form (the one processed) then the claim would have been much more closely scrutinised as to the alleged circumstances and statement of liability to the third party.

In our interview with Clr Hall it was put to us by his legal adviser that we should look at a statutory declaration he had personally sworn and lodged with an investigating agency with whom a complaint was also lodged about the General Manager's involvement in the affair.

The statutory declaration makes some extraordinary and potentially, if true, serious allegations not only against Ms Bignell but also against members of Council's staff who were players in the events of 19 July 1999 and the ensuing insurance claim. During our interview we asked again and again where the evidence was to support such allegations. None was provided to us. The thesis put to us was that we as Departmental Representatives in this Investigation should, simply on the basis of the

startling and unsubstantiated allegations, go off on a fishing expedition. We do not agree. If materials and so on are put before us which establish that there is a prima facie case or a serious question to be examined, then of course we will look at it further as it is our duty and responsibility as investigators to do.

The whole case put to us entailed no more that a series of allegations and innuendos or implications sought to be drawn, largely by jumping to conclusions on the basis of at most circumstantial evidence. In fact many of the allegations were not clear. As we have said, innuendos were left hanging. Again and again we asked if something or other was being alleged, only to find the allegation was backed away from and in one breath denying that there was any allegation of that sort, yet in the next breath going on and continuing the innuendo.

These are some of the issues we asked be clarified:

> Mr Bulford: Are you suggesting that the insurance company has been defrauded in this claim are you?
>
> Mr Dunn: We're not putting that of course because we can't say that and it may be very wrong for us to say this.
>
> Mr Bulford: Well, it would be outside the terms of reference of this investigation surely to examine that issue?
>
> Mr Dunn: Well, the terms of reference - our original letter of complaint raised concerns about this claim, raised concerns about the documentation of this claim, the lack of disclosure to the insurance company.

And again:

> Mr Dunn: - - - and this unusual accident occurred, Mr Bulford, on the basis that there was a member of staff driving the husband's vehicle - who we understand he may have been in the vehicle behind - and there was a - - -
>
> Clr Hall: A witness.
>
> Mr Dunn: - - - a witness, Ms Williamson, presumably travelling with the General Manager in her car. …

And again:

> Mr Dunn: It is my view - it is my view - no, no, in fact I don't believe the person that gave me that information knew that fact through. What I do put to you though, Mr Bulford, is that you will need to look closely at the likelihood and occurrence of an accident of that sort. All I have said and what I have said in the statutory - - -
>
> Mr Bulford: Are you suggesting that the accident was contrived?
>
> …
>
> Mr Dunn: …I'll tell you what I'm suggesting and let me make this clear to you that this was suggested in the statutory declaration that has been provided to the other authority and is being provided by them to you. Are we clear on that point?

Mr Bulford: M'mm, go on.

Mr Dunn: On the basis of that I have said in my statutory declaration, Mr Bulford, that it is my experience that it is more likely an accident of that sort occurs by the vehicle behind running into the vehicle in front which stops suddenly and unexpected - - -

Mr Bulford: So, are you suggesting that this accident was deliberately created?

Mr Dunn: I'm - no, I'm certainly not. I'm suggesting that the accident happened. What I'm saying to you, Mr Bulford, is it is very important through my statutory declaration for you to consider who hit who. And you see it has a big difference on whose insurance policy a claim like that would be made. In my view, Mr Bulford, through the statutory declaration to the other authority, thus giving me the protection that I would require to make those sorts of statements to you, it is my view that an explanation as to why all the strange businesses went on about forms, lack of disclosures and so forth.

Mr Bulford: Are you suggesting that the person who caused the accident was the driver of the car behind the General Manager's one?

Mr Dunn: No, I think - I think it was probably - well, the law Mr Bulford is very tough on the person behind. If you ask me what I thought happened I'll tell you what I think happened. …

And again:

Mr Bulford: …what is the evidence that you provide to back up those beliefs?

Mr Dunn: …the insurance policy form shows that those officers were witnesses and one was the driver of the other vehicle. So, what they're saying is this - - -

Clr Hall: Without disclosing they were council officers.

Mr Bulford: …there's an awful lot of jumping to conclusions here isn't there?

Mr Dunn: Of course, Mr Bulford, and one would never want to do that because - and that's funnily enough why we've asked for an investigation. …

And again:

Mr Bulford: …The natural implication from that is to suggest that the accident did not occur in the way that…is described in the accident claim form.

…In which case you are suggesting that there has been a fraud on the insurance company.

Mr Dunn: No, what I'm simply saying is that there are matters that the insurance company - if it had had a proper disclosure made to it - would have investigated more thoroughly than what it did. And what I'm saying is this. In a situation like that an insurance company where they know that the two, the driver and the owner are related would have wished to thoroughly investigate. Not just accept a piece of paper coming over the desk. …

And once more:

Mr Bulford: Are you suggesting that those officers have fabricated their evidence?

Mr Dunn: No, quite the contrary. I think those officers - -

Mr Bulford: Are you suggesting that any other officers have tampered with council's file?

Mr Dunn: I'm not suggesting anything but all I can put to you is the facts, Mr Bulford. The facts are these: the documents aren't on the council's file. The documents appear to be on the insurance company file and indeed without even looking at the insurance company file, one can see without even being some sort of amateur detective or anything like that, that there are significant differences between the handwriting of whoever filled out this page and that on that page. …

As we came to the conclusion of this lengthy part of our interview, Clr Hall intervened:

Clr Hall: Could I just add - I only want to add one matter.

Mr Bulford: Please do, Councillor.

Clr Hall: Question. Was any incentive given to Nicole Williamson, Ian Canham or Michael Drysdale in terms of Williamson and Canham leaving and resigning and Drysdale who receives grace and favour accommodation from the Council in the house in Stanhope Street owned by the Council? Was his rent reduced in some way?

Mr Dunn: Councillor Hall, I - I - - -

Clr Hall: Well, I put these inducements - - -

Mr Dunn: Councillor Hall, I counsel you - we are here dealing with facts. Mr Bulford is - you can have any concerns - - -

Clr Hall: I am asking a question.

Mr Dunn: Councillor Hall, unless you're prepared to make an allegation that is - - -

Mr Bulford: I need to have some evidence. I need to have some evidence, I'm sorry. I cannot - - -

Mr Dunn: We're not putting - Mr Bulford, we're not here to have a witch hunt, we're not here to make comments about other council staff officers.

We asked Ms Bignell about the involvement of Ms Williamson and Mr Drysdale in the accident:

I rang David Dobbin and I have to say I was very upset when I rang him, just having to tell somebody is when it really sort of hits you. So I rang him and said Daniel had been in a very serious accident and I was going to have to go to Perth and it didn't look very good. David just said, "Yes, you go, take whatever time you like, but don't drive. You get my Mike Drysdale to drive you there because you're not to drive." I said, "Nicole's here at the moment too, she wants to help. We're going to have two cars, maybe she could come and drive the other car because I don't know whether I can drive or not," because I had the shakes and everything at that stage. So he said, "Yes you go, take whoever you need, take Nicole and Mike."

4.8 Allegations that the General Manager was somehow deliberately responsible for what he saw as inadequate secretarial assistance to himself

While this is not an issue that was formally particularised as a complaint against the General Manager that Clr Hall sought to have investigated pursuant to paragraph (2) of our Terms of Reference, it has nonetheless been a recurrent theme of Clr Hall and one that moreover he did bring up on several occasions during our interview with him. Numerous statements attributed to Clr Hall have got into the papers to this effect. Not the least of these is the Daily Telegraph story of 25 October 1999.

Much of the evidence examined by us to assess this complaint against the General Manager is actually considered at section 3.18 of this report. The compelling and probative evidence shows unequivocally that it was Clr Hall's fault and responsibility that he could not get the secretarial assistance he wanted.

To suggest that somehow the General Manager engineered this situation, just to get at him, is both absurd, unsubstantiated and unwarranted.

We note that one of the issues or allegations published in the Daily Telegraph article of 25 October 1999 was that Clr Hall had been provided with inadequate personal assistants. The suggestion or implication was that the General Manager was responsible for this. See similarly the press report of 19 October 1999 noted elsewhere in this report.

In our interview with Clr Hall we asked him about the Daily Telegraph article and what he had based his claim on:

> Clr Hall: The personal assistant that had been there with the previous Mayor, and who had only been there a short time, I found to - not to be able - not supportive of me and the role of Mayor and - - -
>
> Mr Bulford: How do you mean not supportive?
>
> Clr Hall: Well I just - I just found that she would not - - -
>
> Mr Bulford: Was she refusing to type correspondence?
>
> Clr Hall: Yes…I had official work bans on me. To not help me with correspondence.
>
> Mr Bulford: That caused you not to have secretarial assistance, is that what you're saying?
>
> Clr Hall: No. I needed secretarial assistance but I did not feel I was getting adequate secretarial assistance.
>
> Mr Bulford: I'm getting confused now, Councillor. You said that you weren't getting your memos typed because of the MEU work ban?
>
> Clr Hall: Yes.
>
> Mr Bulford: Is that correct or are you saying you did get secretarial assistance?
>
> Clr Hall: I was given limited secretarial assistance.

Mr Bulford: Can you please amplify as to what you mean by "limited"?

Clr Hall: Well, I found a number of invitations that - there particularly was one instance [which] had been put aside and not given to me, so I felt that was secretarial assistance not given to me.

Mr Bulford: Have you got any reason to believe that the putting aside was deliberate?

Clr Hall: Well I missed the - I missed the opportunity to respond to that invitation.

Mr Bulford: No, I'm asking you, do you consider that that putting aside was a deliberate - - -

Clr Hall: I took that view at the time.

Mr Bulford: Why did you take that view?

Clr Hall: Well because I particularly wanted to be at that function and it hadn't been brought to my notice.

Mr Bulford: Do you now - you say you took that view at the time?

Clr Hall: Yes.

Mr Bulford: As a result of information or inquiries I presume - - -?

Clr Hall: And let me tell you I didn't - I had no idea - I didn't - - -

Mr Bulford: Are you suggesting that you've changed that view, have you?

Clr Hall: Well on the basis that I had an unofficial work ban on me which I didn't come to appreciate until around about 7 or 8 October. So up until then - - -

Mr Bulford: What do you mean "unofficial work ban"?

Clr Hall: Well - - -

Mr Bulford: Are you suggesting there was an unofficial work ban before 7 October, was there?

Clr Hall: I'm sorry, it started around about 7 October, so I'm just going back in time. 28 September I did my own correspondence, my own Mayoral minutes et cetera, and then on 5 October was the following meeting.

Mr Bulford: But let me just ask you about the Mayoral minute. Are you suggesting that you had to go to the Pymble Typing Service because you could not get anybody to type it or did you simply go to the Pymble Typing Service for reasons of confidentiality?

Clr Hall: Confidentiality.

Mr Bulford: Yes?

Clr Hall: But all I'm saying to you is that from 5 October, in hindsight there was certainly a ban put on my secretarial opportunities.

Mr Bulford: From 5 October?

Clr Hall: From around about 5 or 6 October.

Mr Bulford: Why 5 October?

Clr Hall: Well because there was a concerted effort on 1 October from the MEU delegate withdrawing its person power from the workforce. There was a threat given to me on 1 October.

Mr Bulford: Well just pause there. Let me see if I know about that. This I - you're looking at a document, Councillor, are you?

Clr Hall: A memo, it was given to me by a delegate, Mr Woodbury, MEU delegate.

Mr Bulford: Headed, "Subject Mayoral minute dated 30 September 1999", is that right?

Clr Hall: That's it, yes.

Mr Bulford: One page and two lines, signed by K. Woodbury?

Clr Hall: Yes.

Mr Bulford: Okay. Now, where does it say there that there's some sort of unofficial ban?

Clr Hall: Well it was the threat at the bottom of the page. On the first page.

As can be seen from the above questions and answers, we got very few straight answers to our questions. Perhaps the most that can be gleaned from this is that Clr Hall was rationalising in his own mind or persuading himself that the problems he was having with secretarial assistance were related to or arose out of the threats of work bans, threats that only manifested in actuality in very limited terms, instead of an acceptance that it was his conduct towards the secretaries that was the problem.

On the other hand, he did later agree with us that what he said about the impact of MEU work bans did not affect the temporary secretaries he had. This therefore accounts for most of the time. Yet, in the next breath, he sought to somehow suggest that Ms Logan was behind an apparent campaign by the agencies who provided the temps:

> On the other hand, what instructions were they given to assist the Minister - the Mayor by the Human Relations Manager who appointed them? I saw a letter from Gulbin's employer, that's the agency, to say, "He's a difficult person to handle. Watch it." Or words to that effect. Now you'd have to source that from Mrs Carol Logan as to the employment conditions or agency conditions under which these people were - accepted the job as PA to the Mayor.

Our questioning of Clr Hall continued:

Mr Bulford: Why would they have made those sort of statements to you, Councillor? Are you suggesting that they marched in and from the very first moment when they arrived said, "Now, see here, I've been dealing with difficult people", or - I mean what caused them to make such an unusual statement (indistinct)

Clr Hall: Because Mrs Gulbin's employer or agency had told her that she was to be dealing with a difficult person.

Mr Bulford: How would they know that, Councillor? Because I put it to you - - -

Clr Hall: I've got no idea, sir.

Mr Bulford: That the employment agency who provided Margaret Cameron is a different employment agency who provided Carol Gulbin.

Clr Hall: I'd have no idea. I thought they came from both the same agency.

Mr Bulford: No, they didn't. That's not my information anyway.

Clr Hall: Well I would implore you, sir, to talk - - -

Mr Bulford: I see, you're suggesting that Carol Gulbin, the second temporary, arrived with the pre-conceived notion?

Clr Hall: Yes.

Mr Bulford: That you were difficult?

Clr Hall: Yes. And I will give you evidence of - - -

Mr Bulford: And you say you got no co-operation from her?

Clr Hall: Very little co-operation. And I will try to give you evidence - - -

Mr Bulford: But you also concede that both the temporary secretaries were outside the MEU sphere of influence?

Clr Hall: They were only temporary employees. And they needed at least three to five days to understand the very complex word and IBM system and access, and they could not get into the computer for the first two days.

Mr Bulford: Why was that?

A Clr Hall: Because they had no skills and had no password.

Mr Bulford: Given the complexity of the system, would you not admit that it's conceivable and quite reasonable that it would take them a couple of days to come up to speed?

Clr Hall: Given that - and that's quite correct, and I really didn't have the time to accept their training as part of the job when they were agency people, that I would have expected the General Manager to have given the Mayor a person who had a full understanding of not only the system - - -

We shall now deal more specifically with the question of shorthand skills. Clr Hall has apparently demanded that he be provided with a secretary or assistant with shorthand skills. The issue is as to whether the General Manager was supposedly responsible for people being provided without such skills.

We asked Ms Sandra Santens, who had worked for Clr Hall as the Councillor's secretary for some years, whether he in fact needed and used shorthand skills. She told us that she had such skills and used them all the time with Clr Hall, at least until a time shortly before the elections in 1999 when the General Manager instructed her not to take shorthand, with a view apparently to minimising the exposure of staff to Clr Hall in the face of escalating inappropriate behaviour from him towards staff.

As to Clr Hall's temporary secretaries since he became Mayor, Ms Santens told us:

Ms Santens:…I don't think most of them had shorthand, from my knowledge, because it was an issue that I brought up when we were having all these problems and I said, "Look, I think, you know, Tony's asking for all of these qualifications but at the end of the day he really just wants" - Tony seems to work best dictating. He likes to have a secretary in there and he rattles off and you've got to be able to write 10 to the dozen, but that's how he works best.

Mr Bulford: Did Carol Logan ever discuss with you the sorts of qualities that might be needed in a person to work with the Mayor?

Ms Santens: No, she wouldn't discuss anything with me.

Mr Bulford: Why do you say that?

Ms Santens: Because I'm just a secretary there.

Mr Bulford: But then you'd been the person who'd been working with him for years and therefore surely it's possible that she would think, "Oh, well, Sandra will be able to tell us as to what Councillor Hall really needs versus what Councillor Hall thinks he needs"?

Ms Santens: Well I would assume she would speak to the Mayor. You know, I don't know the process at all that - certainly I was not consulted, and I wouldn't have expected to be.

Ms Logan's evidence to us on the question of the difficulties in getting secretaries for the Mayor, and in particular someone with shorthand skills, is set out at section 3.18 of this report. Ms Logan also told us:

Ms Logan: My primary concern was to have somebody there to support him, who had good skills, organisation skills, personal assistant skills, who could use dictaphone etc.

…I had no option. I either put a skilled personal assistant in there without shorthand, or nobody was in that position.

…I consistently asked for that skill. That skill was not available in the marketplace.

Ms Logan said that given her knowledge as to what the Mayor said he required in the way of shorthand skills in a secretary, she had asked Mrs Piri Stephens, who had been one of the full time staff standing in as PA to the Mayor at one time, about what demands in fact were made for the taking of shorthand. Ms Logan told us that her advice from Mrs Stephens was that there was in practice no demand made for shorthand taking.

This advice to us shows, when compared with that from Ms Santens, there appears to have been some misunderstanding of or confusion about the true situation on the part of the relevant persons at Council. Nonetheless, we accept Ms Logan's evidence as to the practical difficulties she was having in getting anyone with short hand skills in any event.

The case of the hiring of Ms Wendy McKenzie as secretary to the Mayor is a special one. Apart from the secretary Clr Hall inherited when he assumed the Mayoralty

(Ms Ann Gabay), she was the only person out of the parade of persons provided by the General Manager to work for the Mayor who was working for the Mayor as a full time employee. She lasted three days. The circumstances of her employment by Clr Hall himself are set out at section 3.18 of this report.

We have noted at section 3.18 of this report the evidence given to us by Ms Ann Gabay as to the Mayor being provided with no less than two dictaphones, both of which he refused to use.

The probative and compelling evidence in our Investigation manifestly does not support the hypothesis and complaint of Clr Hall.

4.9 Allegations that the General Manager failed to report certain matters to Council

It is our understanding that it was alleged by Clr Hall that the General Manager should have made it known to Clr Hall when he became Mayor, or at least when she did a report on certain matters relating to a company called Garpac and this was presented to the Councillors on 28 September 1999, that she had previously commissioned and obtained a report from Price Waterhouse Coopers on certain matters. As will be related below, the Councillors decided to agree with Clr Hall's recommendations and appoint the law firm Blake Dawson Waldron to undertake a review of matters relating to Garpac, and the concern appears to have been that money and effort were being wasted in doubling up what had already been looked at.

The background is that Council's garbage and waste collection service is contracted out to Collex. The trucks are however still owned and provided by Council. Council purchased certain compaction units to be installed on the trucks. These were purchased from a company called Garpac. The units were going to have to cope with very large weights or loads, so, apparently, unlike those provided by the supplier to many other Councils, they were designed to be side loading. Council encountered a number of problems with the operation of the compaction units, with most of the problems occurring in the hydraulics. They kept breaking down. Garpac were called in to rectify under their warranty for the units. The problem kept occurring, and an issue is whether or not the units were faulty in being inadequately designed or whether it was the way they were being used that was causing the problem. Council became increasingly dissatisfied with the matter. But through all this, so we have been advised by the General Manager, Council and its contractor managed to provide a largely undisrupted service to the ratepayers, with only minimal complaints being received. Legal proceedings were threatened. In the midst of all this Garpac got into financial difficulties and a liquidator was appointed.

Now, the events occurring before the most recent event had all happened in the life of the previous Council. The General Manager had become concerned as to how the matter was being handled and managed. She told us that she now believes that basically she was being misled by her managers as to whether or not the problem

was under control and as to how serious it was. She put together an internal team to review and conduct an internal audit of the matter. The General Manager told us:

> So I got Dave Lethbridge as part of the internal audit role, with a couple of Darren Condon's finance people, which we now call the Process Review Team - Management Process Review Team - to do a review of Waste Services and tell me how that specialist internal audit group thought they were managing and their paperwork and how do they handle complaints, and all that sort of stuff. They came back with a whole lot of recommendations and they found a number of holes that they believed should have been improved and so on.

The report was presented to the relevant managers. There was apparently some resistance to and challenging of its findings and recommendations. The General Manager decided to call in Price Waterhouse Coopers ("PWC") to do an internal review of various things including the way in which the waste collection and garbage service was managed from within Council. In other words, *the report was one dealing with internal management or organisational matters, that is to say operational matters.*

The PWC report was initially issued in draft form, with the final version issued in a letter dated 2 July 1999 which is in fact formally addressed to Clr Dobbin, who was Mayor at the time, rather than the General Manager. The report was critical. It contained a number of findings and suggestions in relation to staffing matters and for organisational change. The General Manager told us that because of award conditions and such like these had to be carefully negotiated and handled from a staff management and industrial relations aspect. In fact, she told us that the issues are still being worked through the system.

Despite the operational aspects of the issues and report, the General Manager decided that she needed to inform the Council in an appropriate way in order to ensure that these staff management and industrial relations problems were managed in such a way that they did not get out of hand, as well as to report on her own performance and handling of the matter. At the same time she was getting advice from Council's industrial relations lawyers on how she might address some of the staffing and organisational change recommendations, as well as to how the report findings and so on might be presented to the staff for their comment and review, to meet such requirements as natural justice rules, given the critical nature of the findings against some staff. We also understand in this regard that a question arose also as to whether or not some of the findings of the PWC report were adequately underpinned by appropriate evidence.

So the General Manager decided to organise a meeting between the Mayor and Deputy Mayor of the day and Mr Dennis Banicevic of PWC, who had handled the review within PWC. The Deputy Mayor at this time was Clr Johanne Tobin. Mr Banicevic told us that there were actually two meetings held, only one of which was attended by Clr Tobin. One of the meetings took place on 29 June 1999. It was at about this time that rumours started to circulate that Garpac were closing their doors. The General Manager caused her staff to make enquiries and she also called in yet another external adviser, this time Abbott Tout, solicitors, to advise as to how this issue should be addressed.

At the meeting with Mr Banicevic, one of the issues discussed was as to whether and how all the matters should in turn be reported to the full Council. The General Manager explained that it took a number of weeks for the true situation as to whether or not Garpac were going under and closing their doors to be established, with Abbott Tout engaged in quite a lot of work on the matter in that time. The General Manager said to us:

> The first we knew about what Garpac was really doing was a notice in the paper on 21 September and John Bartrop from Abbott Tout faxed it to me and I rang him and it was a thing that Garpac had been put in the hands of a liquidator. That was the first indication of anything concrete because Garpac weren't telling us anything. … So, as a result of that I did all the work that needed to be done and I reported it to the Council on 28 September - so 7 days.

We called Mr Banicevic as a witness in our Investigation. Mr Banicevic's evidence indicates that there was agreement amongst all those present that nothing should go to the full Council at this stage on the full aspects of the PWC report. This is also corroborated by a letter from PWC to the General Manager dated 29 October 1999. The relevant part of the letter says:

> It was generally agreed at this meeting that the matters were being appropriately handled by yourself and that they do not need to be reported to Council at that stage. The draft report contains sensitive issues relating to the quality of Council's management in the Waste Services area and further work was requisitioned at a later date to provide more details about these issues. This work has not been finalised to date.

Mr Banicevic agreed that he had sent it to the General Manager and that what was in it was correct. Mr Banicevic added:

> I was a part of a discussion to discuss management issues and issues of fact in this report. That discussion then moved on to what the Council should do about it and in that, I guess, informal discussion they asked me for some views and I gave some views…

The evidence is that immediately on the breaking of the news about Garpac on 21 September, she gave a confidential personal briefing to Clr Hall about the liquidation. She showed him the advice and report from Abbott Tout. This took place, so the General Manager said, either that or the next day, in her office.

Clr Hall's evidence to us in our interview with him corroborated this:

> … she did show me considerable files of face to face interviews undertaken by Price Waterhouse, Mr Banicevic, in June and July - March, June and July, that are - and she disclosed those to me on the 21st of October and I handed them back to her. But they are - they are very, very detailed and they do go to management issues of some degree of concern in respect of the waste services.

We have seen the written report that Ms Bignell presented to the Council on 28 September 1999. This was a confidential report, and we do not propose accordingly to disclose all its contents. The report was, we will say, limited to the financial implications of the Garpac liquidation.

It is fair to say that no one anticipated at that time that it would take so long for the Garpac situation to become clear. Therefore, no one seemed to think through and

consider the implications of the forthcoming elections and as to what might need to be reported to a new Council, especially one that might be composed of a very large number of new faces all of whom would understand or know very little of what was going on.

We agree fully on this score with Clr Bennett when she told us about how the new Councillors felt about the news. They were told Council was facing being left with a very large liability it was not going to be able to recoup because of Garpac being in liquidation. They really should have been told a little more of the background. We recognise that, as advised to us by the General Manager, as at 28 September 1999 the PWC report and the issues it had raised had not been fully worked through, so the story was even then not complete. But we nonetheless feel that there could and should have been some reporting of the matters and where they had got to the Councillors, so that they were not left wondering what the story they were told was about. This could have been handled in such a way that confidentiality and so on were properly managed.

It was not fair and proper, we think, to expect the new Councillors to come to grips with the matter just in one quick blast, as it were, in the first week of being a councillor at Council. It is quite understandable, therefore, that the Councillors were prepared to accept, when examining what to do about the allegations against the General Manager on 2 November 1999, that there was a prima facie case or issue to be examined further. It is quite understandable they believed that they were being presented with a cover-up. This very issue was one which presented to the Councillors corroborative evidence, in their minds, as to what Clr Hall was telling them about the General Manager and her staff not co-operating and so on with the new Council.

Having carefully considered all the evidence before us on this matter we find that while there may be room for debate as to how the matter of the reporting of the findings of the PWC report to Council – given the complexities involved - might better have been handled, the General Manager did report the matter to the Mayor and Deputy Mayor of the day, acting in reliance on the outcome of the meeting with Council's industrial relations lawyers and PWC. In the circumstances we are not prepared to make any adverse findings against the General Manager on this aspect.

Another facet of Clr Hall's complaints against the General Manager is that she allegedly misled him about the existence of the report from PWC, which he learned about later, and was very angry about. It seems to us, from the evidence before us, that this supposed misleading really arose due to a misunderstanding in a conversation between the General Manager and the Mayor.

The General Manager told us about the closed session on 28 September, when she was reporting on the financial side of the Garpac liquidation:

> So the Council resolved that I bring back legal advisings and the consultants reports on the Garpac to the next meeting. So that's what I did because I took it to mean that it was about what we were talking about on that night. The Mayor said, "Does the previous Mayor know about this." I said we had informed him that we had got unofficial word that it looked as though Garpac might be closing its doors. … He said that at the meeting. So when the meeting closed I said to him afterwards, and I specifically remember it, and

> Darren Condon was there. I said, "When you asked me if there was a report I'd given to the Mayor or had I told the previous Mayor about it, I took that to mean the closure of Garpac." He said, "That's all right, that's all right, that's fine."

Despite this assurance, however, Clr Hall continued to pursue the matter.

We note that in addition to having raised this issue as a complaint about the General Manager falling within paragraph (2) of our Terms of Reference, Clr Hall had in fact caused this issue already to be examined once before as part of the process undertaken in November 1999 when the General Manager was confronted with allegations over her lack of performance. The findings of that process, largely undertaken by Clr Bennett alone, were that there was no substance to the allegations and that they amounted to a witch-hunt. See section 6.18.4 of this report. Yet Clr Hall has sought to parade them once more before us and to have them re-examined as part of our Investigation.

The General Manager told us that she had said the following to Clr Bennett when she met with her on 10 November as part of that process:

> "The Price Waterhouse Coopers review was on the performance of the staff in the management of waste services and there was an industrial process in place which is taking a while, as it has been difficult to substantiate some of the statements made by Price Waterhouse Coopers about the staff's performance. The industrial process is being followed according to the requirements under natural justice and I'd also say according to the legal advice I was getting from our Industrial lawyer." The Deputy Mayor continued this questioning, "Well why didn't the Price Waterhouse Review be discussed with the Council?" The General Manager and Mr McArdle continued to reinforce that it included major staff management issues and also still wasn't complete and also Price Waterhouse Coopers statements couldn't be substantiated with facts.

As noted, the Bennett sub-committee accepted that explanation.

PART 5

5. CLR HALL'S RELATIONS WITH HIS FELLOW COUNCILLORS

Paragraph (3) of the Terms of Reference of this Investigation required us to investigate and report on, amongst other things, the Mayor, Clr Hall's relationship with his fellow Councillors.

5.1 General

At the last Council elections in September 1999 the electorate chose to vote into office a large number of new Councillors. The Council, which is made up of 10 Councillors, and which assumed office after the election, comprised only two re-elected Councillors, namely Clrs Hall and the independent, Clr Elaine Malicki. One Councillor, Clr Ted Roach, had served a term as a councillor of this Council once before, but on the last but one Council. Council elections occur every four years.

Of the remaining new Councillors there was one other independent, namely Clr Ian Cross. Clr Cross was elected in the same Ward as Clr Roach, who was also an independent, namely Wahroonga Ward (each Ward has two Councillors). The rest were all candidates who had been endorsed by the Trust and other bodies, such as (for the St Ives Ward) the St Ives Progress Association Inc and Friends of Ku-ring-gai Environment Inc. The Trust is supposedly not a political party.

In our interview with Clr Bennett, we asked her about Clr Hall's role in relation to the Trust. She said it was something in relation to which she was "unclear". She said, "The impression I get is that the Trust was formed as an independent body but that Clr Hall, particularly in the early period, had a significant influence on the Trust".

The Council, therefore, comprises seven Trust Councillors and three independents. The key election platform on which the Trust Councillors were elected related to concerns in the community about the NSW Government's policy of urban consolidation, as set out in State Environmental Planning Policy (or "SEPP") number 53 *Metropolitan Residential Development*. The Minister responsible for this SEPP and for planning matters is the Minister for Urban Affairs and Planning and he had expressed dissatisfaction at the lack of progress in this Council, and others, in bringing in necessary policies and planning procedures to implement the SEPP. The previous Council had done some work on the matter, but apparently neither to the satisfaction of the Minister and his Department nor to the majority of the electorate. The Trust and other lobby groups were some of the sections of the community most vocal in this regard.

Clr Hall has frequently sought to make much of the large vote in favour of Trust candidates at the elections. He made this point a number of times to us in the course of this Investigation. He advised that he had received a 60 % vote.

The system of voting provided for in the Local Government Act 1993 at Council elections is not a first past the post system but an optional preferential or proportional one. For Ku-ring-gai Municipal Council, with its system of Wards, with two Councillors being elected for each Ward, the system is therefore the optional preferential one.

It needs to be remembered that the final vote, after distribution of preferences, may not ultimately reflect the initial first choice of the electorate.

This was the case for the voting for Clr Hall and his running mate on his ticket, who was Clr Laura Bennett. According to the results as declared by the Returning Officer at the declaration of the poll on 16 September 1999, Clr Hall was elected with 6,524 first preference votes. The next largest number of first preference votes was for Giselle Perry, with 3,059 votes. After that the candidates received 971, 228, 117 and 115 votes, respectively. The total number of votes was, therefore, 11,014. That means Clr Hall's percentage of first preference votes was 59.23%. This confirms the story about a 60% vote that Clr Hall spoke of to us.

For Clr Bennett, the figure is even more interesting. The lowest primary vote of 115 votes out of the total of 11,014 was in fact that of Clr Bennett. Her percentage of primary votes was a mere 1.04%, yet she was elected as the second Councillor for that Ward, ahead of all the others. We note that her election was as a result of her being second on Clr Hall's ticket, and hence she benefited from his votes, under this system.

If a comparison is made with primary votes cast at previous Council elections it is undoubtedly the case that Clr Hall was able in the 1999 poll to substantially increase his vote over that in the 1995 poll (3,595) and the 1991 poll (2,619).

The point we wish to make is that irrespective of how high the number of votes a Councillor receives to be elected to Council, it provides no licence to do what he pleases as a Councillor or as Mayor. It is no licence to ignore or consider himself above the law and it is no licence to act in an unacceptable way towards the General Manager and her staff or towards fellow Councillors, particularly those not elected as endorsed Trust candidates.

Likewise, when it comes to the Residential Housing Strategy and how the Councillors – or the community - feel the staff, should deal with and determine development applications and planning matters in accordance with existing planning laws, codes and policies. If the new Council had a mandate for a different planning approach the appropriate way for them to proceed was to follow the statutory processes to enact changes to its planning regime more in keeping with the planning philosophies. It would seem that many persons both amongst Councillors and the community fail, in our view, to appreciate this.

If the staff, in particular the planners and those handling development and related applications, merely apply existing laws, schemes and procedures in making the recommendations they do to the elected body, or in making the decisions they make themselves under delegated authority, and in so doing are seen to supposedly thwart or frustrate the wishes of those who would have such laws, schemes or procedures changed, it is quite unfair and out of order to hold them to blame or to criticise, denigrate or otherwise attack them for doing so. They are merely doing their jobs in a professional way, and in accordance with the law.

The Local Government Act 1993 makes it clear that in making any recommendation or providing any advice to Council, staff are not required to follow any direction given to them by Councillors or by Council as to the content of the advice or recommendations. One of the difficulties identified in the joint Independent Commission Against Corruption and Department of Local Government publication *Under Careful Consideration: Key Issues for Local Government* as arising in relation to dealings between Councillors and staff is:

> … when a councillor's wishes, actual or perceived, are translated by staff as commands requiring instant obedience. Council staff can take a mere suggestion by a councillor as conveying a decision and then pursue the matter with a vigour that is excessive. It is very important that councillors recognise their responsibility to be objective when carrying out their civic role. They should not state their opinions to staff when seeking information as it may influence or be perceived as influencing staff.
>
> A prime responsibility of council staff is to help councillors make the best decisions. This cannot happen unless staff believe they can give frank advice without fear of reprisal from a senior manager or councillor who may have an opposing position on a matter. Council staff are there to serve the public and must be allowed to give their professional views if they perceive that the public interest requires it. [page 22]

5.2 Clr Hall's domination of his fellow Councillors

Clr Bennett told us that Clr Hall dominated she and her fellow Councillors, at least in the early stages of his Mayoralty. She explained that prior to the Council elections of September 1999 Clr Hall had played a "very significant" role in the affairs of the Trust. She went on to explain what she meant by this:

> It was not the case that Councillor Hall stated an opinion and that that opinion, therefore, dominated. There was always vigorous discussion of things.
> …
> Councillor Hall was influential because he and a number of people who closely supported him within the Trust had very extensive backgrounds in local government and appeared to lay claim to an expertise that the rest of us lacked, including other members of the Trust.

So far as concerns the situation post the elections she told us:

> Mr Bulford: What about the situation since the election? Let's sort of take that slowly as it has evolved, for obvious reasons. Let's stay in the first 2 to 3 weeks after you were all voted in and let's concentrate on you and Councillor Hall and your fellow Trust members who are Councillors. At that stage Councillor Hall was the only one who had held Council office before, is that correct?

Clr Bennett: That's correct and you can actually state it more strongly than that. With a few exceptions such as Councillor de Vulder he was really the only person who had had much involvement or interest in local politics previously.

Mr Bulford: Yes, so did that result in Councillor Hall seeking to dominate the seven Councillors, seven including himself?

Clr Bennett: Absolutely, there's no doubt about that.

Mr Bulford: Would you say that domination was, at least in the early stages, condoned or acquiesced in by the other six Councillors because of his experience?

Clr Bennett: Well absolutely, but from the perspective of an incoming Councillor there are a number of things that are really quite daunting. Even though I have a lot of experience of working on Committees with lots of nasty typical rules about who speaks when and where, Council procedures are, in fact, very difficult to master and very daunting, particularly if you're someone with no Committee experience, as the rest of the Councillors were. So, there were all sorts of ways in which we were, effectively, reliant in the early period on Councillor Hall's expertise, just in terms of who spoke, what the procedural requirements were, what the opportunities - it doesn't sound much but in practice it's quite a lot.

Clr Bennett then went onto explain how Clr Hall's advice on this issue was accepted by the other Councillors as being truthful and accurate. She said that probably only after the first three weeks there was one exception to this namely, Clr Anderson. She added that:

Councillor Hall was, on many occasions, very helpful and that helpfulness together with his background had that effect on us, yes.

And at another part of our interview, in answer to a question about Clr Hall's role in a meeting of 12 October 1999, attended by Clr Hall, she and the General Manager and two of her senior staff, Clr Bennett told us:

It's always the Mayor who dominates.

Clr Anderson's evidence in reference to Clr Hall was very similar:

He had an extremely strong influence. He was the only fellow who'd been there, he was the only chap who knew the ropes, who knew the procedures, knew the protocol - therefore he was very influential.

Clr Coleman also gave evidence of the influence that Clr Hall, with his previous experience, had on new Councillors. On the other hand Clr Coleman apparently made no attempt to talk to other Councillors, such as Clr Malicki, who had served on Council previously, for any assistance.

Having listened to the tapes of a number of meetings of Council and its Committees, it seems to us that Clr Hall has unreasonably frequently used his position as Chairman of the meetings in question to monopolise and/or dominate debate, at the expense of his fellow Councillors. For example, when the Councillors were examining and debating proposed changes to Council's *Policy for the Payment of Expenses and Provision of Facilities to Councillors* after 11 pm on the night of 19 October 1999, this particularly struck us as being so.

The General Manager also gave us evidence about Clr Hall dominating debates:

> What actually happens is that the Mayor speaks as many times as he likes and nobody else gets much more of a chance than one or two times … he has a habit of dominating …

We have noted this ourselves from listening to tapes of a number of meetings.

Clr Roach, one of the independent Councillors, gave further evidence on this:

> …bear in mind they were all brand new Councillors. He wouldn't get away with it now. They were all brand new Councillors and what would happen, they'd start a conversation, they'd start talking or debating the issue, and then he'd come in and then talk for a whole heap of time, and then they'd continue with what they were doing. But - - -

And at a later stage:

> He was leading the debate by - in a secondary way, if you know - you know. He was the guy that was going to control everything, but he had these people passing the motions and then he would then start commenting and probably talk for 20 minutes, if you added all the bits and pieces up, and there'd be three or four speakers.

Clr Malicki, another independent, gave us the following perspective:

> …there was this sort of patronising, in the old fashioned sense of the word, patronising. I'll never forget the day the election was declared. Tony Hall walked down the street, strutted down the street, with his coat tails flying behind him and about six of the Trust Councillors walking in a line behind him and it was just as if he were a presidential candidate, more than - - -

Clr Hall himself told us in our interview with him:

> … nine Councillors hadn't given her [the Councillors' secretary] any work at that stage. There was very little work because they were trying to grapple with understanding how a Council worked. Seven of them didn't have a clue.

5.3 Clr Hall's indoctrination of his fellow KPT Councillors

Various Councillors gave evidence to us during the course of our interviewing them about Clr Hall's having indoctrinated his fellow Ku-ring-gai Preservation Trust Councillors into believing that the General Manager and her staff could not be trusted, that they would actively seek to undermine and not carry out Council's adopted policies and resolutions, and that the Councillors should stick together and not fraternise with the General Manager and her staff to avoid being suborned by the General Manager and her staff.

We have already noted the evidence of Clr Little that he accepted Clr Hall's word in the early weeks of his Mayoralty that the staff were causing him stress because they were not co-operating (see section 4.4 of this report).

We asked Clr Bennett, the Deputy Mayor, about the matter in our interview with her. She told us that until she took over for the brief period when Clr Hall stood aside and she became Acting Mayor, she "did not have conversations with the General Manager before that time".

In this regard Clr Bennett told us:

> Councillor Hall said it was divide and conquer and that we should deal with the General Manager as a Body.

Later she said:

> Mr Bulford: Rather than moving away from the one on one contact on that score, what sort of statements can you recall the General Manager saying, say in the context of the first Council meeting, as to the willingness of she and her staff to work with the newly elected Councillors? Did she say anything about that at all?
>
> Clr Bennett: I don't recall, to be perfectly honest. At that stage if she had - -
>
> Mr Bulford: Were your ears sort of closed, given that you - - -
>
> Clr Bennett: Absolutely, I was about to add that if she had said anything I would have discounted it.
>
> Mr Bulford: Because of what you believed, based on what Councillor Hall told you?
>
> Clr Bennett: Yes.
>
> Mr Bulford: Had Councillor Hall convinced or attempted to convince all the new Councillors, including yourself, that the staff were corrupt and needed to be put in their place?
>
> Clr Bennett: Certainly he had indicated that they needed to be put in their place. He had not accused all staff of being corrupt, and that would have been extremely implausible. He did, however, suggest that he believed there were areas where there was a strong probability of corruption.

At another part of the interview Clr Bennett told us the following:

> Clr Bennett:: …the Mayor did everything he could to cut the KPT endorsed Councillors off from staff members. We were given constant warnings about the danger of being seduced by the staff. It was made clear that we had to function as a coherent small body if we wanted to get our policies through and the Mayor…
>
> Mr Bulford: You simply went along with that, even though you were the Deputy Mayor?
>
> Clr Bennett: Well I don't know about "went along with it." The Council was, there was a fair amount of antagonism. I don't know that even the most professional of the Council Officers necessarily welcomed a Council committed to an extensive reform agenda. I don't think it is as clear cut as is being made out and I think that things were muddied in the early period because there was a very long history that went back a long way and behaviour was, behaviour had to be understood in the context of that history, that we didn't have that history. All we saw was the behaviour.

Mr Bulford: Yes?

Clr Bennett: The behaviour in itself with no context appeared to support a great deal of what Councillor Hall was saying.

Mr Bulford: Presumably you know now that - - -

Clr Bennett: Also Councillor Hall was really on his best behaviour. He maintained a lot of self control and he was very charming, extremely charming.

In her evidence to us the General Manager denied that Clr Hall had been "charming", in particular at the meetings he had with Directors on 27 September 1999 in the presence of she and Clr Bennett. The General Manager told us that she had complaints from all the Directors later about Clr Hall's behaviour on that occasion.

Clr Bennett also told us that at first she agreed with the views about staff standing in the way of the community that Clr Hall was putting at public meetings leading up to the elections. However, she had not formed her own opinions based on any personal experience of the staff acting in this way, but simply on the basis of what she had thought or observed at meetings she had attended before the election dealing with the then Council's proposed residential strategy, and more importantly on the basis of what Clr Hall and members of the Trust were telling her. She told us:

Clr Bennett: … It was my perception of one particular meeting that I attended in Pymble Town Hall that there was an attempt, effectively, by those representing the Council, although in this case I think it was a consultant rather than staff, an attempt to effectively channel and gag debate, and that was the perception of the audience, a very strong perception.

Mr Bulford: But you did not have any personal observation of a staff member actually doing this? You said it was a consultant?

Clr Bennett: No I didn't, in effect I accepted the analysis that was put to me by Councillor Hall and also by members of the Ku-ring-gai Preservation Trust.

Clr de Vulder gave evidence corroborating that at least in the early weeks Clr Hall did appear to believe or hold views that the staff were standing in the way of the wishes of the electorate, though he added, "I didn't know how seriously to take them".

Clr Anderson also gave evidence to us about his early indoctrination by Clr Hall:

Mr Bulford: Is it correct that one of the messages of the Mayoral Minute and one of the messages put forward by the Trust and, in particular, Councillor Hall, is that the General Manager and her staff at Council were not carrying out the wishes of the people of Ku-ring-gai?

Clr Anderson: Oh yes, I would agree that became quite strong during the first meeting.

Mr Bulford: Was that a view that you adhered to yourself?

Clr Anderson: At that time, yes.

Mr Bulford: On what basis did you form that view?

Clr Anderson: I didn't know the detail. I had never met the General Manager so I didn't know these people and I was influenced very much by Councillor Hall's statements and attitude in this matter.

Mr Bulford: You had no personal feelings?

Clr Anderson: I had never met them at all.

Of the General Manager, Ms Bignell, Clr Anderson said, "I found she is workable with, co-operative and I don't believe she's the Machiavellian type that was originally portrayed to me".

Later in the interview we got the following evidence from Clr Anderson, when talking to him about his first contacts with the General Manager:

Mr Bulford: So there was no question of apparent obstruction or not co-operating with the new Council?

Clr Anderson: She was absolutely 100 per cent open. I've been made boss of companies and I could not have had a better introduction, it was excellent. Unfortunately I don't think any other Councillors adopted the same approach.

Mr Bulford: No, it's been put to me that perhaps overawed, certainly indoctrinated, they are my words, by Councillor Hall they came to their first contacts with Rhonda Bignell with suspicion, stand offishness, prejudged views and tended to see situations which occurred which demonstrated that there was in fact, at least either in Rhonda Bignell or more particularly in some senior staff members, proof of what Councillor Hall was saying?

Clr Anderson: I think because of my introduction which was so open and warm I had a different approach. Councillor Hall was stunned to find that I'd done this. He said, "Oh you've been duchessed, you've been swayed to the other side." I said, "I didn't see it that way."

Mr Bulford: Did he tell you or other Trust Councillors, in your presence, to keep away from the staff, otherwise "You'll be suborned"?

Clr Anderson: He said, "Whatever you do, don't talk to the staff. If you do you'll be duchessed." Duchessed is the in word.

Mr Bulford: That is the word he used?

Clr Anderson: Yes, that is a word he uses all the time. He got to the stage where at some stage I remember expressing to somebody that the only time I've ever been duchessed was when I got a sandwich for lunch with tea. I said as far as being duchessed was concerned it was absurd. I said also I'd been around long enough to tell when I was being conned.

Clr Ian de Vulder was another Councillor who had been elected to Council for the first time in September 1999 as an endorsed Trust candidate. Unlike all his fellows, however, he came to Council with some personal experience of what he perceived as poor handling by staff of matters. He owned a property on the Pacific Highway at Pymble. He learned that the adjoining property, apparently owned by the Council itself, was up for sale and might be developed as units. He felt that the way things had been handled was secretive and that as an adjoining owner he should have been approached and given an opportunity to purchase the property himself. He

lodged an objection, but told us that he received no response for a number of months. He later wrote another letter and told us that this, too, was not replied to for several months. He felt aggrieved at this. He was finally told that the land had been sold to developers for units. He was also told by Council that his correspondence "had been misfiled".

We did ask him whether his neighbours might have had similar problems or concerns:

> Mr Bulford: Were you in contact at this time, or perhaps even a later time, at any stage, with any fellow neighbours who had lodged letters of concern or objection or whatever they might be called with Council?
>
> Clr de Vulder: There was one neighbour who did put in an objection.
>
> Mr Bulford: Had any of those neighbours encountered similar difficulties to you in receiving replies to their correspondence?
>
> Clr de Vulder: I'm not aware of that.
>
> Mr Bulford: So it's quite possible that your problems that you encountered were just an unfortunate isolated incident of correspondence being lost?
>
> Clr de Vulder: Possibly.

Clr de Vulder's experiences on this matter were apparently an influence on his decision to stand for election, though were not the principal reason:

> Mr Bulford: So the principal reason for you standing for Council was the concerns that you had about Council arising from your experience that you've just been telling us about, is that right?
>
> Clr de Vulder: Not so much from what I considered to have been suspect in the dealings but more from the case that I felt what had happened in regard to the building was reducing my winter sunlight from 9 hours to 40 minutes a day. I thought that kind of development should not go ahead and that others should not suffer that if there was to be more medium density in Ku-ring-gai.

Clr de Vulder told us that he was signed up as a member of the Trust and endorsed as one of its candidates only a week before the election. Clr de Vulder also told us later in our interview with him that his dealings with Council over his objection to the neighbouring development application had been in writing only, that he had not met with either the General Manager or the staff over the matter, and had only approached in person the Mayor of the day, Mr Richard Geddes.

We therefore do not take Clr de Vulder's personal experiences as providing any corroboration to the thesis expounded by the Mayor that the staff were standing in the way of the wishes of the electorate, or were being obstructive or whatever. Nonetheless, we consider it likely that Clr Hall's views as a result fell, in Clr de Vulder's case, on fertile ground.

Clr de Vulder also told us about a meeting that he attended, before the elections, of candidates endorsed by the Trust. This was apparently at the Greengate Hotel. He did not recall any of those candidates making statements at that meeting about staff

being obstructionist, or such like. He did say he may have made such a statement, but on another earlier occasion:

> I may have said something in the early days of the Development Application when I felt there was something fishy going on.

Clr de Vulder did advise us that it was really only at the first meeting of Council after the September elections that Clr Hall came out, to his recollection, in public talking about reclaiming the Council from the staff for the community. The following questioning of Clr de Vulder also occurred:

> Mr Bulford: Since you were either an endorsed candidate or actually elected as a Councillor, have you made any such suggestions?
>
> Clr de Vulder: That I was going in to get the staff - no.
>
> Mr Bulford: No, not in that sense. I am asking you had you made any statement to the effect that you felt the staff were standing in the way of the effective implementation of the views of the people of Ku-ring-gai?
>
> Clr de Vulder: I'm unaware if I have, no I don't think so.
>
> Mr Bulford: So to the best of your knowledge and belief this concept of the staff standing in the way of the views and wishes of the people, is that one that comes entirely from Councillor Hall?
>
> Clr de Vulder: M'mm.
>
> Mr Bulford: Is it his idea?
>
> Clr de Vulder: Well certainly he has had that opinion.

Clr de Vulder, on the other hand, denied that Clr Hall had ever, to his knowledge, said to either himself or another Councillor that they should stay away from the General Manager and her staff otherwise they would be corrupted or suborned, or such words. However, in view of the evidence from other Councillors to the contrary, we do not accept Clr de Vulder's evidence as proving any more than his own personal knowledge of such matters, and certainly not as establishing any proposition that Clr Hall never made such statements at all.

We asked Clr Little for his views as to whether Clr Hall had told his fellow Trust Councillors to be wary of and not trust the General Manager and her staff. Clr Little rejected the suggestion that Clr Hall had tried to tell him that the General Manager would corrupt, indoctrinate or even subvert his views.

Clr Coleman, another Councillor whom we understand to be a strong supporter of Clr Hall, even into the latter stages of our Investigation, and despite the moves starting to be taken by other Councillors against him, was equally intent on seeking to deny that Clr Hall had sought to indoctrinate his fellow Trust Councillors:

> Mr Bulford: It's been put to us, Councillor, that in the early days the instructions or request, if I can put it that way, by Councillor Hall to fellow Ku-ring-gai Preservation Trust Councillors was to be extremely wary of the General Manager and her staff, that you might be suborned, is that correct?

Clr Coleman: Maybe you need to explain that a bit more because I don't believe that's the - well, I'd like to know a little bit more what you mean by that.

Mr Bulford: Well I'm using the words that other Councillors have put to us, but Councillor Hall, I understand, told his fellow Councillors to treat the General Manager with great care and not necessarily to believe what she and the staff were telling you in terms of how things worked?

Clr Coleman: It's probably putting it in an extreme position, which I don't think is appropriate.

Mr Bulford: Well how would you describe what he told you?

Clr Coleman: He would have given information to us on processes and I believe that's the sort of processes we've followed while we've been in Council that enable us to look at particular developments or whatever before us, not just to accept someone says "This is the way it will be", but to look at what they've told us, that means the staff, and look at other information as well, rather than being told what to think. I think we're mature enough to say, "Well we accept what you say but we would like to look at other factors and then make up our own minds on the issue". And I think that's a normal, mature procedure to take.

Despite the evidence of Clrs Little and Coleman, we accept rather the evidence of other Councillors, such as that of Clrs Bennett and Anderson and, to some extent, Clr de Vulder, on the question of indoctrination, duchessing or whatever it may be described as.

Clr Roach, one of the independent Councillors from Wahroonga Ward, put the following to us:

Clr Roach: Look, my view is that Tony's got a problem. Tony thinks that there are conspiracies all round the place, and he had that when I was at the previous Council, when I was on there for four years. And Tony takes great delight in being able, when someone's doing something, to pull out the most minor little issue or to go after something that may even be of a - you know, of a small nature which might be - you know, when people are doing things, there are things that go right and things that don't go right, and anyone can nit-pick, you know. We can nit-pick someone walking down the street and identify things that they may do that they shouldn't. Now, when staff are doing things quite often, when I was on the previous Council, he would pull out things which in fact were absolutely correct but twist it around so that it appeared that there was a major problem going on, and then there would then - that was one way he would do things. The other was that he would be talking about either previous Mayors, and he did this on a bus trip that we had around with all the Councillors, inferring that previous Mayors didn't do that right and didn't do something else right, and put up the theory that there was a conspiracy by Council staff and Mayors and other people to do things which were, you know, bordering on corruption or whatever.

Mr Bulford: But from your perception and your own experience of dealing with the General Manager and staff, would you say that there was any substance to the allegation that they were deliberately obstructing and non-cooperative?

Clr Roach: My view is that the staff were acting in a manner which was as productive as they could be. If I was the General Manager I would have had very strict

rules not to allow Tony to go rifling around the files of any person in the office. You know, any member of the Council. I'd have strict demarcation.

And later:

Mr Bulford: Have you seen any evidence yourself of staff being non-cooperative and obstructive?

Clr Roach: Non-cooperative and obstructive, never. I haven't seen any.

Mr Bulford: No. And that includes the General Manager?

Clr Roach: That includes the General Manager, yes.

When listening to the tapes of Council's meetings of 19 October 1999 we came across an example of Clr Hall's views as to the supposed lack of co-operation of the staff ourselves.

Mr Ian Glendinning, Council's Director Environmental & Regulatory Services, also gave evidence to us about the attitude of the Trust Councillors towards staff:

Mr Glendinning: I mean it was like they all came with this huge chip on their shoulder, like - like, that staff were not to be trusted. Don't talk to the staff. It was an environment that was totally foreign to me. It was not a collegian environment. It started with - - -

Mr Bulford: Them and us?

Mr Glendinning: Yes. Absolutely. It was just amazing, you know, and I mean we know our place in the system, we know that they make the policy and we're there to act upon their policy. There was no question about any of that stuff, it was just the way that it came in, and it was just staggering the environment that we were placed - all placed in. And as I say, you know, I've said - they all appeared to come in with this huge chip on their shoulder.

Mr Bulford: Would you say that there are still a number of Councillors who are in that situation?

Mr Glendinning: Yes I - - -

Mr Bulford: Where they haven't thawed or changed their - - -

Mr Glendinning: Yes, I say some of them. But I am encouraged by certain Councillors on an individual basis, by actually, you know, talking to me and questioning certain things and saying, you know, that they now have a much better understanding, and so there are, I'd say, probably four of them in that category, but there's still a number of the others that are still very much suspicious or anti-staff.

Clr Malicki, however, put to us, even as we were interviewing her on 15 February 2000 and our Investigation was advancing, concerns that many Trust Councillors still had not escaped the influences of Clr Hall:

Clr Malicki: Now, this leads to another issue which is fairly big. Trust Councillors were around and not one of them stood up for me, not one of them stood up for the staff.

Mr Bulford: This was in the early days?

Clr Malicki: It still happens now.

Mr Bulford: Does it?

Clr Malicki: They don't stand up for anybody. At yesterday's Task Force meeting not a single person said, until Councillor Bennett, right at the end, took over the chair, not a single one of them said, "She's a Councillor, Mr Mayor, she should be able to speak."

Mr Bulford: Yes?

Clr Malicki: If there was that support then there wouldn't be all the upsets, but there's a lot of, I've got a lot of complaints about the way the Trust Councillors behave as well and I've just listed them. I mean it's no big deal. … They didn't ever investigate Councillor Hall before they elected him and I actually had one of them say to me over the weekend that we were to blame, the people who knew about Councillor Hall for not telling them how bad he was, and I said, "Well for a start he'd poisoned your minds against me, but secondly you weren't listening to anyone. It was in the papers, it was in the papers for years what this man was like and you paid no attention, but blame someone else. So, they came in with an attitude that the staff were corrupt. There's no question that they kept having this attitude. They'd never speak to them, they'd never look at them, they'd never ask them questions and the staff would sort of look at me and say, "These people don't ever ask us a question. If they brought that to us we could answer so easily, but they don't do that." They still by and large don't ask the advice of staff which is a real problem to me. They let the Mayoral Minutes come through. Half the time they didn't have a clue what was going on but they voted for them and they certainly didn't listen to people who were saying, "Hang on, what this is doing is illegal. There are sections in here which are not legal." I, for instance, moved that we defer the Mayoral Minute so that they could get legal advice and, of course, they didn't do that.

Council's Manager in charge of media relations spoke to us about the difficulties that the General Manager and her staff had in managing the public perception that Clr Hall was right and that the staff were in fact unco-operative and obstructive. Ms Leafe had been telling us of the extent to which the General Manager makes statements or gives interviews to the press. She said that this was limited to operational matters, and did not extend to Council policy or such matters, and not to commenting on statements in the press about alleged feuds between the Mayor and herself:

Ms Leafe: … She is rung up by the media - not so much any more, but she was at the beginning all the time. She did not want to comment on it. The comment she wanted to make and that I said on behalf of the General Manager, was that we wish, that the Council wish and Rhonda wishes and the staff wish, to work with the Council in a positive manner.

Mr Bulford: And that's been said to numerous journalists?

Ms Leafe: Yes, that's correct. That was the official stance.

Mr Bulford: Has it been reproduced in those journalists' stories?

Ms Leafe: No. In some - it's hard to think, but in some it has but I know that a lot of the stuff that I have said to the media, where I'm trying to portray a positive

image, is being left out because it's not the interesting story.

Mr Bulford: A lot of the press reports, of course, contain statements attributed to Councillor Hall where he's accusing the staff of obstructing the elected body and in particular this new Council in terms of what they see as their mandate from the electorate?

Ms Leafe: That's correct. And we find that - and I've said this to Rhonda many times, this is a very difficult situation for the staff. One, because we can't comment in the media about - I mean it's just not done. We just can't say "Well the staff says we disagree". We can't do that. What we're trying to maintain our professionalism by being corporate about this.

Mr Bulford: Yes. Which entails making it clear that the staff are there to co-operate?

Ms Leafe: Exactly.

She later added:

> And I can just say that is not true. It is not true. Staff don't have anything to gain by that attitude. … I've worked in local government for a long time, there is no benefit for the staff to act in this manner to the Mayor, that he says. What is the benefit? I don't understand it. It's making our lives miserable.

5.3.1 The fall-out over Clr Little's press statements

At this stage we need to deal with another but related issue that arose whilst our Investigation was under way. We have already noted at section 4.6.1 of this report that an article in the Advocate on 17 February 2000 caused a not inconsiderable reaction amongst staff, and the General Manager had to deal with the impact and complaints it generated. The Advocate reported Clr Little as having made certain statements seemingly critical of staff, that if accepted at face value and as being correctly attributed to him, would establish another example, which on their face appear to be but an aspect of Clr Hall's in our view proven improper indoctrination of his fellow Trust endorsed Councillors as to the alleged lack of co-operation of the General Manager and her staff.

We asked Clr Little about the matter when we interviewed him on 16 March 2000:

Mr Bulford: Okay. I'd like to move on now to the article recently in the Hornsby Advocate of the 17th of February should I say. Are you aware what article I'm referring to?

Clr Little: How could I forget? Yes, I can.

Mr Bulford: Could you tell us something about how it was that you came to be quoted saying what you were quoted as saying?

Clr Little: Yes, okay. Look, I'm aware of the quote so that was a very great irritation to me because Councillor Malicki had actually rang that reporter and had made allegations with regard to the integrity of the residential strategy, and had completely misinterpreted the whole process and instead of ringing myself, as Chairman of that Committee, or ringing the staff and finding out about the situation she went straight to the press. And of course I got the press

coming - ringing me and so stating that the - well, I forget what that first paragraph said but - - -

Mr Bulford: Did they catch you a bit on the hop I suppose?

Clr Little: Yes. Yes.

Mr Bulford: And what questions were put to you by the press?

Clr Little: Well, I think - I think the article covers that reasonably well as to - - -

Mr Bulford: Well, I'm asking you because you can't believe everything that's in the press can you?

Clr Little: No, certainly not given that particular one, but I think they were asking about - that there were these roads that didn't exist.

Mr Bulford: And what did you say about that?

Clr Little: Well, my recollection of that was that there was - I had picked up actually roads in Gordon, for example, which were registered on the cadastral data base which were not roads and it was my misunderstanding at that time and I subsequently corrected that because I was incorrect in that, that the cadastral data base did represent the roads but in fact it doesn't, it represents a gazettal of roads and that's a subtle distinction.

Mr Bulford: So, let me just get this clear. Did you indicate - when you say there was a misunderstanding, did you respond to - are you saying that you responded to questions from the reporter under a misapprehension as to what was the situation?

Clr Little: Well, obviously, at that particular time, yes – that would have been partly the case.

Mr Bulford: So, when the reporter put it to you, as I understand you're saying was put to you, that there were issues over roads that didn't exist, did you agree that they didn't exist or did you disagree?

Clr Little: I said that there were roads in Gordon that I had found didn't exist and I think the point was I said look, it's a minor thing, it's like a typographical error and it's the sort of thing that you'd have to be a local to pick up because you wouldn't - it's, you know - it's such a minor thing really in that regard.

Mr Bulford: All right. What was - - -

Clr Little: And if you've ever seen a road map and if you pick out - out of all the roads in Ku-ring-gai there's this one deviation, you'd have - you'd have to know that area quite intimately to pick that up. I mean the average person certainly wouldn't pick it up.

Mr Bulford: Did you say anything else to the reporter?

Clr Little: Well, I think that was an aspect of it. I was just trying to get off it.

Mr Bulford: Did you comment about staff?

Clr Little: No, I don't recall making comments about staff. I mean, there was - there was that quote which really irritated me where he said the staff had to be removed. What I said was that the data base has to be corrected and the

roads removed by staff and he damn well changed the wording to that to say that the staff should be removed. So I mean it was ridiculous.

Mr Bulford: So you deny that you blamed staff for the mistakes?

Clr Little: Of course.

Mr Bulford: And you deny that you said "One problem we have is most of the staff don't live here. It's been a nightmare for us in terms of being able to communicate with the community"?

Clr Little: I deny that sort of statement, yes. I think that that's completely out - - -

Mr Bulford: Why would a reporter quote you as using the word "nightmare" if you hadn't used that word?

Clr Little: I'm certain I might have used the word "nightmare" but not necessarily in that context. There was a lot of nightmares we had I can tell you.

Mr Bulford: What context would you have used it in in speaking to the reporter?

Clr Little: I'm wondering myself actually as to where that came from. I asked him for a tape of the interview and he didn't have it so I can't comment as to where that came in.

Mr Bulford: Was this interview on a one on one basis or over the telephone?

Clr Little: Over the telephone.

Mr Bulford: Did you – do you deny that you said that the staff aren't good at communicating with the community?

Clr Little: I don't think that was said that way, no.

Despite Clr Little's various denials, we must say, having regard to the whole of the evidence before us, and in particular to the witness's general demeanour and behaviour at our interview with him, that we remain unconvinced as to his version of events. We think that the incident does, on balance, prove or operate as an example of the impact of Clr Hall on his fellow KPT Councillors in terms of leading them to believe that the staff were obstructive and unco-operative.

We say this notwithstanding the fact that, as noted at section 4.6.1 of this report, letters went to the Editor of the paper from both Clr Little on the one hand and Clr Bennett and the General Manager on the other, which indicated that the staff accepted explanations from Clr Little, and despite the acknowledgement by the Editor, when publishing those letters, that "there may have been miscommunication between Clr Little and the journalist concerned". It is clear from what Clr Little put to us, both in his interview and his later written submissions, that he acknowledged that he did make a comment to the reporter that could well be construed as being critical of staff. All this was happening at a time when Clr Little should have been well aware of the concerns of staff about the way Clr Hall and some of the Councillors were treating and reacting to them, and to have made such a statement in such circumstances shows an insensitivity and lack of awareness by the Councillor of the need to be cautious at the very least. Criticisms of the staff had been in the press for some time.

Clr Little also put it to us in his submissions:

> The term indoctrination I find quite fanciful considering many of the Councillors have a wide range of professional qualifications and are independently minded.

Clr Little, however, did not have the benefit of having seen the other sections of this report dealing with this issue when he made those comments, and the evidence clearly does not support his perception of matters.

We note that Ms Virginia Leafe, the Council Manager in charge of media relations, gave us the following evidence about the Little press incident:

> …it's my job to look in the newspaper as soon as I get to work…there was this… this article from Councillor Little and I was most taken aback when reading it. I was - had to go to an important meeting at 9 o'clock, so I just rushed in, told Rhonda quickly, and said to her, "We must discuss this. We have to have a meeting at 11 o'clock", I ran down to Urban Environment - Environment and Planning I think as they're now called, to Chris Young, told his staff, said, "We must do something about this" and I had to run off to a meeting. So when I'd come back to this at 10 o'clock or 10.30, already the momentum had started, obviously. People were very upset to read this. The Residential Strategy is a nightmare. It is a very difficult issue. It is a lose/lose situation for the Council, for the community, for the staff. And it's something that we just saw immediately as they're going to start to do it, they're going to start to hang it on the staff. And, I mean I know we're being paranoid.
>
> …What had happened in reality was that Councillor Malicki had rung the newspaper, as she does, and said "There's a big mistake in one of the base line studies". Now the base line studies are based on - this is what the strategy's going to be based on. There's a big mistake. There's all these roads that aren't in existence and it's all been based on these roads that aren't in existence...
>
> …what she should have done was ring Chris and - or anyone in Planning and Environment that would know…because I had to go on a crash course on this because I don't understand it either, but there's things called (indistinct) maps or whatever, and what it means is when they do big planning maps they have subdivisions on there that aren't necessarily there. Okay? So there's road systems there - - -.

Ms Leafe then went onto describe how the media contacted Clr Little as the Chairperson of the Environmental sub-committee in relation to this issue, and continued:

> …So they rang him. And he said all these comments like, "Staff couldn't - wouldn't have understood this because they don't live here. It's been a nightmare in communicating the stuff", which I was most offended at, "And a nightmare - the staff don't know how to communicate with the community". I believe we do. And other things that other people were offended about, about living in the area and things like that. Now, I was shocked when I saw it. I didn't - I wasn't surprised that it was there maybe, I thought all I'd - I can see that that would happen, but again, a bit of the article didn't make sense to me so it did make me think that it was not written properly. But nevertheless on that Thursday I just happened to be having coffee with the journalist from the Advocate who wrote it, and his replacement because they were changing, she starts tonight, they came in to have coffee with Rhonda and I. Something that we do get to know the journalists. We don't talk about the politics, although they want to talk about it. We try to remain very professional. I said to Jonathon - I rang Jonathon actually the minute I saw the article, said, "What is the story? Did he really say this?" and he said, "Yes, yes, yes, plus more" ...

Ms Leafe added, commenting on Clr Little:

> Ms Leafe: I don't believe he understood why the staff were upset. I don't believe he did. I think - because the way he wrote it. He's a very technically based man. I don't think he truly understood what the issue was, what the staff were upset about. Laura Bennett did, who was there, and she tried to keep him on track with that because I was sitting next to Laura, so I could hear her talking to him. But I think he's just that type of man. Look, there's all different personalities and you've got to take that into account. What did come out of that was that they mentioned - Councillors should have media training, which I think's a good idea. I think it's a good idea and I think it's a bad idea. But nevertheless - - -
>
> Mr Bulford: Well obviously it depends on who - how the arrangements are set up and what are the rules for who can talk to the media?
>
> Ms Leafe: Exactly. Well that certainly might be an outcome of that, and that's something that I'm happy to pursue.

5.4 Clr Hall's misleading of his fellow Councillors

We have in this Investigation found a number of examples where Clr Hall has misled his fellow Councillors.

The General Manager told us this in our interview with her:

> Ms Bignell: Well Hall was obviously the one who could spruik the Local Government Act. It doesn't matter whether or not it's the right bit or anything, that is irrelevant, but he was the only one that had any Local Government experience. He was the only one that had been to a Council meeting and so he right from the word go was telling them what you can do under Local Government Act, which wasn't correct of course, and he, if you like, was the one who was saying what you can and can't do. That's the real worry that we had in the beginning, that he was telling them all the wrong things.
>
> Mr Bulford: This educative role that Councillor Hall was undertaking?
>
> Ms Bignell: Yes.
>
> Mr Bulford: That was in your presence actually during the course of Council meetings?
>
> Ms Bignell: Yes, he does it all the time. You know, he quotes sections out of the Land and Environment Act, and Local Government Act, which aren't right.
>
> Mr Bulford: So you have personally seen this?
>
> Ms Bignell: Oh yes and then the staff will say, particularly in Ian Glendinning's area, the Development Control, "Mr Mayor, that is not right, that is incorrect information." "I don't want to hear from the staff, just take notice of what I've said." So there's no doubt he was telling them and there's no doubt he's been telling them what they can and can't do with staff according to him. That's part of the problem that I've got with that.

At section 6.13.1 of this report we set out evidence from Clr de Vulder about the extent to which he relied on two of his fellow Councillors for background knowledge

on the legal aspects and framework of certain development applications. We asked him about what Clr Hall might have said:

Mr Bulford: What about Councillor Hall? Did he never say anything to you as to his views as to how the development system and what have you worked?

Clr de Vulder: Well all Councillors do.

Mr Bulford: What do you mean by that statement?

Clr de Vulder: They give their opinions on how things should be.

Mr Bulford: Did Councillor Hall give his opinions to you on how things should be. I'm not talking in relation to any specific application, I'm talking in terms of how the system works on Development Applications?

Clr de Vulder: M'mm.

Mr Bulford: Did Councillor Hall not give you a series of briefings and statements, either at this initial meeting or on other occasions, telling you as a new Councillor how the new system worked at Council?

Clr de Vulder: I'm unaware of that.

Mr Bulford: You are absolutely sure of that?

Clr de Vulder: Yes.

Mr Bulford: You are on oath here Councillor.

Clr de Vulder: He may have given opinions, we all give opinions of how we think things could be better and how things are not.

Mr Bulford: So what sort of opinions did he express?

Clr de Vulder: I can't remember.

In his interview with us Mr Ian Glendinning told us the following:

Mr Glendinning: And the way that he makes outrageously misleading statements, like he'll quote part (a) of a section of an Act, but not part (b), which provides all the qualifications to part (a). Or he'll tell people, like he attempted to do at the last Council meeting, that the provisions of the Ku-ring-gai Planning Scheme Ordinance prevail over the State policy.

Mr Bulford: Have you seen any evidence of the impact on Councillor Hall's fellow Councillors, and I speak I guess, the members of the Trust, in terms of their views towards and understanding of planning provisions and processes and development applications, development control processes, et cetera? Misunderstandings on their part et cetera. Have you seen evidence of that?

Mr Glendinning: I - I - what I see is that Tony Hall was, in the beginning, their mentor. They took all their advice and instructions from Tony Hall. They did not give us the opportunity to tell them what the Act requires. What the matters are that they can take into account when they assess a development application. What the Ombudsman's recommendations were.

Mr Bulford: To this date you still have not had that opportunity, is that right?

Mr Glendinning: That's correct. Individually I've had a chance to talk to a few of them and point a few of these things out, notwithstanding the Mayor's direction to me that I was never to talk about the Ombudsman again. But nevertheless that - I feel it incumbent upon me to actually try and provide that information to the Councillors when the opportunity arises.

Mr Bulford: Which Councillors would you say are being more receptive in that you've managed to speak to?

Mr Glendinning: I think the two outstanding Councillors in the current lot are Graeme Anderson and Laura Bennett. I see - you know, I mean I've seen an enormous turn-around by Laura. I mean she's an intelligent woman to start with, but she's had an enormous turn-around and actually now, funnily enough, seeks out my advice and takes it. The same as Graeme Anderson.

Another example of Clr Hall misleading his Councillors lies in his memo of 12 October 1999 to them, considered at section 6.2 of this report.

5.5 Clr Hall's relations with Clr Bennett when Deputy Mayor

We have noted that Clr Bennett was the running mate at the last elections of Clr Hall in the St Ives Ward, and she was elected on the strength of his votes. On the same night that Clr Hall was elected Mayor, ie 21 September 1999, she was elected Deputy Mayor by her fellow Councillors. She was granted leave of absence for a period while she was overseas, namely from 3 December 1999 to 23 January 2000. During this period Clr Anderson served as Acting Deputy Mayor, having been elected to that position by his fellow Councillors.

Clr Bennett told us that her background was as "an academic for 15 years" and that she was "a senior lecturer in law". This background was what helped her become a Trust candidate:

> … the University where I worked for the last 10 years was Griffith University in Brisbane and Griffith had a very strong Committee system and in the Faculty in which I worked it had a very low proportion of senior staff and very few women and the culmination of that was that the few people around like myself ended up doing a lot more senior administrative work than someone in my position normally would do. So I chaired a number of Faculty Committees, for instance a Head Honours Board. What else did I chair? It's on my CV but it's a while ago now. Safety Committee, Equity Committee. I sat on University Committees, I ran a University working party. I was accustomed to running a Committee system and to working administratively and one of the Trust's strongest planks was that there was a need for the new Council to be proactive and, in order to do that, it was necessary to revive the Committee system. I was in fact not selected to run as a Ku-ring-gai Preservation Trust by Councillor Hall, as I understood it. I actually fronted up to a Selection Committee run by the Trust.
> …
> I was grilled extensively on my professional background and I was also asked for my views on Ku-ring-gai and development within Ku-ring-gai.
> …
> It's my understanding that it was on the basis of those things that I was selected.

Clr Bennett told us that in the early period of Clr Hall's Mayoralty he always spoke to her with "considerable charm". Particularly to her.

However, Clr Bennett also gave us evidence as to her awakening and realisation of the truth about Clr Hall. This apparently started in earnest when Clr Hall stood aside in early November 1999 and Clr Bennett took over as Acting Mayor. This evidence is set out at various sections of this report.

5.6 Clr Hall's relations with Clr Anderson

Clr Graeme Anderson was elected at the September 1999 Council elections for the first time to Council. He had no previous local government experience. He was an endorsed candidate for the Trust and stood in the Gordon Ward.

We have noted at section 4.6 of this report, that Clr Bennett told us in our interview with her that Clr Anderson was one of the first Trust Councillors who apparently viewed Clr Hall at an early stage (but apparently not for about 3 weeks, at least in her perception) with different eyes from those of the other Trust Councillors. She had told us in that regard that he was one of the first to become aware that there was a "problem" in relation to Clr Hall's conduct towards the staff. However, she explained that the Mayor had fallen out with Clr Anderson "within the first couple of weeks," as he identified Clr Anderson as being after the Mayoral job. Questioned as to whether she had observed any grounds justifying that view held by the Mayor, Clr Bennett replied:

> I had no grounds, no convincing grounds were given and I saw no grounds, but at the time I accepted that, as I accepted the Mayor's own view.

Clr Anderson himself gave evidence of the early breakdown of his trust in Clr Hall. His evidence in this regard is quoted at section 6.20.2 of this report. It reached a further height with his ultimatum to leave Ms Bignell alone over her car accident – see section 4.7 of this report.

5.6.1 Clr Anderson's resignation

In the midst of our Investigation and in circumstances that caused something of a stir, Clr Anderson resigned first as Chairman of Council's Finance & Corporate Services Committee and then as Councillor.

At a meeting of the Committee on 4 April 2000 Clr Anderson read out the following statement, which we have compiled by listening to the tape of this part of the meeting:

> It is with strong feelings of regret that I have to advise that I will be submitting a letter of resignation as a Councillor to the General Manager in 15 days' time, on the 19th April. Since January I have been living under medical advice that my stress levels associated with Council activities were far too high for personal safety and could not be continued.
>
> I'd hoped these problems would ease, but this has not been the case. I apologise deeply and sincerely to those who elected me and to all who will be disadvantaged by the absence of their Ward Councillor, pending a by-election. I also regret and apologise for the extra load my decision will place on my colleagues.

> I have stayed on despite this medical advice so as to cover the preparation of the Residential Strategy and had hoped to also last the outcome of the current Departmental Inquiry. The delays have made this unrealisable.
>
> I found my regular Councillor work in representing the ratepayers to be productive and enjoyable. Council staff are good to work with and will match efforts in pro-active output. The more effort I put in, the more the staff will join in with ideas and suggestions.
>
> I have however found considerable extra stress on Council in a series of events concerning the Mayor, Tony Hall.
>
> My decision to vote with others for him as Mayor in the first few days after election was one that I regret, and I have to admit I was wrong.
>
> A major disappointment with resigning is I may have won some battles, but I have lost the war, as I cannot risk another five months disputing with the Mayor.
>
> It may be said it's not my function to intervene, but if there's lack of response it seems to me that I and other Councillors are tacitly accepting his actions which I do not personally agree with.
>
> I've advised my fellow Gordon Ward Councillor that during the exhibition period of the Strategy I will field phone calls and handle enquiries to me and make sure I pass onto him all the information I receive. …

There was a motion on the matter, seconded by Clr Keays, who did not speak to it. Clr Coleman said this:

> It was a disappointment, Clr Anderson, that we will lose you, on a personal note, and also for your expertise. For most of us, we are new, except for the Mayor and Clr Malicki. It's been a new, a trying experience. One where we are all learning and where will continue to learn and I shall personally miss you …

Clr Bennett and Clr Roach also spoke, the latter also making reference to stress levels they had been subjected to. Clr Hall made a long and rambling speech. He made mention of the 28th September and described it as a "bonding situation that was remarkable in itself". He also said:

> …there is, er, I think, er, bon ami and good, good humour as we move outside the doors of this Chamber …

This elicited the following retort from Clr Bennett and interchange between Clr Hall and herself:

> Clr Bennett: Mr Mayor, if there were bon ami and good nature when walked outside of this Council Chamber, it is my belief that Clr Anderson would not be resigning.
>
> Clr Hall: I think Clr Anderson made the point his health does not allow it to remain –
>
> Clr Bennett: The point is, Mr Mayor, was that –
>
> Clr Hall: I know what your, your disloyalty. I know your disloyalty –
>
> Clr Bennett: - the conditions in this Council –

> Clr Hall: - you don't need to make an issue of it. You did make that issue on the 7th of November.

Clr Anderson hurriedly called for the vote to take place. He did later formally hand in his resignation as a Councillor.

5.7 Clr Hall's relations with Clr Malicki and other independents

Clr Roach, one of the two independent Councillors elected for the Wahroonga Ward, told us of the lack of impartiality on the part of Clr Hall as Mayor when he first planned Councillor representation on the key Residential Development Housing Strategy:

> … one of the major issues in Ku-ring-gai was the Residential Housing Strategy, and I then wrote a memo to Councillor Hall because there was nobody in Wahroonga Ward on the Housing Strategy. And Councillor Hall, being the Mayor, he didn't respond to that memo, that letter, and so I then rang him a few days later because it was planned to get this Housing Strategy up and running very quickly, and again he didn't respond so I then left a further message the following day saying that if he didn't respond, that I was going to take the matter up further, and - with others, and that, you know, "I would take the matter to the press if you didn't allow" - if he didn't wish to talk to me. He then rang me back very quickly and said, "Look, what's your problem?" And I said, "Well, look, you know, Tony, you've got a Housing Strategy going in, it's very important. You've got only Trust Councillors on the Housing Strategy, I don't think it's right that that should be the case. You've got things in your Mayoral Minute which basically say that you can throw any Councillor or member of the public out at your whim if you don't like them, and that means that there's a high probability that Wahroonga Ward will not be represented in the Housing Strategy", and I said I didn't think that was fair and that I would like to be on it. … And he then said, when I - he said, "Well what are you going to do about it?" and I said, "Well, look, you know, I'll start organising people in Wahroonga to come down to Council meetings to protest" and as soon as I said that he said, "Well, I'll put you on the Committee. I'll put you on the Housing Strategy Committee." So he then put me on it.

We agree that, in as important a matter affecting the entire Municipality of Ku-ring-gai as was the Residential Development Housing Strategy, all Wards should have been represented on the committees, forums or other groups examining and dealing with the matter. It should not have been necessary for Clr Roach to have to resort to the measures he threatened to achieve this. We note that section 7 (a) of the Local Government Act 1993 provides that one of the purposes of local government and of the Act is:

> to encourage and assist the effective participation of local communities in the affairs of local government.

If not even the elected representatives of key areas of the Council, ie one of the only five wards that the entire Council area was divided into, namely Wahroonga, were represented or included Clr Hall and his Council had not even got to first base on that one.

Clr Roach's evidence as to how he did actually get put onto the Strategy continued:

> Now, the Council - the Trust Councillors, as time went on I've got to know them reasonably well. Their view of what happened at the time was that Councillor Hall came

> to them and said, "Oh, look, I think, you know, we've got nobody on Wahroonga Ward, why don't you people have a think about whether we should have Ted Roach on it or not", and then they've come back and said, "Yes, we think we should have someone on it". Now, their view was that they organised for me to be put on there. But the reality was that I put pressure on Hall to say I - you know, we had to have someone there. He's then gone off and had a nice little talk to them and then let them come up with the decision where they think that they've put me on there so that he didn't go to them and say, "Put him on." So what you've got there, and there are a number of different things that happened on the Council where Tony's gone off, worked out what he wants done, then got others to do the dirty work for him, or to do the thing, and then - so that it then appears that he in fact is not involved in it. So I just mention that because that was one of the very early things that happened that you may - they may turn around and say, "Oh, yes. No, we were very fair, we had independents on this Task Force, Councillor Roach got put on there. We were actually acting very independently", but in fact they weren't. The Mayoral Minute was very clear, it had Trust Councillors on everything and the independents not on anything, and then the way - Councillor Malicki decided to take her course, which was to just go along to the meetings and see what was going on, she hadn't been elected on it, which is probably a very appropriate way of doing it. My view was, I wasn't prepared to do that, I needed to be on there to make sure that Wahroonga Ward did have representation and that we needed - and we could see what was going on in the intimate details of everything.

We note that Clr Roach was formally appointed to the Task Force when Council resolved to amend the terms of the Mayoral Minute of 28 September 1999, which originally set up the Taskforce, at its meeting of 5 October 1999. One of the other things then done was to formally note that each of the Councillors on the Task Force was appointed to represent a particular Ward. This had not been so before.

Clr Roach also informed us how the Trust Councillors had adopted a “them and us” type of attitude in the early weeks of the newly elected Council.

Clr Elaine Malicki is one of the three independents on Council. At this Council she is one of only two Councillors who had served in the previous Council who stood for re-election and who were returned at the last Council elections in September 1999. The other was Clr Hall. Clr Malicki has in fact served as a Councillor continuously since September 1991 (except for the short period this year before she was re-elected at a by-election – see elsewhere in this report).

The apparent excluding of Clr Malicki from meetings of the Task Force, at least in her formal capacity as a Councillor, is noted, and condemned, elsewhere in this report.

Clr Malicki gave similar evidence to Clr Roach about the stand-offishness of the new Trust Councillors in the early weeks and their reluctance to talk to any Councillor who had previous experience (other than Clr Hall) for any assistance in undertaking their new roles. She said:

> I was considered Public Enemy Number 1, right from the start.

The questioning of Clr Malicki later continued on this:

> Mr Bulford: Was any attempt made by any of the Councillors to come to you for any advice?

Clr Malicki: No, not to come for advice. It was fairly strained. After a few weeks a few of them would say hello and so on but quite early in the piece I'd had a pretty awful experience when Councillor Hall - there was a whole issue on being declared guilty of disorderly conduct. I don't know whether you've heard the tape yet, but it was an absolutely awful experience for me. It seemed to me as if they'd been leading to a point where they could get me, you know, it was a sort of set up to "get" Malicki whenever we could on disorderly conduct and it was just an awful experience.

Mr Bulford: This is the meeting where you were ejected, is that right?

Clr Malicki: They didn't eject me, I just sat there and said no I wouldn't go. I refused to go partly because they hadn't followed the procedures at all. I was certainly upset as a result of one of his Mayoral Minutes, which was extraordinary. I'm very passionate about my role as a representative, it really means a lot to me and I fight very hard for people in my Ward. So, what was done on that night horrified me, shocked me, disappointed me. I knew it was virtually irrevocable. The way things were going, they were never listening to any of us, they were never going to change their minds. It was a real low point of my career as a Councillor.

She agreed that it was a "them and us" situation:

Clr Malicki: Absolutely, there's no question. So I didn't make a particular effort. I used to feel sick on the stomach coming to Council meetings but I must say I kept to myself, I arrived and did my Council work. I sat at the dinner table with the staff, I left straight after the meeting and it's only since all the trouble with Tony that I've gotten quite close to a number of them. The whole situation's changed now, I'm now in the majority, I now confer fairly regularly with two of them, only two [Councillor Anderson and Councillor Bennett].

…

Mr Bulford: Is there any particular date or occasion where you can see the sudden change?

Clr Malicki: Yes, around the time they decided they had to have an investigation and part of it was that they needed the numbers because two of them, those two, have spoken to me about the numbers against Tony, or on the Tony issue, on a number of occasions.

It is clear from the evidence before us that Clr Hall and Clr Malicki are old and frequent sparring partners. Though, when we asked her about this her reply was "yes and no". She proceeded to explain that back in the early 1990s Council had originally granted him leave of absence and then purported to revoke it. Legal proceedings had ensued in which Clr Hall was the victor. At the time Clr Malicki was not on Council and was the Secretary of the Ratepayers Association. She told us:

Now, the ratepayers under me, as Secretary, defended him, said what Council was doing was quite wrong. We thought that what Council did to him was grossly unfair and I was actually in the Court on the day the Judgment was given and I had lunch with Tony.

She also said:

It was a horrible thing to have done. … Yes, and there have been times when Tony's been in the right and I've defended him. I've voted with him on things. The Councillors' Secretary, when you get to talk to her, often said, "You and Tony are the two who work hardest for the people," you know, "Tony respects you." So, I believe he respected me, I certainly wouldn't say we were enemies in that broad sense, you know, because when

> he was doing something that was right I would - - -

And at a later stage:

> I would support him and I always used to say to the Councillors in previous Councils, "Unfortunately he goes on with a lot of rubbish, but if you listen to him occasionally he'll come out with really good stuff and you can't dismiss everything Tony says," and I do believe that, you know, because he's been around a long time and he did a pretty fair job with his residents and he has certainly deteriorated since then.

In the same vein, Clr Malicki's principal comment and concern with the final draft of our report was:

> My major issue with the first hundred or so pages is the tendency to lump all Councillors together and suggest that all of us supported Cr Hall. This is not so, and I was often in a 9-1 minority against the rest of the Councillors who supported various of his schemes.

We accept that this is so, and the evidence before us, where it reveals voting patterns, supports this. Nonetheless, we must make it clear that where in this report we hold the Councillors, as the collective elected body, responsible for what has been done, or what needs to be done, we do so in that sense.

An oft-repeated theme of Clr Malicki is that she has been discriminated against by Clr Hall in his rulings from the Chair, and in other ways.

Clr Malicki gave us, as an example, information as to what had happened at the meeting of Council's Residential Development Strategy Task Force the previous day, ie 14 February 2000. She explained that whilst not formally a member of the Taskforce, and despite the fact that she found the meeting times of the Task Force had been set at hours she found it difficult to be available for, she nonetheless tried to attend as many meetings as possible:

> Clr Malicki: Yesterday I was at the Task Force meeting and I wanted to ask a question and the Mayor said to me, "You are an observer, you are not on the Task Force, you cannot ask the question." I said, "But I'm a Councillor."
>
> Mr Bulford: These meetings are open to members of the public?
>
> Clr Malicki: They're open to the public, yes, and now - - -
>
> Mr Bulford: So what rights do members of the public have to ask questions?
>
> Clr Malicki: I'm going on. This, as I said, was at 5.15 because the thing's taped. Within 20 minutes he'd allowed Helen Ferns to speak, who's a Trust Committee member. He'd allowed Graham Lewis, the Trust Secretary, to speak and he'd allowed Councillor Elise Keays to speak, several times, and she even prefaced what she said by saying, "I know I'm not a member of the Task Force." So I was forbidden to speak and yet these three people, within 20 minutes, had all been allowed to speak, and it's all on tape.

We have noted at section 3.22.2 of this report that despite the use of the word "forum" in relation to meetings of the Task Force, Council's Residential Development Strategy Task Force, set up under the Mayoral Minute of 28 September 1999, is a Committee of Council. Even though it might not be a Committee of which all the

members are Councillors, there are provisions of the Local Government (Meetings) Regulation 1999 which apply to such a Committee. In this regard clause 36 of that Regulation provides that "a councillor who is not a member of a committee of a council is entitled to attend, and to speak at, a meeting of the committee".

If, therefore, this is how Clr Hall and Council are running meetings of this type in this way then they are doing so in breach of the requirements under the Regulations. This needs to be addressed immediately.

The tapes of Council's meetings of 19 October 1999 record Clr Malicki's concerns about "an alarming trend in this Council to hold meetings during the daytime. That causes problems for what appears to be at least me. I think I might be the only one who works during the day. I feel that that's very discriminatory and it also makes it very difficult for our residents who work to get along to such meetings …". Clr Hall's immediate response (which from the tapes sounded genuine but we wonder given the other evidence) to this was the seemingly flippant retort, "Would you like it Saturday afternoon?", but he later added, after further comments from Clr Malicki, that "I appreciate your motions Councillor" and noted the need for input from staff on the matter which was the subject of the proposed meeting in question that prompted Clr Malicki's concerns, and asserted that therefore the meeting should be in working hours.

From listening to the tapes of a number of meetings of Council or Committees of Council, there have been a number of questionable rulings by Clr Hall as Chairman against Clr Malicki. Several examples of these occurred during the debate at Council's Policy Development and Strategy Committee meeting of 19 October 1999 on the question of a new organisational structure for the Council.

Another example, at the same meeting, but occurring during the course of debate and voting on, clause by clause of, Council's amended *Policy for the Payment of Expenses and the Provision of Facilities to Councillors*, arose in relation to amendments to clause 3 (a) of that Policy. This concerned administrative staff assistance to the Mayor. The issue of the Mayor's proposal to relocate the Councillors' secretary became a matter of concern to Clr Malicki, who has commendably risen to the defence of this woman from time to time. Clr Malicki pointed out that in her view what Clr Hall proposed would make the secretary "distraught". The debate became increasingly agitated, in our view, but not to the extent of any disorder or disrespect to the Chair. Yet Clr Hall threatened Clr Malicki, and Clr Malicki noted this. The debate continued thus:

> Clr Hall: I beg your pardon?
>
> Clr Malicki: I said 'threatening'.
>
> Clr Hall: Will you, will you withdraw and apologise to the Chair, please?
>
> Clr Malicki: I withdraw, Mr Mayor.
>
> Clr Hall: [loudly] And apologise please.

Clr Malicki: [her response is inaudible because of the loudness of the Mayor's last-mentioned demand; it sounded to us as though Clr Malicki was repeating that she withdrew the remark.]

Clr Hall: Well, could I have a motion for disorderly conduct please? [there was a longish pause] It can't go on like that, Clr Malicki, trying to defend staff. Trying to defend staff. You know, this – you're a councillor – you're not a general manager.

Clr ?: [identity not clear and remark inaudible]

Clr Cross: My comments, Mr Mayor, weren't in relation to the particular staff person –

Clr Hall: No, no –

Clr Cross: - but in relation to how I believed it ought to operate.

Clr Hall: I beg your pardon?

Clr Cross: The reasons I voted against the motion is –

Clr Hall: Mm.

Clr Cross: - that I believe it ought to be status quo, not having that particular secretary reporting to the PA.

Clr Hall: Well, it makes a lot of sense to have the PA – the Mayor's PA and the Councillors' PA working together, otherwise they could be split quite easily.

Clr Cross: You can say that about all staff –

Clr Hall: No, no, no, you're talking about Councillors against operational staff.

Clr Roach: Could I just draw attention –

Clr Hall: [in a very exasperated voice] Oh, Jesus Christ!

Clr Roach: - to Clr Cross to what we just voted on with regard to the previous Council structure, and that is, we did agree that the Executive Support of the Mayor and Councillors would all be altogether in one area.

Clr Cross: Except I voted against it.

Clr Roach: Yes, but the motion was carried. …

The debate continued, and during the course of this Clr Bennett questioned why the Councillors' Secretary should report to the Mayor's Personal Assistant. Clr Hall initially argued and stood over her. However, he proceeded to calm down and lower his voice to make his point.

Clr Malicki gave us other examples of Clr Hall's discrimination towards her:

…I've specifically mentioned the ways he discriminates against me, in Council, but the fact he's given me no places on Committees, Task Forces, anything like that. He interrupts when I'm speaking, he ignores my [red] light. He moved me, he moved where I sat.

…

> …The first week I was sat near Councillor Roach and all the sheets were put out with this seating plan. Tony decided he would move me so he had all my things moved across the room. Well I was fairly cross about it when I saw it and then I realised he'd put me right in the centre of the table. He was there and I was here. I thought, "I've got great advantages here because he can't avoid seeing me, I'm right in the centre. If I were in either edge I'd be in bigger trouble." So I thought, "Okay, I can live with this." I started to move my chair over, because we had our chairs, mine had my label on it and it was all set up. He came into the room, this is before the meeting, and he started to really yell at me and he said, "You will sit where you're put." I didn't let on to him I was merely moving my chair. I said to him, "What is this, the Council's becoming fascist." I don't think I even know what fascist means but I just couldn't resist. So, I kept moving my chair and he said, "It's a Mayor's prerogative to seat you where you [sic] want to go and you will sit where you are put." I finally got my chair there and I said, "You know Tony what I'm doing, I'm moving my chair across, I was moving to the spot you put me."

The General Manager told us that in her experience Clr Malicki was the only Councillor to whom Clr Hall issued warnings and similar rulings from the Chair. However, she said:

> I don't think any of his warnings to her have been justified. She gets fiery, she may raise her voice but she's a very good debater and you do that in debate. She'd do it in the other Council as well but she wasn't rude, she was frustrated with him …

Clr Malicki also told us of the reaction that Clr Hall was having on her:

> Clr Malicki: He gets me really upset lately, it depends on the stage of the meeting and that sort of thing but I was actually trembling when he did that to me.
>
> Mr Bulford: Does that happen very often?
>
> Clr Malicki: He's always accusing someone of doing stuff like that.
>
> Mr Bulford: In terms of him getting you upset, does that happen very often?
>
> Clr Malicki: Yes it does.
>
> Mr Bulford: Have you ever felt that may be added fuel to the fire and encourages the Mayor to continue his attacks on you, the fact that you were getting upset?
>
> Clr Malicki: I've no doubt that it does, for instance, when he upsets people, for instance Rhonda, I've seen him upset her, he just keeps on going, yes.
>
> Mr Bulford: Yes?
>
> Clr Malicki: It's part of his tactic. Usually in Council meetings you're going on to something new so it's not such a big issue, you know, you go from one thing on to another. I'm less tolerant with him now than I was before. I just sit back and let it wash over me, but it makes me upset now.

Clr Bennett's evidence to the same effect about the General Manager is at section 3.8.2 of this report.

5.8 Alleged sexual discrimination by Clr Hall towards female Councillors

Clr Hall was given particulars of this alleged conduct in our Statement of Particulars provided to him on 14 February 2000:

> Alleged sexist and discriminatory conduct of Clr Hall towards female staff and Councillors (the latter being matters that in the view of the Investigation may be examined pursuant to paragraph 3 of the Terms of Reference) has been the subject of a complaint to the Minister for Women, the Hon Faye Lo Po. See Attachment 13.

Suffice to say, this issue was fully investigated. In the result we find that there is no probative or reliable evidence of any sexual discrimination, in the legal sense, by Clr Hall towards females such as the General Manager or the female Councillors at Council meetings. However, his demeanour and conduct towards them is an issue.

PART 6

6. ADDITIONAL ISSUES

Paragraph (4) of the Terms of Reference of this Investigation required or permitted us to investigate and report on any associated matter, which we take to mean "associated with issues arising under paragraphs (1) to (3) inclusive of the Terms of Reference", which warrants special attention. See also section 433 (2) of the Act.

During the course of our Investigation a number of matters have come to our attention, which arise out of or relate to or are associated with issues examined in relation to paragraphs (1) to (3) of the Terms of Reference, and which in our view warrant special attention, and comment in this report. We shall now deal with these.

6.1 The way Clr Hall went about preparing and bringing in his key Mayoral Minute of 28 September 1999

We note that clause 16 of the Local Government (Meetings) Regulation 1999, which came into force on 1 September 1999, replacing an earlier Regulation to much the same effect, provides:

> (1) If the mayor is the chairperson at a meeting of a council, the chairperson is, by minute signed by the chairperson, entitled to put to the meeting *without notice* [our emphasis] any matter or topic that is within the jurisdiction of the council or of which the council has official knowledge.
>
> (2) Such a minute, when put to the meeting, takes precedence over all business on the council's agenda for the meeting. The chairperson (but only if the chairperson is the mayor) may move the adoption of the minute without the motion being seconded.
>
> (3) A recommendation made in a minute of the chairperson (being the mayor) or in a report made by a council employee is, so far as adopted by the council, a resolution of the council.

We have noted, elsewhere in this report, the concerns expressed to us by Clr Little in relation to Clr Hall's use of the Mayoral Minute procedure, when he provided comments to us in respect of extracts of the draft of this report (being extracts relating to his own role and position) for his comment.

Clr Malicki, in our interview with her, also raised concerns over her perception that the Mayor was abusing the Mayoral Minute procedure. She said:

> His use of the Mayoral Minute is definitely to avoid reports, to avoid the Trust Councillors getting the information they need to make a decision.

Given the proven mistrust that Clr Hall has of the General Manager and her staff, we can see that Clr Malicki has a point, and the use made by Clr Hall of the Mayoral Minute procedure may well be explainable in those terms. Certainly, when it comes to the Mayoral Minute and the wideness of its subject matter, as well as the

sweeping nature of what it sought to achieve, we do have serious concerns as to Clr Hall's use of this procedure on that occasion. If ever this was a situation where there was a need for co-operation with and assistance of the General Manager and her professional staff this was one.

Our concerns go wider than this, however. We are also concerned at the lack of consultation with even his Deputy Mayor, let alone other Trust Councillors, in its preparation.

There are also the many problems that arise in relation to the frequent poor and unclear drafting of the document and what it was trying to say or achieve. The issue over the impact of the Minute, or even the elections, if that is the trigger, on the existence of the lesser mortal committees, that is to say other than the "Principal Committees" provided for expressly in the Minute, is a case in point. The confusion and angst that this created with staff has already been considered at section 3.20 of this report.

Clr Hall told us how the Minute came into being:

> When I was elected Mayor on 21 September, I had given an undertaking to myself to put in place a committee style Government with the elected representatives having control of its destiny. I then embarked on looking at other charters of other Councils or other resolutions of other Councils and I hit upon Pittwater Council as being a fairly new Council, that is it was - it embraced pretty well what the new Act provided. It was a very strongly Council oriented resolution setting out how the Council should be structured in terms of committees. So I got hold of that after I was elected, and I sat down and worked it through. I spoke to Peter Woods and one or two other Council practitioners and former State Government people I knew very well …

Clr Hall also told us that he had done a presentation on butcher's paper to the Trust Councillors at his home. He said it was on the Monday (27th), but it may be that he is mistaken in this, because the evidence of those Councillors we interviewed about the matter was that they met at his home on the Sunday – see below.

Clr Hall said they did not see the Minute, or a draft of it, though until on the night he introduced it. He said:

> the draft hadn't actually been finished. I didn't finish it till 5 o'clock on the 28th.

His further evidence is also seemingly slightly confused as to the exact timing or sequence of events, for he said:

> Then I finalised the minute the next morning at the Pymble Typing Service, in Pymble Hill …

And later:

> Mr Bulford: And you did not sit down with your Deputy Mayor, for example, to review what you were proposing in your Mayoral Minute?
>
> Clr Hall: No, I'd virtually walked into the Council with the document in my bag and went straight to the podium, to the Mayor's chair with the bag - with my bag under my arm, actually. It was that tight, you know. I really didn't have a lot of

> time. But I had explained all that in detail, the thrust of all this, to the Councillors concerned on the Monday night previously.

We asked Clr Bennett about the circumstances in which the Mayoral Minute came to be introduced. She described how she had attended a briefing with the other KPT endorsed councillors conducted by the Mayor at his home on Sunday 26 September 1999. They were not presented with a typed up document but rather she said:

> …from memory, some of the central points in the Mayoral Minute, and I couldn't honestly tell you which they were at this point, were presented to us in the form of - he had one of those boards where you have large pieces of almost butcher's paper on - what are they - big texters.
>
> …and basically put it down in dot point form and explain - - -

Councillor Bennett confirmed that, while she was the Deputy Mayor, the Mayor had not consulted with her as to the drafting of the document. She said:

> He gave the impression, and I'm not sure he ever said explicitly this, but he gave the impression that it was his document and his document alone. …
>
> I have no idea whether that was the case.

Clr Bennett then went on to explain how according to her recollection, the Mayoral Minute was first handed out to Councillors for viewing at the Council meeting of 28 September 1999.

Clr Anderson's evidence confirmed that of Clr Bennett and included:

> …the Mayoral Minute had a lot of surprises in it, a lot of surprises. Some bits of it we had talked about but there was a lot of it that was very much a surprise. …
>
> …It's the way it came together that to me had some surprises. For instance we did talk about his access to the Council which at that time was completely prescribed and this had to be thrown open. …
>
> We did talk about the Committee system. We didn't talk about some other items in the Minutes, some of them were absurd - signing of letters. …
>
> There were some whackies in there…

The interview continued:

> Mr Bulford: All the time leading you to believe that what he was proposing was perfectly hunky dory under the law?
>
> Clr Anderson: Oh yes, well at that time we fully believed yes. …
>
> Mr Bulford: Coming back to the Sunday in terms of what was discussed. Was it a one way sort of presentation in terms of "This is what will happen," from Councillor Hall or did he actually get a consensus as to what he, at least at that stage, had described as his proposals?
>
> Clr Anderson: He [the Mayor] put forward a master plan and we agreed to it. …
>
> Mr Bulford: Would it be true to say that any one of you, other than Councillor Hall that is,

managed to put forward a view that reflected itself in what at least you believed at the end of that meeting had been agreed to? In other words were you able to change what Councillor had apparently been proposing at the outset?

Clr Anderson: In certain issues I'm quite sure we did make some changes. I couldn't remember the detail but it was a 2 hour, 2 and a half hour session, so it wasn't a matter of - - -

We asked Clr Little for his recollections as to whether he was present at this meeting and if so as to what took place. His evidence on the matter was:

Mr Bulford: Do you recall what happened at that meeting?

Clr Little: Not clearly.

Mr Bulford: Did Councillor Hall address you fellow Councillors who had been endorsed by the Ku-ring-gai Preservation Trust?

Clr Little: Well, we went to his home and he addressed us, yes, I guess he did. …

Mr Bulford: He spoke to you?

Clr Little: Yes, he spoke to us.

Mr Bulford: For how long?

Clr Little: I couldn't say. Good heavens - - -

Mr Bulford: Was it a lengthy session?

Clr Little: What would you mean by "lengthy"?

Mr Bulford: Well, couple of hours?

Clr Little: I couldn't say it might have been that long but it would have been of the order, at least an hour I would have thought.

Mr Bulford: Did he do a presentation with a white board and butcher's paper and that sort of thing?

Clr Little: He may have, I couldn't be specific.

Mr Bulford: But you can't recall?

Clr Little: I can't recall specifically that but I'm not going to say he didn't.

Clr Little later informed us that he had not seen a copy of the Mayoral Minute before it was produced by Clr Hall at the Council meeting of 28 September 1999. Clr Little did go on, however, to indicate that "I knew of the contents, a portion of the Mayoral Minute but there were aspects of that Mayoral Minute that I had never seen before at the time that it was delivered". He said that there had been a discussion between Clr Hall and the Councillors at their meeting on the Sunday of those items that he had heard of before.

Clr de Vulder confirmed that he too was present at the Mayor's home on that Sunday, and corroborated other the witnesses' evidence as to Clr Hall's presentation of the Mayoral Minute on that occasion. He went on:

M Bulford: Did you recognise what was on the board as being what was in the Mayoral Minute?

Clr de Vulder: There seemed to be some additional things. …

Mr Bulford: Can you please amplify on that?

Clr de Vulder: It was things like entering properties. Bush fire - declaring a sorry, I'm not sure what you call it. I can't, there was another sort of section added in where he gave himself some additional powers, but I can't remember those.

Mr Bulford: At the meeting of the 28th when the Mayor handed down this document you had not seen it before he handed it around at the meeting, is that correct?

Clr de Vulder: Not that final version, no. …

Mr Bulford: When you saw this document at the meeting of the 28th, what was your reaction to it?

Clr de Vulder: Well first off I thought it was just what had been discussed at the meeting but then it was read out and there was obviously a couple of extra things in there in regard to the powers of the Mayor.

Mr Bulford: That you cannot be sure of the details?

Clr de Vulder: No, I can't.

Clr Coleman's evidence was as follows:

Mr Bulford: Did he hand round at that meeting a draft of the Mayoral Minute?

Clr Coleman: I don't believe he did. I can't recall that one.

Mr Bulford: Had you played any - - -

Clr Coleman: Because many times we were given papers and I don't - I couldn't say yeah or nay (indistinct).

Mr Bulford: Had you played any part in the drafting or content of the Mayoral Minute before it was introduced by the Mayor on the night of the 28th?

Clr Coleman: Only as we were able to make input on the Sunday afternoon.

Mr Bulford: In what way were you making input on the Sunday afternoon?

Clr Coleman: As he put the information to us, and we were able to comment.

Mr Bulford: So there was some debate and impact by Councillors present as to the proposed structure of Council say, for example, in terms of committees and the Mayoral powers, was there?

Clr Coleman: Probably wasn't discussion on every point because being new to the Local Government scene there were many issues that maybe we didn't - - -

Mr Bulford: As a new Councillor, did you feel yourself very much in debt to Councillor Hall in terms of telling you the ropes?

Clr Coleman: Well it was very useful to know someone who'd been in Local Government, worked in the Department, in the Minister's office.

6.1.1 Events at Council's meeting of 28 September 1999 itself

Clr Roach put the view of the independents to us as to their concerns about how the Mayoral Minute was handled:

> I was very concerned about the Mayoral Minute that was handed down, and the Mayoral - it was done in a fairly arrogant way, and even when I spoke to him on the phone he said to me - initially he said, "Look, I read out the Mayoral Minute very slowly at Council and if you had any objections you could have voiced them at the time", which I did do, but it was basically, "Look, I've got the numbers, you just keep quiet. It's your problem. You know, I'm able to go off and do my thing even if you don't think it's correct, and even if it's not, I've got the numbers and I've got the control of what's going on and this is the way it's going to be run from now on."

We recognise that the system of local government certainly provides for decisions of the Council to be made by majority vote, and if one grouping of Councillors votes together and forms the majority, then that is the system, and democracy, at work. But the point is, as will be demonstrated in the next section, Clr Hall as Mayor, leader of this majority group and Chairman of the meeting, did not even permit the minority to effectively put their legitimate views. He gagged debate and rammed his Minute through, with the support of the newly elected and unquestioning fellow Trust Councillors, and this is not appropriate.

Given their evidence, as noted above, that they were aware they were to vote on new items which they had not been briefed on or discussed, and which related to matters about which they knew little or nothing, it is appalling to us that, if they did not do so they apparently made no attempts to ask questions or to debate the issue. It was incumbent on them, in order properly to discharge their duties as elected Councillors, to do so.

In his written reply to the allegations and submissions of the General Manager Clr Hall denied that he had not given General Manager any ability to speak or raise a point. We do not accept Clr Hall's evidence on this. In any event, we note that Clr Hall's legal adviser added on his behalf:

> Clr Hall recalls that one or other Councillor did attempt to provoke further comment from the General Manager by a further question, but that he considered that that was an attempt to bring the General Manager into the Council debate on a policy issue as distinct from simply providing information and he disallowed that attempt as he is properly entitled to do as Chairman in those circumstances.

The General Manager is we consider quite entitled and indeed required to speak up and give advice and not just information to Councillors as and when it is required, so we do not agree with the last point.

We asked Clr Coleman in our interview with him as to his recollection on whether Clr Hall had attempted to prevent Councillors, such as Clr Malicki, from raising points in relation to the Mayoral Minute:

> Clr Coleman: I don't recall, but they possibly did.
>
> Mr Bulford: And were they allowed to speak or did the Mayor prevent them from doing so?
>
> Clr Coleman: He's never prevented anyone from speaking.
>
> Mr Bulford: Are you sure of that?
>
> Clr Coleman: Yes.
>
> Mr Bulford: What about the General Manager, did she not seek to raise some issues with the Councillors about the content of the Mayoral Minute?
>
> Clr Coleman: At what point? In the meeting, in the Council meeting?
>
> Mr Bulford: During the meeting.
>
> Clr Coleman: I don't recall that at all.
>
> Mr Bulford: You have no recollection of that happening or that - the General Manager not being allowed by Councillor Hall to speak?
>
> Clr Coleman: Don't recall that at all. Not at all.

We are unable to accept Clr Coleman's evidence on these issues, in view of the overwhelming probative evidence to the contrary.

Clr Roach's evidence was that Clr Hall denied Clrs Malicki and Cross and the General Manager leave to speak on the Mayoral Minute.

Clr Malicki, on the other hand, was not as clear in her recollections when she gave evidence to us in our interview with her. She seemed to think that she had not been prevented from speaking as such, but had only been prevented from asking questions of or getting advice from the staff, or rather the staff had been prevented from answering.

We accept nonetheless the evidence of the General Manager and of Clr Roach on Clr Hall's alleged failure to allow the proper making of points etc and find the allegations proven. The General Manager had every right to speak up and raise any concerns she had which needed to be drawn to the attention of the Councillors, and it was quite wrong to gag her.

Given the demonstrated lack of adequate consultation with even his fellow Trust Councillors before producing the Mayoral Minute on the night of the meeting, we also consider that, having regard to the enormous range of very important and complex issues it covered, the proper and appropriate course for the Mayor to have taken was to agree to put a motion to the Councillors as to whether they wished the consideration of the Minute to be adjourned to a later time or date.

6.2 The concerns of the MEU in relation to the Mayoral Minute

The introduction of the Mayoral Minute by the Mayor, Clr Hall, and its adoption by the Councillors, on the night of 28 September 1999 not only had the result of causing the General Manager to have the concerns and to take the actions she did in respect of it but also set off a chain of events commencing with widespread concerns amongst the staff. The Mayoral Minute is in many respects the key issue which set off the chain of events which ultimately led to our Investigation.

The staff concerns led to the involvement of their Union, the MEU. We have seen a copy of a memo written as early as 1 October 1999 from one of the MEU delegates at Council, Mr K Woodbury, to the General Manager and copied to the MEU General Secretary. This memo expressed "some real concerns with the content" of the Mayoral Minute, commenting:

> It is plainly obvious the Mayor sees himself as the supreme commander who makes decrees without consultation. This is contrary to the Local Government (State) Award.

The Award is binding on Council, except in relation to the employment of senior staff members (section 340 (4) of the Local Government Act 1993) and it is the responsibility of Councillors to ensure that Council is not in breach of laws, awards and its contractual commitments. The Councillors bear that responsibility through their directorial type role as the "governing body" of Council, as enunciated in sections 222 and 223 of the Local Government Act 1993. Clause 22 of that Award provides:

> (i) The parties to the award are committed to securing the benefits of structural efficiency through the establishment of consultative and participative processes.
>
> (ii) Each council shall establish a consultative committee to provide a forum for consultation between council and its employees to positively co-operate in the implementation of award restructuring and ensuing workplace reform to enhance the efficiency and productivity of the council and to provide employees with access to career opportunities and more fulfilling, varied and better paid work.

Hence the Joint Consultative Committee at this Council, which is not a formal Committee of the Council itself as such but merely a Committee of persons from both the management side of the Council and its employees.

We note that the concept of consultation with staff is given further statutory underpinning via section 8 (1) of the Local Government Act 1993 which provides that one of Council's Charter Obligations is:

- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government.

The Union organiser for the area, Mr Graeme Kelly, became directly involved. He gave evidence to us and told us how the union had been contacted by many people being delegates or members of the Union about a Council meeting and the Mayoral Minute of 28 September 1999. He went on to describe the changes to the working environment proposed in this minute:

> … that we believe are contrary to, in some respects, the Local Government (State) Award - the Local Government Act and which we felt without consultation was going to have significant effects on the employees which were our members of the Council.

Mr Kelly drew our attention to a memo issued on 4 October 1999 under the names of five members of staff to their Union delegate, Mr Woodbury, likewise expressing various concerns over the implications of the Mayoral Minute.

Mr Kelly also told us that initially those concerns were also raised within Council by the local Union delegates talking to the General Manager and the Mayor. We note that the Mayor wrote a memo on 12 October 1999 to all the Councillors with the subject heading "Ku-ring-gai Council Joint Consultative Committee and MEU" which refers to "representations" he received on 6 October from the Chair of that Committee and a delegate from the MEU.

Mr Kelly told us that at the request of the local group delegates a meeting was convened between he and the delegates on 7 October to consider the contents of the Mayoral Minute. He said that at the meeting it was unanimously agreed that he should issue a notice immediately to all financial members of the MEU indicating:

> 1. That members of the MEU do not engage in any discussions on any staff related issues with the Mayor. All discussions relating to staff matters are the responsibility of the General Manager.
> 2. A meeting with the Mayor, General Manager, General Secretary B. Harris, Organiser G. Kelly of the MEU, and all workplace delegates be convened at a mutually suitable time to discuss the ramifications to staff in respect to the Mayoral Minute …

That notice was duly issued and it commenced with noting the meeting and saying:

> The meeting was convened as a result of serious concerns raised by members as to the proposed changes outlined in the Mayoral Minute including but not limited to:
>
> - Access into employee worksites or workstations by the Mayor.
> - Involvement in staffing matters contrary to the Local Government Act 1993.
> - Disregard for the Local Government (State) Award 1997 and the requirements of consultation on any significant effects to employees conditions.

Mr Kelly told us:

> It's the first time in ten years as an official that I've been instructed by the membership to take that action … the delegates felt very strongly about it.

On the same day as the notice was issued, that is to say on 7 October 1999, Mr Kelly caused a letter to be issued under his General Secretary's name to Clr Hall to inform him of the terms of the notice, quoted above. A meeting was requested, as per paragraph 2 of those terms. The letter advised Clr Hall that it was the resolution of delegates at the meeting that:

> Mr Woodbury is not to attend any meeting with the Mayor without the other Union delegates and Officials of the MEU, B. Harris General Secretary and Graeme Kelly Organiser and General Manager Rhonda Bignell of Council being invited.

Mr Kelly told us that the reason for this was:

> … in our opinion, he was seeking to single out a particular delegate to break down … the structure - the fabric of the structure of the delegates. … And we weren't allowing that to take place because it was in our delegates' opinions that if you placed yourself in a situation where you held discussions with the Mayor, the Mayor had the ability to twist that and turn that into something that it wasn't and I can demonstrate that because it happened to me.

He referred in this regard to what had occurred to him at the meeting of 18 October, to which we will come shortly.

The letter also included the following statement:

> The Union has serious concerns with the content of the Mayoral Minute and in particular the proposed involvement by the Mayor in staffing matters, this is contrary to the Local Government Act 1993.

The same message that the General Manager was giving to the Mayor; but he chose to ignore it, apparently.

Clr Hall replied by letter the next day saying:

> We welcome the opportunity to clear up any misunderstandings and we look forward to maintaining an excellent relationship with the MEU, particularly in any personal relationship with Graeme Kelly.

This must have appeared at the time to be a reassuring olive branch to the Union. As the evidence to us indicates, subsequent events showed this to be a false hope.

The Mayor's memo of 12 October, noted above, ends with advising the Councillors of a forthcoming meeting with the MEU to be held on 18 October (as to which see below) and the following paragraph:

> In bringing these representations to your notice, I must point out that as recently as July 1999, the Minister for Local Government, Mr Harry Woods, MP, expressly stated in writing to me as a Councillor, that councils have wide powers in exercising their responsibilities providing such powers are not in conflict with relevant State and Federal laws. Mr Woods' Department is only concerned with due process. In other words, the Council by resolution is its own master and is accountable to its electors each four years. [Our emphasis]

It is apparent from this memo that notwithstanding all the advice he was getting he declined to believe that there was anything wrong in the Mayoral Minute and what that document sought to achieve. It seems clear to us that the words which we have underlined are a sweeping generalisation, misleading and in fact incorrect.

Council cannot, simply by passing a resolution, do what it pleases, which is what Clr Hall seems to be saying, despite the preceding words. He seemingly thought or at least chose to believe, in any event, that what was in the Mayoral Minute was not contrary to State and Federal laws, or more relevantly the NSW Local Government Act 1993. That is not so, and the evidence is that Clr Hall was well aware of it, as advice given *a week before* showed. We refer in this regard to a letter of 5 October

1999 from Mr David Clark, the Legal Officer of the Local Government Association of NSW, to Clr Hall, which raised doubts about the validity of a number of aspects of the Minute.

It should be noted that Clr Hall had received that letter on that same day as is proven by an endorsement on our copy of that letter in Clr Hall's own handwriting in which he asks the General Manager to note it. That endorsed note is also dated 5 October. Later different advice from the President of that Association is in a letter dated 13 October, which Clr Hall cannot have yet received. Likewise the Department of Local Government's advice of 14 October – which like that of Mr Clark queried aspects of the Mayoral Minute.

Mr Kelly told us this about the arrangements made for meeting with Clr Hall on 18 October 1999:

> We felt that it was a very significant matter that the general secretary of this union and myself attend a meeting with the Mayor and all of the MEU delegates. Can I just say for the record: I've been an official ten years, the former General Secretary of this Union - I only ever talked to two Councils in that nine years. Brian Harris has been elected as the General Secretary 12 months ago and I've had to in the first 12 months of his term take him to this Council and it's an issue that I regard as serious. If I have to take the head of our organisation to a Council, then I really have some serious concerns about it. It's not something that I do.

Mr Kelly went on to tell us about what happened when he arrived at the Council Depot, the venue for the meeting with Clr Hall, on the morning of 18 October:

> Now, on the morning of the 18th, I knew our meeting was at some time around nine o'clock that morning and unbeknownst to myself, the Mayor had taken it upon himself to go down to the Council Depot and hold group discussions, if you like, convene informal meetings with groups of employees without notice. Bearing in mind that we had arranged at nine o'clock that morning to meet with the Mayor to try and work through our concerns of the both the Mayoral Minute and complaints that we'd had from staff over his intimidation and harassing tactics.
>
> I was surprised when I arrived at the Depot at about 7.45 to sit down with my delegates to try and re-hash, refresh our memory on why we were there and those sorts of things - - - …
>
> To find the Mayor parading around the Depot with the Operations Manager, Ian Canham and some other management with him and those names escape me at the moment.
>
> I had a very good relationship with Ian Canham inasmuch that he is the Director of Operations and myself as the Union official were working very hard to ensure that we had good lines of communication and that if ever there was a problem that we would sort it out at the local level internally and hence, we've only ever had to go to the Industrial Relations Commission, I think, about two or three times in - two times, I think, in the last ten years.
>
> I arrived at the yard to find the Mayor, as I said, walking around - he passed me on no less than three or four occasions; I was dressed in - in what I would consider to be formal attire, I had a suit on - which I would expect in a Council Depot, you would notice. … Ian Canham was with him, they walked past me on several occasions, as I said - and the Mayor didn't acknowledge me - - -

Mr Kelly added:

> The Mayor then left the - the yard, I had some informal discussions with Ian Canham, Director of Operations, and I said, "What is going on?" He said, "I arrived at work this morning to be confronted by the Mayor saying that he wanted to talk to the staff."
>
> And this was in a climate that we had indicated to them that there was bans on the - on the Mayor, that we didn't want any discussions or dialogue and we had set ourselves down a path of what we were considering eventual resolution to problems.

And later said:

> I really believe - and this is in my firm opinion, that that attempt of his discussion with our members was to undermine the importance that the Union was placing on the Occupational Health & Safety, the concern we had for disregard for the Local Government Act 1993 and the confusion as to the General Manager's role as opposed to the Mayoral role in the day-to-day operation of Council.
>
> Following those discussions with Ian Canham, I went and convened another small meeting of our delegates prior to going into the meeting in at the Mayor's office. The General Secretary greeted me, Brian Harris, at the back of the Council meeting. I distinctly remember the day because one of our officials had passed away that morning and we got a phone call to that effect while we were going into the meeting.
>
> When I went into the meeting everybody was introduced to the Mayor and were directed to a seat within his office. When he came to me, bearing in mind he'd walked past me three or four times in the Depot, didn't acknowledge me, didn't know who I was - he sought to infer that him and I were long lost buddies and I was introduced as Graeme Kelly, he said, "Hi Graeme" he said, "It's been a while since we've got together" he said …

Mr Kelly added that it was not true and that he had never had any discussions with him "only on the telephone preceding the Local Government elections earlier that year".

In relation to the Mayor's letter to Brian Harris of 8 October which refers to, particularly the personal relationship between the Mayor and Graeme Kelly, Mr Kelly's response was:

> …there is no personal relationship - what the Mayor was seeking to do prior to his election as the Mayor, as a Councillor, was continually contacting me on the mobile telephone and in my office in then the Clarence Street, Sydney office - with a range, I believe, undermining concerns about the General Manager.
>
> I felt there was a - a strong, if you like, influence from the then Councillor Hall, not Mayor Hall, to try and establish that the General Manager wasn't doing her job. And there were issues such as the contract on the Council garbage, there was issues regarding the General Manager going to seek legal opinion on a dispute that we had lodged regarding the non-payment of gratuities payments under the Local Government Act where our members hadn't been paid and what he was trying in terms of her general manager's role as per the Local Government Act and I indicated at that meeting of the 18th when the Mayor shook my hand and indicated that we were long lost friends, I said, "Sorry, Mr Mayor, you're mistaken, you haven't met me before. In fact, you walked past me three or four times down at the Depot this morning." And the reason I did that was because it concerned me greatly that I was standing in the Mayor's office being greeted by somebody that I had never formally met before, painting a picture that I had had some relationship with him. And to me, the credibility of the delegate or an organiser or an official of this Union at the local workplace level, is paramount of importance, because if the members loose faith in you, you have no hope of survival.

As to his contacts with Clr Hall in the period before the September 1999 elections, Mr Kelly also told us:

> Mr Bulford: As you say, Councillor Hall's contacting you sort of in fact had gone back almost 12 months before the mayoral election?
>
> Mr Kelly: Yes.
>
> Mr Bulford: But on each occasion your perception was that he was seeking to –
>
> Mr Kelly: Build a case against the General Manager.
>
> Mr Bulford: The General Manager; it wasn't so much that he was personally interested in actual issues concerning terms of employment of staff?
>
> Mr Kelly: Correct. It was about getting, if you like, for the want of a better term, getting the goods on the General Manager. …
>
> Mr Bulford: Is there anything - before we leave that and jump back to 18 October, is there anything else that you wanted to add in relation to that?
>
> Mr Kelly: Yes, there is. The then Councillor Hall went to great lengths to reinforce with me the General Manager's past record in local government.

Mr Kelly confirmed that the Mayor had raised the issues of Maitland and Liverpool.

Moving now to the meeting of 18 October itself, we asked Mr Kelly as to his recollections on how he observed Clr Hall at the meeting. He told us:

> He went through a number of different mood swings if you like, during the course of the meeting. He went to - he went to some, from being happy, some to being very stern, some to being very dismissive of what we were saying and, in fact, dismissive enough to say he wasn't, in our opinion, taking those matters seriously.

Minutes were kept of the meeting of 18 October, and a copy has been provided to us. Mr Kelly told us that he had received a copy of them too and had had some input into them. The minutes were prepared by Ms Gail Goff, a Council employee, as the Minute Secretary. The following extracts are of note:

> 4. The Mayor advised that the 1993 Act is not generally properly understood. It is an Act that is performance based and was done deliberately to get away from the previous prescriptive provisions of the 1919 Act. He further advised that he spent seven years with a Local Government Department and had a close association with the 1919 Act.
>
> He advised that the Ku-ring-gai Trust was set up to listen to the residents as no-one had listened before. He had tried to explain to his colleagues that the Act was widened to ensure the day to day running of the Council *and could extend the power to councillors, if they chose to use it*. He advised that other councillors had not read the Act. [Our emphasis]

6.3 The powers granted to Clr Hall by Council when it adopted the Mayoral Minute on 28 September 1999

We propose now to examine certain only of the powers or delegations granted to the Mayor in his Mayoral Minute of 28 September 1999. We have largely restricted our examination of the Minute to those issues which have generated the most concern at Council and which have figured prominently in our Investigation.

6.3.1 Signing of correspondence

Paragraph 4 of the delegations granted to Clr Hall as Mayor in the Mayoral Minute of 28 September 1999 provided:

> To sign outgoing correspondence on behalf of the Council.

This wording seems quite clear, and purports to give power to the Mayor to sign all outgoing Council correspondence. The Mayoral Minute that Clr Hall introduced on 5 October 1999 sought a number of amendments, including to paragraph 4, in the following terms:

> To retain the right to sign mayoral correspondence and to see all inward correspondence relevant to policy issues before Council.

It is not abundantly clear to us just what this means or just what the effect of it would be. However, we note from the minutes of Council's meeting of that same day that paragraph 5 is not one that seems to have either been amended, as proposed by Clr Hall, or dropped or revoked altogether. The situation as to what delegation, if any, Clr Hall has as Mayor on signing of correspondence is not clear.

Clr Hall sought to put it to us in our interview with him that the intent of the original delegation was merely that he sign Mayoral correspondence. We fail to see how this could be so given the clear language of that paragraph. Perhaps he was thinking about the 5 October Minute when he told us this. In any event, why would it be necessary to give a formal delegation to the Mayor to sign his own correspondence?

Clr Hall also told us:

> Clr Hall: …yes, there was a misunderstanding there, that was taken - and that was taken, as I - later revealed, and that was the type of thing that perhaps could have been amended in the rescission motion on 5 October. … I just took that from - that was from Pittwater.
>
> Mr Bulford: No legal advice or input?
>
> Clr Hall: No, no. I took that from Pittwater Council, that was actually taken right out of Pittwater Council's role of the Mayor - Mayoral Minute.

Assuming that the original delegation stands, we must seriously question either its legality or its practicality.

6.3.2 Press releases and contact with the media

The issue of who is entitled to contact the media at a council is a difficult and complex one. There are issues as to the role of the General Manager and her staff, the role of individual Councillors, including the Mayor, and the role, if any, of the person holding the position of mayor, by virtue of that office.

There are also issues as to whether contacts with the media, looking here at contacts by Councillors, are made in such a way as to purport to be a speaking on behalf of Council as an officially endorsed and authorised spokesperson, versus contacts in a Councillor's own personal right. Public perceptions as to what is happening in this regard are important.

Therefore the whole situation needs to be carefully managed.

We are concerned first that what was provided for in the Mayoral Minute of 28 September, in terms of purported powers granted to the Mayor in relation to media matters, and second what Clr Hall has at times done in practice, are severely undermining this and presenting potential serious problems.

Ms Virginia Leafe, the Manager at Council responsible for media matters, told us that in her five years at North Sydney Council in a similar role the situation had been managed reasonably well. She said her perception on arrival at Ku-ring-gai Municipal Council was different. She told us that Clrs Hall and Malicki had apparently been in the habit of frequently issuing media releases, though she admitted that it was the prerogative of a politician to do so. But the question is whether those were media releases which purported to be the expressing of views that were clearly personal, with which we have no quibble, as opposed to views that purported to be on behalf of Council as a whole. Ms Leafe continued:

> Ms Leafe: I believe that they sent out media releases as Councillors under their own political bat, but the perception in the community, and this is where we get into perceptions and this is very important, I think - - -
>
> Mr Bulford: Yes, I accept that that's so, yes?
>
> Ms Leafe: That the perception in the community for me - before I started at Ku-ring-gai I did some research about Ku-ring-gai before I went to work there and I thought - I'd never heard of Councillor Hall, but I did read about him all the time in the newspaper and I thought he was actually the official spokesperson for the Council. I did not realise, until I got there, that that was not the case.
>
> Mr Bulford: And that arises simply from the frequency with which his name was in the paper?
>
> Ms Leafe: Absolutely. And because there was no response from the Council.
>
> Mr Bulford: But that's not a sort of issue or problem that you saw happening at North Sydney?
>
> Ms Leafe: No. Definitely not.

Ms Leafe went on to tell us as to the steps that were formally taken, once she joined Council, to manage the situation better:

> Ms Leafe: … once I got there and I realised that this was not the case, I certainly went about trying to give the Mayors the media opportunities to be able to make their presence felt in the media so they could start being the spokesperson. I tried to make it happen that we were sending out media releases more often and we were getting the Mayor to comment more often on issues that often they wouldn't have taken up.
>
> Mr Bulford: And those media releases you at least knew they were happening and maybe even had an input into their language, did you?
>
> Ms Leafe: Yes I did.

She explained that in the period between when she joined Council and the time Clr Hall was elected Mayor, the situation of press releases by Councillors, such as Clrs Hall and Malicki, was managed reasonably well, but that this degenerated once Clr Hall became Mayor. She told us that once Council had its Residential Development Strategy review and Task Force up and running Clr Hall virtually ceased using her for press releases or other matters where her expertise lay, only coming to her for assistance on a couple of occasions. For example, on a Mayoral Minute issued by the Mayor sometime in approximately February 2000, shortly before we interviewed Ms Leafe. This concerns us. Professional staff, such as Ms Leafe, are there to help and assist Councillors, as well as the Mayor, and Councillors run risks in by-passing or sidelining them when they are not themselves experts (as opposed to soi-disant experts) on the issues involved.

Ms Leafe drew our attention to memos that the General Manager had issued to staff about the rules for them contacting the media, but there were apparently no equivalent rules or procedures at the Councillor level. So far as the present Council is concerned, it is noted that the day after Clr Hall was elected as Mayor, but a week before the Mayoral Minute was produced, there had been consultation between Clr Hall and the General Manager about Council's "media contact policy". On 22 September 1999 the following memo was issued to the Directors (or officers holding equivalent managerial positions in the organisation) – but not copied to Councillors – promulgating the following policy:

> Mayor and General Manager **only** to speak to the media. If the media contacts you, please refer the call/enquiry to either the Mayor or the General Manager. Staff should not make comments to the media.

The name of Ms Leafe, or rather her office, Corporate Communications Executive, is conspicuous by its absence from this statement.

Before proceeding, we should pause here to make two comments. If this was purporting to be a Council policy – the word "policy" is used in the preliminary paragraph of the memo, not quoted above – then there first should have been a Council resolution on the matter. Neither the Mayor and/or the General Manager have any power or authority to determine Council policies. There is an exception for the Mayor allowing him to do so in cases of necessity only, between meetings of the Council – see section 226 of the Act. If this was, on the other hand, merely a rule for

staff as an organisational or operational matter then it was in order for the General Manager – alone – to issue that ruling. If she chose to consult with the Mayor on the matter, that is her prerogative, and in fact any consultation, on *such* a matter, may well be prudent and good practice. The opening paragraph of the memo in fact said:

> Following discussions with our Mayor, Cr Hall, about media contact, please note that the following media contact policy is in place from today …

But that this memo may have been purporting to promulgate a policy is confirmed in our view by a later memo of 4 November 1999 from the General Manager, but again issued only to all staff. Relevant parts of that memo are:

> I have previously set out for staff the protocol for contact with the media. This memo is to remind you again about that protocol. … It is Council's policy that only the following are to talk to the media:
>
> - Mayor
> - General Manager
> - Corporate Communications Executive …

We have seen no evidence, on the other hand, that *Council* – ie the elected body – has passed a *resolution* adopting such a policy. This needs to be addressed.

Now, the Mayoral Minute adopted by the elected Councillors on 28 September 1999 had the following to say on media issues and the powers of the Mayor, and by implication others, on such issues. In the preamble, or explanatory sections, it is stated:

> 1. THE ROLE OF THE MAYOR
>
> The Mayor is generally regarded as the leader in the community and represents the Council *and acts as its spokesperson*. [Our emphasis]

At this stage we should point out that the italicised words have no basis in the Local Government Act 1993. Section 226 of the Act, which defines or explains the intended role of a mayor in local government in this State, says absolutely nothing which either expressly or impliedly provides to this effect.

The Minute went on to recommend that "to give authority to the Mayor to implement with Council the future directions outlined" Council should delegate a number of additional functions to the Mayor, including:

> The making of media statements or press releases.

The document then proceeded to deal with "delegations to the Mayor in detail". Paragraph 8 of these detailed delegations provided:

8. Media Relations

> To make media statements or releases which are intended to inform the public of a formal Council decision or policy on behalf of Council.

While other parts of the Mayoral Minute were amended by resolution of the Council on 5 October 1999, this paragraph was not.

It is readily apparent that, despite the purported width of the description of the intended delegations to the Mayor in the preamble, the actual delegation, in paragraph 8, is actually narrower.

We have in this Investigation had produced to us a couple of examples of press releases of Clr Hall which show that he exceeded his delegated authorities in this regard. In fact, we called for a copy of *all* press releases issued by Clr Hall as Mayor, but Council was unable to provide them to us, as it has no orderly record, or even any record, of them. Apparently Clr Hall has been issuing press releases without the use or assistance of Council's administrative support, and not producing copies for Council to keep, as it should, in its record system. This is a cause for concern and needs to be addressed.

Now, so far as the General Manager's powers in relation to media contact are concerned, and through her those of the staff, or at least those staff with authority to do so, we consider that section 335 of the Act is the relevant statutory source of those powers. Whilst section 335 does not specifically mention media matters, it is inherent in the general power and role of the General Manager in relation to the "efficient and effective operation of the council's organisation" and the "day-to-day management of the council" that she deal with at least some media matters on behalf of the Council. We do not consider that a formal delegation from the elected body specifically giving such powers to the General Manager is necessary.

We have also noted that the General Manager's contract of employment with the Council contains a clause in which the General Manager:

> warrants that in all dealings with the media she will use her best endeavours to ensure positive publicity for the Council.

While that part of the contract that deals with the responsibilities of the General Manager is not completely clear as to media contact etc, the above clause clearly acknowledges and is based on the inherent responsibility of the General Manager on at least some media matters. The contractual responsibilities of the General Manager as set out in her contract are contained in clause 4.1 of the contract, supplemented by a number of provisions in Schedule One to that contract. In paragraph 5 of that Schedule, under the heading "External Relations", it is stated that these include:

> Develop and maintain media relationships to project a favourable image of Council.

Likewise, the performance measures of the General Manager's performance are also set out, at least in part, in that same Schedule, and on that account these include:

> Interviews and media releases are made within approved format and receive fair coverage.

Notwithstanding the meaning of the above words, it is clear, therefore, that Council, through its contractual commitments with the General Manager, has signalled a role for the General Manager in media matters. Any change to that requires, in accordance with normal requirements of contract law, an amendment mutually agreed to between the General Manager and Council, and not just the passing by Council of some resolution on media matters. Any such resolution needs to be drafted and passed in such a way that a breach or potential breach of the General Manager's contract is not a result.

Dealing with the media, moreover, to keep them informed about Council decisions and policies should, we consider, really be a matter for the General Manager and her staff, given the clear statement in the Act that it is the General Manager, and through her the staff, who is responsible for the "implementation of the decisions of Council". Certainly nothing in section 377 of the Act would, as such, prohibit Council delegating any responsibility for certain aspects of Council's media relations to the Mayor, but the issue of prudent and good management practice needs to be duly considered by the elected body before it determines to grant any such delegations to the Mayor, seemingly cutting across the clearly statutorily intended role of the General Manager.

As noted above, we have noted several instances of poor and imprudent management practice flowing from incautiously issued or worded media releases for which Clr Hall is responsible.

The first of these was a media release dated Sunday 7 November 1999 announcing that Clr Hall was to stand aside for the purposes of the then intended Council sponsored Inquiry. This was issued on Council letterhead, with the additional notation at the foot that it was issued through the "Office of the Mayor". In addition, at the end Mr Walker was nominated as the contact person "for further information", and he was referred to as "Council Public Relations Officer", with a phone and fax number given, as well as an e-mail address. The evidence given to us indicates that these were Mr Walker's own details, and not those of the Council or any Council staff member.

Ms Leafe told us how she came to find out about the release of the press release and her reactions to it:

> Ms Leafe: And I rang him. Obviously - the media rang me on Monday morning and said, "What's going on?" and I'm going, "What do you mean what's going on?" I'd heard - someone rang me on Sunday night, I think it was Rhonda rang me on Sunday night, or first thing Monday morning to tell me that she had heard from another Councillor that this media release went out. Because the media release - they hit Councillors on the buttons which went to all the old Councillors because the numbers hadn't been changed. So

unfortunately for them a Councillor got hold of it and rang Rhonda and told her about it. And I can't remember if she rang me that night or this was Monday morning, I'm not quite sure. Anyway, we were aware of it. But nevertheless the media rang me going, "What's going on?" I'm going, "What do you mean?" They faxed - the media faxed me a copy of it. That happens to me quite often, that they will fax me a copy of information about the Council. So they sent me a copy and of course I was very upset, Peter Walker was - now this was - I was at home because it was Monday, so I was at home. This all happened, they all rang me at home going, "What's going on? What's going on?" I got a copy of this. I rang Peter Walker and I said, "What's going on? The media are going crazy and they're all ringing me and they don't know you, they don't understand what's going on", and he sort of passed it off as like, "Oh, well, you know the Mayor's employed me to do this work and I'm the Public Relations Officer now", and all I could think of was the link back to the payment of provision to Councillors and I didn't think that it wasn't adopted at that stage, I thought of that later, when I was thinking "What's going on?". Anyway, he was talking to the media and I'm saying, "What are you saying?" and he was talking off the record to the media about the Mayor, and I'm going, "What are you doing? What are you saying? This is very scary", and at this stage I was very worried. Because then, the next day, the Herald article had him quoted, off the record, as saying all these things about the Mayor. About how, "He's a bloody idiot, yes he does - you know, he has a tendency to do this", and he talked to me - Peter Walker talked to me and he said, "I'm very shocked that they quoted me off the record", I said, "What do you mean quoted you off - you never talk off the record" You know, "I don't understand why you would even do that and then" - - -

Mr Bulford: So he was clearly totally inexperienced and naïve in these matters?

Ms Leafe: Absolutely. And then I thought, "Wow, what is going on here? I've got this guy doing a communications audit on me and he can't handle this issue".

Mr Bulford: Yes?

Ms Leafe: And then I was moved at that point to write a memo to Rhonda and to … say I want something to happen.

The second was a media release of Saturday 8 January 2000, therefore, again out of office hours. It is again a media release issued on formal Council letterhead or notepaper, and again at the foot is a notation that it comes from the office of the Mayor. His name and signature also appear at the end of the document, and underneath those are his title “Mayor”. It is quite clear, therefore, that the document purports to be an official and apparently authorised expression of opinion and views of Council, through its apparent spokesperson, the Mayor.

We have, as noted, determined that the Mayor certainly has delegated power from the elected body (its wisdom being another matter, which we are now examining) to make media statements or releases intended to inform the public of a policy or decision of Council. But whilst we have been advised that Council has in place an existing policy on brothels (inherited from the previous Council) nothing in the media release purports to be about or even related to that policy.

The document speaks for itself, and as to relevant parts provides:

BROTHEL TASKFORCE A JOKE

> The NSW Attorney General's belated announcement on January 7 to establish a taskforce to monitor the regulation of brothels is all window dressing. Instead a select committee of the NSW Parliament should be elected to undertake this review.
>
> Mr Shaw has conveniently omitted to advise that …
>
> Has Mr Shaw just cosmetically changed the name of that departmental working party or is the new taskforce another bureaucratic process in the all-powerful NSW executive government in order to move the brothel responsibility from one minister to another that will lead to nowhere? No public servants are interested in outcomes. …
>
> Corruption at local council level has now been perceived as a real problem.
>
> Ku-ring-gai's previous council took over eighteen months to obtain state government approval to our 1997 local environment plan and development control plan to regulate brothels. The working party was not interested in my pleadings then. These planning instruments are now described as "Clayton'" planning instruments having been watered down so much as to be virtually useless in defending subsequent court appeals. …
>
> Judgments on brothel appeals handed down are ludicrous ...
>
> … Mr Shaw's belated enthusiasm.

The press release then goes on to attack Council's planning staff over an incident of a brothel detected in Gordon, which we know has been a matter of particular concern to Clr Hall. This incident, so we understand, predated this Council.

Clearly Clr Hall was playing politics here and using his position to push his own personal agenda and gripes. We do not dispute that Clr Hall, as an individual, or as an individual Councillor, like any other Councillor, is entitled to put personal views before the media. But this should not be done in such a way as to represent those views, or to be reasonably taken by the public and others, to represent those views, as being officially those of the Council as a corporate body. At the very least, there is the risk of Council being embroiled in defamation proceedings or having to reimburse the Councillor under its section 252 policy for legal costs in defamation proceedings arising out of these intemperate and unauthorised outbursts.

Council needs to examine and put in place policies, practices and procedures for managing these issues and risks.

6.4 The Mayoral Minute and the proposed Communications Audit

The Mayoral Minute of 28 September 1999 provided in section 5 for the following:

> As part of this Council's plan to examine the effectiveness and extent of all of Council's operations, I recommend Council undertake an audit of our communications with ratepayers and residents to ensure that our communications in written, spoken and visual form are meaningful, effective, efficient and provide value for money.
>
> This communications audit would examine all Council's information publications, public relations, communications strategies, corporate image and events and the ways Council

> relates and reacts to our community needs, including the use and management of a Council website.
>
> In particular the audit person will be asked to address the most efficient and effective ways of introducing a system of precinct consultation to ensure community participation in Council's decision-making processes and provide localised input into Council strategies and handling of issues such as residential housing, planning controls, traffic management and recycling, environment, waste collection, and services.
>
> The audit should also examine methods of improving civic pride and reaffirming Ku-ring-gai "garden suburb" status.
>
> This would also include the recognition of the heritage status of areas and buildings in the municipality.
>
> It is further recommended that the Mayor and General Manager be delegated authority to seek an *appropriate* [our emphasis] public relations professional to undertake the audit, funds to be met from the community consultation budget. The audit is to be completed within six weeks of the appointment of the outside consultant.

The Councillors approved the audit process as outlined in this quotation.

It was certainly well within the power of the elected Councillors to determine that such an audit take place, and we do not seek to examine that aspect. The issue of concern is as to how the audit commenced and proceeded, to the extent that it did, and as to how Council appears to have left the matter somewhat hanging.

We have noted at section 3.16 of this report the concerns expressed to us that Ms Virginia Leafe, Council's Manager in charge of communications matters, had with the audit. To the extent that those concerns may have been directed at the mere fact that the elected body had acted on Clr Hall's recommendations and approved the audit, and we should make it quite clear that there is no evidence that this was so on the part of Ms Leafe, then we note that staff must be mindful of the fact that a newly elected Council is perfectly entitled to determine such lawful policies as it deems appropriate, and to put into place what provisions, in the way of policy matters, it considers necessary to implement the electoral mandate it considers it has from the community. Staff must be prepared to work with and adapt to such new policies and so on.

Whether or not those policies are appropriate is not for the staff to judge, at least in terms of their public stance. The elected body are accountable for such matters to the community, ultimately at the ballot box. Some accountability also arises in terms of the statutory role that a governmental oversight agency, such as the Department of Local Government, we as Departmental Representatives in this Investigation, or the Ombudsman or the Independent Commission Against Corruption, may have to play on such issues.

There is some evidence to indicate that some steps were taken by Mr Walker in his audit, but our impression is that these were fairly preliminary. The evidence before us clearly shows that whatever steps were in fact taken, the audit actually died at an early stage, and on the initiative of Mr Walker himself, albeit prompted by Ms Leafe raising certain concerns with the General Manager.

Ms Leafe told us of her reservations as to the credentials of Mr Walker, in terms of his background and expertise to do the job (and see section 6.3 above) and said:

> Peter Walker was hired to do the communications audit. Now, he came and talked to me. … Nevertheless I was directed to give him information and I did, I gave him all our media releases and he wanted to go back and check all this information. A list of information that he wanted. Which we sought to provide him - we gave him some - we couldn't get all of it to him. Then all of a sudden this came out. … I met him to talk about our unit and he did have discussions with my staff, and then this came out.

The "this" was the press release which Mr Walker issued on 7 November 1999 on behalf of the Mayor, showing Mr Walker supposedly as "Council Public Relations Officer", announcing that Clr Hall was to step aside for the purposes of the then contemplated Council sponsored inquiry process into the staff complaints about Clr Hall.

This resulted in a memo of 9 November 1999 from Ms Leafe to the General Manager in which she raised various issues regarding the proposed audit. She particularly noted that the Mayoral Minute had contemplated that the audit would be conducted by an *independent* consultant. The memo continued:

> It is my understanding that two consultancies were briefed and one appointed being, Peter Walker Public Relations.
>
> I understand that the consultant hired is a personal acquaintance of the Mayor for over 30 years. At this stage I became concerned that this maybe a politically motivated move by the new Council. The Mayor has indicated to me on a number of occasions that he believes I am not promoting the Council in a positive manner. I strenuously deny this allegation. My job is not to take political sides but to provide the community with information about Council business that is unbiased, relevant and timely.
>
> These fears became further accentuated by the fact that the independent consultant was starting the (sic) do work for the Mayor that under normal circumstances would come to the Communications Unit. An example of this is a newsletter on the Residential Strategy and it is my understanding that Peter Walker will produce up to 20 newsletters per year for the Council.
>
> On 10th [sic – 7th] November, Peter Walker, the independent consultant issued a media release on behalf of the Mayor. The contact details listed him as the Council's public relations officer. I am now very concerned that the communications audit is compromised and believe that the independent consultant has a conflict of interest.
>
> Further to this point in today's edition of the Sydney Morning Herald (10/11/99), Peter Walker is quoted as saying he has been employed as the Council's public relations officer. …

Apparently on or shortly after Ms Leafe wrote this memo she had a pre-arranged appointment to meet with Mr Walker for the purposes of the audit. He kept that appointment and when he arrived Ms Leafe told him she had concerns and showed him her memo to the General Manager, which he read. To Ms Leafe's surprise, she told us that he said:

> Oh, no, I've just come in to say exactly that. No, I can't do this any more. I can't do this.

The General Manager told us that she acted on the memo and spoke herself to Mr Walker. This resulted in a letter from Mr Walker terminating his role – as to which see at section 3.31.2 of this report. Both Ms Leafe and the General Manager told us that nothing further was done in relation to the audit after that date.

We also asked Ms Leafe about some of the policy type issues flagged in the Mayoral Minute under the heading of the audit, which we have quoted above. For example, the proposal to set up a precinct committee system for the community to interface with Council, a proposal that Ms Leafe told us that she had no problem with, given her previous role at the North Sydney Council where an established precinct system has apparently worked well for some years. Despite the intent that this be created – indeed we note that it was part of the election platform signalled to the electorate by the Trust endorsed Councillors – nothing has been done about this. We can only assume that the Councillors have got so distracted by other matters emanating from or to do with Clr Hall, as well as with the Residential Development Strategy, that they have failed to do anything about precincts. They could easily have done so, and kept faith with the electorate on this. One would have thought that the establishment of such an infrastructure could have been an important part and means of dealing with the views of the community on the Residential Development Strategy.

Likewise, Ms Leafe told us that, as contemplated by the Mayoral Minute, she had attempted to examine and review all Council's information publications. Indeed, she told us that she had tried to do so in the life of the previous Council, but this got interrupted by the Residential Development Strategy that that Council had been trying to implement – shades of the present Council. She said:

> Not a lot of success because the residential strategy overtook everything. And all I did and all I have done at Ku-Ring-Gai for a long time is crisis management. I'm an expert.

6.5 Clr Hall and the question of access to Council office and other areas

The 28 September 1999 Mayoral Minute purported to give extensive powers to Clr Hall to gain access to all Council's premises and administrative offices.

The Mayoral Minute provided for the Mayor to have delegated to him a series of "additional functions". For present purposes, these included:

> Access to all facilities and information in the Council at all times due to the emergency powers required to be vested in the Mayor.

The Minute, when it came to setting out the delegations to the Mayor in more detail, went on to state:

> 1. Emergency Powers vested in the Mayor will require unrestricted access to all areas of council and to all information sources in council.

On 5 October 1999 Clr Hall introduced another Mayoral Minute, but co-signed by Clrs Bennett and Little, by which he sought to amend parts of the previous Minute. The last-mentioned paragraph 1 was restated in the following terms:

> 1. **Emergency Powers**
>
> To exercise in cases of necessity the policy making functions of the governing body of the Council between meetings of the Council. The Mayor at all times shall have unrestricted access to areas of Council's premises and information sources necessary for him/her to carry out the role of Mayor.

This amendment was unanimously approved by the Council's adoption of the Minute at that meeting.

Given the fact that the second sentence just quoted occurs under the heading it does, we consider that this colours the interpretation and meaning of what is in that sentence. Accordingly, we still interpret that sentence, giving the access powers that it purports to give, as being given in reliance on the so-called emergency powers. This notwithstanding the switch to the use of the word "necessity" in the first sentence, a word which is in fact the word used in section 226 dot point 1 of the Local Government Act 1993. In any event, we note that the "necessity" powers are limited in that provision of the Act to be powers in relation to "policy making", as the first sentence just quoted states, functions of Council, and nowhere in section 226, which defines the ambit of the Mayor's statutory powers under the Act, is mention made of "emergency powers" or, for that matter, rights of access to Council administrative offices, etc, in reliance on such supposed powers.

Certainly, we would agree that the words "necessary for him/her to carry out the role of Mayor" in the 5 October version do have the effect, in our view, of limiting to some possibly considerable extent the ambit of the earlier version, but, except to this extent, the effect of the two versions is much the same.

We also note that clause 5 (a) of Council's *Policy for the Payment of Expenses and the Provision of Facilities to Councillors*, as approved by Council on 19 October 1999 for placing on public exhibition pursuant to section 253 of the Act provided:

> **5. ACCESS TO COUNCIL OFFICES**
>
> **a. Mayor**
>
> The Mayor will be provided with a security card enabling entry to Council's offices as per Minute Nos 707 and 732 of 1999.

Minute number 707 was the resolution of Council of 28 September 1999 approving the Mayoral Minute and Minute number 732 the resolution of 5 October 1999 amending the former. The version then actually in force of the Policy provided in the corresponding paragraph merely that "the Mayor will be provided with a master key enabling entry to sufficient of Council's offices to gain access to the Mayoral and Councillors rooms".

Clr Hall was asked by us in our interview with him as to why he saw it necessary to have access to all parts of Council's offices. He told us:

Clr Hall: I was - I felt that it was a right that the Council Mayor should have in emergency situations, apropos 226 of the Act, which was confirmed by Mr - Councillor Woods and was I think included in the adopted Mayoral Minute by a Council resolution. The Council gave me that authority and I was acting on that authority.

Mr Bulford: All right. And what about the security room, was that included?

Clr Hall: I believe it should have been - yes, if there was an emergency, I was in the room, in the building on my own. For instance, in an emergency situation I felt I should have had access to all - whether I used it or not is not the issue. The issue is that all previous mayors that I'm aware of always had full access to the entire Council as a right and I ensured that the Council considered this matter by the adopted Mayoral Minute process.

Despite what the Mayoral Minute so says, Clr Bennett told us in our interview with her that it was her understanding that the need for such access powers was founded not so much on the so-called "emergency powers" as the fact that "until some time around mid 1999 all Councillors and the Mayor had unfettered access to Council premises". For this view she told us that this is what Clr Hall had told her. She added:

> I was told that the General Manager effectively unilaterally imposed a new security system. She had a security system installed which required that you have adequately coded electronic access keys in order to gain access to the various parts of the Council premises and that this technical system was used to exclude Councillors from all parts of Council other than the Mayoral office, the Councillors meeting room and the Council Chambers. That's what I was told. … my understanding was that there was no legitimate basis for excluding Councillors and the Mayor, both, from Council premises. It wasn't put to me in terms of Emergency Powers at all but of a general right and also a common practice, being the previous practice.

However, it seems that Clr Hall did not tell her the full picture, as the General Manager told us in our interview with her that the issue was one of security:

> We actually did a security audit sometime last year, early last year, and we found we were absolutely, like there was no security whatsoever and anybody could have come in Council meetings, they could have actually got into staff areas, computer areas, the whole place was just a minefield of security problems. … it was early last year we introduced the security cards. … I checked around with a lot of the other Councils as to actually how they handled Councillor access to staff work areas. Most of them did not have Councillors wandering through the staff work areas, even in the day time. What they would do is the Councillor would come into the Councillors' room ring up the Director and say, "Let's meet," or before they came, "Let's meet." … I was just trying to tighten up on security because we actually found we could be robbed like that, we could have a bomb left like that and there was just no security. … There had been a number of thefts and things from staff, you know, wallets and things. So we introduced the security system so his security that we gave him, and we could check the Hemsley records, we gave him as the Mayor, automatically, the Mayor's office, Councillors' room, level 3 conference room, the civic office where Nicole and Sandra and the Mayor's PA was, which actually I believe is where Mayors need to go. Previous Mayors, even after we put in the security system, David Dobbin didn't have unfettered access during the day. He believed that he shouldn't be wandering around the staff areas, he would get the Director up to his office or have a meeting with the staff or something, you know, arrange rather than just wandering through.

We note that when bringing in the new security access system the General Manager in fact sought and obtained from Abbott Tout, Council's solicitors on some matters, advice as to whether this was appropriate. That advice was issued in a letter of 25 June 1999, a copy of which we have read. Their advice was that the Act "specifically does not accord to Councillors any 'right' to enter Council staff areas and work areas at any time". They added:

> Provided the imposition of the security system does not hinder the role of a Councillor under Section 232 then there is no curtailment of any role of the Councillor under the Act.
>
> In our opinion it could not be said that the imposition of a security system could hinder the role of a Councillor under Section 232.

We accept the evidence of the General Manager that the security system was not one that, in the words of Clr Bennett, was introduced with the dominant purpose of excluding Councillors from the office areas. The primary aim was to ensure security generally was improved, and following from that the General Manager arranged to give access to the Councillors to those areas to which they needed access to be able to perform their functions as councillors, in accordance with the Act.

Therefore, the appeal to the so-called emergency powers in both the original and amended versions of the access power delegations to the Mayor is, in our view, just a ploy and one that is without legal foundation. There are no "emergency powers", and certainly none that would warrant the access rights or powers which have purported to be granted to the Mayor.

The advice of the Department of Local Government to Council, provided on 14 October 1999, covered a number of issues arising under the Mayoral Minute. However, whilst it has quite a bit to say on access to Council's information and records, it does not actually deal explicitly with the question of physical access by Councillors and the Mayor to Council office or other areas. It is therefore no endorsement, we believe, despite what we understand Clr Hall might have sought to say on this, of his desired physical rights of access.

There are clear differences of view between those of the President of the Local Government Association of NSW, Clr Peter Woods in his letter of 13 October 1999 to Clr Hall on the legalities of the Mayoral Minute and those expressed in an earlier letter from the Association's Legal Officer, Mr David Clark. Mr Clark's letter is dated 5 October 1999 and was also addressed to Clr Hall.

The advice of Mr Peter Woods was:

> I agree with the majority of the advice given by the Association's Legal Officer, with the exception of some matters contained in points 1 and 2 of that advice. In relation to point 1, in my view, it is entirely appropriate for a Council to resolve, as a matter of policy, that its Mayor should have unrestricted access to all parts of the Council's premises, whether in times of emergency or at any other time. I should say that, depending on what may be contained in the Council's code of conduct, it may not be appropriate for the Mayor to generally seek to give directions to staff on the discharge of their duties, while acting in accordance with that resolution. The General Manager is retained by Council to ensure that the instructions and policies of Council, or by the Mayor in between Council meetings, are carried out. …

Let us deal with the points made by Mr Woods in turn. First, we must indicate that we cannot agree that the Mayor should always have full and unrestricted access to all areas of the Council's premises. Second, it is quite clear that under section 352 of the Act staff can never be given directions by the Mayor, or for that matter other Councillors individually or Council as a body, on the content of any advice or recommendation. Likewise, given the clear dichotomy in roles and powers between the General Manager and the Councillors under the Act, directions on organisational or staffing matters, except in terms of passing appropriate policies on staffing matters, can also not properly be given to staff. Therefore, Mr Woods' statement is too broad. In any event we fail to see the relevance of Council's Code of Conduct on such matters.

On the question of access, Mr Clark had this to say:

> In its present form I feel that this is not properly a delegation within the meaning of the Act, but rather a statement of your needs. Even allowing for this, on a strict interpretation of section 226 of the Act a mayor does not have "emergency powers", but rather a power "to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council". A power to have unlimited access to all areas of Council's premises, including staff working areas, would be liable to be struck down as *ultra vires* unless it could be shown that such access was essential to the exercise of that power. I suggest that delegation should be redrawn to ensure that at all times you have unrestricted access to areas of Council's premises and information sources necessary for you to carry out your role as Mayor. This would give you access to your office, your diary and your mail, Council's meeting and function rooms, other parts of the Executive Suite such as those containing photocopying and facsimile facilities, and those other areas to which you would normally need access in the course of your council duties.

We agree with Mr Clark.

We note that Mr Clark's advice is evident in the amendments made to the Mayoral Minute in this regard on 5 October 1999.

At Council's meeting of 19 October 1999, the tapes of which we have listened to, we note that both letters were tabled with a view to being made public. Clr Hall in fact read out the letter from Clr Woods to those present at the meeting. He then released the views of the Legal Officer of the LGA, but reported to the meeting that those views were contrary to the views expressed by Clr Woods. Clr Hall then went on to announce that he had spoken to Clr Woods, who told him that his views as President prevailed.

We consider that the powers as they presently stand are still too vaguely expressed and wide, and they need to be re-examined by the Councillors as soon as possible with a view to ensuring that they meet both the requirements of the law and good administrative practice.

We note in this regard that the General Manager informed us during the course of the Investigation that Council's *Policy for the Payment of Expenses and the Provision of Facilities to Councillors* was re-considered by Council at its meeting of 7 March 2000, when Council formally adopted that policy, but with amendments,

after a previous version had been placed on pubic exhibition for a period in accordance with the requirements of section 253 of the Act. She also told us that the particular paragraph dealing with Mayoral access was not addressed as such at the 7 March meeting, adding:

> My understanding is that Councillors preferred to have the Investigators address this issue rather than address it in the middle of the Investigation.

Clr Hall's demands for access have created a good deal of problems at Council. There has been a considerable unnecessary adverse impact on staff arising from Clr Hall's demands. This has been no over-reaction on the part of staff.

The General Manager told us:

> Councillor Hall immediately demanded that he have unfettered access. The staff's instant reaction was anguish, outrage, worry because they knew what the fellow's history was. … it was the access that was the major issue universally with staff.

And:

> I have to say the issue of access is something that has just freaked the staff out completely, that he wants access. I said to him, "Why do you want access to the staff workstations 24 hours a day, 7 days a week?" "Because I'm the Mayor and if there's a fire in here I've got emergency powers and I'll be the one that has to be in here." This is at that meeting, very early in the piece, and that's when I told him, "No, you don't have any emergency powers and it'll be the Fire Brigade that comes in if there's fire." The staff and I all know that he just wants to go through people's desks and go through their workstations and take things.

Concerns about access were formalised by staff at an early stage. Mr Graeme Kelly, the former MEU Organiser for the area, drew our attention to a memo of 4 October 1999 issued under the names of five members of the staff to their Union delegate. One of the concerns expressed about the Mayoral Minute in that memo was the issue of the access purported to be granted to the Mayor. It was stated:

> This raises serious concerns of privacy and confidentiality relating to information and data collected in respect of a particular project or programs. For example waiting lists for child care; hall hirers names, addresses and telephone numbers; parent/carer details who enrol their children in school holiday programs; tenderer's details and costings.
>
> The other concern relating to privacy and confidentiality is personal information and possessions belonging to staff that is kept at the work place.

The follow up by the MEU on such matters is considered at section 6.2 of this report.

The General Manager told us a bit about what access was granted to Clr Hall at what stages and as to what was the then current situation:

> Ms Bignell: On 5 October which is the next week he produced to me the advice that was received from the Local Government Association to say that the Mayor's access should be restricted to those civic areas that I mentioned before. I think during that week his access had been turned on because he was just screaming and yelling, "I want access, I'm the Mayor, give me access." I think his access was turned on and then when we got the Advice on

5 October that said he didn't have access, we turned his access off again except for - - -

The General Manager then went on to describe Clr Hall's actions after receiving the letter of advice from Mr Peter Woods:

Ms Bignell: So he produced that at a Council Meeting and he said, "I've spoken to the President and the President says I can go anywhere so I want access." So I gave him access again, full access and he's basically had full access ever since then. The angst levels of the staff are up here.

Mr Bulford: So as we speak he still has complete access?

Ms Bignell: Yes, full access.

The General Manager also told us that Clr Hall had demanded, and been given, a master key to all the Directors' and Managers' offices. She had sought to query this, but his response, she told us, was:

"Yes, I'm the Mayor, I want those, you just give me those keys." I said, "You realise how people are feeling about you having keys to the Directors and Managers offices, why do you need them." "I'm the Mayor, you just give me those keys."

The General Manager told us, however, that Clr Hall does not have a key to her office. "I've had the locks changed ... and I actually think there's superglue in the keylock, just in case he gets a key somehow from somewhere", she said.

Clr Hall's evidence as to what he was given or not given, as the case may be, is different however, though in view of the fact that the General Manager told us that there was an element of on again off again, it is possible that Clr Hall was not clear in his mind as to what happened when. He said:

Clr Hall: I was given this key, which is actually a security card. But I was never given any keys, even though I have a lockable office, the keys were denied me. Any keys were denied me.

Mr Bulford: Keys to what?

Clr Hall: To my own office.

…

Mr Bulford: But I understand you have access to other areas. Was that subsequent to 25 October or was it before?

Clr Hall: I'm not sure. I'm just saying that I didn't have access.

…

Mr Bulford: I'm trying to seek your information to clarify what it is that you were locked out of?

Clr Hall: Just the - it was a matter of principle that given the Mayoral Minute - - -

Mr Bulford: No, I asked what it is you were locked out of, not - - -

Clr Hall: Well I didn't test every door that I couldn't get into with this key, this security card. But the security card only allowed me into my office - - -

A further attempt by us to clarify just what the situation was again really produced no results:

> Mr Bulford: Is it not the case that in fact you have access to more than just the civic area office, the Councillors room and the Council chambers, your office and the ante chamber?
>
> Clr Hall: In terms of accessing the internal offices of the Council?
>
> Mr Bulford: Yes?
>
> Clr Hall: I have that access.
>
> Mr Bulford: You do have that access?
>
> Clr Hall: Yes. Now. Since 25 October.
>
> Mr Bulford: That is since 25 October, is it?
>
> Clr Hall: I believe so.
>
> Mr Bulford: Are you sure of that or are you just not sure?
>
> Clr Hall: I'm just trying to think of the date. 25 October. What was the time I complained about the general access of the building? I'm not quite sure.

We fail to see any legitimate need for the Mayor to have such keys. We understand that, notwithstanding his evidence, he still has them. This should cease immediately.

Access to the Council depot in Carlotta Avenue, Gordon, has also been on Clr Hall's agenda. We strongly question why Clr Hall would need access to this area. A number of Occupational Health and Safety issues arise, plus other problems.

Clr Hall made various demands for keys to the Depot. Mr Canham told us that he had not had to provide keys for the Depot to either of the two previous Mayors he had served under.

Mr Ian Canham explained how Clr Hall "wanted the keys that day to the Depot so he could have access on the weekend". Mr Canham also explained that Clr Hall was given a set of masterkeys to the depot.

The General Manager told us that this was on her (reluctant) instructions. However, she also told us that she was so concerned about safety and other issues with the Mayor's having those keys that she later told Mr Canham to have the locks changed.

The initial demand for the keys came through Mr Darren Condon, Council's Director Finance & Corporate Services. Mr Condon in turn rang Mr Canham. It was late on Friday afternoon, 15 October 1999, at a time when Mr Canham was already on his way home in his car on the Newcastle Freeway. Mr Canham in turn instructed Mr Bill Bright to attend to the matter.

Clr Hall explained to us that he sought access to the Depot for the purposes of getting fuel for his motor vehicle. When questioned on this issue he stated:

Clr Hall: That's all it was. I had no intention of going anywhere - in fact I've never been near the place since. I've made - I've made it my business not to go near the place except on two occasions to collect fuel during working hours.

The General Manager told us that only she and the Mayor had Council Shell cards so they could get petrol for their cars and have the cost borne by Council. Other staff apparently when using Council cars for Council business fill the vehicles up at a petrol bowser at the Depot. We are satisfied that there is no need on that account for the Mayor to have access to the Depot, and we are unconvinced by his explanation and evidence to us.

The question of a map has become an issue. We asked Mr Canham about this:

Mr Bulford: Did Condon say anything to you about a map that might be needed for Councillor Hall?

Mr Canham: A map for the Depot.

Mr Bulford: Yes?

Mr Canham: Yes. He asked me if I had a map of the Depot and I said, "The only one we have is an overall plan of the Depot", but that wouldn't give him an indication of where - what keys fitted where and where the security was because we had security alarms on - - -

Mr Bulford: So did Condon indicate at all that the Mayor had actually asked for a map?

Mr Canham: No, he didn't say that. He just said - he asked me if I had a map.

In our interview with Clr Hall he sought to put it to us that he had not in fact asked for a map. We cannot accept this in view of other evidence to the contrary. In her reply to our final draft of this report, the General Manager provided to us further information which supports this conclusion. She told us that she had sought further advice from Mr Bill Bright on the matter who confirmed that such a map had been requested by Mr Condon and what when one of his staff sought to deliver the map in question to the Mayor he rejected the map provided as not being the map he wanted.

One of the allegations that the General Manager has been confronted with, in particular during the processes followed in relation to allegations over her performance in November 1999 – as to which see section 6.18.2 of this report – is that she has allegedly not complied with Council's resolution granting the Mayor his access rights. We note that the conclusion of the Clr Bennett and Clr Little sub-committee was that these allegations were not made out and were no more than witch-hunts. We have also noted at section 4.4.1 of this report that Clr Hall apparently engineered an incident shortly before this process started, his ensuing memo about it being one with which the General Manager was confronted on 4 November 1999, when he sought to gain access to a security room with two members of staff being told to accompany him as witnesses.

The General Manager told us this about the security room access question in our interview with her (she was actually relating what she said to the meeting with Clr Bennett and others on 10 November):

> I said that this related to an incident last week where the Mayor demanded to get into the security room where the alarm system is kept. I said I do not know if I have access on my own card, because I don't go into the security room by myself, but would not expect to enter the alarm room by myself or out of hours. The security consultant, Hemsley Security Services, should always been there so that there's no danger of the alarm system being damaged. I said I would not expect the Mayor to enter the alarm room by himself or out of hours for the same reason.

She also told us:

> As far as I'm concerned the rules are no one goes into the security room without the security consultant there, on the basis that if somebody goes in and presses the wrong button our whole security goes down, our doors are wide open and anybody could just walk in at any time. Then the alarm back to base stuff is turned off.

In our view it was and is not appropriate or necessary for Clr Hall to have access to this part of the Council offices to be able to discharge his duties as Mayor.

It might well be questioned why the General Manager and her staff gave into Clr Hall's demands. But we accept the evidence of the General Manager and others that with the full-on onslaught they were being subjected to at the time (September to October) it was easier just to give in. That does not make their actions right or justified, but with the benefit of hindsight we can understand the situation as it was.

6.6 Mayoral and Councillor involvement in staff matters

6.6.1 Councillor understanding of what is meant by staff matters

The evidence before us provides a clear picture of a lack of understanding by Clr Hall and his fellow Councillors of what is meant by staff matters, and more particularly of where the lines are drawn between the role and responsibility of the General Manager on staff matters, and the role of the Councillors in relation to determining policies on staff matters.

Clr Anderson gave evidence to us about his understanding, which must be put, in our view, as being the closest statement from the Trust Councillors as to what it really entails, but a view nonetheless that falls considerably short of the mark:

> Mr Bulford: What is your understanding as to who his responsible for staff matters?
>
> Clr Anderson: I guess it's 100 per cent clear, it's 100 per cent Rhonda.
>
> Mr Bulford: What would you understand the term "staff matters" to encompass?
>
> Clr Anderson: The right of hire and fire, daily control, discipline, salaries.
>
> Mr Bulford: Would you say that went to the terms of employment?

Clr Anderson: Yes, she's a Managing Director, in my language, she has complete control.

Mr Bulford: The package is offered to the staff as part of their Terms of Employment?

Clr Anderson: Yes, within the prescribed limits that I understand do exist in awards et cetera. Yes.

Mr Bulford: Provision of cars et cetera?

Clr Anderson: Yes, I do foreshadow the provision of cars will have to change because there's got to be a limit, you can't buy another 100 cars.

Clr de Vulder also appeared to understand partially, and in very general overview terms, what was involved:

Clr de Vulder: Well my understanding is that Council is the elected body to make policies and the General Manager and her staff are operational and to put together those, perform those policies.

Mr Bulford: What does operational mean?

Clr de Vulder: The functioning of the Council.

Mr Bulford: Where do you get this word "operational" from? Is that something you've heard people mention?

Clr de Vulder: Yes.

Mr Bulford: Who?

Clr de Vulder: The General Manager.

Mr Bulford: She has said to you on occasions that operational matters are her problem, is that right?

Clr de Vulder: Yes.

Mr Bulford: What do you understand to be operational?

Clr de Vulder: As I just said, the running of the Council.

Mr Bulford: What about staff matters, are they operational matters?

Clr de Vulder: Yes absolutely, it's her domain.

Mr Bulford: What sort of things are staff matters?

Clr de Vulder: Staff matters are whatever their job entails, whatever they're employed for.

However, none of the above responses gives one any real assurance that the Councillors really and fully understand what is entailed in staffing matters, and as to how far their roles and responsibilities go or do not go, as the case may be. The following sections of this report confirm that in our view.

6.6.2 Clr Hall's attempts to obtain access to or copies of, or detailed information about the terms of, the contracts of senior staff

The evidence obtained by us in the course of our Investigation discloses that Clr Hall has made a number of demands or attempts to obtain such matters. These extend over a considerable period of time, and continued even during the course of our Investigation. Indeed, Clr Hall's legal adviser put to us the proposition that:

> It is submitted that quite apart from the obligation of the General Manager to provide information to Councillors in relation to their requests, THERE IS A DUTY ON THE PART OF THE GENERAL MANAGER TO MAKE DISCLOSURES OF SERIOUS MATTERS TO THE COUNCIL. THIS IS QUITE APART FROM THE QUESTION AS TO WHETHER THE GENERAL MANAGER HAS RECEIVED A REQUEST FROM COUNCILLORS TO MAKE SUCH INFORMATION AVAILABLE. …
>
> It will be submitted that in particular instances Ms Bignell as General Manager of Ku-ring-gai Municipal Council has failed in that duty of disclosure, both with regard to these principles and to specific instances that will be detailed. It will be submitted that these failures are inherent in producing the conflict which has arisen between Cr. Hall and the General Manager, irrespective of what other basis exists, such as the individual personalities of those persons and the like. …
>
> Ms Bignell has interpreted therefore her functions under *the Act* to be paramount over any right or access to information or disclosure that she should make. Thereby Councillors are prevented from knowing what payments or benefits are being made to staff, or putting it bluntly, how the ratepayers money is being spent by the General Manager in relation to such payments or benefits which may be conferred within the staff organisation. …
>
> It is submitted that not only is the General Manager at serious fault in not answering the requests of Cr. Hall as detailed in his various memoranda and as evidenced by her replies, or lack of same, but the General Manager HAS A DUTY TO DISCLOSE THIS INFORMATION TO THE COUNCIL BY TABLING IT AT A COUNCIL MEETING ALBEIT UNDER THE CONFIDENTIALITY PROVISIONS SO THAT THAT INFORMATION IS ON THE PUBLIC RECORD ALBEIT CONFIDENTIALLY.
>
> … In making this submission Cr. Hall does not in any way impute or imply that there has been any impropriety or indeed corrupt use of the General Manager's powers under the Local Government Act. What Cr. Hall is referring to is the system and the procedures of the way in which that power is exercised and hence the accountability of that officer or those officers exercising such powers and responsibility. … [Mr Dunn's emphasis]

The history, but starting for present purposes only at the end of 1998, of the demands made by Clr Hall can be summarised in the following table:

Information or documents requested	Date of request	Date of response	Terms of response
Information about the employment contract of the Director Infrastructure (at that time Mr B Tucker)	14 December 1998	See 4 January 1999	
Largely as 14 December 1998,	31 December 1998	4 January 1999 (quoted later)	Request denied; General Manager informs the Mayor

including for information as to why Mr Tucker had taken some annual leave and as to what authority the General Manager had to approve that leave. He said "I ask you to provide the cost to ratepayers of this 'generous arrangement' " and at the end of the memo noted that he was yet to receive a reply to his earlier memo "which suggests that I may have no alternative than to ask an external agency to compel you to respond".			and Deputy Mayor of the day as to concerns regarding Clr Hall's interference in operational matters. (Note: The threat was quite rightly the subject of comment by the General Manager in her memo of 4 January 1999 to Clr Hall and in another memo of the same date to the then Mayor by means of which she drew his attention to Clr Hall's conduct. Her memo to Clr Hall is quoted at the end of this table below.)
A copy of the General Manager's contract	16 August 1999 (Note: On 13 August 1999, the then Mayor, Clr Dobbin, had written to all Councillors advising of the forthcoming annual review of the General Manager's performance pursuant to her contract. Clr Hall's demand was addressed to the Mayor in response to that memo.)	17 August 1999	Mayor advises General Manager that it is not appropriate that Councillors get a copy of her contract, noting that they just need to know what her performance agreement was. He sends a fax to Clr Hall accordingly, but tells him he can inspect a copy in the General Manager's and his presence .
Ditto, inter alia (general memo about the proposed General Manager's performance review) – Clr Hall suggests that the Mayor's response is "a nonsense"	18 August 1999	18 August 1999	Mayor informs Clr Hall refuting his arguments and standing by his earlier position
Clr Hall orally repeats demand direct to General Manager to see her contract	20 August 1999 at approximately 5 pm	In same conversation	That he could see a copy of her contract, but not right then as it was locked up in the Human Resource Department files; if he gave her warning she could arrange to get a hold of it and let him see it.
Clr Hall demands a copy of the General Manager's contract	Not clear when, but some time shortly after Clr Hall is elected Mayor and at a	28 September 1999	Under cover of a memo of that date the General Manager provides a copy of the contract to Clr Hall. (Note: In our interview with the

	meeting between he and the Deputy Mayor with the General Manager		General Manager she told us that this was a complete and uncensored version, which even included details on her salary amounts and so on. She said that she realised that she did not have to do so, but felt that in the circumstances she had no option to comply or she would not hear the end of the matter. Clr Hall in his interview with us disputed that the copy he had been given was a complete copy. We have no reason to doubt the evidence of the General Manager.)
Information on the car lease-back contribution scheme for employees of the Council who put Council vehicles to private use	11 October 1999		
A copy of the contract and information as to the reasons for the resignation of the Director Open Space & Infrastructure (David Young)	14 October 1999 (oral demand)	Same meeting with Mayor in his office	Denied – staff or organisational matter. (Note: Young had handed in his resignation the previous day and on 14 October the General Manager had written to the Councillors advising them about this and made a formal announcement to the staff. Clr Hall's pursuit generally of matters relating to David Young is considered at section 3.11 of this report.)
Reasons for resignation of David Young and why there were press reports which purported to suggest Clr Hall and his conduct were the cause	15 October 1999 (approx. 12 noon) – a written demand is also presented to the General Manager at or shortly before this meeting which she was summonsed to in the Mayor's office At a later 2 pm meeting with Directors and the General Manager Clr Hall repeated his demand to be told why David Young was going	Same meeting in Mayor's office	Denied that she had been source of the press story and denied again Clr Hall's right to be told the reasons. The same day she replied in writing advising that David Young had given no reasons. At the 2 pm meeting with Directors several of the Directors link David Young's departure with what they consider to be unacceptable conduct of Clr Hall On 25 October 1999, after having received from David Young a memo of the same day setting out his reasons for going, and stating in this regard that the conduct of Clr Hall is an issue, the General Manager wrote to Clr Hall telling him about this and providing to him a copy of Young's memo. (Note: On the following day she also sent another memo to Clr

			Hall along the same lines, this time copying the other Councillors.)
Information about the days on which Virginia Leafe, Council's Communications Executive, worked	At a meeting of Council's Residential Development Strategy Taskforce group on 25 October 1999, with the demand addressed direct to Ms Leafe	Same meeting	Information supplied (refer to section 3.16 of this report)
Information as to senior staff membership of the MEU	26 October 1999	Same day	General Manager advised Clr Hall in writing that details as to staff membership of the Union would not be supplied as they were personnel matters. She added that senior staff, like other staff, were perfectly free to join the Union if they so wished.
A copy of David Young's employment contract and information on David Young's termination payments and rights under his contract; he also demands that Young put his allegations in writing and that he not be paid his termination payments until he had done this; he also demands copies of all performance-based contracts of senior staff and that these be presented to Council, via its Staff Committee, with a report on steps taken by the General Manager in relation to the renewal of a number of contracts of senior staff which had expired or were then due to expire	26 October 1999	Same day 10 December 1999	Denied – General Manager advised Clr Hall in writing that David Young would receive his entitlements, which included annual leave and long service leave. She repeated earlier advice that "Under the Local Government Act 1993, elected Councillors are not afforded access to staff records, which includes leave entitlements. The details of the contract form part of the staff personnel records and as such are not available to Councillors". Re the steps taken by her and progress in filling Directors' positions – this was in a confidential report to the Mayor and all the Councillors
Copies of the employment contracts of all the Directors	Not clear when, but seemingly sometime between the issue of the 26 October memo noted above and 29 October, and maybe even 28 October, and	29 October 1999	After apparently notifying or consulting with the senior staff, at least two of whom wrote to the General Manager saying that they did not want their contracts to be so provided, she wrote to the Mayor declining to provide these – the memo is quoted below

	made orally, so far as we can tell – though it is possible that the response noted opposite from the General Manager is merely an additional response to the Mayor's 26 October memo		
A copy of David Young's contract, plus details of the other Directors' contracts	1 November 1999, following up on the General Manager's 29 October memo replying to his previous demands		(Note: This demand apparently prompted the General Manager to seek the advice of the Department of Local Government on the matter, which was provided on 5 November 1999, and which is considered at section 6.6.3 of this report.)
Information on all appointments and dismissals of senior staff and as to the dates on which consultation took place with the Council on such matters	8 December 1999		
A report on the staff policy in relation to staff taking time off in lieu when they have been working out of hours	8 December 1999	14 December 1999	General Manager advises Clr Hall in writing that "this in an operational matter, under the responsibility of the General Manager under s.335 of the Local Government Act 1993. However, I can advise you that time in lieu is a provision of the Local Government (State) Award, 1997 (Clause 13 A vi). It can be used effectively in the management of delivering services and is managed on a needs basis as required by each Director". In our view this is a satisfactory response.
Details as to the motor vehicle component of the salary package of the Group Manager Urban Infrastructure (a senior staff position with equivalent seniority to a Director), Mr Ian Canham; also information as to his salary sacrifice arrangements, if any	17 December 1999 Councillor Hall's handwritten note ends with the following: "No reply from you within 2 days may require me to seek external assistance"	See 20 December 1999	(Note: These demands were actually scrawled across a copy of a print out of an email of 5 November 1999 from the General Manager to Ian Canham advising that the Mayor had rung that morning and asked for a copy of the requisition order for her current car, and her previous car, and requesting that Ian Canham supply them to the Mayor. The pursuit of the General Manager by Clr Hall on various matters, including over her car, is dealt

			with at section 4.7 of this report.)
Clr Hall repeated essentially his demands of 17 December, adding a demand for a copy of Mr Canham's contract to be produced for him to "sight"	20 December 1999	20 December 1999	The General Manager advised Clr Hall in writing that Mr Canham's contract and the details in it were part of his personnel file and not available to him. She told him, on the other hand, that Mr Canham was provided with a vehicle pursuant to salary sacrifice arrangements and indicated that she considered his threat to call in external assistance was the sort of thing that she thought he had told her on 18 November 1999 he would refrain from (See section 3.32 of this report)
Clarification on the alleged resignation of *Chris* Young, Council's Director of Urban Environment, and information as to any redundancy package payable to or sought by Mr Young under or pursuant to his employment contract. He also sought details on a large termination payment, set out in a list of payments over $10,000 as having been made in November, reported to the Council's Finance & Corporate Services Committee that day (it seems Clr Hall thought this must have been the payment made to Mr *David* Young – as to his pursuit of information about this former Director's resignation see above)	20 December 1999	20 December 1999 21 December 1999	General Manager replied in writing simply advising that rumours about Chris Young's resignation were not correct. Separate memo as to the circumstances of David Young's resignation – she told him that the reasons had already been provided to him; that there had been no redundancy payment to him and that the cheque was a payment to someone other than Young. She added: "I should again point out here that staffing matters are the responsibility of the General Manager, under s.335 of the Local Government Act 1993. The requirements of the Award are adhered to, including long service leave, and in Ku-ring-gai Council's case, untaken sick leave for employees employed in February 1988. I will not be providing information about individual employee's entitlements, as that would be in breach of the Local Government Act 1993".
Information on Ian Canham's vehicle entitlements and a copy of his employment contract	21 December 1999 (a telephone call from Clr Hall to the General Manager)	21 December 1999	In the phone conversation the General Manager told Clr Hall that he would not be getting a new vehicle at the end of his contract and that, as he had been told many times before, and had been confirmed in the Department of Local Government's 5 November 1999 advice, he was not

			entitled to the contract. Clr Hall then said words to the effect, "If you don't give it to me, I will take out an injunction on you tomorrow". The General Manager replied, "I cannot give you Ian's contract, it is outside your role". Clr Hall retorted "I will take out an injunction". The General Manager later that day advised Clr Hall in writing that Ian Canham had no entitlement to a new vehicle on termination, as he seemed to think. She reiterated that he was not entitled to see Mr Canham's contract, and quoted a passage from the Department of Local Government's 5 November advice.
Information as to the reason for Ian Canham's resignation and a repeated demand for disclosure to him as Mayor of the terms of the contracts of Mr Canham and David Young. (Note: That part of this memo is set out in the discussion of some key correspondence at the end of this table.)	7 January 2000		
Amongst various matters of a general nature regarding redundancy payments to staff, information as to what redundancy payments had been approved by the General Manager, or any delegate, to senior staff who had resigned in the previous two years, what was the quantum of the payments and to whom and under what circumstances were they approved. (Note: This is perhaps the zenith of Clr Hall's demands for detailed information on termination payments to senior staff. It is considered therefore separately under its	21 March 2000 (a Mayoral Minute considered at Council's meeting of that day)	Same day	This Mayoral Minute was dealt with by the Council, after some heated discussion, declining to adopt it on an 8:2 vote. It is considered by us below.

own section of this report, below.)			
Apparently on the understanding that claims from two staff members for payments which were confidentially reported by the General Manager to Councillors at its meeting of the previous evening were not so much claims for redundancy as "some form of gratuity on termination or expiry of their contracts", Clr Hall "formally press(ed) his request" to be allowed to inspect the contracts of the two officers concerned	22 March 2000 – a memo to the General Manager, copied to the Deputy Mayor and other Councillors (refer to section 6.6.5 of this report)	24 March 2000	Denied by General Manager, as to which see section 6.6.5 of this report, below.

The above table sets out no less than 23 occasions which have been brought to our attention and on which Clr Hall has made these sorts of demands since the end of 1998. It is apparent that Clr Hall has been told many times what his rights are or are not.

We have commenced our list with demands made by Clr Hall before he became Mayor, but these are noted, first to show that his demands of this type were not something that he merely pursued when he became Mayor in September 1999, but were demands of long standing. Second, the response of the General Manager to the first-mentioned demand is particularly informative as it clearly shows that Clr Hall had for some considerable time before he became Mayor been told in unequivocal terms about the lack of entitlement of Councillors to get involved in matters relating to staff of this nature. It is worth quoting in full from the General Manager's memo of 4 January 1999 to Clr Hall, which she copied to the then Mayor and Deputy Mayor for their information:

> You should have received a response from me dated 29 December 1998, to your memo dated 14 December where you made enquiries about the employment contract of the Director Infrastructure.
>
> I have now received a further memo from you dated 31 December faxed through Council's general fax number, about the employment contract of the Director Infrastructure, much of which repeats your earlier questions.
>
> You are also questioning why Mr Tucker took annual leave "this month at Council's expense" and ask what authority did I exercise to approved (sic) such leave.
>
> You are fully aware that s.335 of the Local Government Act clearly states the responsibilities of the General Manager, including all staffing matters.
>
> In addition, s.332 of the Local Government Act clearly sets out the Councillors' role which **does not** include the day to day management of the Council or its staff.

Your apparent intention to get involved in staff annual leave entitlements is in conflict with your role as Councillor and I would advise you, again, that you do not become involved in day to day operational matters. I also remind you that local government is covered by lawful industrial awards. Ku-ring-gai Municipal Council complies to the requirements of its obligations under the Local Government (State) Award, including annual leave.

Your threat to "ask an external agency to compel me to respond" is a threat which is unacceptable from a Councillor to a staff officer and is in breach of Council's Code of Conduct.

I have major concerns with your actions throughout this matter:

1. I met with the Councillors on this matter on a strictly confidential basis. However, you have not only spoken to Director Infrastructure about my confidential discussion with the Councillors, but you have, on several occasions, sent memos about Mr Tucker's contract through Council's general fax machines not marked confidential, and clearly for other staff to see. This breaches the confidentiality under which I have discussed the matter with Councillors.

   You have my direct fax number. My direct fax is in working order, and there is no reason why you could not have sent any correspondence on this confidential, personal matter to my direct line.

2. Your threat "to ask an internal (sic) agency" to compel me to respond to a memo (which has been answered, and of which you should have a copy) is unacceptable and a breach of the Code of Conduct.

3. Your involvement in operational / or staff matters (in this case annual leave) is in breach of a Councillor's role. The Local Government Act clearly defines a Councillor's role and responsibilities.

I ask you to adhere to the clearly defined role of Councillor under the Local Government Act and refrain from involving yourself in matters outside your defined role.

Council staff and myself will not accept threats – and there have been others – of being reported to some external agency (Department of Local Government, Ombudsman, etc.) as you have in the past for carrying out their duties under the Local Government Act. This threatening behaviour is in conflict with Council's Code of Conduct and is unacceptable to all staff.

Again, in response to various demands for copies of each individual Director's contracts to be supplied to the Councillors, as to which see the table above, the General Manager sent the following memo to Clr Hall on 29 October 1999:

You have requested that a copy of each individual director's contract be provided to the Councillors.

Under S.335 of the Local Government Act 1993, the General Manager is responsible for the appointment of staff.

A Director's contract is an employment contract between the Director and the General Manager. It is a confidential document and forms part of the staff personnel record of each individual Director.

Each Director is aware of your memo about presenting copies of their contract to a meeting of Council. Each Director has stated that their contract is between the General Manager and themselves and is not to be tabled publicly, or provided to a Council meeting.

> The personal details of each contract is confidential and copies of individual contracts will not be provided.
>
> However, I can provide for you a copy of the model contract recommended by the Local Government & Shires Association which is attached for your information. This is currently being used for senior staff appointments.
>
> The Directors contractual conditions are reported annually in the Annual Report in accordance with s.339 of the Local Government Act 1993.

As to the last paragraph of this memo, we have considered the requirements of section 339 of the Act at the section below. Suffice it to say at this juncture that if this is the practice of the General Manager then she is not acting in accordance with the Act. Section 339 requires, as we note later, a report to Council. It is quite independent of the Annual Report requirements of section 428, which in any event contemplate that the Annual Report be a report to the community (and copied to the Minister for Local Government under subsection (3) of that section). This is a matter that the General Manager will need to address, as appropriate.

So far as concerns Clr Hall's demands of 26 October and 1 November 1999 regarding Directors' contracts, he must have been talking to other Councillors about the matter, for on 5 November 1999, the day she received the Department of Local Government's advice on the matter, Clr Cross had emailed the General Manager expressing surprise that as a member of the Staff Committee he was not entitled to review staff and Directors' contracts. It is therefore clear that Clr Hall's misconceptions about his role as Mayor and Councillor on such matters were shared by at least one other Councillor.

There are indications from time to time in the correspondence and other documents we have had access to as part of our Investigation that Clr Hall has appeared to appreciate the distinction, or at least appeared to start to do so, between the role of the Councillors and the role of the General Manager on operational matters. For example, on 18 October 1999, after he had had a meeting with representatives of the MEU on this very issue, he wrote a memo to all staff, with a copy to the General Manager and the Councillors, acknowledging the different roles of the General Manager and the Councillors and Mayor and in particular that operational matters, including staff matters, were the responsibility of the General Manager.

However, later correspondence, and his pursuit, notwithstanding the clear advice from both the General Manager and the Department of Local Government, of his quest for access to or copies of the employment contracts of particular members of the senior staff, show, in our view, that even if he did really believe and understand on 18 October 1999 just what his role and rights were, he was quite unabashed on the matter at least thereafter.

For example, in his demand of 7 January 2000 for access to the contracts of Mr Canham and Mr David Young, he said:

> Your consistent refusal to allow me or other councillors to sight the performance based employment contracts of the senior staff, is not acceptable. Ratepayers could only surmise you have something to hide. There cannot be any exemption under s.12 (7) (a)

> of the Act from disclosing the terms of these contracts which amount to over $1million annually, on a confidential basis of course.
>
> I again request you to disclose the terms of Mr Canham's contract to me as Mayor and that of Mr David Young who resigned on 26 October 1999. You might also advise me whether you are still negotiating with Mr Young vis a vis his council employment contract.

In reference to section 12 (7), for reasons which we will later examine in more detail, we do not accept that this is a correct statement of the position. Section 12 (7) clearly states that members of the public are not entitled to view or obtain information on such matters, if that is the decision of the Council. Nor would the public be entitled to such information via the Annual Report disclosure requirements of section 428. That aspect of the rights of the Mayor and Councillors to information which relies on them at least being entitled to what the public are entitled to therefore fails here. And for the reasons we set out later, neither section 339 nor the general law rights of Councillors would in the circumstances of this case support Clr Hall's demands in this case. Even on a "confidential basis".

It is important to reiterate and note that the General Manager had already provided to Clr Hall a copy of a pro forma contract which was used for senior staff appointments. For reasons to be considered in the next section of this report, this is all that Clr Hall was and is entitled to.

The apparent zenith of Clr Hall's continued pursuit of these matters was in his Mayoral Minute of 21 March 2000, noted in the table above, and in his further memo the very next day to the General Manager, also noted in the table, on the matter. These are discussed in more detail at section 6.6.5 of this report, below.

6.6.3 The legal framework

The key provision of the Local Government Act 1993 for determining the legal framework as to what role, if any, a Councillor, including the Mayor, has in staffing matters (and hence as to any right to access or obtain copies of contracts of senior staff, or for that matter of other staff, and to obtain detailed information about the terms of such contracts) is section 335 of the Act. This provides:

> (1) The general manager is generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council.
>
> (2) The general manager has the following particular functions:
>
> - the day-to-day management of the council
> - to exercise such of the functions of the council as are delegated by the council to the general manager
> - to appoint staff in accordance with an organisational structure and resources approved by the council
> - to direct and dismiss staff
> - to implement the council's equal employment opportunity management plan (hereinafter referred to as EEO).

Like other members of the staff, the General Manager is not subject to the direct control or direction of Council in certain matters, namely as to the content of any advice or recommendation made by her. See section 352 (1) of the Act.

Conversely, the role of the Councillors, including the Mayor, is:

- to approve an organisational structure
- to approve funds or resources, done through the annual Management Plan and budgetary process, for the General Manager to be able to staff the organisation and operate it efficiently and effectively
- to provide general rules or guides in terms of policies on staffing matters.

It is noted that at Council one of the key issues in this regard has been what is meant by "staffing matters".

The legal framework, setting out the respective roles and responsibilities of the General Manager on the one hand and the Mayor and Councillors on the other in relation to organisational matters, which include staffing matters, can be summarised in the following passage from section 3.3.1 of the February 2000 Guidelines of the Department entitled *Management Planning for NSW Local Government*:

> The general manager, who is appointed on a performance-based contract, is responsible for the day-to-day management of the council and is the link between the elected body and its employees. The general manager has specific responsibilities under the Act and the council may delegate other functions to the general manager. The general manager may, in turn, sub-delegate functions to staff. The council cannot delegate directly to other staff.
>
> While council staff have a duty to implement council decisions, they are responsible to the general manager, who in turn is responsible to the council. Council staff undertake their duties according to directions from the general manager or his or her delegate, and by following established policy and procedure. Councils can direct staff to provide advice and recommendations but are not able to direct or discipline individual staff in the carrying out of these and other duties. Any issues should be directed to the general manager. Policy issues concerning, for example, industrial negotiations, overall staff resourcing and organisational structure may appropriately be dealt with by council.
>
> Councillors direct and control the affairs of the council, have a key role in the creation and review of policies, and seek to achieve the optimum allocation of council's resources for the benefit of the area. It is a role of the elected body to assess whether the general manager is implementing council's policies and strategies. This is done through performance measurement in his or her performance agreement. (See section 6.18.1 of this report)
>
> If the council considers that a general manager is not performing, the issue should be dealt with through proper contract management, rather than by simply terminating the general manager and paying out their contract. Councils should recognise the need for general managers to manage the council within the framework of their employment contracts, and in pursuit of the performance criteria set. The fundamental responsibility is for councils to determine objectives and priorities, and for the general manager to implement these policy decisions. The reporting framework should allow councils to monitor the achievement of their objectives, and make changes to short-term directions if circumstances require.

> Experience has shown that a major cause in the breakdown of relationships between councils and their general managers has been the failure of the parties to continually monitor their relationship, identifying at an early stage any potential sources of conflict and developing strategies to resolve it. Other causes of conflict have included the lack of understanding or agreement on the roles of the general manager and councillors.
>
> Councils should be ensuring that adequate performance management mechanisms are in place, that they monitor performance at set intervals or conduct annual reviews in keeping with the terms of the contract, and that they ensure performance agreements for senior staff include specific performance criteria that are both relevant and measurable, as well as aligned with the responsibilities, objectives and indicators outlined in the council's management plan.

At the same section of the Management Planning Guidelines it is explained what is understood by the Department to be entailed in the concept of "day-to-day management":

> "Day-to-day management" is the implementation by the general manager of the council's resolutions and the carrying out of the other functions of the council, as required by legislation or under delegation of the council.
>
> Certain activities, such as staff allocation and the care of council assets, are recognised as coming under the term "day-to-day management". A council may give further guidance to the general manager in carrying out the council's resolutions by wording its resolutions to require specified conditions to be met, eg by specifying that an activity be carried out by a certain date, in a certain priority order or within a stated budgetary limitation. The general manager will be obliged to manage within the terms of the resolution.
>
> Alternatively, a council may draft its resolutions in a manner that merely states what needs to be done and leaves it to the general manager to determine the details about how, when and at what cost it shall be completed. Thus the term "day-to-day management" can vary from council to council.
>
> Giving the general manager greater discretion in management allows the council to focus on key policy issues and community leadership. The general manager remains accountable to the council through the performance agreement.

The issues of entitlements to information and involvement in staffing matters are inevitably closely intertwined. The issue of the access of Councillors to information and their interaction with staff was the subject of an important set of guidelines jointly issued by the Independent Commission Against Corruption and the Department of Local Government in March 1997. These are entitled *Under Careful Consideration: Key Issues for Local Government*. The General Manager was provided with copies of these on behalf of the Council.

Unfortunately the General Manager has not circulated copies to the new Council elected after the September 1999 elections, though she told us in interview that it had been her intention to do so at an early stage in their induction process. This is considered at section 6.13.2 of this report. Despite the clear evidence given to us in this regard in our earlier interview with the General Manager, when she provided to us comments in respect of the final draft of this report, the General Manager sought to argue that she had in fact provided a copy of this document to the Councillors. Whatever may be the case, we recommend that the General Manager should provide to the present Councillors, especially given the changes in their number since September last year, fresh copies of these Guidelines.

We should add at this juncture that the Guidelines did recommend that Councils adopt a policy on the provision of information to and interaction between Councillors and staff and a model suggested such policy was set out in Appendix 1 to that document. Such a policy was in fact adopted on 2 June 1998 by the previous Council, and remains in force. It closely followed the model policy, but some amendments were made to suit the particular needs of this Council and especially the problems it faced in dealing with the likes of Clr Hall.

The Guidelines contain some important assistance and guidelines on the issues we are now examining and it is worth quoting a number of passages from them:

> In any local council there will be a complex web of relationships between council staff and councillors. These contacts are necessary and essential to the smooth functioning of a council, as they allow councillors to access information and staff. Nevertheless they need to be carefully managed to ensure appropriate protocols are in place to avoid any problems that may arise.
>
> …
>
> Councils should be mindful of a councillor's right to information for civic purposes. These guidelines are not intended to limit any statutory and common law rights councillors have to access information. Formalising procedures to specify how these rights should be exercised should be done without trying to restrict a councillor's legal right to access staff and information. However, councillors should avoid any perceptions of wrongdoing when exercising their rights as an elected representative, particularly the appearance of trying to improperly influence staff.
>
> These guidelines are based on the principle that all public officials have a duty to act with integrity, honesty, impartiality and in the public interest. They build on the standards established by the DLG's model Code of Conduct and represent an attempt by the DLG and the ICAC to present a specific model for councils that fits within the existing legal and policy framework. The provisions provided in this report regarding the councillors, **also apply equally to the mayor**, whether the mayor was elected by other councillors or by a popular vote. (Our emphasis)
>
> ROLES AND RESPONSIBILITIES
>
> The *Local Government Act* requires that **councillors as a group** (Our emphasis) direct and control the council's affairs, allocate resources, determine policy, and monitor the council's performance. As individuals, councillors communicate council policy and decisions to the community, exercise community leadership and represent the views of residents and ratepayers to council. The Act makes it clear that the general manager is responsible for the day to day operations of council.
>
> Councillors have a right to information that is necessary for exercising the functions of their civic office. Both the *Local Government Act* and meeting Regulations say how this should be done. …
>
> …
>
> Any information and services that are publicly available should also be available to councillors. In addition, the council should provide councillors with access to a range of material to enable them to perform their role properly. This may include relevant statutes, policy and procedure manuals, regular financial reports and updates on the performance targets in council's management plan. Any information that is given to a particular councillor in the pursuit of their civic duties should also be available to any other councillor who requests it.

> Requests for information from councillors should be dealt with objectively by the council, general manager or relevant staff, according to law and council's policies and procedures.

As is clear from these passages, the General Manager is responsible to the Council and has certain statutory duties. These include duties in terms of reporting on staffing matters.

There are two levels to or facets of the obligations of the General Manager to report on staffing matters. At one level the General Manager is required to report and be responsible to the Council, as a whole. At another level there is a requirement for Council (and therefore for the General Manager to ensure that this occurs) to report to the community.

Councillors, and therefore also the Mayor, are at least entitled to all information, and to see all documents of Council, that the community are entitled to. The General Manager can, if she so wishes, grant additional access to staff and staff contract information to the Mayor and Councillors going beyond their legal entitlements in that regard. In so doing, she is quite within her rights to set the terms and conditions – for example as to confidentiality – on which she will do so. She would need to be mindful, in so doing, of any confidentiality obligations under the terms of any staff contract or award, if applicable. So, for example, she is free to decide to share such information with Councillors in an informal meeting, outside the confines of a formally constituted meeting of the Council or a Committee of Council comprising all the Councillors, and hence outside the confines of section 10 and related sections of the Act. And she is free also to require that Councillors not disclose the information she so imparts.

The Councillors, and hence the Mayor, on the other hand, have a right to all Council information that may be necessary for them to be able to exercise the functions of their civic office. This is a general law right, that is to say one not specifically referred to in the Local Government Act 1993.

The functions of the civic office of Councillor are as set out in section 232 of the Act. In this regard Councillors have two categories or types of functions, first their functions as members of the governing body of the Council and second their functions as elected persons. It is the first category which is relevant for present purposes. In this regard section 232 (1) of the Act provides:

> The role of a councillor is, as a member of the governing body of the council:
>
> - 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 management plans and revenue policies of the council.

Individual Councillors have no statutory powers, duties or authorities outside the Council Chamber, unless specifically delegated by a lawful resolution of the Council. Councillors can only act on behalf of the Council when authority has been given by

the Council. The Mayor does have some powers, duties or authorities outside the Council Chamber, but these are limited to those either set out in section 226 or those lawfully delegated to him. As noted at section 3.1 of this report, such powers of the Mayor have only a limited ambit, and do not, in our view, go so far as the Mayor and his legal adviser have sought to put to our Investigation.

The matter has recently been summarised in the following way at section 3.3.1 in the Department of Local Government's Guidelines entitled *Management Planning for NSW Local Government*:

> Councillors require ready access to council information and facilities to perform the range of their functions under statute and delegation.
>
> This principle was developed in the case of Drummoyne Municipal Council -v- Marshall, (1989) 68 LGRA 258. Briefly, a councillor has a common law right to see a document which is necessary in the exercise of the councillor's duty. That right however does not extend to matters in which a councillor merely has a curiosity rather than an appropriate civic responsibility.
>
> While the mayor and councillors have a right to access council information when relevant to their functions, it is essential that a protocol be established to manage access. An effective policy protects both councillors and staff from any allegation of impropriety.
>
> A model policy is provided in the joint ICAC and Departmental publication "Under Careful Consideration: Key issues for Local Government" (1997) . Departmental Circular 99/55 encourages the adoption by councils of provisions within its Code of Conduct as a means of achieving a reasonable balance between the demands of councillors and the need for the general manager to perform the orderly day to day management of the council.
>
> Section 664 of the Act provides significant monetary penalties where information obtained in connection with the administration or execution of the Act is disclosed except in accordance with the circumstances identified in that section. This offence reinforces the position that the mayor must operate within the functions of his/her office.

As is stated in section 232 of the Act, the functions of the civic office of Councillor, including the Mayor, include the responsibility for policy making. In this regard the Councillors may determine and issue policies on matters relating to staff. But, this must be understood to be subject to the statutorily mandated division of roles and responsibilities in relation to staff. In our view a policy ought not to be so detailed or extend to such levels that it entails an encroaching of the Councillors into what is really the role and responsibility of the General Manager. We hesitate to seek to define in any detail what is the ambit of what the Councillors can and cannot do in that regard, and even the giving of some examples of what may be permitted should not be taken to suggest that there are not other such instances which we have not thought of and set out in this report. As is indicated in the Department's Management Planning Guidelines, quoted above, there is room for some flexibility in the process, and it is to some extent at least for each Council to determine for itself where the line is drawn.

So far as concerns Council's obligations to keep the community informed about staffing matters, section 428 of the Act requires that Council provide to the community an Annual Report as to its achievements with respect to the objectives and performance targets set out in its Management Plan for the year. Section 428

(2) (g) further provides that the Annual Report must contain a statement of the number of senior staff employed by the Council during that year, together with a statement of the total amount of money payable in respect of the employment of senior staff, including money payable for the salary, for the provision of fringe benefits and for all other on-costs connected with their employment. So far, therefore, it seems that, if we were to go no further than this sub-section, all that is required is that a single total figure, covering all the senior staff, be reported.

But section 428 (2) (r) goes on to require that Annual Reports must include "such other information as the regulations may require". What is required in this regard is explained or amplified, for present purposes, in clause 31 (1) (b) of the Local Government (General) Regulation 1999. Under this clause it is clear that there *is* a requirement to report salary and related payments *on an individual basis* for each such senior staff member. On the other hand, for each such senior staff member, the clause provides that there is no requirement to break the figure down into the individual components of the total figure payable to each such senior staff member, that is to say into salary, or the employer's contribution or salary sacrifice to any superannuation scheme to which the senior staff member may be a contributor, or the total value of non-cash benefits, or the total amount payable by Council by way of fringe benefits tax in respect of such non-cash benefits.

It is noted that Council's Annual Report for the period 1 July 1998 to 30 June 1999 provides information on such matters meeting the requirements of the Act and Regulation.

In addition to information gleaned via the Annual Report process, members of the community, and hence the Mayor and other Councillors, are entitled to inspect the current version, and free of charge, of a wide range of documents listed in section 12 (1) of the Act. So far as staff matters are concerned, these include the annual Council Management Plan, the annual financial reports, the Annual Report and Council's EEO management plan. Where a such a document is produced annually, this right includes the corresponding document produced for the previous year. If earlier versions still are reasonably accessible, then those versions too must be so made available.

In addition, members of the public, and hence, again, the Mayor and other Councillors, are entitled to inspect all other documents, not already covered by section 12 (1), (2) or (5), unless the Council, ie through a resolution of the Councillors, decides that it is satisfied that allowing inspection of the document in question would not, on balance, be in the public interest.

The rights to access documents, and to obtain the information in them, noted in the last paragraph of this report are however qualified by reference to section 12 (7), and for present purposes in particular by paragraph (a) of that sub-section. That is to say, if the document, or relevant part, deals with "personnel matters concerning particular individuals" then there is no such statutory right. In our view the detailed or specific terms of any staff, including senior staff, member's contract of employment with the Council would be such a personnel matter. That is to say, it is legitimate not to disclose the particular salary and so on or other contract rights and benefits of the

particular staff member that may differ from standard or normal rights and benefits granted to all equivalent staff members.

On 2 November 1999 the General Manager sought the assistance of the Department of Local Government as to Clr Hall's demands for access to contracts of senior staff. The Department's reply was on 5 November 1999, and stated, *inter alia*:

> … Section 12 (7) (a) exempts documents that deal with personnel matters concerning particular individuals. This exemption could be interpreted to include the contracts of employees of councils.
>
> It is the Department's preferred view that a mayor could not assert his or her common law right to see such a document, relying on the authority of Drummoyne Municipal Council v Marshall, 1989 because of the specific statutory exception provided by section 12 (7) (a). Further, the duties and civic responsibility of a councillor, including a mayor do not extend to such personnel matters which, by operation of other provisions of the Act, are conferred on the general manager of the council.

Therefore it is clear that as of 5 November 1999 the Department of Local Government had advised the General Manager that members of the public, and hence, Councillors, including the Mayor, have **no** right to access employment contracts, and any information in such contracts, via any section 12 (6) statutory rights. The only statutory rights of the Mayor and Councillors to access such information would therefore need to arise either through some other section or sections of the Local Government Act 1993, namely section 428, which has already been considered, and section 339, which will be considered shortly, or through the general or common law rights noted above.

In this regard, and so far as concerns access to or inspection of the contract of the General Manager of Council, it is the view of the Department that, and consistent with its own practices in relation to making available the performance based contracts of the Department's senior executives, in particular in order for the Councillors (including the Mayor) to be able to discharge their direct responsibilities in relation to the regular review of the General Manager's performance, Councillors may have a need to see, and to obtain copies of, the General Manager's contract, except perhaps for those parts of the contract that disclose details or breakdown of her remuneration package. The Department at one time supported a practice of this being done, say, in the office of the Mayor, with the General Manager in attendance. See, however, below as to the more recent views of the Department.

Members of the public, and hence the Mayor and other Councillors, can also access Council documents, and the information in them, via any rights to do so contained in the Freedom of Information Act 1989. It is noted that this Act contains various provisions exempting certain categories of documents from having to be disclosed under the Act. For documents relating to personal affairs there is a requirement to consult with the person affected, before any decision to release is made. (See Schedule 1 Part 2 clause 6 of that Act)

The General Manager's conduct, given particularly the allegations and complaints of Clr Hall against her, as to what she has done in the past can only be judged on the basis of the legal requirements of the time, as well as published policies and

guidelines or recommendations of such instrumentalities as the Department of Local Government that were around at the time. Likewise, the General Manager's conduct can only be judged by reference to what the Department of Local Government formally advised her on 5 November 1999, in reliance on which, in good faith, the General Manager maintained her stand against the continuing demands of Clr Hall.

We must note, however, that the Department's position on these matters has undergone an evolutionary process, in particular following legislative amendments to section 12). We understand that the Department's current position is as follows.

The Department considers that section 12 (7) (a) of the Local Government Act 1993 exempts documents that deal with personnel matters concerning particular individuals. This exemption could be interpreted to include the contracts of senior staff of councils. The common law has also addressed the issue of councillor access to documents. The case of *Drummoyne Municipal Council v Marshall* makes it clear that under the law a Councillor has a right to such information and documents as are necessary for him or her to be able to exercise and perform his or her duties as Councillor. To what extent this extends to give a Councillor a right of access to or to obtain copies of contracts of either the General Manager on the one hand, or members of senior staff on the other, is not clear, as there is regrettably as yet no case law emanating from consideration by the courts of this issue.

While it is unclear how a court would answer the question, the Department has formed the preliminary view that a Councillor could not assert his or her common law right to see or obtain a copy of such a document, in the face of the express provisions of or exemptions contained in section 12 (7) (a). However, a council has a discretion whether or not to rely on this provision when considering a request for access to a contract of employment or related contract of a General Manager or a senior member of staff. Similarly, in the event of receiving an application under the Freedom of Information Act for the contract, the council would be aware that access to it should not automatically be refused just because an exemption could be claimed.

The Department's views are influenced by its stance in relation to the contracts of its own senior executives, the Director General and the Deputy Director General. This has been formed after taking advice from the State Crown Solicitor. That advice found no reason for refusing access to the contracts of such officers in the event of freedom of information requests for access to them, but that in giving any such access personal details relating to the contract may be excluded.

The Department has maintained for many years a policy that copies of contracts of executives of the Department (other than personal details such as the break down of remuneration and so on) should be made available to the public on request, or upon receipt of a formal FOI application, because of the broader public interest.

The Department's position is to encourage a similar approach by councils. That should extend both to the contracts of the General Manager as well as of senior members of council staff. However, the Department considers that providing copies of any pro forma contract forming the basis of such contracts would adequately discharge any need to provide copies of actual contracts. The alternative,

particularly in respect of an FOI request, is to provide a copy of the particular contract or contracts demanded in the request, excising the personal details.

It should also be noted that the Department discourages the use of confidentiality clauses in contracts as a means to defeat open access provisions of the Local Government Act, FOI Act and common law and questions their validity and appropriateness in the face of all of the above.

So much for the position of the Department, as it presently stands. We note that the General Manager has in good faith acted in the past on the basis of the advice expressly given to her by the Department and accordingly no criticism can fairly or rightly be extended to her in respect of what she has done in the past. We see what she has so done as being consistent with that advice.

We note in any event that on 29 October 1999, that is to say even before the General Manager received the Department's express written advice and comments of 5 November 1999, the General Manager had in fact given Clr Hall a copy of a pro forma of the contract then used for senior staff. She was aware of the exemptions in section 12 (7) (a) of the Act and aware that to release would be a breach of the Act. In our view that is all that would reasonably be required by her in responding to other than perhaps a specifically worded FOI request in the event of the receipt of demands of this nature in the future.

As to that level or facet that requires that the General Manager report direct to the Council on certain matters, the Local Government Act 1993, at section 339, provides that:

> The general manager must, at least once annually, report to the council on the contractual conditions of senior staff.

It should be noted that the Mayor's and Councillors' roles or functions do not extend to reviewing the contracts of senior staff; this is the role of the General Manager.

What is entailed in the above statutory obligation is not fully spelt out or completely clear; or to put it from another perspective, is left deliberately flexible. In particular, the issue is as to the ambit and meaning of the words "contractual conditions". There have not been any guidelines or practice notes issued to date by the Department of Local Government which might provide any assistance in this regard. We also understand that no guidelines have been issued for benefit of member Councils by the Local Government & Shires Associations on the matter. It is perhaps an opportune time for this to be addressed.

It is certainly clear that the reporting obligation imposed on the General Manager by this section is to report at least once a year. In our view this means that, subject to what may be included in Council's contract with the General Manager on this, it is left to and in the discretion of the General Manager as to how more frequently than once a year she reports such matters to the Council.

Next, it is clear under the section that the reporting obligation is expressed in terms of a requirement to formally report to the Council. This means not to the individual

Councillors, or to the Mayor, but to the Council as a whole, and we believe that this would only be met by a formal written report presented to the Council for the purposes of and in a formally constituted Council meeting. Reporting by means of getting the Councillors together on an informal basis and in a forum to which section 10 and related sections (concerning open meetings) of the Act do not apply would not suffice in that regard.

Of course, if the information that the General Manager proposes to report under section 339 contains confidential information and it meets the description of "personnel matters concerning particular individuals", as referred to in section 10A (2) (a) of the Act, then it is open to the General Manager to request that before she provides that information Council resolve to close the meeting to the public for only so much of the meeting as is necessary to ensure the confidentiality of that particular aspect of the report. [See s10A(1) and s10B(1)] Section 664 imposes obligations on the Councillors present at the closed session to maintain that confidentiality.

The issue of what is meant by "contractual conditions" in section 339 is not an easy one. We certainly believe that there is nothing in section 339 which would require the reporting by the General Manager of details as to the terms of the contract of employment of any particular named individual member of the senior staff. The implication is clearly in terms of a general reporting on the contractual conditions of all the senior staff, we consider.

In the report it may be appropriate for the General Manager to report to the Council that the contracts of the senior staff contain particular types of clauses or conditions or provisions, such as, for example, on what rights to payments the senior staff have on termination of their employment with the Council for whatever reason and by whatever means. This would require, we think, a report in general terms as to the sorts of provisions in that regard, and if there were some senior staff whose contracts were different from those of other senior staff in that regard it would be incumbent on the General Manager to note this, but without necessarily disclosing the name of the staff member concerned and certainly without disclosing details of the dollar payments payable to each staff member (whether those conforming with the "standard" or otherwise).

We have noted at section 4.4.1 of this report the provision in the Mayoral Minute of 28 September 1999 for the setting up of a Staff Committee, and the amendments made to that provision on 5 October 1999. We asked Clr Hall as to what he sought to achieve in relation to his proposed Staff Committee:

> Clr Hall: …I think I best explain it this way. The General Manager's style of management was that staff matters should be dealt with in an informal forum, outside the formal Council meeting. I have grown up in the old school, and I thought the proper area to do staff issues, and they're not individuals, they were staff issues of staff matters, such as gratuity, unpaid sick leave and those policy issues, that should come through a committee, because I'd - in the Mayoral minute I had set up the principal committee system. This was the first time this Council for many many years had gone back to a committee system where they dealt with, in committee, issues outside the ambit of 377, which could be delegated. And part of that was to formalise the way in which the General Manager gave Councillors

information about staff issues, staff matters, such as gratuity, un - these were the two that were worrying me, unpaid sick leave, untaken sick leave, a car policy, matters that affected staff and affected our revenue. That's all.

Mr Bulford: So were you envisaging that this Staff Committee would simply function as a forum for the General Manager to report to Councillors on those matters or were you contemplating that the Staff Committee have some sort of decision-making function in terms of staff policy matters?

Clr Hall: Could I say probably both. The idea, as we had back in the '87 Council, was a staff committee or a committee of the whole, present (indistinct) excluded, where staff issues were brought forward by the Town Clerk in a report formally to the Council for the Council formally, in the whole, to make a determination on.

Mr Bulford: The '87 Council was the first one you were on, is that right?

Clr Hall: Yes. Yes. And that had a formal committee system.

Mr Bulford: What's the significance of harking back to the '87 Council?

Clr Hall: Because after the '87 Council, the '91 and '95 Councils, there were no committees. It was a very much an informal arrangement regarding staff policy.

If this Staff Committee is used for the purposes of making policy decisions on matters relating to staff and for the purposes of the annual section 339 report to Council, then that is clearly consistent with the Act. But nothing in the Act would require the General Manager, if she wishes to keep the Councillors informed on other staff matters, matters that are operational matters within her jurisdiction, to do so in a formal forum such as either a meeting of the full Council or a meeting of the Staff Committee. We consider that the provisions of the Act relating to the ability to close meetings to the public when confidential personnel matters are discussed is consistent with that [section 10A (2)]. Otherwise, the clear intent and scheme of the Act is to have open and transparent local government and for matters to be discussed and decisions made in open forum where the public may see what is going on.

Clr Hall explained to us in our interview with him his broad intentions in relation to the functions of his Staff Committee. We note first the passage already quoted above on this. After giving us evidence as to what his concerns were in relation to Council's practice and policy on gratuity payments to staff (ie top up payments on termination of their employment), a matter a previous Council had delegated to the General Manager, an issue that Clr Hall also did not agree with, the following questioning occurred:

Clr Hall: … But the Mayor of the day and the Deputy and the former Mayor, Mr Geddes, had made it quite clear that they had the majority of Councillors on side and a straw vote was taken to return the documents to the General Manager and to the ACM lawyers. Now that was quite a - I felt, a watershed in a style of management that led me to try and formalise these so-called informal staff forums of information about staff policy or policies that affected revenue, that the General Manager had a - almost a - well it was a huge demand to tell the Councillors, "This is my area and you must not transgress it and I will not take it to a formal position of Council - a formal committee of Council." And I

found that quite improper.

Mr Bulford: So part of your aims behind your Mayoral Minute of September was to address that, was it?

Clr Hall: To formalise that informality. That's all it was. The Staff Committee matters were policy matters. I must emphasise that.

The issue is, of course, what is meant by "policy". The General Manager described what the Mayor said about her informal meetings with Councillors on staff matters as "secret meetings" [see section 3.11 of this report]. This is a somewhat emotive term. It is not entirely fair and when it comes to informal briefings on staff operational matters, then we see no reason why the General Manager cannot proceed as we understand she has and wishes to. The existence of the Staff Committee cannot be used as a means or device of forcing the General Manager into the public arena on these matters. We asked Clr Hall about this later in our interview, and he sought, at least with us, to back off on his use of the term "secret", but the fact is that the evidence shows that this is the expression he uses from time to time:

Clr Hall: … when you have secret meetings of Councillors, you don't put it through the formal - - -

Mr Bulford: What secret meetings of Councillors are you referring to?

Clr Hall: I'm referring to the gratuity of payments secret meeting, the 30 June meeting with - - -

Mr Bulford: Sorry, are you suggesting that they were meetings which were attended by only some Councillors and not yourself?

Clr Hall: I believe that some of those meetings - - -

Mr Bulford: Or are you referring to these informal briefings that the General Manager - - -

Clr Hall: Mainly the informal briefings. I'm not sure whether I was excluded from other meetings, I can't say that, but I - - -

Mr Bulford: Well the secrecy therefore is - presumably it's out of the public gaze?

Clr Hall: Out of the public gaze.

Mr Bulford: Is that what you mean by secret meetings?

Clr Hall: Yes. That's right.

Mr Bulford: I mean the words "secret meetings" carries with it a certain emotive (indistinct)?

Clr Hall: Could I - I rephrase that answer and say confidential meetings.

6.6.4 Conclusions re Clr Hall's demands for information etc.

As to Clr Hall's requests for information, we note that, as set out in the table at the commencement of this section of our report, one of the dominant demands has been in relation to information on the termination payments to, or on the termination

payment rights of, certain named senior staff. It is conceivable that, in certain circumstances, it may be necessary for the Councillors, as a whole, to have certain information on such matters. As an individual Councillor, and as Mayor, we do not consider that Clr Hall has such a right.

For the Councillors as a whole, there may be a conceivable need for the Councillors to know what amount, as a *single total figure*, had been paid to *all* senior staff members in the financial year in question, in order, say, for the Councillors to discharge their statutory function of reviewing the performance of the Council, and its management plan and financial performance as against that plan, for that financial year, or perhaps to determine what amount should be budgeted for in the next management plan. We do not consider that there would be any need or justification in that regard for a break down of figures into what was paid to individual staff members.

Likewise, there may be a conceivable need for such a single total figure to be reported to the Councillors by the General Manager under section 339, though this is more questionable. As indicated, reporting dollar figures would in most circumstances be in our view beyond the scope of what is required under that section.

By the same token, it may well be within the scope of that section that the Councillors as a whole be informed of the terms of the contracts of senior staff relating to entitlements on termination of employment, for whatever reason. It may likewise be possible that there may be a need for such information to be given to the Councillors to enable them to discharge their policy making role and function, though this needs to be managed carefully, and in a spirit of co-operation between the General Manager and the Councillors, as it may go too far and encroach into the role of the General Manager on staff matters for the policy to be too prescriptive or to go too far into detail as to what may or may not, as a policy matter, be in contracts for senior staff.

In practice, where the line is drawn is going to be difficult to assess in any particular case, and as for the giving of examples earlier, we hesitate to draw that line ourselves because inevitably it may not take into consideration and be applicable in all eventual scenarios. Both the Councillors and the General Manager need to be mindful of the impact their decisions may have on each other. A decision by the General Manager to agree in all or any particular case to a clause in senior staff contracts providing for payment of a pro rata lump to the employee in the event of early termination, say, of the contract for other than just cause may well have an impact on Council's ability to meet its budget in the current financial year and/or impact on what needs to be budgeted in the next.

Conversely, a decision by the Council to have as a policy, in terms of resources provided to the General Manager to implement Council's priority for a quick turn-around, say, of development applications, that the General Manager should engage, say, 65 staff members in that area of Council for the purpose, if the budget and resources for other areas are not set appropriately, may well impact on the ability of the General Manager adequately to staff other areas of Council and hence on the

ability of the General Manager and her staff, and the Council accordingly, to deliver service or to perform in those other areas.

As we have said, there is a clear need for co-operation between the General Manager and the Councillors on such matters. Confrontation is not co-operation. Where demands for information are made which may be questionable there is a need for the Councillors and the General Manager to discuss the matter in an orderly and co-operative fashion to determine whether in the particular circumstances of the case the demands are in order, and for all parties to be satisfied as to this. This can be dealt with either in an informal meeting between the General Manager and the Councillors, outside the formal confines of a formal meeting of Council or a Committee of Council, and therefore outside the provisions of section 10, or by means of closing such a meeting to the public in accordance with the Act for so much of the meeting as is necessary to maintain confidentiality, as appropriate.

We note that, at least during the life of the previous Council under the Mayoralty of Clr David Dobbin, the co-operation which we have mentioned appeared to exist. In response to a memo from Clr Hall of 18 August 1999, which raised a number of issues, including concerns of Clr Hall about "secret meetings", Clr Dobbin wrote, the same day, to Clr Hall advising him that:

> As demonstrated under sections 10, 11 and 12 of the Local Government Act it is appropriate for personnel matters concerning particular individuals to be kept confidential and not placed in the public domain.
>
> The General Manager has sought to take a consultative and open approach with councillors in the certainty that confidential matters would remain confidential.
>
> Clr Hall's allegation that these were 'her secret meetings' is denied.

But, what is clear from the demands of Clr Hall that we have been examining, is that his demands are not for information for the benefit of all the Councillors, as opposed to himself for his own personal ends or goals, and are not, on their face, linked to or demonstrated to be for the functional needs of the Councillors as a whole or to come within the provisions of section 339.

The reporting mechanisms described above are clearly what the Act contemplates as setting the parameters of the extent to which the Mayor and Councillors, on the one hand, and the community, on the other, are entitled to information about the terms of employment of senior staff, or for that matter of other staff. In our view, therefore, the continued attempts by Clr Hall to obtain copies of or access to or information about the contents of contracts of staff members from the General Manager are quite out of order. By the same token the continued denial by the General Manager of those requests has been quite justified, in our view.

Clr Hall has sought to justify his stance on the basis of an argument that the elected Councillors are entitled to know how the ratepayers' funds are being expended and as noted, the extent of the information rights of the ratepayers, and the extent of his information rights, and those of his fellow Councillors, are as set out in the sections of the Act, and the corresponding clauses of the Regulations, to which we have already referred.

Further conclusions, in particular in relation to Clr Hall's unsuccessful Mayoral Minute of 21 March 2000 and his follow up memo to the General Manager the next day, are set out at the next section of this report.

6.6.5 The Mayoral Minute regarding staff redundancy payments

At Council's meeting of 21 March 2000, Clr Hall produced a Mayoral Minute on the subject "Redundancy payments – Senior Staff". It was apparently circulated to those Councillors who were present before the meeting got under way, only minutes before it commenced. The Councillors were therefore given in effect no warning about it.

Clr Hall certainly had statutory power to bring in a Mayoral minute in this way, as we have noted in examining the all-important Mayoral Minute of 28 September 1999 [see section 6.1 of this report], but, as we have indicated on that Minute, bringing in such motions with little or no warning or prior consultation is not conducive to an orderly or informed debate by Councillors on the matter. And if ever there were an occasion where advice from the experts, the staff, and in particular the General Manager, and time for reflection and consideration were needed for the Councillors, this was another one.

We are, in saying this, mindful of the fact that the Councillors have it in their power to determine to defer debate on the Mayoral Minute for that very purpose, but this does not necessarily in our view provide a complete answer to our point.

The Minute is an important one, not the least because of its demonstration of Clr Hall's misconceptions on his rights, and because of the way his fellow Councillors responded to it. We therefore set it out in full:

> **Background**
>
> At its meeting on 12 October 1999, Council resolved pursuant to Section 332 of the Local Government Act 1993 to determine a new organisation structure and the General Manager in her recommendation outlined the objectives, principles, personnel issues and implementation of that reorganisation structure.
>
> As a result of that Council resolution, the General Manager notified all staff in October 1999 amongst other things, of the objectives of the organisation including:
>
> • *To ensure transparency, probity and accountability in all that we do.*
>
> And under the heading, "Industrial"
>
> *In the case of a senior staff member employed under employment contract, redundancy provisions could be applied for by the employee in the event their job responsibilities are changed as a result of an organisation restructure.*
>
> *It is not possible to predict any such claim at senior level at this stage.*
>
> There is no provision under Section 332 (2) of the Act that refers to any redundancy payment in the total remuneration package payable in respect to a position within a Council's structure.

A copy of Section 332 is appended to this Minute together with a copy of the General Manager's October 1999 staff notification, for Councillors' information.

Section 338 of the Act (Nature of Contracts to Senior Staff) is silent on the question of redundancy packages or payments, relying rather on Council's resolving individual redundancy payments on the merits of each case relative to the organisational changes it approves.

I am unaware of any earlier similar advice to staff, as quoted above, when the previous Council adopted an organisation structure change in December 1997.

The Council's power to approve redundancy payments appears to fall within the provisions of Section 377 of the Act which provides under sub-section (1), inter alia, that:

• *the voting of money for expenditure on its works, services* ***or operations****.*

Section 377 does not permit a Council to delegate such powers to any other person or persons (committee).

Recommendation

As Council must act according to and within the Laws laid down in the relevant statutes, including the Local Government Act to which I have referred, I move that:

In the interests of open government and accountability to staff and the public (the residents and ratepayers of Ku-ring-gai), the General Manager at the next meeting of this Council, by confidential staff report listed on the Business Paper of that meeting, inform Council of the following:

(a) What redundancy payments have been approved by the General Manager or any delegate, to senior staff who have resigned in that period in the past two years.

(b) What was the quantum of those payments and to whom and under what circumstances were they approved.

(c) Are there any proposals by any senior staff for a redundancy payment and/or negotiations for such payment currently afoot.

(d) What formal advice was relied upon in each case, from whom and at what cost.

Clr Hall's various arguments as to why his Minute should be supported were, in our view, skewed. To understand what he was arguing we shall consider his arguments in reverse order.

Clr Hall appears to be arguing that the Council, through the Councillors, had to themselves deal with the questions he raised on what he understood to be redundancy claim matters because the only statutory powers given to anyone on such matters under the Act lay in section 377 of the Act, or more particularly in the list of matters that under that section may not be delegated by Council to anyone. He pointed in this regard to dot point 7 of sub-section (1) of that section, namely the "voting of money for expenditure on its works, services or *operations*" (our emphasis).

It is certainly correct that the Act contemplates that Council may not delegate the responsibility for voting of funds for expenditure on "operations" matters. But it is equally clear that the Act, under section 335, makes operational matters the purview

or responsibility of the General Manager. Council's role is to approve and budget for the expenditure of a total sum of money to be available to be expended on operational matters. It is for the General Manager to decide, within the constraints of any lawful or *intra vires* Council policies and resolutions, and her responsibility under section 335 (1) to ensure the efficient and effective operation of the Council's organisation and to implement such Council resolutions, to decide where and how that money is to be spent.

When it comes to wages, salaries and other on-costs it is for the General Manager, within those constraints, to decide what amount of money can be paid or spent on termination payments and claims for redundancy and so on, subject only to any contractual obligations of the Council under its employment contracts and under any applicable award affecting Council staff. These are not matters for the Councillors, except only to the extent that the Councillors may need to discharge their roles in respect of setting the budget and approving the necessary resources. See our comments at section 6.6.4 of this report on such matters.

The information that Clr Hall was seeking in paragraphs (a) and (b) of his recommendations goes in our view beyond what is permissible in that regard. As to paragraph (c), it may be that in certain circumstances, such as when and if Council comes to consider its annual draft Management Plan and budget for the forthcoming year, there may be a need for the Councillors to have that information, but with appropriate measures being taken to ensure confidentiality. There is no evidence to suggest that this was the motive behind Clr Hall's Mayoral Minute or that that process was being undertaken in this instance. As to paragraph (d), some of that information may be information that, again, in some circumstances or contexts, may be appropriate for the Councillors to seek and be given, but we again question the motives in this case and whether those circumstances or context had arisen. We certainly consider it doubtful that there was a, or would question the, need for information on the costs of the advices, if any.

Clr Hall read his Minute out during the Council meeting on 21 March 2000 and at this stage the meeting was in open session, that is to say, with staff and members of the public present. We have listened to the tapes of this part of the meeting. Clr Hall initially suggested that the matter was one which was a revenue policy issue for the Councillors and that it was not "purely operational". The General Manager was heard to raise a point about potential staff conflicts of interest in the matter and that they should withdraw. Apparently staff started to do so and Clr Hall is heard commenting on the fact that Mrs Pattinson, Council's Director Community Services, and Mr Glendinning, the Director Environmental & Regulatory Services, were leaving, and quipped "Mm, that's interesting". This immediately resulted in a retort by Clr Roach, "I don't think it's interesting Mr Mayor; I'm sure you're aware of what's going on". Amidst somewhat of a furore with a number of speakers all talking at once, the Mayor is heard to say that the issue was the need for the Councillors to be informed. We think that, put at its highest, this was the intent and purpose of the minute; it was not then and there a question of Councillors making or amending or even considering a policy at all. Indeed, the recommendations made by Clr Hall, as set out in the Minute itself, are not consistent with the latter scenario.

Clr Roach was then heard amongst the melee of voices to say to the Mayor that he would describe the Mayor's quip as a "sly comment", and added that it was in his view "derogatory", by which we understand him to mean "demeaning", to the Mayoral position for him to have made that remark. Clr Hall sarcastically replied, "Thank you, I'll take that on board".

The debate continued, with Clr Bennett saying that she wished to speak against the adoption of the Minute, but at this point Clr Malicki raised a point of order, which the Mayor took to be an amendment, which was then seconded by Clr Cross, saying that the "Chief Executive" had said that the matter was not for the Council to consider at all, and that if the Councillors must consider it the debate should be in closed session. Clr Hall seemed to ignore this at first, inviting Clr Bennett to resume her intended talking against the Minute, but Clr Bennett saved the day by saying that it was in her view appropriate that the issue of confidentiality be dealt with first.

Clr Roach then suggested that the General Manager should be invited to speak to this issue, which she did, supporting the proposition that the debate should be in closed session.

There was then a vote taken on this and it was resolved that the matter should be deferred till later in the evening in closed session. The vote was 8:2, with Clrs Hall and Coleman voting against it. In our view, it was not appropriate for the matter to be considered at all by the Councillors, that is to say the underlying subject matter of the Mayoral Minute, but, we suppose, the Minute having been introduced, it needed to be decided whether it would be adopted, and on that aspect we certainly would support the view that the matter should be discussed in closed session.

This meant that when it came to the actual debate on the Minute later that meeting the tapes were, in accordance with Council's practice, switched off. In some respects this is a pity, as it does not enable us to be able to listen to what was said and understand the respective positions taken by the speakers and hence form any complete views as to whether or not the Councillors fully understood their roles and responsibilities versus those of the General Manager on such matters. We can only go by what was ultimately minuted.

In any event, when the Minute came before Council later that evening, in closed session, it was firstly the subject of a proposed amendment which was put to the vote but not approved. That amendment quite rightly in our view appeared to query the legality of what the Mayor proposed. It was moved by Clrs de Vulder and Malicki. When it came to the vote, which was 7 against and only 3 for, Clr Malicki apparently changed her mind, because the minutes of the meeting record her as voting against it. Clrs Hall, Coleman and de Vulder supported the amendment, which contemplated that legal advice be sought.

The amendment having been lost, the Minute itself was put to the vote with all Councillors voting against it, other than Clrs Hall and Coleman.

Having disposed of the conclusion of Clr Hall's argument based on section 377, there is perhaps no need to address the earlier steps in his hypothesis. However, lest there be any misunderstanding on the matter, we will now address this aspect.

Clr Hall noted that section 332 (2) of the Act makes no reference to redundancy payments. This section is quite irrelevant to the argument. It merely indicates that the Councillors cannot determine a staff position to be a senior staff position unless certain conditions exist in relation to that position, namely that the responsibilities, skills and accountabilities of the position are at least equivalent to those of persons who hold executive positions within the State Public Service, and that their "total remuneration package" is no less than that payable to such an executive who is a grade Level 1 position. Nothing is said as to what that package must or must not comprise. Certainly, sub-section (3) of section 332 does go on to say that for the purposes of the comparison required by sub-section (2) the package is to be measured by reference to certain components, but the fact that redundancy payments are not mentioned as such we take to be neither here nor there. In any event, the whole thrust of section 332 is nothing to do with what powers the Councillors may or may not have in relation to redundancy, or for that matter other payments, to be made to senior staff.

Clr Hall then appeals to section 338 of the Act. That section lays down certain rules that the employment contracts of senior staff have to conform to. Yes, it says nothing about redundancy payments, but, then again, it says nothing about the salary component of remuneration, nor for that matter long service leave, or holiday leave, or sick leave, and so on; in fact it says nothing about remuneration at all. It is clear that the rules as to the content and form of employment contracts in section 338 are not intended to be exhaustive. Section 338 is, therefore, in our view, entirely irrelevant to Clr Hall's argument.

6.6.6 Senior staffing matters and the question of consultation regarding their appointment and dismissal

Section 337 of the Local Government Act 1993 provides:

> The general manager may appoint or dismiss senior staff only after consultation with the council.

An issue of contention between the General Manager and the Councillors, but one finally seemingly resolved whilst we were in the course of interviewing the many witnesses who appeared before this Investigation, was the extent to which the "consultation" mandated by section 337 allowed Councillor involvement in such matters.

Some assistance to councils and general managers on what is required in this regard is contained in a publication issued by the Department of Local Government entitled *Practice Note No. 5: Recruitment of the General Manager and Senior Staff*.

It seems to us that there have been misconceptions on Clr Hall's part as to what is entailed in consultation. These are, for example shown by a memo he sent to the General Manager on 15 October 1999. It included suggestions that she needed to consult with the Mayor and Councillors before advertising any senior staff position.

Clr Bennett apparently had a view on the meaning of "consultation" that was at odds with that of the Department of Local Government and of the General Manager. She told us in our interview with her (which preceded Council's consideration of the matter):

> Clr Bennett: I made it clear to the General Manager that I don't believe you can have consultation without information and I had a proposed Motion which provided a mechanism by which, subject to her concerns about confidentiality, a mechanism which I thought successfully maintained confidentiality of applicants, non interference et cetera, but gave a sub Committee of Council access to some summaries of information, at any rate. The General Manager said that she thought that was outside power and unlawful. I said I didn't think it was. She said, "Is it okay if I send it to the lawyers." I said, "Fine, I'll withhold it, in other words I won't submit it before 9.30. You'll have a report going will you," and she said, "Yes." I said, "Well if it's okay I can then move it as an amendment." So, we agreed it could go to the lawyers but Dick Graham, who she sent it to has said that it really should go to the Department. He doesn't want to buy into this sort of thing any more and I said, "Fine, send it to the Department." So, she sent it to the Department and it came back with a letter which basically ruled out everything in it that was of any use from my perspective. So tonight I'm just going to move her recommendation, although I'm still not completely convinced.
>
> Mr Bulford: Do you still feel that when it comes to a senior staff member such as a Director that Council should be given a short list, as it were?
>
> Clr Bennett: No names.
>
> Mr Bulford: So that you can decide which candidate gets the job?
>
> Clr Bennett: Absolutely not, no of course not.
>
> Mr Bulford: That is for the General Manager?
>
> Clr Bennett: That's for the General Manager, it's just a question of what the word "consultation" means.

Clr Bennett's explanation of consultation was:

> Consultation is a word that's used extensively in legislation and it is often used to give the appearance of participation without the reality. It's one of words I particularly dislike from a policy perspective.
>
> Because consultation of course doesn't mean the power to appoint. It means the ability, in some sense, to have a say, but the legislation doesn't define what "consultation" means.

The Department issued its advice to Council on 11 February 2000. As to relevant parts it provides:

> The Department's Practice Note No.5 "Recruitment of the General Manager and Senior Staff" deliberately does not seek to prescribe the consultation process since the depth of involvement will vary from council to council and from position to position.
>
> I would expect that the format or level of the consultation process would be a matter to be determined to the satisfaction of both the General Manager and the Council. Where the manner of consultation cannot be agreed upon several points need to be considered:-

- Under the legislation, it is the General Manager's role to appoint and dismiss all staff, including senior staff.

- Consultation for the purposes of section 337 does not necessarily mean reaching an agreement between the Council and the General Manager as to the successful candidate for the position nor is it to constitute a repetition of the selection process already undertaken by the General Manager.

- Consultation would not automatically involve discussion or examination of all, or a shortlist of, applicants.

I have had the benefit of reading the proposed notice of motion by the Deputy Mayor for the extraordinary Council meeting to be held on 15 February 2000. In the Department's view, paragraphs 3 to 5 inclusive are of questionable legality because they would, if adopted by the Council, seek to unilaterally impose a particular consultation process whereas section 337 places the responsibility on the General Manager to consult with the Council. As the definitions would indicate, consultation is one person (in this case the General Manager) asking another person (in this case the Council) for counsel or advice. It follows therefore that the ultimate responsibility for developing a format of consultation consistent with section 337 lies with the General Manager.

As I indicated at paragraph 5 of this letter, while the General Manager should propose a format for consultation agreeable to both the General Manager and the Council as a matter of good administration, if it transpires that no agreement can be reached beforehand then the General Manager should proceed based upon the principles I have outlined.

For example, it should be agreed between the General Manager and the Council whether there will be information provided on all candidates, a shortlist of candidates or only the preferred candidate, together with the level of detail on each. In reaching this decision the Council does need to have sufficient information to give advice to the General Manager and to be able to give that advice. Thus the test of real consultation is likely to be determined according to the information supplied, the opportunity to give advice and the use made of that advice. There may well exist circumstances where additional flexibility is required in a particular case.

It is our understanding that, following receipt and consideration of the Department's views, a consultation protocol was agreed between the General Manager and the Councillors.

We have also been provided with copies of extensive materials from the General Manager which show that both before and after that protocol was agreed the General Manager has undertaken an extensive informal and confidential briefing to Councillor on the steps that she had or was proposing to take, as and when it was necessary. What she has done since is, so we understand, consistent with that protocol.

However, we also understand that notwithstanding this, some Councillors have chosen publicly to criticise what the General Manager has done both in terms of the steps she has taken in filling various senior staff or Directors' positions, which she was doing at the time. Criticisms have been levelled at the choice of candidate made by the General Manager herself, and with her selection panel that did not for good reasons involve Councillors. Criticisms have been levelled in particular at the failure of the General Manager to reappoint Mr Chris Young to one of the Director's positions, despite his more than 20 years' excellent service to Council.

All this makes it clear to us that those Councillors still do not understand what their roles and responsibilities are and seemingly agree with the umpire only when it suits them. This is not acceptable. If Councillors agree a protocol with the General Manager then they must stand by that agreement, unless and until it is mutually agreed to alter it. If they were in the minority in voting against or not agreeing with that protocol, then they have had their say when the matter was debated and voted on or agreed. They are by law required to abide by the vote and decision of Councillors properly made in accordance with the Act, the Meeting Regulation and Council's Code of Meeting Practice, as the case may be. That is to say, they must abide by such decisions etc unless and until the decision or vote is rescinded or a new decision agreed as the case may be.

One of the steps taken by Council occurred on 15 February 2000. Clr Hall told us that he was not happy with what happened that night:

> Clr Hall: … the notice of motion was emasculated to, I think, virtually, the General Manager get on with it and appoint the staff. I don't think even consultation was even taken out. Notwithstanding the Act. Because when it subsequently happened the General Manager met with Councillors informally after meetings, after a Council meeting, with the door closed and told us that she was appointing so-and-so, and that was at midnight - the first appointment was the other day, that was at midnight on that night, and she told us that she was going to announce that person's name at 8 o'clock the next morning.
>
> Mr Bulford: Which is presumably how it occurred, is it?
>
> Clr Hall: And it has occurred.
>
> Mr Bulford: Yes?
>
> Clr Hall: Without any consultation, in the word "consultation" as I say it. Now, I just checked with other Councillors and I found another Council has in fact a policy where Councillors themselves are invited to come onto the interviewing panel and take a formal part in the interviewing, in the consultation process, of senior staff on employment performance contracts. But that does not happen.
>
> Mr Bulford: Would you not agree that the question of consultation is a matter for the Ku-ring-gai Council to determine for itself?
>
> Clr Hall: I do. But that was tried out in that notice of motion and the subsequent debate and it fell over. So no - no resolution was reached as to the interpretation of consultation. And that goes back to the performance basis of that Act.

At a late stage in our Investigation, at a time when we had already commenced preparation of our report, it was drawn to our attention that the following letter from Clr Hall was published in the journal The Ku-ring-gai Observer of May 2000 – it was published under the heading *Council Staff Appointments*:

> While the parting remarks of Mr Chris Young, Ku-ring-gai's former chief town planner (Advocate 13 April) exonerated any involvement by me in his departure, a serious situation continues to plague Ku-ring-gai's senior staff appointments.

> Mr Young's has highlighted the lack of consultation by the Council's General Manager in these appointments.
>
> In "consulting" on the appointment to fill the vacancy following the departure of Mr Glendinning, whose employment contract expired at the same time as Mr Young's, the Mayor and Councillors were told informally by the General Manager Ms Bignell about 11 pm the night before the announcement at 8 am.
>
> I believe the State government must revisit the Local Government Act 1993. Section 337 provides that "*The General Manager may appoint or dismiss senior staff only after consultation with the council*." The wording is far too vague and manipulative. If a general manager considers "consultation" as a memo to the Mayor and Councillors, how can that be disputed?
>
> In other Councils it's practice for "consultation" to include interested Councillors sitting on selection panels for senior staff. That is not so in my Council. We are told, not consulted. There is no accountability and the majority of Ku-ring-gai's Councillors accept this arrangement despite my oft spoken concerns to them and to the Department of Local Government. …

Our general remarks above are equally applicable to and directed at Clr Hall. His criticism is not warranted. He may be entitled to his views, but he is bound, as we say, by what the majority has agreed and decided on. He is expected to act accordingly in the public arena.

It is clear therefore that there is a fairly widespread lack of understanding and confusion at this Council over what is needed in the way of consultation on the appointment and dismissal of senior staff by the General Manager, and that this continues notwithstanding Council's resolution or decision of 15 February 2000. There is a clear reluctance on the part of some Councillors, not the least of them Clr Hall, to let go of their anxiousness to get involved, in our view too involved, in staffing matters. This needs to be immediately addressed. Further training of the Councillors is required as a minimum on this score.

6.7 Council's determination of its Organisation Structure

The legal requirements for Council to determine its organisation structure, following the 11 September 1999 Council elections, are described at section 3.2 of this report.

At its meeting on 12 October 1999, the General Manager presented to the Council a report on a proposed organisation structure to reflect and fit in with Council's "Principal Committee" system, as set up when Council adopted a Mayoral Minute, prepared by Clr Hall, on 28 September 1999, and subsequently amended by resolution of the Council passed on 5 October 1999. However, Council failed to deal with the matter at that time, deciding instead merely to "receive and note the report" and to refer it to "the next Policy and Strategy Development Forum to be held on 19 October 1999".

This "Forum" appears, under the Mayoral Minute adopted by Council on 28 September 1999, actually to be a Council Committee comprising all the Councillors. It was so described by Clr Hall at the meeting of 19 October 1999, despite its formal title (using the word "Forum", rather than "Committee") as set out in

the Mayoral Minute in question, and despite its description as such a Forum on the business papers prepared and circulated to Councillors for the purposes of the meeting. This is another example of the confusions created by the poor wording of the Mayoral Minute as prepared by Clr Hall without assistance from Council's legal advisers, his fellow Councillors, or senior staff, such as the General Manager. That Clr Hall needed to say anything about the "Forum" being a "Committee" at the 19 October meeting in itself demonstrates the unnecessary confusion in this regard.

We also note that during our interview with Clr Hall, when telling us as to what happened at Council's meeting of only a few days before when Council debated what was required in relation to consultation by the General Manager on the appointment and dismissal of senior staff [see section 6.6.6 of this report], Clr Hall told us:

> Clr Hall: She then changed the word from "committee" to "forum" and I had to reply that any committee made up of Councillors, whether it's called a forum or a kitchen cabinet - - -
>
> Mr Bulford: A rose by any other name is a committee?
>
> Clr Hall: Absolutely.

A brief supplementary report was presented by the General Manager to the meeting of 19 October. The same day she had circulated to the Mayor and Councillors a memo under the subject heading "Roles of elected members and staff: clarification – policy and operational". This was a carefully worded memo. She started by noting that at the meeting that took place on the previous day, 18 October, between the Mayor, Deputy Mayor, herself and representatives of the MEU the issue of the respective roles of the Mayor and Councillors on the one hand and the role of the General Manager on the other was raised and discussed at length. She noted that "the outcome of the meeting was that the role of the Mayor and Councillors (policy) and the role of the General Manager (day-to-day operational management) would be clarified". She went on to do so at some length. However, this memo was not apparently considered during the debate and subsequent vote on the organisational structure. We have listened to the tapes of this meeting, in full, and this memo and its advice were not adverted to, except once by Clr Hall and also perhaps by Clr Malicki in at least some of the points she was seeking to make in the discussions that took place.

The memo had important things to say and should have been noted and heeded. Likewise, as noted at section 6.13.1 of this report, the same messages given by Mr John Scott of the Department of Local Government were largely ignored, not understood or long-forgotten.

The memo first pointed out the roles of the Mayor and the Councillors, quoting in that regard from sections 226 and 232 of the Act. The General Manager then quoted from section 335 of the Act, referring to the role of the General Manager.

She went on to note that "in the day-to-day operational management of Council staff (the role of the General Manager), there is associated legislation which governs a significant part of the operational management of staff matters", and she referred in

this regard to the Local Government (State) Award, noting that it "govern(ed) the employment conditions of all staff, other than designated senior staff. The General Manager's role is to implement that award". She then referred to other legislation such as the Occupational Health and Safety Act 1983, the Anti-Discrimination Act 1977 and the Workplace Injury Management and Workers' Compensation Act 1998, noting that her "role is to implement the legislation and ensure that Council's obligations are met".

The memo continued:

> **What is Policy in this Context:**
>
> Staffing matters are largely governed by the legislation outlined above. The role of Policy in this context is the broad strategic framework for Council's personnel. Policy issues in this context would include, for example:
>
> - Resource allocation – setting of funding and project priorities through the Budget setting and Management Plan process
> - Setting service levels (and therefore indirectly staffing levels) through the Budget setting and review process
> - Outsourcing vs In-house service delivery through purchasing and procurement policies
> - Grouping of organisational units through the organisation structure review process
> - Consultation and community liaison through the constitution and structure of committees and delegated decision.
>
> **What is Operational in this Context:**
>
> The day-to-day management (s.335 Local Government Act 1993) represents the processes and procedures for day-to-day operations, and the administrative decisions required to implement those processes and procedures. Day-to-day management of the Council also includes the legislative obligations (outlined above) for the management of the staff.
>
> **Role of the Staff:**
>
> The role of the staff is to implement Council decisions. Staff are responsible to the General Manager. Ku-ring-gai Municipal Council staff have a full commitment to implementing the Council's decisions.
>
> **Interaction Between Councillors and Staff:**
>
> Individual elected members do not direct Council staff in their day-to-day activities.
>
> The avenues to staff for elected members is through the General Manager, or the relevant Director/Group Manager. …
>
> **Summary:**
>
> The information provided above is based on the Local Government Act 1993, the Department of Local Government's advice (presentation by John Scott, Director Policy to Ku-ring-gai Municipal Council on 20 September 1999); and the ICAC *Guidelines for Interaction Between Councillors and Staff*.

> The separation of powers, ie broad policy framework, and day-to-day operational management, is a partnership between elected members and the General Manager, who manages staff, to achieve Council's goals.

It is clear from the debate and discussion at Council's meeting, orchestrated, led and dominated by Clr Hall throughout, that the advice in this memo, the advice in the General Manager's two reports and in particular the proposed organisational structure set out in diagrammatical form in attachments to those reports, were all ignored, except to the extent already noted.

Instead, the Mayor produced his own structure in diagrammatical form, and it was this that was looked at and discussed, and ultimately adopted.

It is interesting to note Clr Bennett's later recollection of events, as told to us in our interview with her:

> Clr Bennett: My main memory of that meeting relates to the issue of where the Mayor's personal assistant was to be placed with respect to the organisational structure that was currently before Council. This was a subject of intense disagreement between the Mayor and the General Manager. The General Manager took the view that it was not possible for any staff, even including a personal assistant, to be placed under the Mayor. They had to be placed under the General Manager in the organisational structure so that they were answerable to her. The Mayor was emphatic that the General Manager was manipulating the position in order to bring him into disrepute.
>
> Mr Bulford: A Trojan horse concept?
>
> Clr Bennett: Most definitely.

Clr Malicki expressed concern at the meeting that there were a number of changes made in Clr Hall's proposal when compared with that of the General Manager. She accordingly suggested that it was important to get the comments of the General Manager on the matter before voting, and observed that Clr Hall's structure breached the Local Government Act.

As noted, we have listened to the tapes and carefully considered the entire debate on the proposed organisation structure. Issues of particular concern that were spoken about at length, principally by Clr Hall who dominated and virtually monopolised the debate in an increasingly long-winded and incoherent manner, related to the proposal by Clr Hall that the secretaries to he and the Councillors and the internal audit role should report and be directly linked to himself. Some Councillors queried some aspects of this, in particular Clr Malicki. Clr Hall's replies were again long-winded and barnstorming, and his response to Clr Malicki aggressive. Clr Hall failed to answer queries from Clr Bennett to her satisfaction, causing her to absent herself for the vote.

Much of what Clr Hall had to say entailed emotional attempts to scare or blackmail his fellow Trust Councillors by saying that if they would not give him what he wanted then he would have to go and step down.

The debate was neither orderly nor considered. The debate in our view demonstrated a clear lack of understanding by both Clr Hall and others of their roles and responsibilities under the Act. It would be helpful, really, to set out the entire debate, because it demonstrates and exemplifies not only these points, but also provides instances of many of the other key issues and complaints that we have considered throughout this report. To do so, however, would entail more than 11 pages of transcript, as prepared by us.

At the end of the debate on the organisation structure, Clr Hall put the motion and it was apparently carried by 8 votes to 2. Only Clr Cross is recorded, by name, in the minutes as being one who voted against the resolution. Later that evening, during the debate on amendments to Council's *Policy for the Payment of Expenses and the Provision of Facilities to Councillors*, Clr Cross explained why it was he voted against the resolution. It seems that his only concern was in relation to the minor aspect of the contemplated reporting of the Secretary to the Councillors to the Personal Assistant to the Mayor. At the close of the meeting late that night, when the Councillors resolved to form themselves back into a meeting of the full Council, the resolution of the Committee was adopted by the full Council, this time unanimously.

At its meeting of 26 October 1999 Council resolved to make an amendment to the organisation structure as approved on 19 October 1999. This entailed adding a reporting line between the General Manager and the Mayor to the diagrammatical chart. This was passed with only Clr Malicki voting against it. The amendment was one moved by Clrs Hall and Anderson.

As we have said, a number of things become clear from listening to the tapes. Firstly, that apart from Clr Malicki the input of other Councillors to what Clr Hall appeared to somewhat incomprehensibly at times be saying appears to have been very little of value. Their understanding of what the whole issue was about therefore must be questioned.

Second, a lot of the debate was clearly sidetracked by the quite different issue of resources available to the Mayor and Councillors, though the Mayor started it.

Third, a lot of what Clr Hall was putting up as supposed justification for what he wanted in the way of oversight or auditing of Council's operations seemed to hark back to the way things were done before the 1993 Local Government Act came into force. We have already noted the extensive changes in approach, in particular on the respective roles of Mayor and the old Town Clerk function brought in by the new Act. This is clearly another case of Clr Hall wishing to put the clock back and introduce changes that Parliament and the Government have long since abolished and signalled as inappropriate. Such changes can only come in via the Parliamentary process and amendments to the existing legislation. They are not a matter for Council to take unto itself, in breach of and inconsistently with the Local Government Act 1993, and they are certainly not a matter for the Mayor, single handedly, to shepherd in himself.

Fourth, this debate was occurring at a time (19 October 1999) when, on the evidence before us, Clr Hall was at the zenith of his support by his fellow KPT Councillors, some of whom, such as Clr Anderson, were only just starting to question what

Clr Hall was saying and doing, though not openly, but most of whom were still considerably influenced by him. The evidence is that the new Councillors were overawed and out of their depth concerning their roles and duties as councillors, and many felt enormously in debt to Clr Hall for his long experience as a Councillor. Accordingly, they still believed that everything he said was right, and that everything the General Manager and her staff said was not and was to be treated with suspicion or more.

Fifth, in that context, Clr Hall's threats to step down were calculated to and did in fact have the effect of steeling the resolve of at least the KPT Councillors to support whatever Clr Hall put up, totally overriding and ignoring everything the General Manager, quite reasonably and correctly, said.

Clr Roach asked a question about who to approach with questions about policy matters. Clr Hall responded, indicating that they should come to him for policy matters and to the General Manager for operational matters. We do not consider it is quite as simple or clear cut as Clr Hall would have had Clr Roach and the other Councillors understand.

If a Councillor has a question as to the interpretation of a policy that Council has, by resolution, adopted, it may well be more appropriate for the question to be directed in the first instance to the General Manager, and/or with her consent to the Director responsible for the administration of that policy. If the question is about a proposal for the introduction of a new policy, or an amendment to an existing policy, then it may be appropriate for the matter to be discussed again firstly with the General Manager, and/or with her consent with the Director responsible for that area. The General Manager and her staff are clearly there to advise and assist the Councillors on such matters.

If the question is one of discussing a proposed new policy or an amendment, from the point of view of sounding out the ideas of fellow Councillors on the matter, or as to whether they might support the proposal, then, clearly, there is no need for the Councillor to go first through the Mayor. Each Councillor is quite at liberty to approach any other Councillor direct on the matter, and the consent of the Mayor is neither required nor appropriate. In some cases, where the Mayor is particularly the leader of a block of votes or of a group of Councillors likely to vote the same way on a matter, it may be politic to sound out the ideas of the Mayor, before approaching other Councillors, but that is a matter entirely for the initiating Councillor to decide.

The Councillors are not responsible to and do not report to the Mayor. Individually, and collectively, they are accountable to the community.

Clr Roach's questions appeared to us to demonstrate a degree of naivety and unnecessary confusion on the issue.

Another issue which we should note at this stage is the claim made on 8 December 1999 by Clr Hall to the General Manager that he was her "supervisor", a claim strongly refuted by the General Manager. It is notable that the organisation structure initially approved by Council is not consistent with this, as indeed it should not be. The amendment to the structure approved by Council on 26 October 1999 which

added such a reporting line, which we noted above, is therefore one that is not appropriate. The provisions of Chapter 11 of the Local Government Act 1993 superseded the requirements of the old 1919 Act to appoint a town clerk and section 87 of that Act which gave certain powers to the mayor or president who was nominated as the "chief executive officer" of the council. There is no equivalent in the 1993 Act, with the reporting mechanisms being set in terms of the General Manager's responsibility to the Council as a whole.

One key difference in the rival structures proposed by the General Manager and the Mayor, and a source of some contention between Clr Hall and the General Manager, is that in the General Manager's version of the diagram there is no "Staff Committee", whilst in Clr Hall's there is. This despite the fact that even the General Manager's version was one purporting to be "an organisation structure that directly links to the Principal Committee System outlined in the Mayoral Minute which was formally adopted by Council on 28 September 1999". See at page 1 of the General Manager's report to the 12 October meeting, and represented to the Councillors at the 19 October meeting. The question whether this is an example of the alleged failure of the General Manager and her staff to implement Council decisions is considered at section 4.4 of this report.

Clr Hall made a number of what we consider to be incorrect, or partially incorrect, and misleading statements in his didactical address to his fellow Councillors. His opening remarks were:

> We are not in a position – below the General Manager – to allocate duties. That is the General Manager's job. However, we have the right to approve the structure that is before you … The General Manager is the centre of the universe in terms of the organisation structure. …

The structure that Clr Hall put to the meeting, in our view, was one that he had no right to put or the Councillors to approve. His structure placed, as we have noted, the Internal Audit function and the positions of Executive Support to the Mayor and Councillors as ones reporting directly to him, and above and independent of the General Manager. This is wrong, and is not in keeping with the provisions of the Local Government Act 1993. So far as concerns the Internal Audit function, we have considered this in more depth at section 6.8 below.

So far as concerns the Executive Support positions, or the roles of secretary or personal assistant to the Mayor and/or the Councillors, it is clear under the Act that these are undoubtedly staff positions and therefore ones for which the General Manager and the General Manager alone is responsible. Such positions are unlikely in our view to be classifiable as senior staff positions, so section 335 (2) dot points 1, 3 and 4 make it clear that, from an organisational structure viewpoint, they should come under and should report to the General Manager.

It is equally clear under the Act that it is the General Manager that is responsible for providing such support and services to the Mayor and Councillors as they require to do the job, subject only to what resources are voted for the purpose by the Councillors pursuant to section 335 (2) dot point 3. Section 335 (1) provides in this

regard that the General Manager is responsible for the efficient and effective operation of the Council and its organisation.

It seems to us that the concerns of the Mayor, apparently shared by a number of the Councillors, are based on a confusion between the reporting lines on an organisational structure basis and reporting lines on a functional basis. If the Mayor and Councillors are concerned that somehow with the secretaries or PAs formally reporting directly to the General Manager they lose control over what and how these persons do in the way of performing their jobs and tasks for them, the simple solution and practical common sense way of handling it is to speak to the persons concerned about the matter. In some circumstances it may be necessary to involve the General Manager formally in this, especially if it is a matter of job descriptions.

So, for example, if the Mayor wants his diary and appointments, or his incoming mail to be handled in a particular way by his secretary or PA, he only has to talk to that person and tell him or her about his likes and dislikes and so on. The formal reporting or organisational structure should not inhibit or stand in the way of this in any shape or form on a day to day basis.

Likewise if any particular Councillor wishes to seek certain priorities for his or her own work, given that there is only one secretary performing tasks for the nine Councillors at this Council under the organisational structure and more particularly the resources approved by the Councillors, then it is a simple matter of asking and consulting with fellow Councillors. If the work load of the secretary is such that there is clearly going to be an ongoing problem then it is a matter that the Councillors will need to take up with the General Manager and if necessary approve extra resources to permit the hiring by the General Manager of extra staff for the purpose.

We do note that, for reasons which are not apparent to us, Clr Hall wrote to the General Manager on 28 October 1999 raising the question of the reporting line of the Councillors' secretary to the Mayor's Personal Assistant, which had also been provided for in the *Policy for the Payment of Expenses and the Provision of Facilities to Councillors*, also considered by the Councillors on 19 October 1999 and approved for placing on public exhibition, as required by section 253 of the Act. He said:

> Having reviewed this clause, I would appreciate in the draft that is returned for Councillors for the determination of the policy that the words "*and responsible to the Mayor's Personal Assistant*" be deleted. In effect, the person holding that position would be responsible to the General Manager.

He gave no further explanation of the matter. We are not sure if this has been attended to. The General Manager and the Councillors may need to follow up on this as appropriate.

The Mayor's organisational structure as approved by the Councillors also has each of the key or "Principal Committees" and their chairpersons reporting directly to the Mayor. This is also, in our view, wrong and inappropriate. The Committees quite clearly are accountable to the full Council, which set them up under section 373, and not to the Mayor. This is clear from such sections as sections 222 and 223, and section 232 (1) dot point 1.

It is therefore incumbent upon Council, at the earliest possible time, to review its organisation structure, as it may do so from time to time under section 333, and to adopt a structure that is both in keeping with the Act and good and efficient management practice.

We are aware that there has been a deal of recent activity to re-examine and redebate the organisation structure, but only in relation to the number and arrangement of Directors' positions and roles. Quite a deal of material has been provided to us. We have briefly examined it. It gives us no comfort at all that Councillors have come to grips with what are the boundaries of their roles and responsibilities on staffing matters.

We note the advice of Council, in its corporate response to the final draft of this report, that in May the issue of the reporting of the internal audit and the Executive Support positions was addressed. We also note Council's advice that there will be a further review of the organisation structure in the light of our comments on the matter in this report.

6.8 The question of Mayoral involvement in internal audit matters

Following the adoption by Council on 19 October 1999 of a revised organisation structure, which included the concept of the internal audit function being one that reported direct to the Mayor, Clr Hall wrote to the General Manager on 4 November 1999 as follows:

> Following Council's decision of 26 October to re-structure the organisation, the Internal Auditor, Mr Lethbridge shall now report direct to the Mayor.
>
> Would you kindly arrange this Council resolution to be implemented by 8 November and advise me where he can be contacted.
>
> Perhaps we could discuss Mr Lethbridge's duties with him at 9.00 am Monday 8 November.

We should note that the General Manager told us in our interview with her that she understood that, despite the organisation chart approved by Council referring to "Internal Audit", she understood that it referred to a concept of internal audit being undertaken by external consultants, rather than Council's own employee, Mr Lethbridge. But this does not seem to fit with the clear wording of the chart, and certainly is not consistent with what Clr Hall wrote in his 4 November memo.

Apparently Clr Hall felt that he had not had a response to this, because, some months later, on 10 February 2000, he sent a copy of the memo to the General Manager with a handwritten note, dated that date, marking it "For advice pls". We note that, of course, on 7 November Clr Hall had stood aside, and his duties as Mayor were being fulfilled the following week by Clr Bennett, the Deputy Mayor.

The General Manager responded to this reminder by memo of 29 February 2000:

> You have sent a handwritten note dated 10 February 2000 about Mr David Lethbridge's role, following your original memo of 4 November 1999.
>
> At the time of the original memo, I advised you verbally and in writing (attached) that Mr Lethbridge would not be reporting to the Mayor. This was discussed at the Council meeting on 19 October 1999 and I attach the transcript.
>
> Following an assessment of this issue, I should point out again, that Internal Audit is an operational function and responsibility of the General Manager. It includes reviewing operational processes, procedures and systems which is clearly operational under the Local Government Act 1993.
>
> As General Manager, I have regular process review and internal audit functions in place or scheduled with our Internal Auditor, Mr Lethbridge, on operational matters, and we have been able to achieve improved systems through this work. I have said previously, if you have concerns I will carry out a review, but it is not appropriate, nor stated in the Local Government Act 1993, that the Mayor is responsible for operational reviews such as internal audit.

We agree. The General Manager's reply is one that we consider not only to be well founded as a legal matter under the Local Government Act 1993, but also one that is perfectly proper and appropriate for her to have sent. Given the fact that it is the General Manager that under section 335 (1) who is responsible to the elected body as a whole for the efficient and effective operation of the Council's organisation, it is a matter for her, ie an operational matter, as to how she in turn manages the organisation to ensure that she meets her statutory and contractual obligations to Council. The engaging of an internal auditor is a sensible and prudent management tool to assist her in this regard.

It was not appropriate, therefore, that the organisation structure provide for internal audit, in whatever way one interprets those words, to have to report to the Mayor. There are however other options available to the Council such as the establishment of an Audit Committee (involving staff and councillors).

6.9 Clr Hall's involvement in matters relating to the purchase and disposal of mobile plant and equipment

It is clear from the evidence before us that Clr Hall has taken an incredibly close interest in these matters going back some years. There almost seems to be an obsession on his part in such matters. His concerns may no doubt be motivated by altruistic purposes such as a desire to ensure the ratepayers' funds are being spent wisely. But, as with other matters, we think it clear from the evidence that Clr Hall has in many respects gone too far and trespassed into the role and domain of the General Manager on operational matters. Given the very great volume of materials before us on these issues it is not possible in a report of this nature to address all issues and concerns in detail. We will therefore limit our comments to general ones and perhaps add some comments on particular cases where we feel this is warranted.

On 24 December 1999 Clr Hall sent the following written instructions to the General Manager:

> As no policy has been put forward and arranged by this Council on the above, I request you submit all requests for disposal/purchase of light passenger vehicles to me for concurrence during the recess. I also seek why all purchases require a tow pack. (sic)
>
> I would also request a report of each heavy plant purchased. An inventory of existing heavy motorised plant (date of purchase/price) would be appreciated in the interim.

Similar demands had been made on 28 October 1999 and again on 1 November 1999.

Apparently, Council's Director Finance and Corporate Services, Mr Darren Condon, also got a copy because he sent it on 4 January 2000 with a note to the General Manager seeking her comments. The General Manager had been on holiday over the Christmas period and got back to Council that day. Mr Condon had been acting as General Manager in her absence.

Now, we note that section 226 of the Local Government Act 1993 gives the Mayor a statutory power to exercise the policy making functions of the full elected body (in meeting) only in cases of "necessity" between meetings of that body. There was no Council meeting held or scheduled to be held over the Christmas and New Year period. But, as noted, the power of the Mayor is limited to making policy, and then only in cases of there being necessity to do so. In this case, what the Mayor was seeking to do was not to make a policy and in any event there is no evidence to indicate that there was any necessity for him to do this without waiting for another meeting of Council. Even the so-called absence of a policy – which the evidence before us clearly indicates was not so – does not assist the Mayor here.

Moreover, the delegations to the Mayor, as contained in the Mayoral Minute of 28 September 1999, as amended on 5 October 1999, do not give the Mayor any powers to do what he sought to do in his memo. The original Minute had purported to grant the Mayor a power to "authorise any *work* which is deemed urgent at a cost not exceeding $100,000 provided such expenditure is reported to Council at its next meeting" (our emphasis). The expenditure of moneys on motor vehicles, or a requirement that the Mayor at least concur in such expenditure, does not amount to an expenditure on "work". In any event that power was revoked by the Council on 5 October, apparently because "no funds have been allocated in the Management Plan". We note that in his letter of 5 October 1999 to Clr Hall Mr David Clark, the Legal Officer of the Local Government Association of NSW, had said this about the power in the original Minute:

> 9. This delegation is in order provided that funds for emergency works have been included in Council's annual budget and provided that the delegation is exercised within the limits of that vote. It is not in order if those funds have not been included in the budget, because section 377 specifically forbids the delegation of any vote of money "for expenditure on (Council's) works, services or operations", and a purported approval of such expenditure would amount to such a vote.

Clr Hall was therefore going beyond his powers.

There is also another aspect to this to reinforce that conclusion. The purchase and disposal of particular motor vehicles, as opposed to, say, a policy as to the sorts of motor vehicles that Council might be prepared to approve funds for, is clearly an operational matter for the day to day management of the General Manager. In our interview with her the General Manager told us that she was aware of this when she considered Mr Condon's request, but:

> … in fact, why I complied I don't know, but I think it's probably about the environment that we've been in. I have asked Brian Mazur to send them to him in good faith.

The General Manager should not have had to do that, though if she so choses to consult on an individual basis with the Mayor on such matters that is her prerogative.

Clr Hall has, we have noted from the evidence, frequently been dissatisfied with the information he has been supplied on the purchase and disposal of motor vehicles and related matters. Nothing daunted he has asked for the same information, in one guise or another over and over, and he has repeatedly been rebuffed.

Clr Hall's election to the position of Mayor gave him the opportunity, with a compliant set of Councillors who apparently knew no better, to revisit all his old grievances. Matters motor vehicle were high on the list. He raised a veritable compendium of demands by a memo of 11 October 1999 to the General Manager, which appeared to have reached her only very late in the day – yet he demanded a full report for Council's meeting the next day.

Clr Hall's confrontation of the General Manager on 12 October 1999 over motor vehicle matters was noted at section 3.9.2 of this report. It is clear that some of Clr Hall's demands for information on cars are at least partially linked to his pursuit of the General Manager over the terms and conditions of senior staff's employment contracts, linked in turn to his inability to accept that people might be leaving Council's employ because of his behaviour towards them or others or generally.

Clr Hall wrote to Price Waterhouse Coopers on 1 November 1999 with instructions to undertake an extensive review and inquiry into a number of motor vehicle issues. It is clear from the terms of his letter that many were issues on which he had previously been rebuffed by the previous Council. Clr Hall had, to our knowledge, no delegated authority to issue these instructions to PWC, and we have seen no Council resolution contemplating or authorising such an exercise. He had in our view no inherent power by being Mayor to do this. Nor did the approval of Council of its organisation structure and the reporting accordingly of the internal audit role to him permit this. Likewise, the fact that clause 19 of the Local Government (Financial Management) Regulation 1999 requires a mayor (amongst others) to "sign off" on the Council accounts gives, in our view, no inherent power or authority to the Mayor to commission such a review and inquiry as a condition of and preliminary to the Mayor being prepared to sign off on the accounts. If the Mayor had any concerns about the accounts the proper course would have been to bring the matter back to the full Council for any necessary resolution and the giving of proper authority for such a course of action.

While the letter to PWC refers to the Mayoral Minute of 28 September 1999 and its contemplation of there being a "Financial and Operational Management Review" and "audit" into Council's operations, to be undertaken apparently by Councillors and staff and with the assistance of "an external consultant", the Minute entails no contemplated delegation to Clr Hall or for that matter anyone to engage such a consultant. Indeed it is stated:

> It is proposed that a task force will be formed comprising the membership set out below, where the Mayor and General Manager may contribute to, but will not be involved with the process. … Independent management consultant to be chosen by the Task Force membership (by majority).

The Minute identified Clr Bennett, assisted by Clr Anderson, as being the person to head that task force. We have seen no evidence to indicate any participation by Clrs Bennett and Anderson and the other named members of the task force in selecting PWC. Clr Hall's letter to PWC notes that the job of the task force was going to "commence in the near future". PWC were asked in the letter to do what they were asked to do "as part of your firm's Management Review of the audited financial statements for the year ended 30 June 1999". It seems to us that the terms of reference for the inquiry to be undertaken by PWC, as set out in Clr Hall's letter, go far beyond such an exercise.

On the next day, however, that is to say on 2 November 1999, Council did resolve to have the General Manager review the policy on the purchase and disposal of motor vehicles. This does not provide the necessary retrospective authority for Clr Hall's actions, if retrospective authority could in fact be legally granted.

On 7 November 1999, as has been related, Clr Hall stood aside, only to suddenly re-appear a week or so later on 16 November 1999.

On 9 November 1999 PWC provided a very preliminary report to Clr Anderson, following a meeting that he had with them the day before. According to the PWC letter it was agreed at the meeting that there were 5 specific questions that they were to immediately answer. The letter reported their preliminary findings on these matters, but pointed out that their review did not entail an audit in the strict sense.

There was apparently a further meeting on 10 November with PWC, this time involving both Clrs Anderson and Bennett. PWC were instructed to continue working on a number of issues. That was the same day that a meeting took place at Blake Dawson Waldron over allegations about the General Manager's performance. That resulted in advice to the General Manager on the following day that the "witch-hunts are over". On 12 November Clr Anderson wrote to PWC to narrow down what they were to look at on their inquiry. On 19 November 1999 Clr Anderson wrote to them again, this time telling them to cease work on yet a further item. That same day he did a written report to the Mayor and Councillors telling them what was happening and noting that a number of the issues that PWC had been looking at were "considered closed".

On 22 November Clr Anderson wrote a final letter to PWC instructing them to shut down on all work.

Clr Anderson explained to us how it was that the Inquiry commissioned from PWC was progressively wound down and halted by him, with the acquiescence of his fellow Councillors, other than Clr Hall:

> …what happened was the Mayor under the guise of the audit Inquiry, the normal fiscal audit which has to be signed off by the Mayor and by Council, raised many questions with Price Waterhouse. He raised a hell of a lot of questions and he raised so many questions that it stretched over the audit limit but was just about within audit questions. So at that time I supported it, you got an audit, you got some questions asked. Now, whether the very short answers we got back quite quickly from Price Waterhouse was that there was nothing in them. As we went further, each one that came up, accusations about somebody had a Citroen car - I finally rang the fellow supposedly having had the Citroen car and I talked to him. I found case after case, I just couldn't get anything in any of these items. At the same time the costs were starting to scream up. We were up to $4,000 and it appeared to me in a quick check we're going to be up for another $25,000 to get that better answered, and we were proving nothing. So, that was when I limited the Inquiry and then I closed it because not one bit stood up. The claims made just didn't have substance.

Our questioning of Clr Anderson continued:

> Mr Bulford: With Price Waterhouse. Do you have various meetings with them on the issue?
>
> Clr Anderson: Yes, what happened is the Mayor was no longer at Council. The Price Waterhouse investigation was going on. I felt this should be limited and I didn't even know if I had the powers to limit it, but someone had to.
>
> Mr Bulford: Was Councillor Bennett involved in this at all?
>
> Clr Anderson: Because I had started it she said to me, "You run this one," and I didn't even know if I had the powers to stop it but I thought, "Well at least if I stop it I'm stopping expense as Chairman of the Finance." …
>
> Clr Anderson: Therefore, although the powers were not that well explained I figured, "if I stop things I'm in the right direction". I closed off the first bits when I got the evidence on them. …
>
> Clr Anderson: Then I started to read through the rest of it and that's when I started to realise we had two people working full time at probably $500 an hour.

Clr Anderson confirmed that he wrote a memo on 19 November to the Mayor indicating that he considered a number of items on the list looked at by Price Waterhouse Coopers to be closed because he considered there was no substance in them. Clr Anderson described the Mayor's response in the following terms:

> Verbal explosion are the only words I could use.

Clr Anderson went on to tell us the Mayor was saying

> Oh, you're letting them cover it all up, it's all there, you've got the wrong attitude. You're letting them swizz you," this type of thing.

Our questioning continued:

> Clr Anderson: So we went and saw the General Manager and said, "What right did you

have to bring in a crazy policy on vehicles, of turning them over in a very short period of time -_"

Mr Bulford: Every 12 months?

Clr Anderson: Absolutely, I said, "What right did you have to vary this, and Councillor Cross and I want to know." She said, "Right," and she called in Darren Condon - no, I saw her with Darren Condon so there'd be four of us there. She pulled out the motor vehicle policy dated 1996. We turned to the appropriate chapter, the chapter said she had full right to do so. Ian said, "What do you think, issue closed?" I said, "Issue closed."

Mr Bulford: When the Mayor started this snowball rolling did he give you any indication as to whether he had asked the General Manager about the situation?

Clr Anderson: He did not, to my knowledge, discuss this with the General Manager. He was looking to Price Waterhouse to bring out the attack, the find the evidence.

Clr Anderson: I actually asked Price Waterhouse, "Would you get me an official copy of that Minute. I've no access to these papers."

Mr Bulford: How is it do you think that the Mayor got the idea that there was something wrong?

Clr Anderson: When I've talked with people, whoever I talk to, he's had a thing about motor vehicles for at least 8 to 10 years. It's always been this matter of the Citroen car, it's been on and on.

Mr Bulford: Would you say it's an obsession?

Clr Anderson: Yes, definitely, I've talked to the previous Mayor, David Dobbin, I said, "David, what can you tell me about this vehicle thing, help me". He said, "The guy's got an absolute obsession on it. Vehicles are something he can understand and he just goes for it, absolute obsession.

Mr Bulford: And when we say obsession would you sort of add that he appears to be proceeding absolutely without any rational foundation as to his fears?

Clr Anderson: Yes, he made the claim that 4 or 5 vehicles had been bought for $35,000 when the list price of these vehicles is $50,000. Therefore, there must have been a lease back – a corrupt situation …

The evidence shows that PWC found no evidence of corruption or other concerns on the vehicle sale and purchase prices.

6.10 Delegations to the General Manager

The General Manager told us that her delegations, as they stood at the time of our interview with her (on 15 February 2000), included:

"KC4 - Legal advice and assistance." My Delegation is to "Obtain legal advice from Council's solicitors or Counsel where necessary. To arrange appropriate legal assistance subject to arrangements with the appropriate officer."

In accordance with the regime provided for in section 378 (1) of the Local Government Act 1993 she has sub-delegated power to a number of her Directors to instruct solicitors on matters relating to their roles and responsibilities. Those for her Director in charge of development applications are considered at section 6.16.1 of this report.

These delegations are of long standing and those to the General Manager hail from 12 August 1997 and remain binding on the present Council unless and until altered or revoked by it pursuant to duly passed resolution. We note that the General Manager did prepare a report to the Mayor and Councillors on proposed revisions to her delegations on 15 October 1999, but it was our understanding, when completing the first draft of this report, that this had still not then been dealt with. The General Manager told us that the matter had gone before Council on a number of occasions, but kept being deferred. For example, on 7 December the decision was to defer the matter to as far away as April 2000, no doubt because of the effort that was going into the residential strategy, seemingly to the exclusion of much else. A similar treatment to other important matters, as we have noted in this report elsewhere.

This really needs to be addressed without further delay. The General Manager told us that many of the delegations were simply out of date or inappropriate, and this is why she recommended a new set of delegations, after getting advice on the matter. The delegations need to be clarified for the benefit of the efficient and effective operation of Council.

We do note that the proposed delegation on instructing legal advisers is in substance no different from the existing one.

By way of postscript, we note the General Manager's advice that the delegations were in fact considered and adopted by Council on 15 August 2000, only just inside the 12 month deadline. They ought, of course, have long since been addressed. But even the resolution so adopted contemplated a further review of a number of the delegations, and it seems clear that what was adopted was under pressure of time somewhat of a stop-gap measure. Council needs to follow this up without further delay.

6.11 Clr Hall's discharge of his duties and responsibilities

We have already detailed in this report a number of instances where Clr Hall was not properly discharging his role and responsibilities as Mayor.

The evidence obtained by us in our Investigation shows that right from the opening weeks of Clr Hall's Mayoralty he was not coping with the job, particularly in relation to the handling of mail. This was at the time when he still had working for him the experienced and competent secretary who had worked for the previous Mayor, Ms Ann Gabay. She told us:

> He had a problem with just about everything. The arrangement was, when I was working for David Dobbin, and we continued that on, I asked if it wasn't satisfactory to him that we would change it, but David - all mail would go to Records, it would be opened, then it

> would come to me. I would sort through it, then I - I would respond to actually letters on behalf of the Mayor, type those up ready for signing. Things that I felt that I couldn't handle would be put in another folder, invitations would be put there. I would note if he was free to attend or whatever, send that mail on, then it would come back the next morning and I would take it through from there. What I found - in fact I think he did say in the end that he didn't want anyone opening his mail at all.

Ms Gabay said that he did not really give a reason for his actions, adding that:

> I think he just didn't trust anyone. He didn't trust anyone. …
>
> In fact in the end…his in tray was just getting higher and higher and higher because he just…really couldn't cope with the day to day stuff at all. He wasn't really interested in doing that. …
>
> So he was really creating chaos, in my opinion. He wasn't allowing competent people to get on with their jobs. He was making life difficult for himself, really, and for other people.

In our interview with Clr Bennett we asked her about her experiences in the short period that she became Acting Mayor, when Clr Hall stood aside on Sunday 7 November 1999 and suddenly re-appeared only a matter of days later on 16 November 1999. She told us that she had taken possession of the Mayor's office on that very Sunday night She explained how she discovered unopened Mayoral correspondence sitting on the desk or stuffed in drawers inside the Mayor's office. She said:

> the room was in disarray. There were memos, replies to memos, opened letters, unopened letters, Council documents spread everywhere. …
>
> I in fact spent 12 hours one day sorting everything through into folders. … some of it was weeks old.

Asked to describe what type of correspondence she found in the office, she stated:

> …It was primarily from residents who were concerned over some aspect of Council activities, not necessarily DA's but other activities. …
>
> It might be waste, it could be the operation of a child care centre, it could be a footpath. The whole gamut of Council's responsibilities that residents write about.

And at a later stage:

> Some of them concern complaints over staff members. Some of them are complaints that certain things haven't been done.

Asked about the complaints over staff matters she said:

> Clr Bennett: … a staff member was rude to me, or such and such a staff member hasn't been carrying out their functions in terms of protecting trees that were on a development.
>
> Mr Bulford: What would be your understanding as to what should be done with that sort of letter, concentrating on the complaints about staff members, that is?
>
> Clr Bennett: The complaints about staff members?
>
> Mr Bulford: Yes?

Clr Bennett: They should go with a memo to the General Manager.

Mr Bulford: So there were in this unopened correspondence a number of letters of that nature for example?

Clr Bennett: I think there were yes.

Mr Bulford: They were matters that should - would it be true to say that there were a large number of matters that ought to have been dealt with and passed through to the General Manager and her staff for looking into the concerns?

Clr Bennett: That's true but there was a complication in that when I arrived, some time on the first day I think it was, Piri [Stephens] … had actually sent a lot of the correspondence straight out to the Departments and I asked for it to come back.

Ms Stephens' evidence to the Investigation corroborated that this request was made. Clr Bennett went on to say that she did in fact manage to retrieve the papers.

The evidence of Ms Williamson was:

I mean we've tried - I've tried a three box system. I've got three boxes that I give him which is his signing box, his correspondence box and the incoming mail - you know, internal and then incoming mail. The boxes come back and he hasn't done a thing with them, they just come back and I'm supposed to action them. So he's not actually going through and saying can you do this, can you do that? No instruction whatsoever on what he wants done. He doesn't sign things off so we're signing them off but then writing, "Mayor - Mayor requested these to be sent back to file." I mean because we don't want to sign them off because then if it's never actioned and it's something that should be actioned, you know. He won't advise us where he's going or when he's coming back. We're not allowed to ask him anything about his private life or what his meetings - we can't ask him anything.

6.12 The Council Committee system

The Hall Council has introduced fairly radical changes in its Committee system, changes which have led to much confusion and a good deal of problems. This Committee system was part of what Clr Hall introduced in his Mayoral Minute of 28 September 1999.

Clr Bennett told us in our interview with her that "one of the Trust's strongest planks was that there was a need for the new Council to be proactive and, in order to do that, it was necessary to revive the Committee system".

There was some confusion, in particular amongst staff and Clr Hall, as to the impact of the Mayoral Minute, or perhaps just the fact that there was a new Council, had on the pre-existing Committee system as established by the previous Council. We asked Clr Bennett about this also:

Mr Bulford: What was your understanding of the impact of the Mayoral Minute on all these miscellaneous Committees. I mean it is true, is it not, that the Mayoral Minute concentrates on setting up the series of four or five, what are described as Principal Committees. Is it your understanding - - -

Clr Bennett: I didn't think it had any implications.

Mr Bulford: Was it your understanding that the Mayoral Minute actually resulted in the dissolution of all the dozens of miscellaneous Committees?

Clr Bennett: No, that was never the Mayor's argument. The Mayor put his argument to me several times and I also heard him put it to that particular Committee at the time and he put it in relation to the Sports Committee as well and his whole argument was always that when Council dissolves the Committees it has set up as Advisory Committees dissolve also. That was always the line he took.

Mr Bulford: This is as a result of the election of the new Council?

Clr Bennett: Well it was the result, he told me, of the dissolution of the Council.

…

Mr Bulford: Did he ever point to a particular section of the Act which said that was the result?

Clr Bennett: No, he didn't.

Nevertheless, the General Manager's evidence to us was that it was her understanding that the argument was that the Mayoral Minute had somehow impacted on the existence or continued right to exist of all the Committees that had been around from the previous Council. She said:

> Yes, that's a whole issue about those Committees because as soon as the Mayoral Minute came in he was claiming that those Committees were defunct.

Ms Bignell continued:

> It's all up in the air. As far as I'm concerned they've never been disbanded, even though he claims in his Mayoral Minute he's disbanded all of those Committees. …
>
> There's things like the Bushland Advisory Committee, Sports Advisory Committee, mostly community committees. Staff would be involved, there's probably a Councillor or two on each one. …
>
> … real good community stuff. …
>
> There was a lot of good work coming out of them. Now, there was no mention of them in the Mayoral Minute …

The interview continued:

Mr Bulford: As far as you were concerned you interpreted and continued to run the operational side of things at Council on the basis that all those previous lesser mortal Committees still continued in existence?

Ms Bignell: That's right because what I presumed was that the Access Committee would report to the big official Community Services Committee, so that's how I saw it must be working, but there was no mention of any of that. I don't know if he even knew half those committees existed.

Mr Bulford: All the lesser committees were not, sort of, sub-committees of the Principal Committees as such, were they?

Ms Bignell: No.

Mr Bulford: But they simply would come in under the umbrella, subject wise of those four or five Principal Committees?

Ms Bignell: That's right.

Mr Bulford: And is that how things have actually tended to work in practice since?

Ms Bignell: No, well see they're all up in the air. See he went off at me one day that our Sports Advisory which is a really strong Committee were still sending out letters under their letterhead. "There's no such Committee any more. [indistinct] Administration doesn't exist. Where doesn't it exist? So all the Committees are up in the air, the community is furious because he's just, you know, wiped them off. He doesn't have an answer either, he doesn't have an answer to say, "Okay we'll reconstitute them," or anything.

Mr Bulford: Yes, I'm trying to work out how these Advisory Committees, for example, fit into the scheme of Committees contemplated by the Mayor. It's something I'm not clear on and you're saying you're not clear on either?

Ms Bignell: No, and I don't know that he is either. … I don't think anyone, including myself, knows where any of them are at.

It seems that it was intended that the Principal Committee system was not to start until November. A comment to that effect was made in the General Manager's report to the meeting of 12 October 1999 of Council's Policy & Strategy Development Forum or Committee on the proposed organisational structure, not in fact considered until 19 October. While the Mayoral Minute of 28 September makes some reference to what we presume to be the "lesser mortal committees" (our words), their status is unclear, as the Minute provides:

> The General Manager will submit a further Report to the next Council meeting dealing with the reappointment and/or appointment of councillor delegate nominations to serve on the Special / Outside Committees currently operating …

Which or what Committees these are or were is not clear. In the minutes of Council's meeting of 5 October 1999 a number of such appointments are made, including the appointment of Clr Hall as the Council delegate to the Cowan Catchment Committee (as to the issues flowing from this see section 3.34.4 of this report).

In our interview with Clr Malicki we took the opportunity to ask her what was happening with the old committees, especially since she was the only other continuously serving Councillor from the previous Council:

Mr Bulford: Yet these Committees largely continue to sit, don't they?

Clr Malicki: No, the advisory Committees of residents don't sit yet. We did resolve, in his absence, to bring back those Committees, but nothing's been done to bring them back.

Mr Bulford: So what you are saying to me is that a lot of the infrastructure and processes of local government which given that local government is set up at a level of encouraging community participation - - -

Clr Malicki: Yes, that's all been killed.

Mr Bulford: That is simply not happening?

Clr Malicki: It's not happening and I can give you examples. …

We have already noted at section 3.25 of this report what section 7 (c) of the Local Government Act 1993 says as to the intention of Parliament that there be community participation in local government. Clearly this is not happening to the extent that may be required at this Council, and this issue needs to be addressed. Sure, there has been the Residential Development Strategy Forum or Committee, but there is more to the responsibility of local government and this Council than this, despite what some of the Councillors, such as Clr Little, may have seemed to think was the priority of the moment [see section 6.14 of this report].

In any event, the General Manager's advice to us was that the key working sub-committees behind the RDSF were not in fact committees whose proceedings were fully open to the public, with only selective public access being allowed at select times or for select purposes. In her comments on the final draft of this report the General Manager provided a deal of further information to us to clarify and expand on her earlier advice to us on the matter. She explained that while these working sub-committees (ie the Steering Committees set up for the purposes of the RDSF) were, strictly speaking, formally open to the public there was no advertising of this, nor of certain other aspects of the work done in respect of the RDSF, which in our view raises questions as to the adequacy of the public consultative process. For example, we understand that Council itself received complaints from some residents on the matter. We also note that Mr Chris Young and Clr Anderson also went into print to express concerns about the process.

In fact Clr Malicki had earlier also raised with us a number of concerns about the lack of public or community consultation on a range of issues, which is surprising to us, given the avowed election platform or manifesto of the Trust. However, while these issues and more importantly the question of alleged lack of community involvement and consultation are we think matters of some importance, we propose not to address them any further given the Terms of Reference of this Investigation. Moreover, as such matters are primarily for the Minister for Urban Affairs and Planning and his Department to deal with we have in this report not dwelt on the matter at any length.

We also note Council's advice, in its corporate response to the final draft of this report, that Council resolved on 12 September 2000 to review a number of issues, including the question of public consultation and participation, when undertaking a proposed review of the Charter for its Task Force.

6.13 The Councillors' understanding of their roles and responsibilities

6.13.1 The induction of Councillors organised by the General Manager and the presentation of Mr John Scott of the Department of Local Government

After the declaration of the poll following the September 1999 Council elections, the General Manager organised an induction or briefing session get together for the Councillors. This took place on the evening of Monday, 20 September 1999, the day before Clr Hall was elected Mayor at the first meeting of Councillors after the election.

The General Manager told us about this meeting during our interview with her and explained that the main presentation was from John Scott, which "went on for about an hour or so." She further explained that the whole meeting lasted for only about 2 hours.

The interview continued:

Mr Bulford: All right, now as part of this briefing process and, more importantly, housekeeping, I've noted that Council's Policy for the Payment of Expenses and the Provision of Facilities to Council, which is the name of the policy, provides for new Councillors to be given a copy of booklets produced by Council to assist incoming Councillors. What booklets are those?

Ms Bignell: We put them together in packs, if you like. I had each of the Departments put together the specific documents, say like the DCP, the LEP, those sorts of major strategic documents. Somebody like Community Services, obviously the 10 to 20 year plan, Community Services would put, say, a social plan.

Mr Bulford: So none of these booklets specifically talks about the role of a Councillor versus, the dichotomy between the Council as the elected Body and the Mayor on the one hand?

Ms Bignell: No.

Mr Bulford: And the General Manager?

Ms Bignell: No, all of the governance things they got were things like the Code of Conduct. I mean they all got a copy of the Local Government Act as well.

Mr Bulford: They got a copy of the Act?

Ms Bignell: Yes.

Mr Bulford: They got a copy of the Code of Conduct?

Ms Bignell: All those sort of governance policies.

Mr Bulford: This policy for the Payment of Expenses?

Ms Bignell: That's right, Code of Meeting Practice, all of those things, but I didn't do a separate document talking about the role - - -

Mr Bulford: What about the green covered booklet the Department put out in conjunction with ICAC, called "Under Careful Consideration." Would that have been handed out to Council?

Ms Bignell: Well that's part of the Code of Conduct. That had actually been adopted as part of the Code of Conduct.

Mr Bulford: Yes, the model - on that you are talking about the suggested model code on interaction as opposed to actually handing a copy of the full booklet?

Ms Bignell: No, they didn't get that from memory. What they did get though, the Department and also the LGA put out shiny booklets, "So you want to be a Councillor," and so on, so they actually got those as well.

Mr Bulford: That would have been part of their package?

Ms Bignell: Yes, and that was very clear what the roles were.

Ms Bignell went on to tell us about what Mr John Scott, the Director Policy & Reform of the Department of Local Government, whom she had invited to address the Councillors particularly as a person independent of Council and she and the members of staff, had said to the meeting:

> He was very very clear. I have to say that. He's a good speaker, he talks pretty fast because he's got a lot to say but he was very clear. … he talked about the role of the Mayor, he talked about the role of the Council, talked about the role of the Councillors and the General Manager. He very specifically said that Council - talked about policy and strategy and so on and General Manager does operational and staff.

The General Manager told us that she had been disappointed at the level of apparent interest from Councillors to this presentation. She said that Clr Hall just sat there and seemingly took no interest, that Clr Bennett asked no questions and said nothing all night, and that Clr Anderson may have asked some questions.

Clr Hall's evidence tended to corroborate what the General Manager said about him:

> All I saw it as, as an information night for Councillors, and of course I didn't need the information, but I sat there …

Clr Hall said that he could not recall what the General Manager said, or what happened after that. He could recall Mr Scott making a presentation, but not the detail of it. He did agree that Mr Scott had touched on the question of the respective interaction between the General Manager and Councillors, but could not recall what was said in this regard. He seemed to think that a lot of questions had been asked of Mr Scott, but said "I've got no idea" when asked as to what those questions might have been about. Clr Hall's evidence as to the number of questions does not fit with the evidence either of the General Manager or other Councillors, nor with the information provided to us by Mr Scott himself.

We also asked Clr Bennett about her recollections of the induction session. She confirmed attending the induction session where all the Directors were present together with a representative of the Department of Local Government. She confirmed receiving information from the various Directors as to the roles and functions of their respective Departments.

Asked to detail what John Scott had told the Councillors that night, Clr Bennett stated:

Clr Bennett: I can recall very clearly. Mr Scott informed Councillors of what they could not do. Mr Scott informed Councillors that Councillors, when they were not in Council, had no more rights to information or access to Council property than anyone off the street. That was phrased in a number of different ways but that was a point that was very very strongly made. What Mr Scott did not tell us - - -

Mr Bulford: Sorry to interrupt but just from the way you are saying that do I detect you felt some sort of disapproval of that message or disagreement with it?

Clr Bennett: We were a reform Council. What we needed to know was how we could legitimately achieve our aims. We were told effectively that - we were told what we could not do.

Mr Bulford: So it was a negative rather than a positive?

Clr Bennett: It was very negative and I have to say that it reinforced the worst perceptions of the incoming Councillors of both the General Manager and also the Department of Local Government because it seemed to the Councillors who were coming in that effectively walls were being set up. Now, it would have been possible to have given a more balanced presentation and to have explained to us how we could appropriately have gone about doing what we wanted to do. There was a constant reference to the line between operational and policy and constant reference to the fact that we could not cross over into operational. At no point were we told how we might achieve our policy goals.

Mr Bulford: Was it explained to you what was the difference between a policy matter and an operational matter?

Clr Bennett: Not to my recollection no, only in the negative sense of it was explained to us what operational matters were and why we couldn't get involved, but it wasn't explained to us what policy matters were and how we could get involved.

Mr Bulford: Let's look initially at the operational matters, what sort of matters were you told?

Clr Bennett: Staffing.

Mr Bulford: Were there any other issues?

Clr Bennett: That's the main one I can remember.

Mr Bulford: So you were told that staffing was an operational matter and it was not a matter for Councillors. Could you just explain what you were told then?

Clr Bennett: I really can't remember the details at all. The impression I have was that it went to such matters as appointments, as interactions with staff, as to staff conditions, as to how staff performed their duties.

Mr Bulford: Yes?

Clr Bennett: Those were all matters for the General Manager.

Mr Bulford: At the end of the presentation, or even during it, were you given any opportunity to ask questions?

Clr Bennett: I think we were, yes.

Mr Bulford: Did you ask any questions?

Clr Bennett: I think from memory I may have but I honestly can't remember what it was.

Mr Bulford: Were you conscious of other Councillors asking questions?

Clr Bennett: Not really, I don't recall that.

Mr Bulford: What about Councillor Hall, was he present at this?

Clr Bennett: Councillor Hall was definitely present and again I'm sorry, I can't remember what role he had in this. I just had a very overwhelming impression, and I have to admit that I rather lost my temper and focussed in on this.

Mr Bulford: Because of this negative putting barriers up type thing?

Clr Bennett: Well it was a twofold thing.

Mr Bulford: Yes?

Clr Bennett: As I understood it there was a claim to legal expertise in these areas and a claim that essentially we were being given what was, in effect, a legal briefing on what our rights and duties and limitations were. I've done some Administrative Law, I've done some Constitutional Law, I know that generally speaking any grant of power also contains a subsidiary grant which enables you to effect that power.

Mr Bulford: Yes?

Clr Bennett: So, if you require information in order to carry out your task you have a right to that information. At no point were we ever given any indication that there might be circumstances in which we did have more than off the street rights.

Clr Anderson also gave us evidence on his recollections of the induction session. Asked to detail what Mr John Scott had told Councillors that night, Clr Anderson stated:

Clr Anderson: Yes, he talked quite lengthily and at very high speed, an extremely able speaker, and he talked for quite a long while and he did outline the legal situation quite heavily and there was discussion on that legal situation.

Mr Bulford: What sort of discussion?

Clr Anderson: Particularly led by Councillor Malicki endeavouring to clarify the point as to whether the Mayor had any role to play in the detailed administration of the Council and she kept hammering the point and he kept answering the questions, pointing out that the General Manager was the person who had that role.

Mr Bulford: Was that a view that appeared to be agreed to, say, by Councillor Hall?

Clr Anderson: I can't remember any wording but there was no doubt that he did not agree to that.

And again:

Mr Bulford: Can you recall if Councillor Hall entered into any questioning or debate? You have mentioned Councillor Malicki asking questions and making points.

Clr Anderson: My memory's not that good, no.

Mr Bulford: What about questions from other Councillors? Councillor Malicki, as I understand it, is a second time Councillor?

Clr Anderson: Fourth time I think.

Mr Bulford: Repeat Councillor, put it that way, but the rest of you were all new recruits?

Clr Anderson: Councillor Roach knew the ropes.

Mr Bulford: Yes, he'd been on Council once before?

Clr Anderson: Because he'd been on before.

Mr Bulford: Yes, but amongst the Trust Group, in particular, were there questions from the floor to Mr Scott?

Clr Anderson: Yes, there was discussion in this area, trying to get it clarified. I think I might have even asked a question just trying to get it clear because this was relatively new to us or very new to us.

Mr Bulford: Yes?

Clr Anderson: We weren't aware of the divisions of power.

Mr Bulford: Did Mr Scott's message cut across what you had already been led to believe and told by the Mayor was the situation?

Clr Anderson: Yes, the Mayor had conveyed executive function. This was the first time I started to become aware that there was not an executive function so that did cut across - that was the first time this message started to come through.

Mr Bulford: What was your own personal reaction to Mr Scott's message? Did you feel, well, this can't be right, it's inconsistent with what the Mayor's saying or did you sort of have your eyes and ears opened?

Clr Anderson: No, to me it was an education process, that this was the way things had to be and this was quite new to me.

Clr Little was asked by us as to his recollections of the induction session. His initial response was:

New councillor induction. Well, I do - it's very vague - I'm sorry I - I mean it's not a clear one but it obviously occurred, yes.

However, in response to specific questioning he agreed that senior members of staff had been present and made presentations to the Councillors and that various documents had been handed out. He was unclear as to what documents however. He recalled getting a copy of the Local Government Act 1993, but when shown a copy of Council's Code of Conduct and related documents, as bound by Council into one volume, he was unsure about that. The questioning continued:

Mr Bulford: What steps did you take to acquaint yourself with the contents of the information package?

Clr Little: I read them.

Mr Bulford: So, you read the Local Government Act from cover to cover?

Clr Little: No, I can't say I read cover to cover. I just glanced through at the particular aspects of what our obligations were and structure - - -

Mr Bulford: How did you know where to look on that score or did you just skim through it?

Clr Little: Just skimmed through it and - - -

Mr Bulford: What about the Code of Conduct, did you have reason to - - -

Clr Little: I just skimmed through that as well. It was a busy time to be quite honest. There's a steep learning curve as anyone just coming onto Council's going to know. I mean this is the first time, where anything's a bit of a shock to you. (Indistinct) there's all these Acts that you've got to come through but - - -

Clr Little was able to recall a presentation from an officer of the Department of Local Government but was unable to recall specific details of that presentation.

When asked if Mr Scott had spoken about the differences in the roles of the Councillors versus that of the General Manager he indicated that he was aware of there being a difference, but explained that this was a perception made by comparison with his knowledge of how listed and private companies were run, having gained that knowledge through being an investor.

Clr de Vulder's evidence was as follows:

Mr Bulford: What did the General Manager say to you that night or that day?

Clr de Vulder: I've no idea.

Mr Bulford: You have no recollection of what went on at that meeting?

Clr de Vulder: Well other than - - -

Mr Bulford: You can recall being at the meeting?

Clr de Vulder: I can recall being there and it was to welcome us, basically.

Mr Bulford: Would you say she sounded genuinely welcoming?

Clr de Vulder: Yes.

Mr Bulford: What happened other than welcoming at the meeting?

Clr de Vulder: From memory the staff put on a presentation of some of the things that were happening.

Mr Bulford: Did you get handed any documents?

Clr de Vulder: Yes.

Mr Bulford: Can you recall what they were?

Clr de Vulder: From memory it was something to do with the Exempt and Complying Development.

Mr Bulford: Did you have a look at that document?

Clr de Vulder: Yes, briefly.

Mr Bulford: Have you read it since?

Clr de Vulder: Yes, some of it, not all of it.

Mr Bulford: How much of it?

Clr de Vulder: I don't know.

Mr Bulford: Not very much?

Clr de Vulder: I think enough to make a decision on whether it should go ahead, yes, whether it's acceptable.

Mr Bulford: You have only read a small amount of the document, how can you say you've read enough to make a decision. Are you a speed reader?

Clr de Vulder: No, I'm not.

Mr Bulford: So how do you make that statement?

Clr de Vulder: I put I suppose in that regard, I did put my trust in some of the other Councillors who were going through it in detail.

Mr Bulford: Going through what in detail?

Clr de Vulder: The Exempt and Comply Development document.

Mr Bulford: Which Councillors were you putting your trust in?

Clr de Vulder: Laura Bennett and, I believe, Councillor Little.

Clr de Vulder was also able to recall a presentation that evening from a representative of the Department of Local Government, but was unable to recall the officer's name and was also unable to recall the content of that officer's presentation or the impact this presentation had upon him.

We also asked Clr de Vulder further questions of his reading of other documents which had been handed to him. His evidence was that he merely examined them at random and on an ad hoc basis, as he perceived the need arose.

Clr Coleman's evidence was virtually identical as to his reading of the Act.

We showed Clr de Vulder a copy of Council's Code of Conduct and related documents as bound into a booklet produced by the Council. He was able to identify it and recalled reading it at the time. However, as at the date of interview, he was unable to recall the contents of those documents.

We found Clr Roach's evidence as to his recollections of the induction night particularly interesting and informative:

Mr Bulford: Can you remember the sorts of things that happened on that occasion? I mean, it was an informal get-together, wasn't it?

Clr Roach: Yes.

Mr Bulford: The General Manager introduced herself?

Clr Roach: Yes.

Mr Bulford: And her Directors were also there?

Clr Roach: Yes.

Mr Bulford: Were Councillors handed out packages of documents?

Clr Roach: Yes, look I think that they were the - they were, you know, some folders of the general things - we got a lot of information in those first few weeks, which you normally do on Council, but - - -.

Mr Bulford: Yes. But that night, I understand that you were given copies, for example, of the Local Government Act?

Clr Roach: That's right, this Local Government Act here, yes.

Mr Bulford: That's what you've got there now?

Clr Roach: Yes.

Mr Bulford: Were you also handed a copy of Council's Code of Conduct?

Clr Roach: Yes. That's right.

Mr Bulford: Which is like that? [we showed Clr Roach the bound document referred to earlier in this section of this report]

Clr Roach: That's correct.

Mr Bulford: And that's a document that actually is - comprises several documents bound together?

Clr Roach: Mmm.

Mr Bulford: You were also given a lot of information about budget processes and that sort of thing?

Clr Roach: That's right, yes.

Mr Bulford: I understand that in terms of the briefings as to what responsibilities and roles Councillors versus the General Manager and her staff had, was left to the officer from the Department of Local Government who attended, is that correct?

Clr Roach: That's correct.

Mr Bulford: And that person was John Scott, do you remember that?

Clr Roach: That's right.

Mr Bulford: Do you remember how long John Scott spoke for to the Councillors?

Clr Roach: He spoke at - you know, it was a reasonably good talk, it was probably 30 minutes, 40 minutes, 50 minutes. So, you know, it was - he - he went through it in some detail on what our responsibilities and roles were and what - - -

Mr Bulford: And how do you think he spoke? I mean, was he speaking in a way that for those who wished to listen, the message was clear and intelligible?

Clr Roach: Absolutely. And in fact my recollection was that I spoke to him afterwards and said that that sort of discussion should go on with every Council, because I didn't have it in the previous Council, and if you don't have that sort of information early in the piece, it sometimes takes a bit of time to be able to pick it all up.

Mr Bulford: All right. Now, during the course of this presentation from John Scott, do you recall noticing whether the Mayor Clr Hall was in the room? Well he wasn't the Mayor then, but Councillor Hall?

Clr Roach: My understanding was that he was there. Yes he was, yes.

Mr Bulford: Did you notice whether he was paying attention to what Mr Scott was saying?

Clr Roach: He was paying attention but it was in a manner that - where he was not necessarily agreeing with what he was saying.

Mr Bulford: And what caused you to form that view? Was it comments that he made or questions that he asked or simply body language?

Clr Roach: It was body language mainly, and there were, from memory, you know, some comments that he made during the course of the discussion which I think reflected his view that he was not necessarily in agreement with what some of his comments were.

Mr Bulford: Now, it's been put to us that while Councillor Hall was present, he appeared not to be paying a great deal of attention because in fact he was reading other papers. Do you recall seeing that at all?

Clr Roach: Well he has a habit of doing a range of different things which you might even think he's reading papers, but in fact he's actually listening. But the inference, when you look at him, as if he's not taking any notice of what's going on, and that's a - so that you get the general impression that he really couldn't care, and then all of a sudden you find he asks a question and he's actually been listening the whole time.

Mr Bulford: So he has been listening?

Clr Roach: So my having experienced Tony for four years, I knew what his behaviour was and so therefore I probably would have interpreted it that he was pretending to be reading something else but in fact listening and taking note of everything that was going on, but putting across the impression that he wasn't going to be controlled by whatever was said.

Mr Bulford: Now, trying to put yourself back into your impressions formed on the night as opposed to what you may have learned by talking to Councillors since then,

what would you say was - or how would you say the new Councillors from the Trust were paying attention to or heeding or understanding the message that Mr Scott was giving? Were they receptive?

Clr Roach: I think they were receptive but they were coming from a position where they'd been influenced by Tony for some time and you've got to - - -

Mr Bulford: Were they asking sort of challenging questions that made you suspect that that was the case, or that caused you to believe that that was the case?

Clr Roach: I think there were a few questions asked that night, I might have asked a few. And I think that what was happening on that night was that there was a gradual learning curve that was then taking place from their perspective which came from a very negative - you know, it wasn't as though they just came onto Council absolutely new and they were trying to find out information, they had first of all been fairly heavily indoctrinated beforehand that they were going to come onto the Council and that they were going to - well they had policies of changing the staff and they had policies of changing the General Manager, and that everything was corrupt and - when I say that, I say it from the point of view of the brochures that were distributed in my area during the election campaign had - I haven't actually got any of those here, but they had things like, on them, you know, "There's been 650 townhouses, home units and villas approved by Ku-ring-gai Council in Wahroonga Ward in the last 18 months" and then with two high rise buildings and a little house, "Don't allow these sort of things to occur on either side of your house". They had been - - -

Mr Bulford: The implication was that it was the fault of the staff - - -

Clr Roach: It was the fault of the staff, the staff had allowed all of this to go on, there needed to be a complete clean-up of the Council and that they were going to do this and that the first thing that had to happen was that they had to make sure that they had the power, and they gave the impression that the - by being elected onto Council you automatically had control over all of the Council staff and the Council.

Mr Bulford: Was that an impression that they created by some of the questions that they were asking or statements that they were making on that night? I want you to try and divorce what you may have learned in talking to them since?

Clr Roach: Yes. I think that on the night they were - they were probably a little bit taken back by John Scott's informative talk in that they all of a sudden realised that they didn't have control over what they thought they might have. So there were a few questions in that area, but I still think that they were coming from a very negative position. And they actually had quite a - there was quite a fair bit of animosity, I think, towards the three independents at that stage. …

Mr Scott told us a quite different picture, in many respects, to that presented to us by these Councillors in their interviews with us as to what he said that night.

Clr Coleman gave evidence that he missed the induction session altogether because of a work commitment that evening. So far as substitute arrangements were concerned the Councillor told us he spoke to the General Manager later and obtained a package of documents from her.

Mr David Lethbridge told us in our interview with him that he was present at the induction session. He said:

> There was definitely an air and strong body language that the Councillors were not going to take any notice of anything anybody said and they were going to sort everything out.

6.13.2 The cancelled ICAC presentation

The General Manager's evidence to us was that in addition to having the induction night presentation from Mr John Scott of the Department of Local Government she had also planned to have a separate presentation at an early time from Mr Peter Gifford of the Independent Commission Against Corruption. He was lined up ready to come. She said that she particularly did so because when she met with Clr Anderson for her welcome cup of tea [see section 4.4.3 of this report] he had particularly raised concerns about the need to know what his anti-corruption responsibilities were.

The General Manager went on to tell us that she told Clr Hall about having lined up Mr Gifford. She said that Clr Hall's response was:

> Ms Bignell: … he told me to cancel it, "We're not having any more bureaucrats talking to us." The Deputy Mayor was there, "What do you think Deputy Mayor," and she replied that she'd a lot on her plate to take in and preferred to see to that. I said, "I think it would be very beneficial for the Councillors," and the Mayor said, "General Manager," and this would have been a scream, "General Manager, I've said cancel it, just do as I say."
>
> Mr Bulford: So he gave no reasons other than, "I don't want any bureaucrats climbing all over the place"?
>
> Ms Bignell: That's right.

The written reply of Clr Hall, through his legal adviser, to the General Manager's evidence as to the cancellation of the Independent Commission Against Corruption presentation was, as to relevant parts:

> Clr Hall rejects the imputation which the General Manager seeks to maintain in relation to this matter particularly as it seems to be brought up in the context of attempting to obtain some advantage in dealing with the Department of Local Government Investigators …
>
> In relation to the suggested address by Mr Gifford, Clr Hall stated to the General Manager:
>
> > *"Let's postpone this Rhonda. We've got enough on our plate at this stage and those issues have already been covered by the presentation last week by Mr Scott."*

We do not accept this evidence or response and prefer the evidence of the General Manager on the matter. Mr Scott's own advice to us is that it was he who probably suggested that the Independent Commission Against Corruption be called in, so this last-mentioned statement simply does not accord with that. Likewise, as is recorded elsewhere in this report, we have evidence about Clr Hall's views about having agencies such as the office of the Ombudsman mentioned in his presence. Clr Hall's proposition has we consider no credibility.

In our interview with Clr Hall later we did ask him as to just what he was meaning to say by what is first quoted above. Clr Hall got no chance to reply, as his legal adviser dived in for him:

> Mr Bulford: Are you suggesting that the mere fact that the General Manager has brought up the issue of your allegedly having said we're not going to have Peter Gifford of ICAC do a presentation, that she is somehow trying to ingratiate herself with this Investigation?
>
> Mr Dunn: Well, why else would she have brought it up?
>
> Mr Bulford: You asked the General Manager of that matter.
>
> Mr Dunn: It's all full of lovely stuff to please teacher I would have thought.

The General Manager also told us:

> Mr Bulford: Coming back to "Under Careful Consideration," other than on this briefing session [the induction session of 20 September 1999], have at any stage right up to today, have you given Councillors as a whole copies of "Under Careful Consideration"?
>
> Ms Bignell: No they haven't, because the idea was that we would then get, and it would probably have been Peter Gifford from the ICAC to come out and give a talk and give the things. That's what he did with the previous Council and he gives it out like as he's explaining it at the time.
>
> …
>
> Mr Bulford: You have not attempted to have given copies of those documents?
>
> Ms Bignell: No, because I think actually they certainly needed some talking through with it first of all. If I had just sent something else out it wouldn't have gone anywhere.

6.13.3 A planned training / induction session on development application assessment and Court appeal matters

Mr Ian Glendinning, Council's Director Environmental & Regulatory Services, ie the man in charge of development applications and appeals from decisions of Council on those applications, told us that it had been planned that, about two weeks after the initial induction night for new Councillors held on 20 September 1999, a further induction or training session was to be held for Councillors on these additional important matters. He presented to us copies of the extensive notes and materials he had prepared for this session. He told us that these had been prepared on the instructions of the General Manager, Rhonda Bignell.

Mr Glendinning told us that the training session or presentation to Councillors was cancelled and that in this regard:

> I think it all sort of happened with his Mayoral Minute, and the change of direction following that - his pronouncements.

We asked him what steps he took to raise with the General Manager the need to have the session reinstated. He told us that he did talk to her:

Mr Glendinning: In general terms yes, but I think we were all just gobsmacked at the time about what was happening and confused and - - -

Mr Bulford: You're talking in terms of the Mayoral Minute and the (indistinct)?

Mr Glendinning: And the aftermath, yes.

Mr Bulford: And its aftermath. So would it be fair to say that in the process - in the confusion that reigned from the Mayoral Minute, the whole thing has somewhat got lost, overlooked?

Mr Glendinning: The whole operation of Council has just been totally dysfunctional since that time. I mean - - -.

Mr Bulford: Well how do you mean dysfunctional?

Mr Glendinning: Well I think the General Manager's focus has been on the conflict that's arisen between herself and the Mayor to the fact that there's been a lack of strong leadership and we've just been trying to manage our - managing what we do ourselves.

Mr Bulford: And when you say lack of strong leadership, do you mean on the part of the General Manager and her Directors or do you mean on the part of the elected members?

Mr Glendinning: No, I mean on the part of the General Manager.

To be fair to the General Manager on this, we need to point out, as we have already noted at section 3.37 of this report, that the General Manager herself admitted that Clr Hall and his conduct was causing a good deal of dislocation at Council and that she seemed to spend a good deal of her time putting out brush fires started by him. However, we should also note that Mr Glendinning, as he himself concedes, has a reputation for being outspoken, and at times challenging and difficult to deal with. Indeed we must state for the record that we ourselves had some difficulties in this regard during our interview with him. Furthermore, at the time Mr Glendinning was being interviewed decisions had already been made that Mr Glendinning's contract as a senior officer with Council was not to be renewed and Mr Glendinning had already announced he was to leave. We have reason to believe there was some residual animosity, perhaps that is too high a word, towards the General Manager on his part over this. Mr Glendinning did himself say to us:

I mean Rhonda and I haven't had the greatest of relationships either.

We have nonetheless felt it necessary to quote Mr Glendinning's responses, as above, because they do illustrate, to the extent we have explained, a valid point, and in the interests of true reporting of his evidence to us.

6.14 The Councillors' duties and responsibilities as Ward Councillors

It is clear that under the Local Government Act 1993 all Councillors, from whichever Ward of Council, are expected to have regard to and be responsible for the interests

of *all* ratepayers over the *entire* Council area. The evidence before this Investigation establishes that all Councillors, as part of their induction on 20 September 1999, were, amongst other things, given a copy of the April 1999 edition of the Department's brochure, produced both for the benefit of candidates at Council elections and of successfully elected councillors, entitled *So you're thinking of becoming a Local Government Councillor*. The following passages in that brochure are particularly pertinent (at pp. 11-12):

> As individuals, councillors communicate council policy and decisions to the community, represent the interests of residents and ratepayers to the council and provide leadership and guidance to the community. They should keep in mind at all times the good of the community as a whole, not merely the interests of special groups who may have been active in electing them.
>
> …
>
> Councillors are expected to make every effort to attend all council meetings and all meetings of any committee of which they are members. Any civic office also requires a good deal of reading in preparation for meetings and time to attend council inspections and conferences.
>
> …
>
> Sometimes people stand at local government elections because they have a special interest in one or two local issues. A word of caution. Councillors have a responsibility to represent the broad needs and wishes of the whole community, not to be interested in only limited issues or to represent only specific interest groups, no matter how valid those groups' demands may be.
>
> The commitment required to be an effective councillor is great and the community expects every councillor to provide representation to all council activities and responsibilities. Councillors therefore need to become familiar with the whole council area and the important issues affecting the community.

At section 6.18 of this report, we deal with Council's appointment of Clrs Bennett and Little as a sub-committee to deal with certain allegations entailing a dissatisfaction by Councillors with the performance of the General Manager. Clr Little told us in our interview with him that he actually played almost no part in this issue, pleading pressure of other work. He also told us:

> we had the residential strategy, the studies were coming to a head. We had to work out who was going to be the coordinators for these residential studies to actually generate a residential strategy. I mean there was a tremendous workload on us at that time and I can tell you this was a minor issue to me personally. It's something that, you know, in another time certainly we might have looked at it more seriously but at that time the priority - number one priority was the residential strategy. I have to say that's number one and I got fed up of getting side tracked on other issues.

The questioning continued:

> Mr Bulford: At this meeting of the 30th of November in relation to Councillor Bennett's report was any conclusion reached by the Councillors? I mean was there a resolution passed by the Councillors of what should be done?
>
> Clr Little: I'm certain there - I'm certain there would have been a resolution but it'll be in the minutes as to what - - -

Mr Bulford: I'm asking you.

Clr Little: Well, I certainly was. I couldn't tell you precisely what - - -

Mr Bulford: Can you remember what it was or are you saying you can't remember?

Clr Little: Well, I couldn't remember the details of it but I'm certain if you told me I could say yes or no on it. I'd probably be able to do that but I mean - - -

Mr Bulford: Did it not occur to you that destroying documents was a bit unordinary - out of the ordinary?

Clr Little: It probably was but then on the other hand we were in a situation where there was a lot of leakages of material which was creating problems and it was distracting us from the purpose that we were there for.

Mr Bulford: Which was?

Clr Little: Which was basically to serve the community and to get this residential strategy going. I didn't want distractions of this sort occurring.

Mr Bulford: So the only interest that really was engaging you as a Councillor at that time and presumably for many months as you've been a Councillor has been the residential strategy?

Clr Little: That's been the prime interest at this point, yes. We've got other - other issues that come in such as the budget and other factors but the priority one for the last four months has been the residential strategy.

Mr Bulford: Well, what about the budget. I mean, what importance does that have to you - to your line?

Clr Little: It has a considerable importance in the longer term but right at this particular point in time I can tell you the residential strategy is still number one, that the - - -

Mr Bulford: So, are you able to devote much time to the budgetary matters that are going on, say, at the moment?

Clr Little: Not a great deal. I mean I attend the meetings on those and I've got an idea of where things are going but we have a Councillor devoted to that. We've got a Chairman of the Finance Committee and it's his role - I mean we specialised.

Mr Bulford: So what happens when you're asked to vote on these sort of matters that are not residential strategy matters. How do you make up your decision as a councillor as to which way to vote?

Clr Little: Sorry?

Mr Bulford: When it comes to voting on matters that are not related to the residential strategy - - -

Clr Little: Yeah, okay, right I understand what you're saying.

Mr Bulford: how do you decide which way to vote?

Clr Little: That is determined on its merit and the arguments that are put at the particular - at the Council meeting. So you have to look at the agenda,

what's on it and the - you have to make an assessment of the details that are put before you.

Mr Bulford: How do you find as a Councillor you get on with the large volume of paper that comes to you for each meeting in a bound volume?

Clr Little: Well, it's one of the burdens you have to deal with I'm afraid.

Mr Bulford: Are you able to read those carefully?

Clr Little: You're talking about in - I think there's a range of the way you read those things. Your own Ward you do with considerable detail because you're responsible for your Ward. The other ones are done in a lighter manner because you expect the other - I mean I have an expectation that each Ward Councillor will serve his own Ward and he'll put the arguments. Now there maybe some things as you skim through this material that you have doubts about and your question the Ward Councillor about that.

Mr Bulford: So, you simply rely on other people and follow their views on the matter. Is that correct?

Clr Little: No, I don't think you follow their views, you have to form an independent view but - - -

Mr Bulford: How do you form an independent view if you've not fully read issues - - -

Clr Little: I didn't say you don't fully read them, I'm just saying that you don't go through to the detail, the level of detail that you would - - -

Mr Bulford: All right. Well, how do you - how do you form a view when you've not gone through to the level of detail that you've described?

Clr Little: How does one form a view on any of these matters? I - I believe that if you have doubts on these things it's your role to query the particular - in the debate, that's when you listen to and you form the final view. If you - - -

Mr Bulford: Do you enter into the debate on these non-residential strategy matters very often?

Clr Little: In some - sometimes I may, sometimes not. I can't say that there's a huge - if I have a strong disagreement with something yes, I will. Otherwise it's - it's not a major issue. I don't think most of these things are major issues, in fact when you get down to them I would see them as fairly routine.

Mr Bulford: Such as matters concerning the General Manager?

Clr Little: No. That would have been an unusual one.

Mr Bulford: And yet you can't remember very much about it?

Clr Little: No, wasn't that on the Garpac issue? I believe that was with regard to the loss on the Garpac issue. And it was - there was a question not of the actual - there was obviously an issue of as I understand it now that you - am I correct in that, is that the Garpac issue?

Mr Bulford: Well, I'm asking the questions and you're providing the answers Councillor.

Clr Little: Well, if you can just prompt - give me a - a [cue] on that one as to whether it was the Garpac because I believe there was one on the Garpac.

Mr Bulford: Well, there was a discussion at one stage concerning Garpac, yes.

In a belated reply to the extracts of the draft report Councillor Little sought to downplay what we consider to be the clear nature of the evidence he was giving us by arguing that the oral evidence related only to business papers to do with development applications and the residential strategy, and that he read all other business papers. He sought to deny any suggestion that he had not involved himself in all issues that came before Council. However, we cannot accept this after-the-event rationalisation, given the clear oral testimony. His non-involvment in matters relating to allegations as to the General Manager's performance is quite clear on the evidence and this is dealt with further at section 6.18.4 of this report. On the other hand, we note that in his comments on the final draft of this report Clr Anderson sought to come to Clr Little's aid on this matter and took issue with our conclusions, suggesting that Clr Little was a dedicated and hard working Councillor, more so in particular than some others he named.

But whatever may be one's conclusions, on the probative evidence, as to Clr Little's discharge of his responsibilities as a Councillor, it is clear, therefore, that it is not good enough for Councillors to plead the burden of work and the volume of business papers and other reading as an excuse for not *themselves* considering *all* issues that come before the Council or any Committee of Council of which they are members. The position is even worse where a Councillor is appointed to a Committee or other position by Council itself and fails to attend himself to the work he or she is delegated or appointed to do.

It is equally clear that the mere fact that a Councillor has been elected by the electors of a particular Ward does *not* mean that if a matter relating to another Ward comes up before Council or such a Committee then the Councillor can "switch off" and need not concern him or herself with that matter.

All Councillors must ensure that they discharge fully and adequately their duties as councillors. There is a need for <u>immediate</u> action and change in this regard.

A number of issues arise from Council's practice of referring development and such applications affecting properties in a particular Ward to a Committee of Councillors comprising just the Councillors from that Ward. In this regard we examined two examples of such matters during the course of the Investigation. We should add that we have not attempted to do a complete audit of minutes of all meetings to determine whether there were other instances of this occurring.

The two instances noted related to decisions of the full Council at its meeting of 19 October 1999. The two matters in question were development applications for, respectively, townhouses at 6-8 Park Crescent, Pymble and residential units at 10 Post Office Street, Pymble. In each case the decision of Council was that the DA concerned be referred to the Ward Councillors for further consideration with residents, the applicant and Council's solicitors, Abbott Tout, and that "the Ward Councillors be granted delegated authority to determine the application".

It is recognised that the approach was one agreed to by the Councillors and Council is able, by resolution, to delegate certain matters pursuant to section 377 of the

Local Government Act 1993. But, it is noted that such applications come to Council because of some serious Council wide implications, or some controversial, difficult or problematic issue requiring the determination by the full Council or Committee.

Accordingly, in ensuring that Council properly fulfils its planning responsibilities and deals with issues of transparency and openness in decision making, the more appropriate practice may be, in cases where the elected body of Councillors considers that any particular matter that comes before it requires a specialist input or more in depth examination, to resolve to refer the matter to the appropriate staff member or members, or consultant, or even a Committee of Council, as the case may be, for advice and consideration, and *then a report back* to the full Council or the full Council Committee, as the case may be, for determination.

Generally the arrangements this Council adopted are likely to give rise to a potential for actual or perceived conflicts of interest (including a pecuniary interest as defined in the Local Government Act 1993) in that the Councillors concerned may, for example, have properties or other interests, such as business interests, in the Ward they represent. In the case of a pecuniary interest the Councillor concerned would be required to declare the pecuniary interest and not involve himself/herself in the matter. Where the matter has been delegated to a small Committee of Councillors there is the risk that the Committee could be left without a quorum.

Such arrangements may also create a climate conducive to corruption and undue influence particularly given the small number in the group and level of authority delegated to the group without appropriate checks and balances.

It is worth noting that in April 1998 the then Minister for Local Government, Mr Ernie Page MP, wrote to Clr Hall about Council meeting procedures. On 7 May 1998 Clr Hall asked the Councillors' secretary to arrange for a copy to be provided to the then Councillors. Relevant parts of the letter are as follows:

> Council Policy Forums or similar groups, such as workshops, can be beneficial in conveying background information and clarifying issues for councillors. However, it is considered that such forums or groups should usually be no more than this and should not be the place where the discussion is so detailed and advanced that a consensus is reached or a de facto decision is made. Any detailed discussion and exchange of views on an issue should be left to the open forum of a council or committee meeting.
>
> The potential of local government is best realised when its decision making is open and accountable to the local community. The ability of public and media to attend and observe the meetings containing the deliberations and decisions of elected representatives plays a crucial role in achieving better standards of accountability. This is recognised in recent amendments of the Local Government Act encouraging the making of decisions at open council meetings. It would be most undesirable for such openness and accountability to be subverted by de facto council decisions being made at closed meetings.
>
> Councillors should be prepared to have their views aired publicly on both controversial and routine issues. This is an integral element in ensuring accountability of councillors to their constituents. The capacity of electors to vote in an informed manner is best achieved when they can clearly see the actions, including the speeches and voting patterns, of their councillors.

> In coming to a council decision it is essential to openly demonstrate fairness, impartiality, objectivity and due consideration of all issues. Open decision making also provides some assurance of probity and integrity as well as preventing misunderstanding and unfounded allegations.
>
> The Council should ensure that its Policy Forums do not effectively take the decision making process from the formal council meetings. It would seem appropriate to restrict Policy Forums to discussions of general issues, without recommendations being made at those forums. Such forums would not be required to be open to the public. However, where the Council proposes to consider and discuss specific business and make recommendations to the Council, it would be appropriate for such meetings to be conducted as a committee of which all members are councillors and for it to be open to the public. The Council would retain the discretion of having Council staff providing information and advice to such committees.

These remarks are, in our view, equally apposite to decisions made by one or two Councillors under delegated authority.

We note that Council, in its corporate response to the final draft of this report, issued through the new Mayor, Clr Bennett, has indicated that our comments in relation to these delegation practices are accepted and that Council "rejects the practice".

6:15 The handling of development applications and related issues

Council's Director Environment and Regulatory Services, Mr Ian Glendinning, in his submissions to our Investigation drew our attention to a number of concerns he had as to the way this Council is handling development applications and those which are appealed to the Land & Environment Court. His concerns were largely that practices that had come to the attention of the NSW Ombudsman in the past, and which had been the subject of trenchant criticism, were being resurrected by Clr Hall and his fellow Trust Councillors in the present Council.

6:15.1 The "calling up" by Councillors for DAs to be dealt with by Councillors rather than by staff under delegated authority

Mr Glendinning told us in our interview with him that he had concerns over the amount of time Council was spending on development applications. He said that this issue alone was consuming two meetings a month, though he also admitted that the problem was not new to this Council, the Council elected in September 1999. He informed us:

> …we might have between 20 and 30 development applications going to every second Council meeting and, you know, stuff like alterations and additions and fences and stuff that really shouldn't be on the agenda, in my judgment.

Most routine development or related such applications are dealt with at this and other Councils by staff under delegated authority. That is a sensible system. Like other Councils, Ku-ring-gai Municipal Council has a system of "calling up" of applications. This entails any Councillor having a right to ask that the application

come before the full Council (or where there is a Committee such as a Development Committee, or whatever it may be called, that has delegated decision making authority on such applications, that Committee) where it is considered that the application has particular concerns. That is, the matter may be taken out of the hands of the delegated authority, for dealing with by the elected body.

Mr Glendinning described the process to us in these terms:

> …the process is that the Councillors are notified of every DA that's received. They're provided with a form and a copy of - a reduced copy of the plan. Within 14 days of receipt of that they're to indicate whether or not they want any further information or further involvement with that application. In other words they get a right to veto the application at that stage.

He also described how the process worked in the life of the 1995-9 Council:

> … there were the same number of applications going to Council but sort of differently - there was - in most Wards it worked very effectively. Where they would ask to be advised about the issues involving a particular application, we'd advise them by way of a written report, they'd review it and in most occasions agree with the recommendation, and so I was able to process that under my delegation after briefing them on the report. In St Ives Ward, didn't happen, in Comenarra Ward it was always difficult. But in the other three Wards it was a very good working relationship.

As for the present Council, Mr Glendinning told us:

> Well we still notify them but the Mayor has abandoned this consultation process so that what you have now is more matters having to go to the Council meeting or the committee meeting than might otherwise have taken place, when you can actually sit down with the Councillors and say, "Well, okay, what's your issue here?"

Mr Glendinning explained there had been an increase in the number of matters now being called up before the present Council. At our request he made a quick estimation that this increase was of the order of 10%, so whilst the increase in call ups is marginal, we nonetheless sound the warning that Council is clearly starting to drift back into old habits that have been criticised in the past. This needs to be addressed.

6:15.2 Alleged favouring of views of residents and objectors

A further concern raised with us by Mr Glendinning was that Councillors appear to be placing an emphasis on the rights of objectors over the rights of applicants, an approach he claims has become more prevalent with the present Council.

At section 6.14 of this report we have dealt with part of this issue. Suffice it to say here that it is a complete misconception on the part of any Councillor who holds such views that the only responsibility of elected Councillors is to represent the views of objectors. It is inevitable that decisions not made on proper planning grounds or that cannot be supported in law, but made having regard to the pressures and views of residents and objectors, will be overturned by the Land and Environment Court. Defending such decisions in the Courts – and we have noted below the apparent propensity of Council to do so, seemingly again in the interests of the residents and

objectors – is a very costly exercise and will inevitably lead to a blow out in Council's budget, at the expense of Council's ability to provide other services and facilities to the community.

We obtained the following views from Mr Glendinning as a professional and expert in these matters – we had been asking him about the issue of the Councillors not following staff recommendations, and he had conceded the right of the Councillors to do so:

> Mr Bulford: But if in exercising that right, and in implementing their views, their philosophical views on development, they are in fact going against what the legal system and the law would allow, such that applicants can go on deemed refusals or actual refusals and appeal, and win those appeals perpetually, they're running up unnecessary cost, is that a fair statement?
>
> Mr Glendinning: It's a very good statement. Very fair. And close to my heart. I think dual occupancy and dual occupancy sub-divisions are a classic case. Every case that they've run on those - that's this Council, they've lost. And - I mean we had one last week, and it'll be a lay down misere, it'll get approved by the Court. And I even think they know it'll be approved by the Court. But they still refused it. I mean I think there have been at least six or seven dual occ sub-division proposals which they've refused which have either been determined in the applicant's favour or have resulted in consent orders being issued in the last six months. And yet they still refuse, they still - - -
>
> Mr Bulford: In all these occasions, presumably the staff advice is that the - - -?
>
> Mr Glendinning: The proposal should be approved, yes.

What Council is apparently doing is not the right way to go. Certainly any elected body which choses that path must account to the ratepayers and the community for such decisions, ultimately at the ballot box.

6:16 The handling of appeals to the Land & Environment Court

6.16.1 The instructing of solicitors to act for Council

We have already considered at section 6.18.4 of this report the issue of the authority of Councillors to instruct solicitors or other legal advisers to act on behalf of or to advise Council. There is, as we have noted, certainly no inherent authority in either the Mayor or the Councillors, individually or collectively, to do so. It requires a decision of the elected body to delegate that authority to the Mayor, Councillor or group of Councillors, as the case may be. And such decisions should not be made lightly and should only be made in appropriate cases.

In most or nearly all cases the instructing of legal advisers is, we consider, a day to day operational matter for the General Manager and, under delegation from her, her staff to deal with.

One area of Council's business, affairs or operations where instructing of legal advisers may be common or frequently required is in relation to development and

planning matters, and particularly where objections or appeals are taken to the Land and Environment Court.

Prior to the election of this Council at Ku-ring-gai there was a system or procedure in place whereby the General Manager had sub-delegated, in writing, to the senior officer in charge of such matters, in relation to development applications and such like, in this case, Mr Glendinning, the power and authority to engage and instruct solicitors and legal advisers. This seems eminently practical. It is after all part of the job of such a senior officer to be responsible for such matters on a day to day basis, reporting to and keeping the full Council informed, either direct or through the General Manager, as appropriate.

The General Manager's delegations on legal proceedings hailed from 9 June 1998. Whilst section 380 of the Local Government Act 1993 requires that Council must review all its delegations during the first 12 months of its term of office, unless and until so reviewed or otherwise revoked pre-existing delegations remain in place. Our advice from the General Manager is that whilst she submitted a written report on 15 October 1999 to the Mayor and Councillors on what delegations should be made to her as General Manager, after having reviewed the previous delegations with Council's legal advisers, Council has deferred consideration of the matter.

Accordingly, in October and November 1999 the delegations to the General Manager from Council on legal proceedings provided:

> KC 3 Legal Proceedings
>
> 1. Institute, conduct and defend legal proceedings with respect to Council's activities in all Courts and instruct and engage Council's solicitors and counsel where necessary.
>
> …
>
> KC 4 Legal Advice and Assistance
>
> 1. Obtain legal advice from Council's solicitors or counsel where necessary.
>
> 2. To arrange appropriate legal assistance subject to arrangements with the appropriate officer.

With effect from 10 July 1998 KC 3 and KC 4, amongst others, were sub-delegated by the General Manager to Mr Glendinning, at least so far as development control matters were concerned.

Asked to explain how this system had previously operated within the Council, Mr Glendinning stated:

> Well I had the delegation, it was my responsibility. There's no requirement under the delegation to consult with the General Manager. The policy was in place that we had two firms of solicitors and they be briefed on a rotational basis.

On 13 October 1999 Clr Hall, as Mayor, wrote the following memo to the General Manager, and copied it to all Councillors:

> SUBJECT: INSTRUCTIONS TO COUNCIL'S SOLICITORS RE: APPEALS
>
> I refer to my concern about appeals relating to 6-8 Park Street, Pymble and 10 Post Office Street, Pymble …
>
> In view of my concerns and my anticipated appearance before these court hearings as an objector to these developments, I request you to withdraw the Delegation of Authority provided to the Director Development Control, to give instructions to Council's solicitors in relation to Land & Environment Court appeals, effective immediately.
>
> I would appreciate these delegations being administered by yourself in consultation with the Mayor until the Council can review the delegations generally on the 19 October 1999.
>
> I would expect that the Director Development Control would continue to make recommendations relating to instructions to you in respect of future appeal matters requiring instructions to Council's solicitors.

It should be noted that it is these very two properties that were also the subject of Council's resolutions of a few days later, on 19 October 1999, to delegate to the Ward Councillors (ie Clrs Hall and Bennett from the St Ives Ward) authority to determine the applications altogether, which as noted at section 6.15 of this report we consider to be completely inappropriate for a number of reasons. Therefore the moves by Clr Hall to take away from staff powers to deal with solicitors on a Court appeal need to be viewed in conjunction with the 19 October decisions. Viewed together, it becomes abundantly clear that what Clr Hall and his fellows were about was indeed to take over themselves – in this case Clr Hall personally – the evidence is that at this time Clr Bennett was compliant with Clr Hall – all control over particular developments for the benefit of certain vocal sections of the community, in accordance with the Trust election manifestos. Clr Malicki was the only Councillor to vote against the measures.

We asked Mr Glendinning as to the Mayor's authority to issue these instructions:

> Mr Bulford: To your knowledge was that made entirely of his own initiative or was there a Council resolution backing that up?
>
> Mr Glendinning: There was no Council resolution.

We have also ourselves checked the terms of the Mayoral Minute of 28 September 1999, as amended by Council's resolution of 5 October 1999, ie as it stood at the date of the above memo, because this is the document or authority in which the principal or general delegations were given to the Mayor by this Council. It gives *no* delegated authority to Clr Hall to instruct legal advisers, or to issue instructions concerning the instructing of legal advisers, on any account.

It was therefore, in our view, quite improper and *ultra vires* for the Mayor to have purported to issue the instructions he did.

On this score there is another dimension. This is in terms of the self-confessed interest that the Mayor had as a prospective witness and objector in the forthcoming Court proceedings in relation to the two properties referred to in the memo. For

Clr Hall to have issued these instructions involved a clear and obvious case of conflict of interest, and it adds accordingly considerably to the impropriety of his actions in this matter.

Mr Glendinning explained to us that the Mayor was, to his knowledge, not in fact a formal objector to the application and appeared to have taken his avowed active interest in it after the September 1999 elections. These were both applications that had been lodged with Council before the elections. Mr Glendinning was unable to assist us with an explanation as to why the Mayor was now suddenly getting involved, telling us that, "I'm not aware of any resident who lobbied the Mayor about this development". Nor is it clear to us how it was that the Mayor was apparently to be a witness, but the matter need really trouble us no further at this point.

Mr Glendinning provided to us a further copy of Clr Hall's memo of 13 October on which the following handwritten endorsement was made by the General Manager on 15 October 1999 and sent to Mr Glendinning:

> I have already given you a copy of this on 13 October. Could you please ensure your recommendations relating to instructions come to me for all matters.

The evidence shows that the General Manager implemented the instructions of the Mayor. While in our view she did not have to do so, we have noted the circumstances that prevailed at the time.

We also need to consider further evidence of Mr Glendinning on this issue. His evidence demonstrates that the Mayor's inappropriate and unlawful interference here actually caused considerable disruption and unnecessary undoing of work that had already been done by staff:

> Mr Glendinning: Well basically these applications had been reported to the previous Council and the Council resolved to defer determination pending further consultation between the applicant and the surrounding neighbours with the view to having design amendments made to the building so that they represented - better represented Ku-ring-gai, in inverted commas, "style development".
>
> Mr Bulford: Were they both residential developments or were they commercial?
>
> Mr Glendinning: They were both medium density residential developments. … On land that had been re-zoned to permit that development to take place, so we'd already been through the re-zoning exercise. So there was no issue per se about the developments going ahead … So I then proceeded to have discussions with the applicant and the objectors and we had a meeting. The objectors then - or the residents, rather, elected from amongst themselves three people to represent the residents. We had an extremely productive process … whereby the residents actually wrote and said, "We're very happy with the design, we withdraw all our objections" and in the meantime the applicant had commenced appeal proceedings.
>
> Mr Bulford: On?
>
> Mr Glendinning: On the basis of the refusal. And I had then prepared a report based upon the amended plans and the dialogue that had taken place, and I think the resolution was that I had to get the concurrence of the Mayor before we

could process the thing. And then all this other stuff happened as a consequence.

And later:

Mr Bulford: Rhonda's written you a note two days later, at the bottom of this memo which you've given us a copy of, where she asks you to ensure your recommendations relating to instructions come to her for all matters?

Mr Glendinning: Yes.

Mr Bulford: What is your comment in relation to that note?

Mr Glendinning: I followed that instruction.

Mr Bulford: But are you not suggesting in your memo that that was having a dislocating process in terms of duplication of - - -?

Mr Glendinning: Absolutely. Absolutely. It just created enormous confusion and duplication of work. It created - I mean I - I mean we were getting - we're at the stage where we're running - over the full year we'll have basically one appeal a week.

The last thing we need to note is that this disruption apparently lasted only a month. It will be recalled that on Sunday 7 November 1999 Clr Hall stood aside temporarily as Mayor and the Deputy Mayor, Clr Bennett, took over as Acting Mayor. We have also noted the evidence of Clr Bennett as to the backlog of mountains of mail in the Mayor's office [see section 6.11 of this report]. Mr Glendinning told us however that only part of this mail related to situations where instructions had been sought on legal matters. But it was bad enough, in our view, that any of such clearly urgent and important mail had not been dealt with promptly and appropriately.

Council was fortunate in that it did not lose a case as a result of these problems, but Mr Glendinning told us it was costing Council money and there were problems in meeting deadlines for the lodgement of documents and so on under the Rules of the Court.

On 9 November 1999 Mr Glendinning wrote to the General Manager a memo which referred to the 13 October instructions of Clr Hall and continued:

From this I seek confirmation that there is no Council resolution to this effect. I also understand that your delegation to me is withdrawn.

I also observe that Council has granted consent to the development applications for 6-8 Park Street and 10 Post Office, Pymble.

You would agree that the process since operation of these arrangements have caused problems in one case a failure to issue instructions prior to the call over.

In view of the events of yesterday do I continue to make recommendations to you?

Mr Glendinning also told us that that the period resulted in duplications:

…well see I'd still do all the work, but write it under Rhonda's hand, basically, for Rhonda's signature, and they might sit in Rhonda's office for, I don't know, a day or two

> until she got them, and then they'd sit in the Mayor's office for an inordinate time and there were two or three occasions when I'm getting calls from solicitors saying, "We're in the Court. This matter is listed. Do I have any instructions?" And I'm, you know, running around saying, "I wrote a memo about that", because I mean I'd write the memo and then I'd draft a letter of instructions for the Mayor's and Rhonda's signature.

On 11 November 1999 Clr Bennett issued written instructions to the General Manager and Mr Glendinning re-establishing the delegation in respect of Land and Environment Court proceedings as it had existed prior to Clr Hall's memo of 13 October 1999.

There is another example of a similar problem occurring in this one month period is in relation to a property at 153 Bradfield Road, Lindfield which was also the subject of an appeal to the Land and Environment Court. Council at its meeting of 5 October 1999 had already passed a motion that Council's defence of the appeal was to be referred to Council's Legal Services Committee. However, this decision was the subject of a rescission motion lodged by Clrs Little, de Vulder and Cross considered by Council at its meeting of 19 October 1999.

The rescission motion was carried unanimously, with the minutes recording that Clr Roach withdrew during the discussion of the item. The following motion was adopted in its place:

> 1. That the delegation by Council to the General Manager, in consultation with the Mayor, to institute, conduct and defend legal proceedings with respect to Council's activities in all Courts and instruct and engage Council's solicitors and counsel where necessary be revoked for the matter of 153 Bradfield Road, Lindfield (Development Application No 657/99).
> 2. That the Mayor and Deputy Mayor be authorised to choose both Council's solicitors to defend the case and expert witnesses or consultants to advise and represent Council on the matter.
> 3. That the Mayor and Deputy Mayor or their delegates be authorised to obtain access to and make copies of all Council's files regarding [that property] and all files that make reference to it
> 4. That no further correspondence concerning [the property] is to be entered into with the National Parks and Wildlife Service or any other interested party by Council officers or lawyers instructed by Council officers without prior approval of the Mayor, the Deputy Mayor or their delegates.

For the same reasons as outlined above, we consider that the width and ambit of this resolution is inappropriate from a management, best practice and probity point of view. As we have previously noted in this report, we have listened to the tapes of this meeting in full, and have noted that during the brief debate on the matter Clr Hall made the following comment before the vote:

> I think you know that instruction, legal instructions, to our appeals lawyers is now in the hands of the General Manager, in consultation with the Mayor, as of last, er, Friday – I think it was – er, no staff can act – give instructions – any more. So the matter stands with the General Manager in consultation with the Mayor. This motion therefore will involve further instructions being given and other instructions withdrawn – which comes at a cost – however you have a – urgency's been established by this Council – so it is of great moment – and perhaps, I might have a copy of the motion …

He then proceeded to read the motion, as set out above, but while reading paragraph 4 quipped, "That's pretty tough". After the motion was carried Clr Hall also made the following editorial comment from the Chair, "A very far reaching motion, by the look of it".

6.16.2 The choosing and appointment of expert consultants to Council

On 1 July 1994 the Office of the Ombudsman delivered its final report under Section 26 of the Ombudsman Act concerning Council's actions in relation to the processing of development and subdivision applications for a dual occupancy development at 88 Wellington Road, East Lindfield.

At page 79 of that report, the Ombudsman specifically commented upon the decision of the Council to "shop around" for a consultant planner prepared to pursue the Council's appeal in this case:

> I acknowledge that some of the Council members voted against the search for yet another consultant planner. I am convinced that the others (including the Mayor who exercised his casting vote), acted unreasonably in pursuing a defence which was manifestly untenable, with scant regard to the potential legal costs. As it turned out, even the consultant planner who eventually agreed to support Council's refusal warned that it would be "*a difficult case to win"*. Despite this, the Council proceeded to hearing, wherein it duly lost the case.
>
> Council in its submission argued that "shopping around" for consultants is common practice in local government, and cited with approval, their solicitor's experience of making 12 unsuccessful invitations to consultants before an expert was obtained to argue an appeal for another council. Council also contended that the number of "rejections" does not have a significant bearing on outcomes. Councillor Malicki made a similar submission citing specific cases where Council had won appeals after making decisions that went against the advice of council's professional staff.
>
> While that may be a fact, there has to be a reasonable limit to "shopping around" for expert advice. When a series of experts refuse to accept a consultancy on the basis that their expert opinion could not support Council's determination, one must question the decision. Good management practice would dictate that a Council in such circumstances should have an open mind and make a pragmatic decision based on the case itself and Council's consideration of its wider corporate duty to use Council's resources wisely, and effectively. In my view the decision to continue "shopping around" was unreasonable in the circumstances of this case.
>
> The legal costs borne by both parties were not insubstantial. It is my view that the costs reached this level only because of the unreasonableness of the Council in not terminating the proceedings earlier by entering consent orders and in pursuing a defence which was clearly tenuous. Furthermore, I believe the Council abrogated its general responsibility to its ratepayers to act in a cost-efficient manner.

Despite the recommendation of the Ombudsman in her report, Mr Glendinning told us that even in the previous Council they had not been completely compliant with that recommendation:

> The Ombudsman, in her report, made a recommendation that the Council should re-consider every appeal once two consultants had been briefed and declined to act for Council. Council's resolution in considering those recommendations was that there be a

> further report to Council once three consultants had been briefed and declined to appear for Council.

We have been provided with a copy of the staff report on the Ombudsman's report, which went to a Committee of the Whole Council on 6 September 1994. We note that even the staff report sought to disagree with the findings and comments on consultant shopping.

We asked Mr Glendinning for his summary as to what he saw the present problem as, and how it was related to the past conduct criticised by the Ombudsman:

> Mr Glendinning:…where Council staff had recommended approval of a development and Council refused it, we would just keep asking consultants after consultant until we finally found one who would be prepared to give evidence on Council's behalf. Sometimes you'd go to eight, nine, 10, 11.
>
> Mr Bulford: Yes. The chasing of consultants, was that at the initiative of staff or was it on the demand of Councillors or some Councillors?
>
> Mr Glendinning: It was on the instruction of Councillors. I mean we would go back to Council and say, "Well we've sought advice from three consultants, none of whom are prepared to support Council's case. We believe that in this matter you should seek consent orders, the Council solicitors advise that we haven't got much of a case", they'd ignore all that advice and say, "Go and find another - go and ask another three consultants", and then another three consultants.
>
> Mr Bulford: To what extent was Councillor Hall involved in this …?
>
> Mr Glendinning: He was very much involved with it. …

Mr Glendinning confirmed that Clr Hall should have been more aware of the import and the recommendations of the Ombudsman concerning saying:

> …he and Elaine Malicki would be the two Councillors, current Councillors that would be more aware than any others. Because it was right up - you know, they were involved with it. I mean the report was very scathing of the Council's process. Not the staff.

He confirmed that it was not merely Clr Hall, saying:

> … it was the whole Council. I mean there was - there were a certain element of the Council who were supportive of the applicant, and there were the majority of the Council - it was almost like a 6-4 split, that supported the objector. There were all sorts of outrageous issues involved with this with personal contact with individual Councillors and all sorts of stuff. And the same sort of scenario is developing now.

Worse still, Mr Glendinning told us Clr Hall:

> has refused to allow management, me or the General Manager, to brief the Council as to the appropriate thing to do, based upon the recommendations of the Ombudsman. I've not been permitted, nor has Rhonda been permitted, to address the Council about these issues.

Mr Glendinning told us that this was not so much a refusal on an ad hoc basis at Council meetings when these sorts of practices started to manifest themselves again, so much as the refusal of Clr Hall right at the outset of his Mayoralty to allow

Mr Glendinning to make any presentation to Councillors by way of induction or briefing on how the development application assessment and Court appeal processes should operate. We have dealt with this in more detail at section 6.13.3 of this report.

The General Manager also told us:

> Councillor Hall since he's been Mayor has been instructing consultants and wanting to instruct solicitors and so on and Ian Glendinning brought up, "Remember what happened at Lister Street," and he just screamed, "I don't want to hear anything more about the Ombudsman. You bring the Ombudsman up again …

Clr Malicki's evidence to us in our interview with her effectively corroborated the points that Mr Glendinning was making to us on these issues. She expressed the following concerns to us, with those concerns being directed at the Trust Councillors as a whole:

> They're employing more and more consultants everywhere you turn. They're employing consultants. They actually too have used Councillors to brief consultants on Land and Environment Court cases which you're probably aware of. They've moved motions that these two Councillors brief a solicitor and they've got no idea half the time. They try and do all these things themselves and they get around going, "Oh my God, it's so hard," but they're doing all the things the staff should be doing. … But they've got this idea that they can do all these things you know and they spend hours worrying about how to do things they've got no role in. … They've never once defended me when it comes to anything in Council. If I've asked for a staff member to give me an answer, and I'd say probably four times he's refused to allow that to happen, no one's stood up for me, they just let all that happen. They don't accept that staff advice is necessary. They've used the fact that they have the numbers to sort of, how can I put it, threaten is too harsh a word, but to sort of indicate that I'd better not be naughty. I shouldn't talk to the press about something or other because I mightn't get the numbers on something I want. Now, I've never had that done so overtly in my life. …

She put it to us that it was an example of the continuing corruption of the minds and views of the Councillors by Clr Hall as to how they were to go about doing their jobs and as to not trusting the professional staff to help them. She continued:

> They've got this view that they're experts. They have different people that are experts on various things and they're fairly mediocre experts, I can tell you, but they've got their environmental expert and this and that and the other, and he's the fount of all knowledge. They seem to sort of leave anything on the environment to this one, anything on finances to this one. I've seen in Council, and actually Councillor de Vulder has said in Council, "It was written down that his development item was in Wahroonga Ward, so I didn't even read it," when in fact it was Comenarra Ward. But we're there to make decisions on Development Control issues and he didn't read the report because it was someone else's Ward. They've got that sort of feeling, that you don't do everything, you just do the bits you need to do and you rely on one other person. … Yes, that's frightening.

One example of the Councillors resolving to control the appointment of consultants was noted at the previous section of this report, relating to the DA at Bradfield Road, Lindfield. Mr Glendinning provided other examples to us. In respect of a property at 1 Katina Street Turramurra, he told us in his written submission that on appeal by the owner the Court had granted a development consent for a second dwelling (dual occupancy) on the property. The applicant later applied for a subdivision approval. The staff advice was to recommend approval, but it was refused by Council. The

applicant again appealed to the Court. Both Mr Glendinning and Council's solicitor advised the Council that its chances of success in the case were low. Council decided to proceed nonetheless. Three town planning consultants were approached, and each declined to act for Council. A fourth was approached, on the insistence of the Councillors. Worse still, this consultant had a conflict of interest, in that he had provided professional advice to one of the objectors. He agreed to act. The appeal was heard at the beginning of November 1999. Council lost, and the Court granted the consent sought.

Mr Glendinning reported to us in his written submissions that:

> The issue here is that the councillors following a meeting attended by the Mayor, Deputy Mayor Clr L Bennett, Clrs I Cross and T Roach (the relevant Ward Councillors) and Mr R Graham of Abbott Tout directed Mr Graham to approach Mr Sanders to assist Council – notwithstanding my advice that this advice would be contrary to the Ombudsman's recommendation and Council policy.
>
> In fact the Mayor in a loud and aggressive manner during this meeting shouted words to the effect of:
>
> "I never want to hear the word Ombudsman again. That the recommendations were not binding, that the Ombudsman's office was a bureaucracy made up of ex Department of Local Government staff."

Mr Glendinning went on to allege that Clr Hall had even gone so far as to instruct the General Manager to delete any reference to Mr Glendinning's advice and comments and not to make any record of them. He told us, however, that he had made his own contemporaneous file note of this meeting, and he provided a copy of it to us. It supports what he says in his submission to us.

6.16.3 General conclusions

Mr Glendinning told us that the problems in relation to appeals in the Court were costing Council considerable sums, sums which are way over budget. This money has to be found at the expense of other Council services to the community.

> Mr Glendinning: the current level of appeals I think, in anybody's experience, is extraordinary. 51 appeals for this period of time already this year. It's just - I mean we're going to spend over a million dollars in the Land and Environment Court this year.
>
> Mr Bulford: And what is the budget?
>
> Mr Glendinning: $300,000.

Both Council, in its corporate response to the final draft of this report, and former Clr Anderson in his submissions in respect of that document, sought to challenge Mr Glendinning's evidence to us about Council's total legal bills for the year on Court appeals. The fact is however that his advice was given to us only part way through the year and was clearly an estimate. The final figure turned out to be $867,122, in our view not substantially dissimilar from what Mr Glendinning's estimate was, and in any event a figure that may be considered to be unacceptable, even if it does fall in

the ball park of the experience of a number of other Councils. The Department has consistently expressed concerns at the level of legal costs incurred by a number of Councils in relation to appeals to the Court.

Mr Glendinning also told us:

> … they were talking about engaging an in-house solicitor and want a report on that, and they were saying that "We need this because we're spending so much money in the Court", and I tried to explain to them that the Land and Environment Court matters are not on issues of law, they're issues of fact and you really don't need lawyers in that process, but in any event if they had taken my advice this year in respect of those, they would have saved themselves about $700,000. So I guess it depends upon where they get the advice from. Whether they believe it or not. They very rarely take the advice of their professional staff.

It is also not without relevance here to note once again the provisions of section 352 (1) of the Local Government Act 1993:

> A member of staff of a council is not subject to direction by the council as to the content of any advice or recommendation made by the member.

This applies equally, of course, to individual Councillors, including the Mayor, as well as to the elected body as a whole.

6.17 The need for an adequate and documented general complaints handling system

Given the focus of this Investigation on complaints about the conduct of Councillors (more particularly the Mayor) and staff, and given the concerns expressed as to whether or not complaints have been properly handled, we were interested, as part of our Investigation, to find out about what steps Council was taking generally in relation to complaints.

Certainly, despite the fact that a number of members of the public wrote into the Department with complaints about how staff had been handling such things as development applications, and that such complaints were referred by the Department to us for our information and action, as appropriate, such complaints are in fact strictly outside the Terms of Reference of this Investigation. Many such complaints clearly do not entail likely or alleged breaches by staff and/or Councillors of Council's Code of Conduct, but are classifiable under the heading of general complaints. One of the prime focuses and concerns of the Department's Investigations and Review Branch has for many years been the question of the adequacy of council handling of complaints.

In as early as August 1994 the Department of Local Government advised councils in the State of the need to have a complaints policy and procedure in place – see the Department's *Practice Note No. 9* in this regard. When it came to competitive neutrality matters arising under National Competition Policy, this was followed up and reiterated in the Department's November 1997 *Guidelines on the Management of Competitive Neutrality Complaints*. All general managers were advised about the

issue of these and all councils were sent hard copies of the documents when they were first issued. They can in addition be accessed via the Department's homepage on the Internet.

In June 1998 amendments to the then Local Government (General) Regulation were gazetted. These required that each council include in its annual reports to the community and the Minister for Local Government pursuant to section 428 of the Local Government Act 1993 a statement regarding the establishment of a complaints handling mechanism for competitive neutrality complaints, and as to the manner in which the council publicises and makes the mechanism known to the public. The same requirements are now contained in the replacement Local Government (General) Regulation 1999 [see clause 31(d) (vii)].

So far as concerns what this Council has put in its Annual Reports to meet the Local Government (General) Regulation requirements, what Council reported in its 1998 report was grossly inadequate in terms of compliance with all the requirements on competitive neutrality matters, with a bare statement that "Council did not have any Category 1 Businesses during 1997/98". When it comes to the 1999 report the information is somewhat more fulsome, but when it comes to the specific requirements of clause 31 (d) (vii) of the 1999 Regulation all that Council could say was:

> Ku-ring-gai Municipal Council is developing a complaints handling mechanism for competitive neutrality complaints in conjunction with a corporate electronic complaints handling system.
>
> It is anticipated that this system will be finalised shortly and appropriate public notification will then be given in relation to the complaints handling system.

This is not good enough. The Department's *Pricing and Costing Guidelines* indicated quite clearly that councils were expected to have attended to the need to implement a complaints handling system for competitive neutrality complaints from 1 July 1997. This is now more than three years ago. Given that the Department's *Practice Note No. 9* – relating to general complaints - hails from even earlier, the degree of non-compliance is seen to be even worse.

We note that in July 1998 the Department of Local Government had written to the General Manager, following a complaint over the conduct of Clr Hall at the Pet Expo on 8 May that year, suggesting that Council may not have in place appropriate complaints handling procedures to deal with issues concerning Councillors. It was also suggested at the same time that Council might need to revisit its 1989 resolution in relation to Clr Hall in view of legislative changes, ie the introduction of the 1993 Local Government Act, since that time.

In our interview with the General Manager we asked her about Council's track record on the general complaints handling policy and procedure issue. She told us:

> Ms Bignell: … we're actually putting a complaints management system in place. We've been working with a company called Somerset for something like 15 months to work in with our hardware system and that's like more, you know, the general residents ring up and so on about, you know, dogs and - - -

Mr Bulford: That management system is in terms of you tracking complaints and recording them and ensuring that they are processed through the system?

Ms Bignell: Yes.

…

Mr Bulford: If I as a member of the public rang up and said, "Can you give me a copy of the procedures for making a complaint," there is not such a document?

Ms Bignell: No, no.

Mr Bulford: Likewise on, for example, Competitive Neutrality, National Competition Policy?

Ms Bignell: No, the Council hasn't developed or moved into that per se yet.

Mr Bulford: If I, as a member of the public, wanted to lodge a complaint about a staff member having done something inappropriate, what written policies and procedures exist?

Ms Bignell: There's no written policies and procedures. They come to me and I then will deal with them in the way that is according to the grievance procedure.

Mr Bulford: A de facto procedure and understanding in place how it happened?

Ms Bignell: Yes usually as I said I have David Lethbridge, as the internal auditor, do a review on the process.

There is in our view a clear distinction between a *policy* on the one hand and a written *procedure* manual or whatever it might be called on the other hand. The public needs to be able to know not only what is Council's policy on the handling of complaints (eg such as dealing with them in an open and transparent manner, in a way that entails no actual or perceived conflicts of interest or bias, and in a timely fashion, and so on). The public also needs to know how to go about making complaints, how their complaints are handled once lodged with Council, and how their complaints will be responded to. There is equally a clear distinction between a policy and a *written* procedure manual, or whatever it might be called, on the one hand, and a *de facto* practice or procedure on the other.

The public needs and is entitled to expect to have available to it a properly documented policy and a properly documented procedure on how general complaints, including competitive neutrality complaints, are handled at this Council. Members of the community, both from within and outside the Council area, as well as ratepayers, should be able to obtain from Council enquiry counters and other appropriate venues (such as libraries), via Council's website on the Internet, and through telephone and mail enquiries, or other such means, copies of both short summary brochures as well, if they so choose, as full documents or manuals on the matter, to tell them how they might go about lodging complaints or expressions of concern on issues relating to Council policies and practices, Council decisions and processes, and Council businesses and affairs, which are troubling them.

A proper and well-documented policy and practice on complaints handling is a useful and effective management tool to assist Council gauge how well it is performing, in

particular having regard to the freedoms and discretions granted to councils in the 1993 Local Government Act, and the attendant need for Council to be directly accountable for its actions to the wider community. Such views have been repeatedly and long expressed both by the Department of Local Government and other regulatory bodies with jurisdiction in relation to local government in the State, such as the New South Wales Ombudsman.

The blame and responsibility for Council's failure to produce an adequate and properly documented policy and practice for dealing with general complaints, including competitive neutrality complaints, lies both with the General Manager and her staff, as well as with the Councillors.

In saying this we acknowledge that the focus and attention of all concerned, during the life of both the present and the last few Councils, has been consumed by the issues of the implementation of a residential strategy to meet State Environmental Planning Policy ("SEPP") No. 53 requirements on metropolitan residential development, and of dealing with Clr Hall and his conduct and demands and complaints and concerns. We understand that, at least in the eyes of the present Council, it has had to handle an extremely large number of development and building applications, or applications of that type. We are also cognisant of the fact that, as advised to us by the General Manager, Council is still engaged in putting into place a computer based system for recording and tracking complaints. We are equally cognisant of the fact that the Council is far from unique in its failure to put such a policy and practice into place.

However, in our view, none of these factors presents a complete or adequate excuse for the failures at the Council.

By way of postscript, and following the receipt of comments from the General Manager in relation to the draft of this report, we note her advice that a formal Complaints Handling Policy was to be presented to Council's August Policy meeting.

6.18 The process followed by Councillors in relation to concerns over the General Manager's performance

6.18.1 Preliminary comment

At two meetings of Councillors allegations about the alleged failure of the General Manager to do certain things, that is to say allegations about her performance were considered. These meetings were on 2 and 30 November 1999. At both meetings one Councillor was missing. The identity of that Councillor not involved in the initial stages is not known to us, however. The minutes of the second meeting do record that Clr de Vulder was not present due to ill health and his apology was accepted and noted.

The General Manager, as a senior member of Council staff, is employed, as required by the Local Government Act, on a performance based contract. We have been provided with a copy of the General Manager's contract, which closely follows a

standard or model contract recommended to member Councils by the Local Government & Shires Associations. There is therefore, so far as we have been able to ascertain, nothing unusual in it in terms of provisions about assessment of the General Manager's performance.

Clause 4 of the contract, which deals with the "Responsibilities of the General Manager", as to relevant parts, provides:

> 4.1 The General Manager shall:
>
> (b) comply with the Local Government Act 1993 (NSW) or its equivalent;
>
> (c) ensure the efficient and effective operation of the Council's organisation;
>
> (d) satisfactorily carry out the responsibilities set out in the position statement in Schedule One;
>
> (e) take all reasonable steps to meet the performance criteria contained in Schedule One;
>
> (f) diligently exercise delegations as specified in Schedule Two;
>
> (g) …
>
> (h) comply with **lawful** Council resolutions and adopted policies; [our emphasis]
>
> (i) …

Schedule One contains a number of miscellaneous provisions in it. It identifies the General Manager's "key result areas". These include performance criteria or "indicators" and "key tasks" on such matters as "Corporate Planning", the "Management of [the] Organisation", "Team Leadership" and "Financial Management". Schedule Two merely ties in with section 377 of the Local Government Act 1993 and contemplates that the General Manager shall perform those tasks that Council delegates to her from time to time.

Clause 14 of the General Manager's contract provides, as to relevant parts:

> 14. PERFORMANCE MEASURES
>
> 14.1 The General Manager and the Council shall sign a Performance Agreement within three (3) months of the commencement of this Agreement ***and annually thereafter***. [our emphasis]
>
> 14.2 The Performance Agreement shall set strategic objectives and performance measures consistent with the General Manager's duties and responsibilities.
>
> 14.3 …
>
> 14.4 The performance of the General Manager will be reviewed ***every six months*** (or at such other times as the Council, in its absolute discretion determines) throughout the period of the Agreement. [our emphasis]
>
> 14.5 The Council shall give the General Manager at least fourteen (14) days notice in writing that a Performance Review is to be conducted.

14.6 …

14.7 Within one (1) month of the conclusion of the Performance Review, the Council shall prepare and send to the General Manager a statement which sets out …

14.8 The General Manager shall have the opportunity to address Council with respect to the Council's findings.

14.9 The Council will act in a fair and reasonable manner at all times in the conduct of the proceedings and in their analysis of performance review.

14.10 The Council may choose to use a Consultant to assist in any processes set out in this clause.

We have noted section 14.1 and the need for annual performance agreements. The General Manager's evidence to us in our interview with her was that while this had been addressed in past years no agreement had yet been signed for 1999. This is a matter that needs addressing by the General Manager and the Councillors. The year 2000 needs to be taken into consideration also. Without this, the General Manager has no duly set performance targets to work to and against which she may be judged. We note that the General Manager did tell us she had reminded Clr Hall and the Deputy Mayor, Clr Bennett, about this in a meeting she had with them on 27 September 1999 and that she had advised the Mayor and new Councillors that she would nonetheless work to the targets in Council's Management Plan in the meantime. This is basically how the performance agreements worked in the past.

We have already in other sections of this report mentioned the sections of the Act - section 232 (1) and 335 (1) - regarding to the role of the Councillors in relation to monitoring performance of the Council and the General Manager. Note that the Act does not set out the process to be followed. Instead that this is left to the contractual provisions in the employment contract between the Council and the General Manager. These are the provisions in clause 14 quoted above.

She told us that while clause 14.4 actually provides for 6 monthly reviews to be carried out, except for one such review carried out six months after the commencement of her contract, there has been no such review conducted ever since. She said that there was no explanation for this. This needs to be addressed. If it is not intended to carry out reviews as regularly as every six months, then the contract should be amended accordingly. At the very least, annual reviews are what is needed.

Ms Bignell did tell us however:

> I was going to say that with the former Council we were probably meeting about two or three times a week, like informally in workshops and so on. There was a lot of opportunity for feedback and I guess I'd probably say it was so ongoing that certain issues weren't raised about the need for having it.

Whether this ongoing process really satisfies the formal requirements of clause 14.4 on the other hand is perhaps a moot point. The General Manager also told us that the ongoing process had been in the past conducted more just with the Mayor and Deputy Mayor, rather than with all the Councillors assembled together.

The General Manager told us that the most recent performance appraisal that had been conducted of her performance was one conducted in August 1999 by the previous Council and it was conducted in accordance with the contractual requirements. The evidence is that Clr Hall played a very disruptive role in that process. It is noted that the General Manager told us that the previous year Clr Hall had been even worse. As noted, the evidence of Ms Bignell to us was that Clr Hall wanted to do another one, apparently because he was not satisfied with the outcome of the previous one.

The General Manager told us that one of the first things that Clr Hall had done when he became Mayor was to ask again for a copy of her contract. This was on 27 September 1999. She told us about this conversation:

> I said, "We will have to set the performance indicators for the forthcoming year." He said, "What about performance appraisal?" One of his election things was that we were going to do a performance appraisal on the General Manager as soon as we get in.

She gave him a copy. She told us that that copy was, so far as she is aware, an unedited contract. She had apparently got Council's Manager Human Resources to supply the copy to Clr Hall.

The question of rights of the Mayor and Councillors to access the General Manager's contract is discussed at length at section 6.6.3 of this report.

The Mayor and all Councillors therefore are aware, or have the means of being aware, of the contractual requirements that they must ensure are met in any process of review of the General Manager's performance undertaken by them.

6.18.2 The allegations or concerns

The allegations or concerns that were examined by the Council, with the assistance of a sub-committee of Councillors appointed by them, were not in fact set out in any detail or particularised in Council's resolution of 2 November 1999 which appointed that sub-committee. That resolution merely stated, as to the relevant part:

> To raise with the General Manager issues relating to her conduct including compliance with Council resolutions and directives.

On the day after Council's resolution was passed she was handed a document which as to relevant parts, for present purposes, provided merely that:

> We advise that Council has appointed the undersigned to raise with you issues in relation to your conduct, including compliance with Council resolutions and directives, and to obtain your response on these issues. We attach Council resolutions of particular concern in this regard.

While we have been provided with a copy of that document, we were not given copies of the attachments, so we are none the wiser, on that account, as to what the allegations really were.

Moreover, merely attaching copies of resolutions that had supposedly not been complied with did not amount to an adequate giving of notice or particulars to the General Manager of the allegations against her. This notice, therefore, failed in our view to meet minimum standards or requirements of fairness or natural justice. In any event, it is clear by the terms of the notice that we have quoted above that the copies of the resolutions in question were simply examples of "particular concerns", and by no means represented the entire case that at least by the terms of the memo the General Manager was going probably to have to answer.

However, we were provided with evidence from Clr Bennett and the General Manager herself that the issues were in fact two in number, namely, first the Mayor's concerns about lack of access to Council offices and facilities, and second concerns over the alleged failure of the General Manager to report to the new Councillors that she had already commissioned, and obtained, in the life of the previous Council, an independent report from Price Waterhouse Coopers, Council's Auditors, on the Garpac affair, and briefed the Mayor and Deputy Mayor of the day on that report. Apparently, given that the new Council resolved to appoint the new Mayor and Deputy Mayor, ie Clrs Hall and Bennett, to get an independent report from Blake Dawson Waldron on the Garpac affair, there was at least a concern that money and efforts were being doubled up and wasted. Clr Bennett told us that the access issue only related to Mayoral access, and did not affect other Councillors.

6.18.3 The background to the concerns

Clr Hall put it to us in our interview with him that the concerns that Council was examining in relation to the performance of the General Manager arose out of another issue which he and the Deputy Mayor had, by resolution of the Council passed on 5 October 1999, been delegated to examine, and to seek assistance from the firm of lawyers, Blake Dawson Waldron. He told us that this was the Garpac matter [considered at section 4.9 of this report]. He admitted that the allegations as to the General Manager's performance had been discussed with the Deputy Mayor and the lawyers before the matter came up before Council on the night of 2 November, and that he knew that it was coming up that night.

In our interview with Clr Bennett, she told us as to how it came about that Council resolved to have these concerns expressed about the General Manager's performance examined:

> Councillor Hall had indicated on several occasions that, despite the Mayoral Minute of 28 September, giving him full access, despite the letter from the Department of Local Government confirming the legality of the Mayoral Minute, that he still did not have full access. …
>
> That was a concern to the Councillors because that just seemed to be flagrant disobedience of a lawful Council resolution. …
>
> That was one issue which had come up. In addition there was the more involved question of Garpac. At a Council meeting fairly early on in Council's term, and I can't remember the date, the General Manager had put an item on the agenda relating, I think, to the winding up of Garpac. Garpac was the company which supplied the compactors …

She continued:

> Well the issue with respect to that meeting was whether or not Councillors had received full background information on the Garpac issue, or whether there had been a selective culling of information on the Garpac issue. The only information we had been presented with on that night was information which related to the specifics of the financial difficulties and the likely closure, or existing closure, I can't remember, of Garpac, but there was actually an ongoing, as you are aware, an ongoing problem with the garbage trucks.

Next:

Mr Bulford: Yes, which started before the present Council's term of office, did it not?

Clr Bennett: Well 90 per cent of it occurred in that period.

Mr Bulford: Yes, could that be an explanation as to why the briefing, or the report of the General Manager of the new Council was fairly limited in terms of contact?

Clr Bennett: No, absolutely not because, as the General Manager was aware and as subsequently came up in Council, the issue of what was to be done with the defective compactors had to be resolved by Council.

Mr Bulford: Yes?

Clr Bennett: We've lost a great deal of money on that.

The interview continued:

Clr Bennett: It was the view - Councillor Hall had obtained access to some documents. The Directors, the General Manager and possibly some others, from an Executive Group which meets or met, I don't know, on a regular basis and had Minutes. The Mayor had, somehow, acquired copies of these and I read the relevant sections, he gave them to me.

Mr Bulford: These were meetings before the life of the - - -?

Clr Bennett: Yes, they were and it became clear that there had been, and was, an ongoing problem with the compactors. The Mayor informed me, and I think several other Councillors, in addition to this, that on discussions with the auditor he became aware of a document, a report commissioned by the General Manager into the [matter] … that we were facing a big financial problem, that there was history that we had not been told any of the background.

Mr Bulford: Yes?

Clr Bennett: That we were not informed. On the only opportunity when we might have been given information and where problems might have been flagged, that opportunity was not taken. Nor was it being taken now, there was no sign that it was going to be taken. So, in those circumstances it was felt, and also in view of the perceptions with which the Councillors came on to the Council and in view of the fact that although the General Manager stated that she was eager to work with Councillors we didn't seem to get information. Council policies came to us in the broad form of Council policies with no background documents. As new Councillors we needed to benchmark things, we needed background on things, we needed the provision of all sorts of information but all we got in Council meetings were the Council documents totally taken out of context and we knew nothing of what to do

with them. So, there was a feeling that we were not being given information in the spirit with which we really required it.

It is clear to us, from the above evidence, that the concerns were at least originally those of Clr Hall, but ones which he persuaded his fellow Councillors about. Yet, this is not the view that Clr Hall, through his legal adviser, put to us. This was put at a time when we were seeking to exercise our statutory rights to get at documents relevant to our Investigation, so we feel there was an attempt by Clr Hall somehow to distance himself from the consequences of what Council had done in destroying records. All this is considered shortly.

On the other hand, Clr Bennett did tell us that, once she and Clr Little had been appointed as Council's delegates to handle the process, she did most of the talking and became the leader in relation to the process. See however the evidence of Clr Roach below.

Yet, when it came to their substantive advice on the issues, Blake Dawson Waldron, addressed it not to Clrs Bennett and/or Little, but to Clr Hall, and their bill of costs for the work done on the matter demonstrates a number of ongoing telephone discussions and meetings with Clr Hall. It is therefore clear to us that Clr Hall was still very closely involved in the whole affair, and had not stepped aside in deference to the delegations to Clrs Bennett and Little, as he, through his legal adviser, would have us believe.

Clr Roach had lodged written submissions with us prior to the commencement of our interviews of witnesses. In those submissions he argued that the whole exercise was one orchestrated and thought up by Clr Hall. We asked Clr Roach about this in our interview with him:

Mr Bulford: In your submissions you've raised, I think - you've made the statement that the idea was Councillor Hall's but he got - - -?

Clr Roach: That's right. That's right.

Mr Bulford: A motion encouraged by Councillor Hall but put by other Councillors?

Clr Roach: Yes.

Mr Bulford: To have the General Manager assessed on her performance?

Clr Roach: That's right.

Our questioning continued:

Mr Bulford: You've asserted in your written representations or submissions to us that the motion was encouraged by Councillor Hall. What caused you to form the view that the motion was encouraged by Councillor Hall? I mean, did he talk to the motion?

Clr Roach: No. The first thing that happened was that Councillor Hall asked the General Manager to leave. There was no, "Oh let's have a discussion about all of this" and, "Oh, now it's getting to this stage, I think it's time that the General Manager - for you to leave".

Mr Bulford: Councillor Hall's in the chair, presumably?

Clr Roach: He was in the chair and he just turned around and said, "Oh we've now got to such and such a stage", and there was a nod and a wink to the - to Councillor Bennett, and then he said, "I think it's time for you to leave" to the General Manager.

Mr Bulford: So we've moved past - now she's left. Who then spoke? I mean, we've got no means of knowing what was said or done because the meeting was closed, the tapes were turned off, and nobody else is present other than Councillors?

Clr Roach: I've got a feeling, I'm not - - -.

Mr Bulford: And I'm trying to get at the truth of the matter here.

Clr Roach: Okay. What happened was that - and I've got a feeling they may have even waited until Councillor Malicki had gone home, I'm not sure. Is Malicki there in that one?

Mr Bulford: It appears that she was not present at least when the vote was taken?

Clr Roach: Right. So Malicki wasn't there, so what - what happened was that Councillor Hall participated in the debate and quite often participated in the debate while other people were discussing the topic. If he didn't agree with something he'd just interrupt and then put in his version.

Mr Bulford: The motion, according to the minutes, was moved by Councillors Anderson and Keays?

Clr Roach: Mmm.

Mr Bulford: And it would be normal, in my experience, for the movers of the motion to do the principal talking to the motion, is that not right?

Clr Roach: That's right.

Mr Bulford: But what happened on this occasion? What - were Anderson and Keays doing the talking or was it Councillor Hall?

Clr Roach: The main talking was coming from Councillor Hall.

Mr Bulford: Okay?

Clr Roach: And then, when I objected to what was going on, Councillor Bennett came over to me and said, "Don't get too concerned about this, it's really not a big issue at all. We're only really wanting to just - this is just one of the steps we're taking in order to make sure that motions and different things that we've been putting through Council up to date are being administered properly by the General Manager." But in fact once we got down the track a bit further it was a witch hunt on a couple of issues that had been going on in Council, and what they were trying to do was pin down the General Manager.

Mr Bulford: All right?

Clr Roach: I don't mind them giving the General Manager or the staff a hard time over issues, but as I have explained in my memo to you, what Councillor Hall does, if there is a problem, he will then try and twist this problem around to in fact achieve a result that he wanted. If it's to get rid of the General Manager,

> he'll twist something around so that it turns out to be her fault, so that he's got - and I could see - when I was on the previous Council he did it with Councillor Patterson. Councillor Patterson I've mentioned in my notes to you. … And so it was - he used to do it with Glendinning as well, this, you know, after them all the time, you know, really delving into anything that they were doing, and so what he was trying to do there - what they intended to do there was in fact they had in mind a lot more than what that motion just appears to be on the surface. They then started organising meetings with the General Manager and they became quite high powered and directed.

Mr Bulford: You weren't present at those meetings?

Clr Roach: No. So - - -

Mr Bulford: I'd prefer to restrict the evidence that I get from you, Councillor, as to matters in which you were personally involved in or heard.

Clr Roach: Yes.

6.18.4 The process

Whilst some of what took place during the meeting of 2 November 1999, after the General Manager left the Chamber, is covered in the previous section of this report, it is necessary now to examine a number of other aspects of the process in more detail.

The process followed by the Councillors to deal with the allegations as to the General Manager's performance was not one that complied with the contractual requirements that by law they had to follow. Nor was it in our view a process that represented fairness and compliance with the principles of natural justice towards the General Manager. Surprisingly, in view of Clr Hall's requests during this Investigation, she was given very little detail as to what was the nature of the allegations against her.

In her submissions to us the General Manager raised as an issue the question of legal costs and expenses that she had to incur in relation to this process and submitted that these costs and expenses should be reimbursed to her by Council. Given our conclusions on the matter, it was unreasonable for the General Manager to have been forced to incur these costs and expenses. If the General Manager wishes to press her claim for reimbursement she will need to raise this formally with Council.

In our interview with him, Clr Hall gave evidence that advice as to the process that the Councillors needed to follow came from Blake Dawson Waldron. He led us to believe that that advice was contained within a letter from that firm, which we were ultimately unable to access or inspect, despite exercising our statutory powers. Given that we have not been able to so inspect that document, we have been equally unable to verify whether or not the process followed by the Councillors was one which was indeed recommended by the law firm, or whether or not the law firm alerted the Councillors to the need to have regard to any relevant provisions of the General Manager's contract, which, if they had given due and proper advice, they should, in our view, have done.

What happened was that on 2 November 1999 the Council resolved to close its meeting, actually a meeting of Council's Staff Committee, to the public. The meeting was in fact so closed because the General Manager was reporting to the Councillors on other confidential staffing matters.

After completing her reports on the other matters, the General Manager was asked to leave the meeting, but the circumstances of this were raised by the General Manager with us as being a matter of concern. We asked Clr Bennett about those circumstances. She told us that the General Manager was asked to leave, that this had come from Clr Hall as Chair, and that she may have joined in the request, but that she was not sure about this last aspect. She said that Clr Hall gave no explanation as to why the General Manager was asked to leave.

We note that there is a provision of the Local Government Act 1993 which deals with the rights of the General Manager to be present at Council meetings. This is section 376. Sub-section (3) of that section provides:

> However, the general manager may be excluded from a meeting of the council or a committee while the council or committee deals with a matter relating to the standard of performance of the general manager or the terms of the employment of the general manager.

Therefore, what we are concerned with here is whether the General Manager was given an adequate explanation as to why it was she was being asked to leave the meeting. Before the questioning of Clr Bennett continued we explained this to her and asked for her response on this, which was:

> It probably wasn't, no.

Clr Anderson's evidence was even clearer on this account:

> Mr Bulford: Can you recall whether the General Manager was given any reason as to why it was necessary for her to leave?
>
> Clr Anderson: That was not handled particularly well. She was not really given a reason. She was requested to leave because of conflict of interest.
>
> Mr Bulford: Were those words mentioned?
>
> Clr Anderson: No, I couldn't remember the wording but I felt she left the meeting without knowing why.

Clr Coleman's evidence is different saying that she was asked to leave because "she was the subject of discussion." He recalls her leaving but could not remember the details of what was discussed.

The fact that Ms Bignell was merely asked to leave, and was given no reasons, was corroborated by Clr Roach in his evidence to us. Likewise in the General Manager's own evidence.

The General Manager told us that what happened was that she was walking around collecting copies of the confidential reports she had circulated to the Councillors on the other matters, when:

> the Deputy pulled out a bit of paper and said, "We now want to talk about the General Manager." I immediately said, "What about?" and I think I was still on the floor. The Mayor said, "Yes General Manager, you'll have to leave." I said to him, "Do I wait outside or do I go home." The Mayor said, "No, wait outside - no you can go home." So that was it, I went home …

Our questioning of the General Manager continued:

> Mr Bulford: So the only one who actually asked you to leave was Councillor Hall?
>
> Ms Bignell: Yes.
>
> Mr Bulford: Did he, when he asked you to leave, give any explanation as to why you were being asked to leave?
>
> Ms Bignell: No, in fact I did say, "What about?"
>
> Mr Bulford: Yes?
>
> Ms Bignell: I don't think there was a number of Councillors that knew this was going on. Obviously to me it was very clear that this had all been worked through between, obviously, the Mayor and Deputy Mayor and I don't know how many others, beforehand because some seemed to know about it, especially the Mayor and Deputy Mayor and some didn't. You got Ted Roach and Councillor Malicki saying, "What's going on, why's the General Manager being asked to leave?"

The General Manager added:

> From recollection I'd have to say I was not surprised that something like this was coming because I had had something like 5 weeks of non stop attack and threats and "That's a breach of your Contract," and all this sort of stuff from the Mayor. There was no doubt in my mind that something was brewing and I'd have to say to myself when I got home, I said to my husband Gerald, "Well it's on," and so it wasn't a surprise.

The meeting ended with the Councillors passing the following resolution:

> That Council appoint a sub-Committee comprising Councillor Bennett and Little:
>
> A. To raise with the General Manager issues relating to her conduct including compliance with Council resolutions and directives;
>
> B. To obtain a response from the General Manager on these issues; and
>
> C. To make recommendations to the Council in relation to these issues.

We note that Council resolved by that resolution to appoint Clrs Bennett and Little as a sub-committee to deal with the matter. Clr Little has informed us that he was irritated by his appointment to the sub-committee because he was "not involved in this matter and was busy with other issues."

It is a matter of some concern, in our view, first that Clr Little should have been supposedly co-opted by the Councillors into being on the sub-committee in the first place, without prior consultation with or acquiescence from him, but, second, it is of even greater concern that, having been charged by Council with the delegation granted to him, Clr Little played practically no part in the process. In this regard Clr Little told us:

> Mr Bulford: All right. Now, what was this sub-committee to do?
>
> Clr Little: It should be in the minutes there.
>
> Mr Bulford: But I'm asking you what you can recall was the role that you had to undertake?
>
> Clr Little: No, I'm not clear on that at this stage to be quite honest.
>
> Mr Bulford: Did you actually participate in what this sub-committee has to undertake?
>
> Clr Little: You mean - I know there was a meeting with the General Manager. That was the reason why there was two of them. And I didn't go to that meeting.
>
> Mr Bulford: Why did you not attend that meeting?
>
> Clr Little: Well, I was busy at the time. That's part of the irritation of course. I wasn't consulted when that nomination came through and I should have really down right refused it at the time but it was - I think it was Councillor Bennett who had that and I think she had a solicitor with her at the time, and if she'd really asked me to go - - -

And later Clr Little informed us that the only other involvement he had in the process was at the end of it when he and Clr Bennett informed the General Manager that the matter was over. He stated:

> Clr Little: I would think the end occurred when I went in or Councillor Bennett and I went in with the General Manager to say that - - -
>
> Mr Bulford: Went in where?
>
> Clr Little: Into her office actually, and we said that - I can't remember the mechanism by which that occurred, we might have adjourned the meeting or whatever to - to go to the General Manager to say that it - that's how I remember. I remember having a meeting but I can't be clear on this but I do remember having a meeting with Councillor Bennett and going to the General Manager's office saying that it - it was - the matter was cleared and as far as I was concerned it was over. That's where it was.
>
> Mr Bulford: But you can't recall when that meeting took place?
>
> Clr Little: No, I - look it's too long ago for that. I - I just cannot remember the details of that. But if you've got details there I'm certain I could sort of - if you prompt me I'll be able to help you but I can't off the head do that.

Yet Clr Hall told us that Clr Little should have been well aware of what was going on and what was planned to take place in relation to the allegations against the General Manager:

Councillor Little was involved too because he had been at Blake Dawson Waldron and had been - taken part in a discussion. So he was aware of it. He was aware of it. He actually attended - it was - he was there dealing with a particular appeal matter called 153 Bradfield Road, Lindfield, and during that discussion on the conduct of the General Manager issue, he was there sitting in that meeting in the board room.

Clr Bennett was asked as to her understanding of what it was that she and Clr Little were delegated to do:

Mr Bulford: You knew that night that what you were doing was discussing the adequacy, or otherwise, of the General Manager's performance, is that right?

Clr Bennett: That's right and that was indicated to her in the meeting I had with her.

We asked Clr Bennett a series of questions to establish whether or not what was happening was done in the context of the General Manager's contractual performance review provisions. These clearly establish that they were not:

Mr Bulford : … As of that date had you ever seen a copy of the General Manager's contract?

Clr Bennett: Absolutely not.

Mr Bulford: Have you, as we speak, ever seen a copy of the General Manager's contract?

Clr Bennett: No, I haven't seen a copy of her contract.

Mr Bulford: Have you ever asked the General Manager to provide a copy of her contract?

Clr Bennett: I think I probably have.

Mr Bulford: Can you remember when that may have been?

Clr Bennett: No, I can't.

Mr Bulford: Are you aware whether Councillor Hall has a copy of that contract? Was there anything he may have said on the night which gave any indication that he was aware of the existence of a contract and its contents?

Clr Bennett: Well he'd have to be aware of the existence of a contract because there always is a contract, isn't there?

Mr Bulford: Well more importantly, the contents?

Clr Bennett: I'm trying to think. He had adverted to things but I don't know that he would have needed to have sighted a contract to have made those points. I mean everyone knows who's been around that such contracts contain performance, but what they are - - -

Mr Bulford: What I am pursuing here is that the contract contains specific provisions as to not only what performance she's expected to achieve, performance levels and benchmarks, but as to how her performance is to be measured and examined and assessed and there are specific provisions in that contract as to the procedures that need to be adopted?

Clr Bennett: Well, I don't remember ever sighting them.

Mr Bulford: So you would say it would be a fair thing to say that in the meeting of the 2nd and in the processes that led up to the meeting that occurred on the 10th pursuant to your request on the 3rd to the General Manager that there be that meeting, there had been no attempt to examine and understand and to move pursuant to or in the context of those contractual provisions on the necessary procedures. You were just proceeding the way you thought was appropriate, probably blissfully unaware of the existence of those provisions in her contract?

Clr Bennett: Well I don't think it's quite that simple. Generally speaking at common law there are certain things which are implied into all contracts, unless they are explicitly excluded within the contract. There are common law duties, I lecture and write on this, that are implied into every contract of employment.

Mr Bulford: But no implied clause can be inconsistent with an express clause either though, can it?

Clr Bennett: No, but it's highly unusual if not bizarre and almost unheard of to have provisions which, for instance, exclude an assessment of whether or not duties are carried out in a competent fashion.

Mr Bulford: Surely it is equally possible though that the contract itself sets out the procedures that need to be followed as to how that assessment is to take place?

Clr Bennett: Well that's possible but it is unfortunate, in that case, that if the General Manager was of the view that we were not following the procedures that she did not inform us at the time.

We accept Clr Bennett's last comment and point.

The General Manager told us:

Mr Bulford: At no stage in those conversations [before the meeting of 10 November took place] did he [Mr McArdle] speak to you in terms of understanding that this was some sort of performance review process under the terms of your contract?

Ms Bignell: No, he just saw it was just an attack on the General Manager. Quite frankly if I hadn't had Chris McArdle there, and you could see the way the conversation went, if I hadn't had him there I really believe the Deputy Mayor would have gone through with whatever she had written out saying, "We find this is disgusting, we find this, we find that," and it would have just been a kangaroo court. I have no doubt in my mind about that because I believe that's what the intention was of that meeting.

We have to say, however, at this point, that during our questioning of Clr Bennett about the events of 2 to 30 November 1999 we progressively found her to be an increasingly unco-operative witness. We found her answers frequently to be evasive and we had the distinct impression that she was keeping something from us. The discourse into what might or might not be implied into contracts of employment, quoted above, is but an example of this, and in our view was an attempt, conscious or unconscious, to avoid an admission that, at least by the time of our interview with the Councillor, she knew full well that the process she had followed was questionable. This found its zenith in the episode over the destruction of records, to be considered separately below.

The evidence of both the General Manager and Clr Bennett establishes that the next morning, 3 November 1999, Clr Bennett, but not Clr Little, went to the General Manager and handed to her a document under the names of Clrs Bennett and Little. The document, which we have a copy of, is in the form of a typed memorandum from the two Councillors to the General Manager, and signed by them, provides:

> We advise that Council has appointed the undersigned to raise with you issues in relation to your conduct, including compliance with Council resolutions and directives, and to obtain your response on these issues. We attach Council resolutions of particular concern in this regard.
>
> In accordance with Council's resolution, we would like to meet with you and suggest a meeting to be held at a mutually convenient time this Friday 3 [sic] November 1999.
>
> Please contact the Deputy Mayor to confirm your availability to meet on Friday. If you wish to have another person present at the meeting, please confirm this in advance with the Deputy Mayor.

The General Manager's evidence to us about this meeting was:

> The Deputy Mayor asked to see me at 10.00 a.m. So, she came into my office, it's the first time I think she's been into my office and I'd have to say fairly aggro. The night before was aggros, she was aggro, he was aggro. I don't know about the others because I was too busy watching them. …
>
> She came into my office, she handed me a typed memo with some documents and it was a Resolution. What she gave me was a resolution of the Staff Committee about concerns with the General Manager not adhering to Council Resolutions and asking for a meeting. So, I said to her, because she just gave me these bits of paper, and it was "Resolution from last night," typed out so they must have had it typed out. … I would have to say at this stage you can imagine I was quite concerned and probably anxious about what on earth this was all about or where we were going because I knew what it was about but, I mean, I just knew it was an attack on the General Manager, I didn't know what they were talking about. Okay, so she said, "For not adhering to Council resolutions and we're asking for a meeting." So I said, "What resolutions, what is this all about." She said, "I don't have a list because that would pre-empt the meeting, it'll be a preliminary meeting." I know myself from Human Resources requirements and so on if you're going to do this to a person you actually need to give them in writing what the problems are.

Ms Bignell's evidence was that she wouldn't tell her who was going to be there, which she thought was unfair, and responded by saying:

> I said, "What's this about," and she said, "There, it's about Garpac and the Mayor's access." So these attachments were the resolution of the Council about having a look at the Garpac legal advice.

In her written submissions replying to an extract of this section of our draft report Clr Bennett objected to the evidence of the General Manager that she was "fairly aggro". Clr Bennett said in those submissions (of 3rd August 2000):

> It is now 8 months since that incident occurred but with the best will in the world I cannot remember the details. I find her account hard to believe. I am well aware of the fact that evidence of bias is hardly consistent with the demands of natural justice and, when representing Council, I have endeavoured to behave professionally. For me to have been aggressive in such circumstances would have been inconsistent with the obligation that I

> owed to Council. Again there were no witnesses; again it is the word only of the General Manager who is neither neutral nor impartial on this matter.

On the question of whether there was aggression and Clr Bennett's questioning of Ms Bignell's reliability and veracity as a witness, see our comments below.

The General Manager replied to that memo in writing the same day, advising Clr Bennett that she would be available to have such a meeting on the Friday, as requested, nominating her office as the venue, and telling them that on legal advice she would have her lawyer present. The next day, however, following a request from Clr Bennett to change the proposed meeting time, the General Manager again wrote to her to advise her availability to meet on 10 November in her office.

In our interview with Clr Hall he brought to our attention a memo he sent the General Manager on that same day, 4 November 1999, on the subject of his access, asking her to "please explain why access is still being denied to the Mayor to parts of the Council Chambers and Administration area". At the foot of the memo the following typed annotation is added:

> At 2.15 today we the undersigned sought access to the Security Room located on Level 2 and occupied by John Hemsley, an outside consultant.
>
> The Mayor tried to use his security card to open the door and was denied access. M Drysdale, Corporate Support Officer, used his security card and gained access. We the undersigned witnessed this happening.

We think it no coincidence that this memo was issued that day and that the Mayor had attempted to gain access then to the area noted. He himself told us that he deliberately took the two officers who signed this note, along with himself, namely Mrs Piri Stephens, secretary to the Director Finance & Corporate Services, who was in fact temporarily working as Personal Assistant to the Mayor at the time, and Mr Michael Drysdale, who provided various support services to the Mayor and others, with him when he attempted to gain access, so they could be witnesses. We view this whole exercise as a put up job, and we consider it was unfair and improper for the Mayor to have involved the staff in this way at this time. We note, in particular, in this regard that this memo was produced by Clr Bennett at the meeting held with the General Manager on 10 November when she was confronted with allegations about her performance, one of which was that she had allegedly breached the Council decision of 28 September (adopting the Mayoral Minute of that date) granting Clr Hall his access rights.

Clr Hall's explanation to us of this episode, which we do not accept, was as follows:

> I asked them - Ms Piri was helping me as temporary secretary, Mr Drysdale was also helping me as the - as the corporate support officer and I said, "Look, I've still got no access to this building and would you accompany me and we'll try - and I've been told I have, would you please accompany me", and I tried quite a number of doors and that door was secured against me. I said, "Mr Drysdale, would you please try you key, your badge?", and he was able to open it straight away. Which I found quite extraordinary.

The meeting of 10 November 1999 took place. It was, according to evidence supplied to us by Clr Bennett, and corroborated by the General Manager's evidence,

attended by Clr Bennett, the General Manager, the General Manager's solicitor, Mr Chris McArdle from the law firm Phillips Fox, and two lawyers from the law firm Blake Dawson Waldron. Neither Clr Hall, nor Clr Little, was present.

During interview Clr Bennett explained to us that she contacted the two solicitors from Blake Dawson Waldron and arranged for them to be present at this meeting, as representing the interests of the elected Council.

Later evidence from Clr Bennett appeared to establish that Blake Dawson Waldron had in fact been instructed some time before the 3 November 1999 "invitation" to the General Manager, which included advice that she could have a representative there, as noted above. Clr Bennett told us that she called them in to actually attend the meeting because of the General Manager's advice that she was having her lawyer there. It was this that apparently caused the delay, because of the need to co-ordinate the availability of that many players, and in the process, according to Clr Bennett, "Clr Little got dropped off".

Now, it will be noted that the terms of the delegation to Clr Bennett and Clr Little, made by Council pursuant to its resolution of 2 November 1999, said nothing about any delegated power to instruct solicitors. The fact that clause 14.10 of the General Manager's employment contract provides that in doing a "Performance Review" under clause 14 the Councillors may choose to use a consultant to assist them does not assist here for various reasons. First, and most obviously, what was being done was not a clause 14 "Performance Review". Second, even if such a process were being undertaken, for a Councillor to instruct solicitors, or for that matter any other consultant, would require a resolution of the Council delegating to the Councillor the power to do so. There is no inherent power in a Councillor to instruct solicitors on behalf of the Council.

We note that Clr Bennett referred to the fact that in relation to the appointment of solicitors she was supposedly acting on behalf of the Mayor, Clr Hall. It is true that by resolution of 5 October 1999 the Council had, in confidential closed session, resolved to "delegate to the Mayor and Deputy Mayor the power to appoint a suitably qualified person with legal expertise to inquire into, and report to Council upon, all matters *concerning the awarding of tenders* to GarPac Pty Ltd in 1998 and subsequent events" [our emphasis]. This delegation, however, clearly was one limited to the Garpac issue, as defined in that resolution. It was one also made jointly to the Mayor and Deputy Mayor and granted no power to sub-delegate. It is clear from the terms of section 377 of the Local Government Act 1993 that any sub-delegation that is lawful under that section must be expressly made.

It is doubtful whether that delegation extends to grant power to the Mayor and Deputy Mayor to examine issues (and to appoint lawyers for assisting in this) concerning the question of the alleged lack of a report from the General Manager to the new Council elected after the September 1999 elections in relation to matters that essentially concerned the staff handling and administering of the performance of Garpac under the contract, after it had been awarded. It is a question as to the interpretration of the words "and subsequent events". It is clear that those words mean subsequent events in relation to the tendering and contractual performance of

Garpac itself, and at least on one view arguably extend to any report by the General Manager, or lack of such a report on issues arising albeit out of such matters.

It is interesting to note that if the 5 October delegation was sufficient in this regard, then there would have been no need for the resolution of 2 November.

As to what actually took place at the meeting of 10 November, the evidence from Clr Bennett was as follows:

> I outlined the concerns over access to the General Manager. She conferred, from memory, with her lawyer and then she stated that the Mayor had had access since the advice from the Local Government Department. The only two exceptions to that were to the security room and to the Directors' offices. The security room because even she didn't have access to the security room and the Directors' offices because they had manual keys, whereas the access we're talking about is electronic.

Asked about her reaction to that advice she said:

> I was absolutely flabbergasted, whatever response I had expected I had not expected to be told, "Yes I have done this." That meant there was now a direct conflict between what the Mayor had led me to believe, and I had to rack my brains, had he actually said he no longer had access? …
>
> Well I thought about this and thought about this and obviously I thought about it very hard at that time and he had certainly, up to some point, been claiming that he didn't have access and he certainly didn't have access before the Local Government letter came, I'm pretty sure of that, but I couldn't then recall whether or not he had explicitly stated that he no longer had access, that he still didn't have access.

Asked about how she had the impression that the Mayor had been denied access substantially she said:

> Well I've thought about this. He was at the meeting of the Staff Committee where I ran the discussion on the basis that I understood that he was being denied access and was still being denied access and he did not contradict me. He could have stood up and he could have said, "That is no longer the case."

Asked whether she felt let down by the Mayor, she said:

> At this point I didn't really know who to believe to be honest. At this point I sat there and I made an assessment and my assessment was I had no idea who was telling the truth and who was lying but I could not assume that the General Manager was lying. I knew there were occasions where I had caught the Mayor lying, I knew that his truthfulness could not be vouched for unequivocally. Under those circumstances I felt professionally that the best assessment I could make was that the General Manager had to be given the benefit of the doubt. It was not possible under those circumstances to assume that the Mayor had not been given access and, therefore, the matter could not be pursued any further.

On the Garpac issue Clr Bennett said:

> With respect to the Garpac that was still not so clear cut. I put the concerns to the General Manager, in much the way that I've expressed to you. The General Manager stated that the only issue that was before Council that night was the issue of what Council should do with respect to the financial problems that Garpac itself was suffering. In other words the issues raised did not go to the history of arrangements with how the tenders

had been let out or what had happened subsequently, et cetera, et cetera. The only issue had to do with the small issue of what was happening to Garpac at that particular point in time and what Council needed to do with respect to that and she argued that with respect to that she had provided all relevant information and that there was no reason to insist that background information be raised.

Clr Bennett said that Ms Bignell "was not aggressive at all". She continued:

I also raised the issue of the Price Waterhouse report with her and she stated that she'd given a copy to the Mayor.

Clr Bennett had confirmed that the Mayor had led her to believe that that was not the case. Clr Bennett confirmed that the General Manager "argued very very strongly that the Price Waterhouse report was an operational matter because it dealt with staffing matters."

The interview continued:

Clr Bennett: My role was to go back to Council and report and then to come back on the basis of what Council decided…

Mr Bulford: So everybody said their piece and the meeting finished?

Clr Bennett: No, the meeting didn't end at that point. At that point she made a statement that she was very anxious to work with Council, that she wanted things to work and I followed that with a statement that I also was very anxious to make things work, that this Council wished to be a very different Council to the last Council, that it was a proactive Council, that its needs were different to the needs of the last Council and we needed a lot more in the way of information and that we were anxious to get that and that we were anxious to work together in a way that would achieve that. I actually think that we substantially - maybe it's a delusion on my part, I don't know - but the impression I got was that we actually cleared the air somewhat at the end of that meeting.

Mr Bulford: However you didn't express any conclusions. You had the intent, you felt it was your role to go back to Council and report?

Clr Bennett: Which I did.

And later:

Mr Bulford: Let us go back to the meeting itself, I meant to ask you this. You were describing Chris McArdle's address to the meeting as extremely aggressive. Was there, at some point in the meeting where he called for a medical report on Councillor Hall?

Clr Bennett: That wasn't the first thing he did.

Mr Bulford: What was your reaction to that?

Clr Bennett: I have a horrible feeling - well I was very taken aback, I remember that, because he didn't just do this, he leant over the table and basically roared it in my face. ...

Earlier in our interview we had asked Clr Bennett how the meeting was run in the early stages:

Mr Bulford: Her own solicitor, Chris McArdle, was present?

Clr Bennett: Oh yes.

Mr Bulford: I understand that quite early in that meeting he virtually took over and ran the meeting?

Clr Bennett: Well I wouldn't say he took over and ran the meeting but he was immensely aggressive and rude. I was attempting to run it in a professional and dispassionate way and he was attempting to provoke me, there was no doubt about that at all. He wished to make me behave in an unprofessional and unacceptable way and he was quite immensely rude.

The General Manager's evidence to us as to what took place during the meeting of 10 November 1999 was extensive, and she jogged her memory from extensive notes that she had prepared for herself at the time of or shortly after that meeting. Her evidence corroborates that of Clr Bennett as to what was said during the meeting. The General Manager told us that Clr Bennett had formally opened the meeting as a sub-committee meeting and had apologised for the absence of Clr Little. If that was so, then we wonder how the meeting could have continued, in the absence of a quorum. We understand that Mr McArdle made this point himself to the meeting. Apparently Clr Bennett sought to argue that the meeting could formally proceed, despite the absence of Clr Little, but this was not accepted by Mr McArdle. The meeting was allowed to continue unofficially, as it were, however.

The General Manager told us that whilst Clr Bennett was somewhat confrontational at the commencement of the session:

> I actually think by halfway through, even the first section about the Mayor wanting to get into the security room, to me they looked embarrassed.

The General Manager added that by the end of the session Clr Bennett was becoming quite conciliatory.

In her written submissions, replying to an extract of this section of our draft report as supplied to her, Clr Bennett objected to the evidence which portrayed her as being "confrontational" at the meeting. As is clear from the evidence noted above, Ms Bignell's evidence to us indicated no more than that she was "confrontational" at the beginning of the meeting only. We take this evidence as first establishing that in the mind of the other key player at the meeting Clr Bennett's behaviour was perceived to be "confrontational".

However, we also accept, despite Clr Bennett's remonstrations to the contrary, that, based on other probative evidence before us noted in this report, it is more likely than not that Clr Bennett was acting in a way that was reasonably likely to be perceived the way it was. We have her own admission, quoted earlier in this section of our report from her written submissions, that "with the best will in the world", given the passage of time since those events, she could not herself remember the details, and her submissions were seemingly simply based on her latter day postulations as to how she thought she would/should have acted. We also have her own evidence as to the impact that the revelations made to her by the General Manager at the

meeting had on her – she said she was "flabbergasted"- and her own evidence (noted at section 4.4.3 of this report) as to how her relationship with the General Manager evolved and her agreeing that she was "standoffish" with the General Manager in the early days – ie until about this time (remember that this meeting took place in the week Clr Bennett was Acting Mayor, as Clr Hall had stood aside). It seems quite clear that the wind was somewhat taken out of her sails as the meeting progressed.

Clr Bennett's submissions went further however, as she felt her evidence as to her conduct at the meeting was being unreasonably and improperly rejected and that of the General Manager accepted or preferred. She sought to attack the credibility of the General Manager as a witness generally, drawing our attention to various passages of the judgement of Commissioner Patterson in the Parry and Liverpool Council case, arising out of matters which took place at that Council when Ms Bignell worked there. She put it to us that:

> In the circumstances to continue to rely on the testimony of one who has been found to have previously lied in legal proceedings and fabricated evidence would indicate a substantial degree of bias on your part. It would also indicate that the providing of an opportunity for those adversely named to respond is not an opportunity genuinely given but an attempt to give the findings of the Inquiry the appearance of impartiality through a token adherence to the procedures of natural justice.

Frankly, we are surprised at such comments from Clr Bennett and found them to be out of character and inconsistent with our general impression of the Councillor as a witness before us, which was generally that she was a truthful and reliable and co-operative witness before our Investigation. She was quite frank with us on many occasions, such as when she admitted to being bad with dates or not being able to remember details. Her evidence in relation to why and how the documents came to be destroyed at Council's meeting of 30 November 1999 was the one "blip" in this, and it is possible that many of Clr Bennett's comments in her written submissions to us in relation to the extract (only) given to her in respect of our draft report may have been made in ignorance of the vast bulk of material, findings and presentation in the balance of the draft report, which she had not then seen (as it contained no comment or conclusion considered to be adverse to her personally).

Furthermore, we have already (see section 2.6 of this report) indicated our approach and conclusions in respect of such a line of argument assiduously put to us at an early stage in our Investigation by Clr Hall and his legal adviser.

We must also stress that we have read in full the judgement of the Industrial Relations Commission in the Liverpool Council case to which Clr Hall, through his legal adviser, and later also Clr Bennett, sought to draw our attention. Clr Bennett"s assertions that Ms Bignell was found by that Tribunal to have "lied" and "fabricated evidence" are not supported by that judgement. Whilst there is a reference in the judgement to the view of the Commissioner in that case that he considered some of the evidence to have been fabricated, no direct connection is made to any particular person as being responsible in that regard.

We also reject totally Clr Bennett's gratuitous suggestion of tokenism on our part in affording her natural justice in relation to the matters in this section of our report. It does little for her credibility in her submissions to us.

The General Manager said that her legal adviser put it to the meeting:

> Mr McArdle said, "What else," so the Deputy Mayor said, "Nothing." Mr McArdle said, "What, these are the two issues and both have been complied with. You brought me all the way for this?" The Deputy Mayor went on to say that we now had a reform Council and there may be some resistance by staff to that and that we should talk more about some of things to ensure everyone understood what was required. Mr McArdle said, "What you want to do is to sack the General Manager, let's be honest." He actually told me he was going to raise that at the meeting because that's really the crux of it. "This is a show because what you really want to do is get rid of the General Manager." I said at that stage, "I think this is a witch hunt." The Deputy Mayor said, "No, we do not want to get rid of the General Manager," so Mr McArdle said, "Could you repeat that." He wanted it in the Minutes as well …

The General Manager also told us that she was invited at that stage by one of the Blake Dawson Waldron lawyers present as to whether she wished to say something, and she told us she said to the meeting:

> Yes I do. Firstly I want to say that there seems to be some view that the staff and I are against the new Council. That's not correct. We have given full commitment to working with the new Council and I support the policies that the Council wishes to bring in and will ensure that they are implemented. For the first time we've got a majority on the Council so from a General Manager's point of view it means that we'll be able to get some decisions made, which wasn't always the case with previous Councils because you had 10 individuals. What the problem is is the behaviour of the Mayor. We are aware of the Mayor's behaviour towards staff but I have not yet spoken about the treatment by the Mayor of the General Manager. For the past 6 weeks since the Mayoral election it's been in your face, shouting, threatening and abuse of the General Manager. … I'm not being able to be a General Manager, I'm a counsellor to the staff who are ongoing in coming to see me because they've been abused by the Mayor. My office is like the Ku-ring-gai Counselling service and this issue must be resolved.

The General Manager went on to tell us that at that stage Clr Bennett told her that these were issues that could be taken to the inquiry that Council was looking at having.

The General Manager in her written submissions to our Investigation told us that the next morning after this meeting of 10 November Clr Bennett came into her office and told her that there would be no more witch hunts.

When questioned on this aspect, Clr Bennett conceded she may have made this comment to the General Manager at sometime but that, if made, such a comment would have related to other issues, not just those discussed at the meeting of 10 November 1999. She said:

> …there were many many witch hunts. I wouldn't necessarily read it in the context of that particular thing, although it may very well have been said with reference to that.

We also asked Clr Bennett for information as to how she reported back to the Council, which she did at its meeting of 30 November 1999 – again, as with the

meeting of 2 November, this part of the meeting was closed to the public and the General Manager was asked to wait outside:

Mr Bulford: You started to tell us - we moved forward through to 30 November when you did your report to Council on your meeting with Blake Dawson Waldron & Co. Was Councillor Hall present when that report was being delivered?

Clr Bennett: Yes he was.

Mr Bulford: What was his response?

Clr Bennett: It was very subdued. I had expected a more hostile response.

Mr Bulford: Subdued in terms of saying nothing or did he sort of agree that he had been misleading and - - -

Clr Bennett: I didn't put it that way and I would not do so in a Council meeting. I simply stated with respect to the General Manager's assertions, for instance on the access thing, that she had granted access. I simply stated that was what she had said and in view of the fact that there was a conflict between what each party said the matter could be taken no further, but I expressed no opinion on - - -

Mr Bulford: You said the matter could be taken no further?

Clr Bennett: Yes, but I expressed no opinion on who was lying, nor would it have been appropriate for me to do so.

Clr Anderson gave evidence to us about what happened at the Council meeting of 30 November 1999:

Mr Bulford: After she left, the General Manager left, is it the case that the Deputy Mayor, Councillor Bennett, presented a report to the Council?

Clr Anderson: Correct, yes.

Mr Bulford: What was the gist of that report?

Clr Anderson: The gist of the report was that the investigation she'd had with Blake Dawson Waldron and had led to the conclusion that the General Manager had done no wrong, to quote the phrase.

Mr Bulford: Yes?

Clr Anderson: As such the General Manager took exception to anything being made public that inferred she had done wrong because this would be quite a slight on her career. Under the circumstances the discussions have to be completely and absolutely confidential at this meeting of Council. That the whole subject was closed off and withdrawn and that no advice of this was to be leaked outside. As we could be we had been advised that we could even be laying out sort of a writ from her lawyers if public knowledge of this meeting became available.

Mr Bulford: Who gave that advice?

Clr Anderson: Laura Bennett. I don't know who gave her the advice but it was her opinion.

Mr Bulford: She said to the Councillors, as part of the presentation, that "We the Council

could be sued"?

Clr Anderson: Yes, she said that Blake Dawson Waldron had recommended strongly to her that the Motion be handed to the General Manager at end of the meeting, killing the matter, full stop.

Mr Bulford: Did she table any documents during that meeting?

Clr Anderson: Yes, she - - -

Mr Bulford: Or did you get any papers before the meeting in relation to this issue?

Clr Anderson: No, she tabled some documents that were handed around and advised us it was the advice of Blake Dawson Waldron that those documents be destroyed.

In his written submissions replying to extracts of this part of our draft report Clr Little advised:

> While it is true the General Manager was cleared on preliminary findings and the Mayor would probably have liked a full investigation carried out, the Council in its deliberations had to take into account the personalities involved, the actual seriousness of the alleged misconduct and the cost to the community of continuing an investigation that was unlikely to yield anything of real substance. The Councillors had decided the Mayor had had his fair run. We could no longer afford these unproductive diversions. It was time to get on with the urgent business of the Council and deliver an acceptable Residential Development Strategy within the deadlines set by the Minister. That after all was our central election platform and what the community expected us to deliver on. The prospect of an inquiry into the conduct of the Mayor would hopefully act to curb his poor behaviour towards staff.

Whilst these after-the-event rationalisations and views are noted, we consider they need to be treated with some care and scepticism having regard to the evidence from other witnesses, and to the fact that these sentiments are not consistent with the evidence that the Councillor had given us when we interviewed him.

Clr Bennett has informed us that after this meeting had concluded she approached the General Manager outside the meeting and advised her that "these matters would be closed off and they would not be followed up any further." She also indicated that she had handed a copy of Council's resolution on the matter to the General Manager.

It is clear, therefore, that the Councillors did, in that closed session, pass a resolution. As to the recording of that resolution, or rather the failure to do so, see section 6.19.2 of this report.

It was put to us that, despite the decisions of Council to keep the matter confidential, which we will come to shortly, Clr Hall later sought to get it out in the open. The occasion for this was the tabling of minutes of the meeting of 30 November 1999 at Council's meeting of 2 December 1999.

We asked Clr Bennett for her recollections of this meeting. She informed us she was unable to recall the specific incident and explained:

Mr Bulford: It was put to me that several of the Councillors were outraged.

Clr Bennett: It is the sort of thing that Councillor Hall does. I don't honestly remember. There are so many different things.

Mr Bulford: You cannot recall that you were one of the Councillors who were outraged?

Clr Bennett: I could very well have been so. That was a fairly full meeting from my point of view. It was a meeting at which I had to ask for leave of absence, I had to ensure that there was someone who was Acting, who was responsible whilst I was away. They were the things that I was focussed on in that meeting and unfortunately these sorts of dramas are not infrequent when Councillor Hall is around and, unless you have an elephant's memory, to recall the details of every one of them is close to impossible. Moreover to recall the number of times you protested about things -

We listened to the tapes of the meeting of 2 December 1999 ourselves. They certainly disclose that there was an attempt by Clr Hall to read out the resolutions, and this is considered elsewhere in this report, but it could not be said, simply from listening to the tapes of the meetings, that there was consternation, or some such fairly strong phrase or expression, by the Councillors.

6.18.5 The destruction of Council records

As noted above, Council passed a resolution on 30 November 1999 comprising a number of parts or paragraphs. We actually have a copy of both a typed and handwritten version of the full set of resolutions, comprising some 5 numbered paragraphs or resolutions. The handwriting is Clr Bennett's. These have somehow survived the destruction of other records. The first resolution was:

> That all copies of correspondence from Blake Dawson Waldron concerning the meeting of the sub-committee with the General Manager be destroyed immediately.

At one stage in our interview with Clr Bennett she told us, in sworn testimony, that:

> All documents were destroyed on the advice of our lawyers.

Frankly, we were surprised and somewhat sceptical at this information, so later we again asked Clr Bennett about the matter, and again her sworn response was:

Mr Bulford: Now, that resolution, we understand, comprised a number of numbered paragraphs?

Clr Bennett: Yes it did.

Mr Bulford: The first of which concerned the destruction of correspondence?

Clr Bennett: That's right, that was on the advice of our lawyers.

Mr Bulford: I was Blake Dawson Waldron who advised that you should destroy the correspondence was it?

Clr Bennett: Yes.

Mr Bulford: You are quite clear on that?

Clr Bennett: Yes, they were emphatic.

We sought Clr Little's evidence as to this aspect. He was unable to recall anything being circulated in writing to the Councillors. However he did advise us that Clr Bennett reported that the solicitor's findings were that the General Manager was cleared. Clr Little had some recollection of the documents being destroyed on the advice of the solicitors, but when pressed on this particular issue, he stated:

> I believe - look, I can't be certain as to - I had that impression, I had the impression that that was the case but I can't be certain as to how I got that impression but that's the impression I had.

The General Manager told us:

> What happened was the Councillors came out of that meeting on 30 November waving the report. I didn't really know what it was. The Mayor had actually broken the shredder because he puts too many papers in it and stuffs it up and they were saying, "Rhonda where's the shredder," and I said, "We haven't got a shredder." I didn't really know what it was. I mean I was really stupid, I should have said, "Give it to me."

We also asked Clr Bennett for information about how and what records were destroyed:

Mr Bulford: Where was this material destroyed, was it physically torn up in the Council Chamber?

Clr Bennett: I wasn't in charge of the destroying and I don't remember which Councillor did it.

Mr Bulford: Did you not give any thought to the fact that the destruction of Council records was something that was a bit odd?

Clr Bennett: Well Council records in what sense?

Mr Bulford: You simply accepted at face value Blake Dawson Waldron's advice that the material should be destroyed?

Clr Bennett: I'm not an expert on legal privilege, so I took their advice.

Mr Bulford: What documents were destroyed? Did they include the legal advice itself from Blake Dawson Waldron?

Clr Bennett: Yes, that's right, they did.

Mr Bulford: What other documents?

Clr Bennett: I can't remember if there was anything else that was destroyed.

Mr Bulford: What else was in the legal advice, other than the advice to destroy?

Clr Bennett: Isn't that privileged?

Mr Bulford: Not for me it isn't.

Clr Bennett: I can't recall.

It was at this stage of our questioning of Clr Bennett that we felt she became particularly evasive and non-co-operative with us.

We asked Clr Anderson for his recollection as to what documents were destroyed. He informed us that according to his memory, there "was only a couple of pages" but more than two pages. He was able to recall that some of those documents were from Blake Dawson Waldron.

Mr Bulford: So what were the pages - were they notes, a written report from Councillor Bennett, what was it?

Clr Anderson: No, it was from Blake Dawson Waldron, whatever we had was from Blake Dawson Waldron, I remember that. I don't think there was a covering letter from Councillor Bennett.

Clr Coleman was able to recall documents being handed out by Clr Bennett on this occasion for Councillors' perusal. He could not recall the specific details of the advice but confirmed that there had been a legal opinion from Blake Dawson Waldron. When questioned specifically about the destruction of documents, he stated:

Mr Bulford: Why were the documents destroyed?

Clr Coleman: That was at the request of Councillor Bennett.

Mr Bulford: Did she say anything to you that that request was - as to why she made that request?

Clr Coleman: Well she didn't want the information to be there on record in the Council.

Mr Bulford: Did she say anything to you that the reason why she wanted the documents destroyed was that the legal advice from Blake Dawson Waldron was that they should be destroyed?

Clr Coleman: I recall that's probably the case. I don't - that's not clear in my mind, but - -

Mr Bulford: But you think that's probably what she said?

Clr Coleman: That's possibly (indistinct).

Mr Bulford: And did you hand back your copies of the papers?

Clr Coleman: I did.

Mr Bulford: Who collected them?

Clr Coleman: I think I passed mine to Councillor Bennett, she was sitting on my left and I passed them along to her.

Mr Bulford: Right. Who destroyed the papers? Were they destroyed in the Council Chamber or were they taken away?

Clr Coleman: No, they were destroyed there in the Chamber.

Mr Bulford: How were they destroyed?

Clr Coleman: Just by physical tearing of the paper.

Mr Bulford: And what happened to the bits?

Clr Coleman: They were taken away by Laura Bennett.

Clr Little was able to recall the incident where documents were collected from Councillors at the end of the meeting and those documents being destroyed, but was unable to recall exactly when these events occurred. Asked to explain his lack of recollection on this relatively significant incident, he explained:

> The timing occurred right at - what is it, the 30th of November, when we had a - I had a large environment report to go through which I was chair of and we had the residential strategy, the studies were coming to a head. We had to work out who was going to be the co-ordinators for these residential studies to actually generate a residential strategy. I mean there was a tremendous workload on us at that time and I can tell you this was a minor issue to me personally. It's something that, you know, in another time certainly we might have looked at it more seriously but at that time the priority - number one priority was the residential strategy. I have to say that's number one and I got fed up of getting side tracked on other issues.

This was Clr Anderson's evidence as to how the documents were destroyed:

Mr Bulford: So the papers were all collected up by Councillors Roach and - - -?

Clr Anderson: Hall. Councillor Roach mentioned to me at the time, afterwards, because he pointed out to the Mayor, he'd shoved some papers under the thing and he said, "Hey, what are you doing up there. What papers have you put under there. Have you got a copy of this. You are handing is one copy, have you kept another copy," and the Mayor denied it and Roach said to me straight after the meeting, "He definitely's got another copy that he shoved under there," because he'd been watching him.

Mr Bulford: So you suspect that Councillor Hall still has a copy?

Clr Anderson: I strongly suspect that.

Mr Bulford: As far as you know neither you, nor any of your fellow Councillors have copies?

Clr Anderson: No.

Mr Bulford: How were they destroyed?

Clr Anderson: Literally torn up by Roach and Cross, into lots and lots and lots of little bits.

Clr Roach's evidence to us on these issues was:

Mr Bulford: So she handed out - she presented a report, she handed out the report to the Councillors?

Clr Roach: Yes. Yes.

Mr Bulford: And there was also a legal opinion?

Clr Roach: Yes.

Mr Bulford: Can you remember the name of the law firm that gave the legal opinion?

Clr Roach: No I can't.

Mr Bulford: Was it Blake Dawson Waldron?

Clr Roach: That sounds familiar, yes.

Mr Bulford: Right. Were there any other papers?

Clr Roach: Yes there was. There was some other papers associated with this, and what happened was - - -

Mr Bulford: Can you remember what those papers were?

Clr Roach: There were - I think it was - there was a copy - there were two copies of a document … And the legal opinion was that we were to have them all destroyed, and - - -

Mr Bulford: Okay, well let's just focus on the legal opinion?

Clr Roach: Yes.

Mr Bulford: How many pages did that legal opinion comprise?

Clr Roach: Gee, I'm not sure now.

Mr Bulford: Was it a long document or was it just a short document?

Clr Roach: Look I couldn't - I couldn't really - - -

Mr Bulford: All right. Did you get a chance to read that opinion? How much time did you have to look at the papers that were handed to you?

Clr Roach: Well, from memory she read it out - I'm not too sure whether - I don't even recall reading mine. I think I may have just been listening to what she had to say, so - - -

Mr Bulford: Was - the advice in the opinion, I understand, covered the need to destroy papers?

Clr Roach: Yes.

Mr Bulford: But was that the only matter on which the legal advice covered, or did it talk about other issues?

Clr Roach: It talked about other issues. It talked about - - -

Mr Bulford: Can you remember what those issues were?

Clr Roach: Well it talked about the fact that we have certain responsibilities, I think, and that we had a legal liability and a problem in the way it was conducted, the whole thing was conducted.

Mr Bulford: Are you able to give us more information as to what they said was your legal liability and what they said was the problem?

Clr Roach: Well from memory I think the basic problem was that the whole exercise had been done in an improper fashion and that we had a liability if - and that was the legal opinion, and the reason why it had to be destroyed was for that

very reason. That was my understanding.

Mr Bulford: And did that legal opinion include advice that the legal opinion needed to be destroyed?

Clr Roach: Yes.

Mr Bulford: Did you not think that odd?

Clr Roach: Well, all I can do as a Councillor is take the advice of legal opinion that the Council gets, and if the Council legal opinion says that the legal advice should be destroyed, it should be. It was concerning the General Manager, so it wasn't something that we could sort of say, "Well, look, get the General Manager to put in a file in the Council". …

Mr Bulford: In the things that happened at this meeting did Councillor Little play any role or say anything?

Clr Roach: I can't recall him saying very much. In fact I think that what happened was that Councillor Little, for one reason or another, tended to take a bit of a back seat. And I think it was mainly Councillor Bennett and Councillor Hall.

Clr Roach then continued on to describe how the documents were subsequently destroyed and torn up into little pieces. In his personal comments on the final draft of this report, Clr Roach sought to dispute the evidence as to which Councillors were involved in the destruction of the papers and denied that he was involved.

Clr Hall's recollection of events was quite different from that of all the other Councillors, whose evidence we have noted above. For example, and crucially, he said:

Mr Bulford: So, what documents were collected from all the other Councillors?

Clr Hall: None. They didn't have any.

Mr Bulford: Are you sure about that?

Clr Hall: Absolutely sure. I was the only one who had any documents. Those two pieces of paper. One was about 12 pages and the other one was a single fax report.

Mr Bulford: Because a number of other Councillors have said to us that documents were collected from them?

Clr Hall: Not true. Well, they didn't have anything, sir.

We are unable to accept Clr Hall's evidence as providing an accurate description of what took place.

Our questioning of Clr Hall continued:

Mr Bulford: So, Councillor Bennett did not hand anything out at the meeting?

Clr Hall: No, sir.

Mr Bulford: To the Council?

Clr Hall: No, sir. She just read out that motion.

Mr Bulford: Presumably she therefore - she gave - did she give an oral report before she read out the motion?

Clr Hall: She - she read the motion, that's all she did. She read the motion.

Mr Bulford: So, how would the other Councillors have been in a position to vote on it when they - - -

Clr Hall: Sir, we have a very I suppose inexperienced team of Councillors who placed enormous - enormous respect on the qualifications of Laura Bennett, as I did initially. Enormous respect. Whatever Laura Bennett said, they did.

In her written submissions commenting on an extract of this section of our draft report, Clr Bennett reiterated that she had acted upon the advice of Blake Dawson Waldron in seeking to have the papers destroyed. She said that in so destroying the papers the other Councillors "acted, in good faith, upon my advice". We do not doubt this for one moment, and we believe that nothing in the draft version of this report could reasonably be taken to have suggested otherwise. See, in particular the section below.

She went on to argue, however, that all that was destroyed were copies, and that the only version(s) of the Blake Dawson Waldron letter destroyed were copies, with the original of that letter supposedly still held by that firm. We find it hard to perceive how, if the letter was actually issued or released by that firm to its client, the Council, the original was still held by it, even if all that was sent to Council was a faxed version (as to which we have no evidence). In any event, the legal requirements, which we will address in the next section, apply equally to copies of letters to Council, those copies being the property of Council and not the individual Councillors to whom the copies may have been distributed.

Clr Bennett's submissions indicated that it was "standard procedure in Council to destroy copies of confidential documents including legal advice. Generally they are shredded after the relevant Council meeting". We have no problem with such a practice, as such. But, it is necessary for Council, through in this case its elected representatives, given that the General Manager and her staff were deliberately shut out of the exercise, to ensure that the destruction of documents does not occur in a way or in circumstances such that in the process the original is not destroyed. If the letter was faxed then what came out of the fax machine at Council's end was to all intents and purposes the "original", and all the indications are that this version, too, was destroyed.

Clr Bennett also put it to us that Clr Roach's version of events, as reported above, was not accurate, at least so far as his evidence which suggested that the Councillors acted out of "self-interest or due to threats" (Clr Bennett's words). However, Clr Bennett's views aside, we see no reason not to accept Clr Roach's evidence on the matter, and indeed the other evidence before us clearly establishes that the General Manager's solicitors had threatened litigation and that the Councillors were aware of this.

We note, lastly, for the sake of record, that Clr de Vulder was not present at this meeting. The minutes record that his apology due to ill health was accepted and noted.

6.18.6 The legal requirements on the creation and maintenance of records

Section 666 of the Local Government Act 1993 provides:

> (1) Any person who, without reasonable excuse, wilfully destroys any document belonging to a council is guilty of an offence.
>
> Maximum penalty: 20 penalty units.
>
> (2) Any person who, without lawful authority, destroys, defaces or alters a council record is guilty of an offence.
>
> Maximum penalty: 20 penalty units.

The State Records Act 1998, which applies equally to Council, also contains provisions requiring the protection and preservation of records. Section 21 of that Act is particularly relevant in that regard and it requires that a person must not dispose of certain records, again at the risk of incurring a fine or penalty. Like section 666 of the Local Government Act, it contains a similar provision permitting disposal or destruction of records with "reasonable cause". This is section 21 (5).

In our interview with Clr Bennett we specifically asked her if, in giving the advice she said they "emphatically" did to destroy the Council records concerned, Blake Dawson Waldron adverted to section 666. She replied:

> I don't remember any such reference. Council has relied in good faith on the legal advice they've been given.

We also asked Clr Bennett as to what, in terms of section 666, might be the excuse she or Council would put forward to justify the destruction of the records. She replied:

> There has been a history of leaks from this Council. The leaks are deliberately managed, they have a clear purpose. It is not in Council's interest, it is not in the interests of the Officers of Council to have this material leaked. It dealt with a confidential staff matter, there was an attempt to protect.

While we understand and accept Clr Bennett's bona fides in where she was coming from on this issue, in our view this is not a satisfactory response. There are other ways in which Council could have handled the matter, such as, for example, by wording the terms of its publicly recorded resolution, in such a way that confidential details were not given.

The clear evidence before us is that threats had been made by the General Manager and her legal adviser at the meeting of 10 November 1999 that publication of the allegations against the General Manager would result in the Councillors being sued.

The possibility or even likelihood of being sued is however, we believe, not sufficient reason for the purposes of section 666.

6.19 Service of section 431 notices for production of the destroyed documents

On 7 February 2000, at a time when we had no information as to what documents had in fact been destroyed pursuant to Council's resolution of 30 November 1999, we determined to take action pursuant to our statutory powers as Departmental Representatives under section 431 (1) of the Local Government Act 1993 to obtain access to copies of the destroyed documents. This section provides:

> For the purpose of exercising his or her functions, a Departmental representative may direct a person to do any one or more of the following:
>
> (a) to appear personally before the Departmental representative at a time and place specified in the direction,
>
> (b) to give evidence (including evidence on oath),
>
> (c) to produce to the Departmental Representative any document that is in that person's custody or under that person's control,
>
> (d) to grant to the Departmental Representative such authorities as may be necessary to enable the Departmental Representative to gain access to any document that is in the custody or under the control of any bank, building society, credit union or other person.

We accordingly issued a notice under section 431 (1) (c) to Blake Dawson Waldron on 7 February 2000 directing the relevant person at that firm to produce to us copies of all such correspondence in their custody as may have been destroyed pursuant to Council's resolution.

Contrary to what Clr Bennett appeared to assume in her written submissions in response to an extract of this section of our draft report, in issuing this notice we were not seeking to get at the original of the firm's advice which Clr Bennett had told us about in her interview with us. We made no assumption or admission that the original would be held by that firm, and it is considered it would not have been logical to have done so. Indeed, in issuing the notice we actually had, at that time, no idea as to what documents we were actually or specifically chasing.

The initial response of Blake Dawson Waldron was on 8 February 2000. They advised us that they believed that their correspondence to Council may be subject to legal professional privilege which could only be waived by Council, and that they were writing to Council to seek its instructions.

Our interview with Clr Bennett took place on 15 February 2000, at which time we had not heard anything further in relation to our section 431 notice, other than to learn that Council was apparently due to consider Blake Dawson Waldron's request for instructions the following Tuesday, 22 February 2000. We should also state that despite Clr Bennett's sworn evidence to us in her interview with us that the

documents were destroyed on the advice of Blake Dawson Waldron, we were initially surprised as the alleged advice appeared contrary to the requirements of section 666 of the Local Government Act 1993 and of the State Records Act.

In our interview with Clr Bennett we also enquired from her as to the likely outcome of that meeting. She informed us that she proposed to recommend to Council that it instruct Blake Dawson Waldron not to waive the privilege, that is to say not produce any documents to us.

As this was a matter of considerable concern to us, given the central role or the part played by the Councillors in examining the allegations about the performance of the General Manager in the matters falling within the Terms of Reference of our Investigation, on 17 February 2000 we forwarded the following letter to the Councillors via our contact point with Council, Mr Darren Condon:

> Dear Mr Condon
>
> During the course of our Investigation, it has come to our attention that at a meeting of 30 November 1999 of the Council, in closed session, the matter of certain allegations concerning the General Manager were considered by the Councillors and that this led to a series of resolutions being passed. It is our further understanding that one of these resolutions was "that all copies of correspondence from Blake Dawson Waldron concerning the meeting of the sub-committee with the General Manager be destroyed immediately".
>
> We have received evidence that, pursuant to this resolution, a number of items of correspondence or other documents were in fact destroyed or torn up by Councillors in the Council Chamber.
>
> It has become clear to us during the course of our Investigation that the subject of the correspondence and documents and this part of the meeting related to matters falling within the Terms of Reference of our Investigation. We accordingly wrote to Blake Dawson Waldron on 7 February 2000 requiring, pursuant to Section 431 of the Local Government Act 1993, that the relevant person at that firm produce to us copies of all such correspondence that may be in the custody or control of that firm.
>
> Blake Dawson Waldron replied by letter of 8 February 2000 that their correspondence to the Council may be subject to legal professional privilege which can only be waived by the Council and that, accordingly, they did not propose to produce the correspondence referred to in our letter to them unless they receive written instructions from the Council to do so.
>
> It is our further understanding that Blake Dawson Waldron wrote, on or about 8 February 2000, to the Mayor and Deputy Mayor, about this and, we presume, to seek the Council's instructions in the matter.
>
> We have been advised that this issue is to be brought before Council's Legal Services Committee on Tuesday, 22 February 2000, but that the recommendation to that meeting may be to decline to give instructions to Blake Dawson Waldron to authorise the release of copies of the relevant correspondence and documents to us for the purposes of our Investigation.
>
> We have to advise that we view this with some considerable concern. Any refusal to facilitate the granting of access to us in respect of these documents for the purposes of the Investigation will, in our view, hinder the orderly conduct of the Investigation. In the circumstances, we further consider that it raises serious questions as to Council's motives on this matter.

We also note that Section 666 of the Local Government Act provides that any person who, without reasonable excuse, wilfully destroys any document belonging to a Council is guilty of an offence. A breach of the State Records Act 1998 may also be entailed.

Council has it in its power to pass the necessary resolution to authorise Blake Dawson Waldron to hand over copies of the relevant documents to us for the purposes of our Investigation. Any documents released to us for the purposes of the Investigation will, where they are and need to be maintained confidential, be treated accordingly.

We are prepared to exercise our statutory powers under Section 443 (1)(c) and (d) of the Local Government Act to compel Council to grant to Blake Dawson Waldron and ourselves such authorities as may be necessary to enable us, as Departmental Representatives, to gain access to these documents.

We request that you take immediate steps to circulate copies of this letter to all the Councillors.

On 22 February 2000 Council's Legal Services Committee passed the following resolution, which was communicated by letter to Blake Dawson Waldron the following day:

1. That in response to Mr Robert Bulford's request dated 17 February 2000 Council authorises without hesitation Blake Dawson Waldron to hand over to Mr Robert Bulford of the Department of Local Government a copy of Blake Dawson Waldron's correspondence to Council concerning the meeting of the sub committee referred to in his letter.
2. That Council advises Mr Robert Bulford that in Council's opinion the contents are of a personal/personnel nature and therefore of the highest confidentiality and this confidentiality needs to be maintained as in the terms of the third last paragraph of Mr Bulford's letter.

In her written submissions of 3 August 2000 responding to an extract of this section of our draft report, Clr Bennett was at pains to state:

In the discussion concerning Council's refusal to waive legal privilege over the relevant documents there is a clear implication that, in refusing to do so, Council acted on my recommendation. It was certainly my intention to offer such a recommendation when interviewed by you and I did state that. The interview itself, however, clearly raised issues about the role I had played in relation to the matter of raising the concerns of Council with the General Manager. In light of that I reconsidered my position and decided that, under the circumstances, it would be inappropriate for me to play any role in the matter. I absented myself from all discussion (and voting) within Council on the issue of releasing documents to the Inquiry and formally declared that I was doing so on the grounds that to participate could be perceived as involving a conflict of interest.

My abstention and declaration are clearly recorded in the relevant Council minutes. I wish to express my concern that you have ignored my formal declaration and abstention and effectively held me responsible. Since you quote the voting on the relevant item you could hardly fail to be aware of my absence or my declaration.

I also wish to state clearly, for the record, that I did not seek, at any time, to influence the voting of my colleagues on this matter. I have no doubt that they will confirm this.

My sworn testimony related only to my intentions at the time and they were not acted upon. In the circumstances I request that you omit those pages of the Report, which deal with my testimony and which, by implication, place the responsibility on me. They are misleading, inaccurate and unfair.

For the record, we note that until we received Clr Bennett's submissions we were not aware that she had apparently not carried out the intent she clearly signalled to us in our interview with her (see the next section of this report), and which was the sole reason why we chose to issue our letter to the Council following up that notice. We had not seen a copy of the minutes of Council's meeting of 22 February (nor for that matter those of the later meeting of 22 March 2000 – as to which see below) when we issued our draft report. The evidence as to the resolutions passed at both those meetings came to us via letters from Council's Director Finance & Corporate Services, Mr Darren Condon, our appointed liaison with Council. Mr Condon did not tell us about the voting pattern at the first meeting and certainly gave us no advice as to any alleged abstention by Clr Bennett from the relevant proceedings at Council's meeting of 22 February.

On receipt of Clr Bennett's submissions we called for advice from Mr Condon to confirm Clr Bennett's assertions, but such advice or other corroborative evidence was, despite our request and a later following up of that request, not provided to us. Nonetheless we accept Clr Bennett's advice on the matter, which we also note was later confirmed by Clr Anderson when he provided to us his comments in respect of the final draft of our report. We therefore accept and find that she played no part in the proceedings (and their outcome) of either 22 February or 22 March. That does not detract, however, from her role as to what occurred at Council's meeting of 30 November 1999, that meeting being the pivotal meeting which set in train the whole process of the destruction of records and our attempts to get at secondary evidence of the destroyed documents, outlined below.

This is not to say we hold Clr Bennett totally or even predominantly responsible. This is far from so. It is the Councillors as a whole who must accept the responsibility for having passed a resolution to destroy records, in breach of the legal requirements, and having passed a further resolution which in essence resulted in a failure to co-operate with and facilitate our Investigation getting at the truth of the matter.

Moreover, Clr Bennett's perceived lack of co-operation and frankness with us as to how it was that the documents came to be destroyed does not mean that we do not necessarily accept her evidence that she did in fact, in good faith, rely on advice from Blake Dawson Waldron on whether or not that destruction should take place. What we have simply sought to do throughout this whole unfortunate process of having to issue notices, relying on our formal statutory powers to do so under section 431 of the Act, was to obtain evidence which might corroborate what she told us in this regard. As will be noted in more detail below, the whole problem with her advice was that we had difficulty accepting that a firm of respected lawyers could have given such advice. Something just did not add up with what Clr Bennett was quite clearly saying to us.

Let us return to the narrative as to the steps taken by us to unravel the mystery.

In due course, on 29 February 2000, Blake Dawson Waldron wrote to us providing copies to us of two items of what they described as "confidential correspondence", adding:

> We accordingly enclose a copy of the Confidential Correspondence. We are instructed by Council that it is provided to you on the basis that it is treated by you with the utmost confidentiality. In the circumstances, and having regard to the nature of the Confidential Correspondence, we consider that you should not disclose the contents of the Confidential Correspondence in any way, except with the prior consent of the Council.

The two items were a document entitled "Outline of issues raised at the meeting between the sub-committee and the General Manager on 10 November 1999" and dated 28 November 1999 (which was marked "To be read in conjunction with letter from Blake Dawson Waldron dated 30 November 1999"), and a letter of the latter date addressed to Clr Hall as Mayor.

We do not propose to quote from this communication from lawyer to client. Suffice it to say that nowhere in this advice is there even a hint of any suggestion that documents should be destroyed. The advice was merely to take steps to ensure confidentiality to prevent possible threatened litigation at the hands of the General Manager and to *strongly recommend that no copies of the report or "outline" be made*.

Given the potential of a breach of the requirements of the State Records Act and section 666 of the Local Government Act, we endeavoured to unravel the conflict in evidence.

We examined a copy of the bill of costs from Blake Dawson Waldron rendered to Council for their work. We found that there appeared to be other written communications that had not been provided to us in response to our first section 431 notice. We decided to issue another.

Our second notice was dated 20 March and was issued again direct to Blake Dawson Waldron. On the same day, however, we also issued a section 431 notice to Clr Bennett on the same issue, specifically requiring the production to us of a letter from Blake Dawson Waldron to herself, identified in their bill of costs as such, dated 16 November 1999. We also took the opportunity to require the production to us of a copy of Blake Dawson Waldron's advice to Council of 7 February 2000, that is to say their letter to Council seeking Council's instructions in relation to our first section 431 notice.

Our second notice to Blake Dawson Waldron produced an interim response of 21 March as follows:

> We refer to your letter dated 20 March 2000.
>
> Under cover of our letter dated 29 February 2000 we provided you with the documents referred to in your letter of 7 February 2000. We understand this to be our letter to Council dated 30 November 1999 which attached an outline of the meeting of the sub-committee on 10 November 1999.
>
> You have asked why we did not produce to you certain other correspondence, namely:
>
> • Our facsimile to Councillor Hall dated 15 October 1999 setting out our proposal to act for the Council;

• Our letter to Councillor Bennett dated 16 November 1999 requesting that she call us to discuss the matter.

We did not provide the above documents to the Department because we did not consider that they came within the scope of your letter dated 7 February 2000.

We have reviewed our file and now provide the clarification you sought. We provided a letter of advice dated 2 November 1999 to the Mayor and Deputy Mayor. This was not our letter to Council dated 30 November 1999 which was attached to our outline of the meeting of the sub-committee on 10 November 1999. This document is not within your direction in the 20 March facsimile or the request in the 7 February letter. It is also a document over which the Council has a strong claim of client legal privilege and we have also referred to this in our letter to Council.

In our opinion, your direction does not displace a client's entitlement under the *Evidence Act* to maintain privilege over certain documents. As client privilege attaches for each document, we have requested Council's urgent written instructions regarding the production of these documents. We will provide the Department with these documents if the Council instructs us to do so.

Finally, we wish to make it quite clear that we have no choice other than to refer each of these matters to Council for instructions and that it could be a breach of our professional duty not to do so.

On 22 March 2000 we issued further notices both to Clr Bennett and to Clr Hall under section 431. This time we also required the production to us of a copy of the 2 November 1999 letter to them from Blake Dawson Waldron. At the same time we issued a section 431 notice direct to Council for the production of this document. Our notice to Council, marked for the attention of Mr Condon, provided:

You will be aware that we have been endeavouring to obtain copies of a number of documents which we understand were destroyed at a meeting of Council on 30 November 1999 and which related, so we understand, to Council's examination of certain allegations in relation to the General Manager, Ms Rhonda Bignell, pursuant to the earlier resolution of 2 November 1999 of Council's Staff Committee. We have reason to believe that these documents relate to matters which fall within the Terms of Reference of our Investigation.

It has now come to our attention, through Blake Dawson Waldron, that they issued on 2 November 1999 a letter of advice to Clr Hall as Mayor and Clr Bennett as Deputy Mayor. Whilst we do not accept that this is so, we have been advised by that firm that this letter does not fall within the description of the documents sought by us in previous notices issued to that firm pursuant to section 431 of the Local Government Act 1993.

Without prejudice, and for more abundant precaution, therefore, we hereby request and direct Council to provide to us within seven (7) days of the date of this letter a copy of that letter of 2 November 1999. We are today sending similar notices under section 431 to Clr Bennett and Clr Hall in respect of that document. Copies of those notices are provided to you herewith.

We note your advice today that Council will be meeting next Tuesday, 28 March 2000 to deal with a request for instructions from Blake Dawson Waldron in relation to our section 431 notice of 20 March to them. Would you kindly ensure that this letter is brought to the attention of the Council at the same time. …

Also on 22 March 2000 we again wrote to Blake Dawson Waldron. In that letter we stated, amongst other things:

> However, you will be aware that the destruction of records of Council, as correspondence to and from your firm and Council would be, may amount to a breach of section 666 of the Local Government Act 1993 and/or of the State Records Act 1998. In those circumstances, it is our view that any claim for privilege, if it was the case that your firm advised Council in that letter to undertake steps which might amount to such an offence, would not be available.
>
> Should you propose to advise your client in relation to the notices issued today to claim privilege, we seek your written assurances that the letter of 2 November 1999, and no other written communication to the Council, did not contain any advice in or to the effect that Council should take steps to destroy the sorts of records referred to above.

As will be noted from the above-quoted letter, all we sought from that firm was simple response to our request to be assured, not so much as to what advice the firm did give, which we accept, if it did not entail advice to do an act which was in breach of the law, would be subject to legal professional privilege, and therefore not producable to us pursuant to any section 431 notice, but that they had not in fact advised Council to destroy records. We are of the firm view that this simple request would not entail any breach of that firm's duties of maintaining their client's privilege or confidentiality of solicitor client advice. Their letter of reply, dated 24 March 2000, disagreed with this last statement and contained the following assertion:

> … we categorically reject any assertion of wrong-doing by this firm.

However, we do not consider that either this statement or the rest of the letter clearly gave us any assurance as we had sought. In fact, Blake Dawson Waldron expressly declined to give us that assurance.

We should also add that Blake Dawson Waldron was provided with extracts of the final draft of this report and sought to comment on it, in particular noting:

> We strongly refute inferences and comments in the draft report that our firm has in any way sought to inhibit or not co-operate with the Department's investigation.

The last thing to be noted is that in our interview with Clr Hall he told us the following:

> Mr Bulford: Did Councillor Bennett at any stage in that meeting also add that it was on the advice of Blake Dawson Waldron that the documents should be destroyed?
>
> Clr Hall: Look, I can't say that and as a matter of fact I did - she may have said that because what I did the next day - I'm pretty sure it was the next day - I rang Jan Dransfield and I said, "Did you - did you recommend to Laura at that meeting on the 10th that all the records be destroyed?", and she gave me an unequivocal "No". And I said, "Well, put it in writing". And so she sent me a fax - now it might have been on the day of the 30th or the following day.
>
> Mr Bulford: Do you have a copy of that fax you can provide?
>
> Clr Hall: No, sir. No, I haven't.

Clr Hall, moreover, started to give us evidence about another phone call and fax to Ms Dransfield that had taken place on 29 October 1999, when he had called for a report on what happened at the meeting of 10 November which he had attended.

Clr Hall then proceeded to correct his earlier evidence to say that while he had made the phone call and while it was to the effect set out above, there had been no fax sent to him following that call.

In view of the fact that he could not produce to us a copy of the fax he was referring to, we are unable to verify the accuracy of what he told us. We make no finding accordingly on it.

Through his legal adviser Clr Hall responded to our section 431 notice to him advising that he no longer had a copy, and indicating that it had been taken from him at a Council meeting. Clr Bennett, likewise, advised that she no longer had copies of the documents we sought from her, stating:

> I do not keep copies of such documents beyond the time necessary for there (sic) use as there is an unacceptable risk that they might be inappropriately sighted by third parties.

Ultimately we got copies of the 15 October and 16 November 1999 communications. They proved to be nothing other than of a preliminary or procedural nature. The former was a letter to Clr Hall ostensibly relating to the Garpac matter proper, as set out in his Mayoral Minute of 5 October 1999, but adding:

> It appears from our discussion with you that other legal issues are likely to arise as a result of the inquiry. A team of lawyers with appropriate experience can be involved as required to deal with all aspects of the matter.
>
> If you wish to appoint us to advise you in relation to the inquiry, it will be necessary as a preliminary matter to establish who will be giving us instructions in relation to the inquiry and any subsequent matters.

The 16 November letter was simply a “two liner” asking Clr Bennett to call the firm to discuss the matter.

In the result, despite our efforts to do so, we were unable to find any evidence which might corroborate Clr Bennett’s sworn testimony to us that the destruction of the records took place on the advice of Blake Dawson Waldron, and we are left with no choice but to not accept or at least question Clr Bennett’s testimony on this matter.

6.19.1 Council’s limited co-operation in response to the section 431 notices

In our interview with Clr Bennett, which took place on 15 February 2000, 7 days before Council first considered the first request from Blake Dawson Waldron for instructions as to how they were to respond to the section 431 notice we issued to them on 7 February, we asked Clr Bennett whether she was aware we had issued that notice:

> Mr Bulford: Are you aware that I have issued an Order under the Act to Blake Dawson Waldron to produce a copy of that correspondence?
>
> Clr Bennett: Yes, I have correspondence from them relating to that and they have advised me that it is legally privileged.

Mr Bulford: But that the Council can, if it so chooses, waive that privilege?

Clr Bennett: That's right, and the matter will go to Council.

Mr Bulford: Tonight?

Clr Bennett: No, next week, there's no suitable Committee meeting tonight.

Mr Bulford: Right, when you say go to Council, what is going to - - -?

Clr Bennett: The advice will go to Council.

Mr Bulford: Are you proposing to put a position in terms of co-operating with the Investigation in allowing this material to be handed to us?

Clr Bennett: I'm proposing to recommend that the advice of the lawyers be adhered to.

Mr Bulford: Which is?

Clr Bennett: That legal privilege be maintained.

Mr Bulford: I see, and if I say to you that I am quite prepared to exercise my statutory powers to compel the Council to say to Blake Dawson Waldron, "You are authorised to hand your copies of this destroyed correspondence to Robert Bulford and Gary Bevan," what would you say?

Clr Bennett: I'd say that's a matter for you.

Mr Bulford: Would that not cause you to change your line and to facilitate a co-operation, if I can put it that way, with the Investigation without me having to resort to bringing in the big guns?

Clr Bennett: No, it wouldn't.

Mr Bulford: Why is that?

Clr Bennett: Well there are a number of reasons. I'm not prepared to go into them but I did amongst other things give the General Manager an undertaking at one point that these issues would be dealt with in confidence and kept as much out of the public venue as possible.

Mr Bulford: Are they not very much part of the whole issue as to what this Investigation is about?

Clr Bennett: I don't really think they can - it's a question of how this information can be used in public.

Mr Bulford: You are aware that the second paragraph of the Terms of Reference require us to examine allegations that the Mayor has raised in relation to the conduct of the General Manager?

Clr Bennett: I'm aware of that.

Mr Bulford: Councillor Hall through his lawyer has put to us a number of issues concerning her conduct and it is my view that the documents that we are seeking to get access to relate directly to issues of that nature. The whole thrust - that is why I have spent so much time today talking about these two meetings, the Council meetings and the meeting in between, in terms of the allegations of the Mayor that the General Manager has not discharged her duties properly.

Clr Bennett: I'm sorry, but you have one objective as an investigator, I have another set of interests to look to.

After taking advice on the matter we determined to send the letter on 17 February 2000, quoted above, to be distributed to all the Councillors in time for the forthcoming meeting to discuss our section 431 notice. Further correspondence and notices under section 431 are reported in the previous section of this report as well, including in particular our letter of 22 March 2000 to Council, via Mr Condon.

Somehow the fact of this letter having been issued got to the attention of the press. The North Shore Times of 24 March 2000 contained the following editorial:

Council must co-operate

What is Ku-ring-gai Council playing at?

Our report on Page 3 shows some strange decision making going on.

Documents required by Local Government Department investigators were allegedly ripped up some weeks ago. Now council is delaying handing over copies of these documents, while it receives legal advice on whether they contain defamatory material.

This is the body which must rule on council's fate and hindering the investigation is hardly going to engender sympathy.

And how, pray, do the councillors expect a proper investigation to be carried out without all the necessary documents?

Council asked the Local Government Department to launch the investigation. It must co-operate completely.

On 30 March 2000 we were advised by Darren Condon that Council had considered this matter at a closed meeting held on 29 March 2000 and resolved:

A. That Council agrees to the supply to Mr Robert Bulford of the Department of Local Government on a confidential basis with copies of the facsimile dated 15/10/99 to Councillor Hall, and the letter to Councillor Bennett of 16/11/99 as requested by Mr Bulford in his letter to Blake Dawson & Waldron dated 20/3/00. Council did not specifically authorise their release previously as they were considered minor and not relevant to the Department's earlier request.

B. That Council, having taken legal advice, does not authorise Blake Dawson Waldron to produce the confidential advice of November 2 containing legal analysis, so as not to risk waiving client legal professional privilege over the document.

C. That Council, having requested the 430 Investigation in the first place, is fully desirous of cooperating with Mr Bulford, and regrets its inability to assist in this item.

This was moved by Clr Anderson, seconded by Clr Cross and carried with 5 votes for and 1 against. As noted above, we accept Clr Bennett's advice that she took no part in the debate and voting on this.

The terms of the resolution are all very well, but in our view are not a satisfactory response. If Council were, through its elected Councillors, truly desirous of co-operation with us as Departmental Representatives in our Investigation then that co-operation should have been full and complete.

The final sentence of paragraph A of the resolution is also a lame response. Relevance to the terms of our section 431 notices and relevance to the Terms of Reference of our Investigation are clearly matters for us, as the Departmental Representatives conducting this Investigation, to determine.

We are left with the only reasonable position being that there is a strong inference that Council somehow had something to hide.

6.19.2 Council's minuting of matters dealt with in closed meetings

We have listened to the tapes of Council's meeting of 7 December 1999. An item on the agenda was the confirmation of the minutes of the Staff Committee meeting of 2 December 1999. The accuracy of those minutes, in dealing with what the General Manager maintained were confidential staff or personnel matters, was the subject of some strong debate and disagreement. On each of the subject items resolutions were passed.

Clr Hall maintained that the resolutions passed needed to be minuted. The General Manager had warned that this would entail a breach of the Act. Clr Hall stated that he had advice to the contrary and ruled from the Chair that a motion from Clr Malicki on the matter was out of order. That ruling was the subject of a motion of dissent, ultimately carried, with two votes against. The debate before the vote had been quite heated, with the General Manager seeking to point out what had been the practice in the past on such matters.

The same issues arose when Council came to consider the minutes of the meeting of its Staff Committee of 30 November 1999 also on 7 December 1999. This former meeting was the meeting at which the report of Council's Sub-Committee reviewing the allegations as to the performance of the General Manager had been considered (an issue dealt with extensively at section 6.18 of this report).

In both cases, the outcome was that the resolutions that were passed were suppressed from the public by being omitted from and not included in the minutes of the meeting in question.

We recognise that all concerned may well have been acting with the best of motives. So far as concerns the minutes of the meeting of 30 November 1999 we note that the advice of Council's solicitors was to maintain the strictest confidentiality.

Clause 39 of the Local Government (Meetings) Regulation 1999 provides:

> (1) Each committee of a council must ensure that full and accurate minutes of the proceedings of its meetings are kept. In particular, a committee must ensure that the following matters are recorded in the committee's minutes:

(a) details of each motion moved at a meeting and of any amendments moved to it,
(b) the names of the mover and seconder of the motion or amendment,
(c) whether the motion or amendment is passed or lost.

Section 10A (2) (a) of the Local Government Act 1993 provides that a Council or Committee meeting may be closed to the public to discuss "personnel matters concerning *particular* individuals" (our emphasis).

Section 10B (1) (b) also provides that in closing a meeting to the public the Councillors must be satisfied that it is in the public interest to do so, but this *overriding public interest test* does not apply in relation to "a personnel matter concerning *particular* individuals" (our emphasis).

Section 12 (7) (a) of the Act provides that the other sub-sections of that section which make Council documents publicly available do not apply to a document which deals with "a personnel matter concerning *particular* individuals". The normal overriding public interest test does not apply here.

It is noted that the above sections do not override the minuting requirements in relation to resolutions passed in closed session. Further, Clause 42 (3) of the Regulation provides:

> If a committee of a council passes a resolution, or makes a recommendation, during a meeting, or part of a meeting, that is closed to the public, the chairperson must:
>
> (a) make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended, and
> (b) report the resolution or recommendation to the next meeting of the council.

The onus is on the Council to manage any concerns over sensitivities and confidentiality in ways that are consistent with its statutory responsibilities.

A number of options may be available to the Council including the phrasing or drafting of the terms of any resolution passed in closed session in such a way that confidential information is not disclosed.

Notwithstanding the above, there is an issue concerning the appropriateness of reviewing the General Manager's performance under a veil of secrecy. The whole thrust of local government law under the Local Government Act 1993 is transparency and accountability. The Act provides some flexibility and therefore it is not to say that the whole review process needs to be conducted under a glare of publicity and public scrutiny.

It must be noted that the General Manager, like others, is as much entitled to the protections of the laws of privacy and the requirements as to natural justice and so on, to ensure, for example, that scurrilous and potentially damaging and unfounded allegations are not unfairly and improperly aired. However, the public has a right to know that her performance has been duly reviewed, that she is performing, and that any prima facie or real case of a lack of such performance has been duly examined, and what the outcome is.

6.19.3 The disclosure in this report of the issues relating to the General Manager's performance

In section 6.19 of this report, above, we have quoted from the letter of 17 February 2000 that we sent to Mr Darren Condon, with a view to its being passed on to the Councillors, in which we stated:

> Council has it in its power to pass the necessary resolution to authorise Blake Dawson Waldron to hand over copies of the relevant documents to us for the purposes of our Investigation. Any documents released to us for the purposes of the Investigation will, where they are and need to be maintained confidential, be treated accordingly.

Apparently in reliance on that undertaking, an undertaking that it will be noted was qualified, Council and in turn Blake Dawson Waldron disclosed and provided to us copies of the legal advice of that firm to Council dated 28 and 30 November 1999 (but not other advice). In that regard, we note that Council's resolution of 22 February 2000 facilitating that disclosure provided in paragraph 2 thereof:

> That Council advises Mr Robert Bulford that in Council's opinion the contents are of a personal / personnel nature and therefore of the highest confidentiality and this confidentiality needs to be maintained as in the terms of the third last paragraph of Mr Bulford's letter. [Council's emphasis]

This resolution was duly communicated by Mr Condon to us in a letter of 23 February 2000. Likewise, when sending us the copies of the correspondence provided to us in accordance with Council's instructions, Blake Dawson Waldron stated:

> We are instructed by Council that it is provided to you on the basis that it is treated by you with the utmost confidentiality. In the circumstances, and having regard to the nature of the Confidential Correspondence, we consider that you should not disclose the contents of the Confidential Correspondence in any way, except with the prior consent of the Council.

It should be noted that we have not in fact disclosed the details of the advice given by Blake Dawson Waldron to Council in the advices disclosed to us, other than in the most general terms, namely only to state that the effect of Council's advice was that there was a need to maintain confidentiality. We do not consider that what we have disclosed breaches the admonition given by that firm to us.

However we have our statutory duties and responsibilities to fulfil under section 430 of the Local Government Act 1993 and in particular section 433 of that Act. As Departmental Representatives appointed under section 430 we must examine and report on issues falling within the Terms of Reference of our Investigation as set out in the terms of appointment.

Clause 17 of the Local Government (Meetings) Regulation 1999 provides:

> When a report of a Departmental representative has been presented to a meeting of a council in accordance with section 433 of the Act, the council must ensure that the report:

(a) is laid on the table at that meeting, and

(b) is subsequently available for the information of councillors and members of the public at all reasonable times.

We should also note that evidence as to the nature of the allegations against Ms Bignell and as to the conclusions reached in respect to them that may, coincidentally, be contained in the above mentioned advices and which is disclosed in this report in fact came to us from other sources and in circumstances where confidentiality was not demanded or promised.

We recognise that the advices are matters on which it is likely that claims for legal professional privilege may exist. We believe that we have proceeded in such a way that this privilege is duly maintained, consistent with our duties as Departmental Representatives under the Act.

Lastly, we consider that there is a need, in the public interest, as well as in this instance the General Manager, that what has happened to the General Manager in relation to the allegations against her and how those were handled by the Councillors, be disclosed.

For all these reasons, therefore, we firmly believe that we have kept faith and have acted properly and responsibly in this matter, and in a way that is consistent with our qualified undertaking, which was to maintain confidentiality where there was a need to do so.

6.20 The responsibility of the Councillors for managing the situation arising out of staff complaints about the conduct of Clr Hall

6.20.1 The legal framework

This is largely set out at section 3.1 of this report.

6.20.2 The progressive and growing awareness of Councillors about a problem

We have noted at section 5.6 of this report that Clr Anderson was one of the first Councillors to become aware of a problem in relation to Clr Hall's behaviour towards the staff.

We have already noted at section 4.6 of this report Clr Bennett's evidence to us that she had been shown copies of the complaints that the General Manager copied to the Mayor with her memo of 14 October 1999. This took place only a few days later apparently. However, it would seem that at that time she merely accepted the Mayor's word that the complaints were "trumped up".

Clr Bennett told us about her own gradual personal awareness of the true situation:

> It was a very gradual process because it's very difficult to convey exactly what it was like in those first few weeks. There was the difficulties with coming to terms with a very complex task, but there was also the very overt power struggle, or what appeared to be an overt power struggle, between the Mayor and the General Manager. There was also the fact that two at least out of the five Council Directors had behaved extraordinarily badly in the interviews with the Mayor that I attended and that, in fact, they initiated this bad behaviour, because he was, actually, on his best behaviour.

And agaIn:

> Mr Bulford: Yes, just a couple more questions, then we'll be finished. When were you first aware that there were concerns or complaints by staff about Councillor Hall's conduct?
>
> Clr Bennett: I'm not sure - are you asking me when I was first aware that there were formal complaints or when I was first aware that there was a problem?
>
> Mr Bulford: Either?
>
> Clr Bennett: Sometimes after the first couple of weeks I began to become aware that there was a problem. In the first couple of weeks Councillor Hall's behaviour was much more tightly controlled and particularly so when I was around. This became less the case as time continued.
>
> Mr Bulford: Right?
>
> Clr Bennett: I initially attempted to deal with this in an informal manner. I rang people from KPT, I rang people from the St Ives Progress Association who had been associated with the Mayor for many years. I rang his wife and I asked many people for help in dealing with Councillor Hall.
>
> Mr Bulford: What did Mrs Hall say?
>
> Clr Bennett: Well this was a particular occasion where Councillor Hall's behaviour had deteriorated even for Councillor Hall and he had simply - occasionally he goes into states where he's just unreachable. Even if you are part of the elect few and recipient of total charm, there will be occasions when he sinks into a morass, becomes extremely aggressive and even those who fall generally under the favoured few are subjected to the treatment that others are subjected to. That occurred to me and his behaviour to others. I remember it was the end of one week and I rang his wife up and I said, "Look, I just don't know what to do. He is totally unreachable, he is incredibly aggressive, I cannot talk to him, he's out of control," and she told me that he was at the doctors and that he had a slipped - some back problem, it may have been a slipped disc, and that he was on medication for that and that one of the side effects of that medication was that it made him very aggressive. She said she would go to the doctors and ensure that the medication was altered and when he came in on the Monday his behaviour was totally different. There was a radical change from Friday.
>
> Mr Bulford: Right, did that sort of behaviour or situation occur again?
>
> Clr Bennett: Not to the same extent. This was extreme. …

Clr Anderson also gave evidence of the gradual awareness that something was wrong:

Mr Bulford: Would it be true to say that, for most of you Trust members, the realisation as to the limits on the role of the Mayor and the true divisions of powers, if you like, between the Mayor and General Manager and the respective responsibilities was a gradual process that has increased over the months?

Clr Anderson: Oh yes, it increased over a period of about a month. It started after the Mayoral Minute which was when I started to realise where the boundaries were, particularly when the legal advice started to come back in from Abbott Tout, I think it was, and when the legal advice started to come back in that started to open the issue.

Mr Bulford: Right?

Clr Anderson: The rest dawned over a period of about 4 to 5 weeks.

Mr Bulford: When that progressively happened, for example for yourself, what steps did you take to, sort of, debate the issue and try to perhaps change Councillor Hall's viewpoint or was he unapproachable on these sorts of matters?

Clr Anderson: I suppose I discussed it first at length with Andrew Little, Councillor Little, mainly because he and I seemed to have a bit of a wavelength where we could talk, and the role of the Chief Executive Officer, as he saw it, became a bit blurred at that time. I did not raise it in that area with the Mayor. My problems in assessing the Mayor's attitude came more with the personal conduct. That was when I started to differ on the point of the powers.

Mr Bulford: Let's just move to this question of your relationship with the Mayor. When you first came to office would it be true to say that everything was cordial and you fully believed and accepted everything he said?

Clr Anderson: Oh yes, without a doubt.

Mr Bulford: That presumably is no longer the case as we speak, is it?

Clr Anderson: Anything but.

Mr Bulford: When did the initial relationship start to break down?

Clr Anderson: It started with the attacks on Glendinning in public meetings in Council Chambers in Council meetings.

Mr Bulford: Can you give an approximate time as to when those occurred. Are we talking late September or not until October or even later?

Clr Anderson: No, probably late September, early October. It was almost the earliest meetings.

Mr Bulford: Very early?

Clr Anderson: Yes, second or third meeting.

Mr Bulford: So, it was principally the approach or demeanour of the Mayor towards Senior Directors in Council meetings that caused you to have some concerns, is it?

Clr Anderson: That was the first concern, the attack on Glendinning in public. Then there came his attitude with Rhonda which was also, to me, unacceptable. Not only to a Chief Executive but to anyone.

6.20.3 The steps that have been taken by Councillors

In our interview with her the General Manager told us that whilst there appeared to her to be some growing awareness amongst the Councillors, at least from the end of 1999 onwards, that some of delegations to the Mayor in the Mayoral Minute of 28 September 1999, as amended on 5 October 1999, might need to be cut back or revised there was some unwillingness to take action. Our interview with her took place over a number of days in the week commencing 14 February 2000. She put it to us that she felt that the Councillors were somehow waiting to see what came out of our Investigation and report.

With the passage of time since that interview with the General Manager we have had reported to us a number of instances where the Councillors have sought to take some actions to deal with the conduct and so on of Clr Hall. Extensive documentary evidence has been provided to us on such matters.

We have also determined that in some aspects what has been done is neither legal nor appropriate.

We have considered in particular at section 3.22.1 of this report, the steps to deal with the growing alarm and consternation of the Councillors at the behaviour of Clr Hall in making allegations of corruption and impropriety against Council staff, in particular Mr John Begley. And we have also considered there certain issues arising out of Council's resolutions in that regard.

6.20.4 The steps that should have been taken by Councillors

In the last section of this report we have considered those steps taken by the Councillors to deal with the problems at Council centring on and created largely by Clr Hall, being those steps that have been brought to our attention during our Investigation. Many of these steps are, we consider, in many respects too little too late. A number of the measures taken are also in our view inappropriate in many respects.

There remain a good many steps that the Councillors can and should take to deal with and properly manage the situation, and thereby properly to discharge their role and responsibilities as elected Councillors.

In considering what steps might be taken Councillors will need to be mindful of the absolutely central role that the Mayoral Minute of 28 September 1999, even as amended in minor respects by the Council resolution of 5 October 1999 and again on 7 December 1999 (though the amendments made in December really only related to what are considered to be trivial or peripheral issues, compared with the issues and concerns raised in this report), plays in the events which have occurred.

Therefore, we consider that one of the steps that needs to be taken at an early time is for the Councillors to consider the appropriateness of many of the provisions they

approved and brought in when they adopted the Mayoral Minute. Those aspects of the Mayoral Minute that have caused us particular concern have already been considered in this report.

Apart from addressing those aspects of the Mayoral Minute that need to be remedied, there remains a range of measures that the elected Councillors may take to address the various problems which we have identified for the purposes of and within the Terms of Reference of our Investigation. Councillors will also need to consider what other steps and measures need to be taken to address any other inadequacies or likely causes of conflict and so on in the future.

We note that it is within the power of the elected Councillors to determine the delegations of the Mayor, other than those which the Act grants to a mayor.

It is not for us to prescribe down to the last detail what measures should be taken by the Councillors in this regard. That is for the Councillors to determine. Ultimately the Councillors will have to be judged on what they have done or not done, as the case may be.

Councillors need to consider their roles, responsibilities and duties at the earliest opportunity. This consideration should be swift so that remedial action can commence to repair the damage already done to the fabric of the Council structure, its employees and its public image.

This would demonstrate to the residents and ratepayers of the Ku-ring-gai Municipality that Council can control its own affairs and that it has a vision for the future.

This report has concentrated on the complaints brought before it and the findings which must necessarily be made from those issues. A report of this nature must detract from the impact of the perception of Councillors being able to achieve the positive things for which they stand and to improve the functions of Council in a co-operative and productive fashion. The time has come for Councillors to concentrate on rebuilding that relationship and achieving those outcomes.

Councillor Hall was elected as Mayor from amongst the Councillors. The Local Government Act provides that it is the Councillors themselves who must make the decision as to future mayors and the powers which they are prepared to grant an elected mayor.

It was put to us by Council as a corporate body, as well as by others, when providing comments on the final draft of this report, that the Councillors had really discharged their responsibilities and done all they could reasonably do in relation to Clr Hall and his conduct by the steps they sought to take in November to instigate a Council promoted independent inquiry process into the complaints against Clr Hall and his conduct, as well as by their December resolution to call in the Department to deal with the matter. We are far from convinced that this is so.

Clr Anderson was the Acting Deputy Mayor at the time Council resolved to seek the Department's assistance and to ask that the Department undertake the investigation

into Clr Hall's conduct. It therefore fell to him to handle the passing on to the Director General of the Department Council's request and resolution. In his reply to the final draft report Clr Anderson put it to us:

> After only 7 weeks from election in a 208 week term, which with a 4 week cycle is about 2 full Council meetings, the Councillors got the Mayor to stand down. Then asked LGA for a recommendation for an Investigator, had him appointed, coped with the Mayor's return, put up with an Investigator who lost his courage to take on a losing battle, agreed to ask the Dept for an inquiry, and did all this in another 7 weeks.
>
> The decision not to try and fix it all with a Council internal action was a thought out one. It would not have worked and would have made him a hero in the community again. We thought a Dept Inquiry would take a few months. May I point out that it is now 32 weeks since you were appointed, and I am sure you are only too well aware of his delaying tactics. We foresaw this being even worse with us.

Similarly, in its corporate response to the final draft report, it was put to us on behalf of Council that:

> Whilst the inexperience of the majority of Councillors contributed to the exceptional difficulties of the early period these exceptional difficulties did not continue. From November 1999 Councillors took steps to address problem issues and this has been on-going. These early difficulties, moreover, have to be balanced by the role such councillors played in creating a Council responsive to community concerns and in implementing policies designed to protect Ku-ring-gai from inappropriate development, poor financial and asset management and environmental degradation.

We do not consider that the Councillors could be said adequately to have discharged their responsibilities by "passing the buck" to the Department. It was really incumbent on Council itself to have dealt with the issue in the first place, as can also be seen from our own advice and conclusions that the ball is now clearly back in Council's court for handling under its Code of Conduct.

Moreover, the terms of reference of the Council initiated proposed Henningham Inquiry process were more limited than those applicable to our Investigation, and were clearly principally directed just to dealing with the complaints from staff about Clr Hall's conduct. As can be seen from this report, there was far more to the story than just Clr Hall's conduct towards staff. Council in its November decision in relation to the proposed Henningham process was therefore manifestly only dealing with but part, albeit an important part, of the picture.

While we accept that there may have been reasons for certain possible actions by Council to have been held in abeyance pending the outcome of our own Investigation, again we consider that there were many other measures that could quite properly have been taken in the meantime to address a number of the issues not directly related to the conduct of Clr Hall towards staff.

It was also put to us that since the beginning of the year the complaints from staff about Clr Hall ceased. The evidence does not support such a proposition and we have considered at various sections of this report a number of instances of alleged conduct by Clr Hall occurring or complaints being made since 13 January 2000. Council maintained that no complaints, other than a verbal complaint apparently conveyed to Clr Bennett as Deputy Mayor at the time, were presented to Council or

individual Councillors after the setting up of our Investigation. It is true that the bulk of the more recent complaints considered by us in our Investigation were ones understandably made direct to us, given the fact and awareness of our Investigation process having commenced, but the fact is that many of these were referred to us with the knowledge and consent of at least the General Manager and/or her senior staff. The continuing problems in relation to Clr Hall's conduct towards his secretaries was furthermore a matter of public knowledge, given the publicity given to such matters in the local press.

Council pointed to its actions in March and April this year in respect of the problems centring on Mr John Begley, dealt with in this report at section 3.22.1, as evidence of its having discharged its responsibilities. But this particular example is one of the very ones we have in mind when we have indicated that actions by the Councillors have been too little too late and in some respects not always appropriate.

As has already been noted elsewhere in this report, we have also found too many instances where Council deliberately postponed or delayed dealing with certain matters until after it had dealt with the supposedly all-consuming Residential Housing Development Strategy. We do not accept that this Strategy, even if it was a very large and daunting task for Council and the elected members particularly, necessarily provides a complete answer.

Somewhat by way of postscript, we also note that after drafts of this report were circulated to relevant parties, but before this report was finalised, some steps have already occurred towards addressing some of the outstanding issues and concerns raised in this report. A Mayoral election has been held, and Clr Laura Bennett is now the Mayor and Clr Ted Roach the Deputy. Council has also commenced or, in its corporate response to the final draft of this report, signalled an intent to commence a process to implement or address a number of those issues and concerns.

We note in particular Clr Bennett's advice, as Mayor and on behalf of Council, that a number of such steps have particularly been taken since the recent Mayoral election and her consequent election as Mayor. In its corporate response to the final draft of our report, Council had this to say:

> Council accepts that the behaviour of Councillor Hall to the staff was unacceptable and his conduct, when chairing Council meetings, was often inappropriate.
>
> Councillor Hall is no longer the Mayor and does not hold the position of chair or deputy chair on any of Council's Principal Committees.
>
> The new Mayor, Councillor Laura Bennett, has reviewed the practices adopted by previous Councils to manage the disruptive behaviour of Councillor Hall. She gives a commitment to bring recommendations to Council immediately following the tabling of the final Report.
>
> The Mayor strongly recommends to Council that no action be taken against Councillor Hall until the Investigation findings are available to the public. Good governance demands that decisions, and the basis on which they are made, should be accessible to the community. The community moreover must have the opportunity to address Council on these matters and be fully informed.

> In the interim period if difficulties occur in relation to Councillor Hall's behaviour the Mayor undertakes to report them to Council without delay in accordance with the Code of Conduct.
>
> Council undertakes to review the Code of Conduct and also the Code of Meeting Practice in light of the findings of the Investigation and matters revealed by the Investigation.

This is, with one qualification, encouraging.

While it is one thing for Council to act and proceed in an open and accountable manner in dealing with issues arising under its Code of Conduct in respect of allegations of conduct which breaches that Code, we do not consider, as a general proposition, that this requires, or that it is appropriate for, submissions or addresses to be made by members of the public on such matters. If members of the public have evidence or information of relevance to the inquiry and investigation to be undertaken by Council that is another matter, and appropriate steps can be taken to obtain such evidence or information.

Council should also be mindful of the fact that its own Code of Conduct, based on the Model Code, reflects the standards of behaviour its community expects of Councillors and staff. It would be appropriate in formulating its Code that it consults with its community as to content – however, the enforcement of that Code, once adopted, is solely a matter for Council.

It needs, moreover, to be remembered that there may be occasions or circumstances where all or part of the process undertaken by Council may need to be undertaken, where done in the context of a formal meeting of Council, in closed session, with members of the public excluded, as appropriate, having regard to the provisions of section 10A and other relevant sections of the Local Government Act 1993, as well as to natural justice and procedural fairness constraints. We are concerned that Councillors may be inappropriately swayed and influenced by particular lobby groups of sections of the public in deciding what to do in respect of a Code matter if the public are allowed to be actively involved in the process in the manner that seems to be intended by Council. Politically motivated or influenced decisions may not be good decisions. It is the Councillors, not the community, who have the responsibility for dealing with Code matters. We also again remind Councillors that they are accountable to the community, *as a whole.*

We also note the advice of the General Manager, in her submissions in relation to our final draft report, that the new Mayor, Clr Bennett:

> made a commitment to me that she intended for the Council to work pro-actively and positively with myself and the staff. I have reciprocated that commitment on behalf of the staff.
>
> Since the Mayoral election on 5 September, there has been an immediate and marked increase in staff morale, together with a positive and productive atmosphere in the workplace.

Clr Bennett, herself, undertook to us that Council's corporate response would in due course be tabled at a Council meeting and thereby be made public.

Council needs to follow all these matters through and to be able to demonstrate in due course to the community that the measures it has taken are both appropriate and effective.

7. RECOMMENDATIONS

We have in this report, as each issue or concern was canvassed, made a number of suggestions or recommendations as to the need for action to be taken to address those issues or concerns. We do not propose to revisit or reiterate each of those here in this section of our report.

On the other hand, and noting the promises and indeed indications of action already taken by Council, as advised to us in its corporate response to the final draft of this report, as well as the fact that Clr Hall is no longer Mayor, that the Councillors have elected a new Mayor in Clr Bennett and Deputy Mayor in Clr Roach and that the elected body of Councillors under that new leadership has signalled a substantially different approach and attitude to that followed under Clr Hall, we do propose to make the following general recommendations:

- Council should take prompt action to provide adequate training and guidance to the Councillors as to their proper roles and responsibilities under the Act. In so doing Council may wish to seek assistance from external bodies, such as the Local Government & Shires Associations.

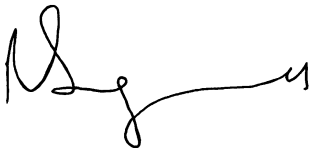
- Council should review and revise, as appropriate, its policy for dealing with the interaction between Councillors and staff, having regard to the guidelines provided in the publication *Under Careful Consideration: Key Issues for Local Government* (see further at section 3.1 of this report, and note also section 4.6).

- Council should review and adopt an appropriate policy on public consultation (see further at section 3.21 of this report).

- Council should review and revise, as acknowledged, the terms of reference for its Residential Development Strategy Task Force (see section 3.22.2 of this report).

- Council should review the need to commence or proceed with its communications audit (see section 3.31 of this report).

- Council should review its organisation structure, in particular in so far as the matters of internal audit and executive secretaries are concerned (see section 6.7 of this report).



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