



NSW Ombudsman

Our File: C/2009/4185

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MANLY COUNCIL
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Dear Mr Wong

Investigation into complaint about Manly Council by Mr Norman Monshall

I refer to my investigation of the subject conduct. I enclose for your information a copy of my final report in relation to the investigation.

Thank you for your cooperation with this investigation.

Yours sincerely


Chris Wheeler
Deputy Ombudsman

25/7/11





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Report under section 26 of the *Ombudsman Act 1974*

Investigation into conduct of Manly Council in relation to:

- the handling and investigation of complaints made by Mr Norman Monshall in connection with allegations concerning his conduct as a member of Manly Council's Sustainable Transport Committee and predecessor committees, and
- changes made to the practices and procedures of Manly Council's special purpose committees in 2008 and 2009, including but not limited to the Sustainable Transport Committee and predecessor committees.

Date issued: 25 July 2011

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1. Introduction

Mr Norman Monshall made a complaint that a member of Council staff circulated three false allegations about him by email to the Mayor, Councillors, the General Manager, a staff member and a member of the NSW Police on 25 April 2009. He was dissatisfied with the way Manly Council had handled his complaint about the circulation of the email.

This report has been prepared in accordance with section 26(1) of the *Ombudsman Act 1974*.

2. The Complaint

On 15 June 2009, Mr Monshall complained to the Ombudsman that Ms Amanda Spalding, then Deputy General Manager of Manly Council had made three false allegations about him that were circulated to the Mayor, Mr Henry Wong, General Manager of Manly Council, Councillors Heasman, Burns and Norek, staff member Mr Doug Keech and Mr Dave Darcy of the NSW Police on 25 April 2009.

Mr Monshall complained that the General Manager had previously apologised for one of the alleged statements repeated by Ms Spalding in her email of 25 April 2009. He believed that Ms Spalding's conduct had damaged his reputation with recipients of the email, particularly the Mayor and Councillors. He was dissatisfied with the Council's handling of his complaints and required a retraction and written apology from Ms Spalding.

3. Preliminary inquiries

We contacted Mr Monshall on 19 June 2009 and requested that he provide further correspondence with the Council that had not been included with the complaint. These documents were provided on 24 June and 8 July 2009.

On 16 July 2009 we made a written preliminary inquiry with the General Manager under section 13AA of the *Ombudsman Act 1974*.

On 5 August 2009, Ms Spalding contacted us after having been advised by the General Manager that he had received a letter from the Ombudsman concerning a complaint from Mr Monshall. Mr Wong had not shown Ms Spalding our letter and she was concerned to know whether the complaint involved her and what her rights were in responding to it. Ms Spalding asked whether she could obtain a copy of our letter to the Council. We advised Ms Spalding that at that stage the focus of our inquiry was the Council's handling and investigation of the complaint rather than the allegations that were made by Mr Monshall in his complaint to the Council. We told her that when we received the response we would analyse the information provided and decide whether further inquiries were required.

On 11 August 2009 we agreed to an extension of time for response to our preliminary inquiry until 19 August 2009. The General Manager responded via email on 19 August 2009 and forwarded the full response, including two large folders of documents, on 20 August 2009 via courier.

On 25 August 2009, Ms Spalding advised us that Mr Wong had shown her the Council's response to our preliminary inquiry and she wished to make a submission to us. Ms Spalding's submission including 24 attachments was received on 30 August 2009.

4. Why we decided to investigate

One of the principal functions of the office of the NSW Ombudsman, as specified in section 13(1) of the *Ombudsman Act 1974* is to investigate the conduct of a public authority where it appears to the Ombudsman that conduct may be conduct referred to in section 26 of the *Ombudsman Act*.

After examining the information obtained from the preliminary inquiry, I decided there was sufficient *prima facie* evidence of maladministration in the Council's handling and investigation of Mr Monshall's complaint and the implementation of changes to Council's special purpose committee system in 2008 and 2009 to warrant the matter being dealt with formally under the *Ombudsman Act*.

I found it necessary to undertake a detailed investigation of the complaint because:

- we were provided with concerning conflicting explanations of events and circumstances within Council provided by the General Manager, the former Deputy General Manager and the complainant
- there appeared to be significant unresolved issues relating to the management of the relationship between staff, Councillors and community representatives on Council's special purpose committees that were manifested in the staff perceptions about the conduct of former members of the Bicycle Committee and the likely future conduct of Councillors and community representatives
- the Council's ineffective approach to the implementation of the new special purpose committee change process seemed to have created complaints from Councillors about staff and complaints from staff about Councillors about each others' roles and their obligations under the terms of reference for committees
- the inadequate handling of Mr Monshall's complaint appeared to be based on what appeared to me to be an unhelpful approach to complaints handling and a deficient complaints management process, which resulted in the failure to correctly identify the issues or to conduct a proper investigation, and
- the General Manager's proposal to resolve Mr Monshall's complaint did not adequately address the systemic failures that created the problem in the first place.

I commenced an investigation under section 13 of the *Ombudsman Act 1974* and issued Notices of Investigation under section 16 of the Act on 1 February 2010.

5. Conduct the subject of the investigation

The following conduct was made the subject of my investigation.

All of the actions and inactions which were part of any process used by the Council in:

- the handling and investigation of complaints made by Mr Norman Monshall in connection with allegations concerning his conduct as a member of the sustainable Transport Committee and predecessor committees, and
- changes made to the practices and procedures of the Council's special purpose committees in 2008 and 2009, including but not limited to the Sustainable Transport Committee and predecessor committees.

6. The investigation

I issued a Notice of Investigation in accordance with section 16 of the *Ombudsman Act 1974* dated 1 February 2010 to the Mayor of the Council. I invited the Mayor and Councillors to make any comments or submissions on the issues raised by the complainant and the conduct specified in the Notice of Investigation. I requested that any comments or submissions be received by 4 pm on 1 March 2010 at Level 24, 580 George Street Sydney. No comments or submissions were received from the Mayor or Councillors.

In accordance with the requirements of section 16(1)(a) of the *Ombudsman Act 1974*, Mr Monshall was provided with a copy of the Notice of Investigation on 1 February 2010.

I also provided Mr Wong with a copy of the Notice of Investigation on 1 February 2010.

On 8 February 2010, the General Manager advised the ordinary meeting of the Council of the formal investigation of Mr Monshall's 'libel' complaint about a member of staff and that legal representation would be retained on the matter. The council noted the information provided and the action taken by the General Manager.

On 8 February 2010, Ms Amanda Spalding, Deputy General Manager, Strategy and Strategic Projects and Executive Manager People, Place and Infrastructure, notified us that she had resigned from Manly Council as from 8 March 2010.

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On 9 February 2010, I received a letter from Ms Melinda Aitkenhead, Manager Corporate Governance at Manly Council on behalf of the General Manager, acknowledging receipt of my letter to Mr Wong of 1 February 2010 and the Notice of Investigation.

On 16 March 2010, I received a letter from a legal firm advising me that they were retained by Manly Council in relation to the investigation.

On 23 November 2010, I provided Mr Monshall with an extract from the provisional statement of facts that included information he had provided to the investigation. On 25 November 2010, I received a submission from Mr Monshall and that submission has been taken into consideration in preparation of this report.

On 7 December 2010, I provided Mr Wong and Ms Scott with an opportunity to respond to the matters raised in this report. Both have taken that opportunity and made, albeit brief, responses on 27 January 2011 and 25 January 2011 respectively. Their submissions have been taken into account in this report.

On 18 March 2011, I provided Manly Council with an opportunity to respond to the matters raised in this report. On 10 May 2010 this office received a much delayed but reasonably extensive response from the Council in regard to the matters raised in this report. Council's submissions have been taken into account in this report.

As a first matter in its response, Council asserted that it had not received an invitation to make any submissions or comment on the subject matter of the investigation as set out in the Notice of Investigation. I note that Council has, in support, provided me with a copy of my letter to Mr Wong of 1 February 2010, albeit that this letter served as only a courtesy copy of the Notice for Mr Wong. My separate letter to the Council of 1 February 2010 (which was addressed to Councillor Hay) quite clearly stated on page 2 that 'I would also appreciate any comments and/or submissions you or councillors would care to make on the complaint, the issues raised by the complaint and the conduct specified in the attached Notice'. Given Council's assertion, I can only conclude that Council either mislaid or did not receive my letter of 1 February 2010.

7. Relevant matters

7.1 Obligations on staff when undertaking their work

Manly Council staff are obliged to comply with a number of essential requirements in relation to the functions and services they provide on behalf of Council. These included the *Local Government Act 1993*, Manly Councils' Code of Conduct, the Customer Service Charter, and the Complaints Management Policy.

In addition, public officials are expected to comply with the principles of good conduct and administrative practice such as those set out in the NSW Ombudsman's *Good Conduct and Administrative Practice for State and Local Government*.¹

7.1.1 Local Government Act 1993

Section 335(1) of the *Local Government Act 1993* provides that general manager is responsible for the efficient and effective operation of the council's organisation.

Section 439(1) of the *Local Government Act 1993* requires a Councillor, member of staff and delegate to act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under the Act or any other Act.

7.1.2 Manly Council's Code of Conduct

During the period of events involved in this investigation, the applicable Code of Conduct was adopted by Manly Council in August 2008.

The stated purpose of the Code was to set minimum requirements of conduct for council officials in carrying out their functions. The Code of Conduct was developed to assist council officials to:

¹ NSW Ombudsman, *Good Conduct and Administrative Practice – guidelines for state and local government*, 2nd Edition, May 2006.

- understand the standards of conduct that are expected of them
- enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligent (section 439), and
- act in a way which enhances public confidence in the integrity of local government.

The Code of Conduct is the key instrument regulating the general conduct of staff and councillors. Council officials are individually accountable for their acts and omissions in relation to their council duties. Council officials must abide by the standards in the Code of Conduct. It is their personal responsibility to observe the standards in the Code and regularly review their personal circumstances with this in mind. The standards must form part of the fabric of a Council official's duties.

Section 5 of Part 1 of the Code of Conduct headed Guide to Ethical Decision Making states:

5.1 If you are unsure about the ethical issues around an action or decision that you are about to take, you should consider these five points:

- Is the decision or conduct lawful?
- Is the decision or conduct consistent with council's policy and with council's objectives and the code of conduct?
- What will the outcome be for the employee or councillors, work colleagues, the council, persons with whom you are associated and any other parties?
- Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

Section 6 of Part 2 headed 'General conduct obligations' states:

6.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute. Specifically, you must not act in a way that:

- a) contravenes the Act, associated regulations, council's relevant administrative requirements and policies;
- b) is detrimental to the pursuit of the charter of a council;
- c) is improper or unethical;
- d) is an abuse of power or otherwise amounts to misconduct;
- e) causes, comprises or involves intimidation, harassment or verbal abuse;
- f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment;
- g) causes, comprises or involves prejudice in the provision of a service to the community. (Schedule 6A).

6.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (section 439)

6.3 You must treat others with respect at all times.

6.5 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.

6.6 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

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The ICAC's *Do-It-Yourself Corruption Resistance Guide* states that a code of conduct's principal aim is to guide behaviour in the workplace. An effective code relies not only on its content but also on its continued promotion and use as a practical guide to day-to-day behaviour and decision-making. It needs to be supported by management commitment, by appropriate training and awareness programs and by systems, policies and procedures that were consistent with the broad behavioural guidance it provided. Staff need to be aware of the range of sanctions that may be applied if they breach the Code.

Section 11 of Manly Council's Code of Conduct specifies that any person, whether or not a council official, may make a complaint alleging a breach of the code of conduct and that suspected breaches by councillors, members of staff of council, excluding the general manager, or delegates should be reported to the general manager in writing.

Part 3 of Council's Code of Conduct sets out the complaint handling procedures, complaint assessment criteria and the operating guidelines for the conduct review committee/reviewer. The complaints handling procedures and sanctions relating to complaints about staff, delegates and council committee member conduct are as follows:

12.3 The General Manager is responsible for making enquiries, or causing enquiries to be made, into complaints alleging breach of the code of conduct regarding members of staff of council, delegates of council and/or members of council committees (other than councillors), and will determine such matters.

12.4 Where the General Manager has determined not enquire into the matter, the general manager will give the complainant the reason/s in writing as provided in clause 13.1 of the Code, and those reasons may include, but are not limited to the fact that the complaint is trivial, frivolous, vexatious or not made in good faith.

12.5 Enquiries made into staff conduct that might give rise to disciplinary action must occur in accordance with the relevant industrial instrument and make provision for procedural fairness including the right of an employee to be represented by their union.

12.6 Sanctions for staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

Section 12.33 specifies that the General Manager must report annually to council on Code of Conduct complaints. This report should include, as a minimum, a summary of the:

- a) number of complaints received.
- b) The nature of the issues raised by complainants, and
- c) outcomes of complaints.

The General Manager does not report annually to the Council on Code of Conduct complaints. In an article in *The Manly Daily* on 21 May 2010, it was reported that Mr Wong confirmed that Manly Council had not had a single code of conduct complaint in his seven year tenure at the Council.

I have been advised that Councillors and staff received training in their obligations under Manly Council's Code of Conduct by an expert in the area. However, I have also been told that the manner in which Council's Code of Conduct training emphasised the penalty aspects of any breaches of the Code had the effect of frustrating open interactions between staff, residents and Councillors.

7.1.3 Customer Service Charter

Manly Council introduced its Customer Service Charter in April 2005. The Charter sets out the minimum standards that the public can expect from Council staff. The service standards include the friendly and professional provision of all Council services, quick and effective responses to services requests such as:

- answering your phone calls within four rings
- acknowledging your letters within two working days
- acknowledging your emails within two working days

- welcoming you to our service desk within three minutes
- completing your customer action requests within 14 working days
- providing appointments after hours as required
- providing after hours service for emergencies

The Charter states that Council would achieve quality customer services by:

- having defined service standards for mostly commonly occurring service situations
- making a commitment to 'when' and 'how' the service will happen
- providing clear outlines of our obligations, policies and having transparent processes
- notifying you if there is a delay in the service we promised
- preventing unnecessary return visits or calls to Council
- advising promptly of the outcome of your request
- referring you, where appropriate, to alternate places where the service might be available if Council is not able to provide the services you seek.

The Charter advises the community that Council welcomes their comments to help improve its services and if Council falls short in its service in any aspect, or staff make a mistake, it encourages people to bring their complaint to the Council directly so that the matter can be resolved. The Charter advises that it has a formal complaint management policy which outlines the standards for actioning of complaints quickly and effectively.

7.1.4 Complaints Management Policy

Council's complaints management policy was adopted in 1998 and revised in 1998 and 2000. A new draft complaints management policy was placed on Council's website in September 2008. I am advised by Council in its response that the policy was adopted at an ordinary meeting of the Council on 13 December 2010 ('the adopted policy').

7.2 Background

During the term of the previous Council between 2004 and 2008, Mr Monshall was a community representative and chair of the Bicycle Committee which was one of Council's 52 special purpose advisory committees. After the elections in September 2008, a new Sustainable Transport Committee (STC) replaced the Bicycle Committee and Mr Monshall became a member of that committee. Mr Monshall advised us he has held senior management positions, including at chief executive level, in the public sector.

Mr Monshall resigned from the STC on 12 June 2009.

Ms Amanda Spalding had two roles at Manly Council as Deputy General Manager, Strategy and Strategic Projects and as Executive Manager People, Place and Infrastructure. Her responsibilities relevant to this investigation included implementing the community engagement strategy, which is part of new statutory Integrated Strategic Planning Framework at Manly Council, and for overseeing the changes to the Council's special purpose committee system. Ms Spalding resigned from Manly Council on 7 March 2010.

Ms Spalding told us she is a graduate chartered accountant and has worked in senior management in mainly local government in England and in State Government in Australia. Most of the positions she has held involved considerable responsibility for financial and staffing resources and at one large English council she was a member of the Strategic Management Group that managed 7,500 staff and a net revenue budget of \$126 million.

Three circumstances at Manly Council need to be examined as further background to Mr Monshall's complaint:

1. a decision in 2008 to alter the structure and operations of Council's special purpose committees;
2. the implementation of changes to the operations of Council's special purpose committees; and
3. staff perceptions about Mr Monshall and members of the former Bicycle Committee.

7.3 Changes to Council's advisory committees

In 2005 the then Department of Local Government conducted a Promoting Better Practice Review of Manly Council. In its Promoting Better Practice Review Report released in January 2006, the Department said:

The review team noted the 52 committees that exist to manage over oversight a range of council activities. The number of committees, which are made up of councillors, staff and community representatives, is too great. The often limited scope of the committee remits means that committees are often overlooking what would ordinarily be considered day to day management functions. Council should review the current committee structure with a view to rationalising current structures.

Council took no action on this recommendation until mid-2008 when the Department of Local Government began the introduction of the new statutory Integrated Strategic Planning Framework for Councils. One aspect of this new framework required the Council to identify stakeholder groups and outline methods of engaging each group to develop the Community Strategic Plan for Manly Council. The development of the Community Strategic Plan would include Council's 10-year strategic plan, a 10-year resourcing strategy, a four year delivery program and a one year operational plan.

Ms Spalding told us that she agreed with the Department of Local Government's criticism of Council's advisory committee system. She believed that special purpose committee governance was a lax and inefficient practice and Council had in the past approved recommendations by committees without a full understanding of whether the committee was seeking to exceed its remit, what the policy implications were or the resources that were being committed. She said along with the impact on Council's resources of a large number of advisory committees, there were no uniform rules for committee procedures or any process for selection of members based on their ability to contribute to the strategic direction of Council. She said there had been major complaints from staff about committees directing staff in their work and there was a perception amongst staff of the undue influence of committees on the allocation of resources.

In June 2008, senior staff began the implementation of the Integrated Strategic Planning Framework with a workshop. At the workshop, staff expressed their concerns about Council's advisory committees. Ms Spalding told us that she discussed the concerns expressed by staff with Mr Stephen Clements, Deputy General Manager Landuse & Sustainability, and he agreed that they needed to do something about it. She put their proposal to reduce the number of special purpose committees to Mr Wong. She told us it seemed an opportune time to make changes to the number of committees and their operational procedures because after each election councillors nominated to be on advisory committees and sometimes they nominated people to be on committees and there was no effective means for overseeing whether the most appropriate people were given membership. She said there was a common perception amongst staff that some committees were more like lobby groups than advisory committees.

The work of the staff project team was then incorporated into a paper for the extraordinary meeting of Council on 20 October 2008. Ms Spalding said that when the paper was put to the Council on 20 October 2008, the suggested changes were resisted and Councillors put forward committees they wanted to have. She told us that the General Manager subsequently had to 'convince' the Council they needed to make some changes to the existing arrangements.

At the meeting, the Council resolved to review the 52 special purpose committees and agreed with the General Manager's recommendation that the Mayor and Councillors participate in a working party to determine the new committee structure. The members of the working party included the Mayor, Councillors Aird, Burns, Griffin, Heasman, Norek and Whitting and the General Manager,

two Deputy General Managers and the Divisional Manager, Corporate Planning and Strategy. The working party met on 13 and 26 November 2008.

On 8 December 2008 Council resolved to establish 16 Special Purpose Committees. Of these, five committees were under the auspice of the Council and 11 were under the auspice of the General Manager. The Council adopted the proposed generic Terms of Reference and resolved that roles and objectives were to be ratified by each committee at their first meeting. The committees were to provide a forum for discussion and recommendation to Manly Council. The new committees were to be advisory only and members could not commit Council resources or direct council staff. Some meetings were to be held monthly and bi-monthly. The minutes of the committee meetings were to be adopted by the Council and any significant issues or the commitment of council resources required the resolution of Council.

Changes that were introduced with this new committee system were:

- a Code of Conduct for Community Members on Special Purpose Committees and Working Groups
- the General Manager's role in the administration of advisory committees was strengthened through his being the convenor of the Committees
- new written procedures were introduced
- there was greater involvement of staff in the committees' processes
- the agendas and minutes of the meetings were to be published on Council's website.

The Mayor called for expressions of interest for community representatives for the committees on 30 December 2008 with a closing date of 23 January 2009.

On 29 January and 2 February 2009, the Council held training sessions for potential community representatives in relation to the Code of Conduct for Community Representatives and the Terms of Reference. We were advised that the General Manager decided that Councillors were not required to attend training in the new committee system and procedures.

On 3 and 5 February 2009, the General Manager arranged for around 50 staff to be trained in the new committee system. As part of the training, the General Manager and Manager Traffic, Mr Prabaka Siva, performed a role play in which Mr Wong played the chair of a committee and Mr Siva played the role of a staff member. The role play was scripted to assist staff deal with the pressure from committee members to commit Council resources and to direct staff to take particular actions. Ms Spalding advised us the script had been prepared with the assistance of staff who had worked with committees and was approved by the General Manager. She said that in her opinion the role of the chair of the committee in the script was based on Mr Monshall, who was the chair of the former Bicycle Committee. A copy of the script for the role play is attached at **Appendix 1**.

Ms Spalding said it was her belief that even though Mr Monshall's name was not used in the role play, all staff knew who the character in the role play was intended to depict. She told us that during the training, Mr Wong and Mr Siva demonstrated to her and all staff that there was a general belief that the chair of the former Bicycle Committee sought to direct staff in the past. She believed that from her dealings with Mr Wong and Mr Siva, they specifically held this point of view. She said that Mr Wong enthusiastically instructed staff to 'hold the line against committee members who would try to get them to do things'.

7.4 Events surrounding the first meeting of the STC on 29 April 2009

Mr Monshall advised us that there was a lot of bicycle projects and matters that were outstanding from before the September 2008 elections and members of the STC who had been on the former Bicycle Committee were anxious to not lose time through delays in getting the 'real work' of the new committee under way. He wanted to facilitate communications with members of the STC before the first meeting if possible.

Ms Spalding told us that former members of the Bicycle Committee who became members of the STC were sending emails to staff about bicycle matters. She said that there was a large number of emails and they were 'discussed between the General Manager and myself on several occasions, and particularly at our Weekly Briefings on Friday mornings'. She said that she, Mr Wong and Mr Keech, staff officer on the STC, all sent out emails in response to those being received 'to set a standard of operating procedures aimed at ensuring that the STC could operate as a more fruitful

advisory committee than the former Bicycle Committee and improving the behaviour of its members'.

On 22 February 2009 Mr Monshall sent an email to Ms Lynne Jess, Secretariat/Administrative Assistant, Corporate Planning & Strategy, and said:

Thanks Lynne for the committee papers.

I want to contact my fellow members about a number of issues before the 1 April meeting. I have all their email addresses except ... and.... I expect there may be some privacy issues involved in your giving them to me. If so, could you pls contact them and

- Give them my email address
- Ask them to contact me asap (if they wish).

Ms Jess told him his request would be passed on.

On 24 February 2009, Mr Monshall sent an email to Mr Keech and Ms Spalding which he also copied to seven members of the STC who had also been members of the Bicycle committee. He said:

Thanks Amanda for arranging for Doug to call me. We had an interesting discussion and he forwarded me some useful links – the key one being the RTA guidelines re TCs.

I note under 5.3.2 that the 'agenda must be prepared by Council and circulated to all formal members and informal advisors a minimum of a week prior to the meeting'. Two comments

1. The agenda has rarely been circulated within this time frame.
2. Is there any reason why the STC cannot be an 'informal advisor'?

Also, under 5.3.4 the TC can allow the public to make personal representations at its meetings. It seems to me there is no difference in the STC making its representations to the TC in writing. In fact the TC has accepted and addressed numerous concerns/comments from the former BC over several years, so clearly it has no problem with this practice. I also appeared at TC meetings on occasions when the BC felt it important I did so as Chair, and both formats worked well.

If the STC doesn't see the agenda how can it know whether there's an issue on which it want [sic] to comment? Isn't it better to raise concerns early so they can be considered, rather than wait for interested Crs [sic] to detect the problems? One would also think that the TC would welcome input from a committee committed to sustainable transport!

The same section says the advice of TC should not be publicly available until council has considered it. The consultative procedure between the TC and the BC did not breach this condition, as we only saw the minutes after they had been to Council.

In short, I can find nothing in the RTA's TC guidelines which have not been complied with in the previous relationship between the TC and BC, nor any reason why a similar one cannot be employed between the TC and STC.

Finally, as I mentioned to Doug, I find it puzzling that while all our neighbouring councils publish the agenda and minutes on their web pages, Manly doesn't. I wonder why not?

Three days later Ms Spalding told him that Council had been having some internal discussions and in the future Manly Traffic Committee minutes would be placed on Council's website after the minutes have been considered by Council.

Mr Monshall responded:

...and what about STC input prior to the meetings Amanda, which was the key issue we raised?

Just 2 examples (of many) of how the BC/TC liaison worked previously.

1. There was a proposal to ban right hand turns from Ethel into Plant at Seaforth. Incredibly, the background papers referred to a council officer doing a traffic count right next to bike signage and

logos, on the Seaforth – Tania official bike route – via Ethel and Plant! The solution was a simple 'bicycles excepted' addition to the sign.

2. The proposed Manly Council response to the woeful RTA Spit-Military Corridor Plan, did not contain any reference to the RTA's total failure to even mention cycling on the route, which was contrary to its own web page charter on cycling infrastructure. We put in a detailed submission on what was needed to make the route safer for cyclists and to encourage cycling generally.

Perhaps we could talk next week about this, because we're not clear what your position is, other than in relation to the publication of the minutes, which is welcome, but a side issue.

On 1 March 2009, Mr Monshall sent another email to Lynne Jess asking 'When did you contact the members of the STC about their emails addresses, pls?' I'm told they are very keen to be involved, yet not one has contacted me, which is odd ...'. Ms Lynne Jess responded that she was putting together a distribution list and all email addresses would be taken from the application forms.

After discussing Mr Monshall's request with Mr Wong, Ms Jess then emailed Mr Monshall again on 4 March 2009 and told him that:

As you have been to your committee training, you would now be aware that you are not allowed to give directions to staff members. Following the Wollongong and Rockdale Enquiries we are now acutely aware of protocols we have to follow. Warringah Council was dismissed because offices [sic] were taking instructions from outsiders and I cannot give out any details. Any request must be in writing to the General Manager, Amanda Spalding or T 9976 1555 should you wish to clarify this.

Ms Jess sent a copy of this email to Ms Spalding and Mr Wong. Ms Spalding responded, 'Good answer. I'm not sure what he asked you to do!' On 5 March 2009, Ms Jess replied:

He asked me to pass on his email address to other members of the Sustainable Transport Committee and request they contact him prior to the meeting – I think it is up to him to arrange that at the meeting otherwise he would be organising the meeting and have other agendas.

Ms Spalding then emailed back 'Yes, Henry doesn't want us to do that kind of thing'.

On 4 March 2009, Mr Monshall responded by emailing Ms Jess, Mr Wong and Ms Spalding and enclosing the contents of his email of 22 February. He said he was fully aware of committee protocols and did not give any directions or instructions. He said he had 'merely requested that an email of mine be forwarded to members of the STC so that they could (if they wished) be part of online discussions prior to our first meeting on 1 April'. He said Ms Jess had advised him that he needed to contact Mr Wong. He addressed part of his email directly to Mr Wong and asked him if he could make the same request for an email of his to be forwarded to members of the STC. He said 'It's getting harder and harder to do simple things – such as communicating with fellow community reps!' He said the reason he wanted to communicate with them was the meetings were to be bi-monthly and he didn't want them to be wasting time bringing everyone up to speed at the first meeting. He enclosed the exact wording of his email of 22 February:

Thanks Lynne for the committee papers.

I want to contact my fellow members about a number of issues, before the 1 April meeting. I have all their email addresses except ... and.... I expect there may be some privacy issues involved in your giving them to me. If so, could you pls contact them and

- Give them my email address
- Ask them to contact me asap (if they wish).

Ms Spalding immediately emailed Mr Wong and asked him whether he wanted her to deal with Mr Monshall's request. She said 'They are already being very naughty and I don't think we should encourage them to gang up on the Council. Happy to talk tactics at our Friday meeting'. Mr Wong emailed her the next day with the following statement:

Ask Lyn to advice Norman that she is not authorised And Council is not to provide him with the info he's is seeking etc. And Council is not authorised to give out the private information of an individual with their expressed permission.

Ms Spalding sent an email at 5.44pm on 5 March 2009 addressed to both Mr Monshall and Ms Jess which said:

Lynne,

Henry would like you to respond to Norm again to say that you have consulted with Henry and myself:

Ask Lyn to advise Norman that she is not authorised And Council is not to provide him with the info he's is seeking etc. And Council is not authorised to give out the private information of an individual with their expressed permission.

In her submission to us, Ms Spalding said she had cut and pasted the General Manager's reply and sent it. She told us that 'As the General Manager is a qualified lawyer I would defer to his knowledge and not check a response he wanted me to send'.

Mr Monshall phoned Ms Spalding that evening. He followed up with an email to her at 10.11pm that he also copied to Mr Wong. He said:

In your email (which you said was sent in error) I was most unhappy to see that you had misrepresented my original request and impugned my professionalism by saying I was seeking individual private information. I wasn't – as even the most casual perusal of my email below would have revealed.

Indeed, I have requested NO information about anything or anybody. What I asked was that my email be passed on to fellow members so they can contact me if they wish. My request was not about breaching privacy, but seeking simple administrative support. I thought the intent of council was to facilitate the work of its committees, not to set up barriers to communication.

When I rang to clarify your misconception, you repeated the canard that I had asked for private email addresses. When I asked if you had actually read my request you hung up after saying I was insulting you, when the reverse was true. It appears that it is fine for you to falsely accuse me of breaching protocols, but unacceptable when I expose your failure of comprehension. I suppose it's always easier to disengage than admit your mistake.

My comments, on advice, have been very carefully chosen and I anticipate your early response. I am prepared to resolve this issue cordially and speedily for the sake of the committee. After 36 years in the public sector engaged in high level management up to CEO level, however, I am not prepared to sit quietly by while my reputation is sullied, or to be treated as some errant neophyte unaware of proper procedures.

Mr Wong responded to Mr Monshall at 6.10am the next morning 6 March 2009:

I have read your email to Ms Jess. If what you are asking of Ms Jess was not email addresses, then please clarify. As you would be aware, Council has statutory obligations under Privacy legislation in relation to the protection of information of individuals. And we may not disclose such information without the expressed permission of the individuals involved.

At 4.09pm on 6 March 2009 Mr Monshall repeated his explanation to Mr Wong that his request that his email address to be forwarded to nominated community representative was so that they could contact him and be part of a dialogue before the STC formally met. He said he had twice been seriously misrepresented by Council with a polite request being 'transmogrified into a direction or instruction'. He said 'I wonder if every request for administrative assistance in carrying out committee duties will in future be interpreted as a direction, in breach of the Code of Conduct.' He said he had also been accused of seeking individual email addresses in breach of privacy provisions and presumably the Code of Conduct. He said he was 'deeply affronted by this chain of events and the continuing lies about my behaviour and motives ...' He told Mr Wong the matter needed to be settled and 'necessarily will involve the repudiation of the baseless allegations made about me'.

When Mr Monshall did not hear anything further from Mr Wong, he sent another email on 9 March 2009 expressing surprise and asking Mr Wong to 'exercise your well honed powers of conciliation'. Mr Wong sent this email to Ms Spalding asking 'Is this something you are working on?' On 11 March 2009, Mr Wong contacted Mr Monshall and asked 'Can we start again? How would you like me to facilitate a satisfactory result for all concerned?'

Mr Wong then emailed Ms Spalding 'I have invited him to meet with us. He hasn't accepted yet.' Ms Spalding told Mr Wong 'I had a long discussion about tactics with Doug Keech and colleagues yesterday that I should convey to you before the meeting then'.

On 11 March 2009 Ms Spalding emailed Mr Monshall advising she was responding on Mr Wong's behalf and she gave an explanation about waiting until the first meeting of the committee and hearing the presentation by staff on the Strategic Framework for the Committee before contacting other members.

Mr Monshall sent another email to Mr Wong on 11 March 2009 advising him:

I said you were a conciliatory Henry! I have subsequently received an email from AS and I accept her reasoning. Had she said that previously, rather than sending me the following accusatory email where she gives instruction for me not to receive information I hadn't asked for, none of this would have been necessary!

Council is not to provide him the info he's is seeking etc. And Council is not authorised to give out the private information of an individual with (sic) their expressed permission.

Yes I would like to see such a satisfactory result, but that will necessarily involve more than just an explanation for my request being denied. May I suggest how we do it. I emphasise the word 'suggest' in case it's again alleged that I am seeking to direct a council officer. Only joking Henry, because I would never presume to direct you...

The simplest way to resolve my justified grievance is for you to email me something like the following. Feel free to use your own words, of course, but I think you understand the sentiments that I have been advised need to be included. I remain concerned that both my integrity and reputation have been traduced, but am prepared to put this unfortunate incident behind us.

I have reviewed your email to council re contacting your fellow community representatives. It's clear to me that your polite request for administrative support did not constitute either a direction or an instruction. Further it is equally clear that you were not asking for private email addresses, but simply that your email be forwarded to them to give them an opportunity to contact you, if they so desired, before the first meeting of the STC on 1 April.

Amanda Spalding has since written to you giving reasons why your request cannot be met and I'm pleased that you accept this explanation. I note your comment that had this approach been adopted earlier, it would have settled matters without the need for my conciliation.

I apologise for any misunderstanding and any suggestion that you have breached protocols, privacy requirements or council's Code of Conduct.

On 17 March 2009, Mr Monshall emailed again about Mr Wong facilitating 'a satisfactory result' and expressing his displeasure that he was still waiting. He said he would have to 'reluctantly take up other options'. Later that afternoon, Mr Wong sent an email to Ms Helen Lever, Manager, Office of the General Manager, and said, 'Can you please draft a reply for me – use his draft as the starting point'.

On 18 March 2009, Ms Jess sent another email to Mr Monshall:

After receiving your last email I spoke to Henry Wong to clarify my position. He confirmed that I don't have the authority to pass on information even if requested.

Norman, as this is a new committee it's an ideal opportunity to introduce yourself to other members and exchange contact details at the initial meeting.

On 19 March 2009, Mr Monshall responded to Ms Jess:

I have no probs with this Lynne, as your GM makes the rules – but what I found disappointing was your use of 'directions' and 'instructions' to wrongly describe my polite request. I have always been careful to be courteous in my communications with you. Indeed you may also recall I helped you out on at least one occasion, when you were struggling with some minutes you were preparing. I'm sure you'll appreciate the no-one enjoys their words being misrepresented...

On 20 March 2009 Mr Wong sent Mr Monshall an email headed 'Apology'. The email contained the wording of Mr Monshall's suggested apology with a few minor adaptations. Mr Wong said:

I have reviewed your recent correspondence with my staff in relation to a request you made to facilitate contact with other community representatives of the Sustainable Transport Committee prior to that committee's inaugural meeting on 1 April 2009.

I am confident that your request did not constitute either a direction or instruction to my staff.

Further it is clear that you were not asking the staff member to provide details of the other committee members private email addresses, but rather, that your email address be forwarded to provide them with an opportunity to contact you, if they so desired.

Deputy General Manager, Ms Amanda Spalding, has since written to you providing the reasons why your request cannot be met and I'm pleased that you accept this explanation. I note your comment that had this approach been adopted earlier, it would have settled matters without the need for my review of the matter.

Norman I would like to offer Council's apologies for any misunderstanding and any suggestion that you have breached protocols, privacy requirements or Council's Code of Conduct and I thank you for your valuable contribution to our community committee.

In her submission to us, Ms Spalding advised that this email was not copied to her, nor was she advised by Mr Wong that he had apologised to Mr Monshall for making an error.

On 25 March 2009, Ms Christine Bone, Secretariat Officer, sent an email addressed to potential members of the STC about rescheduling the first meeting and advising three possible new dates late in April. She also advised that she understood that some committee members had been asking to add agenda items for the first meeting. She told them that agenda items were not being requested because a discussion about the strategic framework and priorities for the work of the committee during the current term of the council was the only item on the agenda.

Mr Monshall responded to that email and copied it to Ms Spalding and seven former members of the Bike Committee who had joined the STC. He expressed his concern about 'another four week delay' and the length of time since the last meeting of the Bike Committee. He said 'Its previously agreed projects and priorities have progressed little since then, despite the goal of the near completion of the Council's Bike Plan by June 2009. A meeting at the end of April would leave only 2 months of the financial year to achieve any outcomes'.

Ms Spalding sent Mr Monshall an email on the same day advising him 'As you know this is a new Committee, not the Bicycle Committee. The first meeting will involve Committee members in developing priorities to achieve strategic outcomes during the Council's current term through to 2012.'

The next day, Mr Monshall emailed Ms Spalding saying he did not understand her point. He said:

Are you implying that because we need to develop priorities for the STC, we should not pursue the completion of Council's bike plan in the interim? If that is not the case, aren't you concerned that existing projects and priorities appear to be on the back burner?

These q's are not rhetorical because I would appreciate feedback on your take re cycling within the sustainable transport context. Worryingly, it's been said to me by several cyclists that they sent council wants to sideline and quarantine cycling initiatives.

I trust they're wrong, but since the opening of the east-west link in August last year, no new routes have been commenced, even the one co-funded by the RTA. Surely, it was not council's intent to stop all progress on cycling infrastructure until the STC establishes its modus operandi. That's not the message I got from several Crs and successful candidates before the last election, - indeed quite the reverse!

Many would argue, particularly in respect of LGAs, that cycling is a key example of sustainable transport – as a healthy, non-polluting and flexible alternative to cars. The growth in cycling in Manly over the last decade, plus that fact that almost every bike rack, both outdoors and in the security cage at Whistler Car Park, are full most of the time, is a testament to the efforts of the BC.

He also told her that he regarded the reasons she gave him in her email of 11 March for not passing on his email were reasonable. He said:

Had you said that originally, instead of telling me I couldn't be provided with the 'private information' that I hadn't asked for, the consequently unpleasantness would have been avoided. I have accepted

Henry's apology for this misrepresentation and the associated one that I had attempted to direct a staff member. The matter is now closed as far as I am concerned and I don't want it to cloud my role in the new STC.

Perhaps it might be an idea if we met for coffee one day, sooner rather than later, and we might have a better understanding of each other's position (apart from our common migrant background). We might enjoy a real dialogue, rather than an internet one which thus far has not proved to be a rousing success...

Ms Spalding responded that she would refer his concerns to Mr Keech and that her role with the Committee structure was 'to ensure that it gets off on the right foot in terms of quality and strategic content'. She thanked him for his kind offer of a meeting over coffee but she declined.

In her submission, Ms Spalding said that the first time she saw a copy of Mr Wong's 20 March 2009 apology to Mr Monshall was on 18 August 2009. She claimed that while she knew Mr Wong had apologised because of Mr Monshall's email of 26 March:

I did not know about the content of that apology, (in which the General Manager admits the mistake he had made in saying that Mr Monshall had asked for email addresses), until after I sent the internal briefing email to councillors on 25 April.

In our preliminary inquiries we asked Mr Wong what communications he had with Ms Spalding regarding Mr Monshall's request for email addresses. Mr Wong advised us that he had been 'copied-in' on the correspondence between Ms Jess, Ms Spalding and Mr Monshall. Upon receipt of Mr Monshall's letter of 6 March 2009, he had revisited the emails received leading up to this date, including Mr Monshall's original email of 22 February and Ms Spalding's email of 5 March 2009. He said he had briefed Ms Spalding at their weekly meeting on 27 March 2009 about Mr Monshall's email and 'emphasised the need to check and be satisfied and clear on the relevant facts in the future'. In the hard copy version of Mr Wong's response to our preliminary inquiries, which was received on 20 August, Mr Wong had added a foot note which stated that Ms Spalding had no clear recollection of his advice to her.

In her submission to us, Ms Spalding advised that she was concerned about the advice Mr Wong had provided to this office about her recollection. She stated:

I have no recollection at all because it did not happen. If the General Manager had reprimanded me in this way I would have recalled it, because all I had done was to cut and paste his response to Mr Monshall. I would have been annoyed with the accusation and reminded him that it was his reply, not mine.

Ms Spalding included a copy of her notes of the weekly meeting she had with Mr Wong on 27 March 2009. The notes comprise a table entitled 'Amanda Spalding Project Status 27 March 2009' with four columns: Project, Status/issues, Next Action and Date. Under the action for the Special Purpose Committees project, Ms Spalding had listed '1. Lots of teething problems. Secretariat making mistakes'. She said she normally made hand-written notes of actions she needed to take as result of Mr Wong's directions during their discussions. She said 'There are no hand-written comments about the Special Purpose Committees on 27 March despite having scheduled the Sustainable Transport Committee for discussion between us'. She also told us that Mr Wong may have included a note on his copy of the Project Status table of 27 March 2009 to talk to her about Mr Monshall's complaint but either forgot to, or decided not to, raise it with her. Ms Spalding's notes of the weekly meeting are **Appendix 2**.

In his response to our preliminary inquiries, Mr Wong enclosed his hand-written notes of his meeting with Ms Spalding of 27 March 2009. This is the same table with four columns with the same headings and the same comments about the Special Purpose Committees project. Mr Wong's handwritten notes were in red pen in the margin. The relevant note in the margin included:

NM – Reviewed – double check facts in future.

Mr Wong's notes of the weekly meeting are **Appendix 3**.

In our preliminary inquiries, we asked Mr Wong whether Ms Spalding acknowledged that she had made a mistake in her interpretation of Mr Monshall's request. Mr Wong told us that he did not seek Ms Spalding's agreement on the issue. He said in hindsight, he should have.

On 27 March 2009, Mr Monshall sent an email to Ms Spalding and copies to community representatives on the STC. He said:

I have been advised that the first meeting of the STC has been delayed for 4 weeks.

I don't wish to stray into 'operational' issues which I know is verboten. However, I speak for all the previous members of the BC in asking how we can currently determine what is status of the many incomplete Bike Plan related projects, plus critical maintenance (e.g. Burnt Creek Deviation extensively marked out last November but not started) which is making some shared paths potentially dangerous, particularly for inexperienced cyclists?

If you want us to send emails to records@manly.nsw.gov.au listing the numerous problems and issues, we'll do so, but that seems hardly to be an efficient process. The previous monthly reporting system on the Bike Plan implementation has of course been abolished, along with the BC.

On 29 March 2009, former Councillor Judy Lambert who was a member of the Bicycle Committee emailed Mr Monshall and Ms Spalding with copies to the community representatives on the STC. She said:

Not really my business any more, but the Council budget process should already be well advanced, and another month hence there will be even less opportunity to influence any allocation to active transport.

Ms Spalding referred this email to Mr Wong on 30 March 2009. She said:

As you know we are having interesting times with getting the new Sustainable Transport Committee established with all of the previous members of the Bicycle Committee on board.

You will see from the following that Judy Lambert has now decided to weigh in with some helpful hints about the budget timetable, and obviously she has been involved in trying to put budget bids through the Waste Management Committee and I recall that you said to Ted at the Committee training that there would be plenty of time later on for budget bids to come through.

Also see below the operational questions that Norm Monshall has about Bike Plan related projects.

Doug Keech feels that we should ask them to seek information through the CRM process, and I wanted to check with you how you feel about Doug's reply to me about how he feels we should deal with these issues, following, as I don't want to set any precedents that you are not comfortable with:

My suggested response is that it is more efficient to ask about the status of bike infrastructure matters through Council's Customer Service staff or through emails to Records.

Both ways result in computerised Customer Response events which must be addressed by staff. The time taken for staff to respond is monitored and staff are reprimanded for failure to respond with time standards. Staff are required to contact the requestor and failure to do so will also lead to reprimand.

By contrast, putting such matters on the agenda of a committee delays getting an answer, much quicker for the appropriate staff member to make a phone call or email an answer. Also attendance at lengthy committee meetings dealing with long agendas and extensive discussions consumes Council staffing and other resources that could be better spent on getting on with the job.

For a good example of this approach, ask ... about a detailed bicycle matter she wanted to put on the agenda of the Sustainable Transport Committee (bicycle use of the new East Esplanade access ramp). Within two days she had a detailed response by email – much quicker than waiting up to a month for a committee meeting.

The most common cause of concern is that something has not been done, or is not being done, in the time frame desired by the complainants. This is not due to a lack of interest on the part of Council staff. It is usually due to lack of funding, which in turn is due to State Government rate capping and high priority having to be given to Council's day-to-day core activities and statutory responsibilities. Having Committee meetings does not help if there is not enough money available to do the work.

Regards

Doug

Mr Wong's response to Ms Spalding was:

It's too late – the budgets are in with me already. Bicycle infrastructure is all but completed for the whole of the area. No new paths are planned for this coming year. Staff are not to engage with individual [sic] on any committee – their requests should be put to the council via the usual channels – CRM.

On 23 April 2009, Mr Monshall sent a long email to 'records' with copies to Councillors Whitting, Griffin, Heasman, Norek and Macdonald and members of the STC. He requested a copy to go to Councillor Burns whose email address was not on Council's web page. He said that at the last meeting of the former Bicycle Committee in August 2008 he was authorised to write to the Council as Committee Chair about the outstanding matters and discuss priorities for 2008/2009. He was eventually told by the Council 'The BC is no longer in existence and consequently no requests for ex BD will be addressed'. He went on to say that 'Since that time, with the very welcome exception of the work currently underway on the Lauderdale-Quirk link, it is clear that the expansion of the approved Bike Plan and the upkeep of the existing crumbling infrastructure have been put on indefinite hold'. He referred to the work of the sub-committee of the Bike Committee that used to meet monthly with council staff 'to review a project report, determine priorities and timelines and arrange inspections of key routes'. He acknowledged Council's advice that the STC was not authorised to consider operational matters and that questions should be put to Council through the web page email. He said the questions in his email comprised the August 2008 priorities list. They were also issues community representative previously sought to raise at the STC and other matters that had arisen.

Mr Monshall asked 16 detailed questions about how the Council would deal with the outstanding matters related to the bike plan, sources of funding for projects and various particular cycling issues which he said had been endorsed by the 13 community members of the STC. He acknowledged that the STC was not authorised to make recommendations on operational matters but it was:

abundantly clear that since the demise of the BC, cycling has become a lower priority for council (contrary to the trend among many other LGAs) with a corresponding lack of network expansion and basic maintenance of existing bike routes. There appears little purpose in setting strategic directions if there is a declining commitment to their associated and vital operational implementation.

Mr Monshall said the community members realised 'that we are seeking answers to a wide range of questions – but this is a consequence of the 9 months vacuum that has occurred since the BC ceased to meet'. He claimed there was 'considerable angst among Manly cyclists over the direction of council which previously seen as a leader in cycling matters by residents, not to mention Bicycle NSW and the North Shore Bike and Pedestrian Committee'.

On the same day Councillor Burns sent an email to Ms Spalding with a copy to Mr Monshall about items to be on the agenda for the first meeting including the 'unresolved/carry-over matters from the previous bicycle committee' and his request that the strategic framework presentation at the first meeting being limited to 30 minutes. He wanted the Traffic Committee minutes to be emailed to everyone of the STC and asked for community representatives contacts to be emailed to Norman Monshall 'to address his concerns'. He also asked some specific questions about a particular signage application which he had sent through to Mr Wong's office and grant deadlines.

Ms Spalding referred this email to Mr Wong with the advice:

Just thought you might be interested to see that Hugh Burns has been 'got at' by Norm Monshall. I shall send out tomorrow, the email to him and the other Councillors I was talking about earlier.

Mr Wong responded 10 minutes later 'thanks'.

On 24 April 2009 Ms Spalding sent an email to Mr Wong enclosing Mr Monshall's email of 23 April 2009. She told him she would see him after the InterDiv meeting to clarify how he wanted it to be dealt with.

Ms Spalding advised us that she spoke with Mr Wong on 24 April 2009 and he agreed with her suggestion that Councillors should be briefed on the difficulties being experienced in 'establishing the STC and laying down the rules'.

At 11.15am on 25 April 2009 Ms Spalding sent an email to Councillors Norek, Heasman and Burns with copies to Councillor Hay, Mr Wong and Mr Doug Keech and Superintendent Dave Darcy of the Manly Local Area Command, NSW Police. Ms Spalding told recipients, in preparing for the first meeting of the STC, staff had dealt with a number of issues raised by community representatives on the committee who were members of the former Bicycle Committee and she wished to write to the Councillors so they would be clear about what advice had been given to members prior to the committee starting. Councillor Burns had also contacted staff and she hoped the email would answer his queries too.

A summary of her briefing included:

1. Public comment – At the training for community representatives on the Council's Code of Conduct for Community Representatives on Special Purpose Committees and Working Groups a potential member of the Sustainable Transport Committee drew attention to the provisions of the Code of Conduct regarding public comment. It was then reiterated to her in a letter that what the Code of Conduct says is what it means, that community representatives are not permitted to make any public comment or statement to the media as members of the Committee and the same goes for the chair of the Committee, unless they have the permission of Council. This was then queried again by the former Chair of the Bicycle Committee so a letter was sent to all community representatives of the Sustainable Transport Committee to ensure that this was clear before they decided whether to accept membership of the Committee.
2. Review of the Committees - ... The Terms of Reference of Committees and the Code of Conduct make it clear that the roles of Committees are purely advisory, are strategic and do not deal with day to day operational matters and that employees of the Council are not subject to the direction of Advisory Committees or any members. Community representatives have been advised that if they want information on operational matters they should follow Council's normal procedures for customer action requests, or contact In the last term of Council some members of the Bicycle Committee sought preferential treatment for their issues, rather than operating as an advisory committee to council and the Chair sought to direct Council staff.
3. Chair of the Committee – the former Chair of the Bicycle Committee, Norman Monshall, asked for the email addresses of the community representatives so that he could communicate with them before the first meeting. It was explained to him that this could not be done as it contravenes privacy legislation and that it was best to wait until the new Committee had met and discussed its role and strategic framework as the STC has a much wider role than the former Bicycle Committee. However, it appears from recent correspondence that he has obtained email addresses of all community representatives as he is copying his correspondence with council officers to all community representatives.
4. Agenda items – A number of community representatives have sought to put items on the agenda for the first meeting. It was explained to them that at the first meeting a presentation will be made on the strategic framework for the Committee and then the Committee will work on its priorities that will set the program for future agendas. Agendas will be set by the Council in response to priorities set by the Committee as a whole.
5. Mr Monshall has requested the agendas and minutes of the Traffic Committee be sent to members of the STC. ... The request was discussed with the Chair of the Traffic Committee and it was agreed that the minutes will be placed on Council's website after they have been considered by Council.

When Mr Wong received this email, he responded to Ms Spalding at 2.59 pm, 'Thank you Amanda. Should you need me to get involved, please let me know'.

Ms Spalding's email was forwarded to Mr Monshall even though it was not addressed to him. The email formed the basis of his complaint about her conduct. Ms Spalding said she asked Mr Wong to investigate how Mr Monshall received the email. She pointed out to him that it appeared to be a breach of section 10.8 of the Code of Conduct regarding the use of certain Council information which required council officials to only release information with Council's established policies and procedures and in accordance with legislation. She referred to the automatic advice on the email server about not retransmitting messages with permission.

Ms Spalding said she would not have sent the email to Councillors without Mr Wong's agreement. She also advised us that Mr Wong had not provided training for Councillors in the operation of the new committee system and she found it 'difficult to implement the Committee review in the absence of the opportunity to work with councillors about why certain changes to processes have been

necessary...'. She advised us that, in these circumstances, she felt it was important to send an internal briefing note to councillor members of the STC 'to try to ensure that the committee started out on the right foot'.

At 8.55pm Councillor Burns responded to Ms Spalding:

Correct me if I am wrong, but I am under the impression that it is the Committee, not the staff, that determine what is to be placed on the agenda of the committee meetings. If this is not the case, please advise me and I will do a notice of motion to see if this can be changed.

There is a mounting undercurrent of dissatisfaction among Community members about some of the initial committee meetings.

As regards the STC, I have made some specific requests for information, limits on presentation time and inclusion of agenda items for the first STC meeting, that I would like to see either the result requested or an acknowledgment that the item or request has been done, or a formal refusal, so I can take it further.....

The attempt to inhibit circulation of information and inhibit communication of email details is frankly a disgrace and shows contempt, not respect, for the community representatives. From your actions if [sic] could be taken that Council appears frightened of the Community and needs to maintain an advantage to ensure control. Not the impression we want at all.

While I note your comments on the changed role of Committees, my direct experience is that Manly Council and the Manly Community is better off with more scrutiny/supervision of Council functions, particularly to the operational level.

To be direct, there have been, and continue to be, far too many serious errors, and continuing less than optimal performance in some areas. I am also aware of some pending matters needing review to prevent Community dissatisfaction.

One has to consider that the recent changes to Manly's local Committee system with previous operational input ... could in fact prove to be a strategic mistake.

In my view, if we have members of the Community that are prepared to assist with time, ideas and monitoring of Council, at no cost, they should be encouraged. I know some senior staff are not of this view and like a tight ship, but as Councillors we must look after the Community interests first.

I will record more Community scrutiny could have prevented the now seemingly never-ending Corso fiasco and it helps protect Council and the Community against the threats of corruption and maladministration.

Lets see if we can do better with the STC.

Ms Spalding advised us that the inclusion of the Police Superintendent of Manly Local Area Command in the email was an error. Councillor Burns' contact details were, and still are, not available to the public and are not readily available in Council's internal records. It was during this search that she accidentally selected the wrong address in the blind copy box. She emailed Commander Darcy on 4 May 2009 and he advised her he realised it was not of concern to him. In his response to our written preliminary inquiries, Mr Wong said that Ms Spalding had stated to him that it was an error and inappropriate and he accepted her admission. Both Ms Spalding and Mr Wong advised us that she had contacted Commander Darcy to apologise and confirm that the forwarding of the email to him was an error.

Ms Spalding sent a separate email to Mr Keech on 26 April 2009 advising him that over the weekend Mr Wong had written a response for her to send to Councillor Burns. She told him that Mr Wong said he was prepared to disband the committee if necessary. Mr Keech in turn expressed his concerns about having to chair the first meeting of the STC which he considered might get out of hand. He proposed various strategies about closing the meeting and getting people to leave the 'security area' and that anyone refusing to leave was to be regarded as trespassing.

On 27 April 2009, Ms Spalding wrote to Councillor Burns advising him that under Manly Council's Code of Meeting Practice it was the General Manager who was responsible for the contents of all agendas and that under the Code the business to be transacted by a committee could only be consistent with its Charter. He was told that it would not be acceptable for members to use 'colour of office' to demand access to materials outside the Charter of the committee concerned and that officials were expected to operate within the rules. With regard to his views about more community

involvement, the Council had spoken on the issue and the task she had was to implement it not to debate it.

When Councillor Burns objected to her advice citing the Code of Meeting Practice and the STC Charter as allowing his requests, Mr Wong wrote to him on 27 April 2009 saying he had become aware of his recent email exchanges with Ms Spalding. He said it was of great concern to him that the pattern of emails suggested that as a Councillor he felt that he was entitled to direct staff in operational matters. Mr Wong requested that he direct all communications with the administration via his office and he would do his best to assist and facilitate them.

The General Manager opened the first meeting of the STC on 29 April 2009 and called for nominations for Chairperson and Deputy Chairperson. Councillor Burns was elected Chairperson and Councillor Norek was elected Deputy Chairperson. Eight community representatives including Mr Monshall attended along with Mr Doug Keech, Transport Planner, as Council staff officer and Councillor Griffin as observer. Most of the items on the agenda were deferred to the next meeting so that Strategic framework presentation could be made.

In her submission, Ms Spalding said she verbally complained to the General Manager in May 2009 that Councillor Burns' conduct could be a breach of the Code of Conduct. She and Dr Ellis-Jones, Council's in-house legal consultant, met with Mr Wong about the matter. Dr Ellis-Jones then drafted a letter for Mr Wong to sign that advised Councillor Burns about the action Council could take under the Code of Conduct with regard to his conduct. In the end, Ms Spalding said this letter was not sent because Mr Wong did not want to refer the complaint about Councillor Burns to the Conduct Committee. He told her that he wanted to handle it himself as Councillor Burns was a 'new Councillor' and he wanted to establish his relationship with him.

At 9.08pm on 20 May 2009, Councillor Burns sent an email to Mr Wong and Councillors Heasman, Griffin and Norek requesting Mr Wong or his staff to prepare a brief written report for presentation at the STC meeting the next evening on Federal bike funding grants and asked whether Manly Council had made a submission for funds. Mr Wong responded at 9.21pm that he was happy to ask Mr Keech to provide a briefing. Councillor Burns replied 'Thanks for this. Are we preparing a submission?' Mr Wong responded "I think so Doug would be far more informed than me on the details and you would hear it from him at the meeting'.

When Ms Spalding was made aware of Councillor Burns' request she sent Mr Wong an email at 3.02am on 21 May 2009. She said:

I would be grateful if you could explain to me how Cllr. Burns' behaviour IS NOT a breach of the code of conduct. I thought that individual Councillors could not direct you (apart from the Mayor in some circumstances) and could only do so in meeting collectively as the Council.

I am concerned that we have given some very mixed messages to staff as it is not so long ago that you asked me to inform Prabaka that he should not respond to Norman Monshall's requests for information concerning certain bicycle matters that we would respond when we had the resources. Now it seems that you are expecting Doug to be dealing with these matters and being able to respond to them with only a view hours notice. Unless you have been having separate discussions with the staff concerning these matters that I am not aware of.

Mr Wong responded at 3.27am that he saw nothing unreasonable in the request because it fell within the terms of reference of the committee and it would not be a paper but an oral briefing.

At 6.03am Mr Spalding sent another email to Mr Wong saying:

I think you need to give clearer guidance to staff about what it is [sic] acceptable behaviour from chairs then, to ensure they are not given mixed messages about which particular line the sand they are defending!!

Mr Wong responded at 9.04am:

Noted ... and remains the position for all staff. However, I am entitled to make a judgment call on issues as they arise, but staff are not.

On this occasion, it was I who asked staff to respond to the request, which I have assessed to be reasonable. That you would agree is the difference.

Ms Spalding told us that Mr Wong's response suggested to her that he believed staff, including the Deputy General Manager, were not entitled to use their judgement. She said:

This means that all decisions have to be made by the General Manager, and makes it difficult for me to have any confidence that I can fulfil my role. Sadly this attitude has been reflected in other communications and behaviour from him towards me.

7.5 Problems with implementing the new committee system

After the new committee system commenced operation in February 2009, it would appear that difficulties were experienced with their operations, particularly with the new procedures which gave the General Manager greater control over the agendas and minutes, increased the role of staff at the meetings and changed the meeting schedule to bi-monthly meetings.

From the minutes of the first meeting of the STC, the Chair, Councillor Burns, expressed concern that the chair of a committee had to obtain approval from the General Manager to put items on the agenda and later that staff were changing the minutes of meetings without reference to the chairs of committees.

Councillor Griffin expressed her concerns about the operation of special purpose committees in a meeting with Ms Spalding and Dr Ian Ellis-Jones on 21 July 2009. These reflected the concerns expressed by Councillor Burns and included:

- the distinction between the committees established by the Council and those established by or otherwise under the auspices of the General Manager is artificial and contrary to the terms of Council's resolution of 8 December 2008. Council had established all the special purpose committees
- there needs to be a mechanism where the quorum of any committee can be changed easily. If all the committees are established by the Council, the quorum is set out in clause 260 of the Local Government (General) Regulation 2005
- minutes of meetings are being 'sanitised' by council staff before they go to Council
- minutes of the committee should go back to the committee for adoption before they go to Council. In one resolution, a retrospective General Manager's note had been inserted in the resolution
- some committees are being used simply for information dissemination from Council
- the strategic/operational demarcation is hard to draw
- questioned whether it was necessary for every agenda item to have a report prepared by a member of Council staff as it was not necessary in many cases and a waste of council staff time in many instances
- agendas are being driven by Council staff, fettering the ability of committee members to deal with other matters.

On 22 July 2009, Ms Spalding sent a memorandum to Mr Wong which included a detailed response to the issues Councillor Griffin raised. Ms Spalding provided a summary of the meeting with Councillor Griffin and Ian Ellis-Joes on 21 July 2009 and made the following specific recommendations.

1. Change Management

Recommendation

A discussion/review Councillor Workshop be held in December 2009 that discusses the why and what of the changes to the Committee structure and procedures, and reviews the progress of the Committees, and the other issues raised in this memo.

2. Status of special purpose committees

Recommendation

That Cllr Griffin be informed by the General Manager concerning the establishment of the Committees separately under the auspices of the General Manager and the Council, with a copy to all Councillors and Lead Officers of Committees that also explains the difference (if any) that this makes to how the Committees and Working Groups are run.

3. Membership of Committees and Quorums

Recommendation

Councillors to be informed that a review of Committees will be undertaken in December 2009, and that review includes issues concerning membership of Committees and the proposal to designate State Government officers as co-optees, so they are not counted in the quorum. This review process should include a Councillor Workshop with all Councillors.

4. Minutes from Committees

Recommendation

That the minutes process be discussed with Councillors at the proposed meeting in December, with a view to continuing with the current system of the final draft minutes being sent to the Chair of the Committee for confirmation, and going to the next Council (P&S) meeting for approval, and subsequently being confirmed by the Committee at its next meeting.

5. Other issues raised

Recommendation

That the Terms of Reference and Guidelines for Advisory Committees be revised and given to Councillors so that they are clear about the processes involved in ensuring the effective use of Council resources in involving the Manly business and local community in advising Council.

Ms Spalding's memorandum is **Appendix 4**.

Ms Spalding advised that she had no response from Mr Wong to her memorandum or to her recommendations.

On 24 July 2009, the General Manager approved Practice Notes for the Special Purpose Committees and Working Groups that provided additional procedures for the conduct of committee meetings and working groups. While a copy of the new Practice Notes was given the committee chairs, no training was provided to Councillors in the new procedures.

Ms Spalding told us that one of the 'flaws in the change management processes to implement the Committee review ... was that Councillors were not specifically trained in the Code of Conduct for Community Representatives, nor in the Terms of Reference for the Committees...'. She said Mr Wong had undertaken to staff during training in the implementation of the additional practice notes he issued for special purpose committees and work groups in July 2009 that Councillors would receive training but he later changed his mind and Councillors received no training.

In his letter of resignation from the STC which he forwarded to the General Manager on 9 August 2009 to let him know he had resigned from the STC, Mr Monshall gave Mr Wong a summary of the contributing factors to his decision. He said:

- a cycling budget significantly lower than any over the last decade
- bans on public comment and involvement in 'operational' matters
- the redefinition of the request for information as improper 'purported directions',
- a tripling of the STC's charter/workload compared to the BC, with half the meeting dates
- a calculated severing of links with the Traffic Committee – a manifestly bizarre decision
- a termination of monthly meetings with council (per bike sub-committee) which ensured that the scheduled works program was implemented.

He said that '...it's over 10 years since the Bike Plan was approved and there is little sign that it will be implemented fully any time in the foreseeable future...'

Mr Monshall's frustrations with the new committee procedures were reflected in ongoing problems with the operation of STC meetings around issues such as the Committee holding meetings monthly instead of bi-monthly, putting items on the agenda and committee members drafting the minutes of meetings without the General Manager's approval.

Ms Spalding said that the STC held an unofficial meeting of the STC on 24 June 2009 without the knowledge of the staff officer or the Council secretariat. She later was advised that Mr Wong had determined that meeting was to be regarded as 'informal at his request'. She told us that a committee member took the minutes which were placed in a document with a Council logo and took on the appearance of official Council Committee minutes. Ms Spalding explained that the approval of the General Manager for the Committee minutes was necessary so that Committees did not exceed their remits and so that Council 'knowingly approved the commitment of resources'.

Ms Spalding advised us that in the report she gave to Ms Barbara Scott, Coordinator Customer Support Services, on 13 May 2009 in response to Mr Monshall's complaint, she asked Mr Wong to investigate whether any of the emails that Councillor Burns sent to staff had breached the Council's Code of Conduct. The reason she did not email this directly to Mr Wong was because he had instructed staff to take more care over what they sent by email and she was seeking an informal discussion and advice from him about how staff could work together to address the issues. She asked Mr Wong whether he thought it would be better to treat the issue as a formal complaint from her and to refer it to the Code of Conduct Review Committee so that neither of them would be drawn into the matter and the Committee could deal with it objectively. Mr Wong told her that he wanted to handle it himself because he wanted to establish his relationship with Councillor Burns as a new Councillor. She said Mr Wong had the Council's consultant solicitor draft a letter to Councillor Burns reminding him that he could not direct staff and under the Terms of Reference he could not call meetings or direct the deliberations and operations of the STC. Mr Wong told Councillor Burns that he wished to be lenient towards him at that stage and he should attend further training on the Code of Conduct.

Ms Spalding sent an email to Mr Wong on 22 July 2009 in which she sought a progress report on her complaint about Councillor Burns' conduct and Mr Wong responded:

In relation to Cllr Burns, we have agreed to work through the STC issues to bring it back on track. As in regard to further training, he has not agreed to it, but he has accepted that I have statutory responsibilities in regard to the matters raised. The relationship remains a work in progress.

Councillor Burns eventually lodged a notice of motion at the Council meeting of 10 August 2009 for changes to the Terms of Reference of the STC relating to setting the agenda, issuing notices of meetings, timing of meetings, the minutes, attendance of staff at the committee meetings and that the convenor of the STC should be the Council not the General Manager. The Council resolved to allow the Chair of the STC in consultation with members and with input from the General Manager to set the agenda for each meeting with a review after six months and noted that the Chair of the STC and the General Manager agreed to establish a meeting cycle and meeting time that best suited everyone's needs.

Ms Spalding advised us that at the Council meeting of 10 August 2009, some Councillors were critical of her implementation of the Terms of Reference for the special purpose committees. She told us that she was held personally responsible for the aspects of the Terms of Reference that some Councillors found most objectionable. She believed that this circumstance came about because the General Manager had resisted all requests for Councillors to be properly trained in their responsibilities and the responsibilities of staff on the new special purpose committees.

On 27 August 2009, Councillor Burns complained that the minutes of the STC meeting of 5 August 2009 were not the correct minutes as approved by the chair, or as resolved by the committee. He said in their present form they were not acceptable or accurate and the Committee wanted them rectified and resubmitted. Mr Keech, the staff officer for the STC made the following comment to Ms Spalding in response to Councillor Burns' email:

This is part of a general pattern of bypassing the secretariat processes (and the staff officer), pushing for additional meetings out of course (which disrupts the proper processes) and treating the Chair and the Committee as autonomous. This gives the impression that the Chair and Committee are in total control of what they do. In my experience at several meetings Committee members think that this is

the case, despite the Strategic Framework presentation and my attempts to tell about the correct procedures. They have been genuinely confused when I explain to them that proper processes are in place and have not been followed. They think the Sustainable Transport Committee is a rebadged Bicycle committee, with the autonomy that the Bicycle Committee previously had.

Every time Cllr Burns has a win or something that could be seen as a win (eg approval to hold an additional meeting, Resolution 104/09) it cements the impression that they are autonomous and that the Secretariat and Staff Officer are an impediment to their operations.

In response to Mr Keech's further complaint about the STC meeting of 26 August 2009, Ms Spalding said:

I am afraid that the minutes of the meeting of 5 August did not go through the proper process as a result of the meeting of 26 August being called, and causing problems with our normal processes. Normally I would consider the draft minutes prepared by the Staff Officer, and see whether the committee was operating within its remit and what recommendations needed to go to Council.

In response, Mr Keech advised Ms Spalding that:

The fact that additional meetings are disrupting the proper probity processes adds to my concerns that the Committee is attempting to rewrite history in its Minutes. In response to my email ... Henry has indicated that he wants to talk to Prabaka and me about the long term future of the Committee. I hope that happens soon.

Ms Spalding told us that a great deal of effort had been put into 'trying to ensure that the new Committees were an effective use of Council resources'. However when she complained about the problems with the proper operation of the new committee system, a member of senior management expressed the view to her that she was the one out of step because in fact the General Manager was content to have a large number of advisory committees as 'it kept the Councillors distracted'. She said one senior manager who was the staff officer for a number of committees had yelled abuse at her in the corridor because he did not like the Terms of Reference and he did not like being answerable to Councillors who wanted to run committees in one way and Mr Wong who wanted them to be run another way.

She told us that her concerns about Mr Wong's commitment to the change process were confirmed when she proposed including an Item for Brief Mention at the Council meeting to draw Councillors' attention to the commitment of Council resources inherent in requests from advisory committees. The General Manager removed it from the agenda of the Council meeting in September 2009 because he said the item was 'taking up too much time at Council meetings'. Ms Spalding said 'it appears that some staff and senior management do not see the need for change and would rather just let the Committees get on with it'.

In September 2009, Ms Spalding's involvement in oversight of the operations of special purpose committees finished. Ms Spalding told us that Mr Wong ended her involvement because of complaints from some staff officers and some Councillors about her involvement in monitoring the performance of committees. She said she understood that her role would come to an end at some stage but it had not been discussed. She said she had suggested a review of the new committee system towards the end of 2009 and this would have been the time for her to cease involvement. However, Mr Wong removed her from further involvement in the special purpose committees without conducting any review of the whole change process.

7.6 Staff perceptions of Mr Monshall

The perceptions of staff about Mr Monshall and his role on the former Bicycle Committee play a significant part in the events that led up to Mr Monshall's complaint about the conduct of Ms Spalding. We have been provided with copies of documents from different sources in the Council that assert inappropriate behaviour on the part of Mr Monshall.

7.6.1 Documents provided by Mr Wong

During the course of our handling of Mr Monshall's complaints, Mr Wong provided this office with information from his email system related to the former Bicycle Committee members in response to our preliminary inquiries. Mr Wong indicated that the emails demonstrated the inappropriate behaviour of Mr Monshall and the effects on Council staff.

The first was a string of emails commencing with an email dated 11 October 2006 from Peter Hopper, member of the Bicycle Committee to Ms Lynne Jess, Secretariat/Administration Support about the Council's comments added to the minutes of the Committee meeting held on 10 August 2006. He said:

... Unfortunately the document includes no references as to the forum or the people who generated these comments. Can you please provide such information? Given that matters raised related to the question of cyclists' safety and "the risk of serious injury", it is important that such comments are fully and properly referenced.

Ms Jess forwarded the email to Mr Steve Calderon in the Traffic Team. Mr Calderon sent this email to Mr Anthony Hewton, Manager Corporate Services and copied it to Mr Tony Goninon, Manager Urban Services and Mr John Inglese, Manager Traffic on 13 October 2006. Mr Calderon told them:

FYI, below is an email forwarded by Lynne from a Bike Cttee member (Peter Hopper) in response to comments that I recently compiled (which Tony G. ok'd). The document that I prepared responded to a number of points that came from the Bike Cttee's August minutes (attached and relevant section highlighted). Tony G and I thought it best to provide a response rather than let the cttee minutes go to Council without any Council input.

Prior to this, about 2 months ago, when I walked the Fairlight LATM project with Bike Cttee reps to assist John Inglese by explaining the various proposals to them, I had Peter Hopper in my face at the end of the meeting discussing the proposed Darely Rd on-road bicycle routes that we will shortly be implementing (approved by Traffic Cttee and Council). I did my best to explain to Peter the technical reasoning for the lanes to go in but he was adamant that it was the wrong option, stating that I would be responsible for the death of cyclists. I advised that despite his objection, the lanes would go in (in accordance with RTA guidelines) but he threatened to do whatever he could to stop them and would take up a campaign through the media.

This 'campaign' has not eventuated, however, after that meeting (in which I was very open and transparent with the Cttee reps) I had decided that I will minimise contact with them, and at most funnel all comments, etc, through Norman Maunsell. This seemed to be working well for the last couple of months, however, they way that I read this email below (dated 11 Oct), Peter Hopper is sending a veiled threat at me (you may disagree). I expect to be protected by management from being named in any media form or defamed by Peter Hopper. I'm just trying to do my job I accordance with Australian Standards and RTA Guidelines and do not accept that it is my job to be exposed to such threats, as I perceive this to be. [Emphasis added]

Following this latest email, I do not wish to attend any future Bike Cttee meetings. The system of providing a written response to the Cttee's minutes seems to me to be the most appropriate way of best progressing bicycle related projects and issues for the community at large.

Later that day, Mr Goninon responded that he agreed with Mr Calderon as the comments attached to the Bike Committee's minutes were prepared by Council engineering staff and there was no need to provide any other details of Council staff who generated the comments. He said he understood the frustration of the Traffic Team with Mr Hopper and the Bicycle Committee but they needed to ensure they provided informed responses to all comments/requests and not to 'react to any comments or take them personally difficult as it maybe'.

Mr Inglese emailed Mr Hewton and Mr Goninon with a blind copy to Mr Wong at 9.26 am on 16 October 2006 regarding Mr Calderon's email. He said:

Anthony,

I need to put this in writing. The Grahame Moore's, Norman Monshall's, Peter Hopper's and more recently the Garry Stewart's of this world have had a severe impact on Me, Steve and Roberto over the past few months.

A softly-softly approach with people like this will NOT work. The more you try to discuss issues with them, the more important they think they are.

Council's Traffic and Transport section know exactly what we have to do in terms of improving the situation in Manly or Pedestrians, Cyclists, Motorists and Public Transport Users.

After hearing and reading what the above four people have said about our work in recent time I'm convinced that they all wouldn't know "shit from clay" when it comes to traffic engineering and yet they seem to think they can call the shots around here.

Based on the attached e-mail from Steve Calderon, there is now way I want him attending any future bike Committee meeting (day or night).

We have done more for cyclists on the past 6 month, than has happened in the last 6 years.

At least we are having a real go at trying to make a difference here at Manly Council.

Sorry if I sound a little annoyed in this e-mail, but certain things are starting to really get to me and my staff.

I could understand getting criticised if we were just sitting on our hands doing nothing, but we are the doing the opposite, and we are still being criticised especially by the Bike Committee...

Mr Wong's response to Mr Inglese was to ask 'How can I help?' Mr Inglese responded that he was meeting with Tony Goninon to discuss these issues and he would let him know. He appreciated Mr Wong's support.

The second email that Mr Wong provided to us was in support of his claim that Mr Monshall's conduct was unreasonable and likely to upset staff. It was an email dated 19 December 2006 from former Councillor Judy Lambert who was a member of the former Bicycle Committee. This was a thank-you email to members of the Committee and the Traffic Team with a copy to the former Mayor and Mr Wong in which she thanked Mr Monshall and all the 'hard working community members' on the Bike Committee 'who are trying to do the right thing by Manly and its cyclists'.

Mr Monshall responded to all names listed on the email with the following:

Thanks to you all for a year of support, hard work, robust debate and solid achievement (although never quite enough of course!). I know we are demanding bunch of malcontents in the Bike Committee, but our objectives are worth pressing for – and we're not going away!

The third email that Mr Wong provided to us was from Mr Inglese to Mr Hewton and Mr Goninon and copied to Mr Wong about comments provided by the Bike Committee, including Mr Monshall, on 22 June 2007 for the Traffic Committee agenda for its next meeting. The comments questioned some of the basis for proposed traffic control and safety measures and included recommendations that the Traffic Committee revisit the issue and apply the Australian Road Rules and RTA preferred option. Mr Inglese's response included the following:

Norman Monshall and his Bike Committee cronies are really starting to SHIT ME!!!

I don't know how much more I can take of him looking over my shoulder at everything I do.

If things keep going this way it will get to the point where I will just start ignoring him.

An example, he has just reviewed the Traffic Committee Agenda for next Monday (see his comments below), and made comments on the issue of No stopping signs where he suggest Council uses yellow lines instead of Signs. I have already explained this particular issue to him a number of times and told him that Terry Jones agrees with me that signs are the best way to enforce these restrictions.

Mr Hewton advised Mr Wong on 25 June 2007 that he would discuss Mr Inglese's issues with him and 'provide what support I can in the interim (eg talking to Norman). He is obviously frustrated.' There was no record of Mr Hewton's 'talk' with Mr Monshall.

In his 'aside' in the footnote on page 3 of his response to our written preliminary inquiries, Mr Wong told us that Mr Monshall:

had caused staff resignations and staff refusals to deal with him directly due to his "perceived" harassing manner at meetings, on the phone, and when it suited him, in writing. There is a pattern to his style of approach that may not be apparent to you in the present complaint.

Mr Wong also told us that a whole section of staff resigned from the council and other staff refused to work with Mr Monshall. Mr Wong said there were circumstances relating to Mr Monshall's working relationships with all levels of his staff, past and present, and these contributed to the difficulties in establishing a normal and equal working relationship with him.

In mid-2007, the three staff in the Traffic and Transport Section left Manly Council.

7.6.2 Document provided by Ms Spalding

Ms Spalding advised us that during her work on the community engagement and committee review project team in 2008 she was informed by staff of many issues concerning the operation of the former Bicycle Committee and the behaviour of its members, including its chair, Mr Monshall. Ms Spalding also said staff advised her that the members of the former Bicycle Committee also behaved more as a lobby group for their own interests than an advisory committee.

In her submission Ms Spalding explained how she formed the view that the Bicycle Committee had acted as a lobby group and received preferential treatment. She said that after the training for community representatives a former member of the Bicycle Committee and later the STC was questioning the requirement of the Code of Conduct regarding committee members not making public comment. Another former member of the Bicycle Committee and later the STC was also questioning the requirement for committee members not to make public comment. This person reported there was general consensus among the community representatives who had attended the Council's training that 'speaking to the media should be allowed if approved by the relevant committee'. Ms Spalding said that these views 'made it clear to me that a number of the former members of the Bicycle Committee see themselves as a lobby group to lobby Council on Bicycle matters outside of Council's control, rather than as an Advisory Committee that is part of Council'.

In her evidence, Ms Spalding referred to East-West Cycle link that was opened in September 2008 as an example of preferential treatment. She said the Bicycle Committee had lobbied for the project which she believed had been estimated to cost \$300,000 but its final cost was \$900,000.

The history of the East-West cycle link project was detailed in a General Manager's Division Report to the ordinary meeting of Council on 15 May 2006. This report stated that an East-West link was proposed as part of Manly Council's Bike Plan the Council had previously adopted. In 2005, the Bicycle Committee had proposed family cycling on the Manly Scenic Walkway to complete the East-West link in Manly's cycle network. However, there was conflict in the local community about the widening of the foreshore path to enable it to become a shared pedestrian/cycle pathway. The Council resolved to hold a public forum in May 2005 and later in July 2005 the Council voted to engaged a consultant to report on various options to find a 'total solution' to the East-West link. The consultant's report was to be funded out of the Bicycle committee's budget allocation for 2005/06. The consultant's report reached some conclusions which were considered at a Council Workshop. The consultant estimated cost of the whole project that was to be undertaken over a number of years was around \$900,000. The consultant's proposal was put on public exhibition prior to a decision by the Council on the East-West link.

With regard to the behaviour of members of the former Bicycle Committee directing staff, Ms Spalding recorded the conversation she had with a former member of the Traffic Team who had left Manly Council. She said:

I spoke to John Inglese who was formerly the Manager Traffic at Manly Council on Monday 22 June 2009. I said I wanted to talk to him about Norman Monshall and without any prompting from me he said:

Norman Monshall was one of the reasons why I, and the rest of the Traffic Team, left Manly Council.

He said the Traffic Team felt that they were working for the Bicycle Committee not the Council as more than 90% of their work was concerned with Bicycle matters. Mr Monshall 'drove them berserk'. They received over 400 emails from Norman Monshall in one 12 month period. He wore them all down by constantly questioning everything they did.

The Traffic Team once mapped all the bicycle paths and where Bicycle Committee members lived and found that the Bike Paths went past their houses.

I explained the issue about me saying that he sought to direct staff and John agreed that he did that and put so much pressure on staff that it was the same as directing them.

The other members of the team were Steve Calderon and Roberto Di Fredrico. Replacing an entire team of 3 officers must have cost the Council in excess of \$250,000. As a result of the urgency in replacing the team Council used HR Consultants, so it may have cost more.

There are emails on the General Manager's Review file demonstrating that the former Traffic Team were distressed by the behaviour of members of the Bicycle Committee and Mr Monshall in particular.

Ms Spalding also told us that because of the involvement of Mr Wong and Mr Prabaka Siva, Manager Traffic, in the scripting and performance of a role play during the staff training in February 2009 based on Mr Monshall's role as chair of the former Bicycle Committee, she came to believe that 'it was a generally held belief that Mr Monshall has sought to direct staff in the past as the chair of the former Bicycle Committee and that this belief was specifically held by Mr Prabaka Siva and Mr Wong'.

During Mr Wong's review of Mr Monshall's complaint he asked Ms Spalding to provide evidence to support her statement that Mr Monshall had directed staff. She subsequently asked Mr Keech to locate examples of Mr Monshall giving directions to staff and these were provided in her submission to this office. Mr Keech located an email headed 'Minor Maintenance' from Mr Monshall to records at Manly Council and copied to Mr Inglese and Mr Hewton on 6 March 2007 in which he said:

John

Thanks for the speedy action on the hatched area at Lagoon Pk.

I intended the attached pics to be circulated before yesterday's sub comm. meeting, but my trip to Tassie didn't leave me enough time.

077 – graffitied sign on Burnt Creek path, concealing directional arrow to Dudley

078 – as one enters Dudley (from the main path) the logo needs renewing, but more importantly the separate bike path markings have almost completely disappeared. You can just see the remnants of the parallel lines. This was a particularly good path because the footpath is on the right adjacent to the wall, so bikes and peds [sic] were directed to separate paths. Even though we're told our maintenance budget is expended, can we find the modest sum to renew these lines and ped/bike logos?

080- the shared path at Shelley is becoming increasingly blocked by sand because there is no barrier at that point between the sand and the path. In the short term at least the path should be cleared.

Another example Mr Keech located that he believed showed Mr Monshall giving directions to staff was an email from Mr Monshall dated 25 October 2008 to the new Manager Traffic and Transport, Mr Prabaka Siva, regarding the Spit Corridor. Mr Monshall was passing on comments from the former Bicycle Committee and he asked 'Could these comments be presented to the TC [Traffic Committee] and incorporated into Council feedback to the RTA? He said 'we should ask the TC to request that the RTA to take all steps [to] enhance and encourage bicycle use in the implementation and delivery of the recommended steps....'. He also raised two further concerns about the road surface and drainage which he said were 'still diabolical' and many lights being out for months. He said both should be addressed.

On 15 December 2008, Mr Monshall sent another email to Mr Siva and asked why none of the Committee's concerns about the Spit-Military Corridor report made it into the minutes he had just received and how would they be addressed in Council's response to the RTA. Mr Siva told him that requests from the former Bicycle Committee would not be addressed.

Ms Spalding also located a copy of a report of a site inspection with Council staff and members of the Bicycle Committee on 11 July 2006 that had been documented by Mr Monshall. **Appendix 5** is the site inspection report date 11 July 2006 which documented the items inspected and the agreed actions or outcomes and formed part of the Bike Committee minutes. The inspection was attended by staff and Bike Committee members. Ms Spalding told us that she regarded these site inspection reports 'as clear evidence of Mr Monshall directing staff'.

7.6.3 Mr Monshall's advice about his role on the Bicycle Committee

Mr Monshall said that staff at Council appeared to hold the view that cycling did not really form part of Council's overall transport plan as motor vehicles were a priority. It was a constant struggle to get the staff to work on the Council's adopted bike plan. He believed it was the hard work of two dedicated pro-cycling Councillors and the considerable talent of the members of the former Bicycle Committee that obtained the outcomes for cycling as an alternative form of transport at Manly.

In his submission on the statement of facts, Mr Monshall said:

It was indeed a constant struggle to achieve progress on the implementation of the council's bike plan. One additional point that I was reminded of reading the papers, was that for one year (either 2007 or 2008) staff 'overlooked' the need to renew its application for RTA funding, so none was received. In my view this again represented the council's attitude to cycling, because in a relatively small budget, a dollar for dollar RTA grant is significant. Also staff were unaware of the then Rudd government's special bike funding and had made no application to the Commonwealth, until I raised it a couple of days before the application expiry date, with Cr Burns. As the new Chair of the Sustainable Transport Committee and he made personal representations to the GM. As a result Manly received funding to complete no fewer than 4 major projects which had been in the 'too hard/expensive' basket for years. Another reflection on poor management.

Mr Monshall believed that the view about the low priority of bike projects was so entrenched that staff actively tried to keep the Bicycle Committee members in the dark about what was going to the Traffic Committee so that they would not have input into the decision-making. When the new STC was formed, the Committee was told that members would not be allowed to see the agenda of the Traffic Committee and it was only after protest that Ms Spalding advised him that the STC would be allowed to view the minutes of the Traffic Committee once they were approved by Council. Mr Monshall said it was far too late once the Traffic Committee had made its decision and for this reason he wrote to Ms Spalding pointing out that the RTA Guidelines for Traffic Committees allowed for community representation. He said this had no effect at all and it took more than 12 months for the current Chair of the STC to get Mr Wong to change the procedure to allow the STC to see the agenda of the Traffic Committee before its meetings.

Mr Wong attended meetings of the Bike Committee. Mr Monshall said that Mr Wong made the decisions about how and when projects would proceed and that staff did not undertake any work without Mr Wong's approval; if they provided solutions without Mr Wong's approval they were chastised. Mr Monshall told us he believed that Mr Wong micromanaged the staff.

Mr Monshall claimed he was not directing or bullying staff. His communications with staff were about the status of various projects. He said that when bike projects were delayed, queries from the former Bicycle Committee were often blocked or deflected by staff. He said that some of the bike projects that were to be carried out by the Council had been funded through grants and it was extremely difficult to relate the stated budget, which incorporated RTA funding, to project completions. He believed that the reason he was being accused of directing and bullying staff was because he was asking questions about why things had not happened.

Mr Monshall provided us with a copy a report of a site inspection on 9 August 2006 also conducted with Council staff and members of the Bicycle Committee. **Appendix 6** is the site inspection of 9 August 2006. This inspection report also formed part of the minutes of the Bicycle Committee meetings.

Mr Monshall provided us with copies of the Bicycle Sub-Committee's emails to Council staff and Councillors on the Bike Committee about meetings of the Bicycle Sub-Committee in November 2006 and February 2007. He said the Bicycle Sub-Committee was established in November 2006 following representations from former Councillors Brad Pedersen and Judy Lambert to senior council staff that bike projects were not being implemented in line with agreed targets, despite the availability of funding. He said that as a result of subsequent discussions on ways to improve project management, Mr Wong agreed that a sub-committee of the Bicycle Committee would meet monthly to enable members and staff to work together. The emails Mr Monshall provided contained 'an agreed list of measurable outcomes' for bike projects.

Mr Monshall advised us that Mr Anthony Hewton, Manager Corporate Services, 'proposed a "matrix" of both funded projects and more general maintenance issues, with targets and progress reports'. He said 'it operated successfully because undertakings were subject to scrutiny and staff responsible had either to report attainment of goals or provide reasons for non-completion'.

Appendix 7 is the email from Mr Monshall to Mr Anthony Hewton dated 31 October 2006 with the agreed issues and outcomes of an earlier audit for the first meeting of the Bike Sub-Committee to be held on 2 November 2006.

Appendix 8 is the email from Mr Monshall dated 7 February 2007 to staff and the Bike Committee about the outcomes of the Bike Sub-Committee meeting on 5 February 2007. It also includes a project progress report in the form of a table that listed each project, the person responsible, the date for completion and the status of each project.

During the investigation, former Councillor Pedersen advised me how the Bicycle Sub-Committee came into existence and Mr Monshall's role. He said that:

The sub-committee's formation was first proposed by the Bike committee itself and was in response to the continued failure of the council bureaucracy to honour commitments and to meet deadlines on cycling infrastructure projects. Indeed, it was only after council staff opposed such a process, that I took the matter up personally with the GM per the attached copy of my email to him late October 2006 (I no longer have the original). He subsequently agreed to the proposal and the sub-committee first met in November. It proved very successful in accelerating progress on bike issues and developing new initiatives.

Far from reducing Mr Monshall's involvement in bike issues, he as Chair comprised one of the three committee members who attended the monthly meetings, at which usually 3 council staff attended. I should add that the Bike Committee continued to meet without council staff in attendance and wrote its own agenda and minutes.

It is entirely possible that certain members of staff may have been discomfited by being,

- requested to carry out the program and charter of the bike committee as approved by the elected council.
- subject to the discipline of producing a monthly report on project outcomes and progress.

However, I know that in all his dealings with staff, both orally and in writing, Mr Monshall was unfailing courteous. I am also aware that Mr Prabaka Siva, who was the last Traffic Manager before the Bike Committee became subsumed within a broader Strategic Transport Committee, enjoyed an excellent relationship with Mr Monshall and that they remained in contact, after Mr Siva resigned from Council earlier this year.

Former Councillor Pedersen's email to Mr Wong of October 2006 stated:

You will recall attending an earlier Bike Committee Meeting, during which you gave a commitment that in return for us (uniquely) taking our own minutes we would be able to meet with a Council officer prior to our meetings. Indeed the suggestion was yours.

I attended the 12 October BC meeting, at which members decided not to change our evening meeting time, but to establish a (day) sub-committee.

At the request of the Committee, the Chair then wrote to Steve Calderon as follows:

FYI the Committee resolved last Thursday not to change the meeting time, so you can relax – we'll continue to take our own minutes...

However, the Committee wanted to formalise the 10am meeting time on the Tuesday prior to our meetings and to 'elevate' it to sub-committee status whose members will (probably) be Sarah, Peter and me.

The Committee sees this as an important step and a way of discussing/resolving issues with you, without adding administrative duties to your liaison role.

Our next meeting should therefore be 10am Tuesday 7 November and be for a max of one hour. Pls confirm your availability.

Steve replied as follows:

I cannot attend the meeting that you requested. I have discussed the matter with my Director and General Manager and we have agreed to continue with things the way they are. In my opinion they are working well and are the most efficient way to progress bike related matters within the area. That is for Council officers to provide written response to Bike Ctte [sic] minutes prior to the subsequent meeting.

As you appear to have endorsed this approach, perhaps you may have overlooked the commitment you previously gave. Written responses are **not** in themselves sufficient and there is a very strong view in the Committee that a regular face-to-face forum is required. I must emphasise that the Committee has been very accommodating in this regard and it is totally unacceptable that we are to be denied the access to Council staff that all other Committees enjoy. Personally, Henry I am not impressed with a process whereby decisions are made and announced, without consultation. The alternative is that we will reschedule our meetings to the morning and seek full secretariat services and the attendance of a Council officer.

Accordingly I seek your assurance that the regular monthly meetings sought will take place and that the next meeting be held on the requested date, ie 10am on Tuesday 7 November.

Mr Monshall told us the Bicycle Committee also raised other issues about Council's failure to lodge funding submissions to the funding agencies and questioned expenditure of the \$5000 maintenance budget after Councillors Pedersen and Lambert had obtained a guarantee from Mr Wong that the maintenance budget would not be used to fund unfinished projects. He said 'Several years earlier after [the Committee] kicked up a huge fuss, we discovered that substantial bike funds had been allocated to tip fees!' He told us that the Committee did not receive any answer to its queries about the \$5000 expenditure and were told the budget was 'a staff prerogative'.

In his submission on the statement of facts, Mr Monshall said:

... after we [the Bicycle Committee] discovered from financial statements that bike funding has been allocated to tip fees, we were never allowed to see these sort of documents again. It was also made clear to us that our committee had no right to this information and that council was the final arbiter of how and where its budgets were spent.

Mr Monshall claimed it was 'no surprise' that the Bicycle Sub-Committee was discontinued after the last election when two of the most pro-bike councillors resigned.

We asked Mr Monshall about the allegation that he had bombarded the staff with large numbers of emails over a 12 month period. He told us that his folder of emails relating to the bike sub-committee contained about 40 emails about one third of which were from him. He said that there were also emails from former Councillor Pedersen, and members of the Bicycle Committee and they were exchanged not only with Mr Inglese but also with other staff including Mr Tony Goninan, Mr Stephen Clements, Mr Andrew Hewton, Mr Prabaka Siva and Mr Robert Radevic.

In his submission on the statement of facts, Mr Monshall said that 'all my emails were unfailingly courteous, professional and outcomes focussed'.

7.7 The handling of Mr Monshall's complaint

On 30 April 2009, Mr Monshall sent an email to Mr Wong with copies to the Mayor, Councillors Heasman, Burns and Norek and Doug Keech about Ms Spalding's email of 25 April 2009 with the subject 'Libel'. He complained to Mr Wong that Ms Spalding repeated 'an earlier libel – for which you have previously apologised – an added two further counts for good measure'. He said:

1. Ms Spalding's claim that he had queried the code of conduct was incorrect and that she possibly confused him with the Deputy Chair of the Bike Committee and she did not 'bother to check, before making the accusation'.
2. He never attempted to direct staff and only ever courteously requested advice on agreed priorities and projects. The monthly sub-committee meetings with council staff were specifically designed to monitor progress on the Council's approved Bike Plan and infrastructure maintenance. The sub-committee had been set up by and operated with Mr Wong's approval.
- 3: He did not ask for email addresses of community representatives as Mr Wong well knew. He regarded this as the most serious falsehood given its reiteration, and despite previously being the subject of an apology from Mr Wong. He regarded it as worse than the first time because the falsehood has been sent to a number of councillors on the STC and to a different staff member. He said he had 'obtained' the email addresses 'not through some dubious process (which seems to be the sub-text)' but because most of them he had had for years as they were friends and colleagues. The remainder were provided by Doug Keech in a circular email to the committee. He advised that Mr Keech had two of them wrong and thanked him for forwarding him the correct ones.

He then went on to say that it was important that those in receipt of Ms Spalding's 'libels' were aware of the text of Mr Wong's apology of 20 March. Mr Monshall then copied the full text of Mr Wong's apology into the email. Mr Monshall required Ms Spalding to provide an unqualified apology in writing by 5 pm the next day. She also had to send a copy to all those to whom the 'libels' were sent, withdrawing them unconditionally. In this email Mr Monshall referred to Ms Spalding as 'Spalding'.

On the same day Mr Wong responded to Mr Monshall that he should first take up the matter alleged with Ms Spalding directly. Mr Monshall emailed Ms Spalding with the words 'The correspondence below is self explanatory. I await your apology and retraction.'

When he had not heard anything by 1 May, Mr Monshall emailed Mr Wong. He asked whether as General Manager he had a role in resolving his complaint, given his previous involvement. He said 'If Spalding doesn't back down, my next step will be the Ombudsman...'

Mr Wong responded at 12.17am on 2 May, that '... as a matter of personal policy, I do not intervene in matters that staff can respond to. I am sure Ms Spalding will acknowledge your email and/or provide you with a response in due course'.

At 8.26am Ms Spalding sent an email to Mr Wong in which she said:

Henry, You are quite wrong. I will not be responding to Norman Monshall. I am not responding to someone who calls me Spalding. I am more than happy for him to go to the Ombudsman. I am assuming that you are investigating which Councillor forwarded the email!

Mr Wong responded 'Understand your view, but You must ask as a minimum'.

Mr Monshall sent another email to Mr Wong at 10.03am in which he said that prompt action was required and that he was perplexed that Mr Wong was not prepared to intervene this time when he had done so last time when the same libel was circulated. He asked whether there was a qualitative difference.

On 4 May 2009, Ms Spalding's emails showed she took two steps. She commenced seeking evidence to support her statement that Mr Monshall had questioned the Code of Conduct not permitted members of committees making public comment in the email of 25 April, 2009 by requesting staff to find documents. She also acknowledged Mr Monshall's complaint but said she neither acknowledged nor accepted its contents. Ms Spalding copied this email to the Mayor, Councillors Heasman, Burns and Norek, Mr Wong and Mr Keech and Police Superintendent Dave Darcy.

On 4 May 2009, Mr Monshall emailed Mr Wong with the subject line 'Libel'. He said it did not surprise him that 'Spalding refused to do the right thing. What may have surprised you however, is that she has implicitly disavowed your apology to me, for the same baseless allegation she has since repeated.' He asked what action Mr Wong intended to take under the Council's Complaints Management Policy. He noted that Council's policy states that 'complainants will be encouraged to use all existing Council procedures to resolve their issue'. He told Mr Wong to take this email as a formal complaint and he awaited Mr Wong's advice on what avenue of redress to Mr Wong considered appropriate.

That day, Mr Wong said:

I would suggest that you seek independent advice on the issue on which you feel you have cause for action in "libel" as that is a question of law for private action and not a matter for administrative investigation. However, if I have misunderstood you, then please let me know.

Mr Monshall responded 'Libel is defined as "any false or defamatory statement" and only becomes a matter for law if that path is pursued'. He said:

I am prepared at this stage Henry, to treat the matter as a **serious complaint**, subject to council investigation, report and recommendation. You well know what outcome I am seeking and I'm confident due process will deliver it, given the facts.

The next day, Mr Wong sent Mr Monshall's email to Ms Mary Rawlings, Risk Manager together with a copy of Ms Spalding's email of 25 April 2009.

In our preliminary inquiries we asked Mr Wong whether Ms Spalding's response to Mr Monshall of 4 March 2009 was appropriate, adequate and accurate. In response to whether it was appropriate, Mr Wong told us it was not and he would have responded differently 'but that is because I have an established working relationship with Mr Monshall'. In response to whether or not it was adequate, Mr Wong said he had asked her to acknowledge the complaint and she did as he requested. However, he told us that her refusal to acknowledge or accept the contents of Mr Monshall's complaints was not an adequate method of complaint resolution and did not address the complaint

in accordance with Council's complaint management policy and procedures. In response to our question whether it was accurate, Mr Wong said 'With the benefit of hindsight, it is my opinion that Ms Spalding had erred in her response due possibly to antecedent factors involved in their relationship'.

Mr Monshall emailed Mr Wong again on 9 May 2009 as he still had not heard anything. He stressed the need for him to have an opportunity to put his case in person. He also said he was happy for mediation to take place because 'as you know I've only ever required an apology and a retraction'.

On 9 May 2009 Mr Wong sent an email to Ms Aitkenhead, Manager Corporate Governance stating 'Pls discuss'. On 11 May 2009, Mr Wong sent an email to Ms Scott and told her to read through Mr Monshall's formal complaint and come and see him. After the discussion, Ms Scott was given the task of investigating the complaint about the conduct of the Deputy General Manager. Mr Wong told us in response to our preliminary inquiries that initially he had forwarded the matter to Ms Aitkenhead but she was out of the office. When Ms Aitkenhead returned to the office on 12 May she emailed Mr Wong about Mr Monshall's complaint. She asked whether he would like to discuss it with her. Mr Wong responded that 'Barbara is on top of it'.

According to Ms Scott's 10 June 2009 report for the General Manager, on 11 May 2009 she phoned Mr Monshall 'to clarify point raised'. There was no clearly identified record of this phone call to Mr Monshall attached to the report or kept within Council's record system. However, there were some handwritten notes on the email Mr Wong sent to Ms Scott dated 11 May 2009 that seem to be of a phone conversation that could have been with Mr Monshall on that date. The handwritten notes consist of disjointed short phrases and words. The parties to the conversation and the subject of the conversation were not identified. In an email to Mr Wong dated 11 May 2009 at 1.33pm, Ms Scott said she had just spoken to Mr Monshall who was in Queensland and she had assured him that she would follow the complaint through and be in touch with him when he returns to Sydney. She told Mr Wong she was 'seeing Amanda tomorrow at 10am'.

Ms Scott also stated in her report that, on 13 May 2009 she met with Ms Spalding 'to clarify her points' and that Ms Spalding 'handed over her report/response at that meeting'. Ms Scott reported that she gave Ms Spalding's response to the General Manager several days later. There was no record of this interview with Ms Spalding attached to Ms Scott's report or kept within Council's record system.

Ms Spalding provided us with a copy of her undated submission which she gave to Ms Scott at the interview. The relevant section of the submission included:

There is no substance to the complaint from Mr Monshall. As a result of the changes we have made to the Special Purpose Committees and our determination to improve the operation of the Committee so that they do not commit Council resources or direct staff, there were always going to be some repercussions, and we were clear from the start that the Sustainable Transport Committee was likely to be a flash point because of the number of members of the former Bicycle committee and their appalling behaviour in the past.

The General Manager has assured staff that we should act as if we are representing him, and that he will back us up if we encounter problems. This is an important test case, and it is important for Council to stand firm and reinforce the new way of doing things even if it means uncomfortable confrontations with a Councillor and some community representatives.

We have one opportunity to get this right for the current term. To give way on a number of important issues now will mean that the Advisory Committees will be in conflict with Council for another term, staff will be bullied, and Council resources will be used to give interest groups preferential treatment.

I am disappointed that the General Manager has chosen to say this is a private matter as I was not a frolic of my own, but advising Councillors as part of my job and in line with the policies established by the General Manager regarding the behaviour of Committees and their members. I am also disappointed that Henry has not taken the opportunity to take Mr Monshall to task for his disrespectful mode of address towards me.

Ms Spalding then addressed the three statements she made in the email of 25 April and Mr Monshall's complaint. She said:

- A. On the issue about him seeking to send emails to the other community representatives on the Sustainable Transport Committee, Mr Monshall admits himself that he has 'harvested' email addresses without permission from an email Doug Keech sent!! So it is quite funny him saying I have libelled him when he has in fact done it, despite our previous comments about privacy, and admits it!!
- B. On the issue about directing staff – it is well known that the Bicycle Committee was a very difficult Committee to deal with, and in fact Henry decided that staff should not attend Committee meetings. I understand that the former Traffic Team left en masse and told people that they would not work for Manly Council because of the bullying behaviour of the Bicycle Committee. The Bicycle Sub-Committee was set up to ameliorate some of the problems, but it is clear that community reps [sic] were still directing staff, particularly the Chair, Mr Monshall. In setting up the new committees, with a Code of Conduct and Terms of Reference we have been trying to get the Advisory Committees to act like part of the Council, not external lobby groups. Henry and I have held training session for staff so that they understood how they should act, and the fact that they should not accept direction from community reps [sic], Councillors or Committees. Examples of the inappropriate behaviour of the Chair of the Bicycle committee were used in this training, to ensure that staff know how to deal with behaviours, to ensure that Council's Advisory Committees are an effective use of Council's resources, and do not constitute preferential treatment of special interest groups, or the partial exercise of council functions....
- C. With regard to questioning the Code of Conduct about public comment, I have eventually found the emails on this... Sarah Weate queried it in the training, and then Richard Green queried it in an email he sent to Records and Norman Monshall and Sarah Weate. So, I am prepared to apologise for this error. I am not prepared to apologise for anything else as I am not in error.

Ms Spalding submitted that she could provide 'plenty of examples of Mr Monshall seeking to direct Councils staff'. She then asked that the General Manager conduct an investigation into who forwarded her email of 25 April, or its contents, to Mr Monshall as she believed it was a breach of section 10.8 of Manly Council's Code of Conduct relating to the use of certain council information. There was no response to this request.

Ms Spalding told us that she later realised she should have lodged a written complaint alleging a breach of the Code of Conduct by Councillor Burns so that the formal processes in the Code of Conduct would have been activated. However, she had not taken this step at the time because she believed that Mr Wong would deal properly with the request in her submission.

Ms Spalding advised us that she was disappointed because Mr Wong did not read her submission of 13 May 2009. She said that Ms Scott

was shocked that the General Manager would not speak directly to me about the complaint from Mr Monshall in May 2009, or address the hard copy report 'Sustainable Transport Committee matters' that was given to him, that was a request for investigations from a senior manager.

On 19 May 2009, Ms Mary Rawlings, Risk Manager, sent an email to Mr Wong about Mr Monshall's complaint. She told him that Mr Monshall 'would be very hard put to get a verdict in a libel case on this email alone'. She asked him whether anything further had occurred in the matter. She said 'If not then I would ignore it – although he seems to want you to force Amanda to apologise – and, if he persists, you may need to tell him that will not happen.'

On the same day Mr Wong sent an email to Ms Scott which said:

See below.

It should be a confidential letter.

You can sign it.

.....

Confidential

Dear Mr Monshall,

Re: Your complaint

I write in response to your email to the General Manager of 9th May 2009 wherein you raise a formal complaint.

Following an internal inquiry into your complaint, I would like to advise that Ms Spalding, after she had carefully considered the nature of your concerns, now retracts the statement made in respect of the Code of Conduct, thus acknowledging that this was an error on her part.

On behalf of the organisation, I would like to offer you our sincere apology for Ms Spalding's comments that have offended you.

Yours sincerely,

Ms Scott thanked him with the following words, 'hoping I can pick up on your style...'. She also asked him 'Are you happy for me to show it to Amanda?' Ms Scott signed the letter as it was drafted. At that stage, there was no written report of Ms Scott's inquiries into Mr Monshall's complaint. Ms Scott signed the letter that Mr Wong drafted under her title of Coordinator Customer Support Services and sent it to Mr Monshall on 19 May 2009.

In response to our question about whether Ms Scott consulted with Mr Wong during her internal inquiries and reported to him on her conclusions prior to writing to Mr Monshall, Mr Wong advised us that he left Ms Scott to handle the complaint as per Council's draft complaint handling draft flow chart. He said:

Ms Scott's handling of Mr Monshall's complaint was completely independent. As such, we both exercised appropriate cautions. There were no material discussions between us about the conduct of the case. However, I would have enquired on its progress.

When Mrs Scott completed her inquiry, she orally informed me of the outcome. Although I felt disappointed with the outcome, where only one out of the three of the matters raised by Mr Monshall was dealt with in the response, I did not express that opinion to Mrs Scott.

Mrs Scott did refer to me her draft response to Mr Monshall and I did view it, but did not alter its substance before Mrs Scott sent it.

In response to our preliminary inquiries, a copy of a page from a diary for 20 May 2009 was provided. It contained a handwritten note of a phone conversation with Mr Monshall which comprised short phrases and words which appeared to relate to the letter Ms Scott sent to him. The owner of the diary entry is not identified.

On 20 May 2009, Mr Wong received two emails. One was from Ms Spalding saying she found the Council's response to Mr Monshall 'extremely disappointing'. The other was from Mr Monshall to Ms Scott in which he said:

Further to our lengthy conversation, I was disappointed to hear from you that Ms Spalding is only prepared to retract one falsehood, namely that I queried the Code of Conduct. I was particularly incredulous that she continues to assert that I sought private email address, notwithstanding her own GM's detailed apology, when she previously made the allegation.

As I have said from the start, I seek a full retraction in relation to all three falsehoods and an apology. I accept that the apology offered by Council is genuine and in good faith, but it clearly inadequate if 2 false allegations remain on foot. It is appalling that a senior public officer should widely circulate a personal attack on a member of the public and a Council Committee representative (obviously not anticipating a refutation) and then resile from the consequences of her egregious behaviour.

I note that the NSW Ombudsman has the power to ... I have no wish to drag Council through this exercise and would much prefer it to be settled internally, but I will do so if necessary. I will make one last concession, given Ms Spalding's recalcitrance and in a genuine attempt to achieve closure.

I will accept a Council statement that its own review of my complaint has confirmed that all 3 allegations are baseless, followed by the same apology contained in the above letter.

Your early advice on the next step would be appreciated.

Ms Scott acknowledged Mr Monshall's email.

In response to Ms Spalding's email, Mr Wong said: 'Agree, but Just let Barbara handle it'.

On 27 May 2009, Mr Monshall sent an email to Ms Scott referring to his previous request regarding her next step and that it was a week since his settlement offer which he 'expected would be given urgent attention'.

On 28 May 2009, Ms Scott sent an email to Mr Wong about a voice mail message Mr Monshall had left and that she had not returned. She advised him that Mr Monshall wanted a full retraction and an apology but based on Ms Spalding's report to her 'it would be difficult to do'. She thought she might reply to him that as far as Council was concerned the matter was closed as he had received an apology. If he felt he should take the matter to an external body that is entirely his decision. She said she was keen to know Mr Wong's thoughts. Mr Wong responded that he agreed with her assessment but suggested 'you may consider referring it to me for a review'. Ms Scott drafted a response to Mr Monshall for Mr Wong's approval. Subsequently she wrote to Mr Monshall telling him that she had referred the matter to the General Manager for a review.

On 3 June 2009, Mr Monshall emailed Mr Wong that if he did not have a response by 4 June 2009 he had no option but to forward 'the whole appalling chronology to the NSW Ombudsman'. When he still had not heard anything from Mr Wong by 5 June, Mr Monshall contacted Mr Wong again. This time Mr Wong gave him a four-week timeframe for a review. Mr Monshall then sent the following to Mr Wong:

Not acceptable Henry, because:

- Your officer has already investigated Ms Spalding's allegations (one of which she had retracted – without apology) so the facts don't again have to be reviewed.
- You have previously apologised for one of the remaining 2 allegations (ie that I had sought private emails) which she continues to assert.
- Barbara Scott has already written to me saying 'On behalf of the organisation I would like to offer you a sincere apology for Ms Spalding's comments that have offended you'.

I have accepted the apology. All I have reasonably demanded is an additional single sentence advising me that 'Council has reviewed your complaint and confirmed that all 3 allegations are baseless'. That is the minimum I require to restore my reputation which Ms Spalding has recklessly impugned.

At 1.50 pm on 4 June 2009, Ms Spalding emailed Mr Wong a copy of the report she had provided to Ms Scott on 13 May 2009.

At 2.20 pm on 4 June 2009, Mr Wong responded 'Thanks'.

At 5.21pm, Mr Wong emailed Mr Monshall and advised him that 'I have provided you with what I consider to be a reasonable timeframe for a review. Of course, I will respond sooner than 4 weeks should I be in a position to do so.' Mr Monshall responded that he was at a loss to understand why he had not resolved it by now but 'in a final attempt at closure I am prepared to wait for another week, until COB 13 June.

In response to our preliminary inquiries, Mr Wong told us that in the two weeks from 20 May 2009 to 5 June 2009, he was mostly away from the office. However, on his return, he held a meeting with Ms Scott and Ms Aitkenhead, Manager Corporate Governance about where they were up to with Mr Monshall's complaint.

On Saturday, 6 June 2009, Mr Wong emailed Mr Monshall and advised him that 'I will review the matter and then respond in due course. If you feel the need to refer the matter elsewhere, then please do so.' Mr Monshall then sent another email asking when he could expect a response. Mr Wong told him:

I have noted your email, *inter alia*, ultimatum contained therein.

As this is a review of what staff have already responded to you on and not a matter about which you had not yet received a response to, I consider a reasonable timeframe to be four weeks from today.

Mr Monshall responded later that day that it was not an ultimatum but 'an offer of a more than generous timeline in which to settle the matter. I cannot allow this to drag on indefinitely.'

Ms Scott then met with Mr Wong and Ms Melinda Aitkenhead, Manager Corporate Governance on either 8 or 9 June 2009 to discuss Mr Monshall's complaint. At that meeting Mr Wong asked Ms Scott to prepare a report 'on where we are up to'.

On 10 June 2009, Ms Scott prepared a report entitled 'Manly Council Report for Review Matters' in relation to Mr Monshall's request for a retraction and apology on matters relating the Sustainable Transport Committee. A copy of the report is at **Appendix 9**.

Ms Scott reported that her conclusion/finding was:

It is surmised that NM has been acting – perhaps unintentionally – in breach of the Code of Conduct specifically in relation to point “10.8 Use of certain council information”.

Ms Scott said she based her finding on Ms Spalding's response provided on 13 May 2009 'and further discernment'. Ms Spalding concluded:

Based on content of AS's report/response of May 2009 and further discernment, it appears difficult for Council to retract and apologise for the 2 outstanding items that have not been addressed by AS, being in relation to directing staff and harvesting emails'. BS suggested this to the GM and referred to the matter to him for review and consideration. NM expresses frustration and advises he may take the matter to the NSW Ombudsman as a full apology is not forthcoming. GM has advised NM that he was within rights to take that course of action if he so desired.

She listed some governance recommendations which included:

- as per the NSW Ombudsman's *Apologies – A Practical Guide*. She believed Council would not be able to offer Mr Monshall a full apology unless Council was willing to accept responsibility or fault for the action or inaction that caused harm
- that the General Manager take no further action, allowing matter to be reviewed by the NSW Ombudsman if Mr Monshall wanted that
- that the General Manager writes to Mr Monshall advising that the review had been conducted and the Council saw no basis for a further apology
- that Council should make further training available to Mr Monshall to ensure that he has a thorough understanding of the Code of Conduct and its purpose.

On 11 June 2009, Ms Scott asked Ms Spalding to provide evidence that Mr Monshall had been directing staff. Ms Spalding responded that Mr Siva had the evidence but he was away and Mr Keech was 'looking into the accessible files to see what he can find that shows the chair of the Bicycle Committee directing staff in the past'.

On 11 June 2009, Ms Scott sent an email to Ms Spalding. She asked:

Is there anything from Mr Monshall since the establishment of the new committee? I feel Henry's take may be to move on from the past and deal with the current Thanks for your help on this.

Ms Spalding responded 'but if we are referring to the alleged libel, I was referring to the past'. She then attached a copy of Mr Monshall's email of 23 April 2009 in which he asked 16 questions relating to bike matters. She said:

Barb,

The detailed operational nature of these enquiries suggest that previously these would have been answered by Prabaka, which means the Chair of the Bicycle Committee was directing staff.

On 11 June 2009, Mr Doug Keech sent an email to Ms Spalding in which he advised her that Mr Monshall's emails to him since the establishment of the STC were similar to those sent to him before the STC in that 'they have not involved an explicit direction to me, but have been phrased as questions'. He went on to explain that:

...their tone their stridency, their frequency and Norman's email warfare technique of picking over and questioning minor details have, in my view, constituted harassment designed to get his way, by forcing me to accede to his implied requests just to get him off my back.

He attached some documents which he said indicated that Mr Monshall 'gave what I would view as instructions – in the form of forceful questions – to various staff in previous years'.

Mr Wong told us that on 12 June 2009 he received Ms Scott's report and then prepared a report of his review into Mr Monshall's complaint. Mr Wong nominated the matters for review as Ms Spalding's statement to Councillors that:

1. In his former role as chair of the Bicycle committee had directed staff.
2. Had collected the email addresses of members of the committee.

Mr Wong said the three parts of Mr Monshall's complaint were 'independently reviewed by staff' and the first matter was subject of an apology in writing to Mr Monshall. Staff found that there were no grounds to make an apology for the remaining two matters under review. Mr Wong said:

The reasons why staff did not and could not offer a [sic] apology for the remaining issues was because they were satisfied from Ms Spalding's explanations that her comments, on the first of the points were founded on the experiences of staff that were relayed to her. On the second, Ms Spalding's comment was a factual observation.

In relation to Ms Spalding's comments that Mr Monshall was directing staff, Mr Wong said:

After reviewing all the material that was made available to me as well as the material I sourced from my email inbox, and also taking into account the comments of present and former staff, I am persuaded by the information available to me that Mr Monshall adopted approach to Council as a tenacious campaigner who has described himself as: "... a demanding bunch of malcontents ... and we are not going away!" (email 10/12/2006 at 11:13AM [2] at tab 4).

The tone of other emails between Mr Monshall and staff that I have reviewed all have the appearance of the hallmark cited in Mr Monshall email of 10/12/06.

I am also aware that present and past staff (Mr Inglese in particular) who needed to interact with Mr Monshall have all found his approach unreasonably demanding and their recount of their experience with him, I described as less than comfortable.

Additionally, staff (past and present) have occasioned from time to time to tell me that they find Mr Monshall's to be overbearing, intimidating, and have felt that at times, Mr Monshall uses undue influence/and/or undue pressure on them in order to "get his own way" ([1] at tab 5).

I am personally aware of 2 members of staff who have left their employed positions and/or the Council so as to avoid the stresses and frustrations caused by Mr Monshall.

But, however unpleasant the experience staff have had with Mr Monshall is, the question I am asked to review is, whether Mr Monshall pattern of conduct constitutes "directing staff" thus justifying the view expressed by Ms Spalding?

While I see no evidence in the email materials to suggest that Mr Monshall had actually directed staff, his sometimes overzealous approach (and harassment) nevertheless, as perceived by staff (present and past), is in my analysis as having the same effect when staff "give in" to his demands in order to avoid harassments by him.

In the words of one staff, he said in relationship to his dealings with Mr Monshall, "in my view, [Mr Monshall's conduct] constitutes harassment designed to get his own way by forcing me to accede to his implied requests just to get him off my back" ([1] at tab 5).

Based on a sample of past email and comments from past and present staff made directly to me, I am persuaded that staff must have at times felt so harassed by Mr Monshall that they simply "gave in" to "get him off their back".

So was [sic] Ms Spalding's email remarks ill founded or made in malice? Based on the materials I have reviewed, I hold the view that Ms Spalding was probably entitled to form the opinion she so expressed, and I believe that she made the remarks based on a body of feedback she had received from staff. As such, I believe she made her remarks in good faith, thus, was without malicious intent.

Now, was Ms Spalding's remark made in her email inappropriate in the circumstances? In my opinion, Ms Spalding could have avoided citing Mr Monshall in her email.

Additional comments

In my recent dealings with Mr Monshall over the issue of providing him with an outcome of this review, I have found his willingness to use ultimatums and thinly vile [sic] threats with me was most unfortunate and in the circumstance, counterproductive.

Conclusion

I conclude that, even given the antecedent information which Ms Spalding relied [sic] in giving the opinion she expressed, the context in which Mr Monshall's name was put was most probably unwise. Therefore, in the circumstance, and erring on the side of caution and affording abundant fairness to Mr Monshall, Ms Spalding should consider providing Mr Monshall with an apology.

However, Mr Monshall must be warned to moderate this apparent intimidatory conduct.

In relation to Ms Spalding's comments that Mr Monshall had collected the email addresses of members of the committee, Mr Wong said:

I have reviewed the findings of staff made on the original complaint and also reviewed the materials provided to me on the issue.

Based on the information available to me, it is evident that Ms Spalding's observation was factual and did not infer improper conduct and is not capable of being taken as implying improper conduct on the part of Mr Monshall when he used what was made available to him, even though it was inadvertent.

Conclusion

I concur with the findings of Ms Scott on the issue.

On 12 June 2009, Mr Wong sent an email to Ms Aitkenhead asking her to review and proof his review report. On 15 June, she sent him an email advising 'While I have not read the emails in your email box which are referred to in the report, the review demonstrates the principles of procedural fairness'.

On 15 June 2009, Mr Monshall sent a complaint to the NSW Ombudsman in which he referred to the chronology of events up to 12 June 2009 and advised he wanted a written retraction and apology from Ms Spalding in regard to each of her three false allegations. He sent an email to Ms Scott advising her of this complaint to the Ombudsman and that in his submission to us he had noted her efforts to broker a resolution. Ms Scott sent this email to Mr Wong with a proposed response to Mr Monshall that she had noted his email. Mr Wong approved this response. She also asked for Mr Wong's approval to advise Ms Spalding of 'this latest move' by Mr Monshall. Ms Spalding was advised immediately.

On the same day Mr Monshall sent an email to the Mayor, Councillors Heasman, Burns and Norek, Mr Keech and Mr Wong advising them he was dissatisfied with the outcome of his complaint and that he would be complaining to the NSW Ombudsman. The Mayor responded that matters relating to staff were the domain of the General Manager. Mr Monshall then sent another email to the Mayor that his advice to her was for her information only as she was one of the people who had received the 'unsubstantiated allegations against me'. He also complained that the allegations were circulated without his having any prior right of reply and in anticipation that he would not be aware of their contents.

On 16 June 2009, Mr Wong wrote to Mr Monshall:

I refer to our recent dealings, more particularly, I would like to address certain matters that have come to light as a consequence of a review I undertook on complaints you have made to Council and for which I have provided you with a formal response dated 15 June 2009.

In the interest of creating a more harmonious working environment that is free from risk, I respectfully suggest that you should review and moderate your apparent modus operandi, as expressed in a 2006 email you sent to a number of others, in which you described yourself and the then members of the Bicycle Committee as "a demanding bunch of malcontents... we are not going away!" Such a state of mind in your approach to Council and staff is inappropriate and unnecessary.

I would also request, as a way forward, that you address your communications with Council via records@manly.nsw.gov.au and not directly to individual members of staff.

There was no copy of a letter to Mr Monshall dated 15 June 2009 on Council's file.

On 17 June 2009, Mr Wong sent Ms Spalding an email with the outcome of his review. He only provided Ms Spalding his review findings. He requested that she consider offering Mr Monshall the retraction and apology that he sought. He asked for her decision by 25 June 2009. Ms Spalding responded that she would reply to his deadline but she wanted to see the letter to Mr Monshall and

all of the evidence that Mr Wong considered including emails from the former Traffic Team that he had 'recently obtained'.

On 18 June 2009, Mr Wong signed and dated a letter to Mr Monshall with the formal outcome of his review. In relation to Ms Spalding's opinion that he had sought to direct Council staff, Mr Wong said:

... I would like to advise that the materials I have reviewed suggest that various staff have felt uncomfortable in their dealings with you and some have considered your approach to constitute a form of harassment that is designed to get things done "your way", however I am less than completely satisfied that Ms Spalding's opinion was justified.

Finding: A retraction and an apology should be offered as requested. Therefore, under the Guidelines provided by the NSW Ombudsman's Office on apologies, I will recommend that Ms Spalding to consider my review of the matter and to provide you with a response within 14 days.

In relation to Ms Spalding's comment that he obtained email addresses of all community representatives, Mr Wong first noted that Ms Spalding's email of 25 April 2009 was an internal email and then said:

... I have read the paragraphs in full and have placed the comment in the context in which it was framed. I have also placed myself in your position when I re-read the paragraphs.

I conclude from the review that Ms Spalding's comment was unambiguous and therefore can only be construed as a statement of fact where because Council did not officially provide to you the addresses in question, their use on the material in other emails you sent out could only have been obtained by you from elsewhere. This conclusion was not unreasonable.

Now that Council has obtained the consent and circulated the email addresses of members to everyone who is on the committee, I see no utility in looking further into the matter.

Finding: The alleged libel claim made against Ms Spalding for her comment on the use of email address is unsupported in fact. Therefore, this review does not propose any further action.

On 19 June 2009, Mr Monshall sent two emails to Mr Wong expressing his dissatisfaction with Mr Wong's advice of 16 and 18 June. At 9.56am, Mr Monshall told Mr Wong that:

In your point 2 headed 'obtained the email addresses of all community representatives' you have curiously mis-stated my complaint. I never denied obtaining the email addresses, because I did so as a result of your staff member, Doug Keetch circulating all community rep email addresses, to the same cohort. You are aware of this fact.

Ms Spalding's circular email of 25 April stated that: The former Chair of the Bicycle Committee, Norman Monshall, asked for the email addresses of the Community representatives so that he could communicate with them before the first meeting. It was explained to him that this could not be done as it contravenes privacy legislation.

In my original response of 4 May to the recipients (which included you) of Ms Spalding's personal attack, I stated quite clearly that: I did not ask for the email addresses of Community representatives, as you well know, This is the most serious falsehood of the three, given its reiteration.

The nature of my complaint could hardly be clearer.

Further, in my email to Barbara Scott of 28 May (cc you) I said that Ms Spalding: ...continues to assert that I sought private email addresses, notwithstanding her own GM's detailed apology, when she previously made the allegation.

Therein the nature of my complaint could hardly be clearer. I therefore find it very difficult to comprehend why you of all people have chosen to totally ignore this key falsehood in your reply, notwithstanding your previous involvement in determining that it was inaccurate and warranted an apology on 29 March.

In short your summary, viz 'the alleged libel claim made against Ms Spalding for her comment on the use of email addresses is unsupported' is a misrepresentation of my complaint, which was not about the use of email address, but in her own words that I had asked for the email addresses of the community representatives.

This is the serious allegation I want retracted Concentrating on, and coming to a conclusion about a side issue Henry, will not make this serious falsehood go away!

Finally, what was the point of your comment that the personal attack made on me was by way of an 'internal email'? Are you suggesting that this somehow attenuates the situation? It in fact exacerbates Ms Spalding's culpability, as she was quite prepared to circulate falsehoods, without giving me any opportunity to respond – and in the expectation that they would remain unchallenged. In my view, you should have asked her to explain her actions at the time, because you knew for sure that at least one of her allegations was a total falsehood, as you had previously so determined. It is now clear that all 3 were false as the reviews by you (past and present) and Barbara Scott have revealed.

The second email from Mr Monshall at 5.48pm was titled 'Protocols'. He said:

Firstly Henry, I'm impressed by your forensic skills, which enabled you to unearth an email I send 3 years ago! I recall that email and the humorous context in which it was sent. Clearly, I wasn't describing my Bike Committee colleagues, who were/are passionate about promoting cycling, as 'malcontents'. The following definition may assist your understanding.

Irony ... is a literary or rhetorical device, in which there is an incongruity or discordance between what one says or does and what one means or what is generally understood. Irony is a mode of expression that calls attention to the character's knowledge and that of the audience.

Perhaps you might have applied those same forensic skills to my rather more recent complaints about Ms Spalding. If so, you wouldn't have reviewed a specific complaint about her that I hadn't made, and found it to be unsupported'. Here's another relevant definition for your perusal.

A straw man is misrepresentation of a person's position. To 'attack a straw man' is to create the illusion of having refuted a proposition by substituting a superficially similar proposition and refuting it, without ever having actually refuted the original position.

Second, I don't contact your staff under the new procedures, although of course I reserve the right to reply to an email sent to me. Indeed, I followed to the letter Doug Keetch's advice that all queries about 'operational' issues should be sent to council, with the assurance that they would be fully responded to. With the approval of the STC, I therefore forwarded 16 unresolved cycling issues to council. In the subsequent brief reply, not one was addressed, in part or full. This was of course poorly received by the STC, which has decided to resubmit the request. We trust that it will be answered properly this time.

If you're going to offer me gratuitous advice about protocols Henry, I would like to return the favour. May I suggest that you ensure that those guidelines developed by the NSW Ombudsman in respect of the appropriate handling of public enquiries are applied, and that specific requests for information are not simply ignored – particularly those emanating from a committee of council? This will doubtless assist in achieving the 'harmonious working relationship' we both aspire to.

Ms Spalding advised Mr Wong on 25 June 2009 that she would not be offering an apology or retracting her comment. During her weekly meeting with Mr Wong on Friday 26 June 2009, Mr Wong asked her to point out to him why she thought Mr Monshall sought to direct staff. In an email on 29 June 2009, Ms Spalding provided information that she believed supported her belief she was correct and reminded him of his assessment of Mr Monshall in his review report of 12 June. She referred to the site inspection reports in 2006 and said she had found another similar document dated September 2006. She asked him whether he wanted her to write to Mr Monshall to inform him that she would not retract the remaining two comments, or apologise for them.

In our preliminary inquiries we asked Mr Wong whether Ms Spalding offered the apology to Mr Monshall within 14 days as he required. Mr Wong told us that after Ms Spalding told him she would not offer an apology or retraction, he discussed her position at their weekly meeting on 26 June 2009 as part of the standing item on committees. He said 'This was a general discussion where I requested Ms Spalding to provide more information on her reason for not offering an apology or retraction'. Ms Spalding then sent him her email of 29 June 2009 in which she stated it was her opinion her comments were 'founded in fact'. He said that as a result of that meeting, 'Ms Spalding and I agreed that I would write to Mr Monshall on behalf of Council advising that Ms Spalding would not be writing to him separately and provided an explanation for this'.

On 3 July 2009, Mr Wong drafted a letter to Mr Monshall to tell him that Ms Spalding had made a further submission drawing his attention to examples of past emails that he sent to the then Manager of Traffic and Transport and/or his staff, giving purported directions to them on such matters as signage installation and other operational matters. He told Mr Monshall that Ms Spalding would not be writing to him separately. He said Council regretted the comments contained

in the internal briefing email Ms Spalding sent to Councillors. Ms Scott signed the letter over Mr Wong's title block. A handwritten note on the bottom of the letter stated 'hand delivered by Ranger Taylor Fri evening of 3/7/09 signed B Scott'.

Mr Monshall replied that he appreciated the Council regrets the comments emailed to councillors by Ms Spalding. However, she would be unable to cite one example of his giving purported directions to staff. He said his communications were properly worded requests pursuant to his role on the Bike sub-committee 'which met monthly with key staff to monitor implementation of the bike plan and infrastructure maintenance' and this was a process established by Mr Wong on the recommendation of Councillors Pederson and Lambert. He also said Mr Wong had again not addressed the allegation made in early March that he asked for email addresses of community representatives and for which Mr Wong apologised.

When Mr Wong received this email he requested that Ms Scott review and provide comment back to him. She discussed the matter with him on the phone and then Mr Wong emailed Mr Monshall 'Given that you have referred the matter to the Ombudsman, should we therefore wait for their feedback?'

Mr Monshall responded:

I previously advised you Henry that I would be seeking a review by the Ombudsman and did so before your last 2 letters. I am sure by now you fully appreciate that my reaction to Ms Spalding's email, has in no way been tempered by the effluxion of time.

I think it would be far preferable to fully cover all the issues before the Ombudsman asks questions – particularly the one I have consistently stated to be the most damaging, as it claims I breached NSW legislation. By contract the other allegations were 'merely' false and offensive.

Who knows, Ms Spalding may even eventually decide that her intemperate remarks merit an apology and we can conclude this imbroglio...

Mr Wong responded: I can only say it again, Council regrets the remarks made'.

When Mr Monshall responded 'And I can only say it again Henry that I appreciate the comments but the outcome I seek is Ms Spalding's full retraction and apology. You are probably as tired as I am writing about this regrettable affair – but it is not of my making'. Mr Wong told him he had nothing further to add to his previous comments.

In our preliminary inquiries we asked Mr Wong why he did not address Mr Monshall's specific complaint and why he saw the issue as being that of obtaining the email addresses of all committee members. He told us:

It appears that I had misdirected my attention when I focused solely on the issue of how he had utilised the email addresses that were provided to him in error instead of directing my mind on the accuracy of Ms Spalding's Statement alleging that he had attempted to obtain email addresses, and for which I had issued an apology for.

We also asked him to explain the reason he changed his views from the time of his apology on 20 March 2009. Mr Wong referred to his earlier response of misdirecting his attention and told us that in hindsight his finding was in error. In a footnote, he also said:

Although Mr Monshall never did put in writing his oral requests for email addresses, his solution to overcome privacy concerns expressed by council was to reverse the process by requesting to use Council's channels to broadcast his email address to everyone, which in effect achieves the same desired outcome for him. But acting as a conciliator, I did err on the side of caution when I apologised to him because I wanted to give him the benefit of the doubt so that we could then progress on the substantive objective of getting the committee started.

In response to our inquiry whether he had given Mr Monshall the opportunity to comment on specific evidence submitted by Ms Spalding, Mr Wong told us that he did not 'as the information contained in the submission and subsequent email did not provide any new information, however only strengthened the evidence which I had already used in the process of my review'.

We asked Mr Wong to explain why he had not required Ms Spalding to retract her statements in her email of 25 April. Mr Wong told us that as Ms Spalding was a senior officer of the organisation

he felt that his expression of regret was appropriate and 'should have fulfilled Mr Monshall's desire for an apology if the issue was not a personality driven issue'. He further said:

While I have strongly encouraged, I have not directed Ms Spalding to apologise for this statement as it is her belief that Mr Monshall was requesting email addresses. This belief was formed in discussion with staff who, after numerous telephone conversations, formed the opinion that this is what Mr Monshall was seeking.

In her submission to us Ms Spalding said:

It was fair to say that I was disappointed with the General Manager's review in June and his request to me to consider apologising for comments about Norman Monshall directing staff. To me, this was one of the main issues that needed to be dealt with in the review of Special Purpose Committees because of the distress that it had caused to staff and because a member of the community was directing considerable Council resources without proper decision-making processes involving the Council.

Ms Spalding also advised us that it was only in the week beginning 17 August that Mr Wong encouraged her to apologise at all on the matter 'and that is because he feels that it has used up enough of Council's resources'.

Ms Spalding told us that when Mr Wong showed her his response to our preliminary inquiry letter, she asked him to change the part of the letter where he advised us it was Ms Spalding's belief that Mr Monshall was requesting email addresses. She said it was not her belief that Mr Monshall was requesting email addresses. She said that 'the General Manager made a mistake when he gave me the response to send to Mr Monshall because, at that time, it was his belief that this is what Mr Monshall was seeking'. She said she was not shown Mr Wong's letters to Mr Monshall of 20 March 2009 and 3 July 2009 until Ms Aitkenhead gave her copies on 18 August 2009.

Ms Spalding advised us that from the commencement of her employment at Manly Council as Deputy General Manager she was not treated in the same way as other Divisional Managers. She was not given any support staff and she was unable to access the information networks other managers had through their staff. Ms Spalding told us it would be evident that the relationship between her and the General Manager 'is not any easy relationship'. There were 'occasions when he has not included me in correspondence or meetings on matters that I should have been included in so that I can do my job'.

We asked Mr Wong whether he considered Mr Monshall's complaint constituted a complaint under Manly Council's Code of Conduct. He told us that 'With the benefit of hindsight, the matters could have been dealt with more formally under the Code of Conduct rather than the complaints management process provided for under the Code of Conduct'.

We also asked Mr Wong what factors he used to distinguish complaints about breaches of the Code of Conduct from a general complaint. He told us:

The factors that I would take into consideration ... may include whether the complaint is specifically about a council process or whether the complaint concerns the actions of a council official.

However, determining whether a complaint is a "general" complaint or a "Code of Conduct" complaint is often difficult when the complaint covers both the process and the council official. A review of other Council's complaint management policies and procedures would also suggest that other councils also struggle with this initial determination, although we will review this matter in detail when finalising our Complaints Management Policy.

In his response to our preliminary inquiries, Mr Wong told us that 'Council has discussed numerous possible options' for dealing with Mr Monshall including mediation and an apology from the organisation. However, Mr Monshall will only accept an apology from Ms Spalding. He said that 'upon further review of the issues in totality, including reviewing various communications and undertaking further internal discussions, Council suggests the following as resolutions to address Mr Monshall's complaint':

- Discussion and consultation with Ms Spalding on 18 August 2009 about incorrect view of issue and directed to apologise.
- After consultation with Ms Spalding on 18 August 2009, he has drafted a response to Mr Monshall for review by us before sending.

- Offer of mediation, by an outside party, to Mr Monshall and Ms Spalding to work to resolve issues and moving forward.

The draft response to Mr Monshall was to be jointly signed by Mr Wong and Ms Spalding. It said:

Re your complaint of 4 and 9 May

We write in response to your complaint dated 4 and 9 May 2009 regarding three alleged falsehoods made by Ms Amanda Spalding, Deputy General Manager, Manly Council. In your email sent on 19 June 2009 to Mr Henry Wong, General Manager, Manly Council, you stated "Thank you Henry for your letter of 18 June, which leaves onto one falsehood unresolved". This remaining allegation relates to your request for the email addresses of committee members of the Sustainable Transport committee. This letter seeks to address this alleged falsehood.

Upon further review of the issues in totality, including reviewing various communications and undertaking further internal discussions, it has been established that the statement made by Ms Spalding in her email dated 25 April 2009 regarding your request for email addresses of community representatives was a misunderstanding of your written request.

Therefore we acknowledge the statement was made in error. We apologise for that factual error and misunderstanding of your written request and subsequent complaint.

We sincerely hope that his matter can be put behind us and look forward to a continued mutually rewarding working relationship.

Mr Wong also suggested nine actions to address protocol and procedural issues he had identified as a result of the complaint. They included:

- Research appropriate customer service courses, including unreasonable complainant behaviour, to assist Staff in continuous improvement in terms of customer relations. Staff to attend as appropriate.
- Further consideration of the adoption of a specific complaints management system to assist us in dealing with the more unreasonable complainants which staff often come into contact with. We will of course be reviewing the relevant publications including the NSW Ombudsman's "Managing Unreasonable Complainant Conduct Practice Manual 2009".
- Review of Council's complaint management policies and procedures. Definition of complaints versus code of conduct issues and under which process a matter should be managed.
- Training plan to be developed and implemented regarding staff's obligations in relation to dealing with complaints under the Code of Conduct as per The NSW Ombudsman and the Department of Local Government's Practice Note No 9 "Complaints Management in Council's on page 38.
- Review of Council's complaint management policy and inquiries/review protocol to include information on "apologies" as contained in the NSW Ombudsman guide to apologies.
- Research on relevant training in review and complaint management techniques, including resolution options. Staff to attend as appropriate.
- Review of Council's inquiries/review protocol and options for redress to be considered.
- Attendance at the next LGMA workshop in early September on new Government (Public Access) Act with a briefing back to Senior Management on the implications of this new Act.
- Continuation of Council's Records Review Project (copy of information previously provided to the Ombudsman attached) and education of staff to ensure that all official officer records are placed into Council's EDMS system.

7.8 Approach to complaints handling

Council's initial complaints management policy was adopted in 1998, with minor revisions in 1998 and 2000. These documents referred to the organisational structure that applied prior to the restructure of the Council in early 2003. The complaints management policy states that the objectives of the Council's complaints management system are to ensure that Council provides a system to investigate expressed customer dissatisfaction for all its responsibilities and to satisfy and to improve customer service in all areas. This was to be achieved by:

- staff and customer awareness of the complaints management policy and commitment to our procedures
- ensuring customer satisfaction in all areas of our business

The outcomes of the Complaints Management Policy include:

- respond to individual complaints through a system of natural justice
- ensure probity, equity and open access to Council's information
- identify and respond to the issues/services that create the most dissatisfaction for our customers
- provide management report to the General Manager and Directors and feedback to Group Managers and staff to ensure a clear understanding of the issues, their resolution and awareness of the corrective actions taken and the documentation of the matter for reference.

The policy defines a complaint, specifies complaint handling procedures such as dealing with general complaint and email complaints, who is responsible for dealing with complaints and a timeframe for dealing with complaints.

Frontline and all operational staff were to deal with requests for service, information, follow up of information and provision of that service. Directors, Groups Managers and the Public Officer were to deal with complaints where the service request has not satisfied the 'customer' and additional dissatisfaction was expressed. The General Manager was to deal with complaints of a formal nature, usually received in writing or via email which alleged corrupt conduct, serious and substantial waste and maladministration, pecuniary interest or were protected disclosures.

All written complaints within the scope of the policy were to be forwarded to the Group Manager or Director for response and resolutions with a copy to the General Manager via the Records system and registered in the complaints register. The Group Manager was to ensure the complaint was impartially investigated within three working days and formally responded to in writing within seven working days. If the Group Manager was unable to resolve the complaint, the matter was to be brought to the attention of the Director and/or to the General Manager. The Director would then investigate the complaint and if there was likely to be a delay, indicate to the complainant the timeframe and provide an outline of the steps to be taken to resolve the matter. The Director would notify the 'customer' of the resolution within seven working days.

In the Promoting Better Practice Review report published in 2006, the former Department of Local Government commented on the complaints management policy. The former Department said:

Council has a complaint handling process but it does not appear to be current and/or widely used. The most significant problem with the current document is its structure. For example, while it has a definition section, this section lacks clarity and does not contain all the required definitions. Definitions for terms such as "general complaint" and "service request" are not included in the definition section but are found elsewhere in the document.

There are parts of the document which are nonsensical (see pages 5, 10 and 11 for examples). The inclusion of a section on protected disclosures is not necessary given the focus of the document is on handling of complaints from persons external to council. The flow chart in the document refers to a scenario where the complaint is unresolved and no action is taken. The process for taking oral complaints is buried in the document and could lead to the view that complaints must be made in writing. Finally, the process lacks provision for the escalation of complaints to a body external to council. The policy is hard to find on the council's website.

The complaints procedures do have some positive elements including time frames for dealing with complaints, provision for acknowledgement of complaints, referral of copies of complaints to senior management, provision for escalation if not resolved within time frames, a complaints register, provision for management reporting, staff training, requirement for follow up action/commitment to improvement and the need for customer awareness of the policy. However, the review team was concerned that the process does not appear to be being used.

Council should take the opportunity to update its complaint handling procedures. Once this occurs, the staff and the community should be informed as to their availability and follow up action should be taken to ensure they are used. (Recommendation 59)

In her review of the Council's development application processing in 2006, Professor Sourdin² also identified issues related to access, transparency and information sharing that she attributed to 'the lack of an effective complaints handling process within Manly Council'. Members of the community consulted for that review advised Professor Sourdin they felt like Council labelled complainants as 'troublemakers' and they feared being 'branded' once a complaint was made. In addition she was told 'once a complaint was made there was no guarantee that it would be adequately addressed' and complainants believed 'if they sent in a complaint it was likely to be sent through an uncertain process with no clear timelines'.

Professor Sourdin said 'The consultants consider that there would be many benefits in implementing a complaint handling system within Manly that complies with the Australian Standard'. She recommended that Council review its complaints management policy in accordance with the *Australian Standard Customer satisfaction – Guidelines for complaints handling in organisations*, AS ISO 10002-2006. The Council's response to that recommendation was that the complaints management policy was compliant and due process already existed.

The Australian Standard for complaints handling in organisations suggests a whole-of-organisation approach. The recommended complaints handling framework includes commitment by the whole organisation, establishment of 'an explicit customer-focused complaints handling policy' and specification of the appropriate responsibilities and authority for complaint handling within the respective levels of management and for all personnel.³

Senior management should be responsible for:

- ensuring that the complaints handling process and objectives are established within the organisation
- ensuring that the complaints handling process is planned, designed, implemented and maintained and continually improved in accordance with the organisation's policy
- identifying and allocating management resources needed for an effective and efficient complaints handling process
- ensuring promotion of awareness of the complaints handling process and the need for customer focus throughout the organisation
- ensuring that information about the complaints process is communicated to customers, complainants and where applicable other parties directly concerned in an easily accessible manner
- appointing a complaints handling management representative and clearly defining their responsibilities and authority
- ensuring that there is a process for rapid and effective notification to senior management of any significant complaints, and
- periodically reviewing the complaints handling process to ensure that it is effectively and efficiently maintained and continually improved.

The complaints handling management representative should be responsible for:

- establishing a process of performance monitoring, evaluation and reporting
- reporting to senior management on the complaints handling process with recommendations for improvement, and

² Sourdin Tania and Harding Nina, *A review of Manly Council's Development Application (DA) Process*, 2006, page 37.

³ Standards Australia, *AS ISO 1002-2006 Customer satisfaction – Guidelines for complaints handling in organisations*, April 2006, section 5, p.4 and p. 5.

- maintaining the effective and efficient operation of the complaints handling process.

Other managers in the organisation should be responsible for:

- ensuring the complaints handling process is implemented and promoted
- ensuring that information about the complaints handling process is easily accessible
- reporting on actions and decisions and ensuring that the monitoring of the complaints handling process is undertaken and recorded and data is made available to senior management for review, and
- ensuring that action is taken to correct a problem, prevent it happening in the future, and that the event is recorded.

All personnel in contact with customers and complainants should:

- be trained in complaints handling
- comply with complaints reporting requirements determined by the organisation
- treat customers in a courteous manner and promptly respond to their complaints or direct them to the appropriate individual, and
- show good interpersonal and good communication skills.

All personnel should be aware of their roles, responsibilities and authorities in respect of complaints and be aware of the procedures to follow and reports complaints.

In the Ombudsman's *Complaint Handler's Tool Kit*, the essential features of an effective complaint system include:

- the definition of a complaint that will be wide enough to gain insight into citizen's levels of satisfaction with an agency's services so that they can be improved
- an easy-to-understand procedure for lodging complaints
- a simple-to-understand process for dealing with complaints
- a means for recording complaint information to identify defects in service provision.
- commitment to the efficient and fair resolution of complaints throughout the whole organisation
- staff who are trained, skilled, motivated and empowered through appropriate delegations to deal with complaints and take remedial action
- performance standards to ensure complaints are dealt with effectively and promptly
- information about alternative remedies, especially if the agency is unable to resolve the complaint
- agreed written policies and procedures that are easy to understand and explain.⁴

A new draft complaints management policy was placed on Council's website in September 2008 without the approval of the Council. The General Manager announced in *The Manly Daily* of 20 September 2008 that Council would fully implement *Best Practice* in complaints handling and management by the end of 2008. This would include reviewing all existing policies and procedures to conform to the Australian Standard and Council's existing training module in customer service would include *Best Practice* requirements.

⁴ NSW Ombudsman, *Complaint Handlers Tool Kit*, 2nd Edition, June 2004, p. 8-14.

The purpose of the draft policy was said to be 'to provide a coherent and integrated system for the handling of complaints about Council administration and conduct of Council officials'. The principles in the draft policy include that:

- Council's Customer Service Charter and Code of Conduct establish the principles against which Council's standards of quality service may be measured. Customers have a right to expect that principles of economy, efficiency, effectiveness, fairness, impartiality, and responsiveness will underpin service delivery. When they believe that their expectations have not been met, the Customer has a right to expect that the council will deal with their concerns in a professional, respectful and timely manner.
- Manly Council has established a complaints handling system to ensure that complaints are responded to appropriately and in a respectful and timely manner with the aim of resolving customer concerns and improving service delivery.

The draft policy stated that all council officials are responsible for ensuring compliance with the policy and related legislation and procedures. The General Manager 'will nominate specific staff responsible for handling complaints and these staff are to be responsible for investigating complaints, recommending outcomes and appropriate methods of redress to the General Manager. The General Manager is responsible for dealing with serious or difficult complaints which have been established to him or her. The General Manager is the owner of the policy but the responsibility for implementation of the policy is with the Manager Customer Service.

The Conduct Review Committee is responsible for the investigation of Code of Conduct complaints about the General Manager, the Mayor or Councillors'.

The complaint handling process was outlined in the draft policy as follows:

- staff will, within the scope of the delegation of authority, endeavour to resolve issues the subject of complaints at the first point of contact and record their actions and the resolution of issues in Council's document management system
- complainants will be encouraged to use all existing council procedures to resolve their issue – nothing in this policy prevents such a complaint being referred back to the appropriate service document for resolution
- should such a referral be considered inappropriate or fail to resolve the complaint or the outcome be regarded as unsatisfactory to the complainant, the complaint will be reviewed by the member of staff nominated by the General Manager as the Coordinator Customer Support Services and then to the General Manager for further review if appropriate
- in circumstances where these internal processes are unable to resolve a complaint or satisfy the complainant, Council will refer the complaint to an appropriate external agency for review. Such agencies may include the NSW Ombudsman's Office, the Independent Commission Against Corruption or the Department of Local Government.

There are two further paragraphs in the draft policy regarding complaints relating to contractors (these paragraphs do not appear in the adopted policy) and the section on communicating with complainants states that 'The staff member responsible for handling the complaint will ensure that the complainant is kept informed of progress regarding investigation and resolution of the complaint'. The staff will also 'provide written advice to the complainant as to the outcome of investigations'.

Under a sub-heading 'Complaints involving allegations of maladministration or corrupt conduct', the policy states "All complaints alleging corrupt conduct, pecuniary interest, maladministration or improper use of position ... are to be referred immediately and directly to the General Manager. The provisions contained in Part 3 of the Manly Code of Conduct will be applied to any subsequent investigation and findings..

Under a sub-heading 'Malicious, frivolous and vexatious complaints' the draft policy stated that after investigation a complaint is found to be malicious, frivolous or vexatious, Council will take no further action. However, 'Council may, at its discretion, seek legal advice with respect to the implications of the suspected vexatious or malicious complaints. Where the complaints relate to a

member(s) of staff, such legal advice will be made available to the affected staff member(s) on request'.

The adopted policy provides that the Manager, Corporate Governance, will provide report to the General Manager on complaints received and subsequent follow-up and departmental action. On a six monthly basis the General Manager will present a report to Council with details of complaints received and acted on for the preceding two quarters.

The first of these reports was presented to the Council in November 2009.

In July 2010, Council resolved to receive a full report on Council's current Tier 3 complaints handling procedure for consideration and, if applicable, adoption by Council. The Council also resolved that at each ordinary meeting a report is included in the agenda for information:

- (a) Outlining any matter or item where a complaint has been made to the General Manager;
- (b) Outlining similarly where there have been 12 or more items of correspondence received by Council in a period of 3 months on any item or matter, or closely related items or matters.

On 9 August 2010, Councillor Burns lodged a Notice of Motion No 29 regarding Council's Interim Tier 3 Complaint Review procedure. The motion was:

- (1) Council is to finalise and adopt its Draft 2008 Complaints Management Policy document.
- (2) The policy is to be enhanced to include a new tier 3 Complaints review procedure as follows.
 - (a) Council is to set up a Tier 3 Complaints Review Committee comprising two Councillors, the General Manager and a volunteer independent community representative, together with a staff member not involved in the administrative area connected with the complaint to minute any meetings.
 - (b) The procedure for referring matters to the Tier 3 Complaints Review Committee is to be automatically activated by a written (email, letter or fax) request to the General Manager for a review of a matter or determination, but only after Tier 1 (face to face staff) and Tier 2 (Council Management staff review) have failed to satisfy the complainant or otherwise resolve the matter.
 - (c) The committee terms of reference are to be developed by the General Manager, senior staff and the Committee, and approved by the committee.
 - (d) At each hearing or meeting one of the Councillors is to Chair the hearing or meeting held, independently without bias or favour toward the complainant or Council staff.
 - (e) Meetings are to be fully minutes and minutes are to be signed (certified) by the two Councillors to be an accurate record of the meeting proceedings, data, and agreed outcomes.
 - (f) The committee has the authority of the Councillors to require production of any Council record, file or information or statement that would reasonably, in the opinion of either Councillor, assist the investigation or resolution of the complaint being examined.
 - (g) The outcome of the review procedure is to be an efficient and fair resolution of all matters placed before the Manly Council Complaints Review Committee, and at the end of considering each matter the committee is to report to Council (as a whole) on the outcomes reached and make any recommendations it sees are required to provide the administration of Manly Council.

It was reported to us that following advice from the General Manager that he had forwarded a copy of the draft complaints policy to the Ombudsman in 2008 and had not had a response, the motion was amended to state 'That the Council write to the Ombudsman to progress the Draft 2008 complaints Management Policy'. This office has no record of having received any correspondence from the Council in this regard.

Considerable comment about the inadequacies of the 2008 draft complaints management policy were provided to the General Manager on 14 September 2009 and 26 February 2010 and the Council on 13 May 2010 in relation to another matter.

8. Conclusions

One of the objectives of public administration is to preserve public confidence in the integrity of government. To preserve public confidence, officials must perform their duties to the highest standards and avoid conduct if that results in or creates the appearance of improper use of office. To do otherwise is to breach the official's duty to act fairly, impartially and in the public interest. When the public deals with council officials there is an expectation that those officials will at all times act honestly and disinterestedly because they are trustees of the public interest.

There are a range of factors that impact on the level of public confidence in the integrity of government including:

integrity issues – ensuring legality and honesty in decision-making by public officers (ie, ethical issues)

fairness issues – acting fairly, reasonably and consistently

transparency issues – providing more and better information to the public by improving the government's attitude to openness and transparency

trustworthiness issues – improving the information available to people to enable them to better predict how the government is likely to react in any given circumstance (as part of a program to increase the public's perception that government will act/react appropriately)

accountability issues – improving the government's approach/attitude towards accountability generally, including increasing the actual and perceived level of accountability of government (perceived cover-ups, the misuse of secrecy and the rigid control clearly exercised by modern governments over the disclosure of information about the operations of government, increase the public's distrust in government)

performance issues – ensuring competent, efficient and effective action by public officials.⁵

I am of the view that the Council's failure to deal properly with Mr Monshall's complaints was a manifestation of the conduct of certain Council officers who did not, in their dealings with Mr Monshall's complaints and in other matters referred to in this report, perform their duties competently and in accordance with the highest standards of good conduct and good administrative practice or the requirements of Manly Council's Code of Conduct and section 439 of the *Local Government Act 1993*. That conduct demonstrated a lack of balance and fairness, respect for colleagues and members of the community and regard for their obligations to exercise a reasonable degree of care and diligence in carrying out their functions.

8.1 The perceptions of staff about former members of the Bicycle Committee

In my view the historical and collective perceptions of staff at the Council played a significant role in the way the Council dealt with Mr Monshall as a member of the STC, the manner in which the special purpose committee change process was implemented and Ms Spalding's decision to send the email to the Mayor and Councillors on 25 April 2009 that referred to Ms Monshall's conduct as chair of the former Bicycle Committee.

Mr Wong and Ms Spalding provided copies of documents to demonstrate that Mr Monshall's conduct was inappropriate and likely to cause problems for the operation of the new STC. However, it seems to me that the emails from staff were largely about the Bicycle Committee and references to Mr Monshall were because of his prominent role in that committee. For instance:

- The complaint from Mr Calderon of the former Traffic Team in October 2006 about members of the Bicycle committee was attributed to Mr Monshall even though a different committee member was named in the email and Mr Calderon indicate he intended to direct his comments through Mr Monshall in future.
- The complaint from Mr Inglese of the former Traffic Team in October 2006 about members of the Bicycle Committee named three other members of the Committee as well as Mr

⁵ Wheeler, C., *Embedding high ethical standards*, paper delivered at the Ethical Leadership and Governance Public Sector Forum, Canberra, 10 June 2010.

Monshall and indicated the problem was differences of professional opinion about approaches to bike and road safety matters between staff and committee members.

- The complaint from Mr Inglese of 22 June 2007 about recommendations for the Traffic Committee from Mr Monshall also referred to Bike Committee members.
- Mr Inglese's email to Ms Spalding of June 2009 advised that the Traffic Team felt they were working for the Bicycle Committee as more 90% of their work concerned Bicycle Committee matters and Mr Monshall drove them 'berserk' with his questions.

In her submission to Ms Scott of 13 May 2009 in response to Mr Monshall's complaint, Ms Spalding also referred to the bullying behaviour of the Bicycle Committee and that Bicycle Sub-committee was set up 'to ameliorate some of the problems, but it is clear that community reps were still directing staff, particularly the chair, Mr Monshall'.

There appeared to me to be a merging of perceptions about Mr Monshall and the former Bicycle Committee and they became interchangeable. In his advice to us, Mr Monshall indicated his view that his prominent role in the former Bicycle Committee caused him to become a target for staff complaints about the Bicycle Committee.

Ms Spalding was made aware of the negative perceptions of staff about Mr Monshall in 2006 and 2007 after she joined the Council in 2008. Ms Spalding submitted that she was told that the former Traffic Team found meeting with the former Bicycle Committee so difficult that the General Manager decided that the Committee should meet without staff and the chair of the Committee would later meet with staff to inform them of the outcomes of the Committee meeting. She said subsequent meetings with Mr Monshall were also 'very difficult' because he was 'constantly seeking to direct staff and commit Council resources, regardless of what was included in the Council's Management Plan'.

In her submission provided to Ms Scott on 13 May 2009, Ms Spalding spoke about 'the appalling behaviour' of the former members of the Bicycle committee in the past and the 'our determination to improve the operations of the Committee so that they do not commit Council resources or direct staff'. She said the STC 'was likely to be a flash point' and 'test case' in which Council had to 'stand firm' even if it meant 'uncomfortable confrontations'. She warned the Council had 'one opportunity to get this right' and that if the Council gave way the advisory committees would be 'in conflict with Council for another term, staff will be bullied and Council resources will be used to give interest groups preferential treatment'.

There was no evidence that the General Manager, who closely supervised the implementation of the special purpose committee change process, ever advised Ms Spalding about the correctness or otherwise of her views about the conduct of the former members of the Bicycle Committee, and Mr Monshall in particular. In fact, the evidence suggests that Mr Wong participated in 'talking tactics' with staff about how to deal with the former members of the Bicycle Committee who were regarded as being 'very naughty' and likely to take over the STC and direct and bully staff. He had also assured staff that he would back them up if they encountered problems with the new committees as they were representing him and implementing changes that he had made to the special purpose committee system.

Mr Monshall's explanation of his interaction with the former Traffic Team puts forward a different explanation for the events in 2006 and 2007 which were the subject of the emails provided by Mr Wong and Ms Spalding as evidence of Mr Monshall's inappropriate conduct. Mr Monshall's explanation was subsequently supported by advice from former Councillor Pederson.

According to Mr Monshall, Mr Wong attended the meetings of the Bicycle Committee and made the decisions about the commitment of staff and resources. The reports of 2006 site inspections/audits and the email of 6 March 2007 headed 'Minor Maintenance' that were cited by staff as examples of Mr Monshall's directing staff appeared to have served a project management purpose. At that stage, it appears that the Bicycle Committee was concerned about the progress of the Council's bike plan and routine maintenance of the bike infrastructure and the site inspections/audits were part of the process for determining shortfalls in delivery of the plan and routine maintenance. Mr Wong's presence at the Committee meetings ensured that any interaction between Committee and staff and any commitment of Council resources were oversights by him. For this reason, it is difficult to accept claims that Mr Monshall was directing staff, bullying staff or committing Council resources regardless of what was included in the Council's Management Plan.

Mr Monshall's advice in response to claims he was directing and bullying staff was that Mr Wong agreed to the Bike Sub-committee arrangement in response to complaints from Councillors Pedersen and Lambert. The purpose of the Bike Sub-Committee was to work with Mr Hewton, Manager Corporate Services and the staff to progress projects and maintenance work within an agreed timeframe. Councillor Pedersen's advice to us confirmed that the Bike Committee first proposed the formation of the Bike Sub-committee in response to 'the continued failure of the council bureaucracy to honour commitments and to meet deadlines on cycling infrastructure projects'.

It appears to me that the Bicycle Committee's questions about the progress of bike projects and Mr Monshall's role in the close scrutiny of the work of staff caused Mr Inglese to feel aggrieved about both the Committee and Mr Monshall. Both Mr Inglese and later Mr Keech described Mr Monshall's questions/emails as putting so much pressure on them that they 'felt like' he was directing them. Mr Keech described Mr Monshall's questions as 'forceful' and their numbers he described as 'an email warfare technique' of 'picking over and questioning minor details' which he viewed as 'harassment designed to get his way'. Mr Inglese vented his frustrations at the questioning and advice from the Bicycle Committee and Mr Monshall in October 2006 at the time the Sub-Committee was formed and later in June 2007 after it had been operating for seven months. The Bicycle Committee's questioning of his advice also appeared to have caused 'discomfort' to Mr Calderon in October 2006 but his complaint was not directed at Mr Monshall.

Mr Inglese's advice to Ms Spalding in June 2009 about his experiences with the Bicycle Committee and Mr Monshall driving the Traffic Team 'berserk' with 90% of their work being for the Bicycle Committee and Mr Monshall over 400 emails in 12 months were not supported by any evidence from either Ms Spalding or the Council. In contrast, Mr Monshall told us he possessed about 40 emails to Council staff about Bicycle Committee matters.

While Mr Inglese told Ms Spalding that Mr Monshall was one of the reasons he and the rest of the Traffic Team left Manly Council, Mr Wong put it more strongly by claiming to us that Mr Monshall actually caused a whole section of staff to resign. However, in light of the evidence disclosed by this investigation, I am unable to entirely accept Mr Wong's claim. In particular, no evidence was provided to support Mr Inglese's claim that other members of the Traffic Team who resigned in 2007 did so because of Mr Monshall. However, Councillor Pedersen's advice about the 'discomfort' of staff being requested to carry out the program and charter of the bike committee as approved by the elected council and being subject to the discipline of producing a monthly report on project outcomes and progress suggests that Mr Monshall's scrutiny in his role on the Bike Sub-committee would have had some negative impact on the former Traffic Team.

Mr Wong was made aware of the complaints raised by Mr Inglese about the Bicycle Committee members questioning the work of staff in 2006 and 2007 and appeared to leave the matter to line managers to deal with. Mr Hewton, Manager Corporate Services at the time handled Mr Inglese's complaint by having an informal 'talk' to Mr Monshall.

It appears to me that Mr Wong did not have any significant concerns about Mr Monshall's conduct at that time. I take this view because there is no evidence of any action taken by Mr Wong under Council's Code of Conduct in relation to any alleged harassment of staff by any member of the Bicycle committee at that time despite his claims to us that there was a 'pattern to' Mr Monshall's 'style of approach' that 'contributed to the difficulties [of staff] in establishing a normal and equal working relationship with him'. If Mr Monshall's questioning/oversight had in fact been viewed as inappropriate, Manly Council's Code of Conduct complaint process should have been used and Mr Monshall duly and properly advised of the complaint. However, there is no evidence that senior management viewed Mr Monshall's interactions with staff as a possible breach of the Code of Conduct, even though senior management was aware that some staff were unhappy about the arrangement put in place to require them to be more accountable to the Bicycle Committee for the acquittal of bike plan projects. It was Mr Wong's own assessment in his review of Mr Monshall's complaint on 12 June 2009 that Mr Monshall had not actually directed staff.

One of the emails Mr Wong provided to us as an example of Mr Monshall's 'state of mind' and his inappropriate approach to staff was only put to Mr Monshall on 16 June 2009 by Mr Wong after Mr Monshall informed the Mayor and Councillors Heasman, Burns and Norek that he had lodged a complaint with the Ombudsman. Mr Monshall advised Mr Wong that his Christmas email of 16 December 2006 to the members of the Bicycle Committee and Traffic Team that contained his statement that 'I know we are a demanding bunch of malcontents, but our objectives are worth pressing for - and we're not going away!' was made in jest. While it would not be unreasonable to believe Mr Monshall considered his comments as jovial - and in ordinary circumstances they might

have been taken that way – in the situation where there was tension between staff and the Bicycle Committee, the words would not have assisted his cause or the situation with staff. If anything, they would have tended to reinforce the negative perception of staff about Mr Monshall.

Overall, however, the evidence tends to support Mr Monshall's advice about the role of the Bicycle Committee and the interactions between members and staff. In particular it appears that it was the mismanagement of staff perceptions about Mr Monshall and the members of the former Bicycle Committee that led to the negative views being spread and reinforced amongst Council staff. Ms Spalding's decision to inform the Mayor and Councillors about problems with Mr Monshall was the result of hearsay information she had received about the 'conflict' between previous and then current staff in the Traffic Section and community representatives on the former Bicycle Committee.

I conclude that the negative perceptions of staff over a number of years played a significant role in the unfair way Mr Monshall's communications were dealt with by staff during the implementation of the new special purpose committee system and that Ms Spalding's actions and decisions in April 2009 were affected by those negative perceptions about the former members of the Bicycle Committee.

I conclude that Mr Wong failed to properly manage the negative response of staff in the former Traffic Committee when they interacted with the Bicycle Sub-committee members in 2006 and 2007 under an arrangement developed by him and Councillors on the Bicycle Committee and that these negative perceptions were allowed to continue and influence staff attitudes towards community representatives on the new Sustainable Transport Committee.

8.2 Problems with the special purpose committee change process

8.2.1 Implementing the change process

The problems that arose as a result of the special purpose committee change process also led to Ms Spalding's decision to send an email to the Mayor and Councillors about Mr Monshall on 25 April 2009.

The introduction of the new Integrated Strategic Planning framework at Manly Council required the Council to review its community engagement strategy and this led to a review of Council's advisory committee system. Ms Spalding, who played a key role in the implementation of the Integrated Strategic framework, told us that Manly Council needed a more inclusive process for determining Council's strategic planning through involving knowledgeable and experienced staff as well as input from Councillors and members of the community. She believed the Council's committees needed to focus on strategic planning rather than the performance of projects and there was a need for improved committee membership selection, better governance and more involvement of staff.

Ms Spalding was critical of the operations of previous advisory committees and strongly believed that they acted more like lobby groups who obtained preferential treatment for their interests through their interactions with staff and the Council. She viewed the operations of former Bicycle Committee as a prime example of this type of behaviour. She worked closely with Mr Wong when developing new Terms of Reference for the new committee system and had a large personal and professional stake in the effective implementation of the new system. She did not appear to have any doubt about advice from Mr Wong and staff about the members of the former Bicycle Committee and supported the new governance arrangements for the special purpose committees that gave the General Manager more direct control over the majority of the new committees through the Terms of Reference and the role of the staff officer.

While the new Terms of Reference created some issues about control and management of Council committees that were raised by Councillors Burns and Griffin, of interest to this investigation is the way that the General Manager implemented the change process that gave rise to the complaint from Mr Monshall. The problems identified by the evidence included:

- inadequate training for Councillors
- inappropriate training for staff, and
- failure to properly communicate with Councillors and community representatives about the handling of outstanding work and projects and funding applications from disbanded committees.

8.2.2 Inadequate training of Councillors

While Mr Wong recognised the need for community representatives and staff to be properly trained in the new committee process, I am of the view that he failed to ensure that Councillors also received training and, according to Ms Spalding, this limited the Councillors' understanding about the need for the change and how the change process would proceed. Ms Spalding told us that it was not the case that all Councillors fully understood the significance of and reasons for the changes that were being introduced. The issues raised by Councillors Burns and Griffin about the operation of the new committee system indicate that, even though they were members of the Council working party that formulated the new committee system, they did not agree with the direction the process had taken.

When the new committees commenced operation in early 2009, Councillors had not been trained in the new committee system processes. Ms Spalding's email of 25 April 2009 was an attempt to give some background about the new process and why it was necessary for a new system to be introduced. It seems to me that the decision not to properly train Councillors in the new special purpose committee system was an ineffective and inefficient strategy for implementing the new system. Had Mr Wong ensured that Councillors received formal training, there would have been no need for Ms Spalding's email of 25 April 2009 to the Mayor and Councillors.

8.2.3 Inappropriate training of staff

It appears to me that the staff training involving a role play based on the perceived behaviour of Mr Monshall as chair of the former Bicycle Committee could serve only to reinforced negative perceptions in staff who later dealt with him as a member of the STC. Ms Spalding, whose evidence I accept in this regard, told us that staff were well aware of the identity of the person and the committee on which the training was based. After the training, Ms Spalding said she was convinced that Mr Monshall's communications were attempts to direct Council and control the STC and Councillors needed to be aware of this.

In my view, this training unreasonably heightened staff concerns about Mr Monshall and his likely behaviour on the new STC. It also perpetuated disunity between staff and community representatives with staff being encouraged to see themselves in a struggle with new members of the STC to overcome resistance to the new way of operating.

This inappropriate approach to staff training about the role of Committees and Committee members was particularly concerning because there is no evidence Council properly advised Mr Monshall of concerns about his perceived behaviour on the Bicycle Committee. From the evidence provided by Mr Wong, complaints from Mr Inglese and Mr Calderon of the former Traffic Team about the actions and questions of Bicycle Committee members were dealt with by an informal chat between Mr Hewton and Mr Monshall who was chair of the sub-committee. As there is no record of these informal chats, there is no evidence whether the discussion was about Mr Monshall's conduct, the conduct of the Committee members or other issues about the management of the bike projects that were being undertaken.

8.2.4 Outstanding projects and upcoming funding applications

Mr Monshall's communications with staff prior to first meeting of the STC suggested that his concerns were about the outstanding bike plan projects, the need to work effectively in the bi-monthly timeframe for STC meetings and that Council's interest in bike matters appeared to be waning. When former members of the Bicycle Committee initially asked in 2008 about outstanding bike plan projects they were abruptly told Council did not have to deal with any issues from the disbanded Bicycle Committee. It would seem that this response led to Mr Monshall's concerns and his desire to obtain some answers about outstanding projects. Prior to the first meeting of the STC in April 2009, Councillor Burns also began emailing questions about the outstanding projects and about funding applications in the belief, like Mr Monshall, that the STC was the forum for continuing the monitoring of various operational targets for the bike plan and for organising funds for new projects.

That Councillor Burns and Mr Monshall were communicating these concerns was a consequence of the inadequate information provided to new committees in January 2009 about the transition from old to the new committee system. The explanation of the change in the work of special purpose committees to a strategic planning focus did not appear to adequately deal with the outstanding projects of previous committees that were already under way in September 2008. As a

result, Council did not pro-actively communicate with new committee members about how it would deal with outstanding projects and upcoming funding applications.

It was only after Mr Monshall and Councillor Burns sent emails that suggestions were put forward by Mr Keech as to how to deal with queries about outstanding projects. Mr Wong accepted Mr Keech's suggestion that these types of queries should be dealt with by way of the customer request management (CRM) system and answered directly by the staff involved. It appears that by the time Mr Wong agreed to this method for dealing with queries about outstanding projects, staff perceptions were already confirmed that Mr Monshall and former members of the Bicycle Committee now on the STC were again inquiring into operational matters and continuing to be a problem.

The necessity for committee members to inquire into the management of outstanding projects would have been avoided with better focus in training on matters likely to have been of concern to committee members.

I conclude that the Council's training in the new Terms of Reference for the special purpose committee system was inappropriate, did not include Councillors, and, being based on the perceived behaviour of Mr Monshall and members of the former Bicycle Committee, served to unreasonably exacerbate staff concerns about the conduct of members of the STC and Mr Monshall in particular. This entire circumstance perpetuated disharmony between staff and community representatives.

8.2.5 Council's response

In its response to the report, the Council disagreed that the change process of the special purpose committee was poorly implemented. The Council pointed out that the Terms of Reference for the new committees emphasise their advisory role and that councillors had a significant involvement in reviewing and implementing the new committee system. The Council relies on this involvement and councillor's subsequent attendance at thirty four special committee meetings prior to the first STC meeting as showing that councillors had acquired sufficient 'on the job training' to provide them with an adequate understanding of 'how the new system was supposed to work'. I cannot agree with this assertion. Further, the Council claims that the STC and the BC were special cases and that 'the problems associated with the STC were a result of the failure of some of their community representatives to the code of conduct and Terms of Reference, particularly Mr Monshall'.

In my view, 'training' of such an ad hoc nature cannot provide councillors with a uniform understanding of the new committee system, its purposes and its functioning and, developed through such means, councillor's expectations of the new system could not possibly have had any objective grounding. The evidence disclosed that the capacity of councillors in this regard was, in the absence of proper training, demonstrably lacking.

In the council's response, Councillor Hay took the opportunity to express her opinion of Mr Monshall as 'a difficult person to work with'. In support, Cr Hay indicated that she had received a number of complaints from council staff about what she described as the 'highly political motivations of BC and STC members' and provided copies of clearly difficult email communications between Mr Monshall and Mr Inglese, the council's former Traffic Manager. Whilst I cannot disagree that certain council staff had a difficult work relationship with Mr Monshall, the evidence disclosed by this investigation does not support the problems of the special purpose committee change process being laid at Mr Monshall's door.

I conclude that the ineffective implementation of the special purpose committee change process led Ms Spalding to send the email to the Mayor and Councillors on 25 April 2009 for the purposes of correcting the deficient information she believed that they had received.

8.3 Events surrounding the first meeting of the STC on 29 April 2009

There were aspects of staff conduct in the lead up to the first meeting of the STC that suggested poor performance and inefficient decision-making. The Council's response to our preliminary inquiries suggested to me an attempt on the part of the General Manager to distance himself from the events that led to Mr Monshall's complaint. The effect of this was to permit Ms Spalding to be held entirely responsible for the events that led to the complaint.

Because of a lack of timely advice about outstanding projects related to disbanded committees, Mr Monshall repeated his questions first raised in November and December 2008 in order to find out what the Council intended to do about bike plan projects. His questions were not unreasonable or improper, but staff clearly perceived them as an attempt to direct them and involve himself in operational matters. His requests to be able to contact STC members before the first meeting to bring members up to date were perceived as an attempt to take control of the new committee in order to push the bike agenda even before the new committee commenced.

It is clear on its face that Mr Monshall's email of 22 February 2009 did not request the email addresses of other members of the new STC. However, Mr Wong's email to Ms Spalding on 5 March 2009, which she subsequently forwarded to Mr Monshall without query or correction, claimed that that was what he was seeking. It was Mr Wong's misinterpretation of Mr Monshall's initial request on 5 March 2009 that commenced the string of errors that led to Mr Monshall's complaint to the Council of 30 April 2009. While such a minor mistake might have been expected to be quickly rectified, Mr Wong's involvement exacerbated the situation when he asked Mr Monshall on 6 March 2009 'If what you are asking of Ms Jess was not email addresses, then please clarify'. Far from resolving the mistake, both Mr Wong's interventions on 5 and 6 March 2009 turned Mr Monshall's communications with Council into a complaint that he had been 'twice seriously misrepresented by Council'.

In response to our preliminary inquiries about what communications he had with Ms Spalding regarding Mr Monshall's asking for email addresses, Mr Wong indicated he had only been 'copied-in' on the correspondence. He told us that after Mr Monshall's email of 6 March 2009 he had reviewed the emails between Council and Mr Monshall and emphasised to Ms Spalding at their weekly meeting on 27 March 2009 that she needed to 'check and be satisfied and clear on the relevant facts in the future' although he said Ms Spalding had no clear recollection of his advice to her. He also told us in response to our question whether Ms Spalding acknowledged that she had made a mistake in her interpretation of Mr Monshall's request that he did not seek her specific agreement on the issue but in hindsight he should have.

In contrast, Ms Spalding told us she had no recollection of Mr Wong advising her to check and be clear on the relevant facts because this did not happen. When we examined both Ms Spalding's record of that weekly meeting and Mr Wong's record of that weekly meeting, it was not clear from Mr Wong's notes in the margin that he had given any specific direction to Mr Spalding and what he had written, i.e. 'NM – Reviewed – double check facts in future', could have equally been a reminder to himself that he later did not act on. Ms Spalding told us that she normally made handwritten notes of actions she needed to take a result of Mr Wong's directions during their weekly discussions and there were none on her copy in relation to the special purpose committees. She also claimed that she would have remembered had he reprimanded her in this way and reminded him he was the author of the email to Mr Monshall on 5 March 2009 in which he interpreted Mr Monshall's email of 22 February 2009 as a request for email addresses.

It appears to me that the evidence does not support Mr Wong's explanation of events. My reasons for reaching this conclusion are as follows.

Firstly, Ms Spalding was not involved in misinterpreting Mr Monshall's request. On 5 March 2009, Mr Wong drafted a response to Mr Monshall's email of 4 March 2009 that he forwarded to Ms Spalding after she asked him whether he wanted her to deal with it. She cut and pasted Mr Wong's response to Mr Monshall and sent it to Mr Monshall directly. The response, that clearly misinterprets Mr Monshall's request of 22 February 2009, was not written by Ms Spalding. Mr Wong's subsequent email to Mr Monshall on 6 March 2009 asking Mr Monshall to clarify 'If what you are asking of Ms Jess was not email addresses' suggests that Mr Wong believed Mr Monshall was asking for email addresses. Ms Spalding told us that Mr Wong made it known that he had some type of law background and for this reason she would not question his advice to Mr Monshall about privacy and email addresses and this was the reason she cut and pasted Mr Wong's exact wording.

Secondly, Mr Wong did not seek Ms Spalding's specific agreement that she had been mistaken in her interpretation of Mr Monshall's request because he did not discuss 'the issue' with her. Mr Wong's additional information in the footnote in the hardcopy of his letter to us was included after Ms Spalding indicated to him she disagreed with the information he was providing to the Ombudsman about what he had discussed with her on 27 March 2009. Had Mr Wong discussed his review of Mr Monshall's complaints of 4 and 6 March 2009, it seems reasonable to believe he would have not only told Ms Spalding to check the facts in future but that he had apologised for Council's error in his letter to Mr Monshall of 20 March 2009 just seven days prior to his meeting

with Ms Spalding. Had Ms Spalding been made aware of the apology of 20 March 2009, it seems reasonable to her email of 25 April 2009 would not have contained information that she had only recently been told was incorrect and for which Mr Wong had provided an apology.

Thirdly, from the documents examined in the investigation, it is evident that Mr Wong was involved in every decision made in relation to the implementation of the new committee system, which was contrary to his advice to us that he was merely 'copied-in' on communications. Mr Wong did not delegate the decision-making for the special purpose committee change process to staff and quickly reminded Ms Spalding that it was his prerogative to make the decisions when she complained about him allowing the STC not to comply with the Terms of Reference when it suited him. Ms Spalding's emails indicate that she checked with Mr Wong about every communication and action she intended to take and that Mr Wong drafted the letters and email responses for staff to send to members of the STC. From the information provided to the investigation, Ms Spalding did not question any of Mr Wong's advice or instructions until he started to allow special purpose committees not to comply with the Terms of Reference.

Fourthly, the evidence indicates that on 24 April 2009 Ms Spalding discussed her intention to send the email to the Mayor and Councillors explaining the new committee system and detailing her concerns about Mr Monshall before the first meeting of the STC. While there is no evidence that Mr Wong saw the email Ms Spalding sent on 25 April 2009 containing the allegations about Mr Monshall's conduct, he acknowledged receipt of it a few hours later and showed no concern that she had made any errors in what she had written. I accept Ms Spalding's claim that she would not have sent the email to the Mayor and Councillors without Mr Wong's agreement, given the fact that she appeared to consult with, and took direction from, Mr Wong on her every action and communication relating to the implementation of the special purpose committee change process.

Mr Wong's practice of directly supervising the work of all levels of staff while at the same time claiming that he was merely told about issues raises a question in my mind about his understanding of good conduct and his obligations to act honestly. It is a serious concern to me that Mr Wong has sought to distance himself from the events leading up to Mr Monshall's complaint and has failed to acknowledge his own involvement.

I conclude that the General Manager's failure to fully inform Ms Spalding that he had apologised to Mr Monshall for the misinterpretation of his request of 22 February 2009 led to the circumstances where Ms Spalding sent the email of 25 April 2009.

I conclude that Ms Spalding discussed the contents of her email of 25 April 2009 with the General Manager and obtained his approval prior to sending it out.

8.4 The handling and investigation of Mr Monshall's complaint about Ms Spalding

8.4.1 Approach to complaint handling

The manner in which Council dealt with Mr Monshall's complaint about the conduct of Ms Spalding raises questions about integrity, fairness and the competency. The following problems were identified:

- An inadequate Council complaints management process.
- A failure to identify conduct issues and deal with them in accordance with Manly Council's Code of Conduct.
- A failure to investigate the complaint.

The General Manager's management of the complaint fell short, in my view, of his obligation under the *Local Government Act 1993* to manage the Council's operations efficiently and effectively and to act honestly and to exercise a reasonable degree of care and diligence in carrying out his functions under the Act.

Additionally, as revealed in a review of Council's approach to complaint management, the elected Council has failed to provide the appropriate oversight of the General Manager's performance in relation to the management of complaints generally and complaints about conduct of council

officials and not implemented appropriate systems, policies and procedures to ensure compliance with Manly Council's Code of Conduct and the behavioural guidance it provides to all staff.

8.4.2 Inadequate complaints management process

At the time that the staff were dealing with Mr Monshall's complaint, Council's adopted complaints management policy was more than 10 years old and had been irrelevant to Council's structure since 2003. While in September 2008, the General Manager had placed a draft complaints management policy on Council's website and has been using it since, it has not been approved by the elected Council and is not the Council's adopted process for dealing with complaints.

In my view the draft policy is an inadequate document, despite the General Manager's announcement in *The Manly Daily* that it was best practice, and falls far short of the stated purpose of the policy which is to provide 'a coherent and integrated system for the handling of complaints about Council administration and conduct of Council officials'. It lacks coherence in that it contains contradictory advice and significant omissions. It also is not integrated with Manly Council's Code of Conduct, Customer Service Charter, Guide to Ethical Decision-making, Access to Information Guidelines or other Council policies such as the Compliance and Enforcement policy. There are no cross-references to relevant sections in any of these important policies and guidelines.

The draft policy contains little advice to the community or staff about the management of complaints about the conduct of staff and other council officials, except for the Mayor, Councillors and the General Manager. There is brief a reference to complaints alleging maladministration or improper use of position being investigated under Part 3 of the Manly Code of conduct but there is no explanation of what maladministration means or what the improper use of position entails. There is no cross-reference to Manly Council's Code of Conduct to assist a proper understanding of conduct obligations.

Complainants are also warned if they complain about the conduct of a staff member they have to bear in mind Council would seek legal advice and give it to the officer if Council regarded the complaints as vexatious or malicious. This is contrary to the spirit of the Code of Conduct which provides for members of the public to be able to make complaints about staff without threats of legal action by the Council. It is also contrary to Council's customer service charter which encourages the public to make complaints and contrary to the former Department of Local Government's advice to councils in its circular 08-05 that councils are not to meet the costs of an action in defamation taken by a councillor or council employee as plaintiff in any circumstances or of seeking advice in respect of possible defamation, or in seeking a non-litigious remedy for possible defamation.

In the draft policy, complainants are 'encouraged' to resolve their complaints themselves by using Council's existing procedures.

The draft complaints management policy has an inward focus. It appears to reflect a view that it is Council's responsibility to deflect criticism and protect staff from members of the public who place demands on them. It sends a negative message to complainants contrary to the Principles set out on the first page of the policy which states that 'customers have a right to expect that the Council will deal with their concerns in a professional, respectful and timely manner'.

If the complainant is dissatisfied with the outcome of their complaint, they will not be given the appropriate advice about their right to complain to a relevant oversight body. According to the draft policy, it will be the Council's decision as to whether the complaint will be referred to an external agency for review. It seems to me that this approach seeks to circumscribe the actions the complainant might take. In addition, formal arrangements with oversight bodies are required for referral of a complaint in order to comply with privacy and confidentiality provisions. This advice should be removed and the appropriate advice for complainants about lodging a complaint with a relevant oversight body should be included in the policy.

Even if staff wanted to follow these processes for dealing with complaints, they will not be assisted by this policy because the lines of responsibility and authority for dealing with complaints are not clear, except for the General Manager and the Coordinator Customer Support Services. There also seems to be contradiction between the responsibilities section of the draft policy which states that the General Manager 'will nominate specific staff responsible for handling complaints' and the complaint handling section which states that 'staff will, within the scope of their delegation of authority, endeavour to resolve issues the subject of complaints at the first point of contact'. The roles of Executive Directors, Division Managers, Sections Heads, the Manager Corporate

Governance, the Public Officer, the Principal Office Manager, Office of the General Manager, and the Manager Customer Service are not mentioned even though these positions would normally be expected to have responsibility for dealing with complaints. The draft policy centralises responsibility for all complaints management in the General Manager's Unit rather than just responsibility for ensuring all complaints are appropriately actioned and acquitted. This is not best practice for a modern public sector agency and this proposed approach should be reviewed in line with best practice and the Australian Standard.

The draft policy contains no procedures for investigating complaints. The references in the draft policy to complaint handling, reviewing, addressing issues and investigating are used interchangeably and without explanation. It is not clear whether complaints require addressing, handling, reviewing, investigating or resolution or how or when any of these particular processes might apply. While the complaint handling section advises that the Coordinator Customer Support Services position will review complaints unable to be referred to the appropriate service department for resolution or if the complainant is dissatisfied, there is no guidance about exactly what the Coordinator Customer Support Services is required to do in either of these circumstances.

The draft policy does not comply with the Australian Standard, the Division of Local Government's Practice No 9 Complaints Management in Council, jointly published by the Division and the NSW Ombudsman, or the complaint handling guidelines published by the NSW Ombudsman.

I conclude that the draft complaints management policy should be reviewed by a person not associated with Manly Council and who is competent and experienced in complaints management. The new policy should include proper guidance regarding the management and investigation of complaints about the conduct of staff and other council officials. When the new policy is adopted by Council all staff and councillors should be trained in its use and they should be obliged to act in accordance with the policy.

8.4.3 Failure to recognise conduct issues

During this investigation, Mr Wong was reported in *The Manly Daily*⁶ as claiming Manly Council had no Code of Conduct complaints in the seven years he had been General Manager.

In response to our question about the factors he used to distinguish complaints about breaches of the Code of Conduct from general complaints, Mr Wong told us it was 'whether the complaint is specifically about a council process or whether the complaint concerns the actions of a council official'. He also said it was 'often difficult when the complaint covers both the process and the council official' and 'other councils also struggle with this initial determination'. In the experience of this office, other councils do not struggle to determine conduct issues and I cannot view this statement as other than an attempt to deflect focus from shortcomings in the management of Mr Monshall's complaint.

Throughout the events in this investigation, the conduct of Manly Council officials came into focus. It was clear that some of the views expressed in emails by members of the former Traffic Team towards members of the former Bicycle Committee were possibly contrary to section 6 of Manly Council's Code of Conduct. Had Mr Monshall and other members of the Bicycle Committee been harassing and intimidating staff in the way Mr Wong and Ms Spalding alleged, then such conduct was, if proven, contrary to section 6 of Manly Council's Code of Conduct. Had Councillor Burns conducted himself in such a way as to circumvent the Terms of Reference of the STC, then his conduct possibly was in breach of section 6 of Manly Council's Code of Conduct. However, when these issues were brought to Mr Wong's attention, his preferred method for dealing with them was through managing his relationships with the council officials involved or to leave line managers to deal with them informally. This is, and has been shown by this investigation to be, an inadequate way of dealing with such matters.

Further, in the absence of a documented process for managing and investigating complaints about the conduct of Council officials, staff relied on the unapproved draft complaints management policy for managing the complaints. The shortcomings of such an inadequate practice were apparent in the handling of Mr Monshall's complaint.

As a result, when Mr Wong received Mr Monshall's complaints of 30 April and 4 and 9 May 2009, he:

⁶ Cherry, Brenton, 'A code of their own', in *The Manly Daily*, 21 May 2010, p.3

- focused on the word 'libel', treated the matter as a legal threat to the Council, obtained the opinion of Council's Risk Manager and told Mr Monshall to seek his own independent advice as it was a question of law for private action and not a matter for 'administrative investigation'
- referred the complainant to the staff member the subject of the complaint about her conduct as a matter of his 'personal policy' not to intervene in matters that staff can respond to, and
- referred the complaint about the conduct of the Deputy General Manager to Ms Scott, the Coordinator Customer Support Services to deal with under Council's unapproved draft complaints management policy and then dismissed the complaint.

I conclude that the General Manager failed to recognise conduct issues of Manly Council officials and deal with them in accordance with Manly Council's Code of Conduct.

8.4.4 Failure to properly investigate the complaint

In my view, the allegations about Ms Spalding's conduct were serious and required the appropriate investigation by the Council. However, the evidence suggests that no proper investigation was conducted and the actions staff took to deal with Mr Monshall's complaint were deficient and incompetently carried out.

Mr Wong's first action was to deflect the complaint back to Mr Monshall as not a matter for the Council and when that failed, he referred it to Ms Spalding based on his 'personal policy' not to intervene in matters that staff can respond to, not on the basis of any adopted Council process. It was concerning that in response to our question whether he found Ms Spalding's refusal to acknowledge or accept Mr Monshall's complaint as appropriate, adequate or accurate, he told us that he would have responded differently because he has 'an established working relationship with Mr Monshall' and that she had 'erred in her response due possibly to antecedent factors involved in their relationship'.

It appears to me that from the beginning, Mr Wong's approach to dealing with Mr Monshall's complaint was to have it finalised as quickly as possible. Under Council's unapproved draft complaints management policy, the Coordinator Customer Support Services deals with matters that are inappropriate to refer back to the appropriate service department or where the complainant is dissatisfied. However, Mr Wong clearly did not consider it inappropriate to refer Mr Monshall's complaint back to Ms Spalding, even though it was a complaint about her conduct.

When asked to explain Ms Spalding's failure to deal with the complaint, he blamed antecedent factors in Ms Spalding's and Mr Monshall's relationship and a failure on Ms Spalding's part to use the unapproved draft complaints management policy to resolve the matter.

In the absence of any written guidance about what staff members are supposed to do when a complaint is referred to them, neither Ms Spalding nor Ms Scott had any approved process to follow. I do not believe that Mr Wong recognised this as a deficiency in the Council's complaints management process because he was in control of how Council dealt with complaints in any event.

Ms Scott's role in dealing with Mr Monshall's complaint was to gather information for Mr Wong. She obtained a copy of Ms Spalding's email of 25 April 2009 and Mr Monshall's complaint of 30 April 2009 and contacted by Mr Monshall and Ms Spalding to 'clarify points raised'. However, she did not make a full and proper record of those conversations as required by the *State Records Act 1998* or the requirements of good administrative practice for conducting investigations. Ms Spalding gave Ms Scott a written statement in response to the complaint during their discussion on 13 May 2009. In her statement, Ms Spalding claimed that Mr Monshall's complaint could not be sustained because he had harvested emails without permission despite Council's advice about privacy. She supported her statement that Mr Monshall had directed staff by claiming that she could provide 'plenty of examples of Mr Monshall seeking to direct Councils staff' and advised she had been incorrect with her third allegation about the chair of the former Bicycle Committee questioning the Code of Conduct and she was prepared to apologise for it. Ms Scott gave Ms Spalding's statement to Mr Wong.

No further evidence was gathered, analysis undertaken or investigation report prepared before Mr Wong finalised the complaint on 19 May 2009. It was clear that Mr Wong had waited for an email

from Ms Rawlings, Council's Risk Manager to advise that Mr Monshall did not have a case against Council before he drafted a letter to Mr Monshall for Ms Scott to sign. Mr Wong briefly dealt with Ms Spalding's retraction of her statement that Mr Monshall had questioned the Code of Conduct but did not include any information in response to the other two alleged statements Ms Spalding made in her email. There was no reference to his previous letter dated 20 March 2009 in which he apologised to Mr Monshall and stated Mr Monshall's request did not constitute either a direction or instruction to his staff or a request for the staff to provide details of other committee members' private email addresses. It appeared to me that Ms Wong's purpose in writing to Mr Monshall was to finalise the complaint as soon as possible.

After Mr Monshall expressed dissatisfaction with the letter Ms Scott signed on 19 May 2009 and advised the Council that he would go the Ombudsman unless Council confirmed all three allegations were baseless and apologised, Ms Scott met with Mr Wong and Ms Aitkenhead to discuss the matter. Mr Wong told her to prepare a report on 'where we are up to'. This report was titled 'Manly Council Report for Review Matters'. The report is an inadequate and confusing document. The template used lacks sufficient structure and guidance for staff to prepare a comprehensive report into the handling of any matter under review. There is no provision for identification and assessment of the issues raised or analysis of the evidence gathered that would lead to any conclusions reached. Ms Scott's report did not restate or summarise Mr Monshall's complaint issues or properly identify all the documentary evidence available from the time Mr Monshall sent his email on 22 February 2009. She prepared a brief chronology from the date Mr Wong involved her in the matter and included her brief assessment of the issues in the recommendations section.

The report appears to be largely based on Ms Spalding's 13 May 2009 statement and further unspecified 'discernment'. Ms Scott's discussion with Mr Wong and Ms Aitkenhead on either 8 or 9 June 2009 might have informed the contents of the report. The report contained errors of fact. Even though the harvesting/collecting of emails was not the action Ms Spalding alleged Mr Monshall had undertaken in her email of 25 April 2009, Ms Scott repeated this different allegation in her investigation report. Her report incorrectly stated that Ms Spalding had not addressed the two outstanding items when it was the letter that Ms Scott signed on 19 May 2009 that did not address them. While Ms Scott recognised there was a conduct issue, Mr Monshall's conduct appeared to be the subject of the report and not Mr Spalding's. The relevant Council policy was stated to be Council's Code of Conduct for Committee Members which applied to Mr Monshall and not Ms Spalding.

The conclusion/findings of the report had no relationship at all to Mr Monshall's complaint. Inexplicably, Ms Scott 'surmised' that Mr Monshall had been acting in breach of 'point 10.8 Use of certain council information' of Manly Council's Code of Conduct, which was a point Ms Spalding raised in her statement about the conduct of an unknown person who had given Ms Spalding's email to Mr Monshall on or after 25 April 2009. Because the fact-finding was poorly conducted and the analysis was flawed, the recommendations were that the General Manager take no further action and write to Mr Monshall advising his review had been conducted and that Council saw no basis for a further apology and Mr Monshall be trained to ensure he has a thorough understanding of the Code of Conduct and its purpose. There were no conclusions about Ms Spalding's conduct as the focus of the investigation appeared to be Mr Monshall's conduct.

Mr Wong asserted that he had only a limited involvement in Mr Monshall's complaint other than to conduct a review. He told us that from 20 May to 5 June 2009 he was mostly away from the office and on his return he called for a report on 'where we are up to'. However, the evidence shows that he both received and responded to emails about the complaint from staff and Mr Monshall during this time.

He told us in response to our preliminary inquiries that Ms Scott's handling of Mr Monshall's complaint was completely independent. He said that he was disappointed with the outcome but did not express that to Ms Scott and that he viewed Ms Scott's letter to Mr Monshall but did not alter its substance before she sent it. Mr Wong also claimed that Mr Monshall's complaints were 'initially independently review by staff' and they had offered an apology in writing to Mr Monshall for one matter but found there were no grounds to make an apology for the other two matters. However, Mr Monshall was not satisfied with Ms Scott's 'determination' of 19 May 2009. For this reason he conducted a review of the handling of Mr Monshall's complaint.

This advice about his role appears to me to be inconsistent with to the evidence disclosed by this investigation. The evidence indicates that Ms Scott took directions from Mr Wong during the time she was dealing with the matter. It is clear from Ms Scott's emails to Mr Wong, in particular her

response to Mr Wong's draft letter to Mr Monshall on 19 May 2009 in which she thanked him for the draft and hoped she could pick up on his style, that staff did not take any action without instruction from Mr Wong. It is also clear that Ms Scott prepared her review report on 10 June 2009 after having met with Mr Wong and Ms Aitkenhead to discuss the handling of Mr Monshall's complaint. For these reasons, there would not appear to be any basis for Mr Wong to claim that staff acted independently from him during the initial handling of Mr Monshall's complaint and the only purpose it could serve is to distance himself from the obvious failings in this process.

In my view, Mr Wong's review also involved poor administrative practices and continued to focus on the conduct of Mr Monshall.

When Mr Wong commenced his review, he did not check the matters he was reviewing to determine whether they were consistent with the content of Mr Monshall's complaint. He did not identify the statement that Ms Spalding made in her email of 25 April 2009 that Mr Monshall had requested email addresses of community representatives contrary to privacy legislation. Instead Mr Wong reviewed another of Ms Spalding's statements that Mr Monshall 'had collected the email addresses of members of the committee'. I note that when Mr Wong emailed Ms Spalding on 17 June 2009 with the outcome of Mr Monshall's 'original libel complaint', he told her that the complaint was about her 'comment on his use of email addresses'.

Mr Wong also did not check the statement that Ms Spalding made in her email of 25 April 2009 that Mr Monshall has sought to direct staff. Instead Mr Wong described the matter for review as Ms Spalding's statement to Councillors that in his former role as chair of the Bicycle Committee Mr Monshall had directed staff.

While Mr Wong claimed that he reviewed 'all probative material used in the initial review of the complaint', this severely limited the evidence that he relied upon to make his decision about Mr Monshall's complaint. Mr Wong did not go back to the start of events in February/March 2009 and examine how Mr Monshall's complaint came about nor did he collect all the evidence that would have properly informed his decision. Mr Wong did not locate Mr Monshall's email of 22 February 2009 or Mr Monshall's email of 11 March 2009 where he included a draft apology for Council's error in claiming he had requested email addresses. Nor did Mr Wong locate his own letter of apology dated 20 March 2009 based on Mr Monshall's draft. Mr Wong also did not reread Mr Monshall's emails where he reminded Mr Wong about the arrangement he had approved for the Bike sub-committee to monitor the work of staff to meet agreed targets for the bike plan.

Instead Mr Wong relied on his search of his own email inbox where he found some email exchanges between staff about the arrangement for the Bike sub-committee to monitor their work on the bike plan that he had been copied into. He also found the email from Mr Monshall to Councillor Lambert on 10 December 2006 containing Mr Monshall's statement about the members of the former Bicycle Committee being a 'demanding bunch of malcontents' and included the email from Mr Keech forwarded by Ms Spalding dated 11 June 2009 where he discussed the tone, stridency and frequency of Mr Monshall's email 'warfare technique of picking over and questioning minor details'.

Ms Aitkenhead's advice to Mr Wong on 15 June 2009, that 'the review demonstrates the principles of procedural fairness', seems incorrect and in any event limited to matters concerning Ms Spalding, given that none of the evidence Mr Wong relied upon to determine that Mr Monshall had harassed staff into giving in to his demands or that he was overbearing and intimidating and that he had exerted undue influence and/or pressure on staff, had been provided to Mr Monshall for his response. Mr Wong did not tell Mr Monshall that Mr Inglese regarded Mr Monshall's approach as 'unreasonably demanding'. Nor did he tell Mr Monshall that he was aware that two members of staff had left the council 'so as to avoid the stresses and frustrations caused by Mr Monshall'.

The four key principles of procedural fairness include:

- informing people of the case against them or their interests
- giving them a right to be heard (the 'hearing' rule)
- not having a personal interest in the outcome (the rule against 'bias'), and

- Acting only on the basis of logically probative evidence (the 'no evidence' rule).⁷

Mr Wong told Mr Monshall that he had decided to reject his complaint about Ms Spalding's conduct based on 'certain matters that have come to light' and 'materials that I have reviewed'. Despite these 'matters' and 'materials' being about Mr Monshall and not Ms Spalding, the only matter that Council put to Mr Monshall before Mr Wong's decision on 18 June 2009 was Mr Monshall's email of 10 December 2006 where he jokingly said the members of the Bicycle committee were a 'demanding bunch of malcontents... we are not going away!' Mr Wong did not put any of Ms Spalding's evidence to Mr Monshall until 3 July 2010. Mr Wong told us that he did not give Mr Monshall the opportunity to comment on Ms Spalding's specific evidence because he considered her submission and subsequent email did not provide 'any new information, however only strengthened the evidence which I had already used in the process of my review'. Ms Spalding's later evidence was subsequently put to Mr Monshall in order to support Mr Wong's advice that the Council would not take any further action on his complaint and not to provide any procedural fairness to Mr Monshall.

The inadequate investigation process and consideration of irrelevant matters about Mr Monshall caused Mr Wong to reach flawed conclusions that did not fit with the facts. His review did not resolve the complaint and led to ongoing emails from Mr Monshall about how he had handled the matter and Ms Spalding's refusal to comply with his recommendation that she retract and apologise to Mr Monshall for claiming he had directed staff.

Even though Ms Spalding had alleged that Ms Monshall had 'asked for' the email addresses of community representatives, Mr Wong concluded that Mr Monshall had collected emails which he said was Ms Spalding's factual 'observation' and an unambiguous 'statement of fact' that because Council had not officially provided Mr Monshall with the email addresses he could only have obtained them from elsewhere. He further concluded that it did not infer 'improper conduct' on the part of Mr Monshall 'when he used what was made available to him, even though it was inadvertent' and therefore he agreed with Ms Scott's handling of the matter and his review 'recommend no further action be taken on this'. These versions of Ms Spalding's claim that Mr Monshall had harvested emails were irrelevant considerations but they enabled Mr Wong to claim Ms Spalding's statement of 25 April 2009 was based on fact and was not 'libel'.

In my view, Mr Wong's conclusion was based on a misrepresentation of Mr Monshall's complaint and irrelevant observations by Ms Spalding. It did not address the matter that Mr Monshall complained about and completely overlooked the fact that Mr Wong had been responsible for the misinterpretation of Mr Monshall's request for email addresses in the first place and Council had apologised for the misinterpretation. Mr Wong was unable to require Ms Spalding to retract the comment because he would have had to admit to Mr Monshall that he was at error for not advising her of his apology and not preventing the comment being made in the first place. This misrepresentation allowed Mr Wong to justify absolving Council of responsibility for any 'libel' and to claim there was 'no utility in looking further into the matter'.

In response to our question about why he did not address Mr Monshall's specific complaint and why he saw the issue as being that of obtaining email addresses, Mr Wong admitted that 'in hindsight' his finding was 'in error' because he had misdirected his attention to the issue of how Mr Monshall had utilised the email addresses instead of the accuracy of Ms Spalding's statement that Mr Monshall had attempted to obtain email addresses and for which he had issued an apology. However, he then tried to convince us that Mr Monshall had really 'reversed the process by requesting to use Council's channels to broadcast his email address to everyone, which in effect achieves the same desired outcome for him'. I regard Mr Wong's assessment of Mr Monshall's intentions as an irrelevant consideration and an attempt to divert attention back onto Mr Monshall's conduct.

Mr Wong also concluded that, although he could find no evidence that Mr Monshall 'had actually directed staff', Mr Monshall had harassed staff into giving in to his demands and this was similar to directing staff. Mr Wong supported this view by reference to ultimatums and thinly veiled threats Mr Monshall had made to him. He concluded that Ms Spalding was 'probably entitled to form the opinion she so expressed' because she had received 'a body of feedback' from staff about Mr Monshall, although it was 'probably unwise' for her to have named Mr Monshall. He told Mr Monshall, nevertheless, that he was 'less than completely satisfied that Ms Spalding's opinion was

⁷ NSW Ombudsman *Good Conduct and Administrative Practice Guidelines for State and Local Government*, 2nd Edition, May 2006, page B-4.

justified'. For these reasons Mr Wong concluded that Mr Monshall needed to be warned about his 'apparent intimidatory conduct' and Ms Spalding had to consider apologising.

Even though Mr Wong's approach satisfied neither Mr Monshall nor Ms Spalding, it seems to have had the effect of moving attention away from Ms Spalding onto Mr Monshall's conduct and to explain if not justify her opinion. Mr Wong's inability to acknowledge his own involvement in the generation of the complaint in the first place, his failure to properly advise Ms Spalding and the deficient handling of the complaint left Mr Wong in a position where he could not follow through on his findings that Ms Spalding should retract and apologise for her statement. Ms Spalding advised us that Mr Wong did not actually 'encourage' her to apologise until just prior to his response to our written preliminary inquiries were to be sent. To me, this suggests his last ditch effort to distance himself from the failures that led to Mr Monshall's complaint by obtaining Ms Spalding's admission she was responsible.

It was concerning that in response to our question why he had not required Ms Spalding to retract the statement in her email of 25 April 2009, Mr Wong did not answer the question but suggested that his 'expression of regret' was both appropriate and sufficient to 'fulfil Mr Monshall's desire for an apology if the issue was not a personality driven issue'.

The deflection of responsibility for his own failures onto his staff and the complainant and the depiction of the problems as personality or relationship issues pervade Mr Wong's handling of Mr Monshall's complaint from the beginning to the end. Even in Mr Wong's suggested apology letter to Mr Monshall that he included with his response to our preliminary inquiries, he blamed Ms Spalding for the 'misunderstanding' of Mr Monshall's written request.

As mentioned, both Mr Wong and Ms Scott made submissions in response to the matters raised in this report.

In her response, Ms Scott has accepted "*that the complaint was not properly assessed under Council's Code of Conduct*" and that "*clearer notes should have been taken throughout the entire process and recorded into Council's electronic records system*". In acknowledging these failures, Ms Scott has provided an explanation that "*at the time of the receipt of this complaint the Governance team was [a] newly formed team with little experience. I personally had no experience in handling investigations of this nature and attempted to do my best under the circumstances*". Ms Scott has also expressed her view that "*Council now has much tighter processes in place now with more experience in the current team including the appointment of a Legal Counsel in June 2010*". In this regard, Ms Scott has asserted a Council focus on "*the Complaints Management Process as a priority and the implementation and education of it over the last twelve months*" and has indicated her belief that "*the processes at Manly has substantially improved*".

Mr Wong has in large part confined his response to defending what he seems to perceive as a personal element to this investigation, and "*refute[s] the adverse comments regarding my character and my conduct with which this report is again peppered, and which I believe have little or nothing to do with the facts in the matter of Mr Monshall's complaint. In terms of the content of this report, once again it includes statements and conclusions which appear to be the personal opinion of the writer rather than evidence or established fact*". Additionally, Mr Wong indicated that "*since 2008 Council has taken steps to improve its processes including complaints management and is currently implementing recommendations from your office, many of which are similar to those proposed in this report*". Mr Wong has also asserted his belief that "*Council has already undertaken sufficient action to ensure that the admittedly poor handling of Mr Monshall's complaint could not reoccur*".

Whilst I note the expressed beliefs of Ms Scott and Mr Wong that improvements have been made, it is my opinion that the evidence disclosed by this investigation points to serious continuing concerns about Manly Council's ability to achieve best practice in complaints management if the draft complaints management policy is not significantly improved.

In light of the evidence disclosed by the investigation and taking into account the submissions of Council, Ms Scott and Mr Wong in this regard, I conclude that Council failed to properly investigate Mr Monshall's complaint about the conduct of Ms Spalding and that the actions staff took to deal with Mr Monshall's complaint were poorly implemented.

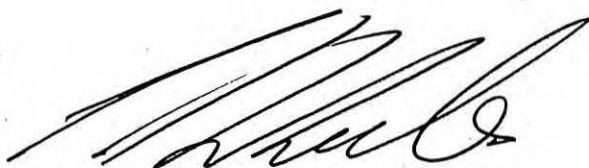
9. Finding

I find that Manly Council failed to properly investigate Mr Monshall's complaints about the conduct of Ms Spalding in accordance with an adopted policy or procedure for dealing with Code of Conduct complaints and in accordance with the principles of good administrative practice and that such conduct was unreasonable, unjust, oppressive or improperly discriminatory in terms of section 26(1)(b) of the *Ombudsman Act 1974*.

10. Recommendations

1. I recommend the Mayor tables this report in full for discussion at the first open session of an ordinary meeting of Council within six weeks of the issuing of this report.
2. I recommend that the elected Council reviews the performance of the General Manager in light of the information in this report.
3. I recommend that the elected Council invites the Division of Local Government, Department of Premier and Cabinet, to provide training to all Councillors regarding the appropriate management of the General Manager.
4. I recommend that the elected Council makes an unreserved written apology to Mr Monshall for the unfair treatment he received from staff during the implementation of the new special purpose committee system, for the dissemination of false statements about his conduct, for the deficient manner in which his complaint about the conduct of the former Deputy General Manager was handled by the General Manager and for the inconvenience, stress and efforts he had to make when dealing with Manly Council. This apology should be provided immediately following the Council meeting referred to in recommendation 10.1. The Council should provide a copy of the apology to the Ombudsman when it is sent to Mr Monshall.
5. I recommend that in the written apology to Mr Monshall the elected Council fully retracts the statements made by Ms Amanda Spalding about the conduct of Mr Monshall in her email of 25 April 2009 and advises Mr Monshall that Mr Wong failed to fully and properly inform Ms Spalding that he had misinterpreted Mr Monshall's email of 22 February 2009 and apologised for it and that Mr Monshall's communications with staff as chair of the Bicycle sub-committee were part of an arrangement sought by Councillors on the Bicycle Committee and approved by the General Manager.
6. I recommend that the elected Council develops and implements written procedures for assessing and investigating complaints alleging misconduct by staff, the General Manager and councillors, that include, but are not limited to, procedures in sections 12 to 14 of the Model Code of Conduct for Local Councils in NSW 2008 and section 5 of Guidelines for the Model Code of Conduct for Local Councils in NSW published by the former Department of Local Government in October 2008. I further recommend that these new written procedures be implemented within three months of the date of the issuing of this report.
7. I recommend that the elected Council conducts training for its members and staff on the new procedures for dealing with complaints alleging misconduct by staff, the General Manager and Councillors. I further recommend that the training be conducted within one month of the implementation of the new written procedures recommended in 10.6.
8. I recommend that the elected Council conducts refresher training for members and staff regarding their obligations to comply with Manly Council's Code of Conduct adopted in September 2009. This training should be conducted by a person not associated with Manly Council and with expertise in Code of Conduct training. I further recommend that the training be conducted within three months of the date of the issuing of this report.
9. I recommend that the elected Council and the senior executive work together to develop and implement a complaints management framework as recommended in the Australian Standard AS ISO 10002-2006 *Customer satisfaction – Guidelines for complaints handling in organisations*, the Ombudsman's *Complaint Handlers Tool Kit 2004* and the *Complaints Management in Councils Practice Note No 9* which is a joint publication of the Division of Local Government, Department of Premier and Cabinet and the NSW Ombudsman. This framework should be finalised within six months of the date of the issuing of this report.

10. I recommend that the elected Council engages a suitably qualified and experienced external policy consultant not associated with Manly Council to revise the draft complaints management published in September 2008 for adoption by the Council within six months of the date of the issuing of this report.



Chris Wheeler

Deputy Ombudsman

25/7/11

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Role Play for Special Purpose Committee Training for Staff

3 and 5 February 2009

Notes for improvisation

Issue	How it used to be done - before	How it will be done in future – after training
Henry as Chair of the Committee	Prabaka as Lead Officer of the Committee	Prabaka as Lead Officer of the Committee
<p>At the start of the meeting of the Chocolate Teapot Committee insufficient members are present to have a quorum – Henry 'OK let's start the meeting. It doesn't matter if there isn't a quorum, you just take notes rather than minutes, and then send them to Council.'</p>	<p>Prabaka 'But there aren't enough Committee members here for there to be a meeting.' 'OK I'll take notes'.</p>	<p>Prabaka – 'There aren't enough Committee members here for a quorum, so the meeting cannot take place as we have waited half an hour since the advertised start time for members to arrive. It is unfair and inequitable to the other members of the Committee to hold a meeting without the majority of the other members of the Committee present. The chairperson needs to decide on a date for the Committee to be reconvened, giving at least 3 days notice to absent members. You will now need to vacate the premises please.'</p>
<p>Henry – 'OK. First item on the agenda – Declaration of Interests, we don't normally bother with that, so let's move on.'</p>	<p>Prabaka – 'But it's important!'</p>	<p>Prabaka – 'As you know all community reps and community organisations, Councillors and staff have all been trained on this important issue through the Council's new Code of Conduct. All Committee members have signed that they accept and will abide by the Code of Conduct for Community Representatives on Special Purpose Committees and the Terms of Reference of the Chocolate Teapot Committee. So everyone accepts</p>

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		<p>that this is an important agenda item, and needs to be taken seriously by all Committees to maintain the credibility of our Committees. There is a lighter declaration of interest requirement for community reps than for Councillors and staff as Council recognises that people often apply to be on Committees because of a non-pecuniary interest, but these must be declared so that Council understands the basis of the advice it is being given.</p>
<p>Henry – 'Now look here Prabaka, this agenda is no good you've left off several items that we want to discuss, so I'll be putting those on the agenda under General Business, and the agenda was late, I only received it 3 days ago, and Mary and Luke never received their copies.'</p>	<p>Prabaka – 'OK. I'm sorry we didn't get the agenda out on time. I was very busy. I'll go and photocopy some for Mary and Luke, or perhaps you could share'</p>	<p>Prabaka – 'As you know, the Council standard is to get committee agendas and reports to committee members at least 3 working days before the meeting, and Kevin, our Secretariat Officer has achieved that standard. I am not clear why Mary and Luke haven't received there copies – Kevin will check the contact details they gave us at the end of the meeting. I have spare copies here of the agenda and a report for each agenda item. You remember that at the first meeting of the Committee we looked at the strategic framework for Chocolate Teapots, and worked out a Work Plan for this year in detail, and what we wanted to achieve over the term of Council. The agenda for this meeting covers the areas that we agreed for this meeting.</p> <p>It is fine for you to raise issues in General Business providing that the recommendations are advisory to Council, and do not seek to commit resources. The meeting must also finish two hours after it starts.'</p>

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<p>Henry – 'These sandwiches are no good. We need more vegetarian, more brown bread, more of everything really. I'll just go and look in the fridge and see what else I can find.'</p>	<p>Prabaka – 'But those sandwiches are for the One Legged Kick Boxing Committee that meets after our meeting. You can't eat those!'</p>	<p>Prabaka – As you know, there is an agreed standard of catering for meetings at different times of the day, and we only get one sandwich and a muffin each.'</p>
<p>Henry – 'What's this report you've written about a Shared Path for cyclists and pedestrians. We just told you to do that at the last meeting – why haven't you done it why have you written a report?'</p>	<p>Prabaka – 'Well the Council did agree the minutes of the last meeting that told us to build a shared path from the Spit Bridge to North Head, and I thought you might like to know a bit more detail about how we are going to do it and how much it is going to cost Council.'</p>	<p>Prabaka – 'As you know, this is an advisory committee and cannot direct staff, or commit Council resources. This report scopes the issue out further in terms of looking at need and demand, how it fits with other projects in our works program, how much it would cost. As officers we think some parts of the shared path are a good idea and fit in with our Active Transport Plan, however, we need to recommend to Council that it considers exploring this further with a view to possibly putting it into the Management Plan for next year.'</p>
<p>Henry – 'Items of General Business, the Council needs to be a leader in electric cars. Let's agree to that and recommend that all Council employees who have Council cars must have electric cars. To be achieved by June. If you won't agree to doing it I'll just have to go to Councillor Attila and she'll make sure you get it done'</p>	<p>Prabaka – 'I haven't got the resources to achieve that.'</p>	<p>Prabaka – 'There are a lot of issues to consider there, and it isn't part of our agreed Work Plan. I suggest that you set up a Working Group from amongst the Committee members to do the research as you obviously know a lot about this, and report back to the Committee meeting after next when the topic will be 'New Technology and Sustainable Transport'.'</p>
<p>Henry – 'Here's another item of General Business that Cecil has just thought of – there are too many signs around the CBD, particularly those irritating 50 kmh signs. Let's get rid of them'</p>	<p>Prabaka – 'OK I'll make that a recommendation to Council then'.</p>	<p>Prabaka – 'Those signs are the property of the RTA and Council cannot remove them. It would be a waste of Council resources to explore this further with RTA. I understand that the CBD Place Manager is looking at the whole issue of signs in the CBD and will be reporting back to the General Manager about what Council can</p>

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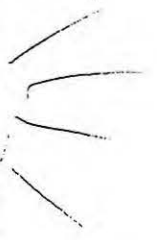
	do about it through influence and persuasion as well as its own powers.	
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Amanda Spalding Projects Status 27 March 2009

Project	Status/issues	Next Action	Date
A. Performance Review/Work Plan	Work Plan to be prepared by AES. Sample provided.	Work plan to be prepared. <i>How to provide copy of his to Cascade</i>	<i>his</i>
B. Integrated Strategic Planning	Coordination Team and Project Team structures agreed with HTW. Project Team meetings held. To finalise work by end of August. Project Plan developed for CSP by June 2009. Legislation slipped – first CSPs due March 2010. New Project Plan approved. Timetable sent to Interdiv. Community Engagement Councillor Working Party held on 26 February 2009	Community engagement strategy to Council We need to plan the consultation process for the Community Strategic Plan. Business Planning underway with new format. Still need long term financial strategy and asset management strategy.	6 April ISSUES PAPERS
C. Community Panel	D&M Research selected. Contract being finalised. Letters going out on Monday. Only using 2 topics. Reports received from consultants.	1. Report to Council? 2. Are we going to use existing panel? What about recommendations from D & M	6 April
D. Stuart Street	New application submitted 191108. Conversation with Ross Woodward 13 January 2009. DLG letter sent to councillors. Results of community engagement considered by Councillor Workshop 16 March. Letter sent to DLG 23 March.	1. In-abeyance.	
E. Special Purpose Committees	Approved by Council 8 December 2008. EOI for community reps closing date 230109. Community reps selected. Letters going out.	1. Lots of teething problems. Secretariat making mistakes. 2. Sustainable Transport Committee to be reorganized to	29 April
F. Addiscombe Road	Deed of release signed with Department of Housing. Land transferred to Council. Letter received from DECC 090309 –	1. Now that Warringah not considered a polluter by DECC – What is our next step?	CONTEST K.S.

Date for review



YOUTH COUNCIL

COMMUNITY ENGAGEMENT

RECRUIT

200 TO BE YOUTH PANEL RESIDENTS OF MANLY.

MEET AGAIN DECC

14-25
YOUTH FORUM
COMMUNITY PANEL
AGE?

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	Warringah not responsible for pollution.		
G. Seaforth TAFE	Site compatibility certificate received. Letters sent to DET. Acknowledgement received. <i>Anthony</i>	1. See Action Sheet from Seaforth Precinct – response being prepared by Paul Christmas. 2. Next steps following Council?	9 March
H. Laneways Strategy	HTW presentation to LMUD 200808. Detailed design on North Steyne footpath widening requested 060808. Sub Committee unanimously chose Choi Rohipa. Presentation to Councillors 1 December 2008.	Staff to prioritise issues for future meetings <i>MR look at priorities.</i>	15 April
I. Energy Australia Lease	Query over terms. Terms of lease discussed with Stephens Clements and Grieve. Report to Henry on issues needing clarification. Response received from EA 200808. Meeting held with EA 271108. Looking at different types of remediation.	Legal documentation to be finalised and signed. Issue over price and delegation? <i>GET PAPER S TO HTW!</i>	
J. Mainstreet Company	Chris Bradley appointed CBD Place Manager. Decorporatisation agreed.	Decorporatise company and establish as committee of Chamber of Commerce. What rules do we want? Company insolvent. Chamber not coming up with the money. ✓	
K. ALGWA		Accompanying Mayor to national Conference. In Adelaide	14-17 April

Amanda Spalding Projects Status 27 March 2009

Project	Status/issues	Next Action	Date
A. Performance Review/Work Plan	Work Plan to be prepared by AES. Sample provided.	Work plan to be prepared.	✓
B. Integrated Strategic Planning	Coordination Team and Project Team structures agreed with HTW. Project Team meetings held. To finalise work by end of August. Project Plan developed for CSP by June 2009. Legislation slipped – first CSPs due March 2010. New Project Plan approved. Timetable sent to Interdiv. Community Engagement Councillor Working Party held on 26 February 2009	Community engagement strategy to Council We need to plan the consultation process for the Community Strategic Plan. Business Planning underway with new format. Still need long term financial strategy and asset management strategy.	6 April Report to Council on - money
C. Community Panel	D&M Research selected. Contract being finalised. Letters going out on Monday. Only using 2 topics. Reports received from consultants.	1. Report to Council? 2. Are we going to use existing panel? What about recommendations from D & M	6 April ✓
D. Stuart Street	New application submitted 191108. Conversation with Ross Woodward 13 January 2009. DLG letter sent to councillors. Results of community engagement considered by Councillor Workshop 16 March. Letter sent to DLG 23 March.	1. In abeyance.	✓ Let E Bill stand
E. Special Purpose Committees	Approved by Council 8 December 2008. EOI for community reps closing date 230109. Community reps selected. Letters going out.	1. Lots of teething problems. Secretariat making mistakes. 2. Sustainable Transport Committee to be reorganized to	✓ 29 April
F. Addiscombe Road	Deed of release signed with Department of Housing. Land transferred to Council. Letter received from DECC 090309 –	1. Now that Warringah not considered a polluter by DECC – What is our next step?	

INTERNAL

NM - Review double check Facts in Johnson

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est

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I. Energy Australia Lease	Query over terms. Terms of lease discussed with Stephens Clements and Grieve. Report to Henry on issues needing clarification. Response received from EA 200808. Meeting held with EA 271108. Looking at different types of remediation.	Legal documentation to be finalised and signed. Issue over price and delegation?	
J. Mainstreet Company	Chris Bradley appointed CBD Place Manager. Decorporatisation agreed.	Decorporatise company and establish as committee of Chamber of Commerce. What rules do we want? Company insolvent. Chamber not coming up with the money.	✓
K. ALGWA		Accompanying Mayor to national Conference In Adelaide	14-17 April

New memorandum -

Rohipa shutter -

Traffic lights -

new def needed
y dec 08

MEMORANDUM



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DATE: Wednesday, 22 July 2009

TO: Henry T Wong

CC: Ian Ellis-Jones

FROM: Amanda Spalding

SUBJECT: Meeting with Councillor Cathy Griffin concerning Special Purpose Committees – 21 July 2009

Henry,

I said I would report back on the meeting with Cllr. Griffin attended by myself and Ian Ellis-Jones on 21 July 2009, with recommendations.

1. Change Management

As you know, we have undertaken considerable training of Committee Lead Officers, and have now trained most of the community representatives on Committees. At the last staff training in June you agreed to meet with the Chairs of Committees to go through the guidelines to Committees as a number of staff have expressed their difficulties and discomfort in working with Councillors who are not 'on the same page' as staff concerning the why and what of the changes to Committees.

I now feel that it is important to involve all Councillors in these matters, not just Chairs, and certainly not just Councillor Griffin.

RECOMMENDATION

A discussion/review Councillor Workshop be held in December 2009 that discusses the why and what of the changes to the Committee structure and procedures, and reviews the progress of the Committees, and the other issues raised in this memo.

2. Status of Special Purpose Committees

Cllr. Griffin questioned the status of the Special Purpose Committees and what is meant by 'auspiced' by the General Manager. Ian has written separately to confirm that the Council's resolution of 8 December 2008 had the effect of Council establishing those Committees that were expressly identified as being under the auspices of Council, and the GM was left to establish those Committees that were expressly identified as being under the auspices of the GM.

RECOMMENDATION

That Cllr. Griffin be informed by the General Manager concerning the establishment of the Committees separately under the auspices of the General Manager and the Council, with a copy to all Councillors and Lead Officers of Committees that also explains the difference (if any) that this makes to how the Committees and Working Groups are run.

3. Membership of Committees and Quorums

Cllr. Griffin raised a number of issues about the membership of Committees and the ability of State Government officers and business people to get to meetings. She suggested that quorums should be amended appropriately. A better solution is to have State Government officers as co-optees to Committees so they are not included in the quorum as it is probably not appropriate for them to be

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members of committees anyway. Her attempt to remove business people from membership of Committees should not be countenanced. We should continue with the current practice of the organisation being the member of the Committee (e.g. the Q Station or the Manly Chamber of Commerce) and being able to send an alternative person if the named representative is not available.

In my opinion it is morally wrong to have a quorum that is less than a majority of a Committee as it allows factions to have undue influence. We should resist reductions of quorums for other Committees.

I thought that we had put a review period into the resolutions of Council concerning the establishment of Special Purpose Committees, but I cannot find it. I therefore propose we have a review either in September, December or February.

RECOMMENDATION

Councillors to be informed that a review of Committees will be undertaken in December 2009, and that review include issues concerning membership of Committees and the proposal to designate State Government officers as co-optees, so they are not counted in the quorum. This review process should include a Councillor Workshop with all Councillors.

4. Minutes from Committees

Cllr. Griffin is of the view that that the draft minutes of a Committee should be approved by the next Committee meeting prior to them being considered by Council. She is aware that this will delay actions being taken, particularly with Committees that meet bi-monthly as the actions will have to wait for another Committee meeting and then await approval by Council, which would take at least three months. Councillor Griffin's view is that the community expectation is that councils work slowly and this delay will not cause problems. I would like to think that the management of Manly Council does not subscribe to this view.

Councillor Griffin would like a flowchart to show the process minutes go through. She said that the community felt there was a conspiracy and that minutes were 'sanitised' in council's internal processes. I explained that there is a process of quality assurance that, for example, checks the consistency of minutes, checks where a resolution of the Committee needs to be a recommendation to Council as an Item for Brief Mention, and whether Committees are exceeding their remits, in which case a General Manager's note needs to be added.

There was a discussion about when a General Manager's Note would be appropriate, and Cllr. Griffin felt that there were occasions where Committees were attempting to exceed their remits where a GM Note to Council would be appropriate, to recommend that Council does not approve a Committee's recommendation. She said that she felt that in the past the GM should have told Council that the Bicycle Committee, for example, was out of line and acting as a lobbying group. She felt that the General Manager should have provided a note that contextualised the issues and indicated that the Bicycle Committee recommendations were not achieving the appropriate balance between bicycle issues and Council policy including traffic matters.

I informed her that the minutes of the Planning and Strategy Committee minutes of 6 July were being revised as they had omitted the General Manager's notes and recommendations. She felt that this was not correct procedure and may raise this issue with you directly or at the next P & S Committee meeting.

I have discovered the problem we are experiencing with the IBM report that under the old system staff were told NOT to bring the General Manager's notes forward into the recommendations, and that is why they are not being picked up in the Council meetings. I have now asked the Secretariat to ensure that General Manager's notes are brought through into the recommendations in future IBM reports.

It is evident to me that there has been a considerable 'white anting' by some Lead Officers who do not take responsibility, undermine Council's internal processes, and blame them on the General Manager and myself. I understand another Chair has asked the Lead Officer to send the minutes to her before they come to me so she can check them. Apparently 'they think that ideas and little details are omitted

and want them included'. I have asked what makes the Chair think that I take them out!! I am reluctant to suggest a 4th staff training session, but the current situation, of staff telling Councillors that senior managers are to blame, rather than explaining the improvements to the process, is unacceptable.

RECOMMENDATION

That the minutes process be discussed with Councillors at the proposed meeting in December, with a view to continuing with the current system of the final draft minutes being sent to the Chair of the Committee for confirmation, and going to the next Council (P & S) meeting for approval, and subsequently being confirmed by the Committee at its next meeting.

5. Other Issues Raised

Cllr. Griffin is of the view that staff have now got control of the agendas, and committee meetings are merely an exercise of disseminating information, not community representatives raising the issues they wish to discuss. I explained to her the recently reconfirmed process for putting reports on to the agenda: of an issue being raised under General Business and discussed about whether the Committee as a whole would like that matter to be discussed at a future meeting, in accordance with the priorities already agreed, in which case a report will be prepared by officers for future consideration.

Cllr. Griffin is of the view that there should not be a report for every agenda item as it uses up staffing resources. I pointed out to her that it is good governance to indicate what is going to be discussed at a meeting so that Committee members can prepare themselves for the meeting.

Cllr. Griffin is also of the view that Committees do not need to work in a strategic framework as they are operational. I pointed out to her the recommendations made by the DLG in the Promoting Better Practice Review report that the Committees were too operational and were overseeing work that would normally be delegated to staff to undertake; and that the role of Advisory Committees; like Councillors, is strategic.

Cllr. Griffin would like to review the Committee terms of reference and agreed with the suggestion that they should include a clause to remove disruptive Committee members.

RECOMMENDATION:

That the Terms of Reference and Guidelines for Advisory Committees be revised and given to Councillors so that they are clear about the processes involved in ensuring the effective use of Council resources in involving the Manly business and local community in advising Council.

I hope that we have an opportunity to discuss my recommendations before I go on leave.

Amanda Spalding
Deputy General Manager
People, Place and Infrastructure
02 9976 1555

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EXTRACT FROM AUGUST 2006 MINUTES OF BIKE COMMITTEE

Following on site inspection of the LATM and Balgowlah Road/Rosebery Street roundabout on 9 August 2006 with Council staff, Steve Calderon and John Inglese, the Committee:

1. *Recommends that the speed limit on Lauderdale should be reduced from 50kph to 40kph (as it is in large sections of Fairlight north of Sydney Road and along much of Balgowlah Road).*
2. *Recommends that any raised reflectors associated with the LATM (and roundabout) are located so as not to provide an obstacle for bicycles and not to encourage motorists to track excessively to the left of medians.*
3. *Endorses the offer to provide a bicycle lane in Lauderdale Street eastbound from the pedestrian refuge at Woods Parade to the refuge at Margaret Street. The lane should start well west of the refuge because the proposed Woods Parade refuge, with its large pedestrian area on the north of the road, creates a squeeze point in an area of fast-moving traffic.*
4. *Endorses the offer to incorporate a 'bike refuge/box' in the planned new median in Lauderdale westbound at Rosedale Street. This is to enable cyclists to pause for oncoming traffic before turning right into Rosedale which is intended as a new link, via Hill Street, to Balgowlah Road. Directional signage should also be installed at Rosedale (prior to full signage when the new route is implemented).*
5. *Endorses the offer to add a dashed line at the western end of the slip lane at Balgowlah Road on approach to the roundabout, but recommends the speed limit through the roundabout be reduced from the present 50kph to 25kph to assist safety.*

PROJECT	WHO	WHEN	STATUS
1. Design of bike lane on downhill section of Darley Rd link, Corso - N Head	NM	8.2.7	Various alternatives were discussed and it was agreed that at the Feb meeting the MBC would make a final determination on its preferred option, and JI to be advised.
2. Signage - shared paths (Panorama/Peacock/Clontarf/Wakehurst/Alan/Hill) subject to the 40% co-funding arrangement	TG	30.6.7	Precincts to be advised/consulted in Feb if possible, but no later than March. All signage/logos to be in place by end of financial year.
3. New shared path from Wakehurst into Dalwood, does not connect with road	TG	30.6.7	AH asked that project be completed before then if possible.
4. Tania Pk - shared path sign erected behind a tree,		Done	Sign has been moved to correct position and redundant pole removed.
5. 25kph limit in Tania Pk, appd by TC and endorsed by precinct not implemented.	JI	ASAP	Minutes to be located and checked. MN to be consulted.
6. Proposed new bike links Smith-Manly Oval-Beach Tania Pk-N Harbour Rosedale-Hill-Balgowlah. Esplanade-LM Beach/Pt	JI	30.6.7	Advised that these would be part of 2007/8, but when it was confirmed that the first 2 require only signage and logos, it was agreed that at least one of these would be targeted for completion this financial year.

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<p>7. Maintenance on sections of Manly - Spit bike route + offshoot to Baringa</p> <ul style="list-style-type: none"> Kenneth Rd - head high trees and overgrown shrubs now block up to a third of the path in parts and need to be trimmed up to Quirk. The current (faded) stop line at pool exit is in the wrong place and needs to be relocated joining the 2 stop signs Burnt Creek Deviation - path near bridge is always strewn with wood chips and needs to be cleaned on a (say) monthly basis. Cleaning machine operator does not go beyond West Manly Pk Also, on the right hand side of the path, near the overpass a half a dozen small trees 	<p>TG(?)</p> <p>JI</p>	<p>5.3.7</p> <p>5.3.7</p>	<p>Advised that \$5000 budget item on maintenance had been spent.</p> <p>Golf Club to be directed to trim dangerous vegetation on Kenneth</p> <p>Agreed</p> <p>The issues in this section unresolved</p>
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<p>have somehow managed to self seed. If they are not removed completely, the roots will crack the path over time.</p> <ul style="list-style-type: none"> Lagoon Pk, faded yellow hatched no parking area near Pittwater Rd needs repaint. 	JI	5.3.7	Agreed
<p>8. Bike Rack locations</p> <ul style="list-style-type: none"> Little Manly) N Harbour) 40 Baskets) Opposite 'Zinc' on beach Adjacent Honolulu Grill Removal of Telstra bars 		5.3.7 5.3.7 30.6.7 5.3.7 5.3.7 ?	<p>Approved - but location check with Energy Australia required.</p> <p>Approved</p> <p>Sensitive issue - 2/3 hoops to be put in later in the financial year.</p> <p>Endorsed in principle - further checks required before implemented</p> <p>Will depend on Telstra response</p>
<p>10. RTA Funding submission</p>	JI	ASAP	<p>Agreed that urgent approach be made to RTA per Kaye Russell on the TC, to see if Oct 06 deadline can be extended, otherwise Council will receive zero funding for 2007/8.</p>

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<p>11. Lauderdale Ave LATM</p> <ul style="list-style-type: none"> • Replacement of bike unfriendly grates • Provision of bike lane from Woods - Margaret • Provision of refuge box at rt turn into Rosedale • Provision of chamfered edges and reflectors on refuge islands 	<p>JI</p> <p>TG</p>	<p>Review 5.3.7</p> <p>30.6.7</p>	<p>All pits needing replacement will have bike friendly design. AH asked TG to develop a longer term plan for their progressive replacement</p> <p>Will be provided once work at Margaret is complete.</p> <p>Possible that redesign at intersection may achieve outcome without need for a refuge, but commitment given to reassess, once work is complete.</p> <p>Chamfered edges cannot be provided on outside for safety reasons, but all refuges with bike slip lane have/will be chamfered. Reflectors are planned, but there is a backlog (eg Balgowlah LATM). AH asked that the program be completed by end of year</p>
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Christine Brunt

From: Norman Monshall [nrm@aapt.net.au]
 Sent: Tuesday, 31 October 2006 13:57
 To: Anthony Hewton
 Cc: John Inglese; Tony Goninon; Sarah Weate; Brad Pedersen; Jon Gunn - home; Jon Gunn - work; Judy Lambert; Michael McGrath; Peter Hopper; Richard Green; Stephen Bowhill; Vince Todd
 Subject: BIKE SUB COMMITTEE MEETING WITH COUNCIL
 Importance: High

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Anthony

Thanks for arranging for:

- Manly to host the Regional Pedestrian and Bike Committee meeting at 2pm on 16 November.
- The Bike Sub-Committee to meet with you and Council staff at 2 pm on 2 November,

As agreed, here are the issues/outcomes (with copies to other participants) following the 'saddle' audit conducted by Brad, Sarah and me recently. Suggest these matters constitute our agenda items on Thursday. **Incidentally, are you located in the main Council building?**

1. Victoria Pde is looking terrific and we were pleased with the favourable MD publicity (even though the BC's long term involvement went unrecognised). Suggested minor improvements i) safety bars on the refuge on Victoria opposite South Steyne, plus signage pointing cyclists that way. (Photo 111) ii) cars parked along Victoria between Darley & the beach do so 'front to kerb' to minimize the amount they over-hang the new bike path and iii) directional signs to the Wharf/Beach as appropriate, at each end.
2. New signs on Marine Pde from S Steyne to Fairy Bower are those recommended by the RTA and a huge improvement on the 'yellow perils' disliked by the public, that they replace. Could we have the same signage from Fairy bower to Shelley Beach? Three or four evenly spaced double sets. on the non ocean side of the path where possible, will suffice.
3. The new shared signage (on path and on posts) on Ocean Beach between the Corso and S Steyne appears to be operating smoothly and without controversy. Wonder why the same proposed treatment along the (wider) full length of East and West Esplanade, has caused such angst.
4. None of the new shared paths (Panorama/Peacock/Clontarf/Wakehurst/Alan/Hill) subject to the 40% co-funding arrangement, are so signposted, although completed for several months. As you know until such signage is installed, they legally can't be used by cyclists, other than children or 'family' groups. We would also need to establish a protocol ensuring that future jointly funded shared paths, incorporate appropriate signage as an **integral** part of the project. In this context the new shared path from Wakehurst into Dalwood is most welcome, but rather than terminating in gravel as it does now, can the path be extended for a few metres so that it connects smoothly with the road?
5. This one will amuse. The missing shared path sign at Tania Pk (east side) has at last been provided. However, someone made the bizarre decision not to simply put the new sign on the **existing** pole (as we requested) but to drill into solid rock, erect a second pole (more clutter) and then carefully position it **behind** a tree. Ye gods! You can see how successful the obscured sign has been (photo 110) in discouraging cars from parking on the bike lane... Can we please have the new post removed and the shared sign moved to the old properly located/sighted pole ASAP? Also the Traffic Committee approved a reduction of the speed limit from 40kph to 25kph. This was also endorsed by the BC and local Precinct, but hasn't occurred yet.
6. We were advised that 3 proposed new bike routes (Tania - N Harbour; Smith - Manly Oval and Rosedale - Hill) were to be 'prioritised'. These are all important links which provide maximum benefit for low cost, as they involve essentially only signage, logos and perhaps

the odd bike lane. We would like to discuss a practical timetable for their introduction this financial year.

7. Bike Racks - the original bike rack program (as advised to the Committee - not the Committee's 'wish list') has been reduced by approximately 50% for reasons never properly explained and we have not been advised the results of 'further investigations' at several sites. Also, we were assured that racks would be an integral part of the upgrade of Little Manly Beach. The upgrade appears to have been completed without any racks. Similarly there is a large concrete slab next to the playground in N Harbour Reserve and another slab at 40 Baskets, but no racks in place on either. **Could you please bring all original and subsequent amended copies of the bike rack installation program (Excel sheets prepared by Shan I believe) to the meeting please, so we can track the deletions and reasons?**
8. We have seen further changes to the Totem development proposal, centred on car parking and accordingly seek advice, as to what point bike access and facilities will be considered and integrated with the consent process. The reason for our concern at this stage, is that we received assurances about ramps, easements, shared paths and easy access to the city bus etc, as part of the Clontarf St/Wakehurst housing redevelopment. The actual outcome was steps between streets, wall to wall subdivisions and a circuitous route to the bus stop. Once bitten...
9. We were advised that safety concerns expressed about cycling through Seaforth shopping centre would be considered and tabled at the Traffic Committee 'if warranted'. What is the outcome of this review pls?
10. We appreciated the 'walkthrough' on the Fairlight LATM and would appreciate an advice/update on each of the associated recommendations made by the BC (see attached Word doc)
11. The Balgowlah roundabout appears to be operating smoothly and successfully, but we remain very concerned about the single car space (photo 099) which is a potential hazard. With the re-routing of the access ramp slightly north (now where the yellow line is) we previously recommended this parking spot be deleted, to give peds/cyclists a clear sight line before crossing. Clearly the 4WD shown significantly obscures the view and a truck would be even worse. We believe people's safety far outweighs the benefit of one car space and its removal, particularly as it is adjacent to a wide driveway, would provide a much improved sight line.
12. What RTA dollar for dollar matched funding has Council sought/received for 2006/7? What project(s) have been identified for next financial year and does the BC need to make recommendations.
13. **General Maintenance** - usually the main Manly - Seaforth bike route is given a face lift before Bike Day (signs/logos/linemarking renewed where necessary. paths cleaned and vegetation trimmed). It didn't happen this year for obvious reasons, so the following need to be addressed.
 - o Kenneth Rd - head high trees and overgrown shrubs now block up to a third of the path in parts and need to be trimmed up to Quirk (photo 117) and the dangerous fence (photo 116) repaired. The current (faded) stop line from the pool (photo 115) is in the wrong place because if motorists stop there they cannot see peds/cyclists approaching from the right. Line needs to be repainted joining the 2 stop signs. NB There is a separate maintenance item in the BC's budget, but much of the overhanging veg is adjacent to the golf course, and in the past they have been required to make the path safe.
 - o Burnt Creek Deviation - path near bridge is always strewn with wood chips and needs to be cleaned on a (say) monthly basis (photo 118). Also, in the background on the right hand side of the path, you'll see a half a dozen small trees have somehow managed to self seed. If they are not removed completely, the roots will crack the path over time.
 - o General - from Lagoon Pk, where the yellow hatched (no parking) area near Pittwater Rd needs a repaint, through to Baringa Rd, various logos and line markings need renewing and several graffitied signs need cleaning (eg photos 107/109).

Finally, it's not a bike issue as such, but we noticed that the sign at Shelly (photo 112) looks pretty silly, given that it should have been removed almost 8 months ago.

Anthony, we understand that Council has many priorities so we don't expect 'tomorrow' outcomes, but what we are looking for is an agreed and achievable implementation program over the next 8 months.

Cheers

30/04/2010

Norman Monshall

159 Seaforth Crescent
Seaforth
NSW 2092

APPENDIX 7

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From: Norman Monshall [nrm@aapt.net.au]
Sent: Wednesday, 7 February 2007 14:27
To: Manly Council
Cc: Anthony Hewton; John Inglese; Tony Goninon; Vince Todd; Stephen Bowhill; Sarah Weate; Richard Green; Peter Hopper; Michael McGrath; Judy Lambert; Jon Gunn - work; Jon Gunn - home; Brad Pedersen; Angelika; Richard Green
Subject: MANLY BIKE SUB-COMMITTEE MEETING WITH COUNCIL 5.2.7

Anthony

Thanks for chairing Monday's wide ranging meeting. I think we've got the format about right, so that we now have an agreed list of measurable outcomes. Future meetings should become more routine and shorter, because we do appreciate the time that you, John and Tony gave us.

My notes and memory may be imperfect, so if there is anything inaccurate on the attached summary I'm sure you'll let me know. In fact could you help on the following pls?

- Item 7, first dot point - I'm not sure who said they would ask the golf course to trim the overhanging vegetation on its section of Kenneth, given the complication that section is in Warringah. I recall Tony saying they had done some work, but when I cycled home, if they had done any it was minor, because it is now much worse than when it was first raised at the November meeting. Whatever LGA it's in, it's even more of a safety hazard, so major trimming to the fence line is required. I also noticed that the previously repaired broken fence between the pool and Addiscombe, has again become detached and the wiring is hanging over the path. Also needs **urgent** repair.
- Item 7, third dot point - I don't recall any resolution on whether the cleaning machine would increase its range or whether the trees would be removed, or who would follow them up!
- Item 8, sixth dot point - the Telstra bars have been an issue for several years, but while I recall Tony talking about the need to contact Telstra, I'm not sure if it's already been done, or if not who's doing it.

The most crucial unresolved matter we discussed was Item 10 - RTA co-funding and that the deadline for funding submissions had expired. Obviously, when informed, the BC was most concerned that it had not been advised of the timeline. The Committee would have had no difficulty in developing a proposal (the obvious major one being the E-W Link) but given the NSW Planning application, it was logical to wait on that decision before proceeding.

We therefore ask that the matter be raised as a matter of considerable urgency with the RTA to see if a late application can be considered. We have a strong argument in that the decision of another govt agency was critical to our project planning - and their final decision was delayed several times. We don't know the RTA-Council process, but should Council have been asked by the RTA to submit a funding proposal and if so was such a formal approach made? If any extension is not granted Manly will receive no RTA funding for bike in 2007/8!

The second matter relates to our specific maintenance budget of \$5000, which we were told had already been expended. We accepted this at the time, but in discussion later we recalled that the annual maintenance of our Bike Day route (involving repairs to root damage, repainting of dotted lines and logos, replacement/cleaning of graffitied signage and simple surface cleaning) did not happen in September last year. Indeed the \$5000 was intended to be used for just that task. Even prior to Bike Weeks there was an annual review and maintenance of the main off-road bike routes.

Given that we cannot recall requesting any other maintenance work (except for replacing a few signs along Marine Parade) we are struggling to see where the money has gone. The only project we can identify is the ocean beach path upgrade, but you'll recall that was a 2005/6 budget item.

30/04/2010

The GM gave a personal assurance both at our Committee Meeting and to Council, that although the 2006/7 bike infrastructure budget had been cut, none of would be used to fund unfinished 2005/6 projects. Judy and Brad were instrumental in securing this guarantee.

We would appreciate advice on how this \$5000 has been expended.

Cheers

Norman Monshall

159 Seaforth Crescent
Seaforth
NSW 2092

9948 5084 or 0417 797 402

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Manly Council Report for Review Matters:

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Matter	Mr Norman Monshall (NM) – Request for Retraction & Apology on matters relating to the Sustainable Transport Committee
Name of Person conducting review:	Barbara Scott (BS) - Coordinator Customer Support Services
Date:	10 th June 2009
Resources used and time taken to conduct investigation:	Emails and conversations with all parties concerned
Sources of information and investigation methodology used:	Emails and conversations with all parties concerned
Relevant legislation and/or Council policies applicable:	Council's Code of Conduct for Committees
Chronology:	<ul style="list-style-type: none"> • Matter referred to BS by General Manager (GM) 11 May 09 • BS called NM to clarify point raised 11 May 09 • BS met with MS Spalding (AS) 13 May 09 to clarify her points, AS handed over her report/response at that meeting. Same report handed to the GM several days later • BS emailed letter of apology to NM 19 May 09 please refer to Attachment 1 • NM called BS 20 May 09 to discuss Council's letter • Email from NM to BS 20 May 09 re Council's response, acknowledged 22 May 09 • BS email to NM 28 May 09 advising referring matter to GM for review • Continuing email between GM & NM • GM emailed NM advising he will review the matter – "if you feel the need to refer the matter elsewhere, ... please do so" • Meeting with GM, BS & Melinda Aitkenhead, Manager Corporate Governance wherein GM asked for report on where we are up to.
Conclusion or findings:	It is surmised that NM has been acting – perhaps unintentionally – in breach of the Code of Conduct specifically in relation to point "10.8 Use of certain council information"
Basis for findings:	<p>To the 3 points on which NM seeks retraction and apology, please refer to Attachment 2</p> <ul style="list-style-type: none"> • NM point 1 – See AS point C • NM point 2 – See AS point B • NM point 3 – See AS point A

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Recommendations to overcome any actual or potential shortcomings or problems identified:

Based on content of AS's report/response of May 2009 and further discernment, it appears difficult for Council to retract and apologise for the 2 outstanding items that have not been addressed by AS, being in relation to directing staff and harvesting emails. BS suggested this to the GM and referred the matter to him for review and consideration. NM expresses frustration and advises he may take the matter to the NSW Ombudsman if a full apology is not forthcoming. GM has advised NM that he was within rights to take that course of action if he so desired.

NM expects response by COB Friday 13th June or he will take the matter to the NSW Ombudsman.

Governance Recommendation:

As per the NSW Ombudsman "Apologies - A Practical Guide" Council would only be able to offer NS a full apology if Council is willing to accept responsibility or fault for the action or inaction which caused harm. An apology that does not include such acceptance or admission has the potential to do more harm than good.

It is recommended that the General Manager take no further action, allowing matter to be reviewed by NSW Ombudsman if NM wishes to do so.

It is further recommended that the General Manager write to NM advising that his review has been conducted and that Council sees no basis for a further apology.

As part of the response Council should make further training available to Mr Monshall to ensure that he has a thorough understanding on the Code of Conduct and its purpose.