

REPORT OF THE PUBLIC INQUIRY
INTO NORTH SYDNEY COUNCIL

UNDER SECTION 438U OF THE *LOCAL
GOVERNMENT ACT 1993*

T.G. HOWARD SC

10 OCTOBER 2016

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TERMS OF REFERENCE

On 21 January 2016, I was appointed by the Minister for Local Government, the Hon. Paul Toole MP to hold a public inquiry pursuant to s 438U of the *Local Government Act 1993* into certain matters relating to North Sydney Council.

My terms of reference are as follows:

To inquire and report to the Minister for Local Government on the following matters relating to North Sydney Council:

- 1. Whether the elected representatives have been, since December 2013, and will continue to be, in a position to direct and control the affairs of Council in accordance with the Local Government Act 1993, so that Council may fulfil its charter, the provisions of the Local Government Act 1993 and otherwise fulfil its statutory functions, and*
- 2. Whether, since December 2013, the Council and its elected representatives have complied with applicable laws, Council's adopted Code of Conduct, the Procedures for the Administration of the Code of Conduct, Council's Code of Meeting Principles and Practice and Council's administrative rules and policies and have fulfilled its and their legislative duties, powers and functions particularly with respect to their relationships with each other and with senior and other staff of Council.*
- 3. The Commissioner may make such recommendations as he sees fit having regard to the outcomes of the Inquiry.*

PERSONNEL ASSISTING THE INQUIRY

Mr Tony Day:	Officer Assisting the Inquiry
Ms Erika Missingham:	Officer Assisting the Inquiry
E. Raper and, with her, C. Bembrick:	Counsel Assisting the Inquiry

EXECUTIVE SUMMARY

1. The Inquiry period (December 2013 to date) has been a troubled period for the governing body of North Sydney Council. The popularly elected Mayor has at no stage enjoyed the support or confidence of a majority group of seven Councillors (**Majority Bloc**) and, with the resignation of two councillors on 27 May 2014, and a third councillor on 23 May 2015, the Mayor became increasingly politically isolated.

Conflict between the Mayor and Councillors

2. The relationships between the Mayor and a number of Councillors in the Majority Bloc throughout the Inquiry period have been characterised by a degree of conflict and personal antipathy exceeding that which might be said to be an ordinary concomitant of robust political engagement. The inability of the protagonists to satisfactorily manage that conflict has resulted in some dysfunction in the performance by the Council's elected representatives of their statutory functions. This has manifested itself both in the poor conduct of the meetings of the Council and, in some significant respects, albeit intermittently, in the events which have played out outside the meeting chamber.

Conflict between the Mayor and the former General Manager

3. Additionally, throughout most of the Inquiry period, from December 2013 to April 2016, the conflict and mutual distrust which characterised the working relationship between the Mayor and the former General Manager was a significant causal factor in the emergence of some elements of dysfunction both inside and outside Council meetings.

Conduct of Council meetings

4. One of the principal manifestations of the conflict between the Mayor and Councillors in the Majority Bloc has been the disorderly conduct of debate during Council meetings.
5. Councillors in the Majority Bloc have not had confidence in the Mayor and have been frustrated by the way in which she has presided as Chair at Council meetings. That frustration is attributable in part to their perception that the Mayor has failed to properly apply meeting rules. A number of councillors contend that the Mayor has misapplied meeting procedures in order to gag debate and thwart the will of the majority.
6. I am satisfied that the Mayor has presided as Chair in good faith. However, the Mayor has in some instances exercised poor judgment while presiding at Council meetings and has departed in significant respects from the legislative requirements governing meeting procedures, including by failing to take or rule on points of order and refusing in some instances to permit motions to be put to the meeting and refusing to allow or abide by

dissent motions. On a few occasions she also purported to expel a councillor from the meeting without having satisfied the requisite preconditions under the LG Regulation.

7. On the other hand, the Mayor's role in chairing Council meetings has been made difficult as a result of behaviour engaged in by some Councillors on the floor of the meetings in the nature of interjecting or speaking without recognition from the Chair as well as intermittent, open displays of disrespect to the Chair. At times, when debate has become contentious there has been a discernible dynamic of a group (of Councillors) against an individual (the Mayor). This has placed pressure on the Mayor and has at times adversely affected her manner of presiding at meetings.
8. The poor conduct of Council meetings is also, to some degree, attributable to the dysfunctional working relationship between the Mayor and the former General Manager. In some instances, there was an inadequate provision of information about Council business from the former General Manager to the Mayor, which affected the Mayor's capacity to preside. Additionally, as the Mayor did not trust the former General Manager (and vice versa), the Mayor was disinclined to seek or follow his procedural advice during meetings.

Decisions and conduct which adversely affected the Mayoral role or functions

9. The conflict between the Mayor and some Councillors and between the Mayor and the former General Manager and the inability of the protagonists to properly manage that conflict resulted in certain decisions being made by the Council's governing body, and certain actions being taken, which have diminished the role of the mayor or adversely affected the mayoral functions.
10. The Mayor's role in overseeing and liaising with the General Manager has been diminished by changes being made to Council policies and by other decisions and protocols being implemented which affected that capacity. The version of the Council's *Oversight and Liaison with General Manager Policy* in force until around September 2014 included an express delegation to the Mayor of responsibility for the day to day oversight of and liaison with the General Manager. This was consistent with the DLG General Manager Oversight Guidelines. However, by way of amendments made to that policy in 2014 and 2015, the Council departed from the DLG Guidelines by taking that delegated responsibility away from the Mayor and by delegating the specific functions of approving the General Manager's leave and expenses to the Director of Corporate Services, an employee who answered to the General Manager.
11. The implementation of internal Council protocols formalised in November 2014 had the effect of reducing the number of face to face meetings between the Mayor and the

General Manager and imposing rigid constraints on the conduct of their meetings and on the ambit of their discussion.

12. Changes made to the office accommodation of the Mayor and General Manager and their respective Executive Assistants (**EAs**) in 2014 and 2015, and associated restrictions imposed on the Mayor's security access entitlements within the Council buildings, had the effect of physically separating the Mayor from the General Manager and other staff and leaving the Mayor and her EA in a physically isolated workplace.
13. The level of support which could confidently be provided to the Mayor by her EA was reduced during 2014 and 2015 as a result of certain directives being given by the former General Manager to the Mayor's EA about how she should and should not perform that role and also, potentially, by an amendment being made to the Council's *Mayor and Councillor Facilities and Benefits Policy* to delete the entitlement which was previously expressly included in the policy for the provision to the Mayor of secretarial services associated with the Mayoral office.
14. Since December 2014, the Mayor's capacity to carry out her civic functions has been diminished by an unfair and disproportionate decision being made by the Council's governing body to take away the Mayor's entitlement to the use of any Council vehicles.

Excessive use of the code of conduct complaint process

15. The inability of some of the protagonists to effectively manage their conflict has resulted in an excessive use of the code of conduct complaint process, occasioning costs being unreasonably incurred by the ratepayers of North Sydney and unreasonably taking up resources of the Office of Local Government in its stewardship role.
16. I am not satisfied that any of the Council's elected representatives has deliberately misused the code of conduct complaint process, but I am satisfied that there has been a misuse of the code of conduct complaint process as a consequence of poor judgment being exercised, because of the underlying conflicts in the relationships between the Mayor and some Councillors and between the Mayor and the former General Manager.
17. In the very small number of cases where a Conduct Reviewer's final report has been presented to the Council containing findings that a councillor has breached the Code of Conduct and recommendations as to the appropriate sanction, I am satisfied that the conflict between the Majority Bloc and the Mayor (and Ms Bevan) has had an extraneous bearing on the decisions of the Council's governing body in determining what sanction to impose, resulting in differential treatment of councillors.

Putting the areas of poor performance into perspective

18. Notwithstanding areas of poor performance within the Council's governing body, which form the main focus of this report, it must be recognised that dysfunction within the Council has by no means been ubiquitous. Despite areas of poor performance, North Sydney Council has met its most fundamental performance measures.
19. During the Inquiry period, the Council has fulfilled its obligations under Chapter 13 of the LG Act with respect to the development and implementation of a community strategic plan, a resourcing strategy, a delivery program and an operational plan.
20. The Council has provided adequate, equitable and appropriate services and facilities to the community and has managed them efficiently and effectively in accordance with the foremost requirement of its charter under s 8 of the LG Act.
21. The Council has been at all relevant times, and remains, in a sound financial position.
22. The Council continues to report properly and effectively to the community in relation to the delivery of its core plans, programs and strategies and the performance of its functions. Evidence which exemplifies this is the Council's receipt of a Gold Award at the Australasian Reporting Awards for the quality of its 2014/2015 Annual Report.
23. At all relevant times, there has been a high level of engagement on the part of the Council and its elected representatives with the North Sydney community, including through the Council's precinct committee system.
24. The fact that the Council has met these fundamental performance criteria is a matter to which I have given significant weight in making findings in favour of the Council and its elected representatives in relation to Term of Reference No. 1 and in determining not to recommend that the Minister suspend the Council under the provisions of Part 7 of Chapter 13 of the LG Act, despite some aspects of poor performance on the part of the governing body.
25. The greater body of the staff of North Sydney Council are not the subject of any adverse findings in this report and are to be applauded for remaining focussed and playing their role in the satisfaction of these fundamental performance measures during a difficult term.

Signs of improvement

26. In looking at identified aspects of poor performance on the part of the Council's governing body, it is necessary to look forward as well as looking backwards.
27. Looking forward, it is significant that one of the principal drivers of the dysfunction that has emerged during the Inquiry period, namely the very poor working relationship

between the Mayor and the former General Manager, no longer subsists. I have heard evidence from both the Mayor and the current Acting General Manager, which satisfies me their working relationship is not beset by the same problems.

28. It is not to be expected that the underlying conflict between the Mayor and some of the Councillors will be resolved. However, there are some signs that the worst manifestations of that conflict are in the past and that the protagonists are now better able to manage their conflict than they were during 2014 and 2015. I note, in particular, that the conduct of Council meetings has shown distinct signs of improvement in the period since March 2016.

Term of Reference No. 1

29. The evidence satisfies me that the elected representatives of North Sydney Council have been, since December 2013, and will continue to be in a position to direct and control the affairs of the Council in accordance with the Local Government Act 1993 (**LG Act**) such that the Council may fulfil its charter, the provisions of the LG Act and has otherwise fulfilled its statutory functions.

Term of Reference No. 2

30. During the Inquiry period, as discussed above:
- (a) there have been numerous contraventions by some Councillors, including the Mayor, of applicable procedural laws governing the conduct of Council meetings under provisions of the LG Act, LG Regulation and Council's Meeting Code;
 - (b) there have been an excessive number of code of conduct complaints made by the Mayor and some Councillors against each other;
 - (c) there have been contraventions of the Code of Conduct by some Councillors, including the Mayor; and
 - (d) certain decisions have been made and administrative measures undertaken that have been symptomatic of dysfunction, or have adversely affected the capacity of the Mayor to carry out the mayoral functions, or both.
31. Otherwise, the evidence does not establish that the Council or its elected representatives have failed to comply with applicable laws, codes or policies.

No recommendation to dismiss or suspend the Council

32. I have determined not to recommend the dismissal of the Council under s 255 of the LG Act or the suspension of the Council under the provisions of Part 7 of Chapter 13 of the LG Act. My primary reason for coming to those determinations is because of my positive findings in relation to Term of Reference No. 1.
33. In determining not to recommend the dismissal or suspension of the Council, and in light of my findings in favour of the Council and its elected representatives in relation to Term of Reference No. 1, I have also given weight to submissions from members of the public whose authors have submitted that they want their elected representatives to remain in place on the Council to represent their interests during the remainder of the Council term.

No recommendations to invoke misconduct procedures against any councillor

34. I have also determined not to recommend that the Chief Executive of the Office of Local Government initiate or pursue investigations of misconduct against any of the councillors under Division 3 of Part 1 of Chapter 14 of the LG Act arising from the conduct specifically considered in this report.
35. Given I am satisfied that the Council's governing body will be in a position to direct and control the affairs of the Council in accordance with the LG Act and its Charter for the remainder of this term, and having regard to my assessment of the conduct the subject of complaints, there is something to be said for seeking to put an end to the cycle of code of conduct complaints and misconduct allegations, so that the Council's governing body can move forward and focus on issues of importance to the constituents.

Two systemic issues that have arisen

36. In my opinion, a systemic problem has emerged during this Inquiry in relation to the operation of sections 226 to 230 of the LG Act, which may be worth some consideration by the legislature. Those provisions have dictated that the Mayor, having been popularly elected, has continued to preside as Chair in all Council meetings throughout the whole term of the Council, despite the Mayor having lost the confidence of the majority of councillors from an early point in the term. This has had the effect of locking in the conflict between the Chair and the floor of meetings for the whole term.
37. The sobering reality is that, had the mayor of North Sydney been elected by the councillors in accordance with the more conventional Westminster system instead of being popularly elected, or had the majority of councillors been entitled to choose at some point during the term which of their number was to preside as Chair of Council meetings,

significant elements of dysfunction within the Council's governing body in the conduct of its meetings would either not have emerged at all, or if they had emerged, would have been relatively transient.

38. The heavy use of the code of conduct complaint process during the Inquiry period has sorely tested that process and has exposed some potential systemic weaknesses both at the front end and back end of the process.
39. Where there is a climate of conflict between councillors, there is a real question as to whether the threshold for making code of conduct complaints is too low and whether there is an effective filter to prevent complaints lacking objective merit from proceeding to an investigation. At the back end of the process there is uncertainty about whether there will be differential treatment of councillors by the governing body when it comes to determine what sanction to impose. I discuss these issues in Chapter 7 of this report.

Recommendations

40. I make my recommendations necessarily on the contingency that the current elected representatives may continue to constitute the Council's governing body until September 2017. However, there are other possible contingencies which could result in the current governing body having a shorter tenure. I acknowledge that the length of the remaining tenure of the current governing body is a matter the Minister might properly take into account in considering some of my recommendations.
41. My recommendations are set out in Chapter 9 of this report. For ease of reference, I extract them here, with some truncation, as follows:

Recommendation No. 1

That, by way of a Performance Improvement Order (**PIO**), the Minister require the Mayor and Councillors of North Sydney Council to take certain specified actions to improve their level of compliance with the legislative requirements governing the conduct of Council meetings (as specified in the draft PIO appended to the recommendations in Chapter 9 of this report).

Recommendation No. 2

That, in ongoing or future reviews of the LG Act, consideration be given to whether any modification should be made to the position, currently dictated by ss 226 – 230, namely that a popularly elected mayor will necessarily retain the role of chairperson of council meetings for the whole 4-year term, regardless of whether the mayor loses the confidence of the majority of councillors.

Recommendation No. 3

That Chapter 13 of the LG Act be amended to confer on the Minister an additional performance management option of appointing a suitably qualified, independent person to preside for a defined

period as a temporary chairperson of council meetings where the Minister considers that this is necessary to ensure the orderly conduct of council meetings.

Recommendation No. 4

That the Office of Local Government augment the *Meetings Practice Note, Practice Note No. 16*, by providing additional guidance as to the degree to which any councillor presiding as chairperson of a council meeting, should engage in substantive debate and/or move motions and the circumstances, if any, where the presiding councillor should consider relinquishing the Chair and participating on the floor of the meeting instead.

Recommendation No. 5

That, by way of a PIO, to the effect of the draft form appended to these recommendations, the Minister require North Sydney Council to re-instate the delegation to the Mayor of the responsibility for the day to day oversight of, and liaison with, the General Manager.

Recommendation No. 6

That by way of a PIO, to the effect of the draft form appended to these recommendations, the Minister require North Sydney Council to revoke the following memoranda: (a) the Confidential Memorandum dated 26 August 2014 from the General Manager to the Mayor's Executive Assistant entitled "Clarification of Position Requirements"; and (b) the Memorandum dated 10 November 2014 from the Chief Operating Officer to the Mayor and General Manager regarding meetings between the Mayor and the General Manager.

Recommendation No. 7

That, by way of a PIO, to the effect of the draft form appended to these recommendations, the Minister require North Sydney Council to amend clause 4.2 of the *Mayor and Councillor Facilities and Benefits Policy* to expressly provide that the Mayor is entitled to the provision of secretarial services associated with the office of Mayor.

Recommendation No.8

That, by way of a PIO, to the effect of the draft form appended to these recommendations, the Minister require North Sydney Council to restore the Mayor's entitlement to the use of a fully serviced and maintained vehicle, equivalent to the value of a vehicle in the Council's pool fleet, including a fuel card and allocated parking space at Council premises to facilitate the performance of the Mayor's civic and ceremonial functions.

Recommendation No. 9

That the Minister require North Sydney Council to forthwith restore to the Mayor the security access entitlements with respect to external entry and internal access which equate with the entitlements this Mayor and previous mayor/s enjoyed prior to security access restrictions being imposed on and after 21 October 2014, including, but not limited to, the provision of security access to the Executive Suite in the Carole Baker Building.

Recommendation No. 10

That, by way of a PIO, to the effect of the draft form appended to these recommendations, the Minister require North Sydney Council to promptly replace the door currently affixed to the Mayor's office with a door having physical characteristics similar to the doors affixed to the offices in the Executive Suite in the Carole Baker building, which does not have a self-closing mechanism, but which is able to be locked and unlocked and can be closed or left open at will.

Recommendation No. 11

The Council is to promptly engage a suitably qualified person (**Consultant**) to assess whether any other changes should be made to the working environment of the Mayor and Mayor's EA in order to meet applicable modern workplace standards having regard to the potential physical isolation of the occupants of those workspaces and to make any appropriate recommendations and the Council is to implement any reasonable recommendations made by the Consultant.

Recommendation No. 12

That the Minister require the Mayor and Councillors of North Sydney Council to refrain from resolving to commission any external investigation, outside the Code of Conduct Administration Procedures, into conduct, which, if proven, would constitute a contravention of the Code of Conduct by any councillor/s.

Recommendation No. 13

That the Office of Local Government, in the course of its current review, and any future reviews, of the code of conduct complaint process give further specific consideration to the issues raised in Chapter 7 of this report.

Recommendation No. 14

That no further action be taken by way of investigation under the misconduct provisions of the LG Act, or otherwise, with respect to the following Code of Conduct Complaints: (a) CoC Complaint No. 10 of 2014/15; (b) CoC Complaint No. 11 of 2014/15; and (c) CoC Complaint No. 8 of 2015/16 (as identified in the full recommendation in Chapter 9 of this Report).

Recommendation No. 15

That the Minister appoint a temporary adviser under s 438G of the LG Act for the period from the date of service of the PIO until the cessation of the current term of the Council to provide advice and assistance to the Council to ensure compliance with the PIO and to monitor the Council's compliance with the PIO.

CHAPTER 1: CONTEXT OF THE INQUIRY

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CONFLICT BETWEEN THE MAYOR AND COUNCILLORS

Background to the conflict

1. On 13 September 2012, Ms Jilly Gibson was declared elected as Mayor of North Sydney Council. Ms Gibson comfortably won the election. She received 40.5% of the votes. The unsuccessful candidates for mayor were Ms Zoe Baker, who received 33.13% of the votes and Ms Suzanne Clarke-Nash, who received 26.3% of the votes.
2. On 14 & 15 September 2012, the twelve individuals declared to have been elected as councillors of North Sydney Council were Ms Zoe Baker, Ms Melissa Clare, Mr Jeffrey Morris, Ms Sarah Burke, Mr Stephen Barbour, Ms Danielle Butcher, Ms MaryAnn Beregi, Ms Veronique Marchandean, Mr Thomas Robertson, Ms Virginia Bevan, Mr Michel Reymond and Mr Anthony Carr.
3. The successful candidates for mayor and councillors came from four political tickets: Ms Gibson's ticket (comprising Ms Gibson, Ms Burke, Ms Bevan and Ms Beregi); Ms Baker's ticket (comprising Ms Baker, Mr Morris and Mr Reymond); Ms Clarke-Nash's ticket (comprising Mr Barbour, Ms Marchandean; Ms Clare and Mr Carr); and the 'Liberty First' ticket (comprising Ms Butcher and Mr Robertson).
4. Ms Beregi, who was elected on Ms Gibson's ticket, fell out with Ms Gibson and the other members of Ms Gibson's ticket during the 2012 election campaign. Despite being elected on Ms Gibson's ticket, Ms Beregi has been a political opponent of Ms Gibson throughout the current term of the Council and there has been ill feeling between Ms Beregi and Ms Gibson and between Ms Beregi and Ms Bevan throughout the current term of the Council.
5. Ms Butcher and Mr Robertson resigned as councillors in May 2014. Ms Burke resigned as councillor in May 2015. There were no by-elections to replace these councillors.

The Mayor is opposed by the Majority Bloc

6. Ms Gibson has not had the majority support of the councillors at any time during this term of the Council. On contentious issues, she has been consistently opposed throughout the Inquiry period by a group of seven councillors comprising Ms Baker, Mr Reymond,

Mr Morris, Mr Barbour, Ms Clare, Mr Carr and Ms Beregi. On the whole, these councillors have voted as a bloc on contentious items at Council meetings during the Inquiry period and, relevantly, they have uniformly voted as a bloc on contentious issues which have either concerned the conduct of the Mayor or the ambit of the role and functions of the Mayor. Accordingly, it is convenient to refer to this group of councillors as the “**Majority Bloc**” (without any suggestion of improper caucusing).

7. After the resignation of Mr Robertson and Ms Butcher in May 2014 and of Ms Burke in May 2015, Ms Gibson became politically isolated. Ms Bevan is the only current councillor who has consistently supported her. Ms Marchandean has remained neutral, at some time supporting Ms Gibson and at other times voting with the Majority Bloc.

Conflict emerges early

8. The relationship between Ms Gibson and the Councillors in the Majority Bloc deteriorated from an early juncture in the current term of the Council, reaching a point by mid-2013 where there was a considerable degree of personal antipathy, which resulted in an absence or paucity of any civil discourse outside of Council meetings.
9. The symptoms of the conflict between the Mayor and Councillors in the Majority Bloc during the Inquiry period soon developed a pattern, principally characterised by:
 - (a) disorderly conduct of Council meetings;
 - (b) displays of incivility in what small area of discourse remained between the Mayor and Councillors outside meetings; and
 - (c) an excessive resort to the code of conduct complaint process.

Unsuccessful conflict resolution process in 2013

10. In August 2013, the Council engaged an external consultant, Mr Norman Turkington, a psychologist with a speciality in conflict resolution within organisations, to attempt to resolve the conflict between the Mayor and most of the individual Councillors in the Majority Bloc. This attempt to resolve the conflict was unsuccessful.
11. Mr Turkington gave evidence to the Inquiry in private session about the conflict resolution process. I made a direction under s 12B of the *Royal Commission Act 1923* that his evidence not be published. In making that direction, I had regard to the circumstance that the councillors, when they agreed to take part in the conflict resolution process, had been assured that their interviews would be treated as confidential. Mr Turkington was understandably opposed to any course being taken that would be contrary to the assurances he gave councillors at that time.

12. Ultimately I came to the view that the only points of significance to have emerged from Mr Turkington's evidence are (a) it was not suggested that any one person was responsible for the conflict and (b) the conflict was entrenched and could not be resolved.

Ms Gibson initiates and withdraws legal action against Mr Morris and the Council

13. In January 2014, Ms Gibson commenced proceedings in the Local Court, seeking an Apprehended Violence Order (**AVO**) against Mr Morris based upon allegations concerning his behaviour towards Ms Gibson in the course of the performance of their functions as Councillors. Mr Morris claimed that Ms Gibson's allegations were false and indicated that he would contest the proceedings. In March 2014, Ms Gibson filed an application with the Fair Work Commission seeking relief from bullying in the workplace. That application relied upon the same allegations made against Mr Morris as were the subject of the AVO proceedings.
14. In May 2014, Ms Gibson withdrew both applications.
15. I draw no inferences from the making or withdrawal of the AVO proceedings. Likewise I draw no inferences from the making or withdrawal of Ms Gibson's application to the Fair Work Commission.
16. Mr Morris has expressed his serious concerns that there was media coverage of the allegations made by Ms Gibson underlying the AVO proceedings in circumstances where he disputed the allegations and they were untested. Mr Morris claims that Ms Gibson ventilated her allegations in the media. I am not in a position to make findings about the circumstances in which there came to be media coverage of the allegations. However, I consider Mr Morris was justifiably aggrieved that contentious and untested allegations impugning his conduct received media coverage at this time.
17. In so far as concerns this Inquiry, this episode is significant in two respects. First, it entrenched a mutual antipathy between Mr Morris and Ms Gibson and prompted a decision by Mr Morris, as he told the Inquiry, to cease to engage in any communication or interaction with Ms Gibson outside the confines of meetings and committee meetings and workshops of the Council. Secondly, as is evident from a resolution passed by the Council on 15 September 2014 "condemning" Ms Gibson for having taken these "ill judged" proceedings, the Councillors in the Majority Bloc took a partisan view of this matter and this deepened and entrenched their distrust of Ms Gibson.

INTERVENTION MEASURES PRECEDING THE INQUIRY

18. By way of letters dated 24 September 2013 and 9 October 2013, Mr Ross Woodward, the Chief Executive of the Division of Local Government wrote to the North Sydney

Councillors and to the General Manager expressing his concern about the performance of the Councillors. More particularly, Mr Woodward expressed his concern that the Council's resolutions of 1 July 2013 and 2 September 2013 imposing reporting requirements on the Mayor and then General Manager (Ms Holloway) went far beyond what other councils were doing and that the effect of these resolutions "*may be to detrimentally affect the ability of the Mayor to undertake her role and undermine the working relationship between the Mayor and General Manager*". Mr Woodward also expressed his concern about the increase in code of conduct complaints being made by councillors against each other.

19. Having regard to these concerns, Mr Woodward required the councillors to: (a) reconsider the subject resolutions imposing the reporting obligations on the Mayor and General Manager; (b) attend conduct training before the end of October 2013 (i.e., those who had not already done so); and (c) make a commitment to work together in the public interest and put aside any personal differences.
20. On 9 December 2013, the councillors revoked the resolutions about which Mr Woodward had expressed his particular concerns and passed a resolution imposing a more moderate reporting obligation on the Mayor in relation to her civic diary.
21. By letter of 23 January 2014, Mr Woodward noted, in effect, that the revocation of the resolutions of 1 July 2013 and 2 September 2013 and the passing of the alternative resolution on 9 December 2013 had addressed his concerns about the reporting obligations that had previously been imposed on the Mayor. However, he expressed concern that the high level of conduct complaints was an indicator that councillors were not effectively managing their conduct and/or their relationships with each other.
22. On 14 July 2014, the Minister wrote to the Mayor and councillors expressing his serious concerns about their performance. He warned that, if he did not see a marked improvement, he would consider use of the intervention options available under the *Local Government Act 1993 (LG Act)* and, in particular, the provisions empowering him to suspend the Council. The Minister expressed the following concerns, among others:
 - (a) that an inordinate amount of time was being spent by officers of the Office of Local Government in dealing with issues raised by councillors and staff arising from the apparent breakdown in relationships at Council, noting that North Sydney Council dealt with more conduct complaints than any other council in NSW in 2012/2013) and about the resultant costs to the ratepayers;

- (b) that it appeared the Model Code of Conduct and its procedures were not being used by Councillors as intended, but rather to score points against each other;
 - (c) that confidential information was being leaked and the media was being used to publicly ventilate disputes between the Mayor and councillors; and
 - (d) that the conduct of Council meetings was unsatisfactory.
23. By way of letter of 15 September 2014, the Minister gave notice of his intention to suspend the Council for a period of 3 months. The Minister indicated that the previous attempts at intervention had failed to rectify the poor relationships that existed between the Councillors and the Mayor and between the Mayor and the General Manager
24. Evidently, the Minister's notice of intention to suspend the Council was precipitated, at least in part, by the conduct of a Council meeting held on 1 September 2014 in which the Council had passed a resolution in relation to a business item raised without notice which raised contentious allegations about the conduct of the Mayor. The Minister expressed concern that: (a) the Council had ignored the Mayor's ruling as Chair of the meeting that the matter was not one of urgency; and (b) that a matter relating to the conduct of a Councillor was raised at the meeting and a resolution was passed for Council to receive further information on the matter in order to deal with it.
25. The Minister indicated that matters relating to the conduct of individual Councillors should not be raised at a Council meeting but, instead, should be dealt with in accordance with the regulated processes under the Model Code of Conduct. The Minister indicated that all Councillors who participated in the discussion of that matter did so contrary to their obligations under the Code of Conduct and arguably in breach of the integrity provisions of Part 8 of the Code and that he viewed this conduct as serious.
26. After inviting and receiving submissions from the Council, the Minister did not suspend the Council. Instead, after first giving notice of intention and receiving submissions, the Minister issued a Performance Improvement Order to the Council on 9 December 2014, requiring the Council to complete the following actions by 30 April 2015:
- 1. The Mayor and all Councillors are to immediately refrain from making allegations at Council meetings that the Mayor and/or one or more Councillors has or have breached the Council's Code of Conduct;
 - 2. The Mayor and all Councillors must immediately comply with the Council's media policy;

3. Council is to without delay engage an independent person or body to monitor the Mayor and Councillors compliance with the Council's media policy with any non-compliances reported to the General Manager;
 4. The Mayor and all Councillors must participate in a conflict resolution process conducted by a suitably qualified independent person in order to resolve the ongoing conflict between them;
 5. The Mayor must participate in a conflict resolution process conducted by a suitably qualified independent person in order to resolve the ongoing conflict between her and the General Manager;
 6. Council is to direct the General Manager to participate in conflict resolution process conducted by a suitably qualified independent person in order to resolve the ongoing conflict between him and the Mayor;
 7. Council utilise the services of the temporary advisor to assist in the orderly conduct of Council meetings;
 8. The Mayor and Councillors must have due regard to the advice of the temporary advisor on matters of meeting procedures;
 9. The Mayor and all Councillors must participate together in Code of Meeting Practice and Code of Conduct training;
 10. Council is to measure staff morale and the impact of leadership relationship issues on this in two stages. The first measure to be undertaken immediately; the second measure using the same process is to be undertaken again four months from the making of this order.
27. The requirements imposed under items 5 and 6, which were intended to resolve conflict between Ms Gibson and Mr Winn were not readily embraced by either Mr Winn or the Majority Bloc of councillors. On the vote of the Majority Bloc, the Council sought a legal opinion as to legality of items 5 & 6 and when it received an opinion confirming that there was no legal impediment, it sought a second opinion (which confirmed that the first opinion was correct). This caused the Council to fail to comply with the requirements of item 5 of the PIO within the required timeframe.
28. By late May 2015, the Council had substantially complied with the Performance Improvement Order. Despite this, symptoms of dysfunction rooted in conflict continued to intermittently surface in the remainder of the 2015, ultimately prompting the appointment of this Inquiry.

CHAPTER 2: THE INQUIRY PROCESS

1. On 21 January 2016, the Minister appointed me to carry out the Inquiry. On the same day, the Minister notified the North Sydney Council Mayor and its then General Manager, Mr Winn, of the appointment of the Inquiry and of its terms of reference. Upon the Minister's request the then General Manager, a copy of his letter was provided to all Councillors.
2. On 2 February 2016, I appointed Mr Tony Day and Ms Erika Missingham, officers of the Office of Local Government, to assist in the conduct of the Inquiry under the provisions of section 12(2) of the *Royal Commissions Act 1923*.
3. On 22 February 2016, I wrote to all Councillors, the then General Manager, a number of senior officers of Council, some relevant agencies and organisations and a number of persons of interest inviting them to provide written submissions to the Inquiry. On the same day On 22 February 2016, an Information Paper providing general details about the conduct of the Inquiry was loaded onto the Inquiry's website.
4. On 25 February 2016, in accordance with my recommendation, the Minister appointed Ms Elizabeth Raper as Counsel Assisting the Inquiry. Ms Catherine Bembrick of counsel also assisted and appeared with Ms Raper during the Inquiry hearings.
5. On 25, 26 and 27 February 2016, respectively, a Notice of Public Inquiry was published in the Mosman Daily, the North Shore Times and the Sydney Morning Herald. That notice included an invitation for members of the public to provide written submissions and notified members of the public of the availability of information concerning the Inquiry on the Inquiry website.
6. On 29 March 2016, I issued a General Practice Direction, published on the Inquiry website providing guidance as to the procedures I proposed to follow, generally, in the ordinary course of the Inquiry.
7. Various, on 6, 7 & 8 April 2016, notice was published in the Sydney Morning Herald, Daily Telegraph, Mosman Daily and North Shore Times that public hearings would commence on 30 May 2016. Notice was also published of the General Practice Direction and the Information Paper and that these documents were available on the Inquiry website.

Notification of a provisional list of some of the issues to be considered

8. On 21 April 2016, mindful of the breadth of the terms of reference, and having had regard to the submissions and documentary material I had then received, I wrote to the Council,

all Councillors, the former General Manager (Mr Winn), the Office of Local Government and to other persons of interest, notifying them of certain issues I considered were likely to be considered as part of the Inquiry, including the conduct of council meetings, the role of the Mayor, the relationship between Councillors and the executive arm of the Council, including the General Manager, code of conduct complaints and procedures and the disclosure of information. The more specific topic areas the subject of the notification included:

- (a) the relationship between the Mayor and the General Manager during the Inquiry period including their behaviour towards each other;
- (b) the Mayor's oversight of, and liaison with the General Manager;
- (c) the Mayor's refusal or omission to sign the General Manager's performance agreement;
- (d) the conduct of meetings;
- (e) code of conduct complaints; and
- (f) whether the Mayor has properly carried out her role and whether she was impeded from properly carrying out her role, including by consideration of (i) building works which physically separated the Mayor and her EA from the General Manager and his EA; (ii) the imposition of protocols which limited the capacity of the Mayor to oversee and liaise with the General manager; (iii) the removal of the Mayor's entitlement to use a council vehicle and (iv) the level of support provided to the Mayor.

Written submissions and documents

9. During the period from February 2016 through to the hearings in June and July 2016, I received in excess of 70 written submissions, including from the Councillors, the former General Manager, the Council Administration, the Chief Executive of the Office of Local Government and from members of the public.
10. Additionally, over the same period, documents and information were obtained from a number of sources on matters relevant to the terms of reference for the Inquiry.

Directions hearing

11. I held a directions hearing on 13 May 2016. Matters addressed during the directions hearing included whether persons of interest intended to be legally represented at the hearing, the provision of witness statements, the tender of documents and applications to call witnesses. Attendees at the directions hearing were informed that, should they

wish to question witnesses during the hearings, they could make an application to do so to the Commissioner during the course of the hearing. The Councillors and the former General Manager were, among other things, directed to: (a) advise whether they wished to apply to call any witnesses at the public hearing and if so, to make any such an application in writing to the Inquiry by 23 May 2016; and (b) provide any witness statement on which they intended to rely in respect of the provisional issues of interest or other matters by either 20 May 2016 or 23 May 2016.

Inquiry hearings

12. Public hearings were held over 17 days during the period between 30 May 2016 and 6 July 2016.
13. Evidence was given by persons including all current Councillors (including the Mayor), some current and former members of the Council staff, and Ms Lyn Brown, Manager Investigations Team at the Office of Local Government (“**OLG**”). A full list of witnesses who gave evidence during the Inquiry appears on the next page of this report.
14. Most of the evidence was heard in public hearings. However, some evidence was heard in private hearings and was the subject of directions made by me restricting the publication of that evidence pursuant to s 12B of the *Royal Commissions Act*.
15. In relation to evidence heard in private hearings held on 18 May 2016 from Ms Asker, Mr Butterworth, Mr Panuccio and Ms Ravn, I made an initial direction under s 12 B of the *Royal Commissions Act*, but indicated at the time that I would re-visit it. Upon consideration of the evidence of those persons, I varied my direction under s 12B of the *Royal Commissions Act* and made available transcripts of their evidence subject to discrete redactions, to persons whose interests I considered could be affected.
16. On 21 June 2016, the hearing of the oral evidence was completed.
17. On 22 June 2016, I wrote to all of the Councillors, the former General Manager, the Council Administration and the Office of Local Government, informing them that Counsel assisting the Inquiry would address on 29 June 2016, following which the hearing would resume from 4-6 July 2016 to hear further oral address. I invited persons of interest to provide any further written submissions they wished to make by 8 July 2016. I also accorded them the opportunity to address in person at some time during the period from 4 – 6 July 2016 and some of them took up that opportunity.
18. On 6 July 2016, the hearing of oral address concluded, bringing the Inquiry hearings to a close.

List of witnesses who gave evidence follows (alphabetical by surname):

WITNESS NAME	POSITION/TITLE
Ms Shari Amery	Governance Officer, North Sydney Council
Ms Robyn Asker	Former Temporary Executive Assistant to Ms Gibson
Ms Zoe Baker	Councillor, North Sydney Council
Mr Stephen Barbour	Councillor, North Sydney Council
Ms MaryAnn Beregi	Councillor, North Sydney Council
Ms Virginia Bevan	Councillor, North Sydney Council
Ms Lynette Brown	Manager Investigations Team, Office of Local Government
Mr John Butterworth	Manager Projects, North Sydney Council
Ms Vee Byok	Executive Assistant to General Manager, North Sydney Council
Mr Anthony Carr	Councillor, North Sydney Council
Ms Melissa Clare	Councillor, North Sydney Council
Mr Ian Curry	Manager Governance and Committee Services, North Sydney Council
Mr Martin Ellis	Director Community and Library Services, North Sydney Council
Ms Jillian Gibson	Mayor, North Sydney Council
Mr Philip Harte	Managing Director, Harte International
Mr Albert Lo	Property Asset Manager, North Sydney Council
Ms Veronique Marchandau	Councillor, North Sydney Council
Mr Ross McCreanor	Currently Acting General Manager, North Sydney Council and formerly Director Corporate Services, North Sydney Council
Ms Sandra Moore	Communications and Events Manager, North Sydney Council
Mr Jeffrey Morris	Councillor, North Sydney Council
Mr Adrian Panuccio	Chief Operating Officer, North Sydney Council
Mr Brian Petschler	Current Mayor of Kiama Council, formerly holding the respective positions of mayor and general manager at various councils
Ms Kristine Ravn	Former Executive Assistant to Ms Gibson
Mr Michael Reymond	Councillor, North Sydney Council
Mr Norman Turkington	Consultant Psychologist (private hearing)
Dr Martin Williams	Resident of North Sydney LGA and Mayor's partner
Mr Warwick Winn	Former General Manager, North Sydney Council

CHAPTER 3: RELEVANT, LEGISLATION, CODES AND POLICIES

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1. The terms of reference call for consideration of the following legislation, delegated legislation and policies:
 - (a) Local Government Act 1993 (**LG Act**),
 - (b) Local Government (General Regulation) (**LG Regulation**),
 - (c) Code of Conduct – Councillors and Staff North Sydney Council, (**Code of Conduct**) including Appendix A: Code Administration Procedures,
 - (d) North Sydney Council Code of Meeting Principles and Practices (**Meeting Code**),
 - (e) Relevant Council policies.

RELEVANT CODES

Meeting Code

2. The Council’s Meeting Code, as the name suggests, is intended to comprehensively replicate in a single document all of the relevant provisions of the LG Act and LG Regulation governing the conduct of the meetings of the Council and its committees. Such a code is permitted to include provisions which complement, but which are not inconsistent with, the legislative provisions.

Code of Conduct

3. The *North Sydney Council Code of Conduct – Councillors and Staff* (**Code of Conduct**) sets out the standards of conduct that Councillors and staff must comply with when carrying out their functions. The legislative basis for the Code of Conduct is found in section 440 of the LGA which requires every council to adopt a code of conduct that incorporates provisions of the Model Code of Conduct for Local Councils in NSW.
4. In summary the Code of Conduct makes provision with respect to:
 - (a) general conduct, for example, by prohibiting councillors engaging in conduct in the carrying out of official functions in a manner likely to bring the council or holders of civic office into disrepute; requiring councillors to treat others with respect at all times; and prohibiting councillors from bullying others;

- (b) conduct concerning conflicts of interest;
 - (c) conduct in the exercise of relationships between council officials, including by requiring councillors to comply with the Meeting Code and to show respect to the Chair, officials and members of the public present at meetings;
 - (d) conduct directed to maintaining the integrity of the Code, for example, by prohibiting councillors from conducting themselves in a manner likely to undermine confidence in the integrity of the code and by prohibiting the making conduct complaints for an improper purpose.
5. Compliance with the Code of Conduct by the elected representatives of a council is a statutory duty, contravention of which may result in disciplinary action.
 6. Appendix A to the Code of Conduct contains the Code Administration Procedures, which relevantly govern the way in which code of conduct complaints are assessed, investigated, reported on and dealt with by the Council.

RELEVANT POLICIES

7. There are three Council policies which are relevant to the terms of reference because changes were made to them during the Inquiry period which were symptomatic of dysfunctional decision making and which affected the Mayoral role. The three policies in question are the *Mayor and Councillor Facilities and Benefits Policy*, which confers on the Mayor and Councillors certain facilities and benefits to facilitate performance of their functions; the *Oversight and Liaison with General Manager Policy*, which details the framework for the day to day oversight and liaison with the General Manager and is based on the *Guidelines for the Appointment and Oversight of General Managers* and the *Councillor Access to Information and Interaction with Staff Policy*, which establishes protocols with respect to what access the Mayor and Councillors have to information and to council staff.
8. In Chapter 6 of this report, I address the relevant changes made to those policies by the Council's governing body in the 2014 and 2015 calendar years

CHAPTER 4: CONDUCT OF MEETINGS

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INTRODUCTION

1. The conduct of the business of North Sydney Council by its elected councillors at its meetings is a critical function of the Council, as the meetings are the primary forum for the making of decisions by the Council. Council meetings are public meetings, at which the elected councillors display their leadership of the local community.

COMPLIANCE WITH FUNDAMENTAL OBLIGATIONS

2. Pursuant to s 365 of the LG Act, a council is required to meet with a quorum at least 10 times each calendar year, each time in a different month.
3. During the Inquiry period, North Sydney Council regularly met with a quorum and exceeded the minimum requirements under s 365 of the LG Act.
4. During its meetings, the Council has commonly dealt with all of the items on the meeting and the majority of the business items have been the subject of uncontentious resolutions, passed unanimously.
5. The fact that the Council, through its elected representatives, have met these fundamental requirements is significant, but this by no means presents the whole picture in relation to the conduct of Council meetings over the Inquiry period.

SIGNS OF DYSFUNCTION AT COUNCIL MEETINGS

6. For the reasons that follow, I am satisfied that the conduct of the Council meetings by its elected representatives during the Inquiry period, has, in some material respects, exhibited signs of serious dysfunction, resulting from, and associated with, the entrenched conflict between the Mayor and Councillors in the Majority Bloc and the entrenched conflict between the former General Manager and the Mayor.
7. Dysfunction has resulted from the conflicting relationships within the governing body and has manifested in serious departures from the rules governing the conduct of the meetings under the LG Act and LG Regulation and the Meeting Code.

COMPLAINTS ABOUT IMPROPER CONDUCT AT MEETINGS

8. Competing complaints are made by the majority of Councillors about the Mayor and by the Mayor about the majority of Councillors.

Complaints about the Mayor's conduct as Chair

9. A number of Councillors, comprising Mr Reymond, Ms Clare, Ms Baker, Mr Carr, Ms Beregi and Mr Morris, contend, in effect, that during the Inquiry period, Ms Gibson has not properly or fairly presided as Chair of Council meetings. They say that the frustration Ms Gibson's failure to properly reside has engendered has been a key driver of problems emerging during Council meetings.
10. Particular allegations made about Ms Gibson include that Ms Gibson improperly:
 - (a) failed to put to meetings motions which were in order under the rules, refusing to do so on the ostensible bases that motions were unlawful;
 - (b) refused to allow Councillors to put legitimate questions to the General Manager or to staff through the General Manager;
 - (c) failed to allow points of order to be raised and/or failed to rule on them;
 - (d) refused to allow motions of dissent against her rulings on points of order; and
 - (e) participated too heavily in the debate while in the chair.
11. Moreover, these Councillors contend, in effect, that the Mayor deliberately misused her power as Chair to gag debate or prevent the Council from dealing with agenda items where Ms Gibson did not agree with the position taken by the majority. In essences, their allegation is that Ms Gibson, not having the numbers on the floor, used her position in the Chair to attempt to thwart the will of the majority.

Complaints about Councillors conduct on the floor of meetings

12. Ms Gibson complains that Councillors in the Majority Bloc, or at least some of them, have consistently engaged in disorderly conduct on the floor of Council meetings which has been disruptive and in breach of the Meeting Code and that this behaviour was engaged in with the purpose of undermining her authority as Chair of the meetings.
13. Particular allegations made about some of the Councillors by Ms Gibson include that:
 - (a) Councillors frequently spoke among themselves outside the structured debate;
 - (b) Councillors frequently called out or spoke to the chamber without recognition from the Chair;
 - (c) Councillors, particularly Mr Morris and Ms Beregi, were frequently and deliberately rude and disrespectful in their conduct towards her as Chair;
 - (d) from time to time she was ambushed by contentious matters being raised which concerned her without proper notice;
 - (e) Councillors, particularly Ms Baker, excessively resorted to points of order and dissent motions and only against her.
14. Ms Bevan also contends that the behaviour of the Majority Bloc of Councillors during Council meetings has consistently been openly disrespectful of the Mayor.

Evidence relevant to the assessment of these complaints

15. In order to assess the competing submissions, I have had regard to the oral evidence and to the submissions and to the agenda papers and official minutes of the Council meetings. I have also listened to the audio of each of the Council meetings held between 2 December 2013 and 17 August 2015 and watched and listened to the podcast of each of the Council meeting held between 21 September 2015 to 18 July 2016 and I have closely analysed those recordings in some instances.
16. In my opinion, the audio and podcast recordings of the Council meetings comprise a body of reliable, contemporaneous evidence, highly probative of the conduct engaged in by the Mayor and Councillors at the Council meetings. It is not possible to develop an adequate level of insight into the conduct of the Council meetings over the Inquiry period without a close analysis of audio and podcast recordings.

MEETING RULES AND CONVENTIONS

17. In order to properly assess the competing complaints, it is necessary to consider the rules and conventions governing the conduct of meetings and to make some findings about

the proper construction of some of the relevant provisions of the LG Act and LG Regulation which govern the conduct of meetings. These are principally to be found in Part 1 of Chapter 1 and Part 2 of Chapter 12 of the LG Act and Part 10 of the LG Regulation. The Council's Meeting Code is supposed to accurately and comprehensively replicate these provisions.

18. In addition to the statutory rules, there are longstanding rules and conventions generally concerning the conduct of the meetings of organisations. These are collated conveniently in texts such as *Joske's Law and Procedure at Meetings in Australia*¹. These conventional rules are, of course, subject to statutory modification under the provisions of the LG Act and LG Regulation.
19. Further guidance has been provided to councillors by the Office of Local Government, which has published and made available on its website the *Meetings Practice Note, Practice Note No. 16*, date August 2009.

The fundamental requirement of due notice of meetings and agenda items

20. As Council meetings are held as part of an open democratic process, there are fundamental rules requiring notice to be given, not only to the councillors, but also to the public, of the business proposed to be transacted at each meeting.
21. Under s. 9 of the LG Act, a council must give notice to the public of the times and places of its meetings and copies of the agenda and business papers must be made available at the council offices and at each meeting and as nearly as possible to the time they are available to the councillors.
22. Section 367 of the LG Act (as replicated in clause 7.1 of the Meeting Code) provides that the general manager must send a notice of each meeting and notice of the agenda to each Councillor at least three days before each meeting, save for extraordinary meetings.
23. An important related requirement is imposed by clause 241(1) of the LG Regulation, which provides as follows:

241 Giving Notice of business

- (1) A council must not transact business at a meeting of the council:
 - (a) unless a councillor has given notice of the business in writing within such time before the meeting as is fixed by the council's code of meeting practice or (if the

¹ 11th Ed., Eilis: S. Magner, Thomson Reuters; first published in 1938 by Percy Joske (later Sir Percy Joske)

council does not have a code of meeting practice or its code of meeting practice does not fix that time) as is fixed by resolution of the council, and

(b) unless notice of the business has been sent to the councillors in accordance with section 367 of the Act.

24. This general obligation is subject to exceptions provided for in clauses 241(2) and 241(3) of the LG Regulation. Clause 241(2)(a) of the Regulation provides that the obligation under clause 241(1) does not apply to consideration of business at a meeting if the business is already before, or directly relates to a matter that is already before the Council. Clause 241(3) provides that, despite s 241(1), business may be transacted at a meeting of the Council, even though due notice of the business has not been given to the Councillors, but only if a motion is passed to have the business transacted at the meeting and only if the business proposed to be brought forward is ruled by the Chairperson to be a matter of great urgency.

The role of a mayor presiding as Chair at council meetings

25. The role of the Chair of any meeting is to preside at the meeting, conduct proceedings regularly, determine the sense of the meeting, preserve order, adjourn the meeting if necessary, control the voting process and declare the meeting closed.² The Chair should exercise control as needed and generally enable those present to fulfil the function and purpose of the meeting in an orderly, lawful fashion.³

26. It has been judicially observed that⁴:

“Authority to preside over a meeting does not give dictatorial power. It merely makes the Chairman “first among equals” and imposes on him certain duties, including taking the Chair and carrying on the meeting so that the business of the body in question before the meeting is disposed of as the meeting desires and also preserving order at the meeting”.

Point of order

27. The orderly conduct of meetings is facilitated by participants being permitted to raise points of order. The expression “point of order” is not defined under the LG Act or the LG Regulation. It has been observed that this expression is not easy of definition.⁵ A “point of order” has been variously defined as “an allowable interjection that directs the Chair’s attention to an apparent or alleged breach of order” or “in effect an appeal to the Chair

² Joske’s Law and Procedure at Meetings in Australia, 11th Ed, Magner, at [6.15]

³ Horsley’s Meetings Procedure Law and Practice 7th Ed, A.D. Lang, at [6.1]

⁴ *Wishart v Henneberry* [1962] 3 FLR 171 at 173; *McKerlie & Anor v Drillsearch Energy Ltd* (2009) 74 NSWLR 673; [2009] NSWSC 488 at [23]

⁵ Horsley’s Meetings Procedure Law and Practice 7th Ed, , at [9.1], citing *Arcus v Castle* [1954] NZLR 122

for a [procedural] ruling”; or “a request from a member [of the meeting] for a ruling on a matter of procedure”.⁶

28. It is the duty of the Chair to rule on any point of order.

Councillor’s right to move dissent from the Chair’s ruling on a point of order

29. There is implicit recognition by the legislature that the person presiding as Chair at meetings of a council is not infallible in making rulings on points of order. The Chair’s power to make a ruling on a point of order is subject to the right of the councillors to reverse or negate the ruling by passing a motion of dissent by a majority vote. Clauses 248(1) and (2) of the LG Regulation relevantly provide:

248 Motions of dissent

- (1) A councillor can, without notice, move to dissent from the ruling of the chairperson on a point of order. If that happens, the chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.
- (2) If a motion of dissent is passed, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given ...

Mayor’s duty to put motions that are in order and not to put motions that are illegal

30. It is a fundamental duty of the Chair to put to the meeting any motion which is in order under the rules.⁷ Clause 238(1) of the LG Regulation embodies that duty in the specific context of council meetings.

31. Clause 238(2) of the LG Act provides the converse. It obliges the Chair to rule out of order any motion that is unlawful or the implementation of which would be unlawful. Clause 238(3) addresses the consequences, providing “[a]ny motion, amendment or other matter that the Chairperson has ruled out of order is taken to have been rejected”.

Ruling by the Chair that a motion is unlawful is amenable to a motion of dissent

32. If read in isolation, clauses 238(2) and (3) of the LG Regulation (clause 36.7 of the Meeting Code) might suggest that it is for the Chair alone to determine whether a motion is unlawful (or its implementation unlawful) and that, if the Chair makes that ruling, the ruling is taken to be infallible and cannot be challenged.

⁶ Joske’s Law and Procedure at Meetings in Australia, 11th Ed, Magner, at [6.65]

⁷ See, for example, Joske’s Law and Procedure at Meetings in Australia, 11th Ed, E.S. Magner, at [6.30]; Horsley’s Meetings Procedure Law and Practice 7th Ed, A.D. Lang, at [6.5], each citing *Wishart v Henneberry*, op cit, at 173

33. However, I find that is not a correct interpretation of clauses 238(2) and (3) of the LG Regulation. Rather, those clauses must be considered in light of the provision made under clause 248 for dissent to be moved against a ruling of the Chair on a point of order. The conventional principle of construction applies: the two clauses form part of a regulatory scheme with respect to the conduct of council meetings and so they should construed so that they operate together harmoniously.
34. In my opinion, a ruling from the Chair that a motion is unlawful (or that its implementation would be unlawful) is “*a ruling on a point of order*” within the meaning of clause 248 of the LG Regulation. That must be so regardless of whether the ruling is made after a point of order is taken by a councillor on the floor or whether the Chair makes such a ruling on his or her own initiative. It would be anomalous if a ruling by the Chair that a motion is unlawful could be challenged by a dissent motion if the ruling is made after a point of order is raised from the floor, but the same ruling could not be challenged by a dissent motion if the Chair makes the ruling on his or her own initiative.

Chair’s ruling on matter of great urgency is not amenable to a dissent motion

35. Counsel assisting and Mr Hale SC, on behalf of the Council Administration, submitted that, where the chairperson rules that a matter raised without notice is not one of great urgency, that ruling cannot be the subject of a dissent motion by a dissent motion. I accept that submission. Mr Hale took the matter one step further and submitted that, unless there is a positive ruling by the Chairperson that a matter raised without notice is one of great urgency, the Council must not transact that business. I agree.
36. Whether an item raised without notice is one of great urgency is necessarily a matter of opinion. It follows from the text and subject matter of clause 241(3) of the LG Regulation that it is for the Chair to form that opinion. Unless the Chair makes a positive ruling that a matter raised without notice is a matter of great urgency, the Council is prohibited from dealing with that item of business at that meeting and there is no right of dissent from the Chair’s ruling on this.

Ruling on an “act of disorder” is amenable to a dissent motion

37. Clause 255 of the LG Regulation makes provision for the Chair to call any councillor to order if a councillor has committed an act of disorder, or if the councillor is out of order. The Chair may rule that a councillor is out of order or has committed an act of disorder either on the Chair’s initiative, or if one of the councillors raises it by way of a point of order. An “act of disorder” is defined under clause 256 of the LG Regulation.

38. Clause 255(4) of the LG Regulation provides that the Chair's ruling that a councillor is out of order or has committed an act of disorder must be obeyed, "*unless a motion dissenting from the ruling is passed*". It is thus plain that a ruling by the Chair that a councillor has committed an act of disorder, or is out of order, is a ruling which is amenable to a motion of dissent.

The power to expel persons from council meetings

39. Section 10A(3) of the LG Act provides that a person may be expelled from a meeting only on the grounds or circumstances specified in the regulations.
40. The Council's governing body may by resolution authorise the Chair to exercise the power of expulsion, but is under no obligation to do so. Moreover, just as the Council may by resolution authorise the Chair to exercise the power of expulsion, so it may by resolution revoke that authority by subsequent resolution.
41. Pursuant to clause 256 of the LG Regulation, certain threshold pre-conditions have to be satisfied before the power to expel a councillor may properly be exercised. Clause 256 relevantly has the effect that a councillor who has been ruled to have committed an act of disorder can be expelled only if the councillor has first been required by the Chair to apologise, or to withdraw, or to withdraw and apologise, or to retract and apologise (depending on what species of act of disorder has been committed) and only if the councillor has failed to comply with that requirement.

COMPLAINTS RE MAYOR'S REFUSAL TO ALLOW MOTIONS AND QUESTIONS

42. It is convenient to deal compendiously with the complaints to the effect that Ms Gibson has improperly refused to permit items of business to be dealt with, refused to allow motions of dissent against her rulings and refused to permit questions to be put by Councillors to the General Manager or through him to the staff concerning her procedural rulings.

Ms Gibson's conduct in the period up to September 2014

43. It appears to me on the evidence that, in the Inquiry period up to 1 September 2014, Ms Gibson did not make any attempt at any Council meeting to prevent the Council dealing with any item of business by purporting to rule that it was illegal or out of order.
44. In relation to motions of dissent, in the Inquiry period up to 1 September 2014, in instances where motions of dissent were moved against Ms Gibson's rulings, the position is that Ms Gibson consistently allowed dissent motions to be put and abided by them.

This occurred at the Council meetings of 17 February 2014⁸, 21 July 2014⁹, 18 August 2014¹⁰ and 1 September 2014¹¹. On each of these occasions, the item in question was contentious and directly affected Ms Gibson and she allowed and abided by the dissent motions against her own interests. During this same period there were no recorded instances of Ms Gibson refusing to put dissent motions.

1 and 13 October 2014: Mayor rules Ms Beregi's motions out of order and refuses to allow dissent motions

45. At an extraordinary meeting of the Council held on 1 October 2014, Ms Gibson ruled a motion put by Ms Beregi out of order and refused to allow a dissent motion.
46. In order to understand what occurred at the meeting of 1 October 2014, it is necessary to first note what had relevantly occurred at the Council's earlier meeting of 15 September 2014. At that earlier meeting, one of the business items dealt with in closed session was the recently completed report of an investigator (**BP**) into the leaking of confidential information to the Mosman Daily in April 2014 (**BP Report**). Notwithstanding that BP was not a conduct reviewer on the Council's Code of Conduct Review Panel and this was not a code of conduct investigation, the BP Report included an express finding that Ms Bevan had breached s664(1A) of the LG Act and the Code of Conduct by providing confidential information to a journalist from the Mosman Daily in relation to the appointment of Mr Winn as General Manager in March 2014.¹²
47. The BP report was discussed and dealt with by way of resolution at the Council's meeting of 15 September 2014. The resolution included that the matter be referred to the General Manager to deal with under the code of conduct complaint process.
48. The business papers for the extraordinary Council meeting of 1 October 2014 gave no indication of what further business was proposed to be transacted in relation to the BP Report. Despite that, when the 1 October 2014 meeting was closed to the public, Ms Beregi attempted to put a motion, without notice, the principal part of which was to the effect that the Council release to the public a redacted version of the Executive Summary of the BP Report.

⁸ Mr Morris's dissent motion on a ruling that Mr Barbour's motion without notice re recruitment of a new General Manager was not a matter of great urgency

⁹ Ms Baker's dissent motion on a ruling on that Ms Beregi's motion without notice re traffic issues in Neutral Bay was not a matter of great urgency

¹⁰ Ms Beregi's dissent motion on a ruling that the meeting was in disorder re the office accommodation changes

¹¹ Ms Baker's dissent motion on a ruling that Ms Beregi's motion without notice re the alleged "workplace incident" of 20 August 2014 was not a matter of great urgency

¹² This investigation and the BP Report is the subject of further consideration in Chapter 7 of this report

49. The Executive Summary of the BP Report, redacted as proposed by Ms Beregi, excluded a statement in the Executive Summary that Ms Bevan had breached clause 7.10 of the Code of Conduct, but it still included the following statement:

Councillor Bevan did provide background information to Adam Bell of the Mosman Daily that subsequently appeared in his Article on 3 April 2014 that was private and confidential at the time of disclosure and in breach of the privacy and confidentiality obligations as follows: ... section 664(1A) of the Local Government Act 1993.

50. Ms Bevan, who had not received any notice of Ms Beregi's motion, was not present at the meeting of 1 October 2014. Notice of the meeting had been published only the preceding day, 30 September 2014 and business papers gave no notice of the motion.
51. Ms Gibson pointed out that there had not been due notice given of this motion and ruled the motion out of order. Ms Baker moved dissent from the ruling of the Mayor, but the Mayor refused to allow the motion of dissent to be put.

13 October 2014: Mayor rules out motion and refuses to permit dissent motion

52. At its ordinary meeting of 13 October 2014, Ms Beregi again moved a motion to release to the public the redacted version of the Executive summary of the BP Report, this time having given due notice of her motion in the business papers for the meeting.
53. Again, Ms Gibson ruled the motion out of order and she refused to allow it to be put. Ms Beregi then moved a motion of dissent against the Mayor's ruling. The Mayor did not permit the motion of dissent to be put.

Findings

54. I accept that, in refusing to allow the dissent motions against her rulings at the meetings of 1 and 13 October 2014, Ms Gibson's actions were not in accordance with clause 248 of the LG Regulation.
55. However, I am satisfied that Ms Gibson's primary rulings that these motions were out of order were plainly correct for the reasons I set out in Chapter 7 of this report in which I deal specifically with the unlawfulness of that motion in addressing the code of conduct findings made against Ms Bevan.
56. In these circumstances, I consider Ms Gibson's refusal to allow the dissent motions in question does not warrant any adverse comment about her conduct. Rather it was the conduct of putting these motions and, in the first instance, without notice, that is of primary concern (see Chapter 7).

17 November 2014: Mayor's conduct in relation to Ms Baker's motion incorporating a response to the Minister's notice of intention to suspend the Council

57. At its ordinary meeting of 17 November 2014, the Council came to consider with due notice the question of the Minister's Notice of Intention to issue a Performance Improvement Order. It should be noted that the Minister had invited the Council to respond to his Notice by way of a resolution. During the discussion of that item, Ms Baker sought to put a lengthy (three page) motion of which she had not given notice.
58. Ms Gibson ruled that Ms Baker's motion was out of order on that basis that it was too long and no notice of it had been given. Ms Baker moved dissent from that ruling. Ms Gibson permitted a dissent motion to be put. The dissent motion was put and carried, but Ms Gibson refused to abide by the successful dissent motion and refused to permit the primary motion to be put.
59. Ms Baker attempted to have a question as to the legality of putting the motion to the floor answered by the General Manager, who referred it to the Chief Operating Officer. Ms Gibson permitted that course after debate. The Chief Operating Officer indicated his view that the motion was lawful. Rather than permitting Ms Baker's motion to be put, Ms Gibson ruled the meeting was in disorder. Ms Clare moved dissent from that ruling, but Ms Gibson refused to allow that motion of dissent to be put as well.
60. I find that Ms Gibson's conduct in this instance contravened the Meeting Code.
61. I consider that Ms Gibson's ruling that the motion was out of order was arguable and certainly not capricious. A three page motion, primarily comprising the articulation of an argument rather than a short proposal to take an action is unorthodox and questionable, but it seems to me that an unusual situation had arisen because of the particular requirement in the Minister's letter that the Council's response be provided by way of a resolution.
62. However, having ruled the motion out of order, and having properly allowed the dissent motion to be put against her ruling, Ms Gibson was then required to abide by the dissent motion, as it was passed by the majority. She was also required to permit Ms Clare's motion of dissent against Ms Gibson's subsequent ruling that the meeting was in disorder to be put to the meeting.
63. During the debate about this at the 17 November 2014 meeting, and in submissions to the Inquiry, Ms Baker contended that Ms Gibson was attempting to gag the debate and prevent the Council from putting forward a response to the Minister, merely because Ms Gibson did not agree with the position being put by the majority of councillors. I do not

accept that contention, as it is not consistent with what actually occurred at the meeting of 17 November 2014.

64. As is evident from the audio recording of this part of the meeting, when Ms Gibson ruled that Ms Baker's motion was out of order on the basis that it was too long, she twice expressly gave Ms Baker the opportunity to separate the motion from the submission to cure the perceived procedural problem with the motion. That is not consistent with an intention on the part of Ms Gibson to prevent the Council from resolving to make a submission to the Minister in terms that accorded with the will of the majority. It does not appear that Ms Gibson was attempting to prevent Ms Gibson from articulating argument, but was only seeking to prevent her eliding the argument with the motion.

16 & 19 November 2015 and 7 December 2015: Mayor's conduct in refusing to allow Governance Committee items to be adopted and attempting to expel Mr Raymond

65. At its ordinary meeting of 16 November 2015 a motion was put to adopt the recommendations of the Governance Committee. There were 17 recommendations. Relevantly, items 6, 15 and 16 were in the following terms:

6. THAT the Councillor's Use of Email Policy Report be adopted.

15. THAT Council endorse the engagement of Hawker Britton¹³.

16. THAT Council allocate \$250,000 for the campaign against forced amalgamations.

66. About 22 minutes into the meeting Ms Gibson ruled that each of these three recommendations of the Governance Committee was illegal and she refused to allow the motion to be put to the meeting seeking to adopt these recommendations.

67. Ms Baker raised a point of order, disputed the ruling and sought to move a motion of dissent. Ms Gibson indicated that Ms Baker could not move a motion of dissent. Ms Baker disputed this and asserted that she was permitted to move a motion of dissent, but Ms Gibson refused to allow the dissent motion to be put.

68. Ms Baker then again raised a point of order and attempted to put a question to the General Manager and Chief Operating Officer to seek advice about Ms Gibson's ruling. Ms Gibson refused to allow this. Ms Baker said it was clear Ms Gibson was using meeting procedure improperly to stifle debate. Ms Gibson directed Ms Baker to take her seat and then purported to identify the illegality of the three items. She asserted that Item 6 was in

¹³ Hawker Britton is a firm of consultants which the Council had engaged to run its campaign against forced amalgamation

breach of the *Workplace Surveillance Act* and that Items 15 and 16 were in breach of the Council's procurement policies.

69. Mr Reymond stood up to take a point of order, but Ms Gibson directed him to take his seat. Ms Baker then raised a point of order asserting that Ms Gibson must allow Mr Reymond to take a point of order and that she must rule on it. Ms Gibson directed Ms Baker to take her seat. Ms Baker contended that Ms Gibson was contravening the meeting code and attempted to move a motion of dissent against her ruling, but Ms Gibson refused to put the dissent motion. Upon a question of clarification then being posed by Ms Clare, Ms Gibson confirmed she did not intend to permit a vote to adopt those items; would not permit any question about it to be put to the General Manager and was refusing to permit a dissent motion to be put. Ms Clare then also moved dissent and Ms Gibson refused to put that motion. Ms Clare then asserted that Ms Gibson was misusing the meeting procedures to gag debate.
70. At about this point, Mr Reymond, who had been sitting quietly attempted again to raise a point of order. Ms Gibson stood up and directed Mr Reymond to take his seat. Mr Reymond sat down as directed. However while seated, Mr Reymond then interjected, *"Are you going to rule everything in this meeting illegal?" Every item on this agenda you could rule illegal."*
71. At this point, about 32 minutes into the meeting, Ms Gibson directed Mr Reymond to leave the meeting. Mr Reymond apologised, but Ms Gibson indicated it was too late. She insisted the meeting would not proceed until Mr Reymond left the chamber.
72. Ms Gibson did not have the authority to expel Mr Reymond from the meeting, as Ms Gibson had not satisfied the preconditions under clause 256 of the LG Regulation by first, in effect, giving Mr Reymond an opportunity to withdraw and apologise.
73. Ms Clare pointed out that Mr Reymond had apologised, but Ms Gibson was insistent that he leave the chamber. Mr Reymond refused to do so and sat in silent defiance in his chair. This led to a farce being played out in front of a gallery open to the public, in which Ms Gibson and Councillors remained in the chamber for a further three and a half hours without transacting any business, leaving 35 agenda items on the business papers for that meeting which were not dealt with and which had to be dealt with by the calling of an extraordinary meeting called three days later.

Meetings of 19 November 2015 and 7 December 2015

74. At its meeting of 19 November 2015, the Council once again sought to adopt the same Governance Committee recommendations. Ms Gibson ruled them unlawful again. Ms

Baker moved dissent. Ms Gibson refused to allow the motion of dissent to be put and refused to allow questions to be put to the staff in relation to the matter.

75. On 7 December 2015, there was a further attempt to move to adopt items 6, 15 and 16 of the Governance Committee recommendations. Once again Ms Gibson ruled that the adoption of those recommendations would be illegal. Once again, Ms Baker moved dissent and once again Ms Gibson refused to allow the dissent motion to be put. By this stage the Council had obtained advice from its internal solicitor, which was available to Ms Gibson, that the adoption of the contentious recommendations of the Governance Committee would not be unlawful.

Associated Code of Conduct complaint by Ms Baker against Ms Gibson

76. Ms Gibson's conduct at the meetings 16 and 19 November 2015 and 7 December 2015 is the subject of a subsisting Code of Conduct complaint by Ms Baker which falls within the terms of reference of the Inquiry.

Findings re Ms Gibson's conduct at the meetings of November/December 2015 and in relation to the associated code of conduct complaint

77. By repeatedly ruling that motions seeking to adopt the subject recommendations of the Governance Committee were illegal and refusing to permit them to be put at the meetings of 16 & 19 November 2015 and 7 December 2015, the effect of Ms Gibson's conduct was to prevent the Council from adopting significant recommendations from one of its key committees in relation to the business of the Council.
78. In particular, Items 15 and 16 of the Governance Committee recommendations, which sought to confirm the engagement of the consultancy firm to co-ordinate the proposed campaign against the amalgamation of the Council and to endorse the allocation of \$250,000 for the running of that campaign were important matters for the Council, as they concerned the Council's proposed campaign against the proposed amalgamation of North Sydney Council with other councils.
79. I find that Ms Gibson's conduct in this regard was a serious contravention of her duty to receive and put to the meeting any lawful motion that is brought before the meeting.
80. Having heard Ms Gibson's evidence, and having seen her give it, I accept that Ms Gibson had genuinely formed the opinion that it would be unlawful to adopt the subject recommendations of the Governance Committee, seemingly based on some informal advice that she had received from a third party. However it was not reasonably open to Ms Gibson, as Mayor, to take that position on the strength of some esoteric opinion as to the legality of the motions in question obtained from a third party. As the Mayor, it was

incumbent on her to rely on the advice from the Council staff or from a lawyer engaged by the Council to so advise.

81. Not only did Ms Gibson not seek advice from the Council staff on the question of the legality of the items, but she refused to allow questions as to the legality of the items to be put by councillors to the General Manager and at the meeting of 7 December 2015, she took a position in contravention of the express advice of the Council staff as to their legality. Her position was capricious.
82. Additionally, for the reasons I have already given, Ms Gibson had an obligation to allow and abide by motions of dissent against her ruling that these motions were unlawful pursuant to clause 248 of the LG Regulation.
83. Fortunately, Ms Gibson's conduct in this regard did not have the consequence that the Council was unable to engage the said consultants or allocate the funds to conduct the proposed campaign against the council amalgamations. I heard evidence that the consultants were in fact engaged and the funds were in fact allocated, as those actions had been sufficiently authorised by earlier resolutions in more general terms, which had been passed by the Council.

The attempt to expel Mr Reymond from the meeting of 16 November 2015

84. Ms Gibson's direction to Mr Reymond to leave the chamber when he interjected after having been frustrated by Ms Gibson's rulings that the adoption of the Governance Committee recommendations would be illegal was disproportionate to his conduct and was a direction given without proper authority for the reasons I have given .
85. It may be said that Mr Reymond could have complied with the direction from the Chair that he leave the meeting. Had he done so, this would not have affected the voting in any material respect and would have prevented the farcical impasse that followed during the three and a half hour session where no business was conducted.
86. However, in the circumstances, I find no fault on the part of Mr Reymond in quietly defying the direction that he leave the chamber, as it was not made with authority.

My recommendations in relation to the associated Code of Conduct complaint

87. The effect of this report is to counsel Ms Gibson for her conduct in: (a) refusing to put to the meetings of 16 and 19 November 2015 and 7 December 2016 the motions seeking to adopt the three subject recommendations of the Governance Committee; (b) refusing to allow questions to be put to the Council staff in relation to the legality of those items; (c) refusing to allow motions of dissent against her rulings; and (d) attempting to expel Mr Reymond from the meeting of 16 November 2015.

88. However, for the reasons which follow, I recommend there be no further action taken in relation to this conduct, whether pursuant to the misconduct provisions of under Part 13 of the LG Act or otherwise.¹⁴

Mitigating circumstances

89. Although Ms Gibson's conduct on these occasions was aberrant, I am satisfied that she did not act in bad faith. Clearly she was not attempting to influence the vote or to engineer a loss of quorum.

90. I accept that the Councillors in the Majority Bloc had made it difficult and sometimes very difficult for Ms Gibson to preside at Council meetings. I am satisfied that, by 16 November 2015, Ms Gibson had experienced three years of intense pressure as Mayor both in the Chair at Council meetings and otherwise. Much of this pressure was a concomitant of her political isolation, being pressure legitimately applied in the political arena by a group of councillors very capable of applying it. In so far as legitimate political pressure had mounted on Ms Gibson, I make no criticism of the councillors who applied it. However, it was pressure nonetheless against which Ms Gibson's conduct at these meetings needs to be understood.

91. In addition to the legitimate pressure, Ms Gibson faced additional pressure that she should not have had to face in the form of frequent conduct from the floor of the meeting that was not in accordance with the requirements of the Meeting Code. She also faced additional pressures outside the meeting chamber as a result of the serious conflict between herself and Mr Winn, which was playing out in a number of ways in the period leading up to November 2015, as discussed in Chapters 5 and 6 of this report.

92. As a result of the pressure she was under and the prevailing dynamic of her being an individual being opposed by a group, I am satisfied that Ms Gibson's identified aberrant behaviour in the Chair in the period from late 2015 to early 2016 was not indicative of a pattern of conduct but resulted from poor judgment which may be attributed to her failure at that time to manage the pressure which had been applied to her over a lengthy period.

93. When Ms Gibson's conduct in relation to these items of business at the subject meetings was specifically raised with Ms Gibson during the Inquiry hearing, Ms Gibson gave evidence which satisfies me that, looking forward, she will not engage in such conduct in the future. In particular, I am satisfied that (a) Ms Gibson will not seek to prevent items of

¹⁴ However, if there is any Code of Conduct complaint or misconduct allegation concerning any conduct of this nature engaged in by Ms Gibson at any meeting of the Council after this report is published, I am not suggesting that her conduct at these meetings would not properly be taken into account in the exercise of any discretion.

business going forward on the putative basis they are illegal unless she receives that advice from the relevant Council staff (i.e, the General Manager, the Chief Operating Officer or the Legal Officer) or from an external lawyer engaged by the Council to advise on that question; and (b) Ms Gibson will accept the advice of the General Manager in respect of legality/illegality of items of business where that is contentious within the Council's governing body.

94. In coming to that conclusion I am fortified by the fact that, when Ms Gibson was asked to direct her mind to how she would act as Chair in future, Ms Gibson said:

I feel differently when I'm chairing meetings, because I feel confident with Mr McCreanor sitting beside me. It's a whole different atmosphere. If Mr McCreanor gave me some advice, I would take it, because I trust him.

95. I am satisfied that Ms Gibson will take Mr McCreanor's advice on procedural matters during the remainder of the meetings of this term of the Council.

15 February 2016 and 21 March 2016: Mayor rules motions re 11 Woolcott Ave, Waverton illegal and refuses to put dissent motion

96. At the Council meeting of 15 February 2016, Ms Beregi put a motion to the meeting which was intended to delay the implementation of a Council resolution to grant a lease over part of a road reserve on public land in Waverton Park to provide a driveway, with associated disabled pedestrian access, and a 2-vehicle parking hardstand for a 'land-locked' residential dwelling within Waverton Park, known as 11 Woolcott Avenue, Waverton and to defer the associated development consent. I consider how the governing body of the Council dealt with this matter in Chapter 6 of this report.
97. For present purposes, it suffices to say that Ms Gibson ruled Ms Beregi's motion illegal, on the basis that it sought to delay or interfere with or overturn the Council's resolution of 15 December 2014 to grant the lease and to delegate to the General Manager the determination of the associated development application.
98. At each of the subsequent meetings of 21 March 2016, 18 April 2016 and 16 May 2016, Ms Beregi again attempted to put the same motion and in each case, Ms Gibson again ruled it to be illegal and refused to allow it to be put. In the course of so ruling, Ms Gibson refused to allow dissent motions against her rulings and did not rule on points of order concerning her rulings.
99. After Ms Gibson had initially ruled the motion illegal on 15 February 2016, the Council obtained advice from Counsel on 24 February 2016 to the effect that Ms Beregi's motion was a lawful motion. Notwithstanding Ms Gibson had access to this legal advice, Ms

Gibson continued to rule the motion illegal and refused to put it to the meetings of 21 March 2016, 18 April 2016 and 16 May 2016.

100. I find that this conduct on the part of Ms Gibson was in contravention of her duty to put lawful motions to Council meetings under clause 248 of the LG Regulation and her duty to allow a dissent motion against her rulings that the substantive motion was illegal.
101. This report serves to counsel Ms Gibson in relation to her conduct in refusing to allow these motions to be put, particularly after she had been made aware of the advice from Counsel that Ms Beregi's motion was lawful.
102. However, in this case, the conduct of Ms Gibson must be viewed not only in the light of the sustained pressure she had been subjected to, about which I have earlier made some observations, but also in the light of the extraordinary history of decision making concerning 11 Woolcott Avenue.¹⁵
103. I note that, at the Council's meeting of 18 July 2016, Ms Gibson relented from her previous position and permitted Ms Beregi's motion to be put.
104. For the reasons I have already given I am satisfied that, in future Ms Gibson will act in accordance with advice she receives from the Acting General Manager before purporting to rule any motions or items of business before the Council as illegal and will respect the right of councillors to move dissent from any such ruling.

No consistent pattern of breach by the Mayor of her duty to put motions and to permit dissent from her rulings

105. I do not accept the proposition that, during the Inquiry period, there was a consistent pattern of conduct on the part of Ms Gibson of refusing to allow business items to proceed and refusing to allow dissent motions to be put. Nor do I accept the proposition that, during the Inquiry period, the Mayor consistently engaged in such conduct for the purpose of gagging debate or thwarting the will of the majority.
106. Each of those propositions is contrary to the evidence of what occurred at the meetings during the Inquiry period. The instances in which Ms Gibson improperly refused to permit items of business to be dealt with, which I have identified above, were relatively isolated instances.
107. In so far as concerns dissent motions, as emerges from the survey of relevant meetings above, there were a number of instances in which she allowed a dissent motion to be put

¹⁵ See the discussion of this in Chapter 6

and voted on and by which she abided. In some of those instances, the Mayor allowed and abided by dissent motions when this was directly against her own interests.

108. Additionally, in far and away the majority of incidences at meetings during the Inquiry period where the recorded debate discloses that the Mayor disagreed with the position of the Majority Bloc, she did not attempt to rule motions unlawful or out of order, but, rather, she allowed motions to be put to the meeting, allowed councillors to speak to them, and when the vote went against her, she simply moved on to the next item on the agenda. This conduct is not consistent with the proposition that Ms Gibson engaged in any pattern of conduct involving the deliberate gagging of debate or thwarting of the majority position.

Conduct of Ms Gibson on 21 March 2016: refusing to allow motion to exhibit an amendment to the Meeting Code and expelling Ms Clare from the meeting

109. On 21 March 2016, Ms Gibson directed Ms Clare to leave the Council chamber during debate about the proposed exhibition of draft amendments to the Meeting Code. One of the proposed amendments to clause 44.1 of the Meeting Code to make it clear that a Councillor could be expelled only by a resolution of the Council and not by direction of the Chair unless such a resolution had first been passed. Having regard to section 10(2)(b) of the LG Act, this proposed amendment to the Meeting Code was lawful.

110. Not only was this proposed amendment lawful, but it was appropriate in order to address departures from the Meeting Code by Ms Gibson in the period from November 2015 to March 2016, Ms Gibson, when she had once expelled and once attempted to expel a Councillor without complying with the preconditions for expulsion under clause 256 of the LG Regulation.

111. Ms Gibson ruled that Ms Clare's motion was illegal in so far as it purported to place on exhibition the proposed amendment to clause 44.1 of the Meeting Code. Ms Gibson's position that this proposed amendment was illegal was not based on any legal advice properly received. It was also a misconceived position to take for the reasons advanced.

112. Ms Clare raised a point of order, following which there was some acrimonious debate between Ms Clare and Ms Gibson.

113. In an ironic twist, Ms Gibson then purported to expel Ms Clare, ruling that she was out of order. Ms Baker moved dissent from Ms Gibson's ruling that Ms Clare was out of order. Ms Gibson refused to put the motion of dissent. Ms Clare purported to withdraw and apologise but Ms Gibson insisted that she leave the meeting chamber. Ms Clare then left the chamber.

114. Once again, Ms Gibson was not entitled to expel Ms Clare, because she had not satisfied the pre-conditions for validly exercising the power of expulsion under clause 256 of the LG regulation by first giving Ms Clare the chance to apologise or withdraw and apologise. In fact, Ms Clare did withdraw and apologise, but Ms Gibson expelled her anyway. This was not appropriate and not in accordance with the Meeting Code.

115. This report serves to counsel Ms Gibson in relation to her conduct at the meeting of 21 March 2016 in refusing to allow the motion to exhibit that proposed amendment to the Meeting Code and in expelling Ms Clare from the meeting.

MS GIBSON REFUSING TO ALLOW QUESTIONS TO THE GM OR STAFF

116. I am satisfied on the evidence that Ms Gibson has on a number of occasions refused to permit Councillors to put questions without notice to the General Manager at meetings. That needs to be balanced against the fact that on more numerous other occasions, Ms Gibson has allowed questions to be put.

117. It is not properly to be expected that the Mayor should allow a question without notice to be put from the floor to the General Manager when the effect of the question is to ask the General Manager whether the Chair's ruling or proposed ruling on a point of order is correct. Although I consider the Mayor should properly seek advice from the General Manager and have regard to it, such advice properly is sought and given in soft dialogue between the Mayor and General Manager. It is not a proper function of a question without notice to seek to have the General Manager, who is not chairing the meeting, second guess the rulings of the Chair.

118. In relation to other occasions where Ms Gibson has refused to allow questions without notice to be put to the General Manager (or to the staff through the General Manager), her refusal to do so needs to be put into context. I am satisfied that there have been a number of instances over the Inquiry period where the procedural entitlement to put a question without notice to the General Manager (or to the staff through the General Manager) has been misused by seeking to elicit an answer to a question on the spot, without notice and sometimes in relation to contentious matters. This is not in accordance with proper meeting procedure.

119. Clause 31.2 of the Meeting Code provides that questions without notice are to be referred to the relevant Council officer for reply and that the question will be taken on notice and the response included on the next available agenda. This is an appropriate sensible procedure to ensure that there is due notice of the response.

120. On this point, Mr Petschler provided this opinion:

Q. What about if what's occurring is a councillor is wanting a question to be asked and answered at that point in time through the chair to the general manager or a director?

A. No, I don't believe an answer should be given at that time.

Q. You think it should be on notice?

A. On notice subject to a report, so everyone has a chance to understand both the question and the response.

121. In circumstances where the proper procedure for the asking of questions without notice has not infrequently been misused, I am of the view that it would not be proportionate to counsel or censure Ms Gibson in relation to her refusal from time to time to allow questions without notice to be put to the General Manager over the Inquiry period.

122. However, if the proper procedure for asking questions without notice is observed in future, then Ms Gibson should permit the question to be asked so that a written response can be provided in the agenda papers for the following meeting.

REFUSING TO ALLOW AND FAILING TO RULE ON POINTS OF ORDER

123. The audio and podcast recordings of meetings demonstrate that, on numerous occasions, Ms Gibson failed to follow the proper and orderly procedure concerning points of order by either not stopping debate to allow the point of order to be articulated or by refusing to rule on it, or both.

124. It should properly be recognised that, on the majority of occasions, Ms Gibson did permit points of order to be raised and did rule on them. However, that is not good enough when the duty is to take all genuine points of order and to rule on them.

125. Ms Gibson also complains that Ms Baker only ever took points of order against Ms Gibson. I am satisfied from the recordings of the meeting that is so. However, Ms Baker was under no obligation to take any points of order other than the ones she chose to take and she was by no means the only councillor to take points of order.

126. Ms Gibson complains that there were an excessive number of points of order taken against her rulings. There certainly were many such points taken, but I am not satisfied that points of order were taken otherwise than in good faith.

127. Regardless of Ms Gibson's view that an excessive number of points of order were taken, it was her obligation as Chair to respect the right of any councillor to take any genuine point of order and then to follow the proper procedure by suspending debate, allowing the point of order to be briefly articulated and then ruling on it. That is a burden which the Chair must carry.

128. Ms Gibson will need to be more assiduous in future to ensure that the correct procedure is consistently applied in relation to points of order.

THE MAYOR'S PARTICIPATION IN DEBATE WHILE IN THE CHAIR

129. I now turn to consider an important issue that Ms Clare has adverted to in her submissions to the Inquiry. Ms Clare's submission is to the effect that, as Chair, Ms Gibson, albeit entitled to vote, is not supposed to get involved in the debate, but is supposed to play the procedural role of running the meeting in accordance with the procedures mandated under the Meeting Code. In my opinion, Ms Clare's submission has merit and properly calls for closer consideration.

130. The recordings of the Council meetings over the Inquiry period amply demonstrate that, on many occasions, Ms Gibson has opted to play a prominent role in the debate from the Chair and she has not infrequently put motions or substantive amendments to motions from the Chair.

131. This conduct does not accord with the conventional role of the Chair of a meeting of an organisation. The general principle is that the Chair should take a neutral stance at meetings, not become heavily involved in the debate, to speak only briefly and to refrain from putting motions while in the Chair. This is recognised as being an important characteristic of the Chair.¹⁶

132. However, the conventional role of the Chair in that regard is not necessarily easy to adhere to when it comes to a mayor presiding at a meeting of a council. That is because the mayor is not only required to preside, but is also required to fulfil the role of an elected councillor and that latter carries an expectation of participation in debate.

133. Mr Petschler, an experienced mayor (of other councils, not North Sydney) said this about that issue:

Q. It's been suggested to the Inquiry that the mayor should have no role or a very limited role in relation to debate on the floor of council.

A. It's been put to me several times in heated debate, I can tell you. My view is that I'm an elected councillor ... and I believe I have a right to comment on issues before council. The issue is if I wish to move a motion, I think I should stand aside from the Chair, but I think I have the right to comment on the issue before the council, as long as I'm being fair and equitable in doing so. I think that's allowable.

¹⁶ Horton at [6.16]; Joske at [8.20]

134. Upon further questioning in relation to this issue, Mr Petschler confirmed that, although he considered it was his entitlement as a councillor to engage in debate, notwithstanding being in the position of the Chair, he took that view that, if he proposed to move a motion, it was appropriate that he vacate the Chair and move the motion from the floor of the meeting.

135. As I perceive it, there was a tacit recognition by this experienced mayor, in giving his evidence, that the degree to which a mayor should participate in debate at council meetings is not an issue which is clear cut or as to which there is a clear consensus of opinion in local government circles.

136. In some instances, I consider Ms Gibson's significant participation in the debate was justified, for example, when the business item in question concerned allegations or imputations about her conduct or had the potential to materially affect her role. However, in other instances, I consider the Mayor's heavy participation in debate was inconsistent with her role as Chair and tended to compromise the effectiveness of her chairing of the meetings and I find that this justifiably led to frustration on the part of the Councillors in the Majority Bloc.

137. Although I consider Ms Gibson should be circumspect in future about taking part in debate from the Chair, I am not in a position to make any hard and fast statements of obligation in that regard.

138. In my opinion, the degree to which a mayor, while presiding at meetings should become involved in substantive debate is a difficult issue as to which some additional guidance should be provided by the Office of Local Government, preferably by augmenting the current *Meetings Practice Note No. 16*.

DISORDERLY CONDUCT OF COUNCILLORS ON THE FLOOR OF MEETINGS

139. The audio and podcast recordings of Council meetings demonstrate that Ms Gibson, while presiding as the Chair, frequently had to try to manage disorderly behaviour on the floor of the Council.

Councillors talking among themselves outside the structured debate

140. One species of disorderly conduct was Councillors speaking among themselves outside the structured debate instead of speaking through the Chair. For the most part, such talking will occur with microphones off in which case the audio recording typically will not pick it up. Accordingly, there is a relative paucity of direct evidence in relation to councillors speaking among themselves rather than through the Chair.

141. However, the recordings of meetings are replete with instances of Ms Gibson requesting Councillors to please stop talking among themselves and I infer that when she made those requests, it was in response to such conduct taking place.

142. While isolated instances of this would not call for any particular comment, the frequency with which I infer this occurred satisfies me that such conduct made Ms Gibson's role in presiding as Chair difficult by frequently distracting and irritating her.

Calling out, laughing or speaking without recognition from the Chair

143. The recordings of the Council meetings vindicate Ms Gibson's complaint that some Councillors called out, laughed out loud or spoke without being recognised by the Chair. Not all Councillors and not all Councillors in the Majority Bloc engaged in this conduct. On my review of the evidence, the only two councillors on the floor of the chamber who frequently engaged in the conduct of calling out or speaking without recognition from the Chair were Ms Beregi and Mr Morris.

Open displays of disrespect

144. The recordings of the Council meetings also demonstrate that a number of Councillors in the Majority Bloc exhibited, with varying frequencies, open disrespect, to Ms Gibson during Council meetings.

145. Over the Inquiry period Ms Beregi frequently made rude and/or sarcastic comments to or about Ms Gibson during Council meetings.

146. Mr Morris from time to time made remarks during his address to meetings, sometimes witty remarks, which were disrespectful of Ms Gibson.

147. Open displays of disrespect for the Chair over the Inquiry period undermined the orderly conduct of meetings and affected the way in which Ms Gibson presided as Chair.

The displays of conflict are not signs of healthy democratic debate

148. I reject the submission that has been made by a number of Councillors and by some members of the public to the effect that the conflict exhibited by Councillors during Council meetings is simply a sign of healthy robust democracy. That proposition might have some specious attraction, but it does not withstand scrutiny of the evidence. Robust democracy is exhibited in structured debate with a divergence of views and robust arguments about issues. The evidence discloses frequent unstructured debate and disorderly conduct of a type which is antipathetic to healthy democracy, not symptomatic of it.

Disorderly and embarrassing conduct at the Council meeting of 25 February 2016

149. At the Council's extraordinary meeting of 25 February 2016, there was gross disorder in front of a full public gallery.
150. In the period immediately leading up to this meeting, in the context of the then-existing proposal to merge North Sydney Council with Willoughby Council, a new proposal had come under consideration by the State Government which proposed that Mosman Council be included in the proposed merger. A report had been placed before the Council attaching a submission which the Council staff recommended be adopted and sent to the Minister in relation to this new amalgamation proposal.
151. Standing orders were suspended on the motion of Ms Gibson to discuss the matter. Mr Morris upon being called to speak sought to do so, but when he made remarks critical of the State Government, Ms Gibson interrupted him, indicating that this was not an occasion for a speech about the State Government and telling him to stick to the issue. This precipitated a cutting verbal retort from Mr Morris, "*Correct me if I am wrong. Is it the Federal Government that is trying to merge this Council?! Is it the New Zealand Government trying to merge this Council?!*"
152. Under clause 237 of the LG Regulation (replicated under clause 35 of the Meeting Code), when the Chair rises during a meeting, any Councillor then speaking must be silent to enable the Chair to be heard without interruption. Ms Gibson, who had just recently had surgery involving a double knee replacement and could not readily stand, had at this time recently adopted a temporary practice of ringing a bell to notionally indicate that she was standing for the purposes of clause 237 of the Regulation. Mr Morris was aware of this. Ms Gibson rang the bell and demanded Mr Morris take his seat. Mr Morris responded by saying "*Do you want to stand up Mayor, because I do not recognise the cow bell?*" He initially remained standing and then sat down. Ms Gibson then remarked "*No wonder they are suggesting a merger of these councils*", to which Mr Morris retorted "*Look in the mirror!*" Ms Gibson then directed Mr Morris to leave the chamber for disorder, to which he replied "*Oh, another put-up job*".
153. Ms Baker attempted to raise a point of order, but Ms Gibson directed her to sit down, saying "I am speaking". Ms Beregi turned and faced the public gallery and spoke out, "*It happens every day*". Members of the public called out from the gallery. Ms Gibson then directed members of the gallery not to call out in response to which Mr Morris called out "*Well your partner does, Dr Martin Williams does*".
154. This prompted Ms Beregi to laugh loudly and clap her hands.

155. Mr Morris proceeded to make some insulting and intemperate remarks both to Ms Gibson and to the chamber about Ms Gibson, including saying to Ms Gibson “*Well you took a fraudulent AVO out against me.*” When Ms Gibson demanded he leave the Chamber, Ms Baker attempted to take a point of order, but Ms Gibson continued to demand that Mr Morris leave the chamber. Mr Morris then turned around and faced the public gallery and said “*See, see what she does. See what a fraud it is.*”
156. Ms Baker then pointed out that there were no standing orders in place and asserted as a point of order that Ms Gibson could not expel Mr Morris in the absence of standing orders. Ms Gibson then purported to apply standing orders and repeated her direction that Mr Morris leave. Ms Gibson rejected Ms Baker’s point that a councillor could only be expelled for an act of disorder if it occurred while standing orders were in place.
157. Upon further calling out from the gallery, Ms Gibson said. “*the gallery cannot get involved in this*”. Ms Beregi then exclaimed “*Oh yeh, they can!*” Ms Beregi again turned around to the gallery and said “*It happens every day.*”
158. Ms Gibson then asserted that the meeting was in disorder and ruled there be a ten minute break. Ms Clare sought to move dissent, but Ms Gibson did not entertain it.
159. Mr Morris exclaimed: “*What a farce. What an absolute farce you are. What a fraud. You dysfunctional Mayor. The only thing that is dysfunctional in this Council is you.* Then, speaking audibly to the gallery and facing the gallery, Mr Morris stated, “*She is completely mad.*”
160. There was then a cross conversation between Ms Beregi and Ms Bevan. Ms Bevan’s remarks are not inaudible, but Ms Beregi can be heard calling loudly across to Ms Bevan “*Clr Bevan you’ve been extremely rude. You called my name a stupid name*” Ms Beregi is heard to then laugh. Then Ms Beregi can be heard to ask, “*It is a stupid name is it?*” She can then be heard saying to Ms Bevan “*Anti semitic, anti semitic*”.
161. Shortly after this point, the podcast recording is blacked out and muted for a period of about five minutes.
162. Upon the recording resuming, Mr Morris who is seen to be standing and is heard to address the Mayor, “*We know what your game is, to knock a vote out. There is nothing too low for you to stoop to knock a vote ... Everyone in this room knows that you are a joke in making that ruling Mayor and they are all laughing at you...*” He then left the chamber.
163. This was an ugly and embarrassing scene played out by leaders of the community in front of a public gallery.

164. It is fair to observe that the initial problem was that Ms Gibson should not have interrupted Mr Morris in the first place. He then should not have reacted as acerbically as he did, but when he initially did react that way, Ms Gibson was not entitled to expel him, because she had not satisfied the pre-conditions for validly exercising the power of expulsion under clause 256 of the LG regulation by first giving Mr Morris the chance to apologise, or to withdraw and apologise. However, of primary concern was the conduct which occurred after that point, to which I have referred.
165. It is was uncivil and disrespectful of Mr Morris to refuse to recognise Ms Gibson's assertion of her authority as Chair by ringing the bell rather than standing up when Mr Morris was aware that Ms Gibson, who had just recently had a double knee replacement, was using the bell because she was temporarily physically impaired.
166. The remarks subsequently made by Mr Morris in front of the chamber, and to the chamber, were grossly insulting to Ms Gibson and unbecoming.
167. Gratuitous conduct on Ms Beregi's part during the same breakdown in the debate contributed to the atmosphere of disorder. Her pointed laughing and clapping was openly disrespectful to the Chair. Her engagement with the public gallery was encouraging of disorderly interjection from the gallery. Her calling out of the remarks to Ms Bevan to which I have referred was not appropriate.
168. As this episode demonstrates, on the occasions when there was disorderly conduct on the floor at Council meetings, it is necessary to recognise that, commonly, only a small number of councillors, and a small number of councillors in the Majority Bloc, behaved in a disorderly fashion. In relation to the Council meeting of 25 February 2016, as was commonly the position, there no disorderly conduct of any note at all on the part of Mr Reymond, Ms Clare, Ms Baker, Mr Carr, Ms Marchandean, Ms Bevan or Mr Barbour (who, in this instance, was not present).
169. In the course of making his remarks at the meeting when the Mayor had directed him to leave the chamber, Mr Morris made an allegation the effect of which he has repeated as a submission to the Inquiry, namely that Ms Gibson purported to expel him for the improper purpose of manipulating the voting numbers to torpedo the motion preferred by the majority of councillors.
170. I do not accept that submission. The expulsion of Mr Morris left the Majority Bloc still with a clear majority (a minimum of 5 out of 8 councillors remaining at the meeting) who would confidently have been expected to vote as per the recommendation. I am satisfied there is no basis to conclude that Ms Gibson, in directing Mr Morris to leave the chamber, had

any purpose of affecting the outcome of the vote on the motion. Rather, I am satisfied that Ms Gibson sought to expel Mr Morris because she was genuinely affronted by the way in which he spoke to her and his refusal to recognise her assertion of the Chair's authority by ringing the bell instead of standing up because of her temporary physical impairment.

Associated code of conduct complaint against Mr Morris

171. There is a subsisting code of conduct complaint which Ms Gibson has made about Mr Morris' conduct at this meeting which falls within the terms of reference of this Inquiry (Code of Conduct Complaint No.8 of 2015/16)

172. I am satisfied that Mr Morris' conduct at the meeting of 25 February 2016 was in contravention of the Code of Conduct, including because it was conduct which was likely to bring the Council into disrepute, and did in fact bring the Council into disrepute (in contravention of clause 3.1 of the Code of Conduct) and because he acted in contravention of the Meeting Code and exhibited gross disrespect to the Chair (in contravention of clauses 6.5 and 6.6 of the Code of Conduct).

173. The effect of this report is to counsel Mr Morris for his conduct on that occasion, which was most unsatisfactory. However, for the reasons which follow, I recommend that there be no further investigation or action in relation to Mr Morris' conduct, whether pursuant to the code of conduct complaint brought by Ms Gibson, or under the misconduct provisions of the LG Act or otherwise¹⁷.

174. I am satisfied this was an unpremeditated outburst on the part of Mr Morris, triggered by Mr Morris losing his cool as a result of what I perceive to have been his understandable frustration that Ms Gibson had interrupted him when he was attempting to speak on an important and politically contentious issue concerning the proposed merger of North Sydney Council with Willoughby and Mosman Councils.

175. I am satisfied from my review of all of the audio and podcast recordings of Council meetings over the Inquiry period that, although there have been other instances of Mr Morris showing disrespect to the Chair, there has been no other instance in which Mr Morris has engaged in conduct which can be likened to his conduct in this instance at the meeting of 25 February 2016.

¹⁷ However, if there is any Code of Conduct complaint or misconduct allegation concerning any conduct of this nature engaged in by Mr Morris at any meeting of the Council after this report is published, I am not suggesting that his conduct at the meeting of 25 February 2016 would not properly be taken into account in the exercise of any discretion.

CHAPTER 5: BREAKDOWN IN THE RELATIONSHIP BETWEEN THE MAYOR AND THE GENERAL MANAGER

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RELEVANCE OF GENERAL MANAGER TO THE TERMS OF REFERENCE

1. The Inquiry's terms of reference do not make any express reference to the General Manager. However, the terms of reference do call for consideration of, among other things, whether the Council and its elected representatives (including the mayor) have complied with relevant Codes and Policies and have fulfilled their legislative duties, powers and functions, "*particularly with respect to their relationships with each other and with senior ... staff of the Council*".

2. As is stated in the NSW Government's Councillor Handbook¹⁸, "[a] good working relationship between councillors, the mayor, the general manager and other council staff is fundamental to an effective council" and "[t]he relationship between the mayor and the general manager is the most important one in a council and can have a significant impact on the council's performance."
3. Having regard to the relevant events which have played out in North Sydney Council during the Inquiry period, the terms of reference, properly understood in their context, require consideration of, among other things, how the demonstrably poor relationship between Ms Gibson and Mr Winn affected the performance of the governing body and affected the mayoral functions.

MS GIBSON'S RELATIONSHIP WITH THE PREVIOUS GENERAL MANAGER

4. In early October 2013, Ms Penny Holloway resigned from the position of General Manager of the Council, effective 6 December 2013. I am satisfied that during the period from September 2012 until Ms Holloway left the Council in December 2013, Ms Gibson enjoyed a generally good working relationship with Ms Holloway. They liaised on a day to day basis. Their respective EAs shared a common working area, liaised daily and each had access to the diaries of the General Manager and Mayor.

THE DEVELOPMENT OF CONFLICT BETWEEN MAYOR AND GM IN 2013

5. The relationship between Mr Winn and Ms Gibson began to deteriorate quickly in the last quarter of 2013 even before Mr Winn was appointed as Acting General Manager

Mr Winn is sponsored to become 'transitional' general manager

6. In the period from 2004 until late 2013, Mr Winn had held the position of Council's Director of Planning and Development Services.
7. On 9 October 2013, Mr Barbour, who at that time held the position of Deputy Mayor, gave notice of a motion he proposed to move "*that Warwick Winn be appointed as our transitional General Manager ... during the period we are waiting to recruit a new General Manager for North Sydney Council.*"
8. Mr Winn gave evidence that, at that time, he had no foreknowledge of this motion and was not aware of any move that he take on a role as a transitional General Manager.
9. In Mr Winn's file note of 11 October 2013, he records that, upon the Mayor showing him this motion "*my first comment was that two GMs was not tenable as an option*" and that

¹⁸ *Councillor Handbook 2012*, published by the NSW Department of Premier & Cabinet, in co-operation with the Local Government Association of NSW and the Shires Association of NSW

“no one had asked me”. Mr Winn records in his note that *“the Mayor then said that her first reaction was that I was working with the other Councillor [sic] against her”*, but that when he told her he was unaware of the motion, *“the Mayor then said that on second thoughts she did not think I was working against her.”* Mr Winn’s note goes on to record:

The Mayor said she had some “serious advice”. She said that anyone who took on the Acting GM role would not get the full time position. I made no comment. The Mayor said “her team” saw me as a serious candidate but strongly advised if it [sic] would not be a “wise move” to accept any Acting role.

10. Consistent with this note, Mr Winn’s evidence to the Inquiry was that the Mayor had expressed the view to him that he was working with other Councillors against her and was advised him not take the role of Acting General Manager.
11. Ms Gibson accepted that she would have expressed her concerns to Mr Winn along the lines that he was working with the other councillors against her, as that was what she thought at the time. Ms Gibson did not accept, however, that she had given Mr Winn the advice that it would not be a wise move for him to accept the role of Acting General Manager. Her evidence was that Mr Winn had made it plain that he would be a candidate for the position of General Manager and she thought it was inappropriate for anyone who would be applying for that role to take up the role of Acting General Manager as, in her opinion, it would give that person an unfair advantage.
12. I do not need to resolve this conflict in the evidence. The more important evidence about this early episode is uncontentious, namely that, from this very early point, Ms Gibson had formed the view that Mr Winn was or would be working with her opponent councillors against her and that she had conveyed this to Mr Winn.

THE CONTROVERSY ABOUT MR WINN’S LEAVE IN DECEMBER 2013

13. One particular incident which contributed to, and was symptomatic of, the rapid breakdown in the working relationship between Ms Gibson and Mr Winn occurred when Mr Winn took leave for 2 days on 12 and 13 December 2013 to travel to New Zealand to visit his father, who was ill at that time. Mr Winn did not give the Mayor any advance notice that he would be in New Zealand over the following on those two days.
14. Mr Winn’s evidence was to the effect that on the afternoon of Wednesday 11 December 2013 he was informed his father had been diagnosed with advanced pancreatic cancer and that he left for New Zealand the next day. Prior to his departure (11 December 2013), he had arranged for Martin Ellis, the Director of Community and Library Services, to cover

for him and for the Council's Chief Operating Officer to take his place to attend the NSROC General Managers' meeting on 12 December 2013.

15. Mr Winn's evidence was that he informed Ms Gibson of his absence around midday of the Thursday 12 December 2013, when he was in New Zealand. Mr Winn was silent as to who had initiated the contact, but, as it turns out, it was Ms Gibson who had contacted him, seeking to ascertain his whereabouts.
16. Ms Gibson said that she had contacted Mr Winn's EA (Ms Byok) on Wednesday 11 December 2013 to try to arrange a meeting with him for Friday 13 December 2013. Ms Gibson said that Ms Byok told her that she would not be able to meet with Mr Winn on Friday and said that it would have to wait until the following week. Ms Gibson says that when she asked "why?" she was told by Ms Byok that Mr Winn "was just busy". Ms Gibson said:

I didn't know where he was and I rang him and was very surprised he was in New Zealand.

...

I initiated the contact. I'd been asking – if he was saying I wasn't there on the Wednesday, why didn't he get Vee to ring me and say, you know, "Jilly, it's Vee, just letting you know Warwick's father's really sick and he's had to fly to New Zealand". I asked Vee where he was because I was trying to have a meeting with him and she really couldn't answer me, so I found this surprising. I initiated the contact the next day, and he's obviously had conversations - he's found time to have conversations with Martin Ellis. Why didn't he get Martin Ellis just to tell me? I just thought what was the secret here? If anyone's sick, all you've got to do is say someone's sick and then that's - I'm the most compassionate person going. I just couldn't understand what all the secrecy was about, why it was necessary. I found it quite disturbing.

17. I accept Ms Gibson's evidence that she was the one who had initiated the phone call to Mr Winn on 12 December, not vice versa. That evidence is corroborated by an email from Mr Winn to Mr Ellis dated 15 December 2013.
18. Mr Winn stated that when he returned from New Zealand on Monday 16 December 2013, Ms Gibson had left a "*very unpleasant memorandum on my desk saying that I had breached council protocols and some other unpleasantries*". He said:

It just got completely blown out of all proportion. I responded to the mayor's memorandum to me formally. The mayor apologised in tears and said the matter was closed. And then I found out that the mayor had corresponded with the Office of Local Government and others that I was somehow truant...

It was a clear demonstration for me that the mayor was going to treat [sic] me differently to the previous general manager and it was just one of the most inhumane things I think I've ever come across...

19. The confidential memorandum Ms Gibson sent to Mr Winn on 12 December 2013, which Mr Winn described as “very unpleasant”, was in these terms:

I am writing to express my extreme disappointment that you would choose to leave the country while acting as General Manager without informing me and without officially appointing anyone to act in your absence while overseas.

North Sydney Council has a long history of support and compassion for staff in difficult personal circumstances and there was no reason to assume that this support would not be extended to you in your situation.

I consider this a breach of your duty as Acting General Manager.

20. The evidence, including Ms Gibson’s memorandum, demonstrates that Ms Gibson’s concern was not about the fact that Mr Winn had taken leave to visit his ill father, but rather that, as mayor, she had not been informed of it. Ms Gibson’s memorandum to Mr Winn was stern and might be said to have been insensitive. However, I consider Ms Gibson was justified in her concern that Mr Winn had not notified her, or caused anyone else to notify her, of the fact that he was taking 2 days’ overseas leave.
21. The General Manager was required under his employment contract to obtain the approval of the Council for any absences from the business of Council. Under clause 4.1 of the Council’s *Oversight and Liaison with General Manager Policy*, as in force at that time, the Council had delegated to the Mayor the responsibility for the day-to-day oversight of and liaison with the General Manager and, under clause 4.3 of that the Mayor was responsible for approving the General Manager’s applications for leave.
22. I accept Mr Winn’s evidence that Ms Gibson was not personally present at the Council chambers on the afternoon of 11 December 2013. However, given that Ms Gibson was contactable by phone, text and email, he could have notified her or arranged for his EA to do so. The only reasonable inference available is that Mr Winn chose to inform certain senior Council staff and his EA of his movements, but not the Mayor, who was responsible for his day to day oversight.
23. In my opinion, Mr Winn’s choice not to notify Ms Gibson of his overseas departure was an early symptom, emerging within a week of his appointment as Acting General Manager, of his mistrust of Ms Gibson and his disinclination to communicate with her.

24. On the other hand, Ms Gibson's election to deal with Mr Winn sternly was insensitive in the context of Mr Winn's difficult personal circumstances and she displayed that insensitivity also in January 2014 when Mr Winn wanted to take time off after his father passed away. Ms Byok said *"I think the Mayor was hard on him having the time off. She questioned why should he go. To him, that was so wrong, because that was his father who had died. He felt that she should have more compassion towards him and let him have the leave in peace and not be questioned about why he is taking this time."*

THE PROCESS OF RECRUITMENT OF A GENERAL MANAGER

25. On 14 October 2013, the Council resolved to immediately engage an external consultancy firm to co-ordinate and manage the recruitment of a new General Manager. The Council appointed a recruitment panel consisting of the Ms Gibson, Mr Barbour, Ms Burke, Mr Carr and Mr Morris, but Mr Carr resigned from the panel in December 2014. The representative of the consultancy firm, process was Mr Christian Morris.
26. The recruitment panel agreed to a process the best five candidates to proceed to first round interviews with the panel; that each panel member would score candidates during the interviews and the three candidates with the highest total scores would proceed to a second and final round of interviews, from which the successful candidate would be offered the position of General Manager.
27. On 9 December 2014, the recruitment panel agreed on a shortlist of five candidates to attend first round interviews in February 2014, including Mr Winn. It was after this point that the recruitment process became enmeshed in controversy.
28. Based on the scoring by the recruitment panel during the February 2014 interviews, Mr Winn was not in the top three candidates. However, there was a controversy about the outcome of the scoring. Ms Gibson and Ms Burke had given very low scores on all selection criteria to Mr Winn compared with the other candidates. Of the four councillors on the recruitment panel, two were not satisfied that the outcome of the scoring had selected the best three candidates.
29. At the Council meeting of 17 February 2014, Mr Barbour moved without notice that all five candidates go through to the final round of interviews, instead of just the top three. Following a heated debate, the motion was passed.
30. The five candidates were then interviewed by the councillors on 21 March 2014. Some councillors missed all or parts of some of the interviews. After the interviews were completed, the Council resolved to appoint Mr Winn as General Manager.

31. There are competing complaints made about this recruitment process. Ms Gibson, Mr Robertson and Ms Burke expressed concerned in February and March 2014 that the majority of councillors had made a preconceived decision to appoint Mr Winn as the new General Manager and that, when Mr Winn had not made it through to the final round, the agreed process was changed to ensure Mr Winn would be appointed. Ms Gibson submitted that the recruitment process was corrupted. She said it was the 'worst piece of process I've ever seen in my life'.
32. Mr Winn gave evidence to the Inquiry that he had only seen the scoring for the first time when presented with that information in the lead up to the Inquiry hearing. He submitted that, having seen that scoring, it demonstrated that there was "collusion" between Ms Gibson and Ms Burke to put him out of the race. Some councillors seemed to have had the same concern at the time.
33. I reject both complaints. The evidence does not establish to my satisfaction that the decision of the Council at its meeting of 17 December 2014 to alter the process so as to permit all five candidates to go through to the final round of interviews was improper. The Council had not delegated to the recruitment panel the decision of appointing a General Manager. The recruitment panel was split (two four and two against) as to whether the scoring process had brought about the selection of the best three candidates. It was open to the Council's governing body to make a decision that all five should go through to the final round of interviews.
34. On the other hand, I reject Mr Winn's contention that the evidence of the scoring demonstrates there was collusion between Ms Gibson and Ms Burke to put him out of the race. There is no evidence of collusion between them. The fact that each of them gave Mr Winn very low scores is consistent with each of them being unimpressed with him as a candidate.
35. The controversy and dissatisfaction about this recruitment process had serious negative ramifications for the ongoing working relationship between Ms Gibson and Mr Winn, which was already bad. It also further entrenched the conflict and mistrust between Ms Gibson and the councillors in the Majority Bloc.

THE ALGA CONFERENCE OF JUNE 2014

36. The Australian Local Government Association (ALGA) held its annual conference over the weekend of 15 – 18 June 2014 at Canberra. The professional relationship between Mr Winn and Ms Gibson further deteriorated as a result of the events at this conference.

37. Typically, the ALGA annual conferences are attended by the mayor and general manager of participating councils and that had been the practice of North Sydney Council in previous years. However, on this occasion the Council approved the attendance at this ALGA conference of five councillors from within the Majority Bloc in addition to the Mayor and the General Manager. At this time, the Mayor and the other councillors attending the conference were not on speaking terms.
38. The ALGA conference included two social functions: an informal dinner on the Friday night and the official dinner on Saturday night at Parliament House.
39. Mr Winn said the conference was one of the worst professional experiences of his life. He said:
- I foolishly attempted at the conference dinner to have the councillors sit together. I sought counsel from a number of the other GMs who were there about providing an opportunity almost in a neutral environment for the councillors to sit together, and that just became an absolute farce with the mayor texting me throughout the dinner, basically abusing me and making some significantly derogatory comments to the people at whose table she was sitting away from the council group. So, yes, it was – those difficulties erupted attain at that juncture.
40. Mr Winn also said:
- [Ms Gibson] made it clear to me at that conference that she was going to destroy my reputation, she said as much, and the conference was probably one of the worst professional experiences I have ever had in my life...
41. Ms Gibson described as “ridiculous” the allegation that she told him she was going to destroy Mr Winn’s reputation. She said she found out about the unexpected attendance of the other councillors not long before the conference took place. When she found out, she came to an arrangement with Mr Winn that Mr Winn would go to the Friday night dinner with the other Councillors, which Ms Gibson would not attend, and that Mr Winn would sit with Ms Gibson at a table during the formal dinner at Parliament House on the Saturday night. The premise on which this arrangement was reached was that it would not be tenable for Ms Gibson to be on the same dinner table as the other Councillors. I accept that Ms Gibson and Mr Winn came to this arrangement, as it is consistent with the contemporaneous text messages.
42. Ms Gibson said that two hours before the official dinner, Mr Winn told Ms Gibson that he had changed his mind and that he would be sitting with the other councillors at the dinner. Ms Gibson said that she responded to Mr Winn that “*I think that’s unfair if you are going to leave me, the mayor, - you’re going to leave me sitting alone in a hall full of strangers.*”

I think that's totally unreasonable and unprofessional". She said that she was upset but not rude and that Mr Winn had then stormed off.

43. Ms Gibson said that when she attended the dinner she saw Mr Winn and the other councillors arrive together in a taxi, drink champagne together and then sit together at a table. She said that she was alone, without knowing anyone, and that this reduced her to tears. Ms Gibson said she felt dehumanised and the following morning, she arranged to get an earlier flight back than had been planned.
44. I have no doubt Mr Winn found himself in a difficult and stressful position when at important social event, he was subjected to the pressure of having come to an arrangement to sit with Ms Gibson, but no doubt having been encouraged to join the group of five councillors. When he decided to sit with the five councillors, he then faced Ms Gibson's recriminations about him reneging on his agreement to sit with her. Mr Winn was not responsible for the conflict between Ms Gibson and the other Councillors which lay at the heart of this problem.
45. However, as Mr Winn was aware, the relationship between Ms Gibson and the five was characterised by deep conflict and, in particular, the relationship between Ms Gibson and Mr Morris was particularly bitter at this time, given that Ms Gibson had made and then recently withdrawn her AVO proceedings against Mr Morris. There could have been no reasonable expectation that Ms Gibson would sit with the other councillors.
46. I do not consider it was Mr Winn's purpose to socially isolate Ms Gibson. On the other hand, I accept that Mr Winn failed to adhere to an arrangement he had previously reached with Ms Gibson to sit with her at this dinner and he must have known she would not sit with the other five councillors. I accept Ms Gibson was then left socially isolated. This was upsetting for her and it entrenched her perception that Mr Winn was aligned with the majority councillors against her and entrenched her mistrust of him.
47. While I accept this was traumatic for Mr Winn, I do not accept his evidence that the text messages Ms Gibson sent him during the dinner were abusive. They were not abusive on any reasonable view of them.

MS GIBSON'S REFUSAL TO SIGN MR WINN'S PERFORMANCE AGREEMENT

48. Clause 7.1 of Mr Winn's employment contract required the parties to sign a performance agreement setting out agreed performance criteria for the General Manager within 3 months of the commencement date of that contract (i.e., it required the parties to sign the performance agreement by 15 July 2014).

49. However, in the period up to 18 August 2014, Ms Gibson refused to sign Mr Winn's performance agreement, prompting the Council to resolve at its meeting of 18 August 2014 to delegate to the Deputy Mayor (Mr Barbour) the authority to sign the performance agreement on behalf of the Council. Pursuant to that resolution, Mr Barbour forthwith signed Mr Winn's performance agreement on 18 August 2014.
50. When asked by Counsel assisting why she had refused to sign Mr Winn's performance agreement, Ms Gibson said, "*t]his weighed heavily on my mind, on my conscience, and I was in a dilemma about whether I should sign this, because I had serious concerns about the way he had been appointed. I felt that by signing that agreement, I would then be party to a process that I thought was seriously wanting*".
51. Ms Gibson's refusal to sign Mr Winn's performance agreement was a serious error of judgment on the part of Ms Gibson, which placed the Council in a position where it was, *prima facie*, in breach of an employment contract. She was part of a governing body which had made a decision and it was her obligation to proceed on that basis. It was entirely appropriate for the remaining Councillors to rectify this breach of contract by delegating the authority to the Deputy Mayor to sign the performance agreement.
52. By refusing to sign Mr Winn's performance agreement, she was signalling to him that she did not accept the legitimacy of his appointment. This caused Mr Winn to mistrust Ms Gibson and increased his resentment of her conduct towards him.

THE 'WORKPLACE INCIDENT' OF 20 AUGUST 2014

53. On 21 July 2014, Mr Philip Harte, the Managing Director of an events company addressed the Council meeting to seek to elicit the Council's partnership and support for a festival, called the North Sydney Leisure and Lifestyle Festival. The Council resolved to give in principle support to the proposal.
54. On 20 August 2014, a councillor workshop briefing was held. It was attended by Ms Gibson, Ms Beregi, Mr Raymond Mr Barbour, Mr Winn and some other members of the Council staff as well as by Mr Harte and a couple of his colleagues.

The complaint about Ms Gibson's conduct at the 20 August 2014 Workshop

55. It is alleged by Mr Winn, Ms Beregi, Mr Raymond that, at the conclusion of this meeting, after Mr Harte and his colleagues had left, Ms Gibson behaved in an aggressive and inappropriate way towards Mr Winn.

The evidence of Mr Winn, Ms Beregi, Mr Barbour and Mr Reymond

56. In a file note prepared on 22 August 2014, Mr Winn described Ms Gibson's behaviour at the end of the meeting as follows:

The Mayor approached where I was sitting and asked about an opportunity for a meeting about an EGM meeting. The guests from the Harte presentation were still leaving at this stage. I said whenever suited her tomorrow. I said how about 10am? I then looked to say goodbye to the guests. The Mayor was quite agitated. The Mayor put her finger in my face and berated me regarding what she thought improper behaviour during the presentation. The Mayor went on about whispering, inappropriate interactions and my behaviour.

This was very embarrassing and confronting. I suggested that the guests need to be able to leave. The Mayor continued with a tirade at me. I stated that the mayor was making a scene and it was not appropriate. The Mayor became quite aggressive and came close up to me where I sat. The Mayor was quite loudly criticising me for not doing my job. There were staff present and Councillors.

The Mayor made further comments about whispering at the presentation and that she considered that was inappropriate. Cllr Reymond who was sitting next to me suggested I just ignore the Mayor. The Mayor went onto abusing me for not sitting near her at the meeting, I replied she was late to the meeting and we were all sitting down already.

The Mayor returned to her side of the desk. After a further brief exchange Councillor Beregi said that the Mayor was behaving pathetically. The Mayor turned on Cllr Beregi and then me. The Mayor then again openly criticised me; this time for failing to call Cllr Beregi to order for saying that her behaviour was pathetic.

This went on for a short time. Cllr Reymond suggested I walk out. The Mayor began packing up and continue to abuse me about failing to call Cllr Beregi up. She was over the other side of the desk. I then stood to leave.

The Mayor then came across the room to where I stood. She was behaving very aggressively. The Mayor came close to me and pointed her finger at me (at or next to my face). Cllr Beregi then stated her behaviour was bullying and directly asked her to step away from me. I was holding my note book to my chest with my arms folded due to the Mayor's aggressive behaviour. I stepped back. The Mayor then began berating Cllr Beregi.

Joseph Hill left the room.

I looked at the staff who were still present throughout this performance by the Mayor. I chose at that stage to leave the room.

57. Mr Reymond, Ms Beregi and Mr Barbour all made file notes of what occurred at the end of the meeting, which they provided to Mr Winn. Their file notes were broadly consistent with Mr Winn's account, as recorded in his file note. Mr Winn used the file notes of these

other councillors in support of a code of conduct complaint he made to the Office of Local Government on 26 August 2014.

58. Mr Reymond and Mr Barbour also made comments suggesting that this was an extraordinary outburst by Ms Gibson. Mr Reymond said in his file note *"In all my years on council I have never ever seen or heard anything like I witnessed last night from a councillor namely Ms Gibson. Mr Barbour said "I have never before seen such an open display of confrontation in the workplace."*

The evidence of Ms Gibson

59. Ms Gibson denied that she had behaved in the manner alleged. In response to Mr Winn's code of conduct complaint, Ms Gibson made a submission to the Office of Local Government of 27 November 2014. In that submission, and at the Inquiry hearing, Ms Gibson claimed that, during the meeting, Mr Winn and Ms Beregi were conducting side conversations between themselves prompting her to ask on one such occasion them "if we could have one meeting" and on another "if they would care to share with the meeting what they were talking about". According to Ms Gibson, when Mr Harte's group left the meeting room, she leaned slightly towards Mr Winn and commented that she found his behaviour to be unprofessional. She said this prompted Mr Winn to speak to her in a rude tone and that Ms Beregi intervened and loudly called her "pathetic." She denied putting her finger in Mr Winn's face or berating him.

The evidence of Mr Harte

60. Mr Harte gave evidence to the Inquiry in relation to what he saw and heard both at the Council meeting of 21 July 2014 and also at the subsequent workshop briefing of some of the councillors and the General Manager on of 20 August 2014.
61. The tenor of Mr Harte's evidence, consistent with a letter he had provided to Ms Gibson in November 2014, was that, while he was present at both these meetings, the councillors and Mr Winn had behaved in a manner towards Ms Gibson that was of a bullying and demeaning nature. He said that when Ms Gibson tried to answer his questions, *"as that answer was coming out the mayor would be chopped down by saying, "Well, you've got no authority to do that, that's not your decision to make, we'll go back and we'll talk about that". It was these cutting, demeaning tones that was just consistent right through the meetings"*.
62. Counsel assisting submitted that it was apparent from Mr Harte's evidence at the Inquiry hearing that he elided the events which occurred at the July Council meeting with the events that occurred at the 20 August workshop. I accept that Mr Harte did, to an extent,

elide the two occasions. However, I am satisfied that some of the things he described occurred at the 20 August workshop briefing, as identified below.

63. When asked to explain the type of conduct he witnessed during the workshop briefing on 20 August 2014, Mr Harte gave evidence to the effect that Ms Gibson was attempting to provide some orderly structure to the meeting other councillors would "just go off on their own agenda. He said

I had to threaten the meeting that, "We are at the point of making a decision on whether or not to proceed with council with this unless there is some sort of maturity shown within council and that this bickering stop and please allow the mayor to conduct a meeting the way it should be conducted." We requested that several times and it just fell on deaf ears, unfortunately, and I believe it was Mr Winn who was trying to take ownership of the meeting and directing the questions and disregarding the chair of the mayor within that meeting.

64. I am satisfied that Mr Harte in giving that description must have been referring, as he said he was, to the workshop briefing session of 20 August 2014, as this type of interaction, in which the General Manager was taking an active speaking role could not, and did not, occur at the Council meeting of 21 July 2014 (as evident from the audio).

Findings concerning conduct during the workshop briefing

65. I accept that, being a promoter experienced in dealing with people in meetings, Mr Harte was struck by the way in which Mr Winn and the councillors behaved in displaying a lack of respect of Ms Gibson in the running of the meeting.
66. The thrust of the evidence of Mr Winn, Mr Reymond and Ms Beregi was that there was nothing untoward in their behaviour during that meeting. Nevertheless, I accept the tenor of the suggestion put by Counsel assisting to Mr Winn and Mr Reymond to the effect that, as they had become accustomed and somewhat de-sensitised to such behaviour, they did not necessarily readily perceive it clearly.

Findings concerning Ms Gibson's conduct at the end of the workshop briefing

67. I am satisfied from the evidence of Mr Winn, Mr Reymond, Ms Beregi and Mr Barbour that, at the conclusion of the briefing, after Mr Harte and his associates had left the room, Ms Gibson behaved in an inappropriately aggressive manner towards Mr Winn.
68. I am satisfied that Ms Gibson berated Mr Winn about what she considered to be his unacceptable behaviour during the workshop; that Ms Gibson then came close to where Mr Winn was sitting and criticised him in front of those present for allegedly not doing his job; that Ms Beregi then became involved in a heated exchange with Ms Gibson in which Ms Beregi either called Ms Gibson pathetic or said her behaviour was pathetic; that Ms

Gibson criticised Mr Winn for not calling Ms Beregi into line; that Mr Winn then stood up to leave and, as he did so, Ms Gibson moved close to him, pointed her finger close to his face while continuing to upbraid him, prompting Mr Winn to hold his notebook close to his chest and fold his arms and to step back.

69. I do not accept Ms Gibson's evidence that she merely leaned towards Mr Winn and whispered or spoke quietly to him about his conduct.
70. I am satisfied that Ms Gibson's behaviour was inappropriately aggressive and that it was prompted by her failure to properly manage the frustration she felt about the conduct of Mr Winn and the other councillors during the meeting.
71. Having said that, there is no suggestion of any physical contact and no suggestion that Ms Gibson swore or used any abusive language. It is evident from Mr Winn's account of this incident that after he stepped back in response to Ms Gibson pointing her finger at his face, Ms Gibson turned her attention to Ms Beregi and ceased her interaction with Mr Winn. It was a transient outburst, following which Mr Winn left the room for the purpose of approaching Mr Harte in the street to apologise for the bickering that had occurred at the meeting. Thus, although Mr Winn was affronted by Ms Gibson's behaviour towards him, I am satisfied he was not intimidated by it.

Mr Winn's subsequent code of conduct complaint to the OLG

72. On 26 August 2014, Mr Winn made a formal code of conduct complaint to the Office of Local Government in relation to Ms Gibson's conduct, supported by the file notes of Mr Reymond, Ms Beregi, Mr Barbour and a staff member. The complaint was not exclusively about Ms Gibson's conduct at the conclusion of the Harte briefing. It comprised a complaint about a number of other incidents in which he alleged that the Mayor had acted towards him in a way he characterised as a bullying or harassment.
73. During the course of its consideration of the complaint, in November 2014, the Office of Local Government received the account of Mr Harte which suggested that the Mayor had been the subject of bullying conduct. Faced with all of the evidence, ultimately the Chief Executive of the Office of Local Government understandably took the position that, as the Minister had issued a Notice of Intention to issue a Performance Improvement Order specifically seeking to resolve the conflict between Mr Winn and Ms Gibson, the issues arising from Mr Winn's complaint were best dealt with through the PIO process.
74. I do not accept the suggestion that the Office of Local Government did not adequately address this complaint.

17 OCTOBER 2014 INCIDENT

75. Ms Gibson alleges that, on 17 October 2014, Mr Winn made a remark to her of a highly offensive and threatening nature. Ms Gibson signed a statutory declaration on that same day as to what she says occurred and what she alleges Mr Winn said to her.
76. Mr Winn made a statutory declaration shortly thereafter denying that he had made the alleged remark and claiming that Ms Gibson fabricated the allegation.
77. Faced with the two contradictory statutory declarations, and without any other sufficiently probative evidence in relation to the matter, I am not able to make any finding about whether Ms Gibson's allegation is true.
78. It was evident from an early consideration of this allegation that I would be unlikely to be able to make any positive finding about it. Accordingly, I heard the evidence about it in private hearings and made a direction under s 12B of the *Royal Commissions Act* that the evidence not be published. I was concerned that there was potential for the publication of the allegation to cause reputational damage to Mr Winn in circumstances where the evidence would not allow me to determine whether the allegation was true.
79. For present purposes, I find that the circumstance that there was a statutory declaration from Ms Gibson that Mr Winn had made a highly offensive and threatening remark to her and a statutory declaration from Mr Winn that Ms Gibson's allegation was fabricated shows that the professional relationship between Ms Gibson and Mr Winn was not just bad, but exceptionally bad. It had completely broken down by this stage.

THE ESCALATION OF THE CONFLICT ON 22 OCTOBER 2014

80. The conflict between Mr Winn and Ms Gibson escalated on 22 October 2014 and spread to also involve Ms Gibson's partner, Dr Martin Williams after Ms Gibson had returned from a conference to find that the Council's decision to relocate her office had been implemented while she was away at a conference. I consider that episode in Chapter 6 of this report.

18 DECEMBER 2014 INCIDENT

81. On 18 December 2014, Ms Gibson and Mr Winn met in Ms Gibson's office and discussed the return of the car which the Council had resolved that the Mayor was no longer entitled to use. This was a contentious issue between Ms Gibson and Mr Winn for the reasons set out in Chapter 6 of this report.

82. After Mr Winn left Ms Gibson's office, Ms Gibson followed Mr Winn into an open corridor and made an inappropriate remark to him of a personal nature, asserting the existence of an improper personal relationship between Mr Winn and another person. The remark was audible to two members of staff who were in the vicinity at the time.
83. There is no contest as to what Ms Gibson said to Mr Winn at this time. She admitted what she said and it has been the subject of a Code of Conduct investigation and findings by a Conduct Reviewer. However, I do not propose to publish in this report what was said. That is because during the Inquiry hearings, I acceded to a request not to publish the remark because of a concern expressed to me that its publication would be hurtful to one or more persons.
84. Having acceded to that request, I am constrained somewhat in my reporting about this matter. It suffices for present purposes to say that the remark was quite improper and that, in the relevant Code of Conduct report, the Conduct Reviewer found that Ms Gibson breached the Code of Conduct in making this remark. I deal with a second, consequential code of conduct complaint in Chapter 7 of this report.

AUGUST 2015: PHYSICAL CONTACT BETWEEN MR WINN AND DR WILLIAMS

85. In August 2015, Ms Gibson and her partner, Dr Williams were walking up Miller Street and Mr Winn was walking down Miller Street. Mr Winn has given sworn evidence that, while they were walking in opposite directions, Dr Williams deliberately bumped into him. On the other hand, Dr Williams has given sworn evidence that Mr Winn was the one who deliberately bumped into him.
86. I cannot make any findings in the face of the contradictory evidence. However, this is another indication that there was a serious degree of hostility between Mr Winn and Ms Gibson and that it had extended to a hostility involving an aggressive physical act by either Dr Williams or Mr Winn.

HOW CONFLICT AFFECTED MEETINGS BETWEEN MS GIBSON AND MR WINN

87. Significant changes were made to the nature and frequency of meetings and the degree of liaison between the Mayor and General Manager of North Sydney Council when the relationship between Ms Gibson and Mr Winn began to seriously break down.
88. Ms Gibson gave evidence that from the day Mr Winn became Acting General Manager (December 2013) she was 'cut out of the information loop'. Her evidence was to the effect that while Mr Winn was Acting General Manager and General Manager, he was reluctant to meet with her or discuss matters with her.

89. Mr Winn and Ms Gibson agreed that at some point in time Mr Winn insisted that the two of them would meet only once per week on Monday and only if an agenda was circulated on the preceding Friday. Ms Gibson's evidence was that this was stipulated very early on. Mr Winn said that it "evolved" in 2014.

90. Ms Gibson gave evidence as to the importance of being properly briefed on the agenda items for the purpose of chairing Council meetings, stating:

I think the Mayor – the role of the Mayor and the chair is obviously a different responsibility to the other councillors. You have to be on top of everything. They're long and they're complicated agendas and long and complicated meetings and, you know, I really needed to be – to be brief and given as much assistance as I should be to make sure that I had all the information so that the meeting could run smoothly'.

91. Ms Gibson suggested that, in relation to discussing the agenda for Council meetings in particular, there was 'zero consultation' from Mr Winn after he became Acting General Manager, stating:

He would – if things had changed, he wouldn't tell me; rather, there'd be things slapped on my desk when I sat down at 5 to 7, there'd be things taken out of the agenda, things added on to the agenda, changes made, and I wouldn't be informed about them.

92. Mr Winn's evidence was that the requirement for there to be an agenda in respect of his meetings with the Mayor evolved over time, but mostly in the second quarter of 2014. In relation to the changes generally Mr Winn stated:

...After my appointment and then after the trauma of the ALGA meeting, the abuse and criticism on [sic] a relentless nature that I was receiving from Ms Gibson at all the meetings required me to establish more formality to those meetings. Now, that happened over time. I probably absorbed from December 2013 through till June/July – or after the ALGA conference, certainly, unacceptable behaviour and I just really tried to draw a line under it and put some rigidity and formality to the exchanges so that we could still communicate.

The meeting 'protocol' of November 2014

93. In November 2014, following the "workplace incident" which had occurred at the Harte briefing meeting in August that year, Mr Panuccio and Mr McCreanor prepared a 'meeting protocol' in respect of interactions between Mr Winn and Ms Gibson.

94. Ms Gibson had no input into the protocol and never accepted its validity, but was in effect forced to adhere to it. The protocol included a requirement that Mr Winn and Ms Gibson were to notify each other by 4pm on the Friday before the Monday meetings as to an agenda for that meeting. Ms Gibson's evidence was that if she didn't send agenda items the meeting would be cancelled. She also suggested that Mr Winn would never put in

agenda items of his own. Mr Winn's evidence was that if a meeting did not take place he would converse with Ms Gibson in written form and that ad hoc meetings would continue to occur from time to time. Mr Winn suggested that the meetings became very rigid due to the nature of the difficulties regarding the communication between him and Ms Gibson.

95. Mr Winn suggested that although there was a formalisation as to meetings after November 2014 the evolution as to meeting structure had been occurring before that 'in terms of minimising the ad hoc and, you know, discussing things in a more structured way normally on those Monday meetings...'
96. In relation to the meeting protocol, Mr McCreanor's observation was that the behaviour of Ms Gibson and Mr Winn was not good before those protocols were instituted and that it was his understanding that 'those protocols were about trying to create a somewhat safe vehicle for the two of them to interact on a business basis, not a personal basis. As to the use of agendas as part of the protocol, McCreanor's observation was that in the 'early parts' the agenda worked but after a period one or the other of Mr Winn or Ms Gibson would raise another issue and 'then the dispute would continue on in earnest'.
97. In relation to the setting of meeting agendas as required by the November 2014 meeting protocol, Ms Ravn gave evidence that if Ms Gibson did not provide the required agenda by 5pm on Friday the meeting would not occur. This was supported by the evidence of Ms Byok that if Ms Gibson did not give an agenda on the Friday the meeting would not proceed, while noting that occasionally there would be exceptions to the rule where if Ms Gibson asked for a meeting Mr Winn would oblige. In relation to the meetings Ms Byok said: 'the general manager was firm about having the meetings on the Monday. He wanted her to collate all of her items during the week and then let him know on the Friday, and put the agenda together, and then the meeting would proceed on Monday'.
98. In relation to the meetings Ms Gibson also gave evidence that Mr Winn would insist on having another staff member join him at meetings and that those staff members were usually men. Ms Gibson found Mr McCreanor was one such staff member who would join Mr Winn at meetings on occasion. When asked about the nature of Mr Winn and Ms Gibson's interactions at those meetings, he stated that some meetings would be quite workable, but also a lot of the meetings ended up being quite volatile, that is, involving raised voices. Each of Ms Gibson and Mr Winn would also on occasion interrupt each other and would also get up and leave the room mid meeting.
99. As to Ms Gibson's request that she could bring along other members of staff, namely a female staff member with her, Mr McCreanor recalled Ms Gibson raising that with Mr Winn but did not recall his response. When asked about Ms Gibson's concerns about

being the only female in the room Mr McCreanor's evidence was that while he did not have any concerns they would intimidate her, he 'could certainly understand if she felt, you know, how a woman could feel intimidated like that', although he noted his view that Ms Gibson was not a person he would regard as one who could be intimidated easily. Mr McCreanor expressed that he did understand that it was possible Ms Gibson may have felt this way given the particular animosity between her and Mr Winn.

100. Mr McCreanor said in relation to whether Ms Gibson had an adequate flow of information from the General Manager, that 'maybe because of the volatility of their relationship it made the sharing of information quite difficult at times'.

THE CESSATION OF THE CONFLICT BETWEEN THE MAYOR AND GM

101. The conflict in the relationship between Ms Gibson and Mr Winn was intractable and has resolved since April 2016 only because Mr Winn resigned from his position at North Sydney Council to take up a position as the CEO of a local government authority in Victoria. The cessation of that conflict is a significant matter

102. In saying this, I wish to emphasise that, in identifying the circumstance that Mr Winn has left North Sydney Council, I am not drawing any inference from that circumstance that he was responsible for the conflict between himself and Ms Gibson. Nor am I drawing any inference at all from the circumstance that he resigned from his position as General Manager with North Sydney Council to take up an equivalent role with another local government authority. I am only making the neutral point, which is relevant in assessing the terms of reference, that the problematic relationship between Ms Gibson and Mr Winn is no longer a factor affecting the Council.

CHAPTER 6: DECISIONS AND EVENTS DEMONSTRATING DYSFUNCTION OR AFFECTING THE MAYORAL ROLE

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THE DECISION TO TAKE AWAY THE MAYOR’S CAR

Introduction

1. The Council provides certain facilities and benefits to the mayor and councillors, as set out in the Council’s *Mayor and Councillor Facilities and Benefits Policy* (**Facilities and Benefits Policy**). Until the occurrence of the events described below in August 2014 – December 2014, the Mayor was entitled under that policy to the use of a fully serviced and maintained vehicle, including a fuel card and parking.
2. However, as from 16 December 2014, that entitlement was taken away. From that point onward, Ms Gibson has been prohibited from using any Council vehicle and has had to rely on her entitlement to use a corporate card to catch taxis in order to carry out her civic functions.
3. The resolution to take away the Mayor’s entitlement to use any Council vehicle was a response to an incident in which the Council car which had been allocated to the Mayor was left parked in one of the three private car spaces of a bottle shop in Crows Nest known as Cutty Cellars over the weekend of 1 – 4 August 2014.
4. The decision made by the governing body of North Sydney Council to take away the Mayor’s entitlement to use a Council vehicle, and the way in which that decision was reached, is demonstrative of significant dysfunction within the Council’s governing body in the latter half of 2014 and exemplifies the negative effects of the breakdown in the relationship between the Mayor and the former General Manager. The decision has had an adverse effect on the capacity of the Mayor to carry out her civic functions.

The Mayor's car is left parked at Cutty Cellars over a weekend

5. Cutty Cellars is a bottle shop with a frontage to the Pacific Highway and with rear lane access via Nicholson Lane. Off the rear laneway and on the business premises there is a vehicle hard stand with marked parking spaces for three vehicles.
6. The Council's email records show that a Constable Anicic of the North Sydney Police called the Council's Duty Ranger on Sunday afternoon, 3 August 2014 and left a message that one of the Council's car with a flat tyre had been left illegally parked in the Cutty Cellars' car park over the weekend from 7 pm on Friday night 1 August 2014.
7. On Monday morning, 4 August 2014, the owner of Cutty Cellars sent an email to the Council in the following terms (without purporting to correct typographical errors):

I am the owner of Cutty Cellars in Crows Nest

There is a Toyota Taris (BQ 89 VC) parked at privat car park space of my shop and block the entrys of my back door since Friday Night (01/08/2014) to Now, without any notice and warning to us.

It's affact my customers and my stocks moving badly, and it totally affected my normal trading during my busiest trading period which is the whole weekend.

I didn't know who is this car belonged to until I reported to police on Sudnay (03/08/2014). The police officers checked the car and fould it belongs to North Sydney Council.

Please find out the matters and respond to me asap

Events within the Council before the meeting of 18 August 2014

8. On receipt of the email from the owner of Cutty Cellars on Monday morning 4 August 2014, the Council's Manager of Fleet and Parking Stations, Mr Cameron Sim, immediately arranged for one of his staff to attend with a spare key to retrieve the vehicle that morning. The Council staff who attended found that the vehicle had a flat tyre. They arranged for the NRMA to attend and fix the tyre and they then drove the car back to the Council chambers during the late morning of 4 August 2014.
9. Mr Sim ascertained that it was the Council car allocated for the Mayor's use.
10. On 7 August 2014, Mr Sim sent a diplomatic reply email to the owner of Cutty Cellars, thanking him for bringing the matter to the Council's attention, indicating that he had arranged for the car to be retrieved immediately after being notified of it on the Monday morning and indicating that the Council had a fleet policy in place that includes procedures for break downs "so that things such as a flat tyre should not lead to a vehicle being abandoned". Mr Sim stated that the Council would ensure that the operator of the

vehicle was made fully aware of these policies and their obligations in operating a Council vehicle and he apologised for the inconvenience.

11. On 7 August 2014, Mr Sim sent an email to Mr Winn, forwarding the email correspondence with the owner of Cutty Cellars (above). In his forwarding email, Mr Sim informed Mr Winn that this was the Mayor's car and stated that "*it was this vehicle that was abandoned with a flat tyre at Cutty Cellars on Friday night*". Mr Sim informed Mr Winn that the car had been retrieved and the tyre fixed on Monday morning and that an apology had been provided to the owner of Cutty Cellars. Mr Sim concluded his email to Mr Winn by stating, "*I now leave it up to you whether you wish to talk to the Mayor about this, including perhaps alerting her to our NRMA membership etc*".
12. The General Manager was thus made aware that the Mayor's car had been left over the weekend at Cutty Cellars and that it had a flat tyre.
13. Evidently, Mr Sim did not consider the matter to be of great concern. In his email to the Director of Corporate Services, Mr McCreanor, of 28 August 2014, he wrote:

I did not think to notify the Mayor separately, judging the matter relatively minor in the context of dealing numerous breakdowns of Council vehicles every year.
14. Mr Winn took an interest in the matter. On the morning of 8 August 2014, Mr Winn sent an email to Mr McCreanor, in which he stated, "*Thoughts? Perhaps a memo?*" A couple of minutes later, Mr Winn sent an email to Mr Sim (copied to Mr McCreanor) in which Mr Winn asked "*What were the costs involved in this?*" Mr Sim, by reply email on the same day, indicated the tyre repair had cost \$18.18 and that, together with the mechanic's labour for replacing the wheel, the total cost had been between \$150 - \$160. On the same day, Mr McCreanor replied to Mr Winn's email in these terms "*A short memo to the Mayor reminding her of the NRMA service. As to leaving a Council vehicle in this location for a number of days, normal practice would suggest that this should never happen*".
15. On 12 August 2014, Ms Baker placed a question with notice on the agenda papers for the upcoming meeting of 18 August 2014:

"Was a Council vehicle abandoned in Crows Nest in early August? If so what were the circumstances of such abandonment and did it interfere with the operation of any businesses or residences in Crows Nest?"
16. Ms Baker's question did not indicate that it was the Mayor's vehicle.
17. Ms Baker indicated that she had found out about the Council car from residents of Crows Nest. When asked whether she knew at the time she nominated the question with notice for the agenda papers that the vehicle in question was the Mayor's, Ms Baker responded

that she didn't think she did, but that she might have, because it was her usual practice in such circumstances to make an enquiry of the Council as well. Ms Baker agreed that it would stand to reason that in the normal course she would have made an enquiry of Council staff before putting the question on the agenda paper and she assumes she would have.

18. On 14 August 2014, Ms Nadya Zayana, a Council officer emailed a number of Council officers, including Mr Sim, in the following terms:

“Would you please provide any additional info apart from ECM Doc#6822948 re Council vehicle Toyota Taris [sic] (BQ 89 VC) had parked at private car space 342 Pacific Highway Crows Nest?

Ms Zoe Baker has requested this for upcoming Council meeting and wants to collect the info Friday 15 August 9:30am.

Your prompt assistance is really appreciated.”

19. Ms Zayana's email had the header “URGENT - info request re abandoned vehicle in Crows Nest (gipa 2014/718/1)”. This indicates a GIPA application about the incident had been made to the Council prior to 14 August 2014, presumably by Ms Baker.

20. On Friday 15 August 2014 Mr Winn sent Mr McCreanor an email in relation to the issue in the following terms:

This is on the Council agenda for Monday night, 18/8. A memo to the Mayor is necessary. Can you have one prepared please? Is there any docs regarding due care and responsibility regarding the vehicle?

It all seems very, very strange.

Ms Gibson is not informed of any concerns about her car being left at the cellars

21. In the period from 4 – 18 August 2014 neither Mr Winn, nor any member of his staff informed Ms Gibson of the complaint made by the owner of Cutty Cellars or of the concerns expressed internally between staff about the matter or asked her to provide any explanation.
22. Ms Gibson was aware that her car had been picked up. She gave evidence that, at some point in time after her car had been brought back to the Council, she had a short conversation with Mr Winn in which he had told her that her car had been left up at Crows Nest and that he had got a ranger to return it. She said Mr Winn told her that it had a flat tyre which had been fixed. She said she had thanked Mr Winn.

Ms Gibson's meeting with Mr Winn on 18 August 2014 to discuss the agenda papers

23. Ms Gibson met with Mr Winn on the afternoon of Monday 18 August 2014 in advance of that evening's Council meeting to discuss the agenda papers for the meeting. It is common ground that, during this discussion, Ms Gibson queried Mr Winn about Ms Baker's question with notice on the agenda papers. Ms Gibson's evidence is that she asked Mr Winn "*What's this about an abandoned car?*" to which he replied, "*I don't know anything about it*" and "*It's just another question that staff will have to answer*". Ms Gibson's evidence is consistent with the contemporaneous evidence, including what she said to Mr Winn during the Council meeting of 18 August 2014 and email correspondence between Ms Gibson and Mr Winn in the days after that meeting.
24. In her email to Mr Winn of 20 August 2014, Ms Gibson, referred to the meeting she had with Mr Winn during the afternoon of 18 August 2014 before the Council meeting and she wrote "*We then discussed the Question by Cr Baker. I made a comment about how vague it was. I asked you if you knew anything about 'an abandoned car'. I also asked whether any councillor or anyone at all had talked to you about it. You answered no. You then said 'it's just another question that staff will have to answer ...'*". Mr Winn replied by email on 21 August 2014, and in relation to that aspect of the matter, he wrote "*My comment as to the question of notice, when raised on Monday 18 August afternoon, was it would 'need to be answered by staff' or words to that effect. I made no other comment ...*"
25. Mr Winn was asked whether he knew about the incident when he spoke to Ms Gibson on the afternoon of 18 August 2014. His response was:
- Well, if I had, I would have told her. I know the situation had arisen, but I just didn't have any of the details associated with that, which then came to light thereafter. I think on the night my responses were basically that a vehicle had been left at this place for a period of time, and then rangers and the police had become involved and that was as much that I knew at this stage. Then there was an exchange of emails between the mayor and myself who seemed to think I should have been able to hose it down or close it down. As I pointed out to the mayor, I didn't know anything about it. It had already blown up by the time I'd become involved.
26. For the reasons that follow, I do not accept that Mr Winn's evidence in this regard is accurate. The email correspondence of 7, 8 & 15 August 2014, to which I have referred, demonstrates that, when Mr Winn met with Ms Gibson on the afternoon of 18 August 2014, he was aware of the fact that the Mayor's car had been parked at Cutty Cellars over the weekend of 1-4 August; he was aware of the complaint made by the owner of Cutty Cellars; he was aware a police officer had attended Cutty Cellars on Sunday 3 August and had contacted the Council; he was aware Council officers had attended the

scene on Monday 4 August; he was aware the car was found to have a flat tyre and that it had been repaired and brought back to the council; and he was aware of the associated costs.

27. Most importantly, he was aware on 18 August 2104, when he met with Ms Gibson, that Ms Baker's question with notice on the agenda papers for that evening's Council meeting related to the Mayor's car being left at Cutty Cellars. Having regard to his email to Mr McCreanor of 15 August 2014, in which he expressly referred to the incident being on the agenda papers, I am satisfied this matter had not slipped his mind when he met with Ms Gibson on the afternoon of 18 August 2014
28. The only reasonable inference available on the evidence is that, faced with Ms Gibson's direct inquiry as to what Ms Baker's question with notice was about at their meeting on the afternoon of 18 August 2014, Mr Winn chose not to tell Ms Gibson that Ms Baker's question related to her car being left at Cutty Cellars over the weekend of 1 – 4 August and he chose not to inform her of the complaint from the owner of Cutty Cellars or of any of the details of which he had been apprised, despite the fact that he knew Ms Gibson would be chairing the meeting that night and the matter directly concerned her.
29. This supports the broader submissions put by Ms Gibson to the Inquiry to the effect that, while Mr Winn was General Manager, he did not provide Ms Gibson with adequate information and, in particular, he did not provide her with adequate information in relation to matters on the agendas for Council meetings.

What occurred at the meeting of 18 August 2014 in relation to the Mayor's car

30. There were two questions with notice on the Council agenda for the 18 August 2014 meeting. One of those two questions was Ms Baker's question about whether a council car had been abandoned at Crows Nest. (It was actually a series of questions, but it is convenient to refer to them in the singular as a "question"). The agenda item, "Questions with Notice", listed four items. Two of the items concerned the written responses of Council staff to questions raised at the previous Council meeting of 16 July 2014 and the other two of them, including Ms Baker's question, were questions asked for the first time on the agenda papers for the 18 August meeting, which had not yet been provided to Council staff for their responses.
31. When the Council meeting reached the "Questions with Notice" agenda item, the Council resolved to "receive" these questions. That meant those questions were to be taken on notice, not answered on the spot, and that answers to each of them would be provided by Council staff in the agenda papers for the next meeting of 15 September 2014. Having

dealt with the matter by the resolution to receive this question, there should have been no further discussion of it at the meeting of 18 August 2014.

32. Later, however, at the conclusion of the meeting, Mr Reymond sought to raise it again as a “matter of urgency”. His questions and the initial discussion which ensued is recorded as follows:

REYMOND: The second [matter of urgency] is really a question to the General Manager that arises in relation to a question that, notice of which has been given on the notice paper and it's a question I'd like to ask the General Manager: was a council car which I understand has been issued to the, for the Mayor's sole use under Council's Facilities and Benefits Policy reported as abandoned or left between the 1st and 4th of August at the rear of Cutty Cellars at 3426 Pacific Highway, Crows Nest?; Two: Has the Council accessed any CCTV footage from Cutty Cellars or CT footage from on the Pacific Highway in order to determine exactly what happened on Friday the 1st August 2014 in respect of this car?; and three, did the Mayor or any other person notify council staff, the NRMA, the Police or any other person or organisation in relation to this car between the 1st August 2014 and today and would the General Manager explain all the known facts in relation to this incident if he has the relevant information before him?

GIBSON: Well, it wasn't, the car wasn't left there for four days Councillor Reymond. You, you must be mistaken. I, I don't, and has someone, and have you been following me? It's very odd, the car wasn't left there for four days.

BEREGI: Sorry, can the General Manager answer the question?

WINN: Just in order of your questions Councillor, cause I note the question is on the, is a question with notice which I think has already been voted on if I am correct but the answers are “yes” there was a vehicle registered that was abandoned in Crows Nest.

GIBSON: Abandoned?

WINN: And “no” and “no”, so we haven't sought the CCTV and “no”, no staff member was informed of the fact the vehicle was there.

GIBSON: What...

BEREGI: That's the Mayor's car?

GIBSON: Well, can I, excuse me. I will, well to start I asked this afternoon if you knew anything about this and you said “no” General Manager, so this is disappointing. I'm just reading here about our abandoned vehicles policy: a car is abandoned, a car is abandoned when rangers have, have issued to the last registered known, last registered owner a formal notice of intention to impound. How can a car that has been left somewhere for about, twelve hours...

WINN: Three days.

GIBSON: It was not there, left there for three days. That is absolutely incorrect.

BEREGI: It's three days.

GIBSON: General Manager, I, I don't know where this is coming from.

BAKER: Madam, Madam Mayor...

[SIMULTANEOUS SPEAKING NOT TRANSCRIBABLE]

BAKER: Point of order...the General Manager was asked. Point of order...the General Manager has asked and answered and the answer was it was left what between the 1st August and the 4th. That's three days.

GIBSON: That is absolutely not true.

WINN: I understand it was left on Friday night. On Sunday the owner of the premises contacted the police who informed him that it was a council vehicle and on Monday Council was informed via a complaint from the owner of the premises and staff went down and picked up the vehicle using the spare keys to the vehicle and then brought it back to council.

33. Mr Winn made no reference to the fact that the car had a flat tyre.

Resolutions passed by the Council about the Mayor's use of Council vehicles

34. Following the disorderly "debate" prompted by Mr Reymond's questions, Mr Reymond put the following motions without notice to the meeting (as per the audio record):

- that pending an investigation into the circumstances surrounding the abandonment/ leaving of the car immediately suspend the Mayor's use of the Council's vehicles;
- secondly, that the Council immediately review the Mayor and Councillor's Facilities Benefits Policy in the light of what has happened; and
- three, that the Council write to the owner of Cutty Cellars apologising for the disruption to its business, which we've just heard, and inconvenience caused as a result of what happened

35. Those three motions were carried without amendment.

The departures from proper meeting procedure regarding this item

36. The way in which this issue was raised and dealt with on the floor of the Council meeting of 18 August 2014 by the making of the subject resolutions was in breach of proper meeting procedures under the LG Act, LG Regulation and Meeting Code.

37. I have already identified the fundamental obligations imposed by the LG Act and Regulation that Councillors and members of the public are required to be given due notice of the business proposed to be transacted at each meeting.

38. Ms Baker had quite properly put her question with notice on the agenda papers. That question had, by resolution, been received earlier in the meeting. This process respected the obligations for due notice, as it contemplated that there would be no response to Ms Baker's question until such time as a written response was provided in the agenda papers for the next meeting (15 September 2014). That should have been the end of the matter in so far as concerned the meeting of 18 August 2014.
39. Mr Reymond departed materially from proper meeting procedure when, notwithstanding that Ms Baker's question with notice had been received, he asked Mr Winn questions about the same matter without notice at the end of the meeting, supposedly as "a matter of urgency". More importantly, he put motions without notice which stood to directly affect the Mayor. Ms Gibson, the Councillors and members of the public were entitled to receive due notice of those motions.
40. Objectively considered, there can be no tenable suggestion that the matter was one "of great urgency". The car had been brought back to the Council two weeks prior to the meeting and there had been no communication from the owner of Cutty Cellars since 4 August. Nothing else had arisen in the intervening period to raise any spectre of urgency.
41. When Mr Reymond sought to raise this matter as one of urgency, Ms Gibson, as Chair, made no ruling as to whether it was, or was not, a matter of urgency. Consequently, the Council's governing body was not entitled to discuss that item. However, instead of enforcing that position, Ms Gibson, who was taken by surprise, reacted to Mr Reymond's question by entering into a discussion that never should have ensued.
42. Mr Winn, having been asked those questions without notice should have brought the procedure back onto track by indicating that Ms Baker's question had been taken on notice and that a response would be provided in the agenda papers for the next meeting. Instead, he departed materially from proper meeting procedure by volunteering to answer the questions without notice. Mr Winn was aware that Ms Baker's question with notice had been received. Indeed, he prefaced his impromptu answer by saying "*I note the question is on the, is a question with notice which I think has already been voted on if I am correct*"
43. There was an additional reason why Mr Winn should have declined to give answers without notice on the floor of the meeting to Mr Reymond's questions. Only that afternoon, the Mayor had expressly asked him what Ms Baker's question was about and he had chosen not to tell her. In those circumstances, he should not have answered the questions without notice on the floor of the Council.

Was Ms Gibson ambushed about this issue at the 18 August 2014 meeting?

44. Ms Gibson's evidence was that she was ambushed, and deliberately ambushed, by this procedure. She submitted that this was "a sting".
45. In response to the suggestion of an ambush, Mr Van Aalst of Counsel, who appeared for Mr Reymond, submitted that I should infer Ms Gibson must have known that Ms Baker's question with notice related to her car, even though the question did not identify that it was about the Mayor's car. He submitted this inference should be drawn because Ms Gibson must have known that her car had been left at Cutty Cellars over the weekend from 1 – 4 August 2014 and she came to the meeting having already done her "homework" on the definition of an "abandoned" car in one of the Council policies.
46. If the issue is considered through the lens of the prominence it later assumed, one might consider that a person in Ms Gibson's position would have at least suspected that the question related to her car, but the issue did not assume that prominence until after it was raised at the meeting. Nobody had told Ms Gibson prior to 18 August that there had been any complaint or that there was any problem concerning her car. Viewing it in that light, I find it credible that Ms Gibson did not link Ms Baker's question with notice to the leaving of her vehicle at Cutty Cellars. The fact that Ms Gibson had looked up the definition of "abandoned vehicle" in advance of the meeting does not mean that she knew it was about her car, but is consistent also with ordinary preparation of a chairperson in advance of a meeting. Ms Gibson gave direct evidence that she did not realise Ms Baker's question related to her vehicle. I accept she was telling the truth.
47. Mr Van Aalst went a step further and submitted, in effect, that Ms Gibson had an obligation to provide an explanation to the meeting of 18 August and the capacity prior to the 18 August meeting to prepare an explanation.
48. I disagree. The presence of Ms Baker's question with notice on the agenda papers only put Ms Gibson on notice that a question formulated in general terms which did not refer to her would be received at the meeting of 18 August 2014 and would be the subject of a written response in the agenda papers for the next meeting in September. There was no basis to assume that there was going to be any discussion at the 18 August meeting of Ms Baker's question or about her car. If Mr Reymond wanted an explanation, then he should have provided reasonable notice of his proposed questions to Ms Gibson. But he told her nothing.
49. Nor did Ms Gibson have the capacity to properly explain the matter. First of all, she was not privy to relevant information. She had not even been informed of the complaint from the owner of the cellars, let alone provided with some briefing about it. Moreover, the

procedure that was invoked, improperly, by Mr Reymond was one in which his questions were posed to the General Manager and the General Manager was invited to answer them. That procedure was not one that invited or allowed for Ms Gibson to provide any proper explanation even had she been in a position to do so.

50. The only way Ms Gibson could speak to the matter at all was to interject during the process of the question being put by Mr Reymond and answered by Mr Winn. When she sought to do so, she was shut down by points of order being raised from the floor to the effect that the question had been posed to the General Manager and it was a matter for him to answer and not one for her to discuss. Upon listening to the discussion of this item at the meeting, no reasonable person would conclude that Ms Gibson was either invited to explain her position or given a proper opportunity to do so.
51. Returning to Ms Gibson's submission that she was deliberately ambushed and that this was "a sting", one can certainly understand why she thought that. However, the evidence does not satisfy me that any of the councillors or Mr Winn acted with the purpose of ambushing the Mayor in relation to the motion to suspend her use of Council vehicles. In relation to the councillors present other than Mr Reymond (noting that Ms Clare was not present), the evidence does not establish that any of them knew that Mr Reymond was going to raise the matter of the mayor's vehicle as a matter of urgency at the conclusion of the meeting.
52. In relation to Mr Reymond, I accept his direct evidence to the effect that his decision to put the motions was improvised during the discussion of the item at the meeting, as distinct from being pre-meditated.
53. As for Mr Winn, he must have known that his answer would take Ms Gibson by surprise, because he volunteered information which he knew had not been provided to Ms Gibson. However, there is no evidence that Mr Winn had any foreknowledge that any motion would be put by Mr Reymond let alone the particular motions Mr Reymond in fact moved. It would have been reasonable for Mr Winn to have assumed that once he volunteered his answers, there would be no further discussion of the matter, as that is what the proper meeting procedures dictated. I am not satisfied Mr Winn had any intention to ambush Ms Gibson in relation to the motion to suspend her use of Council vehicles.
54. However, I am satisfied that the effect of what occurred at the Council meeting of 18 August 2014 was that Ms Gibson was caught by surprise and materially disadvantaged by an unfair and heterodox procedure which culminated in a resolution suspending her use of Council vehicles.

Resolution not based on a sound or complete understanding of the facts

55. It is evident that the decision of the Council's governing body on 18 August 2014 to suspend the Mayor's use of Council vehicles was not based on a proper understanding of the facts and was influenced by extraneous considerations.

56. I heard evidence from a number of councillors who voted in favour of the motion to suspend the Mayor's use of Council vehicles, which indicated that one of the underlying matters they had taken into account in supporting Mr Reymond's motion was a belief, quite mistaken as it turns out, that Ms Gibson had previously been convicted of, or had her licence disqualified for, a drink driving offence.

57. Ms Baker, when asked whether she would accept that the decision to suspend Ms Gibson's use of council vehicles in the circumstances seemed to be a remarkably punitive step, said:

I don't think it's remarkable. There was a context. Councillor Marchandean had told sitting councillors, in the term of the council prior to my being elected, that the mayor had been disqualified from driving. That was something on councillors' minds.

58. When Ms Marchandean gave evidence, she indicated that she did not have any understanding that Ms Gibson had any record of having been convicted of any drink driving offence. The only incident she said she had spoken about in relation to Ms Gibson's driving history was an incident that had occurred seven years previously, when, while serving as a councillor during a previous term of Council in 2007, Ms Gibson had 'side-swiped' two cars at Kirribilli, after a council supper. Ms Marchandean said that alcohol had been consumed at the supper. However, there is no evidence that the accident was alcohol related or that Ms Gibson had driven while over the prescribed alcohol concentration.

59. It was evident also that Ms Baker drew some connection between her misplaced concern that Ms Gibson had previously been disqualified from driving in connection with a drink driving offence and the fact that her car was parked at a bottle shop. In that regard, she said:

My concern was that there had been a suggestion that there had been an issue with disqualification relating to a DUI in the past, that it was behind the cellars

...

Q. How could anyone possibly assume that this incident had anything to do with anyone consuming alcohol?

A. Well, I didn't assume that. I was just concerned that it was behind some cellars.

60. Ms Clare, who did not attend the 18 August 2014 meeting, but who voted against the corresponding rescission motion moved at the meeting of 15 September 2014, was invited to respond to the suggestion that the suspension of the Mayor's use of Council vehicles was a disproportionate response to the circumstances. Ms Clare said:

I don't think so, no. As I said, there were a number of other transport options in the area. It certainly would not have prevented the mayor from attending her civic functions and look, the overriding concern is always for safety and security. It was, and it is, well known that the mayor had previously been convicted of a drink driving offence and there were concerns around having a car left, that potentially it could have been dangerous for the community.

61. Ms Gibson placed her driving record before the Inquiry during the hearing. That record revealed that Ms Gibson had no convictions or disqualifications for any drink driving offences. The Councillors who thought she had were quite mistaken.

62. Some councillors also seemed to have misunderstood basic facts about where and how the car had been parked at Cutty Cellars. Ms Beregi wrongly assumed that Ms Gibson's car had been parked across a driveway. When she gave her reasons for supporting the motion, one of the reasons she gave was that:

"Councillors are treated no differently to anybody else in terms of the laws of the land in the LGA, and clearly parking across someone's driveway is not something for a member of the council is acceptable."

63. Similarly, Ms Clare, having given evidence that she considered this to be a safety issue, gave this evidence:

Q. With respect to what you say about this being a safety issue, obviously a car being left in a car park does not raise a safety issue, does it? I just don't quite understand what's dangerous or unsafe about that.

A My understanding was it wasn't left in a car park, it was left parked across a driveway in a manner which would suggest that there was some degree of carelessness of the person parking the vehicle.

64. The photographs of the car taken by the police officer on Sunday 3 August show that the car was not parked across a driveway or parked with a degree of carelessness. The car was parked parallel to, and between, the marked lines of one of the three allocated parking spaces in the rear of Cutty Cellars.

65. It is also evident that, with the possible exception of Ms Baker, who had independently obtained some documents from Council staff before the meeting, the Councillors present at the meeting of 18 August 2014 were not aware that the car had been found with a flat tyre. That is because, although Mr Winn was asked by Mr Reymond, inter alia, *would the*

General Manager explain all the known facts in relation to this incident if he has the relevant information before him?”, and although he was clearly aware that the car was found to have a flat tyre (having not only been informed of that on 8 August by Mr Sim, but having made specific inquiry of Mr Sim about the costs of repair and having received Mr Sim’s response to that inquiry), he did not mention the flat tyre when he answered Mr Reymond’s question.

66. Thus a relevant circumstance was not taken into account by a number of the councillors voting on the motion.
67. It was submitted by Ms Baker and Ms Beregi that they were influenced by the fact, as they asserted, that Ms Gibson’s first response when the matter was raised was to deny that the incident ever occurred. However, the recorded discussion of the item does not support the proposition that Ms Gibson denied that the incident occurred. What it demonstrates is that Ms Gibson accepted that that her car had been left at the cellars, but denied that it had been “abandoned”, and understandably so, and disputed the asserted period it had been left there. The confusion as to what Ms Gibson was denying was a direct consequence of her being taken by surprise.
68. It was only at the end of the discussion, after the motion to suspend had already been put, that Ms Gibson said “*[w]ell I’m voting against it because it didn’t happen*”. This was a remark consistent with Ms Gibson denying that there had been any incident involving the abandonment of the car.

The inaccurate recording of this item in the Council minutes

69. The official minutes of the Council meeting of 18 August 2014 do not accurately record the motion of Mr Reymond, was put verbally in the following terms and passed without amendment:

That pending an investigation into the circumstances surrounding the abandonment/ leaving of the car immediately suspend the Mayor’s use of the Council’s vehicles.

[emphasis added]

70. The version of this resolution recorded in the official minutes omits the words underlined above. The resolution as minuted is simply:

That Council immediately suspend the Mayor’s use of Council vehicles

71. There is no separate minute of the motion, which is also an aberration.

72. The effect of omitting in the minuted version of the resolution the opening words of Mr Reymond's motion, "*pending an investigation into the circumstances surrounding the abandonment/leaving of the car*" (passed without amendment) was to materially alter the substance of resolution. Mr Reymond's motion sought a temporary suspension of the Mayor's use of Council vehicles pending an investigation into the circumstances, whereas the resolution as recorded is to the effect of suspending for an indefinite period the Mayor's use of council vehicles, without any need to further investigate the matter.
73. Mr Reymond, when he gave evidence, made it clear that the motion he read out reflected his intention, not the motion as recorded in the minutes.
74. Mr Winn gave the following evidence about the inaccuracy in the Council minutes:
- Q. When a resolution is passed that's not the subject of any notice of motion, am I right in thinking that the only way it can be recorded in the minutes is actually listening to the audio of the council meeting?
- A. Yes, that's normally what takes place. The staff listen and then transcribe it, yes.
- Q. You are responsible for the accurate recording of the minutes, aren't you?
- A. I don't sit and listen to the minutes explicitly. If there's been an oversight on that, I guess ultimately I'm responsible as the general manager, yes.
- Q. Is it your evidence that you did not yourself review to make sure that that resolution as recorded in the minutes correctly recorded the council's decision?
- A. I would have reviewed the minutes and obviously I haven't picked it up, but it would normally go through the manager of governance and another director before it came to me.
- Q. Could you name them for me, please?
- A. Ms Ross McCreanor and Mr Ian Curry.
75. Mr Curry gave evidence that there are screens placed in front of the Councillors during meetings which display motions as transcribed by an administrative officer and the general practice is that Councillors vote on the motion as displayed on the screens.
76. On the basis of the evidence of Mr Curry about the way in which the Council used screens to display motions, Mr Hale SC submitted that the motion passed by the Council was not the motion as put verbally to the meeting by Mr Reymond, but was the motion which appeared on the screens in front of the councillors. Mr Hale invited me to infer that the motion recorded in the official minutes must have been the motion displayed on the screens in front of the Councillors. He submitted that I should thus accept that the Council minutes accurately recorded the resolution.

77. I do not accept that. First of all, that submission proceeds on the premise that an administrative officer, whose task it was to type up Mr Reymond's motion and display on the councillors' screens during the meeting, made a mistake, by inadvertently leaving out the words "*pending an investigation into the circumstances surrounding the abandonment or leaving of the mayor's car*". The flaw in that premise is that there was no evidence that such a mistake was made and the premise proceeds on the assumption that the minutes must have correctly recorded what was on the screen. For the reasons that follow, I am not prepared to draw that inference.
78. There was nothing particularly complicated about the motion read out by Mr Reymond. It was relatively short and its intention was clear: to temporarily suspend the use of Council vehicles by Ms Gibson pending an investigation into the matter. The words omitted from the motion as spoken were the opening words and comprised a material and substantive component of the motion. Had the version of the motion put up on the screen omitted those important opening words, one would reasonably infer that one or more of the eight councillors who had just heard Mr Reymond read out the motion, or Mr Winn or Mr Curry, both of whom were present, would have noticed the error and pointed it out. The audio recording gives no hint that the words on the screen were different from what Mr Reymond had spoken or that anyone was intending to vote on anything other than what Mr Reymond had actually read out.
79. However, even if it be assumed that there was an error in the transcription of the motion that appeared on the screens as contended for, it does not follow that the motion passed by the council was the mis-transcribed version of it shown on the screens. If the motion was mis-transcribed in that way, then what was shown on the screens did not reflect what Mr Reymond read out and did not reflect his intention. There is not a shred of evidence that any of the councillors was intending to vote on a motion materially different from what Mr Reymond had put verbally – a temporary suspension of the mayor's use of council vehicles pending an investigation.
80. It is the governing body of councillors who move and pass motions, not the administrative officer who transcribes them. It would offend against basic principle to accept that the motion passed by the Council was the product of the mistaken input of an administrative officer rather than the motion as put by the moving councillor as a member of the Council's governing body. Thus the motion and resolution was that which was put verbally to the meeting by Mr Reymond.
81. It was Mr Winn's responsibility as General Manager to ensure that the minutes accurately recorded the motion and resolution. That did not occur here. While innocuous errors in

minutes do not call for comment, this was a highly contentious item of business, raised without notice, and with direct ramifications for the Mayor.

82. One possible explanation for the error, that it was an error because of a failure to check the audio recording of the discussion, can be discounted. Draft minutes of this particular agenda item were in evidence in an email of 19 August 2014 from Mr Curry to the Council's Communications Officer. A comparison of the draft minutes to the final minutes show that the final minutes included five paragraphs descriptive of the discussion of this item that were not in the draft minutes in respect of this item. When this was drawn to Mr Curry's attention, he agreed that this indicated that someone had reviewed the audio of that part of the meeting before the minutes were finalised or that this was quite probable. In my opinion, it is more than quite probable. The only rational explanation for the addition of the five paragraphs recording the discussion to the draft minutes is that someone listened to the audio record, noticed the additional points of discussion and corrected the draft minutes by adding them.
83. It is thus rather puzzling that there was no correction made to the obvious and material error made in the transcription of the resolution passed on Mr Reymond's motion.

Rescission motion fails on 15 September 2014

84. A motion seeking to rescind the Council's resolution of 18 August 2014 was put to the Council meeting of 15 September 2014, but was unsuccessful.

The corresponding amendment made to the Council's Facilities and Benefits Policy

85. Pursuant to the second of the resolutions passed at the meeting of 18 August 2014, an amended version of the Facilities and Benefits Policy was placed out on public exhibition during the period from 25 September 2014 to 22 October 2014 (together with an amended version of the *Oversight & Liaison with General Manager Policy* and a draft version of a new *Deputy Mayor Policy*).
86. In the amended version of the Facilities and Benefits Policy, the sub-clause in the policy which had provided the Mayor was entitled to the use of a fully serviced vehicle including a fuel card and allocated parking space at Council premises was deleted. Under the proposed amended policy the Mayor was restricted in entitlement to "*travel by taxi and use of a Council charge account for official business*".
87. During the exhibition period, the Council received four written submissions, including one from one of the precinct committees. All four submissions opposed the proposal to take away the entitlement of the Mayor to use a Council vehicle.

88. According to the summary of the submissions that was prepared by the Council, the submissions included the following:

(Submission 1) "I, like many in the Shire, am totally disillusioned with Councillors infighting and mean spirit. This situation resembles a school yard with bullies and bad mouths. Whatever the motivation might be to deny the elected Mayor a motor vehicle is ludicrous and childish in the extreme. It typifies the current negative attitude, does none of you any favours, but simply makes the Council look foolish."

(Submission 2) "I strongly oppose taking away the right of a Mayor to have a Council vehicle. That the Council should seek to remove the access a vehicle affords is simply is [sic] another example of divorcing the Mayor from her community. Attending events and visiting constituents is a major element of the work she has been elected to conduct."

(Submission 3) "Item 4.2 deprives the Mayor of North Sydney of a fully serviced and maintained vehicle. Such an amenity is standard with inner city Councils. You will be aware that the Lord Mayor of Sydney Ms Clover Moore has not only a car available but a chauffeur and Ms Moore is taken from her home to the office and then wherever she requires to go during the working week. The North Sydney Mayor was popularly elected as a full time Mayor and the facility of a motor vehicle seems a minimum benefit to enable her to properly and conveniently represent the North Sydney community at the many civic duties that occur in the municipality."

(Submission 4) – The submission from one of the precinct committees – "There was discussion about Council's proposal to deny the Mayor access to a Council vehicle and comments about reimbursement of the General Manager's expenses. Precinct resolved that as a matter of principle Council ought to provide a vehicle to the holder of the office of Mayor for the performance of his or her official functions".

89. The Council's internal responses to these submissions were, with respect to submission 1, "*Feedback noted. Open statement*", and in respect of submissions 2, 3 and 4, "*Feedback noted. Offers alternative viewpoints*". These were cursory responses to material concerns.

90. The proposed amended policies were reported back to the Council following the exhibition period, to the Council meeting of 17 November 2014 with recommendations:

1. That the written submissions received be noted.
2. "That no further amendments to the Amended Mayor & Councillors Facilities & Benefits Policy, Amended Oversight & Liaison with General Manager Policy and Draft Deputy Mayor Policy (New) are considered required. It is recommended that these policies be considered adopted as of 15 September 2014 (per original resolution)".

91. At the Council meeting of 17 November 2014 the amended policies, including the amended Facilities and Benefits Policy, were adopted *en globo* without any discussion of the submissions from the public or otherwise.
92. A rescission motion put to the Council meeting of 15 December 2014 was unsuccessful.
93. On the following day, 16 December 2014, Ms Gibson handed back the Council car previously allocated for her use. She has not since had any entitlement to use any Council vehicle.

Taking away the Mayor's entitlement to a car was a disproportionate response

94. By the time the matter came back to the Council for the rescission motion on 15 September 2014, the agenda papers recorded that the primary resolution the subject of the rescission motion as "*that Council immediately suspend the Mayor's use of Council vehicles*". So even if councillors had voted on 18 August 2014 to only temporarily suspend the Mayor's use of Council vehicles pending an investigation, it was clear by 15 September 2014 that they were voting to suspend the Mayor's use of Council vehicles for an indefinite period. This was then confirmed by the amendments made to the Facilities and Benefits Policy which were adopted on 17 November 2014.
95. There is no doubt about the flaws in the process of reaching this decision, but there is a separate question as to whether the decision was a proportionate response.
96. Mr Whitlam QC, who appeared for Mr Winn, submitted that the impact on the business of Cutty Cellars must have been extraordinary, given it was a bank holiday weekend and given that the Mayor's car had taken up one of only three car spaces accessible from the rear lane over the entire weekend and in circumstances where Cutty Cellars had a street frontage on the Pacific Highway.
97. I accept that the presence of the car taking up one of three car spaces over the weekend did adversely affect the operation of the business, generally in the way the owner described in his email of 4 August 2014 to the Council. In that email, the owner had said (without correction), "*Its affect my customers and my stocks moving badly and it totally affected my normal trading during my busiest trading period which is the whole weekend*". However, without any other evidence, I am unable to draw sound conclusions from the owner's general statements in the email about how and to what degree his business was affected.
98. The evidence does not demonstrate that this incident had any material financial effect on the business. There is no evidence that the presence of the car in one of the car spaces meant that any business was turned away. I decline to draw a conclusion, which I

understood Mr Whitlam might have been inviting me to draw, either that there was no parking, or insufficient parking, available on this section of the Pacific Highway at or near the frontage of Cutty Cellars over the weekend to reasonably accommodate customers or suppliers of the cellars.

99. Although I accept that the presence of Ms Gibson's council car in the car park near the back door affected the owner's moving of stock "badly", the owner did not state that stock was unable to be moved in or out of the cellars and it is possible that the effect on movement of stock to which he referred was primarily one of physical inconvenience. I am mindful that the email in which the owner set out his position was one sent at a time when the owner was (rightfully) annoyed about the matter and this may have affected the language used in his email. I note that, after Mr Sim sent him the diplomatic reply email of 7 August 2014, there were no follow up complaints or allegations made by the owner of Cutty Cellars to the Council about any material effect on his business.
100. Given the absence of any further investigation of any impacts occasioned by the vehicle being left at Cutty Cellars, I am satisfied that the decision to suspend the Mayor's use of Council vehicles was not only based on extraneous considerations and reached by a flawed process but was an objectively disproportionate response to what had occurred.

This episode is indicative of dysfunctionality within the governing body

101. In my opinion, when one looks at the entire episode concerning the Mayor's vehicle, from the time that the Council first received the email complaint from Cutty Cellars on 4 August 2014 through to the adoption of the amended Facilities and Benefits Policy in which the Mayor's entitlement to use Council vehicles was taken away, on 17 November 2014, one may discern dysfunctionality relating to the performance by the Councillors of their functions in the following respects:
- (a) The Mayor's capacity to properly preside as Chair in relation to this matter was prejudiced by the General Manager omitting to provide her with adequate information about a matter on the agenda papers for a Council meeting in circumstances in which he was privy to information about that matter.
 - (b) There was no effective liaison between the General Manager and the Mayor about an issue directly concerning the Mayor's use of a Council vehicle.
 - (c) The procedure which was followed at the meeting of 18 August 2014 by the governing body of the Council (but noting Ms Clare, Ms Bevan and Ms Burke were not present), and the General Manager was seriously flawed and unfair and involved material departures from proper meeting procedure.

- (d) At least some of the councillors who voted to suspend the Mayor's use of Council vehicles took into account extraneous factors, including a mistaken belief that Ms Gibson had previously been convicted of, or had her licence disqualified for, a drink driving offence, and the cause of this error was the underlying conflict and mistrust between them.
- (e) The decision to take away the Mayor's entitlement to use a council vehicle was a disproportionate decision influenced by the conflict between the Councillors in the Majority Bloc and the Mayor.
- (f) The Council minutes of this part of the relevant part of the Council meeting of 18 August 2014 are materially inaccurate.

Effect of the removal of the vehicle on Ms Gibson's ability to perform her functions

102. Ms Gibson gave evidence that during the Inquiry period she would attend functions and meetings about 4 – 5 evenings a week and that she would meet with constituents every week, several times a week, but varying from week to week. She gave this evidence about her use of the Mayoral vehicle before that entitlement was taken away:

Q. During the average week, if you are in council chambers and having to attend civic functions during the day, prior to the change in the car policy, how often would you use the car during the day to attend work functions?

A. All day every day I would have to - often I would be driving to work, or I might be going out to visit a resident, going down to open a park, or going to a school, and then I'd be coming back to council, then I'd perhaps pop home to get changed and then I'd be going out to other functions. The car was a very necessary part of my job. I was driving around all day every day - just short trips here and there, but not so short that I could walk them easily in business attire. This whole period I have had very bad knees. The car was very necessary. When I came into the role as mayor, for environmental reasons I got rid of my car, oh, about five years ago. So I didn't have my own private vehicle. I relied on that car.

103. She later gave this evidence:

Q. After the suspension of your vehicle, how is it you then got to civic functions?

A. I walked. As I said, one of my councillors suggested I could ride a bike or walk. My partner kindly - this put a burden on my partner and his ability to do his job, because he often had to drive me or pick me up, because as I said taxis wouldn't come for short trips so I either had the assistance of my partner, or I would walk if my knees weren't too bad, or I'd get a taxi. But the taxis were problematic. In the end, I resorted to going and standing up on Kurraba Road, and I would sort of leave home early. I would allow myself about an extra 20 minutes, it wasn't always very convenient in the dark, and I used to stand up on the corner

of Kurraba Road and Wickham Road and I would wait until a taxi came by and I would hail it and then I would jump in and then I would say, "We're just going up the road." And they'd always be rather annoyed, but that was the only way I could get a taxi.

Q. And is that how you are still now getting - how are you now getting to --

A. Again, I'm relying on my partner most of the time. He drives me and comes to pick me up, which is very nice.

104. Ms Gibson also gave evidence to the effect that later, in November/December 2015, she missed some meetings because she could not attend due to troubles obtaining transport.

105. Ms Baker and Ms Clare submitted that the Mayor's entitlement to use of a taxi on the Council's corporate account was adequate to ensure that, without having the use of a council vehicle, she would not be prejudiced in her capacity to attend to her civic and ceremonial duties.

106. When Ms Gibson's evidence concerning her difficulty in getting taxis to come for short fares was put to Ms Baker, Ms Baker expressed some difficulty believing that "*because I have routinely - because I juggle too many lives - taken an even shorter fare from my home to the council chambers without ever having a refusal to do so.*"

107. I do not doubt Ms Baker's evidence accurately reflects her own experience. However, I have no difficulty in accepting, and I do accept, Ms Gibson's evidence that she found it difficult to get taxis to pick her up for short fares (i.e., within North Sydney) from her home. Her evidence is that she resided during the relevant period in Kurraba Point. It is a matter of notorious common knowledge that it is difficult to get a taxi in Sydney to pick you up from a residential address for only a short fare or to get one without considerable delay. Moreover, Ms Gibson's evidence to that effect was consistent with statements she made contemporaneously on a number of occasions during the Inquiry period after her entitlement to use council vehicles had been taken away and was corroborated by Ms Asker (Ms Gibson's temporary EA during the period September 2015 to December 2015), who gave evidence that Ms Gibson was late for some civic duties because taxis would not come to her home address.

108. I am satisfied that the taking away of the mayor's previous entitlement to use a council vehicle has materially, adversely affected her capacity to carry out her civic role. To the extent that she has continued to meet her civic duties by reason of relying on her partner to drive her does not derogate from that proposition, but is symptomatic of it.

No entitlement to a car becomes a particular problem in late 2015

109. In February 2016, Ms Gibson underwent surgery for a double knee reconstruction, because of serious, chronic problems with both her knees resulting from old sporting injuries. Over the two years or so prior to the surgery, and for some time after it, Ms Gibson experienced chronic pain in both her knees.

110. In the period prior to her surgery, the condition of Ms Gibson's knees deteriorated over the course of 2015 and she had consequential difficulties in walking. When asked about the effect that the taking away of her entitlement to use a council car had, Ms Gibson gave this evidence:

I certainly had a lot of difficulty once my car was taken away from me, because I found if I had to go to a function - I live in Kurraba Point, but if I had to go to a function up in Neutral Bay, there was no way a taxi would come for me to take me 500 metres. So I was often left walking to things when that was quite painful for me.

111. In early November 2015, Ms Gibson repeatedly sought temporary assistance from the General Manager to fulfil her mayoral duties.

112. On 2 November 2015, Ms Gibson had a meeting with Mr Winn, which, as per the protocols imposed on Ms Gibson, was attended also by two senior staff, in this case Mr McCreanor and Mr Panuccio. At this meeting, Ms Gibson outlined the problems she was experiencing with her knees and demanded access to a Council car by way of temporary assistance. In an email following the meeting, Ms Gibson stated:

At today's meeting I explained to you that I'm temporarily disabled and require emergency short term additional resources to do my job as Mayor.

I'm extremely disappointed that you chose not to give me the urgent assistance I require on a temporary basis

113. Email correspondence following the meeting suggests that Ms Gibson threatened to take the matter to the media and the Minister if she was not given access to a vehicle.

114. Mr Winn responded by informing Ms Gibson that he could not override the resolution of the Council of 18 August 2014 and that he had requested his staff to make immediate contact with a local cab company "to ensure an appropriate service can be provided to you." Ms Gibson responded by indicating she was not seeking to overturn the Council resolution, but was seeking temporary assistance. In an email sent later the same day Mr Winn stated:

I have already pointed out in writing and directly to you what we can do. That was dealt with immediately after the 12pm meeting.

Clearly if you are now temporarily disabled (as you have stated you are), then driving a Council car, even if I could just ignore a lawful Council resolution, is probably not even an option.

115. Ms Gibson sent a further email to Mr Winn asserting that he had a total lack of empathy for her present medical emergency and stated “*you obviously have the necessary delegations to grant me help urgently.*”

116. Late that night (2 November 2015), Ms Gibson sent a further email to Mr Winn, which she copied to Mr McCreanor and Mr Panuccio, indicating that she had called a taxi at 5:50pm that evening to take her to the Council’s Sport and Rec meeting (a fair from Neutral Bay to North Sydney) and that at 6:40pm she had given up hope of it arriving and missed the meeting. She stated that it was virtually impossible to book a taxi for a short distance and that this meant that she was frequently required to walk to Council functions and civic commitments. She stated in the email:

I am unable to walk any distance at present and I again request that you provide me with some support to do my job during this difficult time. I’m trying to delay surgery until after the last meeting of Council for this year. This isn’t far away. Could you please organise some extra support for me promptly (either in the way of a fleet car or staff member to pick me up and drive me home over the next few weeks.) Please note that some Councils provide this service to their Mayor as a matter of course.

117. Mr Winn responded the following day (3 November 2015) by way of a further email in which he stated:

I have repeatedly requested that you do not include staff members in this type of correspondence. For transparency I have circulated this response on this matter to all Councillors.

Firstly can you please let me know the reference number and other details of your attempted taxi booking last night at 5.50pm for follow up. I note the Sport and Rec meeting was scheduled to commence at 6pm. As promised a corporate taxi account with Premier cabs has now been set up by Council staff.

I refer you to my earlier emails and the discussion at the “urgent” meeting you called yesterday at 12pm.

I have made clear several times the Council resolution related to the Mayoral car. For clarity I am unable to provide a spare “fleet car” as you request. I am also not in a position to arrange a driver or a personal pick up/drop off service as you request. I am confused as to why you are arguing that Council should provide you with a lift between your private place of residence and Council.

I draw attention to the fact, if required for attending Council business, taxi services from Council are excellent and located just in McLaren Street.

You have stated that you are “temporarily disabled” and have a “present medical emergency”. I am sorry that you are unwell but that clearly creates a significant and known issue for Council. I have not seen any medical certificates to support your contention however I would suggest that in the circumstances you should properly recuperate under medical advisement. Perhaps a sensible course of action would be to immediately contact the Deputy Mayor to see if he is able to address any pressing matters whilst you are incapacitated.

118. When questioned about whether, in this last paragraph, Mr Winn was in effect suggesting to Ms Gibson that she stand aside as Mayor and allow Mr Morris (then the Deputy Mayor) to stand in her shoes, Mr Winn said that was not what he was trying to say.
119. It is common ground that Mr Winn made an offer to Ms Gibson to prepare another report to council explaining the situation that she found herself in. However, Ms Gibson directed him not to bring the matter back to Council as she took the view that she would not obtain their support for any assistance and that this would add to her distress.
120. Mr Winn’s position that he could not act in a manner contrary to the resolution of 18 August 2014 was certainly a sound position. It is also evident that Mr Winn was prepared to take steps and did seek to take steps to have the matter reported back to Council for re-consideration of the removal of her entitlement to a Council vehicle in light of her temporary physical impairments, but that Ms Gibson’s mistrust of the Councillors prompted her to direct that the matter not come back before the Council for that purpose.
121. What is also evident from the email correspondence, particularly Mr Winn’s email of 3 November 2015, is that Mr Winn was not prepared to contemplate the provision of any other form of temporary assistance to help Ms Gibson which would not traverse the Council’s resolution of 18 August 2014, such as making temporary arrangements for a staff member to chauffeur Ms Gibson to and from the Council and/or to civic functions.
122. There is a notable lack of empathy evident in Mr Winn’s email communications to Ms Gibson given the personal difficulties she had raised in relation to the physical impairments she was suffering as a result of her knee injuries.
123. In any event, regardless of what Mr Winn should or should not have done in the face of Ms Gibson’s requests for temporary assistance, the particular difficulties experienced by Ms Gibson in late 2015 as a result of not having any entitlement to use a car exemplify that the Council decision to take away the Mayor’s entitlement to use a Council car has

significantly impeded the capacity for the Mayor to properly carry out the Mayoral functions in the subsequent period.

124. In my opinion, the Council should be required to restore the mayor's entitlement to the use a Council vehicle and I make a specific recommendation to that effect in Chapter 9 of this report.

CHANGES TO COUNCIL POLICIES

125. Following exhibition of draft amendments in September/October 2014, changes were made in November 2014 (and purportedly said to have retrospective effect as from 15 September 2014) to the Council's *Oversight and Liaison with General Manager Policy (General Manager Policy)* and the *Mayor and Councillor Facilities and Benefits Policy (Facilities and Benefits Policy)*, which have significance in relation to the role and functions of the Mayor of North Sydney Council.

126. Additional relevant changes were made to the General Manager Policy on 15 September 2015.

Amendments to the General Manager Policy

127. The DLG *Guidelines for the Appointment & Oversight of General Managers* includes a statement that "*a council's governing body should delegate to the mayor the role of day-to-day oversight of and liaison with the general manager*"

128. The 2013 version of the Council's General Manager Policy was in accord with the DLG Guideline. Under the 2013 version of the policy, clauses 4.1 and 4.2 provided as follows:

4.1 The Council has delegated to the Mayor the responsibility of the day-to-day oversight of and liaison with the General Manager.

4.2 The Mayor will liaise with the General Manager on a daily basis in accordance with the requirements of the Local Government Act (1993) and in keeping with the provisions of the Councillor Access to Information and Interaction with Staff Policy, Delegations of Authority and the Code of Conduct for Councillors and Council staff.

129. Clause 4.3 of the February 2013 General Manager Policy provided that the Mayor was responsible for approving the General Manager's applications for leave and his incurring of expenses. Under clause 4.4, the policy provided that the Mayor was responsible for handling complaints about the General Manager.

130. The version of the General Manager Policy as amended by resolution of November 2014, included the following changes:

- (a) Clause 4.1 was deleted, but arguably the substance of it was retained by including as a new statement of intention under clause 1.3 “*To delegate to the Mayor the responsibility for the day to day oversight of and liaison with the General Manager*”.
- (b) Clause 4.2 was amended by removing the words “*on a daily basis*”.
- (c) Clauses 4.3 and 4.4 were amended so as to take away from the Mayor the role of the approval of the General Manager’s leave and expenses and to give that role to the governing body of the Council.

131. At its meeting of 20 July 2015, the Council resolved to adopt the recommendations made by its Governance Committee that an amended draft version of the General Manager Policy be placed on public exhibition. The amended draft proposed removing from the policy the statement of intent in clause 1.3, “*to delegate to the Mayor the responsibility of the day to day oversight of and liaison with the General Manager*” and removing the provision for the Council’s governing body to be the approval authority for the General Manager’s leave and expenses and delegating that approval role to the Council’s Director of Corporate Services (a staff member who answers to the General Manager).

132. The amended policy was placed on public exhibition for 28 days, following which a report was presented to the Council meeting of 15 September 2015 recommending the adoption of the amended policy.

133. The report to the Council indicated that, during the exhibition period, the Council received two submissions from members of the public opposing the proposed changes, who had expressed concerns, *inter alia*, that the changes shift power from the popularly elected mayor directly or indirectly to the General Manager and that this was undemocratic and that the proposed changes could be construed as in discord within the governance of the Council.

134. Upon the report coming before the Council at its meeting of 21 September 2015, the Council resolved to adopt the amended version of the General Manager Policy.

Significance of the amendments

135. The effect of the changes made to the General Manager Policy in 2014 and 2015 were to first diminish and then completely take away the function previously delegated to the Mayor of day-to-day oversight of and liaison with the General Manager, such that the Council’s General Manager Policy became out of step with the DLG Guidelines. The significance of those changes depends on the nature and importance of that delegated function before it was taken away.

136. **Day to day oversight.** In relation to the Mayor’s responsibility for the day to day oversight of the General Manager, Mr Hale drew my attention to particular aspects of the 2013 version of the General Manager Policy which he submitted demonstrated that the Mayor’s oversight function was only of a narrow ambit. Mr Hale pointed out that, although clause 4.1 of the policy conferred the oversight responsibility in broad general terms that “*[t]he Council has delegated to the Mayor the responsibility of the day-to-day oversight of ... the General Manager*”, clauses 4.3 and 4.4 conferred on the Mayor specific responsibilities, respectively, for approving the General Manager’s leave and expenses and for handling of complaints about the General Manager.
137. Mr Hale submitted that the oversight function conferred in broad terms by clause 4.1 of the 2013 version of the General Manager Policy should be understood as being limited to the particular oversight responsibilities with respect to the General Manager’s leave, expenses and the handling of complaints about the General Manager referred to in clauses 4.3 and 4.4 of the policy. Mr Hale submitted that, properly understood in this way, the Mayor’s delegated responsibility for day to day oversight of the General Manager was “a minimal responsibility”. If this is correct, then the decision by the Council to take away that responsibility from the Mayor might be said to be of commensurately minimal significance.
138. Mr Hale said that this interpretation of the ambit of the Mayor’s oversight responsibility under the 2013 General Manager Policy derived support from the DLG *Guidelines for the Appointment & Oversight of General Managers*, which, immediately after stating that “*a council’s governing body should delegate to the mayor the role of day-to-day oversight of and liaison with the general manager*”, states that “*the mayor’s role in the day-to-day management of the general manager should include approving leave, approving expenses incurred and managing complaints about the general manager*”.
139. I do not accept that submission. In my opinion, neither the text, nor the context of the 2013 version of the General Manager Policy, or of the DLG *Guidelines for the Appointment & Oversight of General Managers*, supports the proposition that the delegation to the Mayor conferred in broad terms to have the responsibility for the day to day oversight of the General Manager should be read down as if it only applies to the approval of the General Manager’s leave and expenses and the handling of complaints about the General Manager.
140. If the particular responsibilities conferred on the Mayor under clauses 4.3 and 4.4 of the 2013 version of the General Manager Policy were intended to be exhaustive of the

Mayor's responsibility for the day to day oversight of the General Manager, that would render clause 4.1 entirely redundant.

141. Moreover, the context in which the responsibility for the day to day oversight of the General Manager is conferred on the Mayor suggests to me it would not sensibly be confined only to approving leave and expenses and handling complaints. It is sensible for the Council's governing body to have a broad oversight role of the General Manager so that the governing body is aware of how its decisions are being implemented by the administration. Equally, it is sensible for that responsibility to be delegated to an individual and that the Mayor be the individual to whom the responsibility is delegated.
142. Far from being a minimal responsibility, I consider the Mayor's responsibility for the day-to-day oversight of the General Manager was a broad and important responsibility, facilitating the proper functioning of open government. Thus, I consider it was a significant diminution of the Mayoral role to take away that delegated responsibility by reason of the policy changes in 2014 and 2015.
143. **Day-to-day liaison with the General Manager.** The second component of the responsibility taken away from the Mayor was the responsibility for day-to-day liaison with the General Manager. The delegation of that responsibility to the Mayor is also consistent with the DLG Guidelines.
144. Even if it were correct to suggest that the day to day oversight function conferred by clause 4.1 of the 2013 version of the General Manager Policy is limited to leave, expenses and complaint handling, it could not sensibly be suggested that the role of day to day liaison would be confined to those limited areas.
145. In my opinion, day to day liaison between the mayor and the general manager is equally as important, and perhaps more important, than day to day oversight of the general manager by the mayor. The word "liaison" means "the contact maintained between two units to ensure concerted action".¹⁹ The proper functioning of local government requires liaison between the two arms of the Council with the objective of ensuring that they act in concert.

The significance of the changes made to the General Manager Policy

146. Given that I consider that the Mayor's responsibilities for day-to-day oversight of the General Manager and for day to day liaison with the General Manager are important responsibilities, it follows, in my opinion, that the changes made by the Council to the

¹⁹ Macquarie Dictionary, 6th Ed.

General Manager Policy in 2014 and 2015, which, respectively, diminished and removed those responsibilities were significant changes, and represented significant departures from the DLG Oversight of GM Guideline.

147. What is particularly significant in my opinion is that the function of day to day oversight of, and liaison with, the General Manager is not a function that can be performed by the governing body. The Council's governing body can exercise limited oversight and liaison at Council meetings, but it cannot feasibly perform a day to day oversight or liaison role. Such a role can only be performed sensibly by an individual. By taking this role away from the Mayor, the effect of the Council's decision was to leave the Council's governing body with no delegate to be responsible for day to day oversight or liaison with the General Manager.

148. Thus, this change to the General Manager Policy not only diminished the Mayor's role, but also prejudiced the capacity of the Council's governing body to oversee and liaise with the administrative arm of the Council and for the two arms of the Council to act in concert on a day to day basis.

149. In my opinion, this departure from the relevant DLG Guideline is not in the interests of the constituents of North Sydney and the Council should be required to re-instate this delegation to the Mayor.

Potentially significant change made to the Facilities and Benefits Policy

150. I have already discussed the significance of the change made to the Facilities and Benefits Policy which took away the Mayor's right to use a Council vehicle.

151. There was an additional change made to that policy by way of the November 2014 amendments that calls for comment, namely the deletion of clause 4.2.4 which, under the 2013 version of that policy, provided:

...the Mayor is entitled to receive the benefit of ... secretarial services associated with the office of Mayor

152. Given that the version of the Facilities and Benefits Policy, as amended in 2014, retained the Mayor's entitlement to "*administrative assistance associated with functions of the office of Mayor*", one might conclude that the "administrative assistance" would be considered to encompass the provision of secretarial services. In other words, one might conclude that there was no intention to take away from the Mayor the entitlement to the provision of secretarial services. If so, the policy amendment was not significant. However, the amendment was not stated to be an inconsequential amendment made to avoid duplication. Consequently, there is some risk that the amendment could be

interpreted as having deliberately taken away the Mayor's entitlement to secretarial services.

153. Nothing emerges from the evidence to suggest there is any justification for the removal of the Mayor's entitlement to secretarial services.

154. In my opinion the Council should be required to amend this policy to re-instate an express entitlement that the Mayor be provided with secretarial services associated with the office of Mayor.

CHANGES TO MAYOR'S OFFICE ACCOMMODATION AND SECURITY ACCESS

Background

155. In two stages, the first in October 2014 and the second in 2015, significant changes were made to office accommodation arrangements of the Mayor, the General Manager their respective EAs and certain senior executive staff of the Council.

156. Prior to these changes being made, the longstanding position was that the Mayor and the General Manager and their respective Executive Assistants (**EAs**) worked closely together, liaised frequently and moved freely within a working area on the ground floor of the main Council building known as the "Ground Floor Executive Area".

157. The Ground Floor Executive Area comprised the General Manager's office, the Mayor's office; a conference room, an open working area shared by the respective EAs of the Mayor and General Manager and in which each had a work station; and the offices of the Legal Officer and the Director Corporate Services. The Mayor's office was located next to the General Manager's office and there was an interconnecting door between their two offices. The Mayor's EA and the General Manager's EA each had access to the diary of the Mayor and the General Manager.

158. This physical arrangement facilitated day to day liaison between the Mayor and General Manager, which was consistent with the fact that the Mayor had the specific responsibility for the day to day oversight of and liaison with the General Manager.

159. The first stage of the office accommodation works involved changes being made to the Ground Floor Executive Area and to the Mayor's security card access to staff areas. These works were completed in October 2014.

160. The second stage of the office accommodation works was carried out in 2015. These works relevantly involved the relocation of the General Manager and his EA and certain senior corporate staff from the Ground Floor Executive Area to a newly fitted out Executive Suite in a different building in the Council complex (i.e., level 1 of the Carole

Baker Building). This new Executive Suite in the Carole Baker Building contained the General Manager's office, a meeting room, a work station for the General Manager's EA; an office each for the Chief Operating Officer and the Legal Officer and a waiting area.

The Organisational Re-alignment Report: June 2014

161. At the Council meeting of 23 June 2014, the Council considered a report authored by Mr Winn entitled "*Organisational Realignment*" (**Organisational Realignment Report**). The report stated that the intention of the organisational realignment was to group the key policy staff in a single new Division (referred to as the City Strategy Division) and to seek to group together functions of tendering and contracts and service delivery in a Division reporting directly to the General Manager. The Council resolved at its meeting of 23 June 2014 "that Council adopt organisational realignment structure".

162. The Organisational Realignment Report did not foreshadow any building works or changes to office accommodation.

The Office Accommodation Report: August 2014

163. At the Council meeting of 18 August 2014, a report entitled "*Council Chambers and Office Accommodation*" (**Office Accommodation Report**) was presented. The report was stated to respond to the Council resolution of 23 June 2014 adopting the organisational re-alignment. It was stated in the report that "[i]t is proposed therefore to commence a staged series of office fitouts and alterations commencing with the ground floor Executive Area, Level 1 of the Carole Baker Building ...".

164. The Office Accommodation Report outlined the proposed alterations to the Ground Floor Executive Area (which it referred to as "**Project 1**") and identified in broad terms the proposed fit out to Level 1 of the Carole Baker Building to house the proposed new Executive Suite (which it referred to as "**Project 4**"). One of the recommendations put to the Council meeting was that Project 1 proceed.

165. The Office Accommodation Report did not attach detailed plans. However, reduced copies of the two floor plans of the Ground Floor Executive Area - existing and proposed were extracted and placed within the text of the report. Relevantly for present purposes these floor plans indicated that the changes included:

- (a) moving the Mayor's office from its then current location next to the General Manager's office down the corridor to where the offices of the Legal Officer and Director of Corporate Services had been so that the Mayor's office was separated from the General Manager's office;

- (b) moving the office of the Legal Officer into the office that had formerly been the Mayor's office next to the General Manager's office;
- (c) moving the work station of the Mayor's EA from its then current location in a shared workspace with the General Manager's EA down the corridor into a workspace outside the Mayor's office so that the workspace previously shared by the two EAs was to be occupied only by the General Manager's EA;
- (d) installing some new plasterboard walls where some openings had previously been located.

166. At the meeting of 18 August 2014, Ms Gibson indicated that she opposed the changes. She moved an amendment that her office remain where it was and that the funds allocated for these proposed works be directed elsewhere. However, on the vote of the Majority Bloc, the Council resolved that Project 1 proceed.

The Mayor was not adequately consulted about the proposed changes

167. Ms Gibson gave evidence that she was not aware of the nature of the proposed changes to the Ground Floor Executive Area and did not know Mr Winn was proposing, to move his office to the Carole Baker Building until she read the Office Accommodation Report in the agenda papers for the 18 August 2014 Council meeting. She stated:

...I was reading these reports on the weekend at home and I saw this and I nearly fell off my sofa. Here was the general manager proposing to change an arrangement that had existed for about 149 years without talking to me or asking if I thought it was a good idea.

168. It was common ground between Mr Winn and Ms Gibson and corroborated by Mr Ellis (Council's Director of Community and Library Services) that, on some prior occasion, Ms Gibson, Mr Winn and Mr Ellis had participated in a discussion about proposed renovations to the offices in the Ground Floor Executive Area and there had been a 'walk around' of that area. It is common ground that this was not a walk around of the Carole Baker Building but only of the Ground Floor Executive Area.

169. Ms Gibson said that those discussions were vague, she was not shown any plans, no one explained the proposed layout to her and there was no discussion about the proposal for the General Manager to relocate to a new Executive Suite in the Carole Baker Building with his EA and senior corporate staff.

170. Mr Winn denied that Ms Gibson had not been consulted. His evidence was that the Mayor had complained about the quality of the office accommodation in the Ground Floor Executive Area and had initially supported it being renovated. Mr Winn asserted that at some stage along the journey, Ms Gibson changed her mind. Mr Winn's evidence was

that on the occasion he discussed the matter with Ms Gibson in the presence of Mr Ellis, the discussion included the proposal to relocate himself and his corporate team to a new Executive Suite in the Carole Baker Building. He gave evidence that, during this discussion, he showed Ms Gibson A4 plans of the proposed changes to the Ground Floor Executive Area that were available at that stage. He said “*there might not have been plans even drawn up at that stage for Carole Baker, but it was part of the discussion, the plans that were shown. The Mayor was fully aware of the overall program*”.

171. Mr Ellis, the Council’s Director of Community and Library Services, gave evidence about this discussion and walk around in which he also took some part. Mr Ellis’ evidence was not consistent with the evidence of Mr Winn. Mr Ellis’ evidence was to the effect that the discussions were limited to proposed renovations to the Ground Floor Executive Area and they did not discuss the proposed relocation of Mr Winn and his EA to the Carole Baker Building.

172. Mr Ellis also gave this evidence:

Q. Did you have plans with you when you had those discussions with Ms Gibson and Mr Winn?

A. No. It was all about people and archives and whether I was happy or not.

173. In relation to the ambit of the discussion that occurred during this ‘walk around’ meeting of sorts attended by Ms Gibson, Mr Ellis and Mr Winn, I prefer the evidence of Ms Gibson and Mr Ellis to the evidence of Mr Winn. I am satisfied that Ms Gibson was consulted in a general way about proposed renovations to the Ground Floor Executive Area, but I am satisfied that she was not shown any plans or consulted about the detail of the proposed new layout of the Ground Floor Executive Area.

174. I am also satisfied that there was no discussion on this occasion of the proposed second phase of works involving the relocation of Mr Winn, his EA, the Chief Operating Officer and the Legal Officer to the Carole Baker Building. I accept Ms Gibson’s evidence that she found out about this for the first time when she read the agenda papers for the 18 August 2014 meeting over the weekend preceding that meeting.

Ms Gibson declines to co-operate in the face of the 18 August 2014 resolution

175. Despite the Council having resolved on 18 August 2016 that Project 1 (the works to the Ground Floor Executive Area) proceed, subsequent email correspondence discloses that Ms Gibson remained defiant and continued to express her refusal to allow her office to be moved. She expressly indicated that she did not give anyone authority to move or

pack up her personal effects. She also left open the threat of taking legal action if anyone did move her personal effects.

176. There were a series of emails in the period from 11 September 2014 to 15 October 2014 from which it is clear that Ms Gibson was repeatedly informed that the relocation of her office was imminent and that she should pack up any personal effects to facilitate the move. It was equally clear that Ms Gibson was maintaining a position that nobody was authorised to move her personal effects.

177. Notwithstanding Ms Gibson's legitimate complaint about the absence of meaningful consultation, the fact is that the Council had passed a resolution at its meeting of 18 August 2014 to implement the office accommodation changes in the Ground Floor Executive Area. It follows that the position being taken by Ms Gibson in this regard was both untenable and inappropriate. She was required to co-operate in the implementation of the resolution.

The relocation of Ms Gibson's office while she was away on 21 October 2014

178. Contractors moved Ms Gibson's furniture and personal effects from her old office to her new office on 21 October 2014, while Ms Gibson was attending the annual conference of Local Government NSW in Coffs Harbour. She returned to work on the morning of 22 October 2014 to find that her furniture had been moved from her old office to her new office and that her personal effects had been stacked into boxes in her new office.

179. Ms Gibson contends that her personal effects were packed in a careless way and this is consistent with the evidence of Ms Ravn and the video footage taken by Ms Gibson's daughter, Dr Drummond, on 22 October 2014.

180. When asked by Counsel assisting what effect this had on her, Ms Gibson said:

It caused me an enormous physical and mental distress. It was the most invasive thing I'd ever had done in my life. I felt as though my privacy had been violated, it made me feel just powerless, unwanted. I couldn't believe that someone who had been elected mayor would be treated this way. I kept saying to myself, "What would our residents think? What would our residents think if they could see the state of this office?" ... I was under enormous stress and workplace pressure, and if it hadn't been for the care and support of my partner and my family and the kindness of several staff members, I probably would have ended up having some sort of nervous breakdown.

181. Notwithstanding that I accept Ms Gibson was genuinely upset by the movement of her office against her will and by how it was done, the Council had resolved to implement this change at its meeting of 18 August 2014. Mr Winn had an obligation to implement the

resolution and he repeatedly reminded Ms Gibson the move was going to take place and that she should pack up her personal effects to facilitate it.

182. In light of Ms Gibson's continuing, unreasonable refusal to allow this resolution to be implemented in the face of the reminders she received, it is neither surprising, nor inappropriate in my opinion, that her personal effects were moved in her absence in order to implement the Council resolution. Although greater care could undoubtedly have been taken about the manner in which her personal effects were handled, contractors are not renowned for their sensitivity in such respects. The only reason they moved Ms Gibson's personal effects was because she refused to move them herself.

22 October 2014: Mr Winn arranges for Council Rangers to attend the chambers

183. During the course of the day on 22 October 2014, Ms Gibson was upset and remained defiant in light of the way in which her office and personal effects had been forced on her against her will. Ms Byok (who was Mr Winn's EA) was present and saw that Ms Gibson was upset and that, throughout the day, without any assistance, Ms Gibson attempted to move some furniture back to her old office. Ms Byok was distressed to see the Mayor upset and attempting to move shelves and furniture in this way.

184. Mr Winn left the Council at about 5pm. Before he left, he arranged for rangers to attend the Council building.

185. Mr Winn was made aware during the day that Ms Gibson's partner, Dr Williams, was going to attend the chambers after he finished work. Mr Winn says the reason he arranged for the rangers to attend was in response to Ms Gibson telling him during the day that her partner, Dr Williams was going to come to the Council and assist her in moving her furniture back. Mr Winn's rationale for their attendance was to prevent furniture being moved for work, health and safety reasons. Mr Winn said, "*Obviously that was going to be problematic, so it was made clear that Mr Williams shouldn't come into the office and move furniture around. That was what the rangers were there to prevent*".

186. Ms Gibson denies she told Mr Winn that she and her partner were going to move her furniture back. Nevertheless, I am satisfied that Mr Winn arranged for rangers to attend because he wished to enforce the decision that had been made by ensuring that Dr Williams would not become engaged in moving furniture back to her old office. He may also have had a concern which he faintly pressed that personnel from the media might attend and to ensure that they did not enter the building after hours.

187. Ms Gibson complains about the fact that Mr Winn, having arranged for rangers to attend, then left to go home. Mr Winn says that he did so to avoid any possible direct interaction

with Dr Williams. In my opinion, Mr Winn was justified in taking that approach and is not to be criticised for not having remained at the Council chambers.

188. Ms Gibson's evidence was that there were three rangers in attendance before Mr Winn left and that they were at that stage sitting outside her office. Soon after Mr Winn left an additional two rangers attended. This meant that there were a total of five uniformed rangers present at the Council, apparently for the purpose of preventing Dr Williams from helping Ms Gibson to move furniture back into her old office.

189. Dr Williams's evidence was that Ms Gibson was very upset and had been crying so when he left his work, he came directly to the Council chambers to comfort Ms Gibson and provide her with some support. He said she arrived about 4:40pm to 5:30pm.

190. When he arrived and entered through the front entry door, he faced five uniformed rangers who had formed a line preventing him from getting access further into the council building. Behind them he could see Ms Gibson, upset and crying. Dr Williams's evidence was that the Rangers "*were physically disbarring me from even being able to communicate with Jilly. It was an impossible situation*". Dr Williams added that "*it was an agitated situation, yeah. It was a confrontational situation that you would not like to be part of*". He said he was "*rather stunned*" and "*felt extraordinarily threatened*".

191. Dr Williams said that one of the other rangers had said to him, "*You lay a finger on any of this stuff here and I've been ordered to physically eject you. You will be out of here*". Dr Williams said that these words were spoken in a loud officious tone. Evidently the reference by this Ranger to "*any of this stuff here*" was a reference to the furniture and/or Ms Gibson's personal effects.

192. Fortunately, however, one of the Rangers, who had the appearance of being in charge (**Senior Ranger**) spoke civilly with Dr Williams and, as Dr Williams put it, "*he relented and said 'you may come in'. So I was able to pass the four or five gentlemen*". Dr Williams was then able to comfort and console Ms Gibson. He stayed with Ms Gibson for a period of about twenty minutes, gathering up a few of her things and then they left. The five rangers remained present throughout this time until they left.

193. I observed Dr Williams' demeanour closely when he gave this evidence. I accept his recollection of events was truthful and generally accurate and it was not contradicted by any other evidence.

194. Mr Winn's evidence was that he was not aware that there were five rangers present and that he had left it up to Mark Richardson, the Head Ranger to make the appropriate arrangements. I accept Mr Winn's evidence in this regard, which is consistent with a

statement of Mr Richardson provided to me belatedly by the Council Administration during the course of final address.

195. However, I consider the presence of uniformed rangers – whether three or five - lined up to physically prevent Dr Williams from entering past the front foyer of the Council was intimidating for Dr Williams. Had it not been for the maturity and civility displayed by both the Senior Ranger and Dr Williams, this tense situation could have escalated into something worse.

Dr Williams complaint and Mr Winn’s letter to Dr William’s employer

196. Dr Williams wrote to Mr Winn the following day by way of email which he copied to all of the councillors setting out his version of the events of the preceding evening and, among other things alleging that the action could be classed as “*intimidation of the highest order*” and alleging that it followed a *pattern of continued encroachment on the popularly elected mayor’s privileges, a process that is “undemocratic” and “unAustralian”*: Dr Williams, a lecturer at the University of Technology Sydney, signed his email “Dr Martin Williams, FCIM, School of Public Communications UTS”.

197. Three days later, Mr Winn wrote to both the Vice-Chancellor of the UTS and to the Head of Dr Williams’ School providing them with a copy of Dr Williams’ email, and alleging that “*Dr Williams’ version of events is fanciful and dishonest*” and complaining that it “*smack[ed] of racism*”, as Dr Williams was aware that Mr Winn was not originally from Australia. This letter was written on Council letterhead and signed by Mr Winn as the General Manager. Dr Williams was affronted by this correspondence being sent by Mr Winn to his Head of School and Vice Chancellor and submits it was improper.

198. I was troubled by the terms of the correspondence sent by Mr Winn as General Manager, to Dr Williams’ Head of School and Vice Chancellor. However, as Counsel assisting noted, the actual correspondence did not become available to the Inquiry until after Mr Winn gave his evidence and thus the terms of it was not put to him. In the circumstances, I am not sufficiently confident that other evidence before the Inquiry necessarily allows me to properly understand all aspects of this particular correspondence. Accordingly, I make no findings about this correspondence, except to say that it demonstrates that the conflict between Mr Winn and Ms Gibson had by this stage extended to a conflict also between Mr Winn and Ms Gibson’s partner, highlighting the serious level of dysfunctionality in the working relationship between the Mayor and the General Manager at this time.

Restrictions imposed on the Mayor's security access entitlements

199. The Council controls entry into the Council buildings and internal access by the provision of 'Cardex' electronic transponder keys (security access cards) to its staff and councillors, including the Mayor. Electronic locking mechanisms can be affixed to any door so that the door is locked by default and is able to be unlocked only by scanning a security card with programmed access over the electronic locking mechanism. Each security access card is programmed electronically and that programming will determine what doors the card can unlock.
200. Prior to October 2014, Ms Gibson and previous mayors of North Sydney Council were able to physically access the working areas of the General Manager, his EA, and other council staff, including the Directors and the Legal Officer.
201. When the office accommodation works were carried out in October 2014, new doors fixed with electronic locking mechanisms were installed in various locations within Ground Floor Executive Area, including in the corridor controlling access into working area housing the office of the General Manager, the work station of his EA and the office of the Legal Officer. After Ms Gibson returned from her conference on 22 October 2014, she could no longer enter the main Council building from the McLaren St entry and she could not access the working areas of the General Manager his EA and other staff in the Ground Floor Executive Area side, because her security access card could not unlock the doors. The Mayor was, in effect, locked out of that area.
202. Ms Gibson's evidence was that she was not told about changes to the security access arrangements as part of the renovations. She stated, "*I wasn't told anything about security doors, locked doors, extra swipe cards, changes of entry points to the building, given no information whatsoever*". I accept this evidence.
203. I find that the first notification Ms Gibson received of the security access restrictions imposed on her was by Mr Winn's email of the morning of 22 October 2014, in which, having notified her that the accommodation changes had now taken place, he added "*Please note that access to the staff areas will not be available to Councillors*". Although Mr Winn referred to "Councillors", the position was that this change was one which principally affected the Mayor. In an email he sent later that evening, Mr Winn stated "*Access to the new secured staff area will be properly restricted*".
204. In relation to access change that prevented Ms Gibson from accessing the Council building through the McLaren St entry on 22 October 2014, that access was restored within two days and was of no real significance (until a year later, when Ms Gibson's access was again restricted for a period of three months). Of more significance for

present purposes were the permanent internal access changes which prevented Ms Gibson from having physical access to the General Manager, his EA, the Council Directors and the Legal Officer.

205. These security access changes were not foreshadowed in the Organisational Realignment Report or the Office Accommodation Report and were not foreshadowed in any proposal that had hitherto come before governing body of the Council.

206. The details of the works involving the placement of new doors in the corridors of the Ground Floor Executive Area and the specifications regarding the installation of Cardex security sensors to those new doors were not included in the architectural plans for the proposed works. They were later added by way of hand written notations marked on one of the plans by Mr Butterworth. Mr Butterworth's evidence was that those details were added by him on the verbal instructions of Mr Winn.

207. The associated security access programming undertaken in October 2014 was undertaken by the Council's Property Asset Manager, Mr Albert Lo who carried out such programming changes only when directed. His evidence was that in this instance he would have taken instructions from Mr Butterworth or Mr McCreanor, but more likely from Mr Butterworth as he was the one in charge of this project. I am satisfied from the evidence of Mr Butterworth and Mr Lo that Mr Lo took his instructions about the security access programming of the doors in relation to this project from Mr Butterworth.

208. In turn, it is clear from the evidence of Mr Butterworth that he received directions about the project from Mr Winn and that those directions were for the most part verbal. When Mr Butterworth was asked if he had any role in determining whether a door would have a security system, he said *"Absolutely not. The GM was the one who directed that verbally."*

209. Accordingly, I am satisfied that the decisions to affix the new doors within the Ground Floor Executive Area in the selected locations, to install security sensors on them and to have them programmed so that the Mayor's security access card could not unlock them were Mr Winn's decisions. I am fortified in that conclusion by the terms of Mr Winn's email of 22 October 2014 in which he stated *"Please note that access to the staff areas will not be available to Councillors"* and *"Access to the new secured staff area will be properly restricted"*.

210. The evidence does not disclose any sufficient justification for imposing these restrictions on the Mayor's access into and within the Council buildings. The previous longstanding provision to the Mayor of North Sydney Council of the less restricted access entitlements

which they previously enjoyed is consonant with the role of the Mayor and does not conflict with the obligation on the Mayor not to direct staff in the carrying out of their functions. This access should be restored to the Mayor.

The self-closing security door fitted to the Mayor's new office

211. The October 2014 office accommodation works included the installation of a self-closing solid door to the Mayor's office affixed with an electronic locking mechanism of which the Office Accommodation Report gave no indication. A photo of the door was tendered to the Inquiry and I inspected the door at the Council chambers. The door in question is a heavy, solid door extending from floor to ceiling, without any glass panes and with a metal ventilation grille of sorts near its base. This door was designed to close and lock automatically. If propped open for more than a minute, it would emit a persistent electronic beeping sound, until closed.

212. Subsequently, in an email to Mr Winn of 23 October 2014, Ms Gibson said:

The new suite is in an isolated section of the building. There is a heavy, solid security door which beeps nonstop if the door is left open. I was never consulted about this.

213. In a further email later on 23 October 2014, Ms Gibson said:

There is no way I can work in the new office ... The door beeps constantly. I cannot work locked behind a heavy security door.

214. Mr Winn replied by email of 24 October 2014, in which he relevantly stated:

The door security is in place to help address your numerous accusations and stated concerns of things being removed from your office. The door to your office does not beep when shut.

215. This email is consistent with Mr Winn being a party to the decision to install this particular door with its particular security characteristics on the entry to Ms Gibson's office. It is true that Ms Gibson had previously raised concerns that certain items had been taken from her office. However, her concerns could have been addressed by the simple provision of a lock fitted to her door and did not require the door to be a heavy security door, designed to automatically shut, and remain shut. She gave evidence to the effect that, while she had asked for a lock to be put on her office door, she had not requested the electronic access arrangement that was made.

216. Sometime later, the locking mechanism was reprogrammed so that the door could be propped open during normal office hours, but, outside normal office hours, the position remained that the door emitted a persistent electronic beeping sound if left open for more than a minute.

217. Ms Gibson's evidence was to the effect that the door was heavy and that she had to keep herself closed in her office, which made her feel claustrophobic. I am satisfied that the affixing of a solid self-closing security door of this type to an individual office is markedly out of step with modern office fitout arrangements.

218. Mr Winn initially agreed that the door fitted to the Mayor's office was a "special purpose" door, but he later suggested that "*Everybody's door had those swipes on them*". I do not accept this latter statement is correct. Ms Gibson, when asked whether at any time during the period she had been a councillor and mayor she had ever seen another door with these characteristics fitted to a person's office in North Sydney Council, said "absolutely not". Ms Gibson had been a councillor at North Sydney Council for 14 years or so when she gave this evidence. Mr Butterworth, having indicated that this door was like the doors fitted in the corridor as part of the 2014 office accommodation works, gave this evidence:

Q. What other office in North Sydney Council chambers, if I may ask, had a door that automatically closed when it had a single person inside it

A. I can't recall one to mind.

219. I am satisfied that Mr Butterworth would have recalled such a door being affixed to any other individual office had one existed, having been responsible for Council's building and fit-out projects since 1997.

220. Accordingly, I am satisfied that, although the door affixed to the Mayor's office is not unlike other doors controlling external entry into the Council building and not unlike some doors controlling internal corridor access, there is no door like it fitted to any other individual's office in the Council chambers.

221. When Mr Winn was asked whether the choice of the type of door affixed to the Mayor's office was his decision, he said:

I don't recall. Ultimately decisions on the doors in that whole area would have been part of the project team. I wouldn't have got down to that level of fine grain. Although those swipe doors were placed in a number of places. There had been issues arising where the mayor made accusations of things going missing from her office, and had asked for a lockable door. I recall that from the past, but in terms of what type of door was put here, I wouldn't have had anything to do with that. That would have been a fine grain issue.

222. However, on consideration of all the evidence, I am satisfied the "special purpose", door fitted to Ms Gibson's office was chosen at the direction of Mr Winn. I have already adverted to the evidence of Mr Butterworth that he received directions about the project from Mr Winn and that those directions were for the most part verbal and that, when Mr

Butterworth was asked if he had any role in determining whether a door would have a security system, he said *“Absolutely not. The GM was the one who directed that verbally.”*

223. When specifically questioned about who had made a decision to fit that type of door to the Mayor’s office, Mr Butterworth gave the following evidence:

Q. I’m trying to understand who made a decision to fit that type of door to the mayor’s office.

A. I honestly don’t recall.

Q. So would you have given the instructions – obviously the contractors wouldn’t have just decided to do, so someone must have given them directions; is that right?

A. That’s quite correct. I would have been told but I truthfully cannot sit here now and remember who told me what in regard to that.

Q. Did you receive instructions from the general manager about any aspects of the detailed works?

A. The majority, in fact almost exclusively, his directions were all verbal at this time. When I went back recently through my emails at the time I had next to no emails from him. He would tend to come and see me and speak to me and say he wanted this doing, that doing, or something else doing.

Q. But he did give you verbal instructions at that time in relation to some of the works?

A. Yes, he did. Yes.

Q. I’m just trying to understand at the moment, in the absence of any email, I take it that you wouldn’t have decided off your own bat what sort of door to fit on to the mayor’s office?

A. Absolutely no.

Q. It’s a possibility, is it, that was on a verbal instruction from the general manager?

A. It might have been in consultation with the mayor. I truthfully don’t remember.

224. The possibility mooted by Mr Butterworth that the decision might have been in consultation with the mayor is properly to be discounted. It is contrary to the evidence of Ms Gibson and inconsistent with the contemporaneous email exchanges between Ms Gibson and Mr Winn. Given the balance of Mr Butterworth’s evidence and the absence of any evidence that he received any instructions about these works from any other person, I am satisfied that it was at Mr Winn’s direction this door was fitted.

2015 Relocation of GM’s office.

225. The second stage of the relevant office accommodation works (“Project 4’ as described in the Office Accommodation Report) was carried out in 2015. These works relevantly involved the relocation of the General Manager, his EA, the Chief Operating Officer and

the Legal Officer to a newly fitted out Executive Suite on level 1 of the Carole Baker Building in a different part of the Council complex.

226. The Mayor's security card did not permit her to have access to the Executive Suite in the Carole Baker Building.

The effects of the office accommodation changes on the Mayor

227. Ms Gibson's evidence was that the effect of her physical separation from the General Manager was 'grave'. She said:

I no longer saw him. I no longer saw him. Weeks would go by without me even seeing him. There were no opportunities for casual exchanges of information. With the previous general manager, Penny Holloway, a lot of information would happen as you run into each other. ... We'd exchange important information all the time, as workmates do, just in brief conversations. As soon as the general manager moved, all of those opportunities ceased. There were no opportunities for him to give me information. It excluded any opportunities for us to perhaps work on improving our workplace relationship. There was no opportunity for any casual exchanges. ... I had no idea when he was in his office, when he came in, when he left, I was totally out of the loop. It had enormous consequences of my ability to – how could I exercise the functions of the council between meetings when I was totally isolated from the organisation? I didn't know what was happening.

228. Ms Ravn, who was Ms Gibson's EA throughout this period until she left the Council in October 2015, gave this evidence:

Q. When there was the change, and the general manager's office moved to the Carole Baker building, did the physical separation have any effect on your ability to do your job?

A. Not my ability to do my job, but I saw it as a deliberate policy to isolate the mayor and me as her EA. We were very much alone down there. I had shared an office before with the general manager's EA, Vee, and therefore we had been able to collaborate together. We could share, we could work out, by talking to each other, when would be a good time for the two of them to meet and that sort of thing. We had a good working relationship. As with the previous GM, it meant the mayor could always chat to the GM. Of course, with the separation, that was no longer possible because we were isolated down there. The mayor is a very sociable person. She likes to talk to people. She was used to chatting to anybody from the people on the front desk in customer service, to planners that she might bump into, or anybody, and she felt very much constrained and that she wasn't allowed to just chat with anybody anymore and that she'd been cut off.

229. Ms Byok gave this evidence about the effect of the separation :

Q. When you moved from being in the shared space with Ms Ravn, do you think that had any effect on your ability to work with Ms Ravn?

A. Yes. Well, the general manager's EA and the mayor's EA often worked very closely together and in our work, we crossed paths. It was always helpful to be in the same office, I felt, because we could hear what the other was saying. We were actually sitting behind each other and often things that she would say would help me and vice versa, carrying out my duties.

...

Q. If you can think of how the physical separation between the two of you, how it affected your ability to function?

A. I did notice a difference in that I lost that additional information and additional knowledge that the EA had, which I missed, because I was taken away from a hub into an ivory tower.

230. Mr Winn acknowledged that moving the executive area was a change, but he said that the trip between the executive suite and mayoral suite could be traversed in 'about a minute' and the separation was not 'geographically...insurmountable'. However, in giving this evidence, Mr Winn failed to come to terms with the significance of the fact that Ms Gibson, while readily able to walk the distance from her office over to the new Executive Suite, could not access that area.

231. Mr Winn asserted that, notwithstanding the security restrictions placed on the Mayor's access to him, there was "*still the opportunity, as happened on numerous occasions for the mayor and I to meet, discuss things, as we did*". However, that evidence does not sit with the strong body of evidence that, around this time, Mr Winn took a position of refusing to meet with the Mayor except once a week on Mondays and only if an agenda was provided the previous Friday and only on the basis that one or more other senior staff attended with him.

232. I am satisfied that the carrying out of these office accommodation works and the imposition of the associated security access restrictions had the effect of impeding the day to day liaison between the Mayor and the General Manager and between their respective EAs.

233. I am also satisfied the works and associated security access restrictions had the effect of isolating the Mayor in what was, in effect, her workplace. As a result of those works, Ms Gibson and her EA were left in a work space, comprising the Mayor's office and the adjacent workstation and a short section of corridor outside with automatically closing doors on either side, visually and physically shut off from the other workspaces in the Council buildings.

234. Ms Gibson's isolation was exacerbated during the period after her temporary EA, Ms Asker left on 18 December 2015 upon the expiration of her 3 month contract. Ms Gibson said that this left her feeling more isolated in her office. She gave this evidence about it:

When I don't have an EA, I'm sitting here absolutely isolated. I can't see a person. Commissioner, I'm a Sagittarius and I need lots of contact with other people. I'm very social, and I just thrive on being in a workplace where there's other people around. I found being isolated was the thing that had the most negative effects on my health and well-being, I have to say.

235. In my opinion, although it is not possible to measure the effects of the Mayor's physical isolation on her capacity to carry out her role and functions, the evidence satisfies me the effect has been significantly adverse. This remains an issue in my mind and I consider reasonable steps should be taken to ensure that the Mayor and her EA are not adversely affected by physical isolation.

DECISIONS AFFECTING THE ROLE OF THE MAYOR'S EA

236. It has been a longstanding position at North Sydney Council that the Mayor is provided with the support of an Executive Assistant (**EA**) employed by the Council. This is reflected in the Council's Facilities and Benefits Policy.

237. The conflict in the relationship between Mr Winn and Ms Gibson had a significant effect on the performance of the EA role by Ms Kristine Ravn, who was employed as the Mayor's EA from February 2013 until about September 2015.

The evidence of Ms Ravn

238. When asked why she left the employment of the Council, Ms Ravn gave evidence that,

"I was almost having a nervous breakdown and basically I was caught in the middle of a very difficult situation between the Mayor and the General Manager and the councillors opposing and it was...I was in a cross-fire situation and, in the end, I just – it was affecting my mental health and I therefore decided to negotiate an exit – which I'd been pushed in that direction anyway. There was a lot of pressure on me".

239. When asked from whom this pressure came, Ms Ravn said "*The pressure was coming from the General Manager.*"

240. When asked what form that pressure took, Ms Ravn said:

It took lots of issues where I was called before human resources and asked to explain myself over trivial little matters. I faced a lot of - I was constantly questioned about the mayor and what she was doing and asked to do things that would be - I was asked to maintain a neutral

position, but at the same time, I was asked to constantly to do things that I considered to be spying on the mayor.

I was asked for documents that I didn't – that I thought were confidential documents that she shouldn't have to show him. He questioned my own - I was given both a formal warning and a formal caution during my time there for failing to record documents properly in the electronic records system.

241. Prior to Mr Winn becoming Acting General Manager, Ms Ravn had been Ms Gibson's EA for a period of eight months or so in 2013 when Ms Penny Holloway was still the General Manager. Of the period prior to Mr Winn's appointment, Ms Ravn indicated that Ms Holloway would talk to her to get a sense of what the Mayor was doing, *"but not in this sort of spying and "What is she doing wrong" and "She's not allowed to do this" and "You're not allowed to do this." It wasn't threatening or intimidating in any way."*

242. Ms Ravn's evidence was to the effect that, after Mr Winn became General Manager, in her first meeting with Mr Winn in March 2014 Mr Winn reminded her that he was her boss and not the mayor and that she worked for Council and not the mayor *"and he gave me a big talking to about that"*.

243. In relation to the directions Ms Ravn received about her role after Mr Winn became General Manager, Ms Ravn said *"As I said, there was this idea that I should maintain neutrality, but it was quite obvious to me that I was actually supposed to take a side and I was supposed to take the side of the Council and I was supposed to take the side of the General Manager against the Mayor"*.

244. As a consequence of such discussions and directions, Ms Ravn said *"I was feeling very unclear about my position and this, "You work for council and not for the mayor", which he kept reminding me of, but I was her EA"*. The confusion this created prompted Ms Ravn to request that Mr Winn provide her with some sort of written directions that were a little bit more specific than her position description.

The August 2014 Memorandum

245. Mr Winn agreed to provide these written directions to Ms Ravn clarifying her role as the Mayor's EA and he did so by way of a confidential memorandum to Ms Ravn dated 26 August 2014 entitled *"Clarification of Role"* (**August 2014 Memorandum**). In the August 2014 Memorandum, Mr Winn set out the terms of s 226 of the LG Act, which prescribes the statutory role of the Mayor, and of s 335 of the Act, which sets out the role of the General Manager. However, the memorandum did not make mention of the circumstance which prevailed at that time that the Mayor had the delegated responsibility for day to day oversight of and liaison with the General Manager.

246. In the memorandum Mr Winn stated, among other things:

You are a member of my team providing services to the Mayor.

... you are expected to ... comply with any lawful directions given by your manager, which in your case is me.

247. Under the heading "*Duties*" Mr Winn stated:

You are an employee of the Council under the direction of the General Manager or other manager as delegated by me. You are not employed by the Mayor. Your role is to provide an effective and efficient administrative support service under the direction of your manager. 'The support' referred to here is not intended/ meant to absorb you into the personal/political "world" of the person to whom you provide the service. In fact your work for the Mayor is to only be involved in matters that are work related, not personal/political. For example, photocopying material for a Mayoral Minute is work related whereas photocopying material for personal matters (eg between the Mayor and other Councillors) is not work related.

248. Under a heading "*Seeking Advice and Information from Various Council Staff in order to address Mayoral Matters*" Mr Winn stated:

I expect that any interactions with your fellow staff members are kept between yourselves without copying in the Mayor. If there are matters that require intervention then you are to refer them to your manager. The Mayor should only receive the end product of your request for information/advice. The internal mechanism for obtaining the information/ advice is not the responsibility of the Mayor. Remember, the Mayor is not there to run the business operations of the Council. Of course if the Mayor requests a progress report, then you are welcome to provide her with the status of your request/s but not any road blocks you may come across. As discussed with you in recent times if road blocks do occur then you are to discuss those issues with your manager, not the Mayor.

The references in this part of the memorandum to "*your manager*" are references to Mr Winn, as indicated earlier in the memorandum.

249. Under the heading "*Lawful Directions/Instructions*" Mr Winn stated, among other things:

There is nothing secretive about any of my instructions to you but unfortunately in the world of politics any lawful instruction I may give can be misunderstood or misconstrued depending on the political climate of the day. Given this, while there is nothing secretive about any of my instructions to you, it would be best not to rely anything that passes between us to the Mayor or any other Councillor unless it is in writing or I have specifically instructed you to do so.

250. Under the heading "*Communications and Interaction with Mayor*" Mr Winn stated:

Any/all work related matters in your communication/interaction with the Mayor are not confidential from your Manager.

251. In relation to that particular statement, Ms Ravn said “[a]nd of course he was my manager. Now obviously he says “work related matters”, but the problem there was trying to separate out the two.”

252. Under the heading “Meetings Between the Mayor and the General Manager”, Mr Winn stated:

If you are in attendance at any of these meetings then your role is limited to being that of the minute taker and not as an active participant, witness or support person for either me or the Mayor. Again I feel the need to restate that your role is not to provide personal support to the Mayor but only administrative support as defined by your manager [ie Mr Winn]. You are welcome, however, to seek clarification of matters for minute taking purposes.

253. Aspects of the August 2014 Memorandum caused Mr Ravn some difficulty. In respect of the direction in the memorandum that “*the support is supposed to be business related not personal or political*” Ms Ravn said:

So I was often grilled about whether something – I had to produce a document showing what personal work I’d done for the Mayor and I had to try and work out what that was. And the “political” one was even more complicated.

He was on at me at a lot of the time about what I saved in ECM because of course anything that was saved in ECM as General Manager he had access to. Therefore it worried me when, for instance, the Mayor wrote several submissions to the Office of Local Government in response to the suspension notice – the notice of intention to suspend and the PIO, and whether or not she was supposed to use me or not to do that. I was told that she shouldn’t have, she should have done it personally from home and all that sort of thing. But because I had done it and because it went out under the Mayor, he kept demanding to see those submissions and my argument was well his submissions weren’t available for her to see, nor anybody else’s, but he wanted to see hers all of the time.

The references in this part of the memorandum to “ECM” are references to the Council’s electronic record keeping database.

254. Ms Ravn said that Mr Winn promised her that he would give the Mayor a copy of the August 2014 Memorandum, but that later, he said he had changed his mind and would not give it to her. Ms Ravn said that she told Mr Winn that the memo was about her role working as EA and it didn’t strike her as anything hugely secret, but Mr Winn would not let her show it to the Mayor.

255. Presumably Ms Gibson was aware of the existence of the August 2014 Memorandum at some time after it was issued to Ms Ravn, but not of its contents. Ms Gibson's evidence was that she had asked Mr Winn on a number of occasions to provide her with a copy of the memorandum, but that her requests had been denied. She said she read the memorandum for the first time in the immediate lead up to the Inquiry hearing (this was among the material circulated to Ms Gibson and other persons of interest after Ms Ravn had given her evidence).
256. Ms Ravn said that when she did not enter into the Council's record keeping system (ECM) Ms Gibson's personal submission to the Office of Local Government in response to the Minister's notice of intention to suspend the Council in September 2014 she (Ms Ravn) received a formal caution. Ms Ravn said that she was told that she should not have typed up Ms Gibson's submission, but that Ms Gibson should have done it personally from home. However, because Ms Ravn had typed it up and because it went out under the mayor "*he kept demanding to see those submissions, and my argument was well his submissions weren't available to her to see, nor were anybody else's, but he wanted to see hers all of the time.*"
257. Upon receiving a formal caution, Mr Ravn said Mr Winn told her that she was not to discuss the meeting at which she received the formal caution with the Mayor or to tell her about the outcome. Ms Ravn's said "*I was never allowed to tell her any of this. I was told 'you can't talk to the Mayor about personnel matters'*".
258. Ms Ravn recounted that there was a "*huge drama one day*" about her need to register any text messages that went between herself and the Mayor. Ms Ravn said that she and the Mayor exchanged a lot of text messages and that Mr Winn "*suddenly decided that they were part of records that had to be kept, even though most of them were to do with 'don't forget this meeting at 10' and 'don't wear that skirt because your wore it last week' or whatever*".
259. Ms Ravn also gave evidence that on 14 July 2014 Ms Winn had taken her out for a coffee and "*it was all a litany of complaints about the Mayor and her behaviour, especially at the ALGA conference in Canberra in mid-June, he was extremely critical about her*".
260. In relation to Mr Winn's instructions to Ms Ravn to take notes and keep records Ms Ravn gave this evidence:
- Q That is in fact what the GM told you, is that right?
- A Yes. I'm going to see if I can find that bit where he told me not to support her and get too close to her.

Q. With respect to him saying to you to take notes and to keep certain records of conversations, when was that that he asked you to do that?

A. Sometimes he would say to me - when I went to have meetings in his office and talk about things and I would start writing something, he'd say, "Don't write this down." Then at other times ... the first thing he did is come up to my desk and say, "Write that down". So I would then record pretty much anything bad he thought she'd done.

261. In my opinion Ms Ravn was a sincere and credible witness who, at the time of giving her evidence, still found recounting the events of her period as Ms Gibson's EA whilst Mr Winn was General Manager distressing. Her evidence was consistent with other objective material. For example, in May of 2015, Ms Ravn had spoken with a conduct reviewer who had made a file note of what Ms Ravn had said to him as follows:-

The GM has directed her not to support or get close to the Mayor. The GM has asked her to take notes and keep certain records of conversations with the Mayor. The GM has told her she reports to him and not to the Mayor.

262. Ms Ravn confirmed that this was a correct record of what she told the conduct reviewer.

Mr Winn's evidence re his directives to Ms Ravn and the August 2014 Memorandum

263. In relation to the circumstances which led to the August 2014 Memorandum being given to Ms Ravn, Mr Winn gave the following evidence:

Q. With respect to what you say, what were the issues that you say that had arisen which had led you to providing her with this memorandum?

A. There had been significant issues that had arisen with the performance of Ms Ravn and, in particular, with the failure to keep appropriate records. Procurement practice issue had arisen. I can't recall them all off the top of my head, but there were a number.

...

Q. In relation to that, what was your concern that she was failing to do?

A. Register the documents on the council ECN system.

Q. What documents was she failing to register?

A. There was a whole host of documents.

Q. What categories of documents, can you tell us?

A. There was a whole range of different pieces of communication that the mayor was having with other parties, with the OLG. I wasn't privy to all of the details on that. It was being managed by Mr McCreanor, but it was creating a problem for us in terms of the State Records Act. One of the important things that we have to do in council is make sure our records are kept fully up to date. Part of the challenge was, I believed, that Ms Gibson was

instructing Ms Ravn to keep them on a hard drive separate to the council system and ultimately things had to be kept on the council system, so that was a part what this clarification was about for Ms Ravn, so she understood what she had to do.

264. Mr Winn, when also asked about why it was that he chose to require Ms Ravn to keep the August 2014 Memorandum confidential from the Mayor, gave this evidence:

A. The discussion took place between myself, Mr McCreanor and the HR manager at the time. It was a staffing matter. It needed to be contained on that basis. So that was the reason. What I didn't want to have is something which was clearly a staffing matter exploding into the political arena, which a lot of these things invariably did. That was the reason why it was done in that way.

Q. With the benefit of hindsight, don't you think it would have been better if Ms Ravn was to make sure that she did what she was required to do by you, and for her capacity to make sure that she wasn't being asked by the mayor to do things that were inconsistent with what you were telling her, the best way for her to do it would be to provide the mayor or for you to tell the mayor that she'd been specifically instructed to do things in the way that you told her?

A. At the time, the decision was taken to deal with it in that way.

...

Q. Mr Winn, when you say the decision was taken to deal with the memorandum that way - that is, to keep it confidential - that was your decision?

A. Ultimately all decisions were mine, but I worked on the advice of both the HR manager at the time, Mr McCreanor, who was involved in that, and shortly thereafter - I may be wrong in terms of some of my timing - it was also decided we'd change the management reporting arrangements because of my serious concern that there was an attempt to put pressure on Ms Ravn to make a bullying complaint about me. That was all part of the same exercise to try to deal with the issues that were arising

265. When further examined, Mr Winn said that he had made the ultimate decision to keep the August 2014 Memorandum confidential, but only based on advice and after "*very, very careful consideration of the circumstances*". When asked whether the consideration of that matter was the subject of some written report or minuted meeting, Mr Winn suggested that there may well have been some correspondence about it between himself and either Mr McCreanor or Ms Highton (Human Resources Manager) but "there was no sort of formal report produced".

266. When the Council produced at my request all emails between Mr Winn, Mr McCreanor and Ms Highton in relation to the confidential memorandum during the period 1 August

2014 to 1 December 2014, no records were produced of any advice of any type given to Mr Winn in relation to Mr Winn's decision to refuse to disclose the memorandum to the Mayor or of any consideration of that decision. I infer there are no such documents.

My findings about the directives to Ms Ravn and the August 2014 Memorandum

267. I am satisfied that it was Mr Winn's decision to issue the August 2014 Memorandum to Ms Ravn and it was his decision to keep the Mayor ignorant of its contents.

268. As I see it, the General Manager's refusal to inform the Mayor of the August 2014 Memorandum was a significant omission to provide the Mayor with information which affected the performance of her functions. The directives included the imposition of restrictions as to what information the Mayor's EA was allowed to provide to the Mayor and what support she could give to the Mayor and the imposition of a requirement that the Mayor's EA disclose to the General Manager material that the Mayor regarded as being confidential in circumstances where that material related to matters in which Ms Gibson was in dispute with the General Manager and some of the Councillors. Whether Mr Winn was right or wrong in stipulating that such material was not to be kept confidential from him, Ms Gibson had a right to know about the directive.

269. The refusal of Mr Winn to provide the August 2014 Memorandum to Ms Gibson exemplifies the broader proposition that he did not provide her with adequate information about matters which concerned the mayoral role.

270. I am satisfied that Mr Winn's directives to Ms Ravn sought to pressure Ms Ravn to keep him fully informed of her communications with Ms Gibson - not to treat anything as confidential from him – but, on the other hand, not to tell Ms Gibson about Ms Ravn's communications with Mr Winn.

271. I am satisfied that Mr Winn took Ms Ravn out for a coffee on 14 July 2014 and spoke to her in a way that was openly critical of Ms Gibson.

272. I am satisfied the directives provided by Mr Winn to Ms Ravn, including, but not limited to, the directives in the August 2014 Memorandum, had the effect of placing pressure on Ms Ravn not to support Ms Gibson. In my opinion, these directives had the effect of diminishing the level of support which the Mayor's EA could confidently provide to the Mayor and tended to undermine their working relationship.

The commencement of Ms Asker's employment as the Mayor's EA

273. After Ms Ravn resigned, Ms Asker became the Mayor's EA on a temporary (3 month) contract and she remained in that position until 18 December 2015.

274. The circumstances in which Ms Asker commenced her duties as EA are worthy of note. Ms Gibson had not been consulted about Ms Asker's replacement and on the day Ms Asker commenced employment as Ms Gibson's EA, Ms Gibson did not know that a new EA was starting and had never heard of Ms Asker. Ms Gibson rang her office that morning expecting to speak to another member of staff who had been temporarily filling in and, when a voice she did not recognise answered her phone, Ms Gibson enquired who she was speaking to and the person replied "*This is Robyn*" to which Ms Gibson responded "*Sorry if I sound rude but Robyn who?*" Ms Asker then replied "*I'm Robyn Asker*" to which the Mayor responded "*Sorry no bells are ringing. Is Shari there?*" Ms Asker replied "*Oh no, I'm your new executive assistant*".

275. Ms Asker corroborates this evidence. Ms Asker said that when she came in as a temporary, Ms Gibson was even unaware or had not even been advised that she was getting a temporary assistant, which had shocked her. Ms Asker said "*On my first day, she was just absolutely bamboozled*".

276. Mr Winn explained that the fact that the Mayor was not aware that Ms Asker had started was the consequence of an administrative misunderstanding. Mr Winn's explanation about this was corroborated by an email of 17 December 2015 from Mr Curry to Mr Winn. I accept that evidence.

277. However, what this does highlight is the absence of any effective liaison between the General Manager and the Mayor. Ms Gibson's evidence was that, previously, when Ms Ravn had first been employed as her EA in February 2013, Ms Holloway, who was the General Manager at that time, consulted Ms Gibson about her needs for an EA; that there was then a recruitment process in relation to which Ms Gibson was "informed the whole way" and, after it had come down to a short list of candidates, Ms Holloway arranged for each of them to have a chat with Ms Gibson to allow Ms Gibson to express her preference. However, when it came to choosing a replacement for Ms Ravn as Ms Gibson's EA, Ms Gibson was not consulted or given the opportunity to have any input.

Ms Asker's evidence of Mr Winn being critical of Ms Gibson

278. Ms Asker gave evidence that, during her short orientation, Mr Winn took her up to his office for a "*get to know me type thing*". Ms Asker said that, during this conversation, Mr Winn had told her that the Mayor was "*whacky*" and that "*she didn't know what she was*

doing". Ms Asker said that Mr Winn had told her at this meeting that "*he had worked really hard for three years to get things as they were now with the Mayor being isolated*".

279. Mr Winn denied that he had said any such thing to Ms Asker. He said, "*I can't understand why Robyn would say things like that. It's not a terminology I would use and I certainly wouldn't be saying things like in any way, manner or form in any case*". Mr Winn said that there were issues with Ms Asker's employment at the end and "*Obviously she has a disgruntled view on the organisation but I certainly wouldn't have said any of those things*".

280. I have had regard to the submission made by Mr Whitlam QC on behalf of Mr Winn to the effect that I should not attach any weight to the evidence of Ms Asker by reason of the circumstances that she had an axe to grind given the Council's decision not to extend her 3 month contract, for which she blamed Mr Winn, and because Ms Asker made a written submission to the Inquiry.

281. I did not form any impression that Ms Asker's evidence was tailored or embellished on the basis that she had an axe to grind. She impressed me as a sincere and truthful witness. Nor do I draw any inference adverse to Ms Asker from the circumstance that she chose to make a written submission to the Inquiry.

282. Upon consideration of the contradictory evidence, I am not sufficiently confident to make any finding about the language or terminology Mr Winn employed in his discussion with Ms Asker. I do accept, however, that Mr Winn spoke to Ms Asker about Ms Gibson in a way which was critical of Ms Gibson shortly after Ms Asker had commenced employment as Ms Gibson's EA, just as he had spoken critically of Ms Gibson to Ms Ravn when he had taken Ms Ravn out for a coffee in July 2014.

283. In my opinion, for the General Manager to be openly critical of the Mayor to the Mayor's EAs was conduct which tended to undermine the working relationship between the Mayor and her EAs.

Ms Asker's employment is terminated: subsequent intermittent EA support for the Mayor

284. There had been an expectation on the part of Ms Gibson and Ms Asker that, at the conclusion of Ms Asker's 3 month contract, Ms Asker would continue in her role over the summer period. However, Ms Asker was told during the last week of her contract that she would not be kept on for any extended period. Evidently, when she was informed of this, she was instructed not to tell Ms Gibson that her contract would not be extended, but she told her anyway.

285. After Ms Asker's 3 month term finished on 18 December 2015, Ms Gibson was left without an EA for the remainder of December 2015 and for part of January and/or February 2016. Apart from this heightening Ms Gibson's sense of physical isolation, this diminished the support she received. Indeed Ms Gibson's evidence was that her daughters were helping her out informally by doing some secretarial work for her.

CONDUCT OF THE GOVERNING BODY RE 11 WOOLCOTT AVE, WAVERTON

286. Questions have been raised on the evidence and submissions as to whether the Mayor Councillors have acted in accordance with their duties under the LG Act and Code of Conduct in the exercise of their planning functions and decision making in relation to an issue concerning the provision of vehicular and pedestrian access and a 2 vehicle parking hardstand to a residential dwelling at 11 Woolcott Avenue, Waverton.

Relevant Background

287. Located within Waverton Park is a residential dwelling known as 11 Woolcott Avenue, Waverton. Due to the long history and somewhat anomalous confluence of events concerning that particular property, into which I do not intend to delve, there has been no vehicular access to that property for a number of years. It is effectively 'land locked' within Waverton Park. However, there is a road reserve over public land within Waverton Park leading to that dwelling from Woolcott Avenue.

288. Pedestrian access from Woolcott Ave to the dwelling and to parts of Waverton Park is via an old set of steep sandstone steps which do not meet current standards.

289. The current occupants of the property, who have resided there since at least 2006 (possibly longer than that), have made applications to the Council since about 2006 for the provision of vehicular access to the dwelling and a hardstand to park 2 cars and for the associated provision of pedestrian access suitable for persons who are disabled, as one of the current occupants is visually impaired. The application for the associated disabled pedestrian access was made on the basis that it would be open to be used by members of the public.

290. The provision of the proposed vehicular access to the property required not only development consent, but also a lease over the road reserve on the public land in Waverton Park leading from Woolcott Avenue to the dwelling and an associated approval under section 138 of the *Roads Act*. As the proposal involves the alienation of public land and open space, albeit on a road reserve, the application for the lease and development consent has been the subject of longstanding controversy.

291. In the face of that controversy, the Council had sought and obtained legal advice that the granting of the lease would be lawful.

Conduct of the governing body in the period since November 2014

292. I will restrict my consideration of the matter to the most recent history concerning this proposal during the period of this current term of the Council, attempting to cite some of the relevant facts, but without purporting to be exhaustive.

293. On 17 November 2014 the Council considered the proposed lease of the public land to provide the driveway and vehicle hardstand together with the requisite associated development application. At that meeting the Council resolved that the matter be deferred to the next Council meeting for legal advice as to the legality of the Council granting the lease over the public land and granting approval under 138 of the *Roads Act* and to consider the appropriate area of the land to be leased.

294. On 15 December 2014, on a motion to rescind the resolution of 17 November 2014 moved by Ms Gibson, Ms Burke and Ms Bevan, the Council resolved to rescind the resolution of 17 November 2014 and further resolved: (1) that the lease be granted with appropriate conditions; and (2) that the future development application for the leased area be delegated to the general manager for approval.

295. On 16 February 2015 a notice to rescind the resolution of 15 December 2014 was moved by Ms Baker, Ms Beregi and Mr Reymond. The rescission motion was lost.

296. On 27 March 2015, the occupants of the subject property paid \$10,000 to the Council to cover the Council's costs in the preparation of the lease, as had been agreed.

297. In the period following 16 February 2015 the Council engaged, for the second time, an independent planning consultant to assess the development application against the heads of consideration under s 79C of the *Environment Planning & Assessment Act*. The independent planning consultants carried out the assessment and recommended that approval be granted to the development application subject to conditions.

298. Notwithstanding that the Council had resolved on 15 December 2014 to delegate to the General Manager the determination of the development application, upon the Council receiving the assessment and recommendation of the independent planning consultant, Mr Winn chose to bring the matter back before the Council's governing body at its meeting of 29 July 2015 rather than have development application determined under delegation at that time. Mr Winn made that decision because, he had concerns about "probity issues around 11 Woolcott Avenue".

The matter comes back to the Council and is yet again deferred

299. On 29 July 2015, the Council resolved as follows:

1. **THAT** Council notes the assessment and recommendations of the external consultant town planner, Ingham Planning Pty Ltd, which has had regard for the relevant considerations under S.79C of the Environmental Planning and Assessment Act 1979.
2. **THAT** Council grants land owner's consent such that it can consider determining the Development Application (DA79/15)
3. **THAT** subject to land owner's consent being granted as per Recommendation 2, Council determines the development application.
4. **THAT** the lease incorporate the following Conditions:
 1. Stipulate to owners that the parking position known as the "parking slab" is to be used for vehicular motorised parking only.
 2. There be no roof structure over the parking slab.
 3. The parking slab not be used for any building or materials.

300. At the Council meeting of 17 August 2015 a motion to rescind the Council resolution of 29 July 2015 was moved by Ms Baker, Ms Beregi and Mr Morris. During discussion of the rescission motion, one of the occupants of the property, who, when invited to speak to the meeting indicated she was just there to answer any questions, was then questioned about the occupants' affiliation with a political party then recently formed by Ms Gibson to which the answer was given by the occupant that they were not members of Ms Gibson's party. The question was answered and it seems that subsequently some councillors took the view that the answer was inaccurate and/or misleading.

301. Ms Baker also raised with Ms Gibson the question of whether Ms Gibson intended to declare any interest in the matter to which Ms Gibson indicated she did not. However three days later, Ms Gibson did declare a minor non pecuniary interest in the matter.

302. It is trite to observe that any political affiliation between the occupants of the property and Ms Gibson or her party had nothing to do with the planning merits of the proposal and nothing to do with the legality or merits of granting the lease over public land.

303. In any event, at the meeting of 17 August 2015, the dissent motion was lost, thus leaving in place the resolutions of 15 December 2014 and 29 July 2015, pursuant to which the lease was to be granted and the DA determined under delegation.

304. On or about 14 September 2015, a Senior Planner of the Council granted development consent (DA 79/15) under delegation. It was a condition of consent that an executed lease was required before any construction certificate could be issued.
305. Evidently, in the period between the meeting of 17 August 2015 and 21 September 2015, one or both of Ms Beregi and Ms Baker attended or made enquiries of the New South Wales Electoral Commission and ascertained that the occupants of the property had been foundation members of Ms Gibson's political party.
306. The matter was brought back before the Council meeting of 21 September 2015, and the Council resolved at that meeting to write to the Minister for Local Government and to the Office of Local Government in relation to the development consent, "*asking what action be taken in relation to residents who provide inaccurate information to Council when they have a DA before Council for determination*".
307. Notwithstanding that the Council resolved on 15 December 2014 to grant the lease, and notwithstanding that the occupants of the property had paid the Council \$10,000 in March 2015 to cover the Council's costs in the preparation of the lease, the Council did not implement its decision to grant the lease to occupants of the property at any time in 2015.
308. Then, on 15 February 2016, Ms Beregi moved a motion that the signing of the lease over the public land "and subsequent proposed development" in relation to 11 Woolcott Avenue be deferred pending the receipt of advice from Senior Counsel. Ms Gibson ruled that this motion was illegal on the basis that it sought overrule or impede or interfere with the resolution of the Council of 15 December 2014 and refused to allow the motion to be put to the meeting. In Chapter 4 of this report I have addressed the conduct of Ms Gibson in refusing to allow this motion to be put to the meetings of 15 February 2016, 21 March 2016, 18 April 2016 and 16 May 2016.
309. On 18 July 2016, Ms Gibson did allow Ms Beregi's motion to be put and the Council resolved to defer signing the lease pending the receipt of advice from Senior Counsel.
310. However, and most recently, on 15 August 2016, on a motion sponsored by Mr Barbour, Ms Gibson, Ms Bevan and Ms Marchandeanu, the Council resolved to rescind the resolution made by the Council at its meeting of 18 July 2016.
311. This has, again, cleared the way for the Council to implement its resolution of 15 December 2014 to grant the lease.

Consideration and recommendations

312. Having carefully considered the evidence, I have concluded that there is an inadequate evidentiary foundation for me to make findings in relation to the conduct of councillors in

this matter, particularly given that the nature of the issues raised by these events will attract the *Briginshaw* principles.

313. It appears to be the position at the time of writing this report that the decision making of the Council's governing body is now exhausted concerning the lease and development consent and that the execution of the lease is a merely a formality that will be attended to in the near future. If that is the position, then I would not recommend that there be any further action or investigation of this matter (but without purporting to take a position in relation to the exercise of discretion by any other person or body who might wish to investigate it).

314. However, in the event that the issue of the subject lease or consent comes back yet again before the Council's governing body, or if any complaint is referred to the Office of Local Government in relation to this matter, it would be my recommendation that the Chief Executive of the Office of Local Government consider the merits of a thorough investigation being undertaken into the conduct of councillors in relation to this matter, including in respect of the following issues:

- (a) any issues of conflict of interest or failure to disclose interests on the part of the Mayor or any Councillor/s;
- (b) whether any Councillors sought to influence or pressure or direct Council staff in relation to this matter in the period after 15 December 2014 given the perplexing delay in the implementation of the Council resolution of 15 December 2014 to grant the lease;
- (c) the conduct of Councillors in relation to the questioning of the occupant of the property about her political affiliations at the Council meeting of 17 August 2015;
- (d) the conduct of Councillors in: (a) making inquiry in the period after 17 August 2015 as the political affiliation of the occupants of the property; (b) reporting back the results of that inquiry on the floor of the Council meeting of 21 September 2015; and (c) discussing and resolving in respect of the matter as in fact occurred at the meeting of 21 September 2015; and
- (e) whether and Councillors have improperly exercised their planning or decision making functions by taking into account any political affiliation between the occupants of the subject property and the Mayor.

CHAPTER 7: CODE OF CONDUCT COMPLAINTS AND PROCEDURES

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THE CODE OF CONDUCT COMPLAINT PROCESS

1. The North Sydney Council Code of Conduct is administered in accordance with Code Administration Procedures appended to the Code, which are based on the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW*.
2. Section 3 of the Code Administration Procedures requires the council by resolution to establish a panel of independent, external conduct reviewers who are required to meet minimum requirements in respect of their knowledge and experience so as to be able to fulfil that role (**Conduct Reviewers**).
3. Conduct Reviewers play a key role in the consideration of code of conduct complaints against councillors. Such complaints are referred by the council's complaints coordinator to a conduct reviewer appointed to the council's Code of Conduct Review Panel (**Conduct Reviewer**). The Conduct Reviewer first carries out a preliminary assessment under Part 6 of the Code Administration Procedures. On the basis of that preliminary assessment, the Conduct Reviewer may determine to take no action, or resolve the

complaint by alternative and appropriate strategies such as explanation, counselling, training, mediation, negotiation or apology, or refer the matter to another agency or body such as ICAC, the New South Wales Ombudsmen or the Office of the Police or may determine to investigate the matter. If the Conduct Reviewer determines to investigate the matter, he or she must follow the procedures with respect to investigations set out in Part 8 of the Code Administration Procedures. These procedures are intended, among other things, to ensure that procedural fairness is accorded to the person, the subject of the investigation.

4. At the conclusion of the investigation, the Conduct Reviewer prepares a final report which includes any findings that a person the subject of the investigation has breached the Code of Conduct and, if so, recommendations with respect to the appropriate sanction to be imposed.
5. If a conduct reviewer has determined that there has been a breach of the code of conduct and makes one of the more serious recommendations (i.e., any of the recommendations listed in sub-paragraphs (d) to (h) of clause 8.35 of the Code), the council's complaints coordinator must arrange for the investigator's report to be reported to the next ordinary council meeting.
6. Clause 8.44 of the Code Administration Procedures provides as follows:

8.44 The role of the council in relation to a final investigation report is to impose a sanction where an investigator determines that there has been a breach of the code of conduct and makes recommendations in their final report under clause 8.35, paragraphs (d) to (h).
7. Clause 8.56 of the Code Administration Procedures specifies the types of sanctions the Council can impose, including that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the resolution.
8. Pursuant to clause 8.57, the Council is not obliged to adopt the Conduct Reviewer's recommendations. If it resolves not to adopt them, it must state in its resolution the reasons why it has chosen not to adopt them.

Code of conduct complaints during the Inquiry period

9. There has been a high volume of code of conduct complaints about councillors (including the mayor) during the Inquiry period relative both to other NSW councils and also relative to previous periods at North Sydney Council. Most of the complaints fall into one of the following categories:
 - (a) complaints about Ms Gibson made by one of a subset of the councillors in the Majority Bloc, namely Ms Beregi, Ms Baker and Mr Morris;

- (b) complaints about Ms Beregi, Ms Baker or Mr Morris made by Ms Gibson;
 - (c) complaints about Ms Gibson made by Mr Winn; or
 - (d) complaints about Mr Winn made by Ms Gibson.
10. **2013/2014.** In the 2013/14 financial year (1 July 2013 to 30 June 2014), there were 26 code of conduct complaints made that concerned North Sydney Council, the seventh highest total of any council across the 152 councils in New South Wales. Of those complaints, 8 complaints were referred to the Office of Local Government, the highest number for any council in New South Wales.
 11. None of the 26 complaints made in the 2013/2014 year was against any staff member of the Council. Most were complaints against councillors by councillors, most typically complaints about Ms Gibson by Ms Beregi, Mr Morris and Ms Baker and complaints about either Ms Beregi, Mr Morris or Ms Baker by Ms Gibson.
 12. **2014/2015.** A similar picture emerges from the data in relation to code of conduct complaints concerning North Sydney Council in the 2014/2015 financial year. About 33 complaints were made during that year that concerned North Sydney Council, the fourth highest total of any council in New South Wales. Of those complaints, 7 complaints were referred to the Office of Local Government, again the highest number for any council in New South Wales.
 13. An additional pattern that emerges from the code of conduct data available for the 2014/2015 year is a pattern of complaints made by Mr Winn against Ms Gibson and by Ms Gibson against Mr Winn, indicative of escalating conflict between them. I note also that, during the 2014/2015 year, Ms Beregi made three complaints about the alleged conduct of Ms Gibson towards Mr Winn.
 14. **2015/2016.** I am unable to draw safe conclusions from the code of conduct data currently available for the 2015/2016 year.
 15. Of the approximately 50 or so code of conduct complaints which were initiated in the period between December 2013 and March 2016, a little over half of them (probably about 55% of them) were complaints by Mr Winn, Ms Beregi, Ms Baker or Mr Morris against Ms Gibson. Somewhat under half of them (probably about 40% of them) were complaints made by Ms Gibson against Mr Winn, Ms Beregi, Ms Baker or Mr Morris.
 16. For the most part, these complaints have resulted in either (a) no finding of contravention; (b) a recommendation that the matter be dealt with by alternative means than pursuit of the code of conduct procedures (e.g., where an apology has been offered or required);

or (c) a decision being made by the Office of Local Government or conduct reviewer not to continue to deal with the matter under the code of conduct procedures having regard to certain other statutory intervention measures in place, namely the issuing by the Minister of the Performance Improvement Order and the institution of this Inquiry.

17. Of the numerous complaints brought against Ms Gibson during that period, only two have resulted in Ms Gibson either being censured or counselled for breach of the code of conduct, following a code of conduct investigation. Of the numerous complaints brought against Mr Winn, Ms Beregi, Ms Baker or Mr Morris, none has resulted in censure or counselling for any breach of the code.

Time and monies spent by Council in dealing with the Code of Conduct complaints

18. Data held by the Office of Local Government shows that, in the period September 2013 to August 2014 and again in the period from September 2014 to August 2015, North Sydney Council recorded the second highest number of code of conduct complaints and that, in the period September 2014 to August 2015, North Sydney Council incurred costs associated with those complaints of \$145,572, which was the second highest cost of any council in New South Wales for that period.
19. Data provided to the Inquiry by North Sydney Council on 16 May 2016 indicates that, in relation to the code of conduct complaint process, in the period 1 December 2013 to 30 April 2016 the Council spent approximately \$239,995 on consultants and investigators; spent approximately \$22,518 on legal fees; spent \$2,195 on training costs associated with code of conduct complaints; and incurred an estimated \$17,929 of internal costs and costs associated with council staff dealing with such complaints.

Excessive use of the code of conduct procedures

20. The Office of Local Government submits that many of the complaints it has reviewed relating to North Sydney Council involved trivialities and that some were not made in good faith. In relation to the 2014/2015 complaints the Office of Local Government, having reviewed 12 of those, submitted '*.... [g]enerally, the complaints were trivial and in the majority of cases, an assessment of the alleged conduct disclosed no contraventions of the code of conduct. The fact of the complaints discloses a misuse of the code of conduct complaint process.*
21. The contention that some of the code of conduct complaints have not been made in good faith is of a serious nature. It cannot be assessed at a level of generality, but would require specific consideration of the circumstances of each particular complaint.

22. In considering this contention and, more broadly, the way in which the code of conduct procedures have been invoked by complainants and applied by the external code of conduct reviewers, I have had regard to numerous code of conduct reports written by conduct reviewers in relation to many of relevant code of conduct complaints.
23. Among the many code of conduct complaints the subject of my consideration, there are at least two instances in which the code of conduct reviewer has suggested in his or her preliminary assessment or final report that the complaint was not, or may not have been, made in good faith. There are a number of other instances where either the subject matter of the complaint or the observations made by the code of conduct reviewer, or both, legitimately raises the question of good faith.
24. However, upon close reflection, I am not satisfied that any of the code of complaints was made in bad faith. In coming to that view, I have had regard not only to the evidence, but also to the nature and subject matter of this inquiry, the gravity of the contention that a person has not acted in good faith and the potential gravity of the consequences of a finding to that effect, in accordance with the principles stated by the High Court in *Briginshaw v Briginshaw*.²⁰
25. However, I am satisfied that there were a disproportionately high number of code of conduct complaints made during the Inquiry period that did not disclose any contravention of the code of objectively sufficient gravity to justify invocation of the code of conduct complaint process. Although I am satisfied that this demonstrates there has been a misuse of the code of conduct process, I am not satisfied that any of the Councillors has intentionally misused the process. Rather, I consider that poor judgment has been exercised as a result of some of the principal complainants being overly fixated on the issue of conflict and power struggles in their relationships.
26. However, it is necessary to state some provisos to avoid the unfairness to some of the Councillors resulting from over-generalisations. The first proviso is that only a small number of councillors (Ms Gibson, Ms Beregi, Mr Morris and Ms Baker) and Mr Winn account for most of the complaints. There can be no suggestion that any of the remaining Councillors (i.e., Mr Reymond, Ms Clare, Mr Barbour, Mr Carr, Ms Marchandean or Ms Bevan) made an excessive number of code of conduct complaints or otherwise misused the code of conduct complaint process.
27. The second proviso relates to Ms Baker. The code of conduct complaints which are of particular concern in relation to the misuse of the code of conduct complaint process are

²⁰ (1938) 60 CLR 336 per Dixon J. at pp 361 - 362

those that fall into the category of complaints about the way in which a person spoke or behaved where the allegation is questionable or the alleged conduct is not objectively serious enough to warrant invoking the code of conduct complaint process. Although Ms Baker has made about six complaints (all against Ms Gibson) during the relevant period, Ms Baker's complaints are not complaints that fall into that category. They are complaints about the way in which Ms Gibson has presided as Chair during Council meetings. In the circumstances, I do not find that Ms Baker has made an excessive number of code of conduct complaints.

28. Thus the only persons whom I consider have exercised poor judgment in making an excessive number of code of conduct complaints are Ms Beregi, Ms Gibson, Mr Winn and Mr Morris.

POLICIES UNDERLYING CODE OF CONDUCT PROCESS HAVE BEEN VINDICATED

29. Two of the fundamental policies underlying the code of conduct complaint process are that allegations that a councillor or other person has breached the Code of Conduct are to be reserved for the Code Administration Procedures and that such allegations are to remain confidential and are not to be raised at Council meetings, unless and until findings have been made in the final report of a Conduct Reviewer that a councillor has breached the Code after due process under the Code Administration Procedures.
30. Events in relation to the use of the code of conduct complaint process at North Sydney Council over the Inquiry period have emphatically vindicated those underlying policies by demonstrating the adverse procedural and substantive consequences which follow when those policies are not properly observed.

FINDINGS OF BREACHES OF THE CODE OF CONDUCT

31. During the Inquiry period, there have been four instances in which a councillor of North Sydney Council has been found to have contravened the code of conduct during the Inquiry period by a Conduct Reviewer appointed to the Council's code of conduct Review Panel (**Conduct Reviewer**). One such instance related to conduct which occurred before the Inquiry period.
32. In each case, the Conduct Reviewer provided his or her final report to the Council and, in each case, the Council considered the report in a closed session at a Council meeting and determined what sanction to impose by way of resolution, as is required under the Code Administration Procedures.
33. Given term of reference No. 2, I consider, below, each of these four matters, including the Conduct Reviewer's reports and the particular findings of breach of the Code of

Conduct made against the councillor in question. I also consider, below, the way in which the Code Administration Procedures were applied in each case and the way in which the governing body of the Council has dealt with each matter upon being presented with the final report of the Conduct Reviewer.

FINDINGS BY CONDUCT REVIEWER OF CODE BREACHES BY MR MORRIS

34. In respect of Code of Conduct Complaint No. 14 of 2012/2013 against Mr Morris, a Conduct Reviewer (**LL**) carried out a lengthy investigation and made a final report dated 7 May 2014 (**LL Report**). LL made findings in the LL Report that Mr Morris had aggressively pointed his finger towards Ms Gibson and had spoken to her in an insulting way while she was chairing a Council meeting on 17 June 2013. LL found that Mr Morris had thus contravened clause 6.6 of the Code of Conduct which relevantly requires councillors to show respect to the Chair during Council meetings.
35. LL also found that Mr Morris had made some comments which were insulting to Ms Gibson in an email sent by on 16 June 2013 sent by Mr Morris to the General Manager and copied to the mayor and councillors. LL found that, taken together, the sending of the email and the conduct during the meeting (summarised above) constituted a breach of clause 3.3 of the code of conduct, which requires councillors to treat others with respect at all times and clause 3.1(e) of the code of conduct, which prohibits councillors from conducting themselves in a manner that is likely to bring the Council into disrepute by reason of the conduct involving intimidation, harassment or verbal abuse.
36. LL concluded that the breaches of the Code by Mr Morris were serious. The primary recommendation in the LL Report was that Mr Morris be required to unreservedly apologise to the Council and Ms Gibson for his actions.
37. As the LL Report related to conduct which occurred prior to the Inquiry period, I am not concerned with any assessment of the conduct of Mr Morris the subject of the report. I make no findings about Mr Morris' conduct. However, what I am concerned with is the way in which, during the Inquiry period, the Council's governing body responded to the findings and recommendations in the LL Report and how that compares with the way in which the Council's governing body responded to findings and recommendations made by other Conduct Reviewers in relation to code of conduct breaches found to have been committed by Ms Gibson and Ms Bevan.
38. The LL Report was presented to the Council meeting of 19 May 2014. As Ms Gibson was the complainant, she absented herself from the discussion. After hearing an oral address

from Mr Morris, the Council passed the following resolution on the vote of the Majority Bloc (excluding Mr Morris):

1. That the Council has carefully considered the conduct reviewer's report and does not adopt the recommendations therein for the following reasons:
 - The Code of Conduct was never intended to be used to resolve personality and political differences between Councillors.
 2. That all Councillors undertake annual Code of Conduct and Code of Meeting Principles and Practices training as soon as practicable.
 3. That pursuant to the Code of Conduct procedures, the Independent Conduct Reviewer's report remain confidential.
39. The Council's stated reason for not adopting the Investigator's recommendation, namely that "*the Code of Conduct was never intended to be used to resolve personality and political differences between Councillors*", is significant. It is, in essence, a rejection of LL's findings that there had been serious breaches of the code of conduct by Mr Morris. The Council's reason, as expressed, suggested that the matter should not have been the subject of the code of conduct process at all.
40. I have not overlooked Ms Baker's evidence that she recalled generally that she had concerns about the quality of the LL Report. Be that as it may, the Council's reason for not accepting the recommendations did not relate to the quality of the report.
41. Of the four instances in the Inquiry period in which the Council was presented with findings made by a councillor committed serious breaches of the code of conduct and made recommendations that sanctions be imposed, this was the only instance in which the Council's governing body resolved to impose no sanction at all. It is significant, also that the Council's governing body framed its resolution in a such a way that there would be no public record of the findings made by the Conduct Reviewer that Mr Morris had breached the Code. This stands in clear contrast to how the governing body, on the vote of the Majority Bloc, later dealt with findings made by other Conduct Reviewers in relation to breaches of the Code by Ms Gibson and Ms Bevan, to which I will now turn.

FINDINGS BY INVESTIGATOR OF CODE BREACHES BY MS BEVAN

42. In relation to Code of Conduct Complaint No. 1 of 2014/2015, a Conduct Reviewer made findings that Ms Bevan had breached the Code of Conduct by disclosing to a journalist information the substance of discussion which took place during a confidential closed session of the Council meeting of 21 March 2014 concerning the recruitment of Mr Winn as the General Manager.

43. At the meeting held on 21 March 2014, the Council resolved in closed session to appoint Mr Winn as the new General Manager. It resolved at the same time that no public announcement of the name of the successful candidate be made until the Mayor had received Mr Winn's written acceptance of the offer.

Provision of confidential information to a journalist from the Mosman Daily

44. On 3 April 2014, the Mosman Daily published an editorial article written by journalist, Adam Bell, in which Mr Bell reported that "*the Council has resolved to appoint Warwick Winn ... after rejecting the three candidates short-listed by an external recruitment firm*". He also reported that, in a closed door meeting in February 2014, the majority bloc had over-ruled an earlier decision to select a candidate from the three who had been short listed and opted to extend the final field to the five candidates who had made it to the second round. The article included the following statements:

A minority councillor, who asked not to be identified, said the process was "completely flawed".

"The recruitment consultant was flabbergasted. They (the majority bloc) had already preordained who they wanted, and when their candidate wasn't one of the three short-listed, they just decided to change the process", the councillor said."

...

The controversy centres around whether the council erred in opting to interview five candidates, including Mr Winn, in the final round after he missed out on being one of the three candidates short-listed by the recruitment selection panel.

45. At the extraordinary meeting on 7 April 2014, Mr Carr raised the leaking of background information used by Mr Bell for this article. During the discussion, concerns were expressed that "a minority councillor" had provided as background information to Mr Bell matters which had been discussed during a meeting which had been closed under s 10A of the LG Act and, in so doing, the councillor had breached the confidentiality requirements of s 664 of the LG Act and of the code of conduct and had breached the privacy attended to the recruitment process.
46. The Council relevantly resolved to undertake a full forensic examination of the breach of privacy and confidentiality. The Council, by its resolution, had commissioned a "full forensic investigation". Significantly, however, the Council did not invoke the code of conduct complaint process at that time.

47. Pursuant to this resolution, the Council engaged an investigator (**BP**) to carry out the forensic investigation described in the resolution. BP was not a Conduct Reviewer and the investigation was not commissioned as a code of conduct investigation.
48. In an investigation report dated 12 September 2014 (**BP Report**), BP found that the Mosman Daily article contained information that was private and confidential, including that Mr Winn was an applicant in the recruitment process, that he was in the shortlist of five candidates and not the shortlist of three candidates and that he was the successful candidate (the **Confidential Information**). BP found that Ms Bevan had either provided or discussed the Confidential Information with Mr Bell.
49. Notwithstanding that BP was not a Conduct Reviewer and notwithstanding that the Council had not called in its resolution for a code of conduct Investigation, BP found that the conduct of Ms Bevan constituted a contravention of s 664(1A) of the LG Act and a contravention clause 7.10 of the code of conduct.
50. At the Council's meeting of 15 September 2014, following discussion of the BP Report in closed session, the Council resolved:
 1. THAT Council refers the Independent Investigator's report to the General Manager for consideration under [the Code of Conduct].
 2. THAT Council refer the full report to Council's external solicitors "to investigate and if sufficient evidence exists, commence proceedings for the alleged breach of s 664 of the Local Government Act 1993

Flawed process of review of the matter by a Conduct Reviewer

51. On 26 September 2014, pursuant to the Council's resolution the Council's Complaints Coordinator referred the BP Report to a Conduct Reviewer (**MM**) as a code of conduct complaint. Under the Code Administration Procedures, the required process was for the Conduct Reviewer to carry out a preliminary assessment of the matter and determine whether to investigate the matter. If a determination was made to investigate the matter, the Conduct Reviewer was required to investigate it in accordance with the Code Administration Procedures and to present a final report to the Council containing findings and recommendations.
52. In this instance, the Code Administration Procedures were not followed. Rather, the matter was referred to the Conduct Reviewer (MM) after an investigation had already been carried out someone else (BP) outside of the code of conduct complaint process, who had already purported to make findings that Ms Bevan had breached confidentiality clauses of the code of conduct.

53. This turned the Code Administration Procedures on their head in that findings were purported to have been made by BP that Ms Bevan had breached the code of conduct before any code of conduct investigation had even commenced.

54. By way of letter dated 15 October 2014, MM wrote to the Council's Complaints Co-ordinator, and stated, among other things:

As required by the Code Administration Procedures (*the Procedures*) I have undertaken a preliminary review of the complaint. I have determined to investigate the matter in accordance with Part 8 of the Procedures

At this stage I do not intend to make any further enquiries regarding the facts of the matter. Rather, I propose to rely on the investigation undertaken by [Investigator BP] and their subsequent report. I intend to provide Councillor Bevan with the opportunity to make a submission in regards to the findings of [BP's report] which I will consider before I form the view as to whether there has been a breach of the Code.

55. In his description of his investigation process, MM stated:

As the matter had already been the subject of a thorough investigation by [BP], I determined not to conduct any further inquiries in relation to the facts of the matter. To do so would have been unlikely to reveal any additional facts relevant to the matter.

56. As described by MM, this was a flawed process, because, on the one hand, MM had "*determined to investigate the matter in accordance with the Code of Conduct Administration Procedure*", but, on the other hand, he decided he would not carry out such an investigation at all, but would instead rely on the findings made by BP, following an earlier investigation been undertaken outside the Code Administration Procedures.

57. However, MM did give Ms Bevan the opportunity to make a submission to him in relation to BP's findings and, after Ms Bevan did provide him with a submission, he evidently took it into account. He also provided Ms Bevan with a draft report to which she responded by a further email before he prepared his final report.

58. In his final report dated 19 January 2015 (**MM Report**), MM found that Ms Bevan contravened clause 7.10(f) of the Code by disclosing information to Mr Bell that was discussed during a confidential closed session of a Council meeting. The confidential information MM found Ms Bevan disclosed to Mr Bell was that there were originally three short listed candidates which did not include Mr Winn and that a decision was made to short list additional candidates beyond those originally recommended. MM also found that Ms Bevan had contravened clause 3.1 of the code of conduct by making a statement to the media that was likely to bring the council or holders of civic office into disrepute; and clause 3.1(c) of the Code by acting improperly or unethically by failing to originally

disclose to an investigator appointed by Council that she had in fact spoken to Mr Bell of the Mosman Daily regarding matters relating to the process for appointment of the General Manager.

59. On the basis of the findings, MM recommended that the Council resolve (1) that Ms Bevan be formally censured under s 440G of the LG Act for breaching the code of conduct and (2) that the matter be referred to the Office of Local Government for further action under the misconduct provisions of the Act.
60. The MM Report was considered in a closed session of the Council meeting of 16 February 2015, following which the Council resolved that Ms Bevan be formally censured for the breach under s 440G of the LG Act and that the matter be referred to the Director General of the Office of Local Government for further action under the misconduct provisions of the Act.

Determination of the misconduct referral by the Office of Local Government

61. On 19 February 2015, the matter was referred to the Office of Local Government as per the resolution.
62. By way of letter dated 27 April 2015, the Chief Executive of the Office of Local Government notified the Council that, in the exercise of his discretion, he did not intend to further investigate the matter. Among the matters to which the Chief Executive said he had regard was the fact that the conduct in question fell within a species of conduct that was being addressed by an alternative statutory intervention measure that was already then in place, namely the Performance Improvement Order issued to the Council by the Minister in December 2014.

Attempts to publicly release statements made in the BP Report

63. At the Council meeting of 1 October 2014, on a motion without notice of Ms Beregi, the Majority Bloc attempted to resolve publicly release a redacted version of the Executive Summary of the BP Report. I say “attempted to resolve”, as Ms Gibson ruled the motion out of order and would not permit it to be put to the meeting.
64. The Executive Summary of the BP Report, redacted as proposed by Ms Beregi, excluded the statement that Ms Bevan had breached clause 7.10 of the Code of Conduct, but still included a statement that:

Councillor Bevan did provide background information to Adam Bell of the Mosman Daily that subsequently appeared in his Article on 3 April 2014 that was private and confidential at the time of disclosure and in breach of the privacy and confidentiality obligations as follows: ... section 664(1A) of the Local Government Act 1993.”

65. As the BP Report was not a code of conduct report, BP's statement, or "finding", that Ms Bevan had breached the confidentiality obligations under s 664 of the LG Act was, in the context of the code of conduct complaint process, no more than an allegation.
66. Thus, what the Majority Bloc sought to do, on Ms Beregi's motion, was to publicly release a statement containing an express allegation that Ms Bevan had breached ss 664(1A) of the Act, and containing a clear imputation that she had breached the Code of Conduct, when those allegations had not been the subject of any investigation or findings under the code of conduct complaint process. Had this statement been publicly released at that time, it would have constituted a serious contravention of s 440 of the LG Act and clause 13 of the Code Administration Procedures.
67. Moreover, this attempt to publicly release allegations of breach of the Code of Conduct before the allegations had been the subject of any findings under the code of conduct complaint process occurred within a short time of the Minister having issued his notice of intention to suspend the Council by way of his letter of 15 September 2014, in which he had expressed particular concern about this type of conduct.

Differential treatment of Mr Morris and Ms Bevan

68. In my opinion, the evidence discloses that the Council's governing body treated Ms Bevan more harshly than it had earlier treated Mr Morris. In each case, a Conduct Reviewer had found serious breaches of the Code by a councillor. Each Conduct Reviewer was independent, as is required under the Code Administration Procedures.
69. In the former instance, concerning Mr Morris, the Council determined to reject the recommendations of the Conduct Reviewer and not to impose any sanction on Mr Morris and it framed its resolution with the particular objective of preventing any disclosure to the public of the finding that Mr Morris had breached the Code.
70. In the latter instance, concerning Ms Bevan, the Council made relevant resolutions at both its meeting of 15 September 2014 and at its meeting of 16 February 2015.
71. At the meeting of 15 September 2014, the Council resolved not only to refer the matter to the General Manager under the Code Administration Procedures, but also to refer the full report to Council's external solicitors to investigate, and if sufficient evidence existed, commence proceedings for the alleged breach of s 664 of the LG Act. This resolution set in train a process which meant that Ms Bevan's conduct would be the subject of three separate investigations.
72. Then, at its meeting of 16 February 2015, after it was presented with the MM Report, the Council accepted the findings of the investigator, resolved to censure the councillor and

to refer the matter to the Office of Local Government for action under the misconduct provisions of the LG Act.

73. Obviously the conduct considered in the case concerning Mr Morris was of a different character than the conduct considered in the case of Ms Bevan. However, in both cases the breaches of the Code of Conduct were found by the respective Conduct Reviewers to be serious. Moreover, not only did the Council, having imposed no sanction on Mr Morris, resolve to censure Ms Bevan and to refer an allegation of misconduct to the Office of Local Government, but it also took the significant, additional step of resolving to refer the matter to Council's external solicitors to investigate with the evident intention that the Council commence legal proceedings against Ms Bevan for a breach of s 664 of the LG Act if there was sufficient evidence of the breach.
74. Notwithstanding that the two respective code of conduct findings related to different categories of conduct and even allowing for some reasonable variation in response in the exercise of discretion, I am satisfied on all of the evidence that the Council's governing body treated Ms Bevan, Ms Gibson's political ally, discernibly more harshly than Mr Morris, a member of the Majority Bloc.
75. In my opinion, this suggests that the conflict between the two camps, which in each case was at the heart of the circumstances giving rise to the complaint, also had a bearing on the decision making at the end of the code of conduct complaint process.

Additional observations re departures from Code of Conduct Procedures

76. The integrity of the code of conduct complaint system risks being undermined if an investigation is commissioned to be undertaken outside of the Code Administration Procedures of conduct which, if proved, would constitute a breach of the Code of Conduct. That risk materialised here by commissioning the BP Report outside of the Code Administration Procedures and then presenting BP's findings of breaches of the Code to a Conduct Reviewer for some kind of "review".
77. If a council opts in the first instance not to invoke the Code Administration Procedures, but to have some other type of investigation carried out by an investigator who is not a Conduct Reviewer, that investigator will undermine the code of conduct complaint process if he or she purports to make any findings that any person has or has not breached the Code of Conduct and it should be made very plain to the investigator that his or her brief does not extend to making any such findings.
78. The Council resolution of 15 September 2014 also tended to undermine the code of conduct complaint process, because the Council resolved not only to refer the matter to

the General Manager for consideration under the Code Administration Procedures, but, at the same time, sought to advance the matter by a parallel course outside the Code Administration Procedures by referring the matter to external solicitors “*to investigate and if sufficient evidence exists, commence proceedings for the alleged breach of s 664 of the Local Government Act 1993*”.

79. Where a matter concerns an alleged breach of the code of conduct by a councillor and the contemplated remedy is punishment or disciplinary sanction for that conduct, the evident policy of the Code Administration Procedures and the enabling legislation is that the matter should be investigated and dealt with under the Code Administration Procedures and not by a parallel process not governed by those procedures.

FINDINGS THAT MS GIBSON BREACHED THE CONFIDENTIALITY PROVISIONS OF THE CODE

80. It is a requirement under clause 13.1 of the Code Administration Procedures that information about code of conduct complaints and the management and investigation of such complaints is to be treated as confidential and is not to be publicly disclosed except as may be otherwise specifically required or permitted under the procedures.
81. I have referred above to the LL Report in which LL found that Mr Morris had breached the Code of Conduct and in relation to which the Council departed from the recommendations of LL, determined to impose no sanction and resolved that the LL Report remain confidential.
82. Ms Gibson was later found by an investigator to have breached clause 13.1 of the Code by providing to a journalist confidential information relating to the LL Report and that finding was subsequently, in effect, adopted by a Conduct Reviewer.

Relevant background

83. On 5 June 2014, the Mosman Daily published an article in which the journalist, Adam Bell, quoted Ms Gibson’s lawyer, Michael Hayter, as saying that Ms Gibson had dropped her AVO action against Mr Morris and her workplace action against the Council, as these actions had been superseded by the council’s investigation into the bullying claims. Mr Bell reported that the Council had resolved on 19 May 2014 to keep a confidential report on the matter secret. He quoted Mr Hayter as saying that he had written to the Division of Local Government calling on it to force the Council to make the report public.

Mosman Daily Articles of 12 June 2014 and 7 August 2014

84. On 12 June 2014, the Mosman Daily published another article written by Mr Bell in which he referred to again to the LL Report. Mr Bell reported that the Mosman Daily had obtained the report. The article also stated:

In the letter to the department, Ms Gibson's lawyer Michael Hayter calls on the State Government to "consider suspending Cr Morris for an appropriate period.

"Allegations of harassment and intimidation are a serious matter."

85. This did not excite any action on the part of the Council at the time.

86. On 7 August 2014, the Mosman Daily published an article in which Andrea McCullagh reported that the Council had been threatened with suspension by the State Government. The article focussed on a letter dated 14 July 2014 sent by the Minister for Local Government to the Council, in which the Minister had expressed his serious concerns about the Council's performance and warned that, if he did not see a marked improvement, he would consider the use of intervention options available under the LG Act and in particular the suspension provisions..

Consideration of alleged leaks of confidential information by councillor/s

87. At its meeting of 18 August 2014, the Council considered the articles published by the Mosman Daily in May/June 2014 and August 2014 and relevantly resolved that there be an investigation into:

- (a) the leaking to the media of the LL Report to the Mosman Daily the subject of the Mosman Daily articles of 5 & 12 June; and
- (b) the leaking to the media of the Minister's letter to the Council of 11 July 2014 [sic], notifying his intention to suspend the Council.

88. The latter resolution was based on a false premise, namely that councillors were under some obligation to treat the Minister's letter of 14 July 2014 as confidential. No confidentiality obligation attached to any councillor in relation to that letter. It was an open letter written by a Minister of the Crown and was of legitimate public interest.

Investigator BP is commissioned to investigate

89. In late September 2014, the Council retained the same investigator (BP) who had investigated the earlier leaks and made findings that Ms Bevan had breached the Code. It is to be recalled that BP was not a Conduct Reviewer at this time and she was not commissioned to carry out a code of conduct investigation.

The final report of BP

90. Investigator BP provided to the Council a final report dated 9 January 2015 (**BP Report No. 2**), which contained the following findings:

Based on the evidence, on the balance of probabilities, I find that the Mayor, Jilly Gibson provided Mr Bell with confidential information in relation to [Investigator LL's] report. In the face of her repeated denials, I am unable to find that the Mayor personally provided [Investigator LL's] report to Mr Bell. However, I do find that she provided the contents of her solicitor's letter to the department to Mr Bell which contained confidential information relating to [Investigator LL's] report. In particular, the call for the suspension of Councillor Morris in relation to allegations of harassment and intimidation constitutes a disclosure of confidential information.

91. As this indicated, BP did not find that Ms Gibson had leaked the LL Report to Mr Bell. According to the Council resolution of 18 August 2014, that was the only matter as to which BP was called upon to investigate. However, BP made the additional finding that *"Ms Gibson provided the contents of her solicitor's letter to the department to Mr Bell which contained confidential information relating to [the LL Report]. In particular, the call for the suspension of Councillor Morris in relation to allegations of harassment and intimidation constitutes a disclosure of confidential information."* This finding was based on what BP described as a "process of elimination".
92. Despite not being a Conduct Reviewer and not having been authorised by the Council resolution to carry out of code of conduct investigation, BP found that, in providing the said contents of Mr Hayter's letter to Mr Bell, Ms Gibson had breached clause 13.1 of the Code Administration Procedures as well as the confidentiality requirements of clauses 7.9 and 7.10 of the Code.

Referral to a Conduct Reviewer

93. After the Council had been provided with the BP Report No. 2, the Council, cognisant of the fact that BP was not a Conduct Reviewer and had not carried out a code of conduct investigation, referred BP's report to a Conduct Reviewer (**MS**).
94. In February 2015, MS provided his report to the Council (**MS Report**). MS stated in his report that he was appointed to "review" the investigation conducted by BP "involving allegations of misconduct involving the Mayor". The executive summary of the MS Report included the following statements:

The review entailed consideration of the material provided by [Investigator BP] to the Council in order to determine if her findings were consistent with the evidence considered and referenced in [the BP Report No. 2] dated 9 January 2015

...

In a matter such as this proof is required on the balance of probabilities. [Investigator BP] indicated she applied this standard in the course of her investigation and determination of her conclusions relative to the alleged conduct of the Mayor.

...

I have considered the investigation report provided by [Investigator BP]. The investigation, in my opinion was conducted in a proper manner and provided the Mayor with procedural fairness. The findings of the report (that the Mayor released confidential information to a third party) is supported by the evidence contained within the report. I support the findings of the report.

The matter was referred to [Investigator MS's firm] because [Investigator BP], at the time of the investigation, was not an approved conduct reviewer appointed by the Council. This is contrary to the requirements of the Procedures. I also identified other instances of non-compliance with the Procedures in relation to the investigation process.

Importantly, however, I do not believe these identified instances of non-compliance are severe enough to void the findings made by [Investigator BP]. I rely on parts 10.2(b) and (c) to support this finding.

I make the following recommendations.

1. It is recommended the Council accepts the findings as outlined in the [BP Report No. 2] dated 9 January 2015.
2. It is recommended the Mayor receive a copy of the final report as required by Part 8.39 of the Procedures.
3. It is recommended the [BP Report No. 2] now be treated in accordance with the Procedures. In particular the sections relating to the Consideration of the final investigation report by Council.

Flawed approach to Code Administration Procedures

95. This approach to the Code Administration Procedures was unorthodox and flawed. To treat the BP Report No. 2 "*in accordance with the Procedures*", was not a permissible application of the Code Administration Procedures, because BP was not a Conduct Reviewer and the Council resolution did not authorise BP to carry out a code of conduct investigation.

96. The approach by MS was all the more untenable given that he identified in his review of the BP Report No. 2 numerous non-compliances with the Code Administration Procedures in the course of the process which produced the BP Report No. 2, including the investigation process. Indeed the greater part of the MS Report is taken up with

identification of those procedural non-compliances. Notwithstanding this, MS stated in his report “*these identified instances of non-compliance are not severe enough to void the findings made by [Investigator BP]. I rely on parts 10.2(b) and (c) [of the Code Administration Procedures] to support this finding.*” This states:

10.2 A failure to comply with these procedures will not render a decision made in relation to a matter invalid where:

- a) the non-compliance is isolated and/or minor in nature, or*
- b) reasonable steps are taken to correct the non-compliance, or*
- c) reasonable steps are taken to address the consequences of the non-compliance.*

97. Clause 10.2 is directed to the validity of decisions made in relation to code of conduct investigation and had no relevant application to the task of MS as a Conduct Reviewer. There was no “decision” within the meaning of clause 10.2 for MS to consider and, even if there had been a “decision”, it was not within the bailiwick of MS, as a Conduct Reviewer, to make some kind of administrative determination that clause 10.2 had a relevant application. His role was to apply the Code Administration Procedures.

Consideration of the report by the Council at its meeting of 20 July 2015

98. The Council considered the MS Report at its meeting of 20 July 2015, following which it resolved as follows:

1. THAT Council censure the Mayor, Councillor Jilly Gibson for a breach under s440G of the Local Government Act 1993 for the following reasons based upon the forming finding of the Investigation report:

- a. breach of Part 3.1 of Council’s Code of Conduct – a finding that Councillor Gibson’s actions are likely to bring Council into disrepute;
- b. breach of clauses 7.9, 7.10 and 13.1 of Council’s Code of Conduct – findings that Councillor Gibson failed to maintain the integrity and security of confidential documents;
- c. breach of clause 8.1 of Council’s Code of Conduct – a finding that Councillor Gibson’s conduct was likely to undermine confidence in the Code of Conduct or Council.

2. THAT Council note with increasing concern that this is the third finding of a significant breach of Council’s Code of Conduct in relation to Councillor Jilly Gibson.

3. THAT Council refer the matter to the Office of Local Government for further action under the Misconduct Provisions of the Local Government Act 1993.

4. THAT Council express its grave concerns that the Office of Local Government has failed in the past to provide serious sanctions for findings by independent investigators in respect

of breaches of s440G of the Local Government Act relating to maintaining the integrity and security of confidential documents.

5. THAT Council advise the Office of Local Government that maintaining the integrity and security of confidential information is fundamental to the public trust in good governance across Local Government in NSW and it is the duty and obligation of the Office of Local Government to promote public confidence in the Code of Conduct, the Local Government Act and good governance in Local Government generally.

6. THAT a copy of this resolution be forwarded to the Minister for Local Government.

Consideration of the matter by the Office of Local Government

99. Pursuant to this resolution, the Council referred this matter to the Office of Local Government on 23 July 2015.

100. By way of letter dated 6 November 2015, the Office of Local Government notified the Council's Complaints Co-ordinator that it would conduct an investigation into whether between 30 May 2014 and 13 June 2014, Ms Gibson engaged in misconduct in failing to comply with either or all of clauses 3.1, 7.9, 7.10, 8.1 and 8.13 of the code of conduct in relation to the release of confidential information regarding the LL's report.

101. By way of letter dated 23 February 2016, the Office of Local Government notified the Council's Complaints Coordinator that it was discontinuing its investigation given this matter fell within the terms of reference of the Inquiry.

My conclusion re the misconduct complaint against Ms Gibson

102. It is my recommendation that no further action be taken in relation this matter whether under the misconduct provisions of the LG Act, or otherwise. I have come to that view for three reasons.

103. First, I am satisfied that the procedures that were followed which resulted in the preparation of the respective reports of BP and MS departed in material respects from the Code Administration Procedures and were seriously flawed. Secondly, I have very significant reservations about the "process of elimination" used by BP as the basis for her findings against Ms Gibson. Thirdly, in so far as concerns any breach of confidentiality in relation to the LL Report, the real issue here was the leaking to Mr Bell of the LL Report and the evidence did not establish who had provided that report to Mr Bell. Once it is recognised that Ms Gibson was not found to have leaked the LL Report to Mr Bell, any breach of confidentiality constituted by the disclosure to Mr Bell of certain statements made in Mr Hayter's solicitor's letter, if proven, properly would be characterised as being of a minor nature such that further action is not warranted.

Differential treatment of Mr Morris and Ms Gibson

104. In my opinion, it is plainly the case that Ms Gibson was treated more harshly by the Council's governing body in relation to this breach of the Code found against her than was Mr Morris in relation to the breach of the Code found against him.

105. In dealing with LL Report which contained the findings that Mr Morris had committed contraventions of the Code, the Council imposed no sanction in the face of the recommendations of the LL Report and framed its resolution so as to keep the LL Report confidential and not to record the breaches of the Code he was found to have committed. In dealing with the MS Report, the Council resolution went beyond the recommendations of the MS Report, referred the matter to the Office of Local Government for consideration of action under the misconduct provisions of the LG Act and framed its resolution to expressly identify the findings of breaches of the Code made against Ms Gibson.

FINDING THAT MS GIBSON BREACHED THE CODE IN REMARK TO MR WINN

106. In Chapter 5 of this report, I referred to an incident in which Ms Gibson made an inappropriate personal remark to Mr Winn in the corridor of the Council on 18 December 2014, which prompted Mr Winn to make a code of conduct complaint about Ms Gibson in relation to that incident. For the reasons, I earlier gave, I do not propose to publish the remark and it is unnecessary for me to do so for present purposes.

107. The complaint (No. 11 of 2014/2015) was referred to a Conduct Reviewer (**AC**). Following an investigation, AC prepared a final report which was presented to a closed session of the Council on 21 July 2015 (**AC Report**).

108. AC found that, in making the inappropriate remark to Mr Winn, Ms Gibson contravened clause 3.2 of the code of conduct in that she failed to exercise a reasonable degree of care and diligence in carrying out her functions under the LG Act and that she contravened clause 3.3 of the Code in that her comment was disrespectful to both Mr Winn and another person to whom the comment related.

109. AC recommended that (1) Ms Gibson be counselled for her conduct and (2) Ms Gibson be required to provide a written apology to Mr Winn and another person to whom the remark related within 14 days of a sanction being imposed by the Council and that the written apology be deemed confidential and not circulated more broadly amongst Council members or the public.

110. As I have previously noted, during the Inquiry hearing, I acceded to a particular request made to me not to publish the remark on the asserted basis that any publication of the

remark would cause additional hurt to a person or persons. The fact that this request was made to me suggests that the recommendation made by the Conduct Reviewer that the written apology be deemed confidential was an appropriate recommendation.

The way the Council dealt with the matter

111. Instead of adopting AC's recommendation that the written apology required of Ms Gibson be deemed confidential and not circulated more broadly than to its recipients, the Council resolved at its meeting of 21 July 2015, on the motion of Ms Baker, as follows:

1. **THAT** the Mayor, Councillor Jilly Gibson, be counselled for her conduct and that such counselling include training in ethics and integrity in public office.

2. **THAT** Council note with concern that this is the second finding by an independent investigator of a breach of the Code of Conduct in respect of the Mayor.

3. **THAT** pursuant to clause 8.56(a) of Council's Code of Conduct Councillor Gibson be required to provide a written apology to the injured parties within 3 working days and that the recipients of the apology be free to use such a document in order to restore any reputational damage.

4. **THAT** the reason for Council expanding on the recommendation in relation to the timing of the apology and the ability of the injured parties to restore reputational damage is to:

- is to avoid institutional risk in other forums to Council;
- because Council considers that the statements are serious, reckless and significant and ought to be remedied as swiftly as possible in circumstances where this Code of Conduct process has taken more than 6 months to review and resolve.

5. **THAT** A copy of this resolution be forwarded to the Minister and Office of Local Government.

112. As the terms of this resolution demonstrate, the Council's governing body once again dealt with Ms Gibson more harshly than had been recommended by the Conduct Reviewer, in this case, AC.

113. I note also that the Council stated in paragraph 4 of its resolution "*Council considers the statements are serious, reckless and significant*". This was inconsistent with findings expressly made by AC that "*there is no evidence of any reckless intention or negligence by Ms Gibson*" and "*there has been no notable harm or potential harm to Council or other parties arising from Ms Gibson's breach of clause 3.2 and 3.3 of the Code*".

ASSOCIATED COMPLAINT RE MS GIBSON NOT COMPLYING COUNCIL RESOLUTION

114. In the face of the Council's resolution of 20 July 2015, to which I have just referred, Ms Gibson did not provide the written apology the Council resolved she should provide. This

prompted an additional code of conduct complaint to be made in late July 2015 (No. 10 of 2014/2015).

Council resolutions of 21 September 2015 and 19 October 2015

115. At its meeting of 21 September 2015, on a motion moved by Mr Reymond, the Council resolved:

1. THAT Council notes that, on 20 July 2015 Council resolved (following a report from an independent investigator) *pursuant to clause 8.56(a) of Council's Code of Conduct Councillor Gibson be required to provide a written apology to the injured parties within 3 working days and that the recipients of the apology be free to use such a document in order to restore any reputational damage.*
2. THAT Council expresses grave concern that as at the date of the Notice of Motion, Councillor Gibson has not complied with the resolution of Council more than 2 months after the resolution was passed.
3. THAT Council remains concerned about on-going potential liability and risk arising from the failure to comply with the resolution in circumstances where the matter relates to reputational damage to individuals.
4. THAT Council urgently write to the Minister for Local Government and Chief Executive of the Office of Local Government advising that Councillor Gibson has failed to comply with a resolution of Council and seeking urgent advice as to consequences for a councillor failing to comply with a resolution of Council arising from an independent report on a Code of Conduct matter under the Local Government Act
5. THAT a copy of the letter be provided to the Premier and the local Members of Parliament.

Referral of the matter as a misconduct complaint to the Office of Local Government

116. On 19 October 2015, on the motion of Ms Baker, The Council resolved to write to the Office of Local Government requesting urgent advice as to any action proposed to be taken by the Office of Local Government in respect of the continuing failure of Ms Gibson to comply with the resolution of Council at its meeting of 20 July 2015.

117. On or about 30 October 2015, the Council wrote to the Office of Local Government as per its resolution of 19 October 2015.

118. On 6 November 2015, the Office of Local Government notified the Council that it proposed to investigate the matter.

119. By way of letter dated 23 February 2016, the Office of Local Government notified the Council's Complaints Coordinator that it was discontinuing its investigation given the appointment of this Inquiry, noting that this matter fell within the terms of reference.

My conclusion and recommendation re the misconduct complaint against Ms Gibson

120. It is important to understand the context in which the Council resolved on 20 July 2015 that “Councillor Gibson be required to provide a written apology to the injured parties within 3 working days and that the recipients of the apology be free to use such a document in order to restore any reputational damage.”

121. When this matter came before the Council on 20 July 2015, Ms Gibson had been threatened with defamation proceedings in relation to the remark she had made. As at 20 July 2015, Ms Gibson was aware of the threatened defamation proceedings and so were other councillors, including Ms Baker, who formulated the motion. (To avoid the possibility of an inference being incorrectly drawn, I add that Ms Baker was not the person who had threatened the defamation proceedings.)

122. Ms Baker accepted that, when she formulated the motion, she was aware defamation proceedings had been threatened by another person or persons against Ms Gibson. When it was suggested to her that it looked like the motion had been drawn in a way that would serve the interests of the threatened defamation proceedings, Ms Baker said that it was not her intention that it would support litigation, but she could see that “that’s one take on it.”

123. In light of Ms Baker’s direct evidence, I do not impute to Ms Baker any intention to craft the resolution concerning the proposed apology for the purpose of serving the interests of any party relation to threatened legal proceedings against Ms Gibson.

124. However, I still need to consider how the crafting of that resolution affected Ms Gibson’s decision in refusing to provide the written apology the subject of the resolution.

125. Ms Gibson, when asked about the resolution, said:

I accepted what the conduct reviewer - I am one to put my hand up. If I've done something wrong I'll put my hand up and say it and I accepted [AC's] recommendation, but then council turned it into something else. They were trying to turn it into - if I made an apology, they then wanted to use that apology to sue me.

126. Ms Gibson’s evidence was that, at that time, she was receiving letters from a person’s lawyer and she believed that she was being threatened with defamation proceedings.

127. Thus it is evident that Ms Gibson’s refusal to provide an apology on the terms formulated in the Council resolution arose because of her apprehension that it might be used against her in relation to threatened legal proceedings.

128. In my opinion, that was not an unreasonable perception for a lay person in Ms Gibson’s position to form. There is a perceptible legal flavour in the language of that resolution,

given the use of the words “*the recipients of the apology be free to use such a document in order to restore any reputational damage*” and given the similar sort of language used in paragraph 4 of the Council resolution.

129. In those circumstances, despite the subsequent persistent agitation of the matter by the Council’s governing body with the Office of Local Government, the Minister for Local Government and other Members of Parliament, I consider that it was and is reasonable for Ms Gibson to have declined to comply with the Council resolution.

130. For these reasons, I recommend that no further action be taken in relation to this complaint whether under the misconduct provisions of the LG Act, or otherwise.

ALLEGED INACTION OF THE OLG ON COMPLAINTS AGAINST MS GIBSON

131. Some of the councillors and Mr Winn have made submissions to the effect that the Office of Local Government (**OLG**) has been remiss in fulfilling its duties by failing to properly address the misconduct complaints made to the OLG about Ms Gibson.

132. Ms Beregi submitted that the Minister and the Office of Local Government have failed to enforce, and continue to fail to enforce, the appropriate disciplinary measures when advised of clear breaches of the Code such that the contravening conduct of the Mayor continues and have failed to support and enforce resolutions of Council in relation to findings by independent reviewers of breaches of the Code.

133. She further submits that responsibility for the high number of conduct complaints does not rest with the persons who made the complaints but rests with the OLG, because of what she alleges was its reluctance to perform its role. She complains in particular about the alleged inaction of the OLG in dealing with the two allegations of misconduct against Ms Gibson which I have earlier considered, namely

- (a) the allegation of misconduct against Ms Gibson following the finding that she had breached the code of conduct by providing to Mr Bell of the Mosman Daily the contents of her solicitor’s letter referring to the LL Report (Code of Conduct Complaint No. 11 of 2014/15); and
- (b) the allegation of misconduct against Ms Gibson following her refusal to comply with the Council resolution of 20 July 2015 concerning the provision of a written apology to persons affected by the inappropriate remark Ms Gibson made to Mr Winn in a corridor of the Council on 18 December 2014.

134. I do not accept these particular submissions of Ms Beregi. Nor do I accept the more general submissions of the same character made by some of the other Councillors and Mr Winn.
135. The evidence does not support the proposition that the Chief Executive of the OLG has failed to properly exercise his discretion with respect to the referral of allegations of misconduct arising from breaches of the code of conduct. My consideration of the evidence suggests the contrary. In so far as I have considered particular allegations of misconduct against Ms Gibson arising from the code of conduct breaches above which were referred to the Chief Executive of the OLG against Ms Gibson, I have in each case formed the view that no further action is warranted for the reasons I have given.
136. Contrary to the submission of Ms Beregi, the Chief Executive of the OLG, in exercising discretion in respect of allegations of misconduct, is under no obligation and is not subject to any presumption that he should “support and enforce resolutions of Council in relation to findings by independent reviewers of breaches of the Code”. That discretion is to be independently exercised by the Chief Executive of the OLG in accordance with the factors set out in the *Framework for Managing Councillor Misconduct Allegations*.
137. Although it might not be perceived this way by the primary complainants, I am of the opinion that responsibility for the excessive number of code of conduct complaints rests squarely with the complainants, who, in deciding to make code of conduct complaints, merit, have too often permitted their antipathy towards the subject of the complaint to cloud their judgment as to the objective merits of the complaint.
138. The OLG’s stewardship role in relation to code of conduct complaints and its role in relation to misconduct allegations has been made particularly difficult both by the excessive number of such complaints and by the prominent emergence in many of them of the underlying antipathy between the complainant and the subject of the complaint.

SYSTEMIC ISSUES RE CODE ADMINISTRATION PROCEDURES

139. The very heavy use of the code of conduct complaint process during the Inquiry period at North Sydney Council has sorely tested the Code Administration Procedures and some systemic issues or problems have emerged which are worthy of consideration in the ongoing review of the complaint process.
140. At the front end of the complaint process, the threshold for making a code of conduct complaint can be very low, making it too easy for one councillor to lodge a code of conduct complaint against another. For example, requirements imposed on Councillors under the Code of Conduct (adopted from the Model Code) include:

- (a) “*You must treat others with respect at all times.*”
- (b) “*You must consider issues consistently, promptly and fairly*”
- (c) “*You must not ... discriminate against colleagues ... on the grounds of ... political affiliation...*”

141. Let it be assumed for the sake of argument that it is possible for requirements in these very broad terms to be consistently complied with by persons engaged in the political arena and that it is appropriate to expect politicians at any level of government to consistently comply with them, the fact remains that a breach of requirements that have the character of a “counsel of perfection” can be committed at a very low threshold of conduct and may too easily trigger a code of conduct complaint.

142. Assuming it is appropriate to impose obligations in these terms, there is a real question as to whether some higher threshold should be imposed in order to permit a complaint to be made than a mere breach *simpliciter* of such behavioural requirements.

143. Next, seems to be a pattern emerging from the code of conduct reports I have reviewed for the purpose of this Inquiry that, even when complaints are ultimately found to be of dubious merit, the Conduct Reviewers, upon their preliminary assessment, seem to almost always determine that it is appropriate to investigate the complaint. Indeed there has been at least one instance among the reports I have considered where a Conduct Reviewer, upon a preliminary assessment, has determined to investigate a complaint, only to question in the final report whether the complaint was made in good faith.

144. The experience at North Sydney Council during the Inquiry period calls into question whether there is an effective filtration of complaints at the front end of the process.

145. At the back end of the code of conduct process, a quite different problem has emerged. If a Conduct Reviewer finds that a councillor has breached the code and makes any of the more serious recommendations as to the sanctioning of the councillor in question, the report of the conduct reviewer with the recommendations is presented to a Council meeting. Where individuals within a majority bloc of councillors have serious conflicts in their relationship with one or more individuals in a minority group, there is a real risk that the governing body of the Council will not be objective, or necessarily even-handed, in determining what sanction to impose.

146. There is also a lack of clarity about what should, and what should not, be made public once a Conduct Reviewer has presented a final report to a council with findings that a councillor has breached the Code of Conduct.

CHAPTER 8: FINDINGS ON THE TERMS OF REFERENCE

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TERM OF REFERENCE NO. 1

1. For the reasons that follow, the evidence satisfies me that the elected representatives of North Sydney Council have been, since December 2013, and will continue to be in a position to direct and control the affairs of the Council in accordance with the Local Government Act 1993 (**LG Act**) such that the Council may fulfil its charter, the provisions of the LG Act and has otherwise fulfilled its statutory functions.
2. In the preceding chapters, I have identified and made findings in relation to particular aspects of dysfunction or poor performance on the part of the Council's governing body during the Inquiry period.

Putting the areas of poor performance into perspective

3. However, it is not to be overlooked that the Council has met fundamental performance criteria in respect of its obligations under Chapter 13 of the LG Act. In particular:
 - (a) During the Inquiry period, the Council has developed and implemented a community strategic plan, a resourcing strategy, a delivery program and an operational plan as required under.
 - (b) The Council has provided adequate, equitable and appropriate services and facilities to the community and has managed them efficiently and effectively in accordance with the foremost requirement of its charter under s 8 of the LG Act.
 - (c) As I understand it, the Council has been at all relevant times, and remains, in a sound financial position.
 - (d) The Council continues to report properly and effectively to the community in relation to the delivery of its core plans, programs and strategies and the performance of its functions. Evidence which exemplifies this is the Council's receipt of a Gold Award at the Australasian Reporting Awards for the quality of its 2014/2015 Annual Report.

- (e) At all relevant times, there has been a high level of engagement on the part of the Council and its elected representatives with the North Sydney community, including through the Council's precinct committee system.
4. It has been unnecessary to examine these propositions in detail in the body of this report, because the evidence is clear and all points the same way and there has been no contention to the contrary. However, that in no way detracts from their significance
 5. The fact that the Council has met these fundamental performance criteria is a matter to which I have given significant weight in consideration of the questions posed by Term of Reference No. 1.
 6. It is also significant that I have not found that the Mayor or any of the other Councillors of North Sydney Council has acted in bad faith. It appears to me on the evidence that the Mayor and each of the other Councillors, having been elected, has attempted in good faith to serve the local community. The root cause of the elements of dysfunction or poor performance that I have identified as having emerged during the Inquiry period was the conflict between the Mayor and some of the Councillors in the Majority Bloc and between the Mayor and the former General Manager. That conflict has, from time to time, clouded the judgment of the protagonists, diminishing their objectivity and causing them to make some poor decisions.

Looking forward

7. The Minister can continue to have confidence in the professional staff of North Sydney Council, who are to be applauded for remaining focussed on playing their role to ensure the Council has satisfied these fundamental performance measures during a difficult term.
8. It is not to be expected that the underlying conflict between the Mayor and some of the Councillors in the Majority Bloc will be resolved. However, there are some signs that the worst manifestations of that conflict are in the past and that the protagonists are now better able to manage their conflict than they were during 2014 and 2015.
9. In my opinion, although some serious manifestations of the conflict prominently emerged in the Council meetings of November 2015 and February 2016, it can be seen from the analysis of events in this report that the period in which the conflict caused the most fundamental manifestations of dysfunction was the period in the latter half of 2014. In my opinion, it is open to the Minister to have more confidence now in the capacity of the Councillors to be able to manage that conflict than at the time the Minister determined not to suspend the Council in the last quarter of 2014.

10. It is of particular significance in my opinion that the conduct of Council meetings has shown distinct signs of sustained improvement in the period since March 2016. This increases the level of confidence which might otherwise be felt, that the Councillors will not allow any underlying conflict between them to have an extraneous impact on their conduct of the business of the Council during the remainder of its meetings in this current term.
11. Looking forward, it is also significant that there is no longer a dysfunctional relationship between the leader of the Council's governing body and the leader of its administration, as there was between December 2013 and mid-April 2016. I have heard evidence from both the Mayor and the current Acting General Manager, Mr McCreanor, which satisfies me that their working relationship is of a sufficiently constructive character to allow an effective liaison between them, which I consider is important for the ongoing capacity of the Council to properly fulfil its charter and functions.
12. Not only does the evidence about the relationship between the Mayor and the current Acting General Manager remove the spectre of ongoing conflict and mistrust between the leader of the governing body and the leader of the administration, but it also significantly improves the prospects that the conflict between the Mayor and some of the Councillors in the Majority Bloc will be able to be appropriately managed between now and the end of this current term of the Council, including in the conduct of Council meetings.
13. Given the limited tenure left in this current term of North Sydney Council and the uncertainty about that tenure, it seems unlikely to me that there would be any process of recruitment of a new General Manager before the end of this current term and there is no evidence before me to suggest that Mr McCreanor will not continue to hold the role of Acting General Manager for the remainder of this current term of the Council.
14. However, if, before the end of this term, Mr McCreanor were to be replaced as Acting General Manager, then, as a matter of logic, it would follow that one of the premises on which I have made findings in favour of the Council and its elected representatives in relation to Term of Reference No. 1 might no longer have sensible application.

TERM OF REFERENCE NO. 2

15. During the Inquiry period, as discussed above:
 - (a) there have been numerous contraventions by some Councillors, including the Mayor, of applicable procedural laws governing the conduct of Council meetings under provisions of the LG Act, LG Regulation and Council's Meeting Code;

- (b) there have been an excessive number of code of conduct complaints made by the Mayor and some Councillors against each other;
 - (c) there have been contraventions of the Code of Conduct by some Councillors, including the Mayor; and
 - (d) certain decisions have been made and administrative measures undertaken that have been symptomatic of dysfunction, or have adversely affected the capacity of the Mayor to carry out the mayoral functions, or both.
16. With the exception of the above, the evidence does not establish that the Council or its elected representatives have failed to comply with applicable laws, codes or policies. Systemic issues emerging from the Inquiry.
17. The observations I have already made in the preceding discussion of Term of Reference No. 1 about what might be expected looking forward for the remainder of this Council term apply also in relation to Term of Reference No. 2.

Consequential recommendations

18. In terms of dysfunction and poor performance stemming from the inability of key protagonists to manage the conflict in their relationships, I think the worst is over. However, in order to address elements of dysfunction and poor performance which have emerged over the Inquiry period, and for the reasons set out in the body of this report, I make the following recommendations.

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CONDUCT OF MEETINGS

Recommendation No. 1

That, by way of a Performance Improvement Order (**PIO**) to the effect of the draft form appended to these recommendations, the Minister require the Mayor and Councillors of North Sydney Council to take certain actions to improve their level of compliance with the legislative requirements governing the conduct of Council meetings.

Recommendation No. 2

That, in ongoing or future reviews of the LG Act, consideration be given to whether any modification should be made to the position, currently dictated by ss 226 – 230, that a popularly elected mayor will necessarily retain the role of chairperson of council meetings for the whole 4-year term, regardless of whether the mayor has lost the confidence of the majority of councillors.

Recommendation No. 3

That Chapter 13 of the LG Act be amended to confer on the Minister an additional performance management option of appointing a suitably qualified, independent person to preside for a defined period as a temporary chairperson of council meetings where the Minister considers that this is necessary to ensure the orderly conduct of council meetings.

Recommendation No. 4

That the Office of Local Government augment the *Meetings Practice Note, Practice Note No. 16*, by providing additional guidance as to the degree to which any councillor presiding as chairperson of a council meeting, should engage in substantive debate and/or move motions

and the circumstances, if any, where the presiding councillor should consider relinquishing the Chair and participating on the floor of the meeting instead.

MAYORAL ROLE AND FUNCTIONS

Recommendation No. 5

That, by way of a PIO, to the effect of the draft form appended to these recommendations, the Minister require North Sydney Council to re-instate the delegation to the Mayor of the responsibility for the day to day oversight of, and liaison with, the General Manager.

Recommendation No. 6

That by way of a PIO, to the effect of the draft form appended to these recommendations, the Minister require North Sydney Council to revoke the following memoranda: (a) the Confidential Memorandum dated 26 August 2014 from the General Manager to the Mayor's Executive Assistant entitled "Clarification of Position Requirements"; and (b) the Memorandum dated 10 November 2014 from the Chief Operating Officer to the Mayor and General Manager regarding meetings between the Mayor and the General Manager.

Note: These memoranda are discussed in Chapter 5 at [87] – [100] and Chapter 6 at [245] – [272].

Recommendation No. 7

That, by way of a PIO, to the effect of the draft form appended to these recommendations, the Minister require North Sydney Council to amend clause 4.2 of the *Mayor and Councillor Facilities and Benefits Policy* to expressly provide that the Mayor is entitled to the provision of secretarial services associated with the office of Mayor.

Recommendation No.8

That, by way of a PIO, to the effect of the draft form appended to these recommendations, the Minister require North Sydney Council to restore the Mayor's entitlement to the use of a fully serviced and maintained vehicle, equivalent to the value of a vehicle in the Council's pool fleet, including a fuel card and allocated parking space at Council premises to facilitate the performance of the Mayor's civic and ceremonial functions.

Recommendation No. 9

That the Minister require North Sydney Council to forthwith restore to the Mayor the security access entitlements with respect to external entry and internal access which equate with the entitlements this Mayor and previous mayor/s enjoyed prior to security access restrictions being imposed on and after 21 October 2014, including, but not limited to, the provision of security access to the Executive Suite in the Carole Baker Building.

Recommendation No. 10

That, by way of a PIO, to the effect of the draft form appended to these recommendations, the Minister require North Sydney Council to promptly replace the door currently affixed to the Mayor's office with a door with physical characteristics similar to the doors affixed to the offices in the Executive Suite in the Carole Baker building, which does not have a self-closing mechanism, but which is able to be locked and unlocked and can be closed or left open at will.

Recommendation No. 11

The Council is to promptly engage a suitably qualified person (**Consultant**) to assess whether any other changes should be made to the working environment of the Mayor and Mayor's EA in order to meet applicable modern workplace standards having regard to the potential physical isolation of the occupants of those workspaces and to make any appropriate recommendations and the Council is to implement any reasonable recommendations made by the Consultant.

CODE OF CONDUCT PROCESS AND COMPLAINTS

Recommendation No. 12

That the Minister require the Mayor and Councillors of North Sydney Council to refrain from resolving to commission any external investigation, outside the Code of Conduct Administration Procedures, into conduct, which, if proven, would constitute a contravention of the Code of Conduct by any councillor/s.

Recommendation No. 13

That the Office of Local Government, in the course of its current review, and any future reviews, of the code of conduct complaint process give further specific consideration to the issues raised in Chapter 7 of this report.

Recommendation No. 14

That no further action be taken by way of investigation under the misconduct provisions of the LG Act, or otherwise, with respect to the following Code of Conduct Complaints:

- (a) CoC Complaint No. 10 of 2014/15; (complaint against Ms Gibson re refusal to comply with Council resolution of 20 July 2015);
- (b) CoC Complaint No. 11 of 2014/15 (complaint against Ms Gibson re conduct at meetings of 16 November 2015, 19 November 2015 and 7 December 2015); and
- (c) CoC Complaint No. 8 of 2015/16 (complaint against Mr Morris re conduct at meeting of 25 February 2016).

TEMPORARY ADVISER

Recommendation No. 15

That the Minister appoint a temporary adviser under s 438G of the LG Act for the period from the date of service of the PIO until the cessation of the current term of the Council to provide advice and assistance to the Council to ensure compliance with the PIO and to monitor the Council's compliance with the PIO.

DRAFT FORM OF PROPOSED PERFORMANCE IMPROVEMENT ORDER

Reasons for the order

1. The Inquiry into North Sydney Council has identified numerous incidences of failures on the part of Councillors to comply with legislative requirements in relation to the conduct of Council meetings under the relevant provisions of the LG Act, LG Regulation and Council's Meeting Code. Remedial action is required to improve the performance of the elected representatives in the conduct of Council meetings.
2. The Inquiry into North Sydney Council has identified that certain decisions have been made and implemented over the Inquiry period which have unduly and adversely affected the mayoral role and functions. Remedial action is required to ensure that there is due performance of the mayoral roles and functions.
3. The Inquiry into North Sydney Council has identified that the Council's governing body has on three occasions during the Inquiry Period commissioned investigations otherwise than pursuant to the Code of Conduct Administration Procedures into allegations, which if proven, would involve breaches of the Code of Conduct by one or more councillors. Remedial action is required to ensure the integrity of the Code of Conduct Administration Procedures.
4. More detailed reasons in relation to each of the preceding points are provided in the Report of the Inquiry into North Sydney Council under s 438U of the LG Act undertaken by Commissioner Howard.

Action required to improve performance at Council meetings

1. The Mayor and Councillors are to familiarise themselves with, and abide by, the rules concerning the order of address and manner of debate during Council meetings as set out in clause 38 of the Council's Meeting Code. The Mayor and Councillors are not to engage in unstructured debate which does not comply with the requirements of clause 38 of the Meeting Code.
2. Each Councillor is to show respect to the Mayor during Council and committee meetings as required by clause 6.6 of the Code of Conduct and is to comply with the requirement under clause 38.1(c) of the Meeting Code to speak only when recognised by the Chair.
3. If a Councillor wishes to raise a point of order, the Councillor is to speak out "Point of Order", but is not to seek to articulate the point of order until recognised by the Chair. When a Councillor speaks out "Point of Order", the Mayor is to cease the substantive debate and allow the Councillor to briefly articulate the point of order and the Councillor is to do so. The Mayor is then to rule on the point of order before the substantive debate continues.
4. The Mayor is to familiarise herself with the provisions of clause 248 of the LG Regulation (motions of dissent). The Mayor is to respect the right of any Councillor to move a motion of dissent from the Mayor's ruling on a point of order. If a motion of dissent is moved, the Mayor is to suspend

other business until there is a decision on the motion of dissent. If a dissent motion is passed, the Mayor is to proceed as though her ruling on the point of order had not been given.

5. The Mayor is to refrain from ruling any motion or items of business on an agenda at a Council meeting illegal or out of order without first having obtained advice to that effect from the Council's General Manager, Chief Operating Officer, Legal Officer or Temporary Adviser.
6. The Mayor is to respect the right of the Council's governing body to determine by way of resolution, at its discretion, whether or not the person presiding at Council meetings, is given the authority to exercise the power to expel a person from a meeting.
7. The Mayor is to familiarise herself with the provisions of clause 256 of the LG Regulation (expulsion from meetings). If the Mayor has been given the authority to exercise the power of expulsion, the Mayor is not to seek to expel any Councillor from any meeting of the Council for an act of disorder unless the Mayor has first imposed on the Councillor one of the requirements under clause 256(2) of the LG Regulation (reproduced in clause 43.2 of the Meeting Code) and the Mayor must not seek to then expel the Councillor, unless the Councillor has failed to comply with that requirement.
8. The Mayor and Councillors are to familiarise themselves and henceforth comply with the requirements under clause 241 of the LG Regulation concerning the raising of items of business at Council meetings without due notice.
9. In relation to the requirement that due notice be given of any item of business, a Councillor is not to seek to invoke the exception under clause 241(3) of the LG Regulation (matters of great urgency) unless the Councillor genuinely believes the item of business is one of great urgency having regard to both subject matter and timing. Where a Councillor has any intention prior to the start of a meeting to raise a matter of great urgency, written notice of that is to be provided to the Chair at the start of the meeting, to give the Chair some time to consider the question of whether the matter is one of great urgency before being called upon to make that ruling.
10. Where a Councillor seeks to raise an item of business without due notice on the grounds that it is a matter of great urgency, the Councillors must not transact any business in relation to that item unless the Chair has first ruled the matter to be one of great urgency and are not to seek to move dissent from the ruling of the Chair as to whether the matter is, or is not, of great urgency.

Actions to ensure mayoral role and functions are not adversely affected

11. The Council is to promptly resolve to delegate to the Mayor the responsibility for day to day oversight of and liaison with the General Manager.
12. The Council is to revoke the following memoranda: (a) the Confidential Memorandum dated 26 August 2014 from the General Manager to the Mayor's Executive Assistant entitled "Clarification of Position Requirements"; and (b) the Memorandum dated 10 November 2014 from the Chief Operating Officer to the Mayor and General Manager regarding meetings between the Mayor and the General Manager.

13. The Council is to amend clause 4.2 of the *Mayor and Councillor Facilities and Benefits Policy* to expressly provide that the Mayor is entitled to the provision of secretarial services associated with the office of Mayor.
14. The Council is to take the following steps to restore to the entitlement the Mayor had prior to 18 August 2014 to the use of a Council vehicle:
 - a. By way of a resolution at the next upcoming meeting of the Council at which due notice of this matter can feasibly be given the Council is to confer on the mayor an entitlement to the use of a Council vehicle and the associated entitlements, as an alternative to the use of a taxi, as per the terms of the version of clause 4.2.1 of the Council's *Mayor and Councillors Facilities and Benefits Policy* re-adopted by Council on 16 September 2013, namely:

Use of a fully serviced and maintained vehicle – including a fuel card and allocated parking space at Council premises. The value of the vehicle will be equivalent to the value of a vehicle in Council's pool fleet. When not being used by the Mayor, the vehicle will be available for use as a pool vehicle. Alternatively the Mayor may travel by taxi and use a Council charge account for official business,
 - b. The Council is to reasonably promptly take all necessary steps to formalise this change by way of an amendment in such terms to the Council's *Mayor and Councillors Facilities and Benefits Policy*,
 - c. The resolution required to be made by paragraph (a) above is not to be deferred pending steps being taken to make the formal amendments to the Policy under paragraph (b) above and the entitlement conferred on the mayor by the resolution made pursuant to paragraph (a) above is to take effect immediately upon the resolution being made regardless of whether more time is required to formally amend the Policy.
15. The Council is to forthwith restore to the Mayor the security access entitlements with respect to external entry and internal access which equate with the entitlements this Mayor and previous mayor/s enjoyed prior to security access restrictions being imposed on and after 21 October 2014, including, but not limited to, the provision of security access to the Executive Suite in the Carole Baker Building.
16. The Council is to promptly replace the door currently affixed to the Mayor's office with a door with physical characteristics similar to the doors affixed to the offices in the Executive Suite in the Carole Baker building, which does not have a self-closing mechanism, but which is able to be locked and unlocked and can be closed or left open at will.
17. The Council is to promptly engage a suitably qualified person (**Consultant**) to assess whether any other changes should be made to the working environment of the Mayor and Mayor's EA to meet applicable modern workplace standards having regard to the potential physical isolation of

the occupants of those workspaces and to make any appropriate recommendations, and the Council is to implement any reasonable recommendations made by the Consultant.

Actions to ensure investigations of councillors' conduct are carried out pursuant to Code of Conduct Procedures

18. Councillors are to refrain from resolving to commission any external investigation outside of the Code of Conduct Administration Procedures, into conduct, which, if proven, would constitute a contravention of the Code of Conduct by any Councilor.