

Angus Broad

From: [REDACTED]
Sent: Monday, 30 April 2018 3:50 PM
To: [REDACTED]
Subject: Teleconferene Wingecarribee Shire Council

Good afternoon John

The General Manager would like to set up a teleconference with you to discuss the following question from Cllr Scandrett raised at the Council meeting on 24 April 2018.

6. REFERRAL TO THE OFFICE OF LOCAL GOVERNMENT

101, PERS

Cllr I M Scandrett asked if staff can provide an update on the referral to the Office of Local Government of matters relating to him in terms of alleged indiscretions.

Would you be available tomorrow any time between 12:00pm and 3:00pm?

Many thanks

Bobbie-Jo Gordon Executive Assistant to General Manager

Wingecarribee Shire Council

[REDACTED]
Civic Centre, 68 Elizabeth St. Moss Vale, NSW 2577 | PO Box 141 Moss Vale NSW 2577

www.wsc.nsw.gov.au

Ann Prendergast

From: John Davies [REDACTED]
Sent: Thursday, 27 February 2020 5:10 PM
To: Ann Prendergast
Cc: Doug Friend
Subject: RE: Notice of Motion - fwd to Danielle

Hi Ann

As discussed, having received a notice signed by three councillors requesting an extraordinary meeting, the Mayor is obliged to call a meeting within 14 days under section 366 of the *Local Government Act 1993* and clause 3.2 of Council's Code of Meeting Practice.

Clause 3.27 of the Council's code of meeting practice states that the general manager must ensure that the agenda for an extraordinary meeting deals only with the matters stated in the notice of the meeting. In this case, the notice requesting the extraordinary meeting contains insufficient information about the business that is proposed to be transacted at the meeting to allow you to prepare an agenda for the meeting. This can be addressed two ways:

- by the councillors providing you with an amended notice that more clearly specifies the business proposed to be considered at the meeting, or
- by the councillors submitting a separate notice of motion proposing the business to be transacted at the meeting.

Absent this, the extraordinary meeting may need to proceed without an agenda. If there is no agenda for the meeting, business may only be considered at the meeting in the circumstances set out under clause 3.28, namely:

- a motion must be passed to have the business considered at the meeting **and**
- the chairperson must rule that the business is of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.

As we discussed, the *Model Code of Conduct for Local Councils in NSW* requires allegations of conduct that would constitute a breach of a council's code of conduct to be dealt with in accordance with the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW*. Clause 9.10 – 9.12 provide as follows:

9.10 All allegations of breaches of this code must be dealt with under and in accordance with the Procedures.

9.11 You must not allege breaches of this code other than by way of a complaint made or initiated under the Procedures.

9.12 You must not make allegations about, or disclose information about, suspected breaches of this code at council, committee or other meetings, whether open to the public or not, or in any other forum, whether public or not.

Any notice of motion that seeks to place a matter before a meeting contrary to these requirements, will be unlawful.

Under clause 3.20 of the Council's code of meeting practice, you must not include in the agenda for a meeting any business if, in your opinion, the business is, or the implementation of the business would be, unlawful. Where you exclude unlawful business, you must report any such exclusion to the meeting but without giving details of the item of business.

Should unlawful business be proposed at the meeting as a motion or an amendment to the motion, the chairperson must rule it out of order.

Let John know when Extra meeting is scheduled.

If you can let me know when the extraordinary meeting will be held, I will arrange for someone from the Office of Local Government to attend. We may need the Council's approval to attend during the consideration of any items in the absence of the public.

I hope this information is helpful.

Regards

John Davies | Manager Council Governance
Policy and Sector Development Group
Office of Local Government | Locked Bag 3015 Nowra NSW 2541

<http://www.olg.nsw.gov.au>



Office of
Local Government

From: Bobbie-Jo Gordon [REDACTED] **On Behalf Of** Ann Prendergast
Sent: Thursday, 27 February 2020 10:56 AM
To: John Davies [REDACTED]
Subject: Notice of Motion

Dear John

Thank you for your time this morning. As discussed, I attach the Notice of Motion submitted at last night's Council meeting signed by Cirs, Turland, Halstead and Scandrett. The NOM calls for the Mayor to hold an extraordinary meeting as a matter of urgency for staff and governance issue. However, it does not identify the item of business to be dealt with at the meeting. I would appreciate your written advice in terms of the steps that the Mayor needs to take in order to determine what the item of business to be discussed at the meeting is.

Also as discussed, I would appreciate a representative from the OLG to be present at that Extraordinary Meeting once a date is fixed. The Mayor has advised that he will be formally writing to you seeking the advice of your office in relation to recent events.

Kind regards

Ann Prendergast General Manager
Wingecarribee Shire Council

[REDACTED]
Civic Centre, 68 Elizabeth St. Moss Vale, NSW 2577 | PO Box 141 Moss Vale NSW 2577

www.wsc.nsw.gov.au

Angus Broad

From: Ann Prendergast <[REDACTED]>
Sent: Tuesday, 9 June 2020 4:00 PM
To: [REDACTED]
Subject: Private & Confidential
Attachments: complaint to olg letter.pdf; complaint to olg attachments.pdf

Dear Mr Davies

I have today lodged a complaint under Part 9 of Council's Code of Conduct against Councillors Turland, Halstead and Scandrett with Mr Hurst.

I attach a copy of my complaint. As advised to Mr Hurst, a electronic file containing excerpts from a number of Council meetings will forwarded under separate cover due to the size of the file.

I look forward to hearing from either yourself or Mr Hurst that this complaint will be dealt with as a matter of urgency.

Yours sincerely

Ann Prendergast General Manager

Wingecarribee Shire Council

[REDACTED]
Civic Centre, 68 Elizabeth St. Moss Vale, NSW 2577 | PO Box 141 Moss Vale NSW 2577

www.wsc.nsw.gov.au



Civic Centre, 68 Elizabeth St.
Moss Vale NSW 2577
PO Box 141, Moss Vale
02 4868 0888
mail@wsc.nsw.gov.au
ABN 49 546 344 354

9 June 2020

Mr Tim Hurst
Deputy Secretary
Local Government, Planning and Policy
Locked Bag 3015
NOWRA NSW 2541

PRIVATE AND CONFIDENTIAL

Dear Mr Hurst

COMPLAINT UNDER PART 9 OF COUNCIL'S CODE OF CONDUCT

I wish to lodge a complaint under Part 9 of Council's Code of Conduct ("CoC") against:

- Councillor Turland
- Councillor Halstead, and
- Councillor Scandrett.

My complaint relates to 9.12 of the CoC which states:

"You must not make allegations about, or disclose information about, suspected breaches of this code of conduct at council, committee or other meetings, whether open to the public or not, or in any other forum, whether public or not."

On 11 March 2020 an Extraordinary Meeting of Council was held to consider the performance and contract of the General Manager. The Extraordinary Meeting of Council was called by Councillors Turland, Halstead and Scandrett. The Notice of Motion (NoM) did not specify what was to be discussed at the meeting other than staff and governance issues. As the NoM was sufficiently vague advice was sought from Mr John Davies as to how an agenda for the meeting could be prepared. Attached is a copy of his advice (**Attachment 1**). In the end, it was advised that the matter to be discussed was the General Manager's performance and Contract and the Agenda was prepared with the item identified as a "Staff Matter".

Working with you

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WINGECARRIBEE - A COAL MINING FREE SHIRE

As the matter related to my performance and contract, I and other staff were excluded from the meeting. I am therefore not privy to what was discussed at that meeting. With the consent of the meeting, Deputy General Manager Mr Barry Paull and a representative of the Office of Local Government remained in the meeting.

My complaint is based on the Amendment to the original Motion moved at that meeting. The motion moved by Councillor McLaughlin and seconded by Councillor Andrews was:

- 1. That Council notes that the General Manager satisfactorily met all performance objectives in her interim performance review conducted in November 2019.***
- 2. That Council notes that the General Manager's next performance review is scheduled to be undertaken by the General Manager's Performance Review Committee by July 2020.***
- 3. That Council confirms its position that the General Manager is satisfactorily fulfilling her role under the terms of her performance agreement.***

An Amendment was moved by Councillor Turland and seconded by Councillor Halstead in the following terms:

- 1. That Council terminate the contract of the General Manager.***
- 2. That there is a potential breach of the Privacy and Personal Information Protection Act 1998 and Surveillance Devices Act 2007.***

The Amendment was lost and the Motion passed. Councillors Turland, Halstead and Scandrett requested that their dissenting votes be recorded, which was duly recorded in the Minutes, submitted to Council for adoption at its meeting on 25 March 2020.

At the conclusion of the Closed section of the meeting, Council resumed the meeting in Open Council and recommenced the live streaming of the meeting. Clauses 15.21 and 15.22 of Council's Code of Meeting Practice (COMP) requires that the Chairperson must make the **Resolution** public. However, in this case, not only was the **Resolution** of the Council made public but the **Amendment that was lost** was also made public.

Thus, Councillors Turland, Halstead and Scandrett have breached, not only Clause 9.12 but also 9.10 and 9.11 of Council's CoC. I am of the view that these Councillors have also breached 9.1 and for the purposes of Clause 9.1, part 2 of the Amendment was put forward to:

- a. Bully, intimidate or harass me in my role as General Manager; and
- b. To damage my reputation.

None of these three councillors are first time councillors and have had training on the CoC and Procedures for the Administration of the Code on more than one occasion and should have known, or ought reasonably to have known, that if they were of the view that I had breached the CoC, the

proper procedure under the Code and Procedures was to lodge a CoC complaint against me with the Mayor. Instead, they contrived to deal with it through an Extraordinary Meeting of Council where allegations must have been made against me, in the closed forum, which were then made against me in a public forum.

I sought advice from Dr Lindsay Taylor of Lindsay Taylor Lawyers as to whether there could be any doubt as to who was alleged to have breached the two Acts mentioned in the Amendment. His advice was that it was clear from the Amendment that it was me, as General Manager, that was alleged to have caused the breaches.

A further attempt was made by Councillor Scandrett to bring the matter into the public eye. At the Council meeting of 25 March 2020, during the part of the meeting where the adoption of the Minutes of the Extraordinary Meeting was considered, Councillor Scandrett raised a question on the accuracy of the Minutes. He suggested that the dissenting votes had not been recorded. He then proceeded to read the first part of the Amendment out – this, while the meeting was being live webcast. The dissenting votes had been accurately recorded in the Minutes. The ridiculous outcome was that the dissenting votes of the three councillors was then added against their own Amendment!! It is my view that the only purpose of Councillor Scandrett's objection to the Minutes, as recorded, was to take the opportunity to read aloud again, in a public forum, the Amendment put forward by the three councillors at the Extraordinary Meeting on 11 March.

Background to the allegations of legislative breaches

On 20 January 2020, a request was made of Council's Customer Service for the provision of a quote for development application fees. The request was made by phone. Prior to any telephone call being answered, the caller is advised that the phone call is being recorded for training and quality assurance purposes. The Customer Service staff member took the details required to enable a quote to be provided and advised that the quote would be provided within 8 hours.

On 27 January 2020, an article appeared in the Daily Telegraph with a half page article on the front page entitled *Exclusive: Council's fees for fire victims to rebuild* with the further heading in attention grabbing large print *Home Wreckers*. In the body of the article, the homeowner, Ms Haslinger, said, *"We have been horrified (by their response)." "There has been a complete lack of empathy from the council, from these people ... who are getting paid hundreds of thousands of dollars each year."* A copy of the article is shown at **Attachment 2**.

Understandably, Councillors were horrified by the article. It was an extremely emotionally charged time, so close to the bushfires which had happened in the Shire, and which continued to threaten the Shire at that time. I, as General Manager, was horrified by the article and wanted to understand what could possibly have been said to engender such a claim. I listened to the tape recording of the conversation between Council's Customer Services Officer and Ms Haslinger's representative. I was reassured by the level of professionalism with which the call had been dealt.

There are a number of points to note:

- Council does not meet between the 2nd Wednesday in December and the 2nd Wednesday in February.
- No development applications for rebuilding of a home in the bushfire affected areas of the Shire had been received.
- There was no trigger prior to the article in the Daily Telegraph for Council in meet to consider changing its DA Fees and Charges Policy.
- Therefore, the Customer Service Officer would have had no basis on which to quote other than Council's existing adopted fees and charges, and
- **NO REQUEST FOR A DISCOUNT OR A WAIVER OF FEES HAD BEEN MADE TO THE CUSTOMER SERVICES OFFICER.**
- Further, no request had been made to me, as General Manager, or to the Deputy General Manager Corporate, Strategy and Development Services, nor to the Group Manager, Planning, Development and Regulatory Services, presumably the people referred to in the article as *"getting paid hundreds of thousands of dollars each year"*.

To allay the concerns of Councillors, I invited Councillors to an information session to be held on Wednesday 29 January. I provided them with the facts, i.e. the nature of the request, the information collected and the quote which had to be based on the Council's adopted fees and charges. I assured them that the Customer Services Officer could in no way have been seen to have shown a complete lack of empathy. One Councillor asked whether the tape of the request for quotation could be played to the Councillors. In the circumstances, and again purely to allay their concerns, the tape was played once for them. They were completely satisfied that Council staff had acted appropriately and in a professional manner.

Four councillors did not attend the information session, being Councillors Turland, Halstead, Scandrett and Whipper.

At the information session, it was advised to staff that some Councillors may attempt to deal with the issue of the waiver of fees at an Extraordinary Meeting of Council scheduled for 29 January 2020. The purpose of that Extraordinary Meeting was to consider the allocation of the \$1M Commonwealth Government Grant provided to Councils for immediate assistance to fire affected communities. This Extraordinary Meeting was convened following two public meetings held with fire affected communities in the northern and southern parts of the Shire. Those community meetings were held on 20 and 21 January 2020. A discussion was held with all Councillors on 22 January 2020 to obtain guidance on Councillors allocation of those funds based on the feedback from the community. The report on the Agenda for the Extraordinary Meeting of 29 January 2020 reflected what had been agreed by Councillors at that discussion.

The advice to the Councillors at the information session on 29 January 2020 was that the matter of the waiving of Council DA and other related fees should be considered based on a formal report to Councillors so that the Councillors could make an informed decision, rather than on emotive debate without information on which to consider the matter. It was suggested to Councillors that they may wish to put forward a motion that would require a formal report for Council consideration.

On that issues, I note the COMP which states:

3.27 The general manager must ensure that the agenda for an extraordinary meeting of the council deals only with the matters stated in the notice of the meeting.

3.28 Despite clause 3.27, business may be considered at the extraordinary meeting of council, even though due notice of the business has not been given, if:

- (a) A motion is passed to have the business considered at the meeting, and
- (b) the business to be considered is ruled by the chairperson to be of great urgency on grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.

While certain Councillors attempted to bring the matter of the waiver of Council's DA fees into the meeting, I note from the Minutes of that meeting that none of the procedures outlined in 3.28 above occurred at the meeting. Instead, an Amendment moved by Councillor Nelson and seconded by Councillor McLaughlin, included inter alia, that a report be brought back to the Ordinary Meeting of Council which would deal with the matter of Council's position on the waiver of DA fees following consultation with other Councils and the Department of Planning, Industry and Environment. That Amendment was passed, became the Motion and was passed.

The Daily Telegraph article created significant media interest. It has been alleged that, in an interview with 2ST radio, the Mayor made a comment to the effect that the request by Ms Haslinger was mischievous or malicious. I have no knowledge of such an interview. I did not hear the interview so I am not in a position to comment on it.

However, this became the basis of numerous allegations made by Councillors Turland, Halstead and Scandrett in subsequent meetings of Council – in Open Council and ultimately resulted in a CoC complaint being lodged by Councillor Turland against the Mayor. The allegations against the Mayor included a wide range of the CoC provisions. The complaint was referred to one of Council's panel CoC reviewers. The result of the Preliminary Assessment was that no breach had occurred.

Given the allegations that became a repeated theme in Council meetings, I sought advice from Dr Lindsay Taylor of Lindsay Taylor Lawyers. I will refer to these allegations in a later section of this complaint. Allegations were now being made in open council of breaches of the Privacy and Personal Information Protection Act 1998, the Surveillance Devices Act 2007 hence my reason for

seeking legal advice from one of Council's panel lawyers. My interpretation of the advice provided is that, in the circumstances, none of these Acts had been breached.

Allegations in Open Council

An Extraordinary Meeting of Council was called and occurred on 6 February 2020. The purpose of that meeting was to consider the waiver of Council's Development fees and charges. A detailed report was provided by the Deputy General Manager, Corporate, Strategy and Development Services which included advice that the Council, under s.705 of the Local Government Act 1993, would be required to give 28 days public notice of Council's proposal to waive the fees outlined in the detailed recommendation. The recommendation was moved, as a motion, by Mayor Gair and Councillor McLaughlin. The motion was passed unanimously. No Amendments were put forward. This confirms the wisdom of Council waiting for a proper report on which to base its decision and the process to ensure that its decision would meet all the requirements of the Local Government Act 1993.

However, during that meeting Councillor Turland brought into debate his allegation that councillors and staff had listened to the tape of the request for a quotation. He made the comment that the tape was private. Following on from this, Councillor Halstead in his rising to debate the motion, stated categorically, that the Mayor had breached the Surveillance Devices Act. He stated that he knew the law – that the behaviour, particularly of the Mayor was reprehensible. He stated he was disgusted – surprised that the matter of the waiver the fees was back "tonight" – he is very annoyed.

Councillor Scandrett, in his debate, again referred to the tape – stating that it should be investigated.

All of these repeated comments, by Councillors Turland, Halstead and Scandrett, breached the CoC by making allegations against the Mayor and me of breaches of a number of Acts, **in public** – all of which allegations were made in the open meeting, being webcast live. The issue of the tape was raised again by Councillor Scandrett at the Ordinary Meeting of Council on 26 February 2020 in the part of the meeting opened to the public and being live streamed.

Pattern of Behaviour

The repeated behaviour of Councillors Scandrett, Turland and Halstead at meetings, in my view, breaches Clauses 3.19, 3.20, 3.21 and 3.22 of the CoC. I will provide the Office with a record of the disruption to demonstrate my allegation that the above Clauses of the Code of Conduct have been breached but I will outline below some notable examples.

Extraordinary Meeting of 29 January 2020

This meeting was not only live streamed but also the entire meeting was recorded by Channel 7. Also, the public gallery was packed with many of the fire affected residents of the Shire.

At the beginning of the meeting, which under the COMP, was only for the sole purpose of allocating the \$1M grant from the Commonwealth Government, Councillor Scandrett attempted to turn it into a public meeting with all members of the gallery being given the opportunity to address Council. When the Mayor would not allow it, Councillor Scandrett stated *"You have made a big mess of this so far"* and *"Mr Mayor you are a shame"*. The meeting continued with repeated negative comments by this Councillor and Councillor Halstead against the Mayor and staff with Councillor Scandrett repeatedly saying to the Mayorfailed, failed, failed...ineptitude. At one point in the meeting Councillor Scandrett calling Councillor McLaughlan something to the effect of.... *"The sailing Minister for Holidays."*. It is to be noted that Councillor Whipper, towards the end of meeting, stating how deeply embarrassed he was with what had gone on at the meeting, calling it a circus.

Extraordinary Meeting of 6 February 2020

Again, this meeting starts with Councillors Turland and Halstead being argumentative with the Mayor, with Councillor Scandrett again calling "Shame, Shame" to the Mayor. It is at this meeting that the allegations of breaches of the Privacy and Personal Information Protection Act 1993 and the Surveillance Devices Act 2007 were raised, with Councillor Halstead particularly referring to breaches of the latter Act. It was Councillor Halstead who introduced the notion of breaches of the Surveillance Devices Act. Councillor Scandrett then took up this theme, stating that the matter should be investigated.

Ordinary Meeting of Council of 26 February 2020

There were numerous times during this meeting where the Mayor and staff were challenged on meeting practice. Councillor Turland attempted to raise a NoM not on the Agenda as a matter of urgency. The Mayor ruled that it was not a matter of urgency and was something that could wait until the next meeting.

The issue was around a NoM that wasn't on the Agenda, the exclusion of which was not made known to Councillors Turland and Halstead prior to the Agenda being sent out. The circumstances around this do not relate to my complaint but for completion, the NoM was never made known to me, or other staff responsible for putting the Agenda together, due to an oversight of the Personal Assistant to the Mayor and Councillors. I was not going to mention that oversight in a public meeting. However, my statement that it would not have been included in the Agenda was correct as the NoM would have breached the COMP.

Councillor Halstead rose to speak alleging that this was an attempt to shut himself and Councillor Turland down, that he had taken legal advice on the situation, that he would be taking action, that it would not stop here, that he had no confidence in the Mayor's ruling, he would not be hoodwinked – the GM has heard all this before etc. etc. The situation was highly charged and the Mayor adjourned the meeting for 15 minutes. Just prior to the live streaming ending, Councillor Scandrett called the Mayor a coward.

The meeting resumed with Councillor Scandrett trying to apologise for calling the Mayor a coward but the Mayor would not accept the apology.

The meeting continued in a reasonably orderly fashion for about 20 minutes when Councillor Turland again tried to raise the issue of the tape recording as a question to Ms Lidgard on the 6 monthly report against the Delivery Program. Councillor Scandrett then questioned Ms Lidgard about where in the report he could find information around the issue of the building report on a specific council building. I tried to explain to the Councillor the role of the Delivery Program as distinct to the Operational Plan or where such information would be presented to Council, i.e. a report to the Finance Committee or the Council itself.

Finally, in frustration, the Mayor closed the meeting at approximately 21 minutes following resumption of the meeting.

Note: It had become the practice of Councillors Scandrett, Turland and Halstead to submit, either individually or collectively, NoM or Questions with Notice ("QwN") that do not comply or meet the standards of the COMP or CoC. As General Manager, I must exclude such NoMs or QwN, thereby requiring me to submit Exclusions Reports to the next meeting of Council. It again has become the practice of these Councillors to challenge me on my actions at each meeting that an Exclusion Report is on the Agenda. An extreme example of that occurred at the Ordinary Council Meeting of Council on 11 March 2020.

Ordinary Meeting of 11 March 2020

There was further disruptive behaviour at this meeting, with the Mayor again adjourning the meeting for 15 minutes approximately 3 hours into the meeting. The reason for the Mayor's adjournment resulted from the behaviour of Councillor Turland where he made a threat against me and subsequent challenges by Councillor Turland and Scandrett around the exclusion of certain NoMs/QwN from a previous Council Agenda. At one point, Councillor Scandrett took a piece of paper, presumably with his excluded NoM down to the reporter who was sitting at the back of the room and placed it in front of her. The reporter looked completely bewildered. When I objected strongly to the Mayor, Councillor Scandrett tore off a corner of the page and returned to his seat with the paper in his hand. After an attempt by the Mayor to remove Councillor Scandrett from the meeting, the Mayor adjourned the meeting for 15 minutes.

The stress that the Councillors' behaviour was causing me and staff at this stage of the meeting, prior to the adjournment, was such that I advised the Mayor that I was considering removing myself and all staff from the Chamber for the remainder of the meeting. That did not happen.

I took advice from Dr Lindsay Taylor on how I might manage my responsibilities to staff in relation to workplace health and safety, given the growing tensions at meetings. My question was whether I could remove myself and/or all staff from meetings of Council, or briefing sessions, where the behaviour of Councillors was causing extreme stress and anxiety for staff. His advice was that while recognising the impact on staff and my responsibilities to staff, I could not remove myself or staff from the meetings because of my obligation under the Local Government Act 1993 to provide

support and advice to Councillors in the exercise of their duties as Councillors. This leaves me, as General Manager, in an invidious position.

The footage of this meeting, provided with this letter of complaint, will show the context and behaviour of Councillors Scandrett and Turland.

Ordinary Meeting of 25 March 2020

This meeting was one of the worst meetings of the 2020 year, so far. It started with Councillors Turland and Scandrett challenging me on my role as GM, stating that the meeting should not have occurred because of COVID-19, questioning the Mayor as to whether or not he had been tested for COVID-19, making comments about Councillor McLaughlin's health. Councillor Turland accused the Mayor of "fattening up the Agenda" with the Mayoral Minutes, just to have the meeting to consider a matter relating to the Station Street Upgrade project, "putting us all at risk". It should be noted that this was a scheduled Ordinary Meeting of Council.

It took the Council 30 minutes or more to get past the usual Agenda Items of Apologies, Adoption of the Minutes of the previous meetings of 11 March, Declarations of Interest before even debating the 3 Mayoral Minutes on the Agenda. When it came to those Mayoral Minutes, they were challenged by Councillors Scandrett and Turland in a manner which could only have been for the purpose of ridiculing and embarrassing the Mayor thereby bringing him into disrepute. Further into the meeting during the debate on the Station Street matter, Councillor Scandrett made spurious references to Councillor McLaughlin owning shares in Boral and to the someone in the Mayor's family having purchased land in Links Road, maybe the Mayor's father. The purpose of those nefarious remarks could only have been to suggest some interests that Councillor McLaughlin and the Mayor may have in the matter before Council.

It was during this meeting that the Minute Taker found herself in such a state of distress that she left the meeting and the taking of the minutes had to be done by one of the Deputy General Managers.

A comment on Council's Facebook page during the meeting sums the meeting up as follows:

"This is the most unprofessional meeting I have ever seen."

The Council resolved at this meeting to hold no meetings in April.

At the end of the meeting, Councillors Scandrett, Turland and Halstead handed up 4 Notices of Rescission relating to matters considered at the meeting. I believed they attempted to hand them to the Mayor just as the Mayor declared the meeting closed. Presumably, if they had handed them up prior to the closure of the meeting, they could have put the case that they needed to be dealt with at the meeting, under 10.3 of the Code of Meeting Practice which would then require the Mayor to rule that they were of great urgency and needed a decision prior to the next scheduled ordinary meeting of Council. That did not happen, hence the Extraordinary Meeting held on 27 March 2020.

One of the Notices of Rescission relating to item 9.1 on the Agenda contained 2 parts which had not been matters considered and decided at the meeting. These were:

"That all senior staff take a 25% cut in there [sic] salary and for 12 months and that no bonuses for 12 months", and

"That as well this meeting should never have been conducted as it as it [...illegible...] councillors and staff."

See Notice of Rescission at **Attachment 3**.

At the Extraordinary Meeting on 27 March 2020, both these parts were excluded from the Notice of Rescission on the Agenda because the first of these two parts would engage the Councillors in debate on a matter to which they could not lawfully give effect, if passed and the second part was a statement to the effect that there had been wrongdoing on the part of someone.

Councillors Turland and Halstead did not leave the issue of the salary cut there. They co-authored a letter to the Southern Highlands News, which was published on 22 April 2020. The article can be read at **Attachment 4**.

Councillors Turland and Halstead called for a 25% reduction in my salary, the Deputy General Managers' salaries and went on to state that the 25% reduction should apply to all "administrative staff". They stated that the salary reduction should not apply to "works staff" describing the "works" staff as water services, sewer services and road maintenance. The only logical deduction to be made from this is that "administrative staff" covered all remaining Council employees.

Councillor Turland then wrote *"The normal level of administration of council's operations would not be in 'full swing' at present, with administrative staff in the most part, working from home: the likelihood of 'normal' output is unlikely."* He further went on to say... *"Clearly the staff of council are being paid full salaries while the less fortunate are without a job and at best being paid a job-seeker or job keeper allowance...."*

Later in the article Councillors Turland and Halstead are reported to say *"...it was **obscene** [emphasis added] that the residents and ratepayers of the shire are expected to 'carry the load', whilst suffering financial losses and associated social disruption, whereas the administrative staff of council collect their full wages"*.

I will not quote any further from the article as it is attached. Suffice to say the staff (so called "administrative") were extremely upset and a number voiced their anger and distress to me. I provided a message to all staff to reassure them that I would not be imposing the 25% reduction in salaries called for by these Councillors.

The tenor and content of the article was designed to bring me and other staff into disrepute, particularly at a time when members of the public were dealing with the stress of COVID-19,

uncertainty as to the future, including the health of family and friends – a time when members of the public were likely to be vulnerable and susceptible to swallow such negative commentary about the majority of the staff of council.

I am aware that one council staff member has taken a CoC complaint out against those two Councillors. That CoC complaint is being dealt with by one of Council's panel reviewers and the outcome of the preliminary assessment is not yet known.

Extraordinary Meeting under emergency circumstances held on 27 March 2020

Given the subject matter of the 4 Notices of Rescission submitted at the meeting of 25 March 2020 and the increasing likelihood of a COVID-19 shut down of meetings, the Mayor called an Extraordinary Meeting to deal with the 4 Notices of Rescission. Councillor Turland was an apology for that meeting but had requested Councillor Halstead to read out a statement when Apologies were being considered. That statement accused staff of putting Councillors and staff at risk by holding the 25 March meeting and the Extraordinary Meeting which was then underway. He stated that he would be holding the General Manager and staff accountable in due course.

All Ministerial Order specifications and directions from NSW Health had been followed at both meetings. Councillor Turland's statement, and comments at the 25 March meeting essentially accused me, in open council, of putting staff and Councillors at risk when this was not the case. While he did not mention the Workplace Health and Safety Act, there can be no doubt that he was alleging a breach of my responsibilities under that Act or advice in a Ministerial Order in place at the time.

There was continual arguing with the Mayor by Councillor Scandrett and Councillor Halstead requested the Mayor to exclude Councillor McLaughlin from the meeting because he was coughing.

Workplace Health and Safety

I am increasingly concerned about the workplace health and safety of staff, the Mayor and Councillors. The increasing pattern of misbehaviour, disruption and attacks on Council staff both at meetings and outside of meetings is taking a significant toll.

I have found myself experiencing frequent panic attacks, waking at all hours of the night with my thoughts racing and my heart racing. I find that I am constantly trying to anticipate the next attack and devising strategies to deal with or defuse possible situations. Other staff also report finding themselves with the same levels of anxiety ahead of and during Council meetings.

On 11 March 2020, I found myself unable to read the usual pre-meeting statement, instead having to ask Ms Danielle Lidgard to do so. During the Extraordinary Meeting to consider my performance and contract, I was so stressed that my heart was racing frighteningly. I asked my Executive Assistant to put her hand on my chest. Her immediate respond was to insist on taking me out of the Civic Centre for a coffee to distract me.

On my return, and at the end of the Extraordinary Meeting, I asked Barry Paull, Deputy General Manager Operations Finance and Risk, to come to see me. Mr Paull had been requested by the Mayor, and allowed by the Council, to be in attendance during the Extraordinary Meeting. He arrived in a distressed state. He did not discuss what transpired at the meeting only to say that the meeting had been abhorrent. He advised me of the Council resolution and the Amendment which had been put forward by Councillors Turland and Halstead.

It was at about that point when there was a loud banging on my door. There was no time to even say "come in" when Councillor Turland barged into the room. He was in a highly agitated and angry state. He stood over Mr Paull and started shouting at him. To this day, I don't remember what he said as I was so startled by his intrusion and aggressive state. Mr Paull got up, to be in a standing position and as he later told me, to ensure that he could stop Councillor Turland coming around my desk to take whatever action he might be intending to do. I hustled Councillor Turland out of my office and closed the door. Mr Paull got up and went outside to speak to Councillor Turland. The exchange was heated and I commanded Mr Paull to return to my office, which he did, and I again closed the door. Mr Paull was at this stage highly distressed and left my office. This encounter left us both in a state of high anxiety and distress. It didn't help that within an hour of that encounter we had to attend the Ordinary Meeting of Council, commencing at 3.30. This meeting went on for 4 and a half hours. About 3 hours into the meeting, the Mayor adjourned the meeting for 15 minutes due to the behaviour of certain Councillors and the tension at the meeting.

The episode that took place after this Extraordinary Meeting was observed by Councillor Markwart. Councillor Markwart sent me an email of support, which is attached with his consent. It confirms the nature of the exchange but also refers to the repeated behaviour of certain Councillors in Council meetings. See **Attachment 5**.

I went to my doctor on 12 March as I was concerned about my health. I placed on my medical record the bullying and harassment that I was experiencing at the hands of Councillors Turland, Halstead and Scandrett. My doctor gave me prescriptions for medication to help stop my heart racing and some medication to help me sleep. This is the first time in my long professional career in Local Government, both in New Zealand and Australia, that I have found it necessary to take such action.

On 19 March 2020, Mr Paull took a call from Councillor Turland. A record of the call is attached at **Attachment 6**.

The phone call was abusive, with a lot of swearing and threats. Councillor Turland alleged inaction on my part relating to preparing the organisation to respond to emerging Public Health Orders on COVID-19. He would not listen to the information being provided. This is just another example of Councillor Turland's totally unacceptable, abusive and bullying behaviour towards staff, the Mayor and me.

The behaviour of Councillors Scandrett, Turland and Halstead is not only taking a toll on senior staff but also on other staff who regularly attend briefing sessions and Council meetings. A significant

number of Incident Reports have been lodged with Council's Workplace, Health and Safety Branch and these are attached. See Attachment 7.

Letter from Your Office to me dated 24 April 2020

The Mayor and others have been in frequent contact with your office raising concerns about the behaviour of certain Councillors (it is stressed that not all Councillors are behaving in a disruptive manner).

Your letter to me, referred to above, took note of those issues and provided reassurance to myself and other staff that we had not, in any of the circumstances referred to your office, acted inappropriately. It referred to the responsibility of Councillors under the Workplace Health and Safety Act, among other things. Your request that the letter be forwarded to the Councillors was immediately acted on. I also put the letter on the Confidential section of the next available Council Meeting, namely the meeting of 13 May 2020.

Has the letter had any effect on the Councillors, while not specifically named, could easily be identified by staff and their fellow Councillors? It is worthy of note that Councillor Halstead was an apology for that meeting and Councillor Turland left the meeting before the letter was considered in Closed Council. Councillor Scandrett blithely expressed his pleasure that your office was taking notice.

The meeting of 13 May 2020 had an exclusion report relating the parts of the Notice of Rescission considered at the Extraordinary Meeting of 27 March, which had been excluded (referred to earlier in this letter). Councillors Scandrett and Turland again ridiculed my decision with Councillor Scandrett calling it *"a farce"* and Councillor Turland referred to me as *"judge, jury and executioner"*, highly emotive language which he later repeated when he said *"One person makes the decision, not good governance. One person makes the judgement. It's not right to have one person as the judge, jury and executioner."* Councillor Scandrett later made remarks to the effect that it is *"closed shop.....the gag comes in"*.

Yet, that is the role of the General Manager, in accordance with the COMP. I do not make those decisions lightly, often discussing these issues with your office and from time to time, taking legal advice on the matters.

It is unacceptable that this kind of ridicule, belittlement and undermining continues.

Summary

I have no option but to refer my complaint against Councillors Scandrett, Turland and Halstead to your Office. Not even your letter appears to have made an impression on these Councillors and I do not believe it will alter their behaviour.

There is serious concern about the health and wellbeing of staff involved in this complaint. As an organisation we have numerous internal management policies addressing workplace bullying and

harassment, dignity and respect in the workplace, adherence to the Code of Conduct and many others, on which all council staff are trained. Yet, in the Council Chamber the essence of these policies, which apply to staff, are simply ignored and ridiculed by certain members of the governing body. What message does that send to the staff body?

I am often told that Wingecarribee Shire Council has a bad reputation and from time to time certain (the same) Councillors state that it is something that is the fault of the "organisation". I refute that. Certainly, we who manage this organisation are not perfect but we try diligently to work in the best interests of the community, in co-operation with the Councillors. In an attempt to do that, we consistently hold in excess of 100 briefing sessions with Councillors each year, some requested by Councillors but the vast majority volunteered by Council Executive and staff.

At the first informal meeting between the Executive and the newly elected Councillors in 2016, the message from me, as General Manager, was that we wanted to work collaboratively and co-operatively with Councillors. I know that some Councillors do remember that message.

It was therefore alarming to hear that the first message to the Executive from the newly elected Mayor, Councillor Halstead, in 2016 at our first meeting was ..."don't lie to me...".

The three Councillors the subject of my complaint appear to believe they are immune and above any remedy that your office might hold. In fact, it is clear to me that they hold your office in contempt, and therefore the Minister of Local Government.

The purpose of this complaint is to highlight the situation that exists at the Council currently.

I earnestly request that your office investigates this state of affairs and the grounds for my complaint as outlined in this letter. There is more information that can be provided, should your office wish to conduct an in-depth investigation.

Of the utmost concern to me is the mental health and wellbeing and morale of staff and Councillors. With the ongoing bullying, harassment, belittlement and ridiculing of the Mayor, myself and other staff and the postponement of the local body elections until September 2021, it is my view that an investigation into the three Councillors identified in this letter, needs to happen as a matter of urgency.

Yours sincerely



Ann Prendergast
General Manager

cc M John Davies



Office of Local Government

5 Orange Avenue NCARA NSW 2541
Locked Bag 3015 NCARA NSW 2541

Our Reference
Your Reference
Contact
Phone

A639933

Ms Ann Prendergast
General Manager
Wingecarribee Shire Council
PO Box 141
MOSS VALE NSW 2577

Attention: Ms Danielle Lidgard
Group Manager Corporate and Community

D Lidgard

L. Strechford

CONFID

19/15

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PRIVATE AND CONFIDENTIAL

Dear Ms Prendergast

I am writing in relation to Council's referral of an alleged breach of Part 8 of Wingecarribee Shire Council's (Council) code of conduct by Cllr Ian Scandrett.

The matter related to Cllr Scandrett's alleged failure to apologise following a Council resolution requiring him to do so. Council has referred the matter on the basis that the conduct constitutes an alleged breach of clause 8.10 of the former Model Code of Conduct and Council's adopted code which provides:

"Where you are a councillor or the general manager, you must comply with any council resolution requiring you to take action as a result of a breach of this code."

In this instance, Council made findings of inappropriate conduct by Cllr Scandrett and imposed sanctions (different to those recommended in the final investigation report) which included that Cllr Scandrett apologise, that the findings of the inappropriate conduct be made public, that Cllr Scandrett be formally censured for the breach under section 440G of the *Local Government Act 1993* (the Act) and that the matter be referred to the Office of Local Government (OLG) for further action under the misconduct provisions of the Act. I note that Council has made public findings of breaches of Council's code in its resolution of 13 February 2019.

It is noted in the minutes of 27 February 2019 that Cllr Scandrett subsequently declined to make an apology, however on 27 March 2019 Cllr Scandrett provided a public apology to Council.

OLG has finalised its assessment of the available information and due to the fact Cllr Scandrett has now apologised, OLG has determined not to take any further action in relation to this matter.



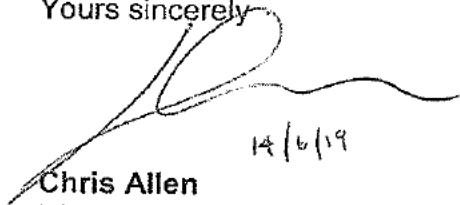
I have considered the harm or potential harm to the reputation of local government and Council arising from the alleged misconduct. I have noted that Council's resolution in its minutes of 27 February 2019 which makes findings of inappropriate conduct public, serves to warn Cllr Scandrett in relation to his conduct.

I also note that as part of the Conduct Reviewer's recommendations it was determined that Council should revise its policies and procedures for dealing with confidential information being provided to Councillors.

I have today written to Cllr Scandrett advising him of my decision.

If you wish to discuss any aspect of this matter, please contact Bron Hewson, of the OLG Investigations Team on [REDACTED]

Yours sincerely

A handwritten signature in black ink, appearing to be 'Chris Allen', with a date '14/6/19' written below it.

Chris Allen
Director, Sector Performance and Intervention

5 O'Keefe Avenue NOWRA NSW 2541
Locked Bag 3015 NOWRA NSW 2541

Our Reference
Your Reference
Contact
Phone

A641150

Council Governance
02 4428 4100

Ms Ann Prendergast
General Manager
Wingecarribee Shire Council
PO Box 141
MOSS VALE NSW 2577



Attention: Ms Danielle Lidgard
Group Manager Corporate and Community
By email: [REDACTED]

PRIVATE AND CONFIDENTIAL

Dear Ms Prendergast

I am writing in response to Council's email of 18 March 2019, seeking the Office of Local Government's (OLG) views on the concerns raised by Cllr Ian Scandrett's legal representative, Mr Anthony Hudson, about Wingecarribee Shire Council's resolution of 13 February 2019 (MN/35/19) relating to the Council's consideration of a matter concerning Cllr Scandrett under its code of conduct.

At the outset, I would note that this response is confined to the consideration of the procedural matters raised by Mr Hudson. OLG notes that at its meeting of 13 February 2019, Council also resolved, among other things, to refer Cllr Scandrett's alleged breach of its code of conduct to OLG for further action under the misconduct provisions of the *Local Government Act 1993* (the Act) pursuant to clause 8.56(e) of the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* (the Procedures). That matter is currently under consideration by OLG's Investigations Team and I do not propose to comment on it here.

In dealing with the procedural matters raised by Mr Hudson, I would note that OLG would normally only intervene in a code of conduct matter if it seemed that the code had not been correctly applied – either because the Procedures had not been followed or the prescribed standards of conduct had been misinterpreted – or if OLG was exercising its powers under the misconduct provisions of the Act. Otherwise, OLG would not normally comment on the merits of a complaint or a determination made in relation to it.

Mr Hudson has raised the following concerns:

- In resolving to impose sanctions on Cllr Scandrett that were different to those recommended by the investigator, the Council failed to state in its resolution its reasons for doing so, contrary to clause 8.57 of the Procedures.



- It was not open to the Council to ground its resolution censuring Cllr Scandrett on findings by the investigator that Cllr Scandrett had engaged in misconduct on more than one occasion and had breached section 664 of the Act given that the investigator made no such findings.

I have addressed each of these concerns in turn below.

Failure to specify reasons

OLG understands that this matter was dealt with under the 2013 iteration of the Procedures and that the Council is yet to adopt the 2018 iteration of the Procedures.

The Procedures contemplate two scenarios in which a council departs from an investigator's recommendations when resolving to impose sanctions on a respondent:

1. The council does not adopt an investigator's recommendation and does not impose any sanction on the respondent (clause 8.57)
2. The council imposes sanctions on the respondent that are different to those recommended by the investigator as occurred here (clause 8.8).

Under the 2013 iteration of the Procedures, councils are only required to specify reasons in their resolution in the first of these scenarios (ie where the council does not adopt the investigator's recommendation and takes no action). Under the 2013 iteration of the Procedures, councils are not required to specify reasons in their resolution in the second of these scenarios (ie where the council imposes a sanction that is different to the one recommended by the investigator).

The 2018 iteration of the Procedures has corrected this and now requires reasons to be provided in councils' resolutions in both the above scenarios. However, until the Council adopts the 2018 iteration of the Procedures, while it may be better practice to specify reasons, the Council is not strictly required to do so.

Grounds for censure

Given that the investigator found Cllr Scandrett disclosed confidential information on multiple occasions, namely '*...on 21 March 2018 during interviews on ABC radio and WIN TV on 28 March 2018, as well as an online FM Radio podcast on 12 April 2018...*' (final investigation report, paragraph 57), on OLG's assessment, it was reasonably open to the Council to be satisfied on the basis of the investigator's findings that Cllr Scandrett had engaged in misconduct on more than one occasion when censuring him under section 440G.

However, on OLG's assessment, it may not have been open to the Council to refer to section 664 of the Act in its resolution censuring Cllr Scandrett. In particular, OLG notes that the investigation report states at paragraph 55 that '*... it is considered the circumstances of Cllr Scandrett's actions fall short of sustaining a finding he breached this section (664) of the Act.*'

In the circumstances, the Council may wish to consider amending its resolution to remove any reference to section 664.

Additional concerns relating to minutes of meeting

I have also noted Mr Hudson's concerns that while the minutes of the meeting of 13 February 2019 record the fact that the complainant, Cllr Garry Turland, left the meeting while the Council considered the investigator's report, they do not record any declaration of interest.

OLG understands that the minutes of the meeting accurately record the fact that Cllr Turland left the meeting while the report was considered by the Council without declaring an interest in the matter.

This is consistent with the requirements of the Procedures. Clause 8.46 of the Procedures requires complainant councillors to leave meetings while the council considers an investigator's report but permits them to do so without declaring an interest in the matter.

I hope this information is helpful. Please feel free to share this letter with Mr Hudson.

Yours sincerely



**Tim Hurst
Chief Executive
Office of Local Government**

3/5/19