



Office of
Local Government

INVESTIGATION REPORT

PURSUANT TO SECTION 433 OF THE
LOCAL GOVERNMENT ACT 1993

ON THE RESULTS OF AN INVESTIGATION
PURSUANT TO
SECTION 430 OF THE
LOCAL GOVERNMENT ACT 1993
INTO
HURSTVILLE CITY COUNCIL



FEBRUARY 2016

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REPORT OF THE SECTION 430 INVESTIGATION INTO HURSTVILLE CITY COUNCIL

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1 EXECUTIVE SUMMARY

This report results from an investigation into Hurstville City Council carried out under section 430 of the *Local Government Act 1993* (the Act).

The performance of Hurstville City Council (Council) came to the attention of the Minister for Local Government and the Office of Local Government (Office), as a result of the following:

- the receipt, by the Office, of public interest disclosures from senior Council staff members, and
- the suspension of two (2) senior Council staff members.

The Terms of Reference for the investigation were to investigate and report on:

- 1 *The governance of the Hurstville City Council including:*
 - a *its consideration at its ordinary meeting of 20 May 2015 of a staff report recommending possible enforcement action into allegations of breaches of the conditions of development consents, illegal demolition and dumping and/or removal of asbestos in relation to property owned by the Mayor, Clr Con Hindi, at 40 Crump Street, Mortdale and the circumstances giving rise to its decision in relation to that matter, and*
 - b *its suspension of the General Manager, Mr Victor Lampe, at the same meeting, the circumstances giving rise to that decision, and any subsequent action taken by the Council and councillors in relation to that decision, and*
 - c *its management of complaints about Mr Lampe, and*
- 2 *such other matters as the investigator considers to be relevant.*

The investigation has found that:

- the acceptance of additional information at a Council meeting provided councillors insufficient time to properly consider that information prior to making a decision,
- the Council did not have procedures in place to manage the situation of a councillor effectively wearing two (2) hats: one as a developer and the other as a councillor, thereby creating the impression that the councillor was receiving preferential treatment or access to senior Council staff,
- the suspension of the General Manager was raised as a matter of urgency, notwithstanding that the allegations concerning the General Manager had been in possession of the Mayor for some time, and
- complaints about the General Manager were not handled in accordance with the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* (Procedures), as referred to in Schedule 1 Analysis section of this report.

The recommendations from the investigation are as follows:

1. That Hurstville City Council be given three (3) months from the date the Council provides its response to this report, as required by section 434 of the *Local Government Act 1993*, to take appropriate steps to do such things arising from recommendations 3 and 4 contained in this report.
2. That the Council immediately revoke Mr Lampe's suspension and arrange for his return to work as General Manager.
3. That the Council review its financial delegations and monitor its expenditure on legal advice.
4. That all existing councillors undertake formal training regarding their legislative responsibilities, the code of conduct and its Procedures and the code of meeting practice.

2 INTRODUCTION

1. This report contains the results of an investigation under section 430 of the Act into Hurstville City Council and is presented to the Minister for Local Government and copied to the Council, pursuant to section 433(1) of the Act.

2.1 Terms of Reference

2. On 29 May 2015, the Chief Executive¹ of the Office determined that an investigation under section 430 be undertaken into the Council. The Chief Executive appointed Internal Audit Bureau Services (IAB), to conduct the investigation².
3. The Terms of Reference for the investigation were to investigate and report on:

1 The governance of the Hurstville City Council including:

- a its consideration at its ordinary meeting of 20 May 2015 of a staff report recommending possible enforcement action into allegations of breaches of the conditions of development consents, illegal demolition and dumping and/or removal of asbestos in relation to property owned by the Mayor, Clr Con Hindi, at 40 Crump Street, Mortdale and the circumstances giving rise to its decision in relation to that matter, and*
- b its suspension of the General Manager, Mr Victor Lampe, at the same meeting, the circumstances giving rise to that decision, and any subsequent action taken by the Council and councillors in relation to that decision, and*
- c its management of complaints about Mr Lampe, and*

2 such other matters as the investigator considers to be relevant.

4. On 29 May 2015, the Council's Mayor and Acting General Manager were provided with formal notification of the investigation.

¹ Being the Director General as defined in the *Local Government Act 1993* as stipulated in Administrative Arrangements Order 2014 under the Constitution Act 1902.

² (A3.Terms, 29 May 2015)

2.2 Statutory requirements relating to the investigation report

5. Section 433 of the Act provides as follows:

- (1) *The Director-General must report to the Minister on the results of an investigation under this Division and must send a copy of the report to the council concerned.*
- (2) *The report may comment on any matter that, in the Director-General's opinion, warrants special mention and may contain such recommendations as the Director-General considers appropriate.*
- (3) *A report furnished to the council under this section must be presented at the next meeting of the council after the report is received.*
- (4) *Section 14B of the Royal Commissions Act 1923 applies in relation to any report that the Minister wishes to lay before both Houses of Parliament in the same way as it applies to a report made by a commission under that Act.*

6. Clause 244 of the Regulation provides as follows:

When a report of the Director-General or a person to whom the Director-General's functions under section 430 of the Act have been delegated or sub-delegated under section 745 of the Act 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.*

2.3 The approach taken by the investigator

7. As part of the investigation, the investigator reviewed various reports and advices provided by the Council. The investigator has not formed a view on the correctness or otherwise of those reports and advices (except as otherwise

indicated), or on the validity, or otherwise, of the complaints against Mr Lampe as these are the subject of other investigations.

8. The investigator was also empowered to investigate and report on such other matters as the investigator considered relevant. Such matters were emphasised in circumstances where they impacted on:

- the effective administration of the Council, and/or
- the working relationships between the elected body, represented by the councillors, and the corporate body, headed by the General Manager.

2.4 *The investigative process*

9. The investigator attended the Council between 5 June 2015 and 22 July 2015 to review documents and conduct interviews.

10. This report is based on evidence gathered from:

- information provided in direct interviews with councillors, senior managers, current and former Council staff members and community members,
- the information provided by complainants in written form,
- written materials provided by community members as submissions to the investigation,
- the investigator's observations of the Council's processes, and
- Council documents.

11. In this report, relevant evidence is identified by footnote reference. An evidence table is provided at the end of the report. The findings are based on the evidence set out in the text of this report and the evidence table.

2.5 *The role of councillors and the General Manager*

12. The Act requires that councillors as a group 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 (refer section 232 of the Act).

13. The Act makes it clear that the General Manager is responsible for the day to day operations of the Council. Under section 335(2) of the Act 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 organisation structure and resources approved by the Council
 - to direct and dismiss staff
 - to implement the Council's equal employment opportunity management plan.
14. The Act sets out the role of the Mayor under Section 226. The role of the 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.

2.6 Background

15. The agenda for the meeting of the Council on 20 May 2015 included a staff report about unauthorised works on a property at 40 Crump Street, Mortdale, owned by the Mayor, Clr Con Hindi, and his failure to comply with a clean-up notice. The report to the meeting indicated that:
- the Council had granted development consent for both the demolition of existing structures and construction of two (2) detached and a single small lot housing development on the subject site on 5 November 2014,
 - following recent heavy rain, the Council received a complaint that the rear garden of the adjoining property had slumped into the subject site,

- a site inspection revealed that the subject site had been levelled, material excavated, inadequate sedimentation controls were in place and that asbestos had been found on the surface of the site, and
 - notices had been served on the owner, Clr Hindi, which had not been adequately complied with.
16. Prior to the commencement of the meeting, Clr Hindi distributed a large document to each councillor concerning the Crump Street matter.
 17. This new information did not form part of the staff report and had not previously been considered by, or commented on by Council staff.
 18. The staff report recommended that:

Council refer this matter to the Council's solicitors for advice and commencement of appropriate proceedings to address the breaches and ensure the health and safety of the subject site and its immediate surrounds, for public health and safety reasons, including but not limited to appropriate fines and penalties and remedial orders.
 19. At the start of the meeting on 20 May 2015 and prior to the Council considering the Crump Street matter, Clr Vince Badalati proposed to move a matter of urgency regarding a staff matter for consideration in closed council. No indication was given to the meeting about the matter to be discussed, other than it being a personnel matter.
 20. Despite the absence of any discussion about what the matter concerned or the grounds for its urgency, the Council resolved close the meeting to consider an urgent staff matter. The doors of the Council Chamber were closed following the departure of the public and the Council staff.
 21. The following is an account of the proceedings of the Council, the details of which have been established through the enquiries carried out by the investigator.
 22. The Mayor distributed some documents concerning two (2) allegations made by Council employees against Mr Lampe and legal advice sought by Clr Hindi about the allegations. The first allegation was made by way of an anonymous email sent on 27 January 2014 to seven (7) of the twelve (12) councillors. The second was made orally by an employee at a series of meetings with Clr Hindi,

at the Penshurst Hotel and another location. Clr Hindi made a written record of his conversations with the employee.

23. Clr Hindi had provided this information and documents to Clr Badalati who moved that it be dealt with at the meeting of 20 May 2015. On a motion by Clrs Badalati and Colin Drane, the Council resolved:

- *THAT the General Manager be suspended on full pay whilst the investigation is carried out on these allegations*
- *THAT the Mayor and Deputy Mayor be authorised to contact the OLG for advice as to who would be able to conduct the investigation.*
- *THAT the GM be asked to hand in his Access Card and that Mr Laurie O'Connor be appointed as Acting GM.*

24. The vote on the motion was split 6:6, with Clr Hindi exercising his casting vote to pass the motion. Mr Lampe left the meeting and the Council's Director Service Delivery, Mr Laurie O'Connor took on the role of Acting General Manager.

25. The meeting then resumed into open Council and following consideration of several planning matters, the meeting arrived at the Crump Street matter.

26. Clr Hindi declared a "*significant pecuniary interest*" in the matter and left the Chamber. The Deputy Mayor assumed the Chair.

27. After consideration of the matter, the Council resolved not to adopt the recommendations of the staff report.

28. During the meeting, Clrs Badalati and Drane had advised of their intention to lodge a motion to rescind the decision to suspend the General Manager. The Council's code of meeting practice provides that if notification of an intention to submit a rescission motion is received, the Council's resolution is not to be implemented pending the Council's consideration of the rescission motion. Mr Lampe therefore resumed his duties as General Manager on 21 May 2015.

29. The rescission motion was subsequently submitted and received before noon on 25 May 2015.

30. An extraordinary meeting of the Council was called by Clr Hindi for 25 May 2015 to consider the rescission motion. On being put to the vote, the rescission motion was not passed, with Clrs Badalati and Drane voting against their own

motion to rescind, with the result that Mr Lampe's suspension was upheld and the matter then not able to be revisited by Council for 3 months.

31. On 29 May 2015, Mr O'Connor, in his capacity as Acting General Manager, sent the Council's Internal Ombudsman, Mr Warren Park an email directing that he attend a meeting at 11:00am on that day. In the presence of the Council's Human Resources Manager, Mr Sharni Watts, Mr O'Connor put allegations to Mr Park involving personal comments made by Mr Park in an email to Cllr Michelle Stevens. The comments were in response to an email from Cllr Stevens, in which she had sought advice on managing allegations, brought to her attention, involving Mr Lampe.
32. During the meeting, Mr Park was given a number of options regarding his future employment with the Council. He was given until the close of business that day to make a decision. Mr Park submitted his resignation, citing ill health, at the close of business on 3 June 2015.
33. At its meeting on 15 July 2015, the Council considered a report to the Council containing advice from Lindsay Taylor (LT) Lawyers dated 19 June 2015. The advice related to the Council's original report and recommendations into the Crump Street matter. The report identified misstatements regarding the condition of development approvals and a failure to afford procedural fairness to Cllr Hindi and follow due process.
34. Cllr Brent Thomas moved a motion that consideration of the report containing the advice from LT Lawyers be deferred pending LT Lawyers being able to present advice to the Council. This motion was defeated.
35. The Council then resolved to accept the legal advice and to take no further action on the Crump Street matter.

3 CHRONOLOGY OF EVENTS

36. It is useful to briefly outline the timeframe of relevant events.

Date	Event
2011 – 2014	Series of 'poison pen' emails sent to councillors and others.
7 August 2013	Anonymous email to councillors regarding the 'Istephan email'. Metadata on attachment indicates source as 'Con Hindi' at 'Ausgrid'.
27 January 2014	Anonymous email to councillors regarding 'stop Lampe' containing allegations against Mr Lampe.
5 November 2014	Council meeting – Council resolves to conduct forensic investigation into source of 'poison pen' emails.
15 December 2014	KPMG commissioned to conduct forensic investigation into 'poison pen' emails.
16 February 2015	KPMG forensic report into 'poison pen' emails received.
4 March 2015	Council meeting – KPMG report tabled; copies not released to councillors.
5 March 2015	Invitation to councillors to view redacted version of KPMG report.
7 March 2015	Details of KPMG report leaked to the press - <i>"Hindi claims he is being framed for poison pen emails."</i>
17 March 2015	Further details of KPMG report leaked to the press – <i>"Ausgrid to investigate anonymous</i>

Date	Event
	<i>poison pen emails."</i>
18 March 2015	<p>Council meeting</p> <ul style="list-style-type: none"> • Clr Thomas addressed the Council on the need for public release of KPMG report. • Clr Hindi allegedly defames Clr Thomas when responding to Clr Thomas' address.
25 March 2015	Confidential workshop between KPMG investigators and councillors.
13 April 2015	Email sent by Clr Hindi to Mr Lampe alleging defamation and blaming Mr Lampe for unredacted release of councillors' names in KPMG report.
15 April 2015	<p>Council meeting</p> <ul style="list-style-type: none"> • Motion submitted that KPMG prepare a redacted version of the report for public release. The motion was lost. • Motion submitted that Council provide copies of emails to those councillors identified in the forensic investigation. The motion was carried.
22 April 2015	Email to councillors from Clr Hindi's neighbour complaining about development at 40 Crump Street, Mortdale.
23 April 2015	Clr Hindi responds to his neighbour's email of 22 April 2015. Clr Hindi uses the Council email and Mayoral designation, despite this being a private matter.

Date	Event
30 April 2015	Mr Lampe and the Council's Director Planning and Development, Mr Watt meet with Clr Hindi's neighbour.
1 May 2015	Clr Hindi meets with the complainant during which initial claims against Mr Lampe are raised.
4 May 2015	Second meeting between Clr Hindi and the complainant at Penshurst Hotel. Clr Hindi advises that a 'general investigation' is to be conducted into allegations.
5 May 2015	<ul style="list-style-type: none"> • Public interest disclosure made by Mr Lampe to the Office regarding defamation allegations made by Clr Hindi. • Public interest disclosure made by Mr Watt to the Office regarding concerns over proposed Crump Street enforcement action against Clr Hindi.
6 May 2015	<p>Council meeting</p> <ul style="list-style-type: none"> • Motion submitted that the Council employ a private investigator to examine the legitimacy of the allegations in the KPMG report emails. The motion was carried. • Amendment moved by Clr Mining that a redacted copy of the KPMG report be released to the public. This was lost. • Amendment moved by Clr Jacavou that allegations against staff be excluded from the investigation. This was lost. • Rescission motion submitted by Clr

Date	Event
	<p>Jacavou regarding the Council's resolution of 15 April 2015 to provide the Council with the emails that councillors had identified should be included in the KPMG forensic investigation. The motion lapsed.</p> <ul style="list-style-type: none"> The Council signed off on Mr Lampe's performance review and approved the SOORT increase for senior officers.
8 May 2015	<p>Mr Park and Mr Lampe advise Clr Hindi's neighbour that the Council will cover his legal expenses if he is sued by Clr Hindi over his complaint.</p>
11 May 2015	<ul style="list-style-type: none"> Rescission motion flagged to rescind the decision to investigate allegations raised in KPMG emails. Meeting between Clr Hindi, Clr Stevens and the complainant at Penshurst Hotel. The complainant repeats allegations against Mr Lampe.
14 May 2015	<p>Last day to lodge the business paper for 20 May 2015 Council meeting. Clr Hindi becomes aware that Crump Street report is on the agenda.</p>
15 May 2015	<p>Public interest disclosure made by Mr Park to the Office – <i>"Should anything happen to me in a politically charged council."</i></p>
16 May 2015	<ul style="list-style-type: none"> Newspaper article reports on Crump Street report going to the Council on 20 May 2015 – <i>"Con Hindi in strife over</i>

Date	Event
	<p><i>asbestos.”</i></p> <ul style="list-style-type: none"> • Clr Stevens emails Mr Park requesting advice about allegations made by the complainant against Mr Lampe.
18 May 2015	Mr Park responds by email to Clr Stevens.
19 May 2015	<ul style="list-style-type: none"> • Newspaper article in the Sydney Morning Herald (SMH) – <i>“Hindi claims he is being framed for ‘poison pen’ emails.”</i> • The complainant again meets with Clr Hindi at Penshurst Hotel and signs a statement prepared by Clr Hindi.
20 May 2015	<ul style="list-style-type: none"> • Clr Hindi contacts Corrs Chambers Westgarth (CCW) Lawyers seeking advice about the suspension of Mr Lampe. • Council meeting <ul style="list-style-type: none"> ○ Urgent motion moved by Clrs Badalati and Drane. The Council moved into closed session. ○ The Council resolved (on the casting vote of Clr Hindi) that Mr Lampe be suspended on full pay. Clr Jacavou flagged a rescission motion. ○ The Council resolved (on the casting vote of Clr Hindi) that Mr Lampe be suspended on full pay. ○ The Council considered the report on Crump Street. The recommendation of Council staff was not adopted. The

Date	Event
	<p>Council resolved to have the matter referred to WorkCover.</p> <ul style="list-style-type: none"> ○ Rescission motion submitted about the investigation into allegations raised in KPMG emails – <i>“THAT Council take no further action in this matter.”</i> The motion was lost. ● Newspaper article in the SMH – <i>“Hindi uses casting vote to suspend General Manager Lampe.”</i>
21 May 2015	<ul style="list-style-type: none"> ● Mr Lampe returns to work following notification of rescission motion. ● Newspaper article in the St George Leader – <i>“Hurstville Council general manager returns to work amid calls to sack the council.”</i> ● Letter from the Office’s Chief Executive to Clr Hindi – <i>“I am making preliminary enquiries into what transpired at the meeting on 20 May 2015.”</i> An explanation is requested for Mr Lampe’s suspension on 20 May 2014, together with copies of legal advice and why the matter was deemed urgent.
22 May 2015	<ul style="list-style-type: none"> ● The complainant is driven to the offices of Carroll O’Dea (COD) Lawyers by Cirs Hindi and Badalati. Assurances are given to the complainant and COD Lawyers that the Council will pay the complainant’s legal expenses.

Date	Event
	<ul style="list-style-type: none"> • Letter to the Office’s Chief Executive from Mr Robert Boulos of Belgrave Lawyers, responding to the Office’s letter of 21 May 2015 to Clr Hindi. • Clrs Badalati and Drane lodge a rescission motion (against their own motion) on the decision to suspend Mr Lampe. • Extraordinary meeting called for 25 May 2015 to consider the rescission motion. Clr Hindi categorised this as an “<i>emergency meeting.</i>”
25 May 2015	<ul style="list-style-type: none"> • Email to councillors from the Office’s Chief Executive – <i>“I require.....that the allegation about the General Manager be referred to Council’s complaints coordinator by 4pm on Tuesday 26 May 2015....a failed rescission motion will prevent Council from reinstating the General Manager for 3 months.”</i> • Alternate rescission motion lodged by Clr Sansom – <i>“THAT Council adhered to the Hurstville Council Code of Conduct Administration Procedures 2013 guidelines.”</i> • Extraordinary Council meeting <ul style="list-style-type: none"> ○ Clr Hindi tables three (3) documents – unredacted legal advice from COD Workplace Solutions acting on behalf of the complainant, dated 25 May 2015; legal advice from CCW Lawyers

Date	Event
	<p>dated 25 May 2015; and unredacted email from CCW Lawyers about advice on suspension of Mr Lampe, dated 20 May 2015.</p> <ul style="list-style-type: none"> ○ Clr Thomas questions Clr Hindi about the legal advices and prior knowledge of the allegations. Clr Hindi takes the questions on notice. ○ Clrs Badalati, Drane and Sin vote against their own rescission motion. The motion is lost and Mr Lampe's suspension resumes for at least three (3) months.
26 May 2015	Newspaper articles in the St George Leader – <i>“Minister ready to sack council”</i> and <i>“Worstville Council.”</i>
27 May 2015	Mr Park asked to attend Clr Hindi's office and directed to hand over a copy of email advice he sent to Clr Stevens on 18 May 2015 about the complaint by the complainant.
28 May 2015	Public interest disclosure made by Mr Park to the Office – <i>“The Mayor has a voting block on Council and would be able to convince other councillors to take action against me.”</i>
29 May 2015	<ul style="list-style-type: none"> • Disciplinary meeting between Human Resources Manager, Ms Sharni Watts, Mr O'Connor and Mr Park. Mr Park is given options about the prospects for his future employment with the Council.

Date	Event
	<ul style="list-style-type: none"> Email sent by the Office to Clr Hindi and Mr O'Connor advising of the commencement of section 430 investigation.
3 June 2015	<p>Council meeting</p> <ul style="list-style-type: none"> Rescission motion on Crump Street matter – <i>“THAT Council refer this matter to the Council’s solicitors for advice....including but not limited to appropriate fines and penalties and remedial orders.”</i>
9 June 2015	<p>Invoice from CCW Lawyers sent to Clr Hindi for \$11,585.20.</p>
25 June 2015	<ul style="list-style-type: none"> Email from COD Lawyers to Clr Hindi – <i>“Please confirm that Council will meet its obligations”</i> to pay the complainant’s legal fees. Clrs Badalati and Drane brief ALP branch meeting attendees on matters relating to Crump Street and the suspension of Mr Lampe.
1 July 2015	<p>Email from Clr Badalati to Mr O'Connor about the complainant’s legal bills – <i>“Representations were made on behalf of individual councillors.....bills are not council’s responsibility....I will write to the lawyers and arrange payment directly.”</i></p>
15 July 2015	<p>Council meeting</p> <ul style="list-style-type: none"> Legal advice received from Lindsay

Date	Event
	<p>Taylor (LT) Lawyers identifying deficiencies in the Council's report on Crump Street.</p> <ul style="list-style-type: none"> • Clr Thomas moves a motion that consideration of matter be deferred pending LT Lawyers being able to present advice to the Council. • The motion is lost. • The Council resolved to receive and note the legal advice and take no further action regarding the Crump Street matter.
24 July 2015	<p>Clr Jacavou resigns from the Council citing <i>"Council's entrenched dysfunction, which had no hope of being fixed with the present set of personalities."</i></p>

4 FINDINGS

37. The following findings are made in relation to the matters raised by the Terms of Reference. A detailed examination of each issue is contained in Schedule 1 Analysis section of the report.

Term of Reference 1a: The governance of the Council including its consideration at its ordinary meeting of 20 May 2015 of a staff report recommending possible enforcement action into allegations of breaches of the conditions of development consents, illegal demolition and dumping and/or removal of asbestos in relation to property owned by the Mayor, Cllr Con Hindi, at 40 Crump Street, Mortdale and the circumstances giving rise to its decision in relation to that matter.

38. The staff report concerning Cllr Hindi and his property at 40 Crump Street, Mortdale was finalised and posted with the Council business papers on 14 May 2015. The report recommended that the matter be referred to the Council for approval to seek legal advice with a view towards possible prosecution of Cllr Hindi.
39. The report was to be considered by the Council at its ordinary meeting of 20 May 2015.
40. Immediately prior to the meeting commencing, Cllr Hindi placed a large document, concerning the Crump Street matter, on each councillor's desk. By transmitting material directly to councillors in relation to Cllr Hindi's own property at Crump Street, rather than making an application to the Council and asking the Council to receive the material, Cllr Hindi was dealing with the Council and using his position as councillor in a manner that would not be available to a person in a similar position who was not a councillor.
41. The investigator was advised by the Council's governance manager that at no time during her tenure had an applicant or stakeholder been permitted, either at the start of or during the meeting, to provide material for or against a matter under consideration
42. After consideration of the report, the Council resolved:

THAT the matter be referred to WorkCover to get a resolution by them to clarify the difference between the Council report and the applicants

comments this evening and when received the matter be referred to Council along with the Council report on the matter.

43. Findings:

- That the acceptance of additional information at a Council meeting, provided councillors insufficient time to properly consider that information prior to making a decision.
- That the Council did not have procedures in place to manage the situation of a councillor effectively wearing two (2) hats: one as a developer and the other as a councillor, thereby creating the impression that the councillor was receiving preferential treatment or access to senior Council staff.
- That Cllr Hindi distributed material in relation to his property at Crump Street directly to councillors, which could lead members of the public to believe that he was seeking preferential treatment, or has sought to take advantage of his position with the Council in order to obtain a benefit.
- That the Office should consider carrying out an investigation into the conduct of Cllr Hindi under section 440H of the Act to determine if any breaches have occurred in relation to this matter.

Term of Reference 1b: The governance of the Council including its suspension of the General Manager, Mr Victor Lampe, at the same meeting, the circumstances giving rise to that decision, and any subsequent action taken by the Council and councillors in relation to that decision.

44. The General Manager was suspended following consideration of an urgency motion, introduced by Cllr Badalati, at the Council's meeting on 20 May 2015.
45. The motion was that the General Manager be suspended on full pay while an investigation into allegations concerning his conduct was carried out.
46. The explanation provided to the investigation for the urgency was that the Council was acting on legal advice, that the allegations were serious and that any delay in the General Manager's suspension would put the complainant at further risk.

47. Following the Council's resolution to suspend the General Manager, and despite having voted in favour of the motion, Clrs Badalati and Drane submitted a rescission motion. Section 372 of the Act provides:

(5) *If a motion to alter or rescind a resolution has been negated, or if a motion which has the same effect as a previously negative motion, is negative, no similar motion may be brought forward within 3 months. This subsection may not be evaded by substituting a motion differently worded, but in principle the same.*

48. Clrs Badalati and Drane voted against their own rescission motion.

49. Findings:

- That the suspension of the General Manager was raised as a matter of urgency, notwithstanding that the allegations concerning the General Manager had been in the possession of the Mayor for some time.
- That the legal advice made no reference to the requirement for the matter to be the subject of an urgency motion or for it to be brought forward to the beginning of the meeting.
- That at the meeting of 20 May 2015, Clr Hindi did not disclose his previous knowledge of the matter. Clr Hindi also ruled that the matter was urgent, and later voted in favour of the General Manager's suspension.
- That the Office should consider carrying out an investigation into the conduct of Clr Hindi under section 440H of the Act to determine if any breaches have occurred in relation to this matter.

Term of Reference 1c: Management of complaints about Mr Lampe

50. On 20 May 2015, Clr Hindi sought legal advice concerning suspending Mr Lampe based on the allegations made against Mr Lampe.

51. In procuring the legal advice, Clr Hindi had no formal authority or delegation to incur such expenses on behalf of the Council. There was no resolution from the Council for Clr Hindi to obtain legal advice in relation to this matter.

52. The powers of the Mayor under section 226 of the Act extend only to the policy making functions of the Council in cases of necessity between meetings. It is arguable that seeking legal advice is not a policy making function.
53. Prior to the Council meeting on 20 May 2015, Clr Badalati had been shown the legal advice and had been briefed on the matter by Clr Hindi.
54. Clr Hindi and Clr Badalati were responsible for having the complaint about Mr Lampe considered at the Council meeting.
55. On 22 May 2015, Clr Hindi and Clr Badalati attended a meeting with the complainant at the offices of the complainant's lawyers. During the meeting, Clr Hindi and Badalati provided an undertaking on behalf of the Council, to pay for the complainant's legal expenses.
56. There was no evidence to suggest that Clr Hindi and Clr Badalati had delegation to undertake to incur such expenses on behalf of the Council.
57. Findings:
 - That complaints about the General Manager were not handled in accordance with the Procedures, as referred to in Schedule 1 Analysis section of this report.
 - That Clr Hindi and Clr Badalati gave undertakings on behalf of the Council to pay for the complainant's legal expenses.
 - That the Office should consider carrying out an investigation into the conduct of Clr Hindi and Clr Badalati under section 440H of the Act to determine if any breaches have occurred in relation to this matter.

Term of Reference 2: Other matters considered to be relevant

Code of conduct complaint against Mr Lampe

58. The Council's decision to suspend Mr Lampe on full pay was based on a complaint about his conduct.
59. Under the Procedures, complaints alleging a breach of the Council's code of conduct by the General Manager are to be made to the Mayor in writing. The Mayor must either seek to resolve the complaint him/herself, or refer the complaint to the Office or the Council's complaints coordinator. The complaints coordinator must refer all such complaints to a conduct reviewer.

60. It is the role of the conduct reviewer to undertake a preliminary assessment of a complaint referred to them for the purposes of determining how the complaint is to be managed. The Procedures provide the conduct reviewer with a range of options for managing the complaint.
61. The conduct reviewer may only determine to investigate a matter where:
- the complaint is a “code of conduct complaint” for the purposes of the Procedures, and
 - that the alleged conduct, on its face, is sufficiently serious to warrant investigation, and
 - the matter is one that could not or should not be resolved by alternative means.
62. On 26 May 2015, the Council advised the Office that it had referred the allegation concerning Mr Lampe to a conduct reviewer.
63. On 9 June 2015, the Council advised the Office that the matter would be investigated by the conduct reviewer.
64. The investigation was finalised in October 2015, with the findings being that the allegations against Mr Lampe are not sustained.
65. A summary of the investigation report was provided to councillors, during closed session, at the Council meeting on 4 November 2015.
66. Following consideration of the matter, the Council resolved to receive and note the report.
67. During the closed part of the meeting, the Council also considered a motion submitted by Clr Mining. The motion sought the conclusion of Mr Lampe’s suspension and his return to work. On being put to the vote, the motion was declared lost.
68. Based on the findings from the conduct reviewer’s investigation, Mr Lampe’s ongoing suspension on full pay is unreasonable.

Potential breaches of the Surveillance Devices Act 2007

69. The potential breaches of the *Surveillance Devices Act 2007* identified during the investigation will be the subject of a referral to the NSW Police, for their consideration.

5 RECOMMENDATIONS

1. That Hurstville City Council be given three (3) months from the date the Council provides its response to this report, as required by section 434 of the *Local Government Act 1993*, to take the appropriate steps to do such things arising from recommendations 3 and 4 contained in this report.
2. That the Council immediately revoke Mr Lampe's suspension and arrange for his return to work as General Manager.
3. That the Council review its financial delegations and monitor its expenditure on legal advice.
4. That all existing councillors undertake formal training regarding their legislative responsibilities, the code of conduct and its Procedures and the code of meeting practice.

6 SUBMISSION OF THE REPORT TO THE MINISTER

70. I hereby make this report to the Minister for Local Government, the Hon Paul Toole, pursuant to my obligation to report on the results of the investigation.



Tim Hurst
Acting Chief Executive
Office of Local Government

Dated this *12th* day of *February* 2016

SCHEDULE 1

ANALYSIS

1. This section details the results of the investigation and where considered appropriate, provides further commentary and analysis.
2. The analysis should be read in conjunction with the evidence table. It is important to note that the table only includes reference to the evidence that was considered to be particularly relevant to understanding this analysis, the findings and recommendations.
3. This section also includes a chronology of events.

Hurstville City Council

4. The City of Hurstville is a local government area in the St George and southern region of Sydney. The Council is composed of twelve (12) councillors elected proportionally across three (3) separate wards, each ward electing four (4) councillors. All councillors are elected for a fixed four (4) year term of office.
5. The last local government elections were held on 8 September 2012. The following persons were elected as councillors for 2012-2016.

Table 1: Councillors elected in September 2012

Ward	Councillor	Party	Notes
Hurstville	Vince Badalati	ALP	Mayor – September 2015
	Nancy Liu	Unity	
	Colin Drane	ALP	
	Andrew Istephan	Liberal	No longer a councillor – resigned in December 2013
Peakhurst	Jack Jacovou	Liberal	
	Michelle Stevens	Independent	Deputy Mayor at the time of the investigation
	Rita Kastanias	Liberal	
	Philip Sansom	Independent	
Penshurst	Justin Mining	ALP	
	Con Hindi	Liberal	Mayor at the time of the investigation
	Dominic Sin	ALP	Deputy Mayor – September 2015
	Christina Wu	Liberal	

6. The councillors elect the Mayor at the first meeting of council, with new mayoral elections held in September each year. Clr Hindi was elected Mayor on 10 September 2014. Prior to Clr Hindi's election, Clr Jack Jacovou held the office from 2012 to 2014. Clr Badalati was elected Mayor in September 2015.
7. Following the resignation of Clr Andrew Istephan, a by-election was held resulting in Clr Brent Thomas being elected in March 2014.

Voting blocs

8. There is strong corroborative evidence that at the time of the events subject of these Terms of Reference, the Council was divided between two (2) voting blocs.³ Anecdotally referred to as the 'Seven' and the 'Five', the blocs would not be considered unusual in bodies politic. The main risk arising from these arrangements, however, is that of oligarchic control. That is, where one (1) or two (2) individuals control a dominant bloc and therefore control the council.
9. The key to identifying potential dysfunctionality within the Council relies on understanding the power bases upon which these blocs operate and the motivations of those individuals that operate within them.

Relationships and alliances

10. Clr Badalati (ALP) held the Mayoralty at the Council from 2004 to 2008. He was also Mayor at the time of the appointment of the current General Manager, Mr Lampe in March 2007⁴. When that Mayoralty ended, the relationship between Clr Badalati and Mr Lampe soured, allegedly over Mr Lampe refusing to resign his position in protest⁵. Clr Badalati confirmed the falling out between himself and Mr Lampe, stating that he had been "*discarded*" by Mr Lampe.⁶
11. Clr Jacovou (Liberal) was elected Mayor in the ballot of September 2012, and Clr Andrew Istephan (Liberal) was appointed as his deputy. Around this time,

³ (T1.Drane, 17 June 2015, pp. 2-3; T2.Garske, 7 July 2015, p. 2; T3.Jacovou, 19 June 2015, pp. 2-3; T4.Lampe, 9 July 2015, pp. 14-15; T5.Mining, 16 June 2015, p. 3; T6.O'Connor, 26 June 2015, p. 6; T7.Park, 24 June 2015, p. 31; T8.Sansom, 12 June 2015; T9.Stevens, 19 June 2015, pp. 4-5; T10.Thomas, 17 June 2015, pp. 2-3; T11.Ware, 11 June 2015, pp. 6-7; T12.Wu, 19 June 2015, p. 11)

⁴ (M11.Leader, 14 March 2007)

⁵ (T6.O'Connor, 26 June 2015, p. 35)

⁶ (T13.Badalati, 12 June 2015, p. 13)

the relationship between Clr Jacavou and Clr Hindi deteriorated, allegedly due to a falling out over pre-selections in the Liberal Party.⁷

12. During the 2012-13 Mayoral term, Clr Istephan was charged with twelve (12) counts of assault for performing unnecessary dental work on nursing home residents. Despite reported attempts by the ALP bloc of the Council to remove him, Clr Istephan refused to resign⁸.
13. By the time of the 2013 Mayoral ballot between Clr Jacavou and Clr Badalati, a number of ALP bloc members were persuaded to support Clr Jacavou's nomination. To avoid exposing those councillors to censure by the ALP, a secret ballot was organised by the Liberal party bloc⁹.
14. When the secret ballot votes were tallied, Clr Jacavou retained the Mayoralty by seven votes to five, to the surprise of Clr Badalati, who was reported in the press as saying: *"I am disappointed because I was the caucus nomination for mayor but obviously some broke caucus to vote for Jack Jacovou."*¹⁰
15. The evidence suggests that the relationship between Clr Jacavou and Clr Hindi was a strained one. While they both belonged to the same political party, neither liked nor trusted the other. Clr Jacavou suspected that Clr Hindi had voted for Clr Badalati in the mayoral ballot, while Clr Hindi suspected that Clr Jacavou had been spreading bad rumours about him¹¹.
16. For his part, Mr Lampe was regarded by Clr Hindi as an agent of Clr Jacavou, reconnoitring and garnering political support on behalf of the then Mayor.¹² This was a view shared by some of Mr Lampe's senior staff, one of whom stated that, *"the General Manager was the 13th Councillor, he's more interested in dealing with and handling issues at a Council level than in terms of the operations of the organisation ..."*¹³
17. In relation to the 2013 Mayoral ballot, Clr Hindi suspected that Mr Lampe had marked the secret ballot papers with invisible ink, so as to indicate who had

⁷ (T3.Jacavou, 19 June 2015, p. 4; T5.Mining, 16 June 2015, p. 4; T13.Badalati, 12 June 2015, p. 15; T20.Hindi, 12 June 2015, p. 20)

⁸ (M1.Leader, 17 October 2013)

⁹ (T2.Garske, 7 July 2015, p. 4)

¹⁰ (M2.Leader, 17 September 2013)

¹¹ (T20.Hindi, 12 June 2015, p. 26)

¹² (T20.Hindi, 12 June 2015, p. 53)

¹³ (T15.Watt, 25 June 2015, p. 45)

- voted for whom¹⁴. Clr Hindi also had a distrust of the Council's Internal Ombudsman, Mr Park who he saw as compromisingly loyal to Mr Lampe.¹⁵
18. In October 2013, Clr Istephan was found guilty on five (5) of the twelve (12) counts of assault with which he had been charged. He resigned from the Council in December 2013.¹⁶ In March 2014, a by-election was held to fill Clr Istephan's vacant seat. The by-election was won by Clr Brent Thomas from the ALP.¹⁷
 19. In April 2014, Clr Stevens resigned from the ALP, acknowledging that there were sanctions pending against her for not voting along caucus lines in the 2013 Mayoral election. She denies the allegations.¹⁸
 20. In the lead up to the September 2014 Mayoral ballot, it was again rumoured that a deal had been done for Clr Hindi to support Clr Badalati for the Mayoralty.¹⁹ Clr Hindi confirmed that such an arrangement was in place, *"on one proviso, if I get offered the Mayoralty, because I haven't been Mayor for ten years, I've never been, if I get offered it I'm going to take it, on a silver platter."*²⁰
 21. In the lead up to the ballot there was a progressive deterioration in Clr Badalati's relationships with Clrs Mining and Thomas. According to Clr Thomas, this was due to Clr Badalati's attempts to control their votes in the Council.²¹ As a result, Clrs Mining and Thomas became increasingly estranged from Clr Badalati's caucus.
 22. Clr Hindi's support for Clr Badalati also faltered when Clr Hindi was nominated to head the Liberal Mayoral ticket in the 2014 Mayoral ballot. In September 2014, Clr Hindi was elected Mayor with the support of the Liberal voting bloc.
 23. The evidence suggests that by November 2014, the Liberal bloc had started to disintegrate, due in no small part to frictions over a KPMG forensic review of anonymous 'poison pen' emails sent to councillors (addressed later in this report). Clr Hindi observed, *"But because of the KPMG Report and other things*

¹⁴ (T20.Hindi, 12 June 2015, p. 21)

¹⁵ (T20.Hindi, 12 June 2015, p. 130)

¹⁶ (M3.Leader, 3 December 2013)

¹⁷ (M4.Leader, 18 March 2014)

¹⁸ (M5.Leader, 3 April 2014)

¹⁹ (T1.Drane, 17 June 2015, p. 5)

²⁰ (T20.Hindi, 12 June 2015, p. 27)













²¹ (T10.Thomas, 17 June 2015, p. 4)

*that followed I knew some of that seven were actually putting knives in my back and that's where the problem lies."*²²

24. With the gradual disintegration of the established blocs, the evidence suggests that new alliances began to form.

The Seven and the Five

25. The evidence suggests that by March 2015, councillors had divided into the following voting blocs:

The Seven	Party	The Five	Party
 Con Hindi	Liberal	 Brent Thomas	ALP
 Vince Badalati	ALP	 Jack Jacovou	Liberal
 Nancy Liu	Unity	 Michelle Stevens	Independent
 Colin Drane	ALP	 Philip Sansom	Independent
 Rita Kastanias	Liberal	 Justin Mining	ALP
 Dominic Sin	ALP		
 Christina Wu	Liberal		

26. Cllr Hindi together with Cllr Badalati formed the nucleus of the group of seven, which contained the majority of councillors.
27. These voting blocs had obviously not formed along party lines, but appear to have been based on opportunism and personalities. The voting patterns of the 'Seven' were not necessarily exclusive. However, in matters of greater concern to the bloc members and certainly, in matters concerning the Terms of Reference of this investigation, the voting patterns were almost invariably along voting bloc lines.
28. On 24 July 2015, Cllr Jacovou resigned from the Council, citing health problems, and *"Council's entrenched dysfunction, which had no hope of being fixed with the present set of personalities."*²³ His resignation effectively left the voting blocs at 'Seven' to 'Four'.

²² (T20.Hindi, 12 June 2015, p. 30)

²³ (M10.Leader, 24 July 2015)

Public interest disclosures (PID)

29. On 5 May 2015, Mr Lampe and Mr Watt submitted PID's to the Office.
30. Mr Lampe's disclosure related to the fear of retribution arising from the KPMG report and his refusal to comply with a direction by Clr Hindi in his defamation email of 13 April 2015²⁴.
31. Mr Watt's disclosure, on the other hand, related to his belief that once compliance notices were issued to Clr Hindi for the Crump Street property, Clr Hindi would garner support from councillors to terminate Mr Lampe's employment contract²⁵. Mr Watt was pre-empting the issuing of compliance notices to Clr Hindi, which were to be issued the following day.
32. The timing of these disclosures is noteworthy. Both disclosures were submitted on the same day and preceded the Council meeting on 6 May 2015. Mr Lampe would have been aware that the KPMG investigation into the allegations contained in the emails were coming before the Council on 6 May 2015. In fact, he states in his disclosure that he considers this to be retribution for releasing the unredacted version of the original KPMG report.
33. On 15 May 2015, Mr Park submitted a PID stating his reason as, *"should anything happen to myself by a politically charged Council."*²⁶
34. On 28 May 2015, Mr Park emailed further information to the Office to support his PID, as follows: *"I honestly believe that the Mayor will place undue pressure on the acting General Manager to take some action against me.... I fear from some detrimental action against me up to and including dismissal."*²⁷

Council's internal governance structures

35. In late 2014, Council had restructured its internal audit function and the position of internal auditor was made redundant. The duties of this position were transferred to Mr Park. This situation continued until Mr Park's resignation (referred to later in this report) on 3 June 2015.
36. Since that time, the Council's Corporate Lawyer has undertaken the duties of all three (3) positions, including her own.

²⁴ (A7.PID, 5 May 2015)

²⁵ (A12.PID, 5 May 2015)

²⁶ (A18.PID, 15 May 2015)

²⁷ (E24.Email, 28 May 2015)

37. In addition, the position of governance officer was vacant from late 2014 until approximately May 2015 and the governance manager was on sick leave from March 2015, for approximately ten (10) weeks. The responsibilities of the governance section, including preparation of Council business papers and minutes, were left to Mr Park during this time.
38. This depletion of the Council's internal governance structures created a significant risk to the effective functioning of the Council.

The 'poison pen' emails and KPMG report

39. Between 2011 and 2014 a series of anonymous 'poison pen' emails were sent to the councillors, politicians, staff members and the media, alleging cronyism, misconduct and corruption. Two (2) of these emails were of particular interest. These will be colloquially referred to as the 'Istephan' email and the 'stop Lampe' email.
40. The relevance of these emails to the Terms of Reference of this investigation are twofold. Firstly, the 'stop Lampe' email encompasses allegations against Mr Lampe. The management of complaints about Mr Lampe falls directly within the Terms of Reference of this investigation.
41. Secondly, the decision by the Council to have KPMG investigate the source of the 'poison pen' emails rather than the substance of the allegations contained therein, has been identified as a principal contributing factor leading to the deterioration of relationships and the decline of governance standards within the Council.

The 'Istephan' email

42. The 'Istephan' email was received on 7 August 2013 from the pseudonym Chris Lee <concernedresident190@gmail.com>. The email questioned how Cllr Istephan was still serving as deputy Mayor when he had criminal charges hanging over his head.²⁸
43. Between 11:30am and 2:12pm, eight (8) copies of the same email were sent to target email addresses. The emails had a word document attached which contained extract copies from activist emails critical of Cllr Istephan.

²⁸ (A2.Report, 16 February 2015)

44. The content of the emails did not change. However, there were changes, mainly in the author and company fields, within the metadata of the email attachments. The metadata attached to the first of the emails, received at 11.30am, showed the author as 'Con Hindi' from 'Ausgrid'. In the subsequent emails, the metadata on the attachments was altered in an apparent attempt to implicate other councillors.
45. While there was some circumstantial evidence, in the form of the metadata, linking Clr Hindi to the 'Istephan' email, Clr Hindi denied any involvement in sending the emails. In fact, stating that he had been set up.²⁹
46. It is logical to assume that multiple emails with different metadata were sent to provide a smoke screen for the real sender's identity. It unclear why the author would send eight (8) copies of the same email, with altered metadata, to the same recipients. Perhaps, it was a means of covering his/her real identity that may have inadvertently been divulged in one of the emails. Of the eight (8) emails examined by KPMG, while metadata had been altered to show different authors, all of them indicated the same company source, being 'Ausgrid'.³⁰

Mr Lampe's response to the 'Istephan' email

47. Ms Garske was present in Mr Lampe's office on 7 August 2013, when the first of the 'Istephan' emails arrived.
48. Ms Garske showed Mr Lampe how to open the attachment to look at the metadata attached to the document. The metadata indicated that the source of the attachment was 'Con Hindi' from 'Ausgrid.' She states that she was then *"very quickly dismissed from the office."*³¹
49. While Mr Lampe claimed not to recall the actual incident, he did not dispute Ms Garske's recollection, stating, *"I'm not uncomfortable with that statement because she showed me several things but I'm not aware, I don't recall that particular day but I'm not uncomfortable."*³²

²⁹ (T20.Hindi, 12 June 2015, p. 50)

³⁰ (A2.Report, 16 February 2015)

³¹ (T2.Garske, 7 July 2015, p. 25)

³² (T4.Lampe, 9 July 2015, pp. 47-48)

Importance of the 'Istephan' email

50. A consideration for this investigation was why the Council decided to investigate the source of the KPMG emails rather than the substance of those emails.
51. Mr Lampe was aware of the metadata attached to the initial 'Istephan' email. Therefore, he would also have been cognisant that the metadata of the 'poison pen' emails would be identified in the subsequent KPMG forensic examination, commissioned in December 2014.
52. The decision to commission the KPMG report was made by the Council, not Mr Lampe. Nonetheless, he was, or should have been aware that Clr Hindi would be identified in the metadata, creating the potential for a difficult and embarrassing situation for Clr Hindi.

The 'stop Lampe' email

53. The second email of interest was received on 27 January 2014 from the pseudonym <viclampestop@hushmail.com>.³³ This email was headed "*Make Victor Lampe Stop harassing women please*" and was sent to Clrs Kastanias, Stevens, Hindi, Mining, Wu, Liu and Badalati, and copied to Mr Mark Coure the local State Liberal member.
54. The email nominated a number of the Council's female staff who had been subjected to similar harassment. Further, it alleged that Mr Lampe was having an affair with a female Council manager.
55. Not all councillors were copied on the email. One particular omission was the then Mayor Clr Jacavou who under the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* (the Procedures)³⁴ would normally receive complaints about the General Manager.
56. Investigation of anonymous complaints can be difficult. One way is to explore the allegations informally, determine whether there is any substance to them, and then decide what exactly is worthy and capable of investigation.

³³ (A2.Report, 16 February 2015)

³⁴ (P2.Policy, 15 March 2013)

Council resolves to conduct forensic investigation

57. At its meeting on 5 November 2014, Council resolved that a forensic investigation be carried out to identify the true authorship of the 'poison pen' emails sent to councillors. This motion was brought by Clrs Mining and Sansom.
58. At this meeting, Mr Lampe requested councillors to privately advise him which emails they considered required investigation. On 5 December 2015, Mr Park wrote to all councillors seeking advice as to the emails to be included in the investigation.
59. Given the technical requirements needed in undertaking a forensic investigation and the sensitive nature of the emails in question, the investigation was outsourced.
60. The evidence is that Mr Lampe was aware that Clr Hindi was identified in the 'Istephan' email metadata prior to the commissioning of the KPMG Report.
61. When questioned whether he had discussed Clr Hindi's details coming up on the metadata of the 'Istephan' email with other councillors, Mr Lampe responded, "*No, I don't recall. I don't recall.*"³⁵

Mr Lampe's response

62. Mr Lampe's evidence is that he first became aware of the 'stop Lampe' email shortly after councillors had received it on 27 January 2014.
63. When questioned as to whether he had acted on the information in the email, he responded, "*I did nothing with it ... Because from my paradigm I've done nothing wrong.*"³⁶
64. Mr Lampe stated that he instigated his own enquiries through the Council's human resources department in regard to one (1) of the allegations in the email. That allegation was that a female staff member had been given a full time job by Mr Lampe in exchange for keeping quiet about being harassed by Clr Istephan.
65. Mr Lampe was challenged about this decision as follows:³⁷

³⁵ (T4.Lampe, 9 July 2015, p. 52)

³⁶ (T4.Lampe, 9 July 2015, p. 54)

³⁷ (T4.Lampe, 9 July 2015, p. 56)

ML: But with the greatest respect where in the code of conduct does it say if you get an allegation against yourself you conduct an investigation into yourself

VL: Well I just put the, yeah I know, I hear that. I did nothing and so that's an error of judgment that's there ...

66. Mr Lampe acknowledged that the Code of Conduct was explicit in regard to the investigation of complaints against the General Manager. He also understood that despite the complaint being anonymous, it did not take away from his responsibilities under the Procedures and his duty of care to his employees.
67. During interview, Mr Lampe claimed that he had reported the allegations to Mr Park³⁸:

VL: At some stage I got Warren Park to pass everything onto the department and the local Government.

ML: Warren Park said that he hadn't seen this until such time as the KPMG report was commissioned.

VL: I'm not uncomfortable with that statement. Warren would always, to me, if Warren says this is that I'd say yes, Warren's right.

68. Mr Lampe did not report the allegations contained in the anonymous 'stop Lampe' email. This is despite there being a number of female staff named in the email who could have provided further avenues for inquiry.

The KPMG report

69. In December 2014, KPMG was engaged to conduct the forensic investigation into the 'poison pen' emails. KPMG was provided with the nominated emails on 17 December 2014. The investigation was carried out over the December 2014 to January 2015 period with the report being provided to the Council on 16 February 2015.³⁹
70. The report did not arrive at any firm findings as to the true authorship of the anonymous emails. To do so, KPMG claimed to have required access to third

³⁸ (T4.Lampe, 9 July 2015, p. 56)

³⁹ (A2.Report, 16 February 2015)

party hardware which it did not have. The report identified all the emails which were provided to KPMG without their contents and attached them as an appendix to the report.

71. Of particular interest was Annexure B of the report, which comprised a table showing metadata details from the emails examined. 'Con Hindi' from 'Ausgrid' was identified in one set, while other councillors, including Clrs Badalati, Sin and Liu were identified in others. It was however, the 'Hindi' metadata that was to cause such furor in events subsequent to the KPMG report.
72. Ultimately, KPMG recommended that the Council consider a number of alternate options, including reporting the emails to the police and broadening the search and/or maintaining webserver configurations for domain tracing to provide a more immediate tracking response.

Advice from Ms Garske

73. Once the KPMG report had been received by Mr Lampe and Mr Park, the question was how the information should be released to council? This was a particularly sensitive issue given that several of the Council's staff members and councillors had been named in the emails and the metadata tables.
74. The evidence is that shortly after receiving the report, Mr Lampe and Mr Park sought advice from Ms Garske on its release. She advised them to consider the original resolution of the Council and the scope of KPMG's brief, which was limited to finding the source of the emails. She advised that the contents of the emails should be considered irrelevant and therefore should be redacted from the report before being presented to the Council.⁴⁰

Ms Garske's response to the 'stop Lampe' email

75. Ms Garske's evidence is, that while perusing the KPMG report she came across the 'stop Lampe' email. This is the first time she had seen this document. She immediately raised concerns with Mr Park, *"I was doing the redactions for the KPMG report I kind of said to him like, what the hell's this*

⁴⁰ (T2.- Garske, p 30-31)

*one? It's the first I've seen of it and he just kind of went oh yeah, we've looked into it... I was told by Warren that it had been addressed."*⁴¹

76. When questioned regarding the 'stop Lampe' email, Mr Park replied, *"There was no formal complaint lodged with me by any of the Councillors ... I can recall an email, an anonymous email coming in at some stage concerning sexual harassment, but there was little detail other than just making aspersions against the General Manager, so there was nothing there that I could follow up."*⁴²
77. Under the Procedures, code of conduct complaints about the general manager, are to be referred to the complaints coordinator by the Mayor. Therefore, as the Council's Internal Ombudsman, there was no obligation on Mr Park to refer the matter for possible investigation.

Advice from Mr Peter Rigg

78. On 19 February 2015, Mr Park sought advice from Mr Rigg, Lawyer⁴³ on the release of the contents of the KPMG report. Mr Rigg was not on the Council's panel of lawyers. Nonetheless, he was regularly used by Mr Lampe and Mr Park for advice.
79. Mr Rigg's advice on the release of the contents of the KPMG report was as follows, *"It is very much apparent that the KPMG Report requires the protection of section 10A (2) (a) of the Local Government Act. The necessary protection against public access to the Report is obtained under section 11 of the Act because the Report can be laid on the table at the meeting of Council when closed to the public."*⁴⁴

Tabling of the KPMG Report

80. Council papers and the agenda for the meeting of 4 March 2015 were posted to the Council portal on 26 February 2015. This prompted Cllr Thomas to email Mr Lampe requesting that councillors be allowed to view the report prior to the Council meeting, so as to allow adequate preparation on this item.

⁴¹ (T2.Garske, 7 July 2015 , p29)

⁴² (T7.Park, 24 June 2015, p3-4)

⁴³ (E3.Email, 20 February 2015)

⁴⁴ (E3.Email, 20 February 2015)

81. In an email to Mr Rigg dated 4 March 2015, Mr Park advised that Clrs Mining and Thomas had inspected and read the redacted report in Mr Park's office on 3 March 2015. Mr Park stated that Clr Hindi had also inspected the report prior to the Council meeting on 4 March 2015.⁴⁵ This was confirmed by Clr Hindi.
82. Mr Park's email states that arrangements had been made for Clr Kastanias to view the report on 4 March 2015. Clr Kastanias states that she never did view the report.⁴⁶
83. The redactions to the report removed the staff names from the document, but left councillors names, included in the metadata details of Annexure B.
84. On 4 March 2015, a telephone meeting was held between Mr Lampe, Mr Park, Clr Hindi and Mr Rigg to discuss the strategy for release of the information contained in the KPMG report to Council that evening. A decision was made to table the report, but not provide copies to the councillors. The reasoning was, that it may be better to provide a viewing of the report at a later time so that the business of the Council would not be disrupted on the evening of the meeting.
85. A copy of the KPMG report was tabled at the Council meeting on 4 March 2015 in closed session. Although no councillors were given a physical copy of the report, all of them were advised that they would be given the opportunity to make an appointment with Mr Park to view the report (under supervision) before the next Council meeting.⁴⁷
86. This approach prompted strong objections from Clrs Mining and Thomas, who argued that the restriction of access by councillors to the KPMG report by limiting it to viewing within the Council chambers and under supervision was unacceptable and without legal justification.
87. The commissioning of the KPMG report and the release of the information contained therein appears to have been a critical juncture in the events subject of the Terms of Reference of this investigation.
88. Both Mr Lampe and Clr Hindi had equally as much to lose from an unredacted release of the KPMG report. Clr Hindi had been identified in the metadata attached to one of the emails. Mr Lampe had been identified in a number of the emails.

⁴⁵ (T7.Park, 24 June 2015, p. 5)

⁴⁶ (T17.Kastanias, 24 June 2015, p. 4)

⁴⁷ (E3.Email, 20 February 2015; T2.Garske, 7 July 2015, p. 31)

89. Based on Mr Rigg's advice, Mr Lampe considered that he was in a position to release the report in redacted form to a closed meeting of the Council. This meant that all employees' names, including his own, would be redacted from the report, but leaving the councillors names un-redacted. As a result, Clr Hindi's identification in the report would not be protected from any councillor seeking to obtain a political advantage or to cause damage to Clr Hindi's reputation by leaking details of the report to the media.

Invitation to view the KPMG report

90. On 5 March 2015, Mr Park issued an invitation to all councillors to review the redacted version of the KPMG report⁴⁸. Noteworthy is that only one (1) councillor, Clr Stevens, responded to this invitation to read the report. Further, apart from Clrs Mining and Thomas, who had inspected and read the redacted report in Mr Park's office on 3 March 2015, no other councillors have sought to view the report since that time.
91. Councillors have an obligation to fully consider and inform themselves of matters before the Council. It is difficult to see how councillors were able to make a decision on the report put to them without having viewed and considered the report. This is particularly so, given the seriousness of the allegations contained in the report.

KPMG report reported in the Media

92. On 7 March 2015, the SMH published an article authored by journalist Ms Kate McClymont, "*Hindi claims he is being framed for poison pen e-mails.*"⁴⁹
93. In the article, Clr Hindi is quoted as saying, "*Everyone is trying to frame me. Everyone is,*" and in regard to the KPMG report, "*....absolutely nothing in it. They just looked at 'emand said we can't find anything.*" Clr Thomas was also quoted in the report.
94. On 17 March 2015, Ms McClymont published a further article in the SMH relating to the KPMG report⁵⁰. Entitled, "*Ausgrid to investigate anonymous*

⁴⁸ (E4.Email, 5 March 2015)

⁴⁹ (M13.SMH, 7 March 2015)

⁵⁰ (M14.SMH, 17 March 2015)

poison pen emails", the article quotes from one of the 'poison pen' emails and provide insightful details of another.

95. The article stated, *"Despite spending \$38,000 of ratepayer's funds on the report, a fortnight ago the mayor moved to prevent fellow councillors from accessing the report."* Once again, Clr Thomas is quoted in the article as stating, *"If Cr Hindi thinks there is nothing in the report, he's either living on another planet or in another universe."*

Council meeting of 18 March 2015

96. The Council held its fortnightly meeting on 18 March 2015. As Mayor, Clr Hindi was the chair of the meeting. Clr Thomas was present along with nine (9) other councillors. There were members of the community in the public gallery.
97. Shortly after the meeting commenced, Clr Thomas read a personal statement relating to the involvement of the Council, councillors and staff in the KPMG report.⁵¹
98. Clr Hindi also read a personal statement in response to Clr Thomas' statement, in which he allegedly claimed that Clr Thomas:⁵²
- was the author of the malicious email published in August 2013 involving a former councillor (the 'Istephan' email),
 - faked shooting attacks on his residential home and campaign office in 2010,
 - leaked details of the KPMG report to a journalist at the SMH, and
 - was a hypocrite.
99. The content of Clr Hindi's statement was considered to be inappropriate. It was subsequently the subject of a Code of Conduct complaint investigation. This investigation found that Clr Hindi had breached the Council's Code of Conduct⁵³.
100. These events are reflective of a serious break-down and deterioration in the working relationships between councillors, stemming back to tensions

⁵¹ (A4.Statement, 18 March 2015)

⁵² (A6.Letter, 19 March 2015)

⁵³ (A5.Report, 3 July 2015)

regarding the release of details from the KPMG report into the 'poison pen' emails.

KPMG councillor workshop

101. On 25 March 2015, KPMG investigators held a workshop for councillors about the outcomes of the investigation into the 'poison pen' emails. Councillors were advised about the unreliability of metadata as a source of identification and how metadata can be altered on attachments to emails.

Meeting between Clr Hindi and Mr Lampe on 10 April 2015

102. On 10 April 2015, Clr Hindi and Mr Lampe met to discuss the fallout from the release of the KPMG report. During this meeting, Clr Hindi accused Mr Lampe of omitting two (2) emails from an appendix to the KPMG report. Mr Lampe denied this accusation and advised that the two (2) emails Clr Hindi was referring to were duplicates and therefore didn't need to be included in the report twice⁵⁴.

103. The meeting is reported in contemporaneous notes prepared by Mr Lampe following the meeting.⁵⁵ Mr Lampe states that Clr Hindi blamed him for councillors' details being released in unredacted form in the KPMG report and alleged that he had been defamed. According to Mr Lampe's record of the meeting, Clr Hindi stated, *"I have been thrown under a bus, and I'm sorry Victor, your friends have thrown you under the bus as well."*

104. Clr Hindi confirmed that the meeting had taken place and the statement attributed to him: *"Oh well, I'll tell you why, because they've asked for that Report to come out. If that leaks out publicly and then he knows he's been thrown under the bus, look at the Sydney Morning Herald, what did I say about it's, it's, it's about the affairs, it's, everyone's, it's not a secret, everyone knows, who does he think they're talking about?"*⁵⁶

105. Clr Hindi advised Mr Lampe that he was unhappy that Annexure B, showing the email metadata attributed to Clr Hindi and other councillors, was the only part of the KPMG report released. Clr Hindi expressed the opinion that this had

⁵⁴ (A7.PID, 5 May 2015, p. 1)

⁵⁵ (A8.Notes, 10 April 2015).

⁵⁶ (T20.Hindi, 12 June 2015, p. 89)

been done to humiliate him in the public eye and compromise his employment with Ausgrid.

106. Clr Hindi stated that Mr Lampe agreed that the report was defamatory. Mr Lampe requested that Clr Hindi send him an email requesting legal advice to have the table redacted from the report.
107. Clr Hindi's version of this meeting is reported in an email to the investigator.⁵⁷ In this email, Clr Hindi identifies the meeting with Mr Lampe as having occurred on 15 April 2015. However, Clr Hindi's email alleging defamation was sent to Mr Lampe on 13 April 2015, therefore pre-dating the meeting.
108. At this meeting, Clr Hindi alleged, "*Lampe demands I get a lawyer to write a letter to ask him to redact my name like he did the others and refuses to explain why ... Lampe said ... let's kill this f***g thing because its (sic) getting legs. You need to kill this so I can do real stuff for your to (sic) for your 'legacy'.*"⁵⁸
109. In attempting to provide confirmation of this agreement between himself and Mr Lampe, Clr Hindi revealed during his interview that he was in possession of a tape recording of this meeting with Mr Lampe, "*That's exactly, he asked me to send him that and I have it on tape. OK, so let me see him put it on a Stat Dec and I'll put mine in a Stat Dec. We'll see who's lying.*"⁵⁹
110. During his interview, Clr Hindi was challenged about his claim of possessing a recording of Mr Lampe:

ML: You taped him during the conversation?

CH: I didn't tape him, someone did.

ML: Who taped him?

CH: I don't know who, but someone did. I said if something arrives in your letterbox you don't know who sent it. What I'm saying is it's exactly what took place, this is exactly what I told him. He asked me to do it. Please send me a letter because there are people out to get you Con and I want to protect you. I said fine. I'll send you a letter.

⁵⁷ (A9.Notes, 10 April 2015).

⁵⁸ (A9.Notes, 10 April 2015)

⁵⁹ (T20.Hindi, 12 June 2015, p. 86)

ML: Con, who else could have taped him if it was only you and him in the room?

CH: I don't know, maybe, maybe it's not taped, maybe he deleted it, I don't know. At the moment there is no tape. At the moment we know these are my words, he gave his word.

111. The *Surveillance Devices Act 2007* prohibits the use of a listening device to record or listen to a private conversation to which the person is not a party, or to record a conversation to which the person is one of the parties.

Email from Mr Lampe to Clr Stevens on 12 April 2015 – Clr Hindi gathering numbers

112. On 12 April 2015, Mr Lampe sent an email to Clr Stevens in which he stated that Clr Hindi was currently getting numbers together to have him removed at the Council's next meeting.

113. When questioned in regard to where he had obtained this information, Mr Lampe nominated the partner of a current councillor.⁶⁰ He could not provide further explanation on this person's motivation for providing this information.

Clr Hindi sends email to Lampe alleging defamation

114. On 13 April 2015, Clr Hindi sent an email to Mr Lampe alleging that he had been defamed in Annexure B of the KPMG report. Clr Hindi stated, "*council would be negligent and irresponsible for releasing the information to the public or even allowing any third party to view it or read (sic) as they will be seen as distributing an unauthorised s**t sheet.*"

115. In his email, Clr Hindi claimed that the Council had failed to protect him and others in that they have allowed other parties to read defamatory data. He stated, "*You have disseminated information which is defamatory to me personally.*" In the email, he makes a number of demands, including that all personal data relating to him or his employer, Ausgrid, be immediately redacted.

⁶⁰ (T4.Lampe, 9 July 2015, p. 72)

Mr Lampe – Code of Conduct complaint against Clr Hindi

116. On 15 April 2015, Mr Lampe sought legal advice from Mr Rigg about Clr Hindi's email. Mr Rigg advised that Mr Lampe does not have any authority from the Council to cause the report to be further redacted. Further, that any further redaction of the report be a matter for the Council to determine.
117. In the meantime, Mr Rigg advised that Mr Lampe should decline to action Clr Hindi's request and that the report should remain available for viewing by councillors subject to obligations arising from section 664 of the Act (disclosure and misuse of information).⁶¹
118. On 24 April 2015, Mr Lampe referred Clr Hindi's email to Clr Stevens. In his communication with Clr Stevens, Mr Lampe claimed that Clr Hindi had made a number of allegations against him in his capacity as the Council's General Manager. Mr Lampe advised that since Clr Hindi had made the accusations in writing, he believed he had no alternative but to formally complain. As such, he lodged a formal Code of Conduct complaint against Clr Hindi, alleging that he had breached the provisions of part three (3) of the Code of Conduct, regarding general conduct obligations.⁶²
119. This provides further evidence of the deteriorating relationships, not only within the elected body, represented by the councillors, but also between the elected body and the administrative body, headed by the General Manager.

Council meeting of 15 April 2015 - provide copies of emails

120. At the Council meeting of 15 April 2015, two (2) motions were considered that were relevant to the Terms of Reference.
121. The first motion, submitted by Clrs Mining and Thomas, was that KPMG prepare a redacted version of the KPMG report that could be made available for public release. This motion was lost along voting bloc lines.
122. The second motion, submitted by Clrs Badalati and Wu, was that the Council provide copies of emails to councillors that were identified by councillors, to be included in the forensic KPMG investigation. This motion was carried, again along voting bloc lines.

⁶¹ (E3.Email, 20 February 2015)

⁶² (E5.Email, 24 April 2015)

123. It appears that the intention of the motion was that all councillors be provided with unredacted copies of all emails that were subject to KPMG's forensic investigation. Further, that not only the councillors who submitted these emails should be identified, but that information be provided about which emails were submitted by each of those councillors.

Legal advice on the provision of emails to councillors

124. Clause 7.2 of the Council's Code of Conduct states that the General Manager must provide councillors and administrators with information sufficient to enable them to carry out their civic office functions. The General Manager, however, is only obliged to accede to any request for information from councillors if such request is reasonable and lawful (clause 8.8 of the Code). Where a General Manager determines to refuse access to a document sought by a councillor he must act reasonably and give reasons for his refusal (clause 7.7 of the Code).

125. On 5 May 2015, Mr Park received advice from Mr Jay Lawrence, Barrister, in regard to the release of the un-redacted KPMG emails together with the identity of the councillors who nominated those emails for analysis. Mr Lawrence's advice was that councillors were entitled to receive copies of the emails without their contents redacted if it was for the purpose of councillors carrying out their official functions, such as assessing how to handle the disparaging allegations, which had the potential to bring the Council into disrepute.

126. Mr Lawrence expressed the additional opinion that, in light of the fact that KPMG's forensic report had not yielded any definitive findings, it was doubtful whether the contents of the emails would shed any additional light on the issue of how to handle the allegations.

127. Mr Lawrence also noted that the leaks to the press on this issue raised the real possibility that the relevant emails were requested not for the purposes of councillors' official functions but for other purposes, such as to obtain a political advantage or to cause damage to another council official's reputation.⁶³

⁶³ (A10.Report, 5 May 2015)

128. On 11 May 2015, Mr Park forwarded Mr Lawrence's advices to Mr Rigg, asking for further advice on whether Mr Lampe should release the emails to the councillors:

“In a response we could say (in short) but you would need to be more specific:

1. Can't provide details of Councillors as it is against the PPIP (sic) Act as per advice from Jay - do you hold the same view?

2. Refer to the emails you (Councillors) received on such a date (I believe most Councillors got the emails originally so rather than give them a fresh copy refer back to when it first came in).

*The advice from you will need to be on letterhead as Victor wants to put it on their Portal.*⁶⁴

129. On 13 May 2015, Mr Rigg provided a letter of advice to Mr Park, providing justification for the emails to be released *“in redacted form only”* and recommending that Mr Lampe not disclose the identity of individual councillors who nominated emails for investigation.

40 Crump Street, Mortdale development

130. The property at 40 Crump Street, Mortdale was owned by Clr Con Hindi. In 2014, the property was subject to two (2) development applications. The first being a demolition of the existing dwelling that was on the property and the second, for the construction of semi-detached dwellings.

131. The Council has a practice that any applications lodged by a councillor or a Council staff member must be referred for independent assessment. Council staff have no role in the content of the report or the recommendations made.

132. The applications were independently assessed by a consultant planner and recommended for approval. Following consideration of the matter at its meeting on 5 November 2014, the Council granted development consent. The development was subject to conditions, including removal of asbestos material.

⁶⁴ (E6.Email, 11 May 2015)

Email from the neighbour

133. There had been subsidence between Clr Hindi's property and the property adjacent to the rear, due to severe weather conditions. On 22 April 2015, the neighbour sent an email to all councillors and to the Council's customer service department, complaining about the subsidence and requesting assistance.⁶⁵
134. The neighbour's email was forwarded to the Council's Planning Department and received by Mr Watt. Mr Watt stated that he would not normally get involved in matters of this kind unless "*there were serious issues raised.*"⁶⁶

Crump Street inspections

135. On the morning of 24 April 2015, Mr Watt called Clr Hindi to obtain permission to inspect the Crump Street property. An inspection was organised for that afternoon.
136. Around 4.30pm on 24 April 2015, Mr Watt attended the site with the Council's Planning Officer, Mr Michael Alexander. Also in attendance were Mrs Miray Hindi (Clr Hindi's wife) and Mr Malcolm Hindi (Clr Hindi's son). The inspection revealed that existing structures had been demolished and the site had been levelled.

Asbestos found

137. A general walk through of the site by Mr Alexander uncovered pieces of what appeared to be asbestos fibre cement fragments. No samples were taken as appropriate collection equipment was not available at the time of inspection, although photographs were taken. The pieces observed were found to have the typical dimple pattern of hardie flex asbestos wall linings.⁶⁷
138. The evidence is that around 10.30am on 25 April 2015, Mr Alexander rang Mr Watt to follow up on what he wanted done about the suspected asbestos fragments found on the subject property during the previous day's inspection. Mr Watt stated that he would ask Mr Lampe what he wanted done. Shortly

⁶⁵ (E7.Email, 22 April 2015)

⁶⁶ (T15.Watt, 25 June 2015, p. 4)

⁶⁷ (A11.Notes, 24 April 2015)

after, Mr Alexander had a teleconference with Mr Lampe and Mr Watt. Mr Lampe stated that Clr Hindi was not to be afforded special treatment.⁶⁸

139. Under Council's enforcement policy, officers can serve a notice to the property owner, requiring remediation works. Following this site inspection, the results were discussed with Mr Lampe and a letter to Clr Hindi was prepared. The letter contained a remediation notice under the *Protection of Environment and Operations Act 1997*.
140. In his evidence, Mr Lampe states that he had dinner with Clrs Hindi and Sansom that evening. Mr Lampe asked Clr Hindi whether he had received the letter from the Council's Planning Department. Clr Hindi confirmed that he had. Mr Lampe states that he advised Clr Hindi, "*It's serious Con. You need to fix it and you need to fix it now.*" According to Mr Lampe, Clr Hindi said "*yes he would, he'd fix all of the issues and he didn't.*"⁶⁹

Second Crump Street inspection

141. Due to the possibility of asbestos on the site, another inspection was arranged for 27 April 2015. Prior permission was sought from Clr Hindi, who also attended the inspection at approximately 1:45pm that day. Both Mr Alexander and Mr Watt attended the site inspection. The purpose of the inspection, from the Council officers' point of view, was to collect samples from the site.
142. Mr Watt's and Mr Alexander's evidence is that Clr Hindi was obstructive and dismissive of anything that was said to him during the inspection. They state that any samples identified as possible asbestos, were picked up by Clr Hindi with his bare hands, to prevent them being sampled. According to Mr Alexander, Clr Hindi instructed them to leave the site.

Clr Hindi's conversation with Mr Alexander

143. When questioned about this inspection, Clr Hindi denied that he had picked up asbestos pieces, claiming instead that the material was blue board. When questioned further regarding this inspection, Clr Hindi replied:⁷⁰

⁶⁸ (T14.Alexander, 7 July 2015, pp. 31-32)

⁶⁹ (T4.Lampe, 9 July 2015, p. 40)

⁷⁰ (T20.Hindi, 12 June 2015, pp. 279-280)

CH: Mate, I've got, I've got his voice taped. Would you like me to let you hear it?

ML: No, I don't want to hear it.

CH: Exactly, I'll let you hear it because that's exactly what I was afraid of because I knew what people were doing to me.

ML: Alright. Do you understand it's illegal to tape people without their knowledge?

CH: I was taping myself.

ML: Do you understand it's illegal to tape people without their knowledge?

CH: Of course it is.

144. As previously noted in this report, the *Surveillance Devices Act 2007* prohibits the use of a listening device to record or listen to a private conversation to which the person is not a party, or to record a conversation to which the person is one of the parties.

Mr Lampe and Mr Watt meet with the neighbour

145. On 30 April 2015, Mr Lampe and Mr Watt met with the neighbour at the neighbour's residence at Mortdale to discuss the complaint. They inspected the neighbour's property and then went into the house. During this time, the neighbour indicated that they were very concerned because they were new residents and weren't aware of the processes of the Council. The neighbour expressed concern that anything that was said might lead to some sort of retribution or action from Clr Hindi. Mr Lampe's response was to try and placate the neighbour's concerns and he assured the neighbour that the Council would look after him. When interviewed, Mr Watt stated that it was "unprecedented" for the General Manager to get involved in matters of this type.⁷¹

146. The Council often received complaints about the conduct of a builder and/or compliance with development consent conditions. It is the role of the Council's

⁷¹ (T15.Watt, 25 June 2015, pp. 32-33)

planning and/or compliance staff to investigate and respond to complaints such as the neighbour's complaint.

147. When interviewed regarding his involvement with the Crump Street matter, Mr Lampe acknowledged that these were matters that he would not normally get involved in. His stated reason for getting involved on this occasion was to look after his staff: *"So when there's a Councillor involved I'll get involved. I'm the General Manager and in this instance here because Councillor Hindi is quite aggressive when it comes to his dealings with people, I could not put the officers out there by themselves ... If he was Con Hindi local resident it's not an issue but when you're Con Hindi the Mayor of the city and there are issues relating to your development then the General Manager should, must get involved."*⁷²

Asbestos found following further site inspection

148. On 6 May 2015, a further site inspection was conducted after council officers served notice on Clr Hindi that they were going to enter the site. Council officers Mr Alexander and Mr Michael Coufer attended. The purpose of that inspection was to obtain demolition fragments for testing.
149. No remedial works had been carried out and the hole within the rear yard of the adjoining property appeared to be larger than during the previous inspection on 27 April 2015. Also observed in this vicinity were approximately a dozen pieces of villaboard type material that appeared to be freshly deposited onto the site. Photos were taken of the site at this time. The fragments were tested on the same day and resulted in a positive result for asbestos.⁷³
150. As a result of this identification, Council staff acted very quickly in issuing a notice of intention to serve an order to Clr Hindi on 6 May 2015. This was at Mr Lampe's direction.⁷⁴ Such a notice invites the recipient to provide an explanation for an alleged breach of the environment protection legislation. It also provides an opportunity for an individual to provide reasons why the Council should not proceed with further enforcement action, such as issuing a penalty notice or commencing a prosecution.

⁷² (T4.Lampe, 9 July 2015, pp. 39-40)

⁷³ (A13.Photos, 6 May 2015; A14.Notes, 6 May 2015)

⁷⁴ (T15.Watt, 25 June 2015, p. 22)

151. The timing of issuing this notice is noteworthy due to the unprecedented speed with which it was issued. It also appears to coincide with the KPMG motion being considered by the Council that evening.
152. The following day, on 7 May 2015, Mr Lampe attended Mr Watt's office and asked about the photos that had been taken the previous day at the Crump Street property. He questioned Mr Watt as to whether the photos had been entered into the Council's TRIM document management system. Mr Watt states that while walking together from the office, Mr Watt told Mr Lampe that after issuing the notice on Clr Hindi, the next step was to "*serve an order pulling up the Notices*" that had previously been served. Mr Lampe allegedly pointed his finger at Mr Watt and said, "*I want that served today ... don't f**k around.*"⁷⁵
153. These interactions provide evidence of Mr Lampe seeking to involve himself in the matter. It should be noted that on the same day as compliance letters were issued on 6 May 2015, the Council resolved to employ a private investigator to examine all allegations in the KPMG report emails, in order to ascertain the legitimacy or otherwise of the allegations (addressed later in this report). This had the potential to severely impact Mr Lampe's professional and personal reputation.

Clr Hindi contacts Council staff

154. Communications between planning staff and development applicants, where applicants are councillors, are problematic. Firstly, they have the potential to intimidate Council planning staff. Secondly, they create the impression to the general public that the councillor is receiving preferential treatment or access to senior planning staff.
155. There is evidence that Clr Hindi contacted Council staff by phone and email regarding his development at 40 Crump Street, Mortdale. In each of the emails addressed to Mr Alexander, Clr Hindi has used his Council email account and signed off each of the emails with his Mayoral designation signature bloc.
156. The Council's Code of Conduct provides that councillors must not expect or request preferential treatment in relation to any matter in which they have a private interest, because of their position.

⁷⁵ (T15.Watt, 25 June 2015, p. 21)

157. The Council's Code of Conduct also provides that any communication with staff should be directed through the General Manager to avoid such perceptions. This was not done in the present case.⁷⁶

Offer of financial assistance to the neighbour

158. On 8 May 2015, Mr Park and Mr Lampe attended the home of the neighbour. The neighbour was concerned about the email that he had sent to councillors and its use in any Code of Conduct investigation against Clr Hindi. According to Mr Park, the neighbour's main concern was the possibility of being sued by Clr Hindi.

159. Mr Park stated that in order to reassure the neighbour, Mr Lampe told him that the Council would cover his legal expenses if he was sued by Clr Hindi.⁷⁷ When these circumstances were put to him, Mr Lampe responded: *"If Warren said I said it I would say I said it ... Yeah. I don't dispute it."*

160. On 9 May 2015, Mr Park sent an email to LT Lawyers, requesting assistance with wording and email to be sent to the neighbour: *"As explained at our meeting on Friday council will cover any and all legal costs for potential litigation from the mayor in this matter."*⁷⁸

161. Mr Taylor's advice was succinct: *"it is not clear to me on what legitimate basis the Council can offer to fund [the neighbour's] costs in any litigation with the Mayor. The Council would be funding one party to a private dispute, which is neither rational nor impartial."*⁷⁹

162. The functions of the General Manager are set out under section 335 of the Act. One of these functions is to exercise such of the functions of the Council as are delegate by the Council to the General Manager.

163. Section 377 of the Act sets out the Council's general power to delegate. Under this section, the Council cannot delegate certain functions. A decision under section 356 of the Act to contribute money or otherwise grant financial assistance to persons is one of those.

⁷⁷ (E12.Email, 25 July 2015, p. 3; T4.Lampe, 9 July 2015, pp. 86-88; T7.Park, 24 June 2015, p. 29)

⁷⁷ (E12.Email, 25 July 2015, p. 3; T4.Lampe, 9 July 2015, pp. 86-88; T7.Park, 24 June 2015, p. 29)

⁷⁸ (E13.Email, 8 May 2015, p. 4)

⁷⁹ (E13.Email, 8 May 2015, p. 2)

Meeting to finalise Crump Street report

164. On 14 May 2015, a meeting was held between Mr Watt, Mr Alexander and the Council's Corporate Lawyer, Ms Jenny Ware to finalise the Crump Street report. The report was to be presented to the Council at its meeting scheduled for 20 May 2015.
165. The final recommendations of the report were to refer the Crump Street report to the Council for approval to seek legal advice with a view towards prosecution of Clr Hindi.
166. There is already evidence that Mr Lampe became personally involved in the Crump Street matter despite not normally getting involved in complaints at that level. The explanation provided by Mr Lampe was that he had to protect his staff from Clr Hindi.
167. The evidence of Mr Watt is that Mr Lampe's involvement was unprecedented, *"I think in this particular matter I can say that he was obviously more interested in it or more involved in it because it involved the Mayor ... is it unprecedented, anything that involves the Mayor you could say might be unprecedented..."*⁸⁰
168. Mr Alexander commented that there appeared to be an unprecedented rush to complete the Crump Street report compared to other matters that the Council had pursued involving asbestos contamination, *"I felt like it had, there was a rush to get the matter into a Report and to a Council meeting."*⁸¹ This view was shared by Mr O'Connor.⁸²
169. Clr Hindi had already experienced bad publicity relating to the unauthorised release of metadata information relating to the first KPMG report. Additional bad publicity in relation to alleged non-compliance with development consent conditions as well as asbestos contamination at Crump Street, had the potential to further erode public confidence in the Mayoralty.
170. When questioned as to whether one of the considerations when drafting the recommendation of the Crump Street report, was that it would cause embarrassment for Clr Hindi in the public domain, Mr Watt responded, *"Well I think we knew that, that it would follow, that if we were to write a Report in*

⁸⁰ (T15.Watt, 25 June 2015, p. 36)

⁸¹ (T14.Alexander, 7 July 2015, p. 7)

⁸² (T6.O'Connor, 26 June 2015, p. 29)

open Council concerning the Mayor and anything that he wasn't looking after appropriately would cause that, but it wasn't a major influence."⁸³

171. It is probable to conclude that the Crump Street Report was rushed in order to get it presented at the Council meeting of 20 May 2015. This was the same meeting at which the rescission motion relating to the investigation into the KPMG emails was to be heard.

Crump Street report submitted

172. The final Crump Street report and recommendations were posted on 14 May 2015, with the business papers for the Council meeting scheduled for 20 May 2015. Clr Hindi became aware of the paper being placed on the agenda on the evening of 14 May 2015.⁸⁴

Newspaper article 16 May 2015

173. On 16 May 2015, the SMH published an article entitled *"Hurstville Mayor Con Hindi in Strife over asbestos."*⁸⁵ The article was once again authored by Ms McClymont and recorded that Clr Hindi may be prosecuted for causing a *"potential health risk"* and possible contamination of waterways for his repeated failure to remediate the *"asbestos-riddled site"*.

Further newspaper article

174. On 19 May 2015, the SMH published an article entitled *"Call for embattled mayor to stand aside."*⁸⁶ The article was once again authored by Ms McClymont and quoted the shadow Minister for Local Government, Mr Peter Primrose as stating, *"Cr Hindi's position as mayor is completely untenable."*

Crump Street report considered

175. Mr Lampe left the meeting of 20 May 2015 before the Crump Street report was considered. The Crump Street report was submitted by Mr Watt. The report contained a recommendation that the matter be referred for legal advice

⁸³ (T15.Watt, 25 June 2015, p. 15)

⁸⁴ (A17.Report, 20 May 2015)

⁸⁵ (M15.SMH, 16 May 2015)

⁸⁶ (M16.SMH, 19 May 2015)

regarding the potential to prosecute Cllr Hindi for non-compliance with the development consent conditions.

176. Cllr Hindi declared a pecuniary conflict of interests and absented himself from the Chamber and from considering this matter. At the start of the meeting and prior to the matter being considered, Cllr Hindi had distributed a large document, placed on each councillor's table.⁸⁷
177. Under the Act and the Code of Meeting Practice, the terms of notice of business place restrictions on the introduction of new information.
178. The evidence of Ms Garske⁸⁸ is that at no time during her tenure in the position of the Council's Governance Manager, had an applicant or stakeholder been permitted, either at the start of or during the meeting, to present material for or against a matter under consideration.
179. She stated that despite a number of attempts over the years, this has always been disallowed by the Mayor of the day or by the Council. The rationale always given was that it was inappropriate to introduce new material without the Council having time to consider this before making a decision. At best, if a speaker identifies issues which have not been addressed, they can ask the Council to defer the item, thereby enabling Council officers to review and provide guidance and for the Council to consider the new information.
180. The information introduced by Cllr Hindi did not form part of the business paper and was therefore, not in the public arena. This prevented the councillors from identifying any issues they were not familiar with, and if necessary, seeking further clarification prior to the meeting.
181. As already noted, this is not a right granted to other applicants or subjects of unauthorised works reports and so this was a misuse of his position as a councillor. The Code of Conduct provides that, *"You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment."*

⁸⁷ (A22.Documents, 20 May 2015)

⁸⁸ (E19.Email, 21 July 2015)

Crump Street motion

182. Once Clr Hindi absented himself from the Chamber, the matter was debated by the Council. There were three speakers on the issue. Clr Hindi's wife, Mrs Miray Hindi, spoke against the report recommendations. Clr Hindi's lawyer, Mr Boulos spoke against the report recommendations. Mr Kevin Williams spoke in favour of the report recommendations.
183. After consideration of the matter and much heated debate, the Council decided not to adopt the recommendations of the report. Instead, it resolved that the matter be referred to WorkCover to get a resolution by them to clarify the difference between the Council report and the applicant's comments at the meeting regarding the asbestos contamination.
184. Once again, members of the 'Seven' voting bloc led the defence of Clr Hindi's development, with members of the 'Five' most critical of it. Clrs Badalati and Drane put the motion to Council and it was resolved six votes to five, in compliance with the established voting blocs.

Allegations of harassment

185. The complainant states that she first became aware of the 'stop Lampe' email when it was sent on 27 January 2014, stating, *"So I read it when it came out ... Oh wow, I thought great, hope, hopefully some, they'll investigate it because it's true."*⁸⁹
186. At interview, the complainant alleged that she had been harassed by Mr Lampe since commencing work at the Council, approximately three (3) years ago. She claimed to have commenced a diary in 2013, approximately one (1) year after commencing employment with the Council, documenting incidents with Mr Lampe. She stated that, *"It's literally just a Word Document and I'd write the date and I would just write, commented on my breasts. Said I don't think you're gay, a guy's going to come long one day, grab you by the hair and make you realise."*⁹⁰
187. On 1 May 2015, the complainant accompanied Clr Hindi to deliver cheques for Council grants to schools for the establishment of vegetable gardens.

⁸⁹ (T16.Lane, 26 June 2015, p. 4)

⁹⁰ (T16.Lane, 26 June 2015, p. 5)

Following their attendance at a school at Lugarno, they called into Clr Kastanias' cafe for a coffee.

188. During conversation, the complainant told Clr Hindi about a rumour that she had heard. This being that Clr Hindi was trying to get rid of Mr Lampe. She claims that Clr Hindi denied this and stated that, *"I know that's the word on the street.....I don't know where it's come from.....me and Victor work great together.....he's fine..."* The complainant then claims to have told Clr Hindi that she had been harassed by Mr Lampe.
189. The complainant states that Clr Hindi responded, *"these are really serious allegations, like I'm obliged to do something."*⁹¹ The complainant maintains that at no time did she intend to make a formal complaint against Mr Lampe, *"No, I just told, I don't even know why I told him."*

The timing of the complainant's allegations

190. The complainant had reportedly been subjected to Mr Lampe's harassment for a period of three (3) years. At interview, she acknowledged that she had never considered Mr Lampe's behaviour as a 'big enough deal'⁹² to formally make a complaint. However, on 1 May 2015, she changed her mind.
191. During this investigation, multiple requests were made for a copy of the diary the complainant claimed to have kept, documenting incidents of sexual harassment by Mr Lampe dating back to 2013⁹³. A copy of the diary was mailed in hard copy, along with the complainant's signed transcript, in late July 2015. The diary consisted of seven dot point incidents, each of no more than three (3) lines in description, dating back to October 2014. This was less than one (1) year ago, rather than the two (2) years the complainant had originally claimed.⁹⁴
192. On becoming aware of the 'stop Lampe' email, the complainant claims to have reported the harassment to Clr Jacavou during his time as Mayor. However, this is denied by Clr Jacavou who states that the complainant did nothing more than query whether he thought that Mr Lampe and another female Council staff member were having an affair (as claimed in the 'Istephan' email).

⁹¹ (T16.Lane, 26 June 2015, p. 19)

⁹² (T16.Lane, 26 June 2015, p. 8)

⁹³ (E8.Email, 10 July 2015)

⁹⁴ (A15.Notes, 17 July 2015)

193. Contrary to assertions made by Clr Hindi, the complainant denies ever making a formal complaint to Clr Jacavou regarding Mr Lampe's behaviour; *"I didn't make a formal complaint or anything ... Was I making a formal complaint? Absolutely not."*⁹⁵
194. The complainant's statement that she had maintained a two (2) year log of harassment events proved to be false. Therefore, it is difficult to reconcile how she could accurately recall events occurring up to three (3) years ago.
195. It is clear, from the evidence, that the complainant definitely discussed the issue of having been harassed by Mr Lampe at the meeting with Clr Hindi on 1 May 2015.
196. The question then becomes why Clr Hindi did not immediately act on the complaint, as he was obliged to do under the Procedures⁹⁶. The Procedures provide that the Mayor may initiate the process for the consideration of a matter without a written complaint, and yet he failed to do so.
197. Clr Hindi claims that he wasn't aware of the Procedures at the time he received this complaint, *"I don't deal with a General Manager and someone at that level. I've never done it before.... I'm too scared, I'll tell you that, I would be too scared to put any claims against the General Manager because I can tell you exactly what happened in Crump Street, that's what would have happened to me on another matter ... Oh so what would Victor Lampe do to me then?"*⁹⁷
198. As Mayor, Clr Hindi should have been aware of the Procedures, or at the very least, should have known where to seek advice on managing the allegations. The Procedures are also outlined in the Councillors Hand Book, a copy of which would have been issued to him when he became a councillor.
199. Clr Hindi did not report or take any action on the allegations made to him by the complainant in their meeting of 1 May 2015. This is despite there being, according to Clr Hindi, an ongoing risk to the complainant of repeated harassment.

⁹⁵ (T16.Lane, 26 June 2015, p. 13)

⁹⁶ (P2.Policy, 15 March 2013)

⁹⁷ (T20.Hindi, 12 June 2015, pp. 127-130)

A second meeting between the complainant and Clr Hindi

200. On 4 May 2015, the complainant received a phone call from Clr Hindi, who asked to meet her at Penshurst Hotel. The evidence is that at this meeting, Clr Hindi told the complainant that he was going to put a motion to the Council to conduct a “*general investigation*” into the allegations in the KPMG report. He assured her that in this way, she would not have to make a formal complaint against Mr Lampe. Rather, that she would just be another person getting interviewed as part of the investigation into the KPMG emails.
201. Despite the complainant’s appeal for no further action, Clr Hindi had a duty of care to her. This appears to have been ignored given that for the period of any proposed investigation into the KPMG emails, the complainant would still have been exposed to the harassing behaviour alleged against Mr Lampe. Duty of care and vicarious liability were later raised by Clrs Hindi, Badalati and Drane, as significant considerations prompting the urgency of action in the Council’s suspension of Mr Lampe. However, they don’t appear to have been considerations on 4 May 2015.
202. In addition, Clr Hindi had a duty to comply with the Procedures, requiring that the allegations be referred to an external reviewer for investigation. Under the Procedures, where the Mayor becomes aware of a possible breach of the Council’s Code of Conduct by the General Manager, he may initiate the process for the consideration of the matter without a written complaint⁹⁸. Clr Hindi failed to do so.
203. Despite his apparent reservations about reporting the matter to the Council’s complaints coordinator, Mr Park⁹⁹, there was still the option for Clr Hindi to report the matter to the Council’s deputy complaints coordinator. Clr Hindi did not do so.

Clr Badalati made aware of the complaint

204. The evidence from Clr Badalati is that, on either 4 or 5 May 2015, Clr Hindi informed him that a staff member had made allegations to Clr Hindi about Mr Lampe. At this point, this information had not been revealed to any other

⁹⁸ (P2.Policy, 15 March 2013)

⁹⁹ (T20.Hindi, 12 June 2015, p. 130)

councillor. His advice to Clr Hindi was, *"I said to him look, once you do meet with the deputy with her if you do nothing you could be in strife, right, because the allegations have been made to you. You need to act. I suggested to him that he get some legal advice of what he should do."*¹⁰⁰

205. Despite this, Clr Hindi did not seek legal advice until some two (2) weeks later on 20 May 2015. This was the same day as the Council meeting that suspended Mr Lampe. Of further concern, is that the Council's Code of Conduct requires that councillors must not disclose information about the consideration of a matter under the Code except for the purposes of seeking legal advice unless the disclosure is otherwise permitted under the Code.

206. In his evidence, Clr Hindi states that he was aware of his obligations not to disclose this information: *"I thought I'm not allowed to discuss these things with anybody. I thought code of conduct says you don't discuss it with anyone."*¹⁰¹

Council meeting of 6 May 2015

207. At its meeting of 6 May 2015, the Council resolved to employ a private investigator to examine all allegations in the KPMG report emails, in order to ascertain the legitimacy or otherwise of the allegations. The matter was raised as an urgency motion by Clrs Badalati and Drane and supported by the 'Seven' voting bloc. A rescission motion was raised soon after by Clr Jacavou, supported by the 'Five'.¹⁰²

208. Usually each item of business to be dealt with at a council meeting is on the agenda. However in cases of a great urgency, business can be dealt with at a meeting without being recorded on the agenda, but only after a motion is passed to allow this particular business to be dealt with. This motion can be moved without notice.

209. It is difficult to ascertain, why this motion was considered urgent, and why, for instance, it could not have been rescheduled for the next Council meeting.

¹⁰⁰ (T13.Badalati, 12 June 2015, p. 16)

¹⁰¹ (T20.Hindi, 12 June 2015, p. 138)

¹⁰² (A16.Rescission, 22 May 2015)

A third meeting between the complainant and Clr Hindi

210. On the afternoon of 11 May 2015, the Deputy Mayor, Clr Stevens was contacted by Clr Hindi and asked if she would be able to meet him that evening at the Penshurst Hotel to discuss an issue. Clr Stevens was not advised the reason for the meeting or that the complainant would be present. The complainant was also invited to attend the meeting.
211. During the meeting, the complainant repeated the allegations against Mr Lampe, in the presence of Clr Stevens.

Clr Badalati informed

212. While Clr Badalati was aware that Clr Hindi had received a complaint against Mr Lampe, he states that he was not aware of the complainant's identity. Clr Badalati's evidence is that on 14 or 15 May 2015, Clr Hindi informed him who the complainant was.¹⁰³ Clr Hindi denies that he told Clr Badalti the identity of the complainant until 20 May 2015, before the meeting at which Mr Lampe was suspended.

Clr Stevens emails Mr Park

213. On 16 May 2015, Clr Stevens emailed Mr Park for advice regarding the allegations made by the complainant against Mr Lampe, as relayed to her at the meeting on 11 May 2015 at Penshurst Hotel.
214. On 18 May 2015, Mr Park responded with email advice to Clr Stevens *"Is Con using this as a tit for tat? ... I am concerned that the Mayor has now involved you ... Is the mayor now going to say you raise the issue with you in you did nothing about it?"*¹⁰⁴
215. On the same day, Clr Stevens emailed the complainant (and copied Clr Hindi) confirming that the complainant and Clr Hindi had asked that no further action be taken at this time regarding the allegations. However, she reiterated that if this matter was required to be dealt with at a later time the appropriate processes would need to be followed.¹⁰⁵

¹⁰³ (T13.Badalati, 12 June 2015, p. 16)

¹⁰⁴ (E16.Email, 18 May 2015)

¹⁰⁵ (E17.Email, 18 May 2015)

216. Immediately following this email, Clr Hindi sent an SMS message to Clr Stevens, as follows: *"You have compromised the young lady's position..... Miss X is off sick and your e-mail will now be read by her replacement therefore exposing her privacy."*¹⁰⁶

Clr Hindi's inaction

217. When asked at interview about his understanding of the process for managing complaints about the General Manager, Clr Hindi replied, *"Basically if you get a complaint about the General Manager I guess you, you take it and then you hand it over to the Complaints Co-ordinator and they deal with it."*¹⁰⁷ However, Clr Hindi claims to have been ignorant of the process at the time of receiving the complainant's allegations. When questioned as to when he first became aware of the process, he replied, *"Basically when the Department says, sent us a letter and says we want you to put this Code of Conduct on Mr Lampe by 4.00pm to be handed to the Complaint Co-ordinator."*¹⁰⁸ This relates to a letter sent to councillors by the Office's Chief Executive on 25 May 2015, immediately prior to the extraordinary Council meeting held on that date.

218. While Clr Hindi may have been ignorant of the Procedures at the time of receiving the complainant's allegations, it was incumbent on him to familiarise himself with them before the Council took action to suspend Mr Lampe.

219. In addition, Clr Hindi's claim contradicts strong corroboratory evidence that he was made aware of the Procedures by a number of councillors at the meeting of 20 May 2015, when the Council suspended Mr Lampe.

¹⁰⁶ (E18.SMS, 18 May 2015)

¹⁰⁷ (T20.Hindi, 12 June 2015, p. 8)

¹⁰⁸ (T20.Hindi, 12 June 2015, p. 11)

A fourth meeting with the complainant

220. On 19 May 2015, the complainant met for the fourth time with Clr Hindi at the Penshurst Hotel. According to the complainant, Clr Hindi presented a statement comprising notes taken from their meeting with Clr Stevens on 11 May 2015, stating, *"I wrote down everything that I could remember.....read it, make any changes.....this is going to protect me and it's going to protect you."*
221. Clr Hindi's evidence is that he told the complainant; *"If you don't want to go ahead I've got another, same thing but it has a Stat Dec, that's what you said to me, you don't want to go ahead but that's what you said to me, I'll take it up to the police and report it to them, if they say it's nothing to do with us I'll say fine."*¹⁰⁹
222. Ultimately, the complainant signed the statement containing the contemporaneous notes *"knowing that.....number one, it's a hundred percent true, I wouldn't sign anything that wasn't. Number two, that it may be used.....or will be used later down the track...."*
223. When the complainant was questioned about her knowledge of how the statement would be used, the complainant stated, *"Did I know that, that this was formalising my, my complaint, yes.....I knew signing the document was serious and I knew that if there was an investigation....that it would be used....."*

Legal advice from CCW Lawyers

224. On 20 May 2015, Clr Hindi sought legal advice from CCW Lawyers in regard to the legalities involved in suspending Mr Lampe based on the complainant's allegation.¹¹⁰
225. The CCW Lawyers' advice to Clr Hindi notes that the complainant *"has indicated her stress arising from the prospect of continuing to work with Mr Lampe,"* and that *"According to [the complainant] other employees with similar complaints will participate in the investigation if the matter is investigated externally and Mr Lampe's employment is suspended."*

¹⁰⁹ (T20.Hindi, 12 June 2015, p. 177)

¹¹⁰ (A19.Report, 20 May 2015)

226. The complainant provided no evidence to the investigation that she had ever met with CCW Lawyers, or spoken to them by phone. She also provided no evidence to the investigation that additional complainants would come forward if Mr Lampe was suspended.
227. Instead, it appears that CCW Lawyers based their advice on a combination of the following: the statement prepared by Clr Hindi, and signed by the complainant on 19 May 2015; and discussions with Clr Hindi regarding the allegations.
228. The advice provided by CCW Lawyers about suspending Mr Lampe's employment, noted that "*Corrs is able to conduct such an investigation ... as part of advising the Council on its response to [the] complaint*". This apparent lack of awareness of the mechanisms for external review under the Procedures¹¹¹ suggests that CCW Lawyers were not briefed on, nor were they familiar with, the Procedures relating to managing complaints about the General Manager.
229. It should be noted that CCW Lawyers were not on the Council's panel of legal advisors, nor were they on the Council's panel of external reviewers for the purposes of investigating breaches of the Code of Conduct. When questioned as to why he had chosen CCW Lawyers, Clr Hindi responded, "*I've dealt with them probably, when have I dealt with them probably? 15 years ago through AusGrid, probably 20, but some friend of mine said you can use them so I just gave them a call.*"¹¹²
230. During interview, Clr Hindi also commented about Mr Lampe's use of Mr Rigg for legal advice, "*I said Victor, Peter Rigg is not on our panel. We have a panel of three lawyers. Why are we using Peter Rigg? Oh Peter will give us the advice that we want. I said Victor I don't want the advice that we want. I want the right advice..... You do not go outside the panels until you really have a compelling argument and you've got to come to Council for it*"¹¹³
231. Noteworthy, is that when questioned about his use of CCW Lawyers instead of one of the Council's panel lawyers, Clr Hindi noted:¹¹⁴

¹¹¹ (A19.Report, 20 May 2015)

¹¹² (T20.Hindi, 12 June 2015, p. 187)

¹¹³ (T20.Hindi, 12 June 2015, p. 70)

¹¹⁴ (T20.Hindi, 12 June 2015, pp. 187-188)

ML: Now given that you've already told me regarding Peter Rigg, that you were critical Lampe using Rigg because he wasn't on the panel.

CH: Yes.

ML: ... why didn't you think to use a panel solicitors yourself?

CH: I don't even know who they are.

ML: You could've found out.

CH: From whom?

ML: Jenny Ware (HCC Corporate Counsel)

CH: I don't even know who Jenny Ware was. No one talks to her. We've never spoken to her.

The Mayor's authority

232. In the absence of a resolution of, or delegation from the Council, the Mayor's functions under section 226 of the Act do not include the authority to seek such legal advice and/or incur costs on behalf of the Council.

233. There was also no authority to incur expenses for this type of legal advice under the Council's expenses and facilities policy.

234. Under section 226 of the Act, the Mayor has the power to exercise in cases of necessity, the policy-making functions of the governing body of the Council between meetings of the Council.

235. During interview, Cllr Hindi invoked this section to justify seeking this advice without the formal resolution of the Council¹¹⁵:

CH: Yeah, I'm the Council right, I am the Council.

ML: No, you're not the Council.

CH: That's what it says read it.

ML: You're not the Council.

236. The executive power of the Council is vested in the body politic. Cllr Hindi's invocation of section 226 in an attempt to justify seeking legal advice without resolution of the Council, to suspend Mr Lampe, demonstrates a misinterpretation of the use of executive power. It also represents a significant lack of understanding of the powers of the Mayor under this section:

¹¹⁵ (T20.Hindi, 12 June 2015, p. 190)

ML: Given that you were going to meet with the councillors that evening, right once again, how can you justify ... invoking Section 226 to obtain legal advice as a matter of urgency?

CH: That's between meetings.....that's between meetings. I'm not in the meeting, I'm in between meetings.

ML: Con, (what if it was) 1 minute to 7.00?

CH: It's between meetings

ML: That does not give you the power....

CH: Why doesn't it? I'm sorry.¹¹⁶

237. The term 'necessity' in this context, denotes either a possible justification or exculpation for non-compliance with a condition or regulation required under the Act. Clr Hindi would need to show that he invoked this authority because he had no reasonable alternative in order to avoid a harm or the emergency, and the harm he sought to avoid outweighed the consideration of non-compliance with the policy making conditions of the Act or regulation.
238. It should be noted that the authority under section 226 extends only to the policy making functions of the Council. It is arguable whether seeking legal advice on a matter before the Council could be determined to be 'policy making' under strict definition.
239. Given that the Council was due to meet on the same day on which the legal advice was sought, it cannot be said that such emergency conditions existed that would justify invocation of this section.

Appropriate processes

240. The investigation has been unable to determine why Clr Hindi did not go through the appropriate processes and seek a resolution from the Council to seek legal advice on the suspension of Mr Lampe.
241. There is no doubt that had a resolution been sought from the Council, it would have potentially delayed the process of suspending Mr Lampe until after the meeting of 20 May 2015.

¹¹⁶ (T20.Hindi, 12 June 2015, p. 194)

242. Clr Hindi expressed the opinion that the situation “*was an emergency to be able to give that to the councillors on the night to make up their mind. That’s what the emergency is. They need to make up their mind ...*” Further, that such a delay would put the complainant at further risk of harassment.
243. This emergency is in contrast to the fact that Clr Hindi had knowledge of the complainant’s allegations from 1 May 2015 until 20 May 2015. It is unclear what changed to create the emergency.

Council meeting on 20 May 2015

244. Council operates pursuant to a code of meeting practice.¹¹⁷ This code sets out the order of business for Council meetings.
245. On 20 May 2015, the minutes¹¹⁸ indicate that immediately on commencement of the Council meeting, Clr Badalati proposed to move a matter of urgency regarding a staff matter and requested the Council to resolve into closed session in order to consider the matter. Clr Hindi approved the matter to be of urgency.
246. Following the Council’s resolution to move into closed session, the doors of the Chamber were closed, with all councillors present. A number of documents were distributed to the councillors, including redacted copies of the emailed legal advice from CCW Lawyers, and a redacted copy of the ‘contemporaneous notes’ statement signed by the complainant on 19 May 2015.¹¹⁹
247. After some debate during which several councillors highlighted that any proposal to suspend Mr Lampe would potentially be in breach of the Procedures, the Council considered a motion put by Clr Badalati and seconded by Clr Drane. The motion was that Mr Lampe be suspended on full pay while an investigation into the allegations was carried out. The motion was carried with Clr Hindi having to use his casting vote to decide the matter.
248. When interviewed in relation to the meeting of 20 May 2015, Clr Badalati stated that Clr Hindi had shown him the legal advice from CCW Lawyers at around 6:00pm on the day of the meeting. This was approximately one (1)

¹¹⁷ (P5.Policy, 18 August 2014)

¹¹⁸ (A20.Minutes, 20 May 2015)

¹¹⁹ (A21.Documents, 20 May 2015)

hour before the meeting commenced. Clr Badalati denied having any discussion, or making any agreement with Clr Hindi to raise the matter as an urgency motion as the first item of business of the Council, stating it was his decision to do so.

249. Given that Clr Badalati was briefed by Clr Hindi prior to the Council meeting on 20 May 2015, it is difficult to believe that there was no discussion between these councillors on a likely action resulting from the CCW Lawyers advice.
250. Clr Badalati stated that he based his actions on the advice contained in legal advice from CCW Lawyers. However, he acknowledged that he had no knowledge of the instructions provided by Clr Hindi to CCW Lawyers on which the legal advice was based. He also acknowledged that he had not directly discussed the issues with CCW Lawyers, nor was he aware whether CCW Lawyers had been provided with critical documentation, such as the Procedures.¹²⁰
251. When Clr Badalati was asked to explain why the motion had been so urgent, he could not provide a reasonable explanation, other than to point to the CCW Lawyers advice and repeat, that the allegations were serious.
252. Clr Badalati failed to provide a convincing case as to why this motion was so urgent that it couldn't be heard in closed session, pursuant to standard practice, as the last agenda item of the Council meeting. In addition, despite Clr Badalati apparently relying on the legal advice, there was no mention in that advice about the requirement for the matter being heard at the beginning of the meeting as a matter of urgency. In fact, the evidence is that such action was unprecedented.
253. Clearly, if the matter was so urgent that it needed to be dealt with as the first item of business, then Clr Hindi was able to raise a Mayoral minute to bring the matter onto the agenda. This was information received by Clr Hindi directly from the complainant. He had personally sought and received legal advice from CCW Lawyers on the matter. However, the urgency motion was raised by Clr Badalati, who insisted that it was his decision and that he was not acting under any direction to do so.
254. The evidence of Clr Badalati was that he was made aware of the allegations against Mr Lampe on 4 or 5 May 2015. In addition he states that he was

¹²⁰ (T13.Badalati, 12 June 2015, pp. 21-24)

informed of the complainant's identity by Clr Hindi on 14 or 15 May 2015.¹²¹ Despite this knowledge, he had taken no action before 20 May 2015, when the matter suddenly became one of urgency.

255. This urgency is also in contrast to the fact that Clr Hindi had knowledge of the complainant's allegations from 1 May 2015 until 20 May 2015.

256. Based on this evidence, it is reasonable to conclude that this matter was raised at this time, and in this manner to achieve the removal of Mr Lampe from the meeting before he had an opportunity to comment on the Crump Street report. Mr Lampe had indicated in his interview that he had intended to do so. It is also reasonable to conclude that the manner in which it was introduced to the Council meeting was designed to distance Clr Hindi from the motion to avoid the perception of the decision being linked to the Crump Street matter.

257. On the balance of probabilities, there is a compelling argument that the action to raise the urgency motion as the first item of business was, to seek the removal of Mr Lampe from the meeting.

258. Further, the Council's Code of Conduct provides that allegations of suspected breaches of the Code of Conduct must not be made at Council meetings or in other public forums.

Rescission motion

259. The minutes of the meeting of 20 May 2015 note that Clr Jacavou had submitted a rescission motion for this matter.

260. If a notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with, normally at the next Council meeting (section 372 of the Act).

261. On the evening of the Council meeting of 20 May 2015, Clr Jacavou's rescission motion had the effect of negating the Council's decision to suspend Mr Lampe until such time as the rescission motion could be considered by Council, normally at the next ordinary Council meeting.

262. Despite this, Mr Lampe left the Chamber and went home following the closed session. When questioned as to why he left, Mr Lampe responded:¹²²

¹²¹ (T13.Badalati, 12 June 2015, p. 16)

VL: I left as soon as ... they came back and said you've got to go, you know, you're suspended I...

ML: Who told you that?

VL: That was the Mayor. That was up on the board.

ML: Were you directed?

VL: Yeah.

ML: By the Mayor to leave the Council meeting?

VL: Yeah, yeah, yeah. As I recall he said "You get out", was his exact terms.

263. This version was supported by Cllr Thomas, who stated that when he came back into the Chamber following the short break after the closed session, he noticed that Mr Lampe was not there. He then went outside and phoned Mr Lampe who informed him that he had been told to leave by Cllr Hindi.

264. When questioned in regard his recollection, Cllr Hindi replied, *"An absolute lie and incorrect. An absolute lie. Number one I have no right to tell him to leave. Number two, he is the one that's getting paid the money and has got the full-time job, would've said Mr Mayor I'm not leaving here until the motion is ratified by full council. The motion was not ratified. He had the right to sit there and continue with the entire meeting. He chose to leave of his willing."*¹²³

Events following the meeting of 20 May 2015

Mr Lampe returns to work

265. Having been informed of the rescission motion, Mr Lampe returned to work on 21 May 2015, much to the dismay of the complainant, *"I walked into the office in my gym gear because I'd walked to work and ran into him ... And I just, like I froze.....it was probably almost like I'd seen a ghost and I just, because I*

¹²² (T4.Lampe, 9 July 2015, p. 29)

¹²³ (T20.Hindi, 12 June 2015, p. 201)

didn't know that, I didn't know if he knew that it was that I had put in a, this claim."¹²⁴

266. The complainant's evidence was that she rang or texted Clr Hindi to ask what she should do. His advice was allegedly, *"If you don't feel comfortable, leave ... it's going to be ok."*
267. The complainant stated that she had picked up a new car earlier that day, and later, was talking to Mr Lampe about her new car. She alleges that he stated, *"Oh promise me you won't have sex in your new car the first week you have it .. you'll be right because you'll be driving down the street, guys will be checking you out ... Make sure you keep your hair long so they've got something to grab onto."*
268. This conversation is flatly denied by Mr Lampe and there is no corroboratory evidence to support the complainant's claims.
269. Despite the lack of corroboration, there is evidence that the complainant rang Clr Hindi and reported the comments to him on 21 May 2015. His advice was to not go into work on 22 May 2015, but rather, that he would email Mr Lampe and advise him that the complainant was required on a photo shoot that day.¹²⁵ In addition, there is an entry coinciding with this event on the complainant's log.¹²⁶

Letter from the Office

270. On 21 May 2015, a letter was sent from the Office's Chief Executive to Clr Hindi advising, *"I am making preliminary inquiries into what transpired at the meeting on 20 May 2015."* In this letter, the Chief Executive requested an explanation for Mr Lampe's suspension, as well as copies of legal advice and why the matter was deemed urgent.¹²⁷
271. On 22 May 2015, a letter was sent in response from Mr Boulos of Belgrave Lawyers.¹²⁸ In this letter, Mr Boulos advised that the matters had been deemed urgent due to the vicarious liability incurred by the Council if the matters were

¹²⁴ (T16.Lane, 26 June 2015, p. 44)

¹²⁵ (T16.Lane, 26 June 2015, p. 46)

¹²⁶ (A15.Notes, 17 July 2015)

¹²⁷ (A24.Letter, 21 May 2015)

¹²⁸ (A25.Letter, 22 May 2015)

proven and that Council had failed to minimise the risk and damage to the complainant.

272. Clr Hindi had known about these allegations since 1 May 2015, and had not acted on them until 20 May 2015. Similarly, Clr Badalati had been aware of the allegations from around 5 May 2015, and he had not taken any action to minimise the personal risks to the complainant, or to address the potential vicarious liability risks to the Council.

Meeting at the offices of COD Lawyers

273. On 22 May 2015, the complainant was driven to the offices of COD Lawyers by Clrs Hindi and Badalati. The evidence is that Clr Hindi gave assurances to lawyer, Ms Nicole Dunn, that the Council would cover the complainant's legal costs.¹²⁹

274. Noteworthy, this only came to light once this investigation sought to ascertain who was paying the legal bills on behalf of the complainant. This appears to have prompted Clr Badalati to send an email to Mr O'Connor, stating that the advice had been sought on behalf of individual councillors and not on behalf of Council.¹³⁰ This is contrary to the evidence of the complainant and Ms Dunn, both of whom attest to Clr Hindi's undertaking that the Council would cover the costs of the legal advice.

275. As with the advice from CCW Lawyers of 20 May 2015, neither Clr Hindi, nor Clr Badalati had any formal authority or delegation to undertake to incur legal expenses on behalf of the Council.

Rescission motion and extraordinary meeting

276. On 21 May 2015, Clr Drane sent an email to Clr Hindi, requesting that an extraordinary meeting be called for 25 May 2015, to consider the rescission motion flagged at the meeting of 20 May 2015. Extraordinary meetings require the support of at least two (2) councillors. Clr Hindi supported the request and sent an email to Mr O'Connor requesting that he make arrangements for an "urgent" meeting for 25 May 2015.¹³¹

¹²⁹ (C1. Letter O'Dea, 25 June 2015)

¹³⁰ (E20.Email, 1 July 2015)

¹³¹ (E22.Email, 21 May2015)

277. Mr Park sought legal advice and was advised that under clause 8(3) of the Code of Meeting Practice,¹³² the three (3) day notice period could only be invoked if the matter was an 'emergency'. If the meeting was regarded as urgent, the earliest it could be held was on 27 May 2015. When advised of this, Cllr Hindi responded, *"I meant to say it was an emergency not an urgent meeting. Councillors Badalati and Drane, that is my understanding it is an (sic) emergency meeting."*¹³³
278. On 22 May 2015, Cllrs Badalati and Drane lodged a rescission motion (against their own motion) on the decision to suspend Mr Lampe. An extraordinary meeting was approved by the Mayor, and scheduled for 25 May 2015.
279. The effect of this rescission motion was to bring the matter of Mr Lampe's suspension before the Council. This would ensure that once the rescission motion was lost, the suspension of Mr Lampe would be enforced and the matter could not be revisited for a period of three (3) months.

Advice from the Office

280. On 22 May 2015, the Office's Chief Executive sent a letter to all councillors, advising that Mr Lampe had made a PID. The Chief Executive warned that any decision made by the Council affecting the employment status of, or any action by individual councillors against Mr Lampe more broadly, may fall within the definition of 'detrimental action' and constitute an offence under the *Public Interest Disclosures Act 1994*.¹³⁴
281. On 25 May 2015, the Chief Executive sent a further letter to all councillors about the proposed rescission motion, advising:¹³⁵ *"I require that the allegation be referred to complaints coordinator by 4pm, 26 May 2015.....a failed rescission motion will prevent Council from reinstating GM for 3 months ... it would be inappropriate for Council to take action that would prevent the General Manager from reinstatement for that period of time given the length of time that some of the allegations have been known to some councillors."*

¹³² (P5.Policy, 18 August 2014)

¹³³ (E22.Email, 21 May 2015)

¹³⁴ (C2.Letter from OLG, 22 May 2015)

¹³⁵ (C3.Letter from OLG, 25 May 2015)

Extraordinary meeting of 25 May 2015

282. An extraordinary meeting of the Council was held on 25 May 2015. This meeting was to consider a rescission motion by Clrs Badalati and Drane, to rescind their own motion of 20 May 2015 to suspend Mr Lampe.

283. The councillors aligned to the 'Five' suspected that the 'Seven' intended to wait until the day of the extraordinary meeting and then withdraw the rescission. This would leave it too late for any alternate rescission motion to be submitted, given that a rescission motion must be formally submitted by the Monday following the Council meeting at which the motion was passed.

284. As such, an alternate rescission motion was lodged by Clr Sansom; *"THAT Council adheres to the Hurstville City Council Code of Conduct Administration Procedures 2013 guidelines."*

285. At the extraordinary meeting on 25 May 2015, Clr Hindi tabled three (3) documents:¹³⁶

- Unredacted copy of the legal advice from COD Workplace Solutions, acting on behalf of the complainant, dated 25 May 2015.
- Legal advice from CCW Lawyers dated 25 May 2015.
- Unredacted copy of the email from CCW Lawyers, dated 20 May 2015.

286. Clr Jacavou's evidence is that Clr Hindi was challenged to justify calling the extraordinary meeting on the basis of the rescission motion being an emergency: *"So I got up and said ... an emergency is when the town runs out of water or electricity, not something like that. It's not an emergency. An urgent motion still would've required 5 days, whatever it is. Only an emergency motion could do that the way you did. What's the emergency?"*¹³⁷

287. Clr Hindi responded by stating, *"I asked Mr Park, through Mr Laurie [O'Connor], what's an extraordinary meeting and emergency and he says it's up to the Mayor to decide because he spoke to the OLG and they said it's up to the Mayor to decide what's an emergency? I said is there anything that's*

¹³⁶ (A26.Minutes, 25 May 2015)

¹³⁷ (T3.Jacavou, 19 June 2015, p. 20)

specifically said? He said no, it's up to you. I said I decide it's an emergency."¹³⁸

288. At interview, Clr Hindi was questioned as to why he had not followed the advice given to councillors by the Office's Chief Executive on 25 May 2015. He responded, *"I didn't think it was the code of conduct so that's why I went that way ... I thought it's more serious than a code of conduct, more serious."*¹³⁹
289. The rescission motion was heard in closed session.¹⁴⁰ During this part of the meeting, Clr Hindi refused to answer questions posed by Clr Thomas, instead taking the questions on notice.¹⁴¹ These were questions regarding the legal advice provided to Clr Hindi by CCW Lawyers and questions to which Clr Hindi obviously could have answered. Instead, he chose to take the questions on notice.
290. When interviewed, Clr Hindi stated, *"No, no, no, no, no, I'm sorry because when I asked a question they won't respond so when I had to respond so therefore I'm not responding to his. I thought I don't have to respond ... no need for me to answer. That's as simple as that."*¹⁴²
291. It is clear that Clr Hindi had the information relating to the questions raised by Clr Thomas. This information was required by councillors to make an informed decision on the suspension of Mr Lampe. Given that the decision on whether or not, to support the rescission motion was to be finalised that evening, it was also information that was required immediately. This information should not have been taken on notice, to be provided at some future date.
292. In any case, under clause 28(6) of the Code of Meeting Practice, where questions without notice are raised at a Council meeting, the question and its response are to be referred to the next Council meeting in the form of a report. This was not done.
293. The evidence of Clr Javavou was that Clr Hindi gave priority to Clr Badalati's rescission motion on the basis of it being an 'emergency', *"then I asked about our motion, will our motion also be heard in due course if this goes down? And basically it indicated no because ... any motion we put will all be motions to the*

¹³⁸ (T20.Hindi, 12 June 2015, p. 191)

¹³⁹ (T20.Hindi, 12 June 2015, p. 192)

¹⁴⁰ (A26.Minutes, 25 May 2015)

¹⁴¹ (E21.Email, 2 June 2015)

¹⁴² (T20.Hindi, 12 June 2015, p. 222)

*negative, therefore they're both together and once one's been heard the other one automatically lapses.*¹⁴³

294. It is also worth noting that a motion to rescind an earlier resolution can only be lost once before a three (3) month ban is placed on any councillor 'bringing forward' another motion to the same effect (section 372(5) of the Act).

295. The motion was declared lost pursuant to the 'Seven' and the 'Five' voting blocs. Once again, providing evidence of how these blocs operate to support motions that are important to the 'Seven'. It should be noted that Clrs Badalati and Drane both voted against their own rescission motion.

296. The result of this was that the Council's suspension of Mr Lampe was upheld and Mr Lampe commenced his period of suspension.

297. Clr Hindi's approach to calling the extraordinary meeting, his behaviour on the evening and his approach to the rescission motion itself, suggests that he wanted to secure the suspension of Mr Lampe, at the earliest possible opportunity. This is based on Clr Hindi's:

- not following advice provided by the Office,
- not following the advice of his own councillors that he was potentially breaching the Procedures,
- lack of explanation for classifying the rescission motion as an emergency,
- not providing timely answers to questions posed to him by councillors during the closed session of the meeting, and
- giving preference to Clr Badalati's motion before alternate motions proffered by the 'Five'.

298. Further evidence is provided in Clr Hindi's communications on 26 May 2015 with CCW Lawyers partner, Ms Siobhan Flores-Walsh. In this email, she states that Clr Hindi had indicated that the rescission motion in relation to Mr Lampe's suspension was likely to be "*withdrawn*".¹⁴⁴

299. This corroborates Clr Jacavou's premise, that the intention all along was to wait until the day of the extraordinary meeting and then withdraw the rescission motion, leaving it too late for any alternate rescission motion to be submitted.

¹⁴³ (T3.Jacavou, 19 June 2015, p. 20)

¹⁴⁴ (E23.Email, 30 June 2015)

300. This is not indicative of the Council having adopted open and inclusive processes, which are representative of good governance.

Mr Park directed to attend Clr Hindi's office

301. On the 27 May 2015, Mr Park was called to Clr Hindi's office, accompanied by Mr O'Connor and Clr Badalati. Clr Hindi questioned Mr Park in relation to the email advices he had provided to Clr Stevens on 18 May 2015.

302. Mr Park advised Clr Hindi that he had advised Clr Stevens by both phone and email. Mr Park alleges that Clr Hindi directed him to provide a copy of the email communications between him and Clr Stevens. Mr Park confirmed that this direction came from Clr Hindi and not Mr O'Connor.

303. That afternoon, Mr O'Connor informed Mr Park that Clr Hindi was still awaiting the copy of the email with Clr Stevens. Mr Park subsequently provided Mr O'Connor with a copy of the email. Mr O'Connor confirms that he then provided a copy of that email to Clr Hindi.

304. When questioned as to why he had supplied this document to Clr Hindi, Mr O'Connor stated, *"I was of the belief that that document had some impact and would bear some relevance to the investigation regarding the Complaint against the General Manager and since the Complaint was received by the Mayor originally I thought he would be entitled to all the information surrounding that Complaint to ensure the Code of Conduct was heard correctly."*¹⁴⁵

305. Once in receipt of the email, Mr O'Connor sought legal advice from LT Lawyers. They advised that Mr Park had potentially breached the Council's Code of Conduct through the advice provided to Clr Stevens in the email.

Mr Park resigns

306. On 29 May 2015, Mr O'Connor sent Mr Park an email directing that he attend a meeting at 11:00am. At the meeting, Mr O'Connor allegedly informed Mr Park that, *"the Mayor was doing his own investigation"*.¹⁴⁶

307. Mr O'Connor clarified this version, *"Oh he [Clr Hindi] told me he was.... going to take his own.... legal action on the matter if he can and I don't know if*

¹⁴⁵ (T6.O'Connor, 26 June 2015, p. 11)

¹⁴⁶ (T6.O'Connor, 26 June 2015, p. 18)

*you've spoken to the Mayor yet, but he talks about a hundred miles an hour and says a hundred things in about five seconds, so a lot of stuff goes in one ear and out the other, but he did say he was going to seek his own legal action against Warren Park.*¹⁴⁷

308. In the presence of Ms Watts, Mr O'Connor put allegations to Mr Park involving personal comments made in the email to Clr Stevens. He also put allegations surrounding Mr Park's email to LT lawyers, proposing financial support for the neighbour should Clr Hindi sue him over his email complaint relating to the Crump Street development. Both matters were considered as serious misconduct on the part of Mr Park.
309. Mr Park was given a number of options regarding his future employment and was given until the close of business that day to make a decision. Mr Park contacted his union and they arranged an extension until the close of business on 3 June 2015. Mr Park provided his resignation, due to ill health, effective at the close of business on 3 June 2015.
310. The issue of most concern from these events is Clr Hindi directing Mr Park to provide him with a copy of the email advice sent to Clr Stevens. Under Part 6 of the Code of Conduct, councillors must not direct staff, or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate.
311. In addition, under section 335 of the Act, one of the functions of the General Manager is to direct and dismiss staff. This is not a function of the Council, nor is it a function of the Mayor.
312. The evidence is that the email was provided by Mr O'Connor to Clr Hindi in case it *"would bear some relevance to the investigation."* The Mayor has no role in conducting investigations into misconduct by the General Manager. Under the Procedures, these are matters for an external reviewer.
313. In addition, Mr O'Connor did not raise any concerns about Clr Hindi's threat that he intended to use a formal Council document obtained in his capacity as a Council official, to take private litigation action against Mr Park.

¹⁴⁷ (T6.O'Connor, 26 June 2015, p. 13)

Council meeting on 3 June 2015

314. At the Council meeting on 3 June 2015, the Council considered the rescission motion relating to the Council's resolution that the Crump Street matter be referred to WorkCover. The Council resolved "*THAT Council refer this matter to the Council's solicitors for advice on appropriate proceedings to address the breaches and ensure the health and safety of the subject site - including but not limited to appropriate fines and penalties and remedial orders.*"

Council meeting of 15 July 2015

315. At the Council meeting of 15 July 2015, Council received advice from LT Lawyers, commissioned to review the Council's original report and recommendations into the Crump Street matter.¹⁴⁸ The advice identified a number of deficiencies within the report, including misstatements regarding the conditions of development approvals and other issues regarding the failure to offer procedural fairness and follow due process.

316. Cllr Thomas moved a motion that consideration of the matter be deferred pending LT Lawyers being able to present the advice to the Council. This motion was defeated.

317. Council then resolved to accept the advice and take no further action on the Crump Street matter.

¹⁴⁸ (A27.Report, 19 June 2015)

CONCLUSION

318. This report has considered matters surrounding the governance of the Council. In particular, those surrounding the Council's resolutions involving the Crump Street matter and the allegations made against Mr Lampe.
319. Council meetings are the most important mechanism through which the governing body of the Council exercises its functions. The most important goal for councillors is to make 'good decisions' in the best interests of the whole community. Good decisions require good preparation, including reviewing all the relevant information and facts.
320. Some councillors have not been provided with access to, or time to assess, relevant information and materials.
321. The evidence shows that legal advice obtained by Clr Hindi, on behalf of the Council, was released in time-frames such that councillors may have been unable to digest and assess the contents before having to make decisions. The evidence also details how the Council's expert advisers were commissioned and what instructions they were provided, in order to effectively withhold information.
322. Delegations are an important aspect of the operations of councils. Without delegations the multitudinous issues that councils have to resolve could never be dealt with. However, in these circumstances, the evidence shows that both the General Manager and the Mayor made undertakings that may not have been in keeping with their authority and financial delegations.
323. The evidence suggests that certain councillors had early access to some information. Clr Badalati received briefings from Clr Hindi and received copies of external advices before other councillors, and so had an extra opportunity to review them. These kinds of practices have the potential to undermine the decision-making role of those councillors who were excluded.

SCHEDULE 2

RELEVANT LEGISLATIVE REQUIREMENTS

This section of the report details some of the statutory requirements which were considered pertinent to the Terms of Reference.

It should be noted that the report does not purport to provide a compendium of all of the applicable statutory requirements.

LOCAL GOVERNMENT ACT 1993 – SECTION 10A

Which parts of a meeting can be closed to the public?

- (1) *A council, or a committee of the council of which all the members are councillors, may close to the public so much of its meeting as comprises:*
 - (a) *the discussion of any of the matters listed in subclause (2), or*
 - (b) *the receipt or discussion of any of the information so listed.*
- (2) *The matters and information are the following:*
 - (a) *personnel matters concerning particular individuals (other than councillors)*
 - (b) *the personal hardship of any resident or ratepayer,*
 - (c) *information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,*
 - (d) *commercial information of a confidential nature that would, if disclosed:*
 - (i) *prejudice the commercial position of the person who supplied it, or*
 - (ii) *confer a commercial advantage on a competitor of the council, or*
 - (iii) *reveal a trade secret,*
 - (e) *information that would, if disclosed, prejudice the maintenance of law,*
 - (f) *matters affecting the security of the council, councillors, council staff or council property,*

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,*
- (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,*
- (i) alleged contraventions of any code of conduct requirements applicable under section 440.*

LOCAL GOVERNMENT ACT 1993 – SECTION 11

Public access to correspondence and reports

- (1) A council and a committee of which all the members are councillors must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.*
- (2) This section does not apply if the correspondence or reports:*
 - (a) relate to a matter that was received or discussed, or*
 - (b) were laid on the table at, or submitted to, the meeting, when the meeting was closed to the public.*
- (3) This section does not apply if the council or committee resolves at the meeting, when open to the public, that the correspondence or reports, because they relate to a matter specified in section 10A (2), are to be treated as confidential.*

Council's charter and functions

Councils are guided by a charter containing a number of principles, as provided by section 8 of the Act. These principles 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 properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development*
- *to have regard to the long term and cumulative effects of its decisions*
- *to bear in mind that it is the custodian and trustee of public assets and effectively account for and manage the assets for which it is responsible*
- *to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and coordination 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 when an activity of the council is affected*
- *to be a responsible employer.*

Sections 21 and 22 of the Act provide that a council has the functions conferred or imposed on it by or under this Act or under any other Act or law.

Conduct of councillors and staff

Section 439 of the Act provides that councillors, members of staff and delegates of councils must act honestly and exercise a reasonable degree of care and diligence in carrying out their functions under the Act or any other Act.

The conduct of all council officials (councillors and staff) is subject to the provision of the Council's adopted Code of Conduct, which in turn is required to be consistent with the Model Code of Conduct for Local Councils in NSW.

The conduct of council staff is also subject to any applicable contract of employment and/or industrial instrument and their common law duties as an employee.

SCHEDULE 3

COUNCIL POLICIES AND PROCEDURES

This section of the report details the policies and procedures which were considered pertinent to the Terms of Reference.

Code of conduct

The Council's Code of Conduct is the key instrument that regulates the conduct of staff and councillors. All councils are required to adopt a Code of Conduct that meets at least the minimum standards set out in the Model Code of Conduct for Local Councils in NSW prescribed by the Act. All council officials (councillors, staff and delegates) must comply with the Code of Conduct. It guides them on a range of matters including the need to act with care and diligence.

Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW (the Procedures)

Sections 440 and 440AA of the Act require every council to adopt a Code of Conduct and procedures for the administration of the Code of Conduct that incorporate the provisions of the Model Code and Model Code Procedures respectively. In adopting procedures for the administration of their adopted Codes of Conduct, councils may supplement the Model Code Procedures. However provisions of a council's adopted procedures that are not consistent with those prescribed under the Model Code Procedures will have no effect.

Code of meeting practice

Section 360 of the Act states that council may adopt a code of meeting practice that incorporates the regulations made for the purposes of the section and may supplement those regulations with provisions that are not inconsistent with them. A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by it.

Councillor expenses and facilities

Section 252 of the Act states that within five (5) months after the end of each year, a council must adopt a policy concerning the payment of expenses incurred or to be incurred by councillors in relation to discharging the functions of civic office. The objectives of the policy are to ensure that there is accountability and transparency in the reimbursement of actual expenses incurred or to be incurred by councillors. This policy provides the details and range of expenses paid and facilities provided to councillors, to ensure they are specifically stated, fully transparent and acceptable to the local community.

Work Health and Safety (WHS) charter

The WHS charter is designed to ensure that standards for worker health and safety are clearly communicated, and that workplace hazards and risks are proactively identified, reported and managed.

SCHEDULE 4

EVIDENCE TABLE

- A1.**Report. (18 March 2015). *Independant Consultant Report into 'Charlie Lovett' development, Council Papers.*
- A2.**Report. (16 February 2015). *KPMG - Forensic Investigation into Email Allegations, Council Reports.*
- A3.**Terms. (29 May 2015). *Instrument of authorisation including the Terms of Reference., Section 430 Investigation - Office of Local Government.*
- A4.**Statement. (18 March 2015). *Personla Statement from Clr. Thomas, Statement in Council.*
- A5.**Report. (3 July 2015). *Investigation Report into Alleged Misconduct by Councillor Hindi Council Report.*
- A6.**Letter. (19 March 2015). *Letter from Lawyers Holding Redlich, Lawyers letter.*
- A7.**PID. (5 May 2015). *Public Interest Disclosure - Victor Lampe, Public Interest Disclosure.*
- A8.**Notes. (10 April 2015). *Contemporaneous Notes - Lampe, Notes.*
- A9.**Notes. (10 April 2015). *Contemporaneous Notes - Hindi, Notes.*
- A10.**Report. (5 May 2015). *Legal Advice from Jay Lawrence, Council Report.*
- A11.**Notes. (24 April 2015). *File Notes - Michael Alexander, Notes.*
- A12.**PID. (5 May 2015). *Public Interest Disclosure - Michael Watt, Public Interest Disclosure.*
- A13.**Photos. (6 May 2015). *Crump Street Photos - Michael Alexander, Photos.*
- A14.**Notes. (6 May 2015). *Crump Street File Notes - Michael Alexander, File Notes.*
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