

Code of Conduct - Preliminary Report - matter 2

Originating Officer Manager Corporate Governance - Kate McKenzie

Corporate Manager Manager Corporate Governance - Kate McKenzie

General Manager Chief Executive Officer - Adrian Skull

Report Reference GC180911F08

Confidential



Confidential Motion

That:

1. Pursuant to section 90(2) and (3)(a) of the Local Government Act 1999 the Council orders that all person present, with the exception of the following, Adrian Skull, Chief Executive Officer, Kate McKenzie, Manager Corporate Governance and Victoria Moritz, Acting Governance Quality Coordinator, be excluded from the meeting where the Council receive and consider information pertaining to the item Code of Conduct, upon the basis it is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential on the grounds that the report contains information relating to personnel matters.

REPORT OBJECTIVE

The purpose of this report is to present the preliminary report with supporting documentation regarding the Code of Conduct Complaint for Councillor Kerry for the allegation of workplace bullying.

EXECUTIVE SUMMARY

The Code of Conduct complaint alleges that Councillor Kerry has breached sections 2.14 and 3.5 of the Code of Conduct for Council Members which states:

- 2.11 Not bully or harass Council Staff and,
- 2.14 that Elected Members must refrain from directing or influencing Council staff in respect to the way in which these employees perform their duties.

The complaint alleges that Councillor Kerry has bullied and threatened a member of staff. Council considered this matter at its meeting of 24 July 2018 and determined to appoint an independent investigator. EMA Consulting were appointed in accordance with Council's resolution. Various statements were taken and a Preliminary Report has been prepared (**Appendix 1**). EMA Consulting have formed the view that Councillor Kerry has engaged in inappropriate and unreasonable behaviour that breaches his obligations under Parts 2 and 3 of the Code of Conduct. They have also found that in light of the repeated and targeted nature of the unreasonable conduct, it meets the definition of workplace bullying.

Council is now required to:

- Review the Preliminary Report and the supporting documentation.

- Determine if a breach of Part 2 and/or 3 the Code of conduct has occurred.
- Determine any relevant sanctions (if applicable).
- Request EMA Consulting to make any changes that may be required to the Preliminary Report.
- If a finding is made, determine if the matter is to be referred to the next public meeting of Council or refer the matter to the Ombudsman.

RECOMMENDATION

That Council:

1. **Determines that Councillor Kerry has breached section(s) XXX of the Code of Conduct for Council Members.**
2. **Determines the following actions be applied in accordance with section 5 of the Elected Member Code of Conduct Procedure for Investigating Complaints:**
 - 1 x
 - 2 x
3. **Provides the following feedback regarding the Preliminary Report to EMA consulting**
 - 1 x
 - 2 x
4. **Refers the Final Report and recommendations to the next public meeting of the Council or Refers the matter to the Ombudsman for review and recommendation (if a breach of Part 3 has been determined).**
5. **In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, any attachment to this report and the minutes arising from this report having been considered in confidence under Section 90(2) and (3)(a) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council meeting in December 2018.**

GENERAL ANALYSIS

A copy of the Code of Conduct for Council Members (the Code) is attached as **Appendix 2**. The Elected Member Code of Conduct Procedure for Investigating Complaints (the Procedure) is attached as **Appendix 3**. The Procedure outlines the various options for Council to investigate Code of Conduct complaints. In accordance with section 4.2 of the Procedure, Council referred this matter to an independent person for investigation. EMA Consulting were appointed to investigate the matter. A Preliminary Report has been drafted (**Appendix 1**). This Preliminary Report has been provided to Councillor Kerry for review and comment prior to being presented to Council for consideration.

Based on the information/evidence within the Preliminary Report, Council will need to determine if a breach of Part 2 and/or 3 of the Code has occurred and then determine the next steps.

PRELIMINARY REPORT

The Preliminary Report determines Councillor Kerry has engaged in inappropriate a unreasonable behaviour that breaches his obligations as an Elected Member. Specifically his obligations under safety legislation and his specific obligations under Part 2 and 3 of the Code. The Preliminary Report concludes that Councillor

Kerry breached several sections of the Code including 2.2, 2.3, 2.6, 2.11, 2.14, 3.1, 3.2, and 3.5.

There are also a number of matters raised within the report that Council should consider and determine if any further investigation is warranted:

Matter 1

Within the General Comments the investigator has stated *"A central issue to these matters is Councillor Kerry belief that he is being 'gagged', 'censored' or 'silenced by Council (either via [REDACTED], the Mayor or the City of Marion generally). Whether this belief is based on reasonable foundation is pivotal to the findings of whether certain conduct was or was not unreasonable. This matter ought to be further investigated before any findings are confirmed and/or acted upon. This can be done by verifying whether Councillor Kerry was (or reasonably ought to have been) aware of the Council's requirement for what can and cannot be published in City Limits and what authority of Elected Members to speak to the media (including on what matters, and how such discussion, should take place".*

In response, Council has a City Limits Policy. This Policy was considered by Council on the 23 May 2017.

Section 6 of the Policy outline Elected Member contributions to City Limits. The minutes of the meeting confirm that Councillor Kerry was present and voted on the matter. No division was called so the minutes do not reflect how Councillor Kerry voted. The minutes state the following:

Moved Councillor Hull, Seconded Councillor Prior to amend the motion that Council:

1. Adopt Option 1A for a 24- page, A4 sized City Limits distributed three times per year, at an annual estimated cost of \$80,100
2. Includes one column from the Mayor in each edition and a column from 6 Ward Councillors (one from each ward) in each edition of City Limits.
3. Updates the City Limits Publications Policy (attached as Appendix A) in line with the new format of the magazine and the frequency of Elected Member columns
4. Introduce the new format City Limits from edition 55 scheduled for Distribution in August 2017.

In response to media training, the section 58(1)(c) of the *Local Government Act 1999* defines the Mayor as the principal spokes person, however this does not preclude other members from speaking to the media.

When speaking to the media, all Elected Members must comply with the Code of Conduct obligations. At the beginning of the Council Term, Elected Members received training on the requirements of the Code and Media Training. In addition to this, Councillor Kerry attended two day training seminar for new Elected Members that covered roles and responsibilities and media.

Matter 2

It has been stated by Councillor Kerry that the was complaint vexatious. The investigator has found that there is no weight to a finding that the complaint was vexatious however, they have raised that if any sections of Councillor Kerry's statement give rise to a concern to Council, it is recommended that those matters be separately investigated. Council will need to give consideration to this when reviewing Councillor Kerry's statement, however this is out scope for this investigation.

Matter 3

Councillor Kerry alleges that he has been bullied by a staff member, however the investigator makes no

finding of bullying of Councillor Kerry by staff. Councillor Kerry has made a formal complaint on Wednesday, 5 September 2018. The matter will be investigated by Council's Human Resources Department in line with organisational procedure. It will not be a matter before Council as it would be an employee related matter for which Council has no authority to determine.

Work Health and Safety Obligations

If Council determines that Councillor Kerry has breached the Code and undertaken repeated and targeted unreasonable conduct with staff, Council has an obligation to ensure any future risk is mitigated. This may be that Councillor Kerry's access to staff is limited to the Chief Executive Officer and the Manager Corporate Governance for a period of time.

Next Steps

Council will need to determine the next cause of events.

- Option 1 - Determine a breach of the Code has occurred and determine what action to take in accordance with section 5 of the Procedure. There are a number of recommendation within section 2.3 of the Preliminary Report for consideration.
- Option 2 - Determine a breach of the Code has occurred and refer the matter to the Ombudsman for review and recommendations. The Code states that an alleged breach of the code 'may' be referred to the Ombudsman.

If Council determines option 1, the final report and supporting documentation should be referred to the next public meeting of Council.

If Council determines option 2, the report and supporting documentation will be referred to the Ombudsman. Please note that the report and findings should not be released and referred to a public meeting until the Ombudsman has finalised their review. Sections 263b and 264 of the Local Government Act 1999 cannot be enacted without an Ombudsman finding (refer to sections below)

263B—Outcome of Ombudsman investigation

(1) The recommendations that may be made by the Ombudsman under the Ombudsman Act 1972 on the completion of an investigation of the complaint include that the council

- (a) reprimand the member (including by means of a public statement); or*
(b) require the member to attend a specified course of training or instruction, to issue an apology in a particular form or to take other steps; or
(c) require the member to reimburse the council a specified amount; or
(d) ensure that a complaint is lodged against the member in the District Court.

(2) If a member of a council fails to comply with a requirement of the council of a kind referred to in subsection (1) made in accordance with the recommendation of the Ombudsman, the member will be taken to have failed to comply with Chapter 5 Part 4 and the council is to ensure that a complaint is lodged against the member in the District Court.

(3) A council is taken to have the power to act according to the Ombudsman's recommendations.

264—Complaint lodged in District Court

(1) A complaint setting out the matters that are alleged to constitute the grounds for complaint against a member of a council under this Part may be lodged with the District Court by—

- (a) a person authorised in writing by the Minister or the council for the purposes of this section; or*
(b) the chief executive officer of the council.

(2) However, a person referred to in subsection (1)(a) or (b) may not lodge a complaint unless the matter has been investigated by the Ombudsman or the Independent Commissioner Against Corruption.

(3) An apparently genuine document purporting to be an authorisation under subsection (1)(a) will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof that the authorisation has been given.

(4) The complaint must be lodged within a time prescribed by the rules of court.

Attachment

#	Attachment	Type
1	Appendix 1 - Investigation Report	PDF File
2	Appendix 2 - EM Code of Conduct	PDF File
3	Appendix 3 - Procedure-for-investigation-complaints	PDF File



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4 September 2018

Ms Kate McKenzie
City of Marion
PO Box 21
Oaklands Park SA 5046

By Email: Kate.McKenzie@marion.sa.gov.au

Dear Kate,

Investigation Report – Councillor Nick Kerry

In accordance with the instruction of the City of Marion ("Council"), I attach the following report of my findings regarding the issues raised by Mayor Kris Hanna (on behalf of employee [REDACTED]) about Councillor Nick Kerry.

Instructions

We were instructed to conduct an investigation and make factual findings as to whether certain events did or did not occur, as well as findings as to whether the behaviour by Cr Kerry constitutes bullying or otherwise inappropriate behaviour. You also requested preliminary views in respect of whether there is a basis for the Council to take action against Cr Kerry in respect of any identified inappropriate behaviour. The report is limited to these matters only. We are not instructed to provide advice or recommendations in respect of specific outcomes nor options to assist the parties to resolve the matter.

Legislative Framework

Work Health and Safety

The *Work Health and Safety Act 2012* (SA) ("WHS Act") provides an active requirement that a person conducting a business or undertaking (eg Council) and officers of the organisation (eg the CEO, senior management, and Elected Members) must ensure, so far as is reasonably practicable, the health and safety of workers which includes:

- eliminating risks to health and safety; and
- if it is not reasonably practicable to eliminate the risks, minimising those risks as far as is as reasonably practicable.

This obligation applies to the extent to which a person has the capacity to influence and control the matter. This also includes the provision and maintenance of a work environment without risks to health and safety of any workers. 'Workers' (for the purpose of the WHS jurisdiction) includes but is not limited to Council employees, contractors, sub-contractors, and volunteers.

Where the investigation concludes that there is potentially a hazard to the health and safety of any persons, the Council must take all reasonable steps to eliminate or minimise the risk. This may include taking steps to make sure that workers comply with their obligations to ensure that their actions or omissions do not adversely affect the health and safety of themselves or other persons.

Once you have determined the outcome(s) to the investigation and taken such actions, you will need to confirm with any affected parties of the following:

- the steps to be taken by the Council to deal with identified safety risks;
- what individuals can do and who to contact in the event that there are reoccurrences; and
- the support mechanisms available to workers.

Stress

In addition to the above risks to health and safety, the Council may be exposed to claims for stress from workers under the *Return to Work Act 2014* (SA) ("**RTW Act**"). Section 7 of the RTW Act states that a disability consisting of an illness or disorder of the mind (eg a stress claim) is compensable if and only if:

- the employment was the significant contributing cause of the disability; and
- the disability did not arise wholly or predominantly from reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment.

The test to satisfy a stress claim is relatively high (compared to a non-psychiatric injury) in that the worker needs to establish that employment was 'the significant contributing cause' and not 'a significant contributing cause' of the disability.

Other Considerations

In addition to the above, the alleged conduct should be assessed against the relevant obligations that apply to Elected Members.

Our findings should be considered in the context of this legislative framework.

If you have any further questions please do not hesitate to contact me.

Yours sincerely,

Ming-Lyn Hii
Consultant

Enclosure – Investigation Report

INVESTIGATION REPORT

1. SUMMARY OF INVESTIGATION

1.1 Purpose and Background

In accordance with the Council's instruction on 1 August 2018, I confirm that I have conducted an independent investigation into matter raised by Mayor Kris Hanna (on behalf of employee [REDACTED]) about Councillor Nick Kerry. This report provides a summary of the key factual findings from the investigation as to whether certain events did or did not occur on the balance of probabilities and findings as to whether the behaviour constitutes bullying or otherwise inappropriate behaviour. The report also makes a preliminary view in relation to the general outcomes arising from the investigation that are available to the Council to address the issues.

As instructed, I have not provided advice or recommendations in relation to specific outcomes or options to assist the parties to resolve the matter, as this is beyond your instructions.

1.2 Executive Summary

This report finds that Cr Kerry has engaged in inappropriate and unreasonable behaviour that breaches his obligations as a Councillor; being his obligations under safety legislation and his specific obligations under Parts 2 and 3 of the Code of Conduct. In light of the repeated and targeted nature of the unreasonable conduct, it meets the definition of workplace bullying.

1.3 Scope and Process

I confirm that the following persons agreed to participate in the investigation process by attending an interview and providing a witness statement:

[REDACTED]	[REDACTED]
5. Kris Hanna	Mayor
6. Nick Kerry*	Elected Member

Copies of the witness statements are provided with this report.

* Please note that the statement of Nick Kerry was provided to the witness on 23 August 2018 for review/signing and has not yet been returned. If the statement contains any material changes if/when it is returned, this report will need to be reviewed against any such changes.

I interviewed [REDACTED] first to obtain the relevant details and factual background. I then interviewed the relevant persons who were identified as having (or potentially having) direct knowledge of the relevant events. On your instruction this was limited to only the persons considered necessary to corroborate certain events or provide supporting information. For example, only one person was interviewed from the [REDACTED] team, whereas we are aware that further team members (potentially all of them) were witness to a particular event and could provide further information. It is open to the Council to obtain statements from these persons if it wishes to do so, as this would lend weight to the findings.

I interviewed Cr Kerry last in order to obtain his view on the events raised.

2. SUMMARY OF EVIDENCE

The following is a summary of the witness interviews and an assessment of how their evidence was considered and other factors that were taken into account.

██████████

██████████ presented genuinely at interview. He was able to recall specific details of the events in question, and also provided evidence which supported his version of events including emails, photos, and contemporaneous notes. He spoke candidly about his recollection of particular events and about the impact that the behaviour had on his physical and psychological wellbeing. His evidence was credible.

██████████

██████████ presented genuinely at interview. He was able to recall specific details of events where he was involved. There is nothing to suggest that his evidence is not credible and accordingly I have treated it as reliable.

██████████

██████████ presented genuinely at interview. He was able to recall specific details of events to an extent. His direct involvement is limited however, he provided evidence of a contemporaneous interaction with ██████████ immediately after ██████████ experienced inappropriate behaviour by Cr Kerry, which supports that the impact of the behaviour on ██████████ was genuine. His evidence is also useful to provide a balanced view of the relevant background. There is nothing to suggest that his evidence is not credible and accordingly I have treated it as reliable.

██████████

██████████ was interviewed by phone. His evidence goes to the relevant factual background as his direct involvement in the alleged bullying behaviour was limited. His evidence was presented clearly and objectively, and accordingly I have treated it as reliable. The balanced nature of his evidence is also informative where the reliability or credibility of other witnesses may come into question.

Kris Hanna

Mayor Hanna was interviewed by phone. He was able to recall specific details of events to a reasonable extent. There is nothing to suggest that his evidence is not credible. I treat Mayor Hanna's evidence as generally reliable for this reason however, given he is implicated in potential wrongdoing it is appropriate that his evidence is treated with a degree of caution.

Nick Kerry

Cr Kerry was guarded at interview however, this is not unusual given he is implicated in potential wrongdoing and therefore I do not take this into account in terms of the credibility of his evidence. Cr Kerry spoke openly and in detail about his recall of the specific events that he was asked about. His recall was limited where it related to interactions or specific conversations with ██████████. Cr Kerry's evidence is not factually reliable as an accurate account of specific events in that regard (for example, where Cr Kerry could not recall a particular event or conversation, that fact has not been relied upon as evidence that the event or conversation did not take place). Cr Kerry was able to specifically and clearly recall how he felt at the time of certain events or conversations, as well as his motivation for taking certain actions or making certain comments. This has been relied upon to make factual determinations as to whether certain conduct occurred on the balance of probabilities. Cr Kerry has a vested interest in the findings of this investigation and for that reason I treat his evidence with a degree of caution.

3. ASSESSMENT OF ISSUES

2.1 Findings of Fact (Whether the events occurred or not)

The assessment of the evidence is attached at **Appendix 1**, and my findings about which events did occur are listed below by reference to the numbered issues in Appendix 1. Where a matter or event is not referred to, it is either not found to have occurred on the balance of probabilities, or it may have occurred but is not relevant to the scope of this report.

Matters that are relevant factual background:

1	On 5 October 2017, Cr Kerry stood very closely behind Mayor Hanna during Mayor Hanna's media interview. Cr Kerry repeatedly muttered disapproving comments which included <i>'Ask about the corruption, ask about the corruption'</i> in an erratic manner. █████ asked him to move away. █████ watched Cr Kerry speak to a journalist.
2	For the City Limits issue in September 2017, █████ tried to contact Cr Kerry in respect to amending his article to comply with Council guidelines, but they did not receive a response by the deadline. The article was published in █████ amended form.
4	For the City Limits issue in February/March 2018, █████ tried to contact Cr Kerry in respect to amending his article to comply with Council guidelines, but they did not receive a response by the deadline. █████ also attempted to contact Cr Kerry. The article was published in █████ amended form.
5	In June 2018, Cr Kerry submitted Questions on Notice to █████ in relation to what he identified as 'censorship' of his City Limits articles. █████ emailed and phoned Cr Kerry in order to give him the opportunity to see the responses before publication as a courtesy to determine if he was comfortable to proceed with the questions. This was on the instruction of █████

Factual matters that constitute potentially inappropriate behaviour by Cr Kerry:

3	At the end of a Council meeting around September 2017 (after the amended article was published in City Limits), Cr Kerry approached █████ and made comments along the lines of, <i>"You're trying to gag me"</i> a few times, and <i>"I won't be silenced"</i> and <i>"You are being rude, your actions will be brought to the CEO who will deal with you"</i> . He stood over █████ and spoke with a raised voice whilst pointing at him.
6	In June 2018, in response to █████ correspondence about the proposed responses to the Questions on Notice, Cr Kerry was rude and defensive and repeatedly asked, <i>"What are you saying, what are you saying"</i> . His tone was confronting.
7	On 3 July 2018, upon exiting an Infrastructure and Strategy meeting, Cr Kerry walked past █████ without saying hello. About 10-15 seconds later, he popped his head and torso backwards around the corner suddenly and stared directly at █████ in an intimidating manner for about 5 seconds without saying anything, and then walked away. This was intimidating for █████ in the context that Cr Kerry had an appointment booked with the CEO the next day to speak about █████.
8	Cr Kerry (and potentially other Councillors) referred to █████ as █████ and Cr Kerry told the CEO that this is █████ nickname. This was raised in the context that Cr Kerry believed he was being censored by █████
9	Cr Kerry made a comment to █████ that Mayor Hanna said to him on various occasions, <i>"When Hitler invaded a country the first thing he did was take over █████ just like I've done with the █████"</i>
10	Cr Kerry suggested to the CEO that █████ was 'working for the Mayor' (in his re-election campaign).
11	On 9 July 2018, Cr Kerry spoke to █████ on the phone and made accusations of █████ 'leaking' to the Mayor and demanding him to <i>'apologise and confess'</i> repeatedly. The conversation went back and forth with Cr Kerry accusing █████ of being rude and demanding that he be more respectful, accused him of lying and threatened to <i>'take this further'</i> , saying words to the effect that the Mayor cannot protect █████ and <i>"There's</i>

	going to be a new Mayor”.
12	Cr Kerry has, on occasion, sneered at [REDACTED] in the corridor of the Council.
13	Cr Kerry has, on occasion, tried to physically intimidate [REDACTED], including at the conclusion of Council meetings, where he would often walk towards [REDACTED] and move away at the last second.

2.2 Conclusions (Whether the conduct constitutes bullying or not)

(a) What are the relevant standards of conduct that apply?

Legislative Obligations – General duty to take care

The *Work Health and Safety Act 2012* (SA) (“WHS Act”) places certain obligations on businesses and persons, as described in the covering letter to this report. In addition, all workers have an obligation to take reasonable care that their acts or omissions do not adversely affect the health and safety of themselves or other persons (section 28).

Legislative Obligations – Bullying

Bullying is defined in the SafeWork Australia Guide for Preventing and Responding to Workplace Bullying (“Guide”) as, ‘repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety’. This is the definition that is adopted for the purpose of assessing breaches of any legislative obligations regarding safety under the *WHS Act*. Where behaviour falls short of the definition of bullying, if it is unreasonable behaviour that creates a risk to safety, it will still be a breach of safety legislation.

Policy Obligations – Code of Conduct for Council Members

Part 2 – ‘Behavioural Code’ states (in part) that Elected Members must:

- 2.2 act in a way that generates community trust and confidence in the Council;
- 2.3 act in a reasonable, just, respectful and non-discriminatory way when dealing with people;
- 2.6 comply with all Council policies, codes and resolutions;
- 2.11 not bully or harass Council Staff; and
- 2.14 refrain from directing or influencing Council staff in respect to the way in which these employees perform their duties.¹

Part 3 – ‘Misconduct’ states that failure to comply with this Part constitutes misconduct. The Part requires (in part) Elected Members to:

- 3.1 act honestly at all times in the performance and discharge of their official functions and duties;
- 3.2 perform and discharge their official functions and duties with reasonable care and diligence at all times; and
- 3.5 not attempt to improperly direct a member of the Council’s staff to act in their capacity as a Local Government employee for an unauthorised purpose.²

(b) Does the conduct breach any standards?

(As determined from the findings – see Appendix 1 below)

The conduct in 3 and 6 constitute conduct that a reasonable person in [REDACTED]’s position would consider to be threatening and intimidating, and therefore constitutes unreasonable conduct which is in breach of safety legislation. Cr Kerry’s intimidating comments relate to [REDACTED] amended publication of Cr Kerry’s article and his continued reply that the amendments were made in order to comply with Council policy on what can be published. Cr Kerry’s comments expressing opposition to being ‘silenced’ or ‘gagged’ and threatening to report [REDACTED] to the CEO all appear to amount to an attempt to compel [REDACTED] to perform his

¹ Code of Conduct for Council Members, appended to Confidential Report GC180724F02 at page 6.

² Code of Conduct for Council Members, appended to Confidential Report GC180724F02 at page 8.

role against Council guidelines. This is in breach of Part 2 (2.3, 2.6, 2.11, 2.14) and Part 3 (3.2, 3.5) of the Code of Conduct.

The conduct in Events 7, 11, 12, and 13 constitute conduct that a reasonable person in [REDACTED] position would consider to be threatening and intimidating, and therefore constitutes unreasonable conduct which is in breach of safety legislation. The tone and manner of the phone conversation in Event 11 was confronting and adversarial, in particular the repetitive nature of the questions or accusations being made by Cr Kerry. The conduct in Events 7, 12 and 13 are physical, or otherwise non-verbal communication, which a reasonable person in [REDACTED] position would find intimidating, especially in light of the context in which these events occurred (being threats to [REDACTED] employment) and the fact that Cr Kerry is in a position (or perceived position) of power. This conduct is unreasonable and therefore in breach of Part 2 (2.3, 2.6, 2.11) and Part 3 (3.2) of the Code of Conduct.

The conduct in Events 8, 9, and 10 constitute conduct that a reasonable person in [REDACTED] position would consider to be undermining in his position as [REDACTED], and therefore constitutes unreasonable conduct which is in breach of safety legislation. The conduct is akin to rumour-spreading. The fact that these comments are made behind [REDACTED] back and without reasonable basis contributes to their unreasonableness. This conduct is unreasonable and therefore in breach of safety legislation and in breach of Part 2 (2.3, 2.6, 2.11) and Part 3 (3.2) of the Code of Conduct.

General Comments

In light of the repeated and targeted nature of the unreasonable conduct identified above, such conduct meets the definition of workplace bullying.

A central issue to these matters is Cr Kerry's belief that he is being 'gagged', 'censored' or 'silenced' by Council (either via [REDACTED], the Mayor or the City of Marion generally). Whether this belief is based on reasonable foundation is pivotal to the findings of whether certain conduct was or was not unreasonable. This matter ought to be further investigated before any findings are confirmed and/or acted upon. This can be done by verifying whether Cr Kerry was (or reasonably ought to have been) aware of the Council's requirements for what can and cannot be published in City Limits and what is the authority of Elected Members to speak to the media (including on what matters, and how such discussion, should take place).

(c) Other Issues

Whether the complaint was raised vexatiously

Cr Kerry stated that the issues with [REDACTED] are a 'set-up' and that the complaint is in fact a political manoeuvre by Mayor Hanna. This infers that the complaint was not raised in good faith and/or is without reasonable cause. We are not instructed to make findings in relation to these matters, though for completeness, I make the following observations.

Clause 7.2 of the Procedure for Investigating Complaints provides that an Elected Member who is of the opinion that a breach of Part 3 of the Code of Conduct has occurred, or is currently occurring, must report the breach to the Mayor of the Council or Chief Executive Officer, the Ombudsman or the Office of Public Integrity.³ It also states at clause 2.4 that the CEO is responsible for advising the Mayor and referring the complaint to Council. The Mayor raising a complaint directly (albeit on behalf of an employee) is not inconsistent with the procedure. The fact that the complaint is found to be with cause lends weight to a finding that it was not raised vexatiously however, if the matters raised in this report and Cr Kerry's statement give rise to concern to Council, it is recommended that those matters be separately investigated.

Bullying of Cr Kerry by [REDACTED]

Cr Kerry described a few instances where [REDACTED] allegedly bullied him. For those specific matters (eg Events 1, 2, 4, 5 and 6) this report makes no finding of bullying by [REDACTED]. Though those matters are not the subject of this investigation, based on the information available, it appears that [REDACTED] acted appropriately and reasonably in all those circumstances. For clarity, those actions include managing the Mayor's media interview to prevent a scene being caused and/or the Council falling into disrepute (as a

³ Code of Conduct for Council Members – Procedure for Investigating Complaints, appended to Confidential Report GC180724F02 at page 14.

result of the interview), seeking to publish articles in an amended form that did not include defamation, and sending the response to Cr Kerry's Questions on Notice in advance of publication so he had the opportunity to decide whether to proceed or not proceed and, potentially prevent embarrassment.

Notwithstanding this preliminary view, if the matters raised in this report and Cr Kerry's statement give rise to concern to the Council, it is open to the Council to have those matters separately investigated.

2.3 Conclusions

Factual Findings and Conclusions

This report finds that Cr Kerry has engaged in inappropriate and unreasonable behaviour that breaches his obligations as a Councillor; being his obligations under safety legislation and his specific obligations under Parts 2 and 3 of the Code of Conduct.

These conclusions are reached based on the information arising from the witness statement evidence. I note however that Cr Kerry was interviewed in an open manner by reference to his recollection of specific events in order to obtain a witness statement from him on those factual matters. The findings of unreasonableness on specific events have not yet been put to Cr Kerry for his specific responses before any sanction on his behaviour is determined. This may give rise to unfairness and, this concern has been raised by Cr Kerry as a specific point of contention given he is overseas for the next scheduled Council meeting.⁴

Outcomes

Subject to the above, at the conclusion of the investigation, the following actions are open to Council under the Procedure for Investigating Complaints (as applicable):

- 5.1.1 Take no action and provide the reasons as to why.
- 5.1.2 Pass a censure motion in respect of the Elected Member.
- 5.1.3 Request a public apology, whether written or verbal.
- 5.1.4 Request the Elected Member to attend training on the specific topic found to have been breached.
- 5.1.5 Resolve to move or suspend the Elected Member from a position within the Council (not including the Members Elected position on Council).

We are not instructed to provide a recommendation in respect to specific outcomes however, for completeness, please note the following observations.

Based on the nature of the issues, action 5.1.1 would not be appropriate. Where a resolution relates to actions 5.1.3 or 5.1.4, the action must correspond to the factual findings in this report and should be confined to those matters which gave rise to the unreasonableness. For example, training provided under 5.1.4 may be in relation to the following matters (or a combination thereof):

- Council guidelines on what can be published in printed media on behalf of Elected Members.
- Council guidelines on what matters an Elected Member may speak to the media about and the manner of that communication to the extent it may impact on the City of Marion's reputation and integrity.
- Respectful communications.
- Workplace bullying.

Ming-Lyn Hii
Independent Investigator

⁴ Witness Statement of N Kerry, para 108.

EMA Consulting

See below: Appendix 1

DRAFT

Appendix 1

Witnesses are identified below by reference to their initials.

	ISSUE / ALLEGATION	EVIDENCE		OTHER FACTORS / WEIGHT	FINDING	RELEVANCE
		Facts Supporting	Facts Non-Supporting			
	Specific Events					
1.	5 October 2017 – press conference.	<ul style="list-style-type: none"> ■ states NK was muttering, standing close, and there was a reasonable concern he would make a scene. Took him side, which was appropriate. No evidence he stopped him from speaking to the media specifically. KH states he was concerned that NK would make as scene. 	<ul style="list-style-type: none"> NK says he was silent. 	<ul style="list-style-type: none"> NK states he was silent, though his statement focusses heavily on how strongly he felt about what he identified to be very sneaky and secretive behaviour. 	Substantiated on the balance of probabilities.	Relevant factual background.
2.	City Limits Issue 1 (September 2017).	<ul style="list-style-type: none"> ■ states NK to contact him, but he didn't respond. Emails support ■ version of emails (Attachment 1, pg 2-6). 	<ul style="list-style-type: none"> NK does not deny that attempts were made to contact him, but does not recall this specific instance without being shown the article. 	-	Substantiated on the balance of probabilities.	Relevant factual background.
3.	City Limits Issue 1 (September 2017)	<ul style="list-style-type: none"> ■ states that at the end of a Council meeting, NK approached him and said "You're trying to gag me" a few times, and "I won't be silenced" and "You are being rude, your actions will be brought to the CEO who will deal with you" ■ states ■ was present and saw it but may not 	<ul style="list-style-type: none"> NK denies making threat about CEO. He did not comment on the rest. Stated that he did feel like he was being gagged or censored, and that he would not accept it. 	<ul style="list-style-type: none"> ■ didn't hear what was said but recalls that ■ reported contemporaneously at the time. NK's statement is consistent with making the comments at the time. He denies threatening ■ with taking it to the CEO then says he did 	Substantiated on the balance of probabilities.	Intimidating conduct.

	ISSUE / ALLEGATION	EVIDENCE		OTHER FACTORS / WEIGHT	FINDING	RELEVANCE
		Facts Supporting	Facts Non-Supporting			
		have heard the words exactly.		have a conversation with the CEO about the alleged censorship.		
4.	City Limits Issue 2 (Feb/March 2018).	<ul style="list-style-type: none"> ■ states he tried to contact NK but he didn't respond. Emails support ■'s version of events (Attachment 1, pg 7-9). ■ confirmed he also tried to contact NK but he didn't respond. 	<ul style="list-style-type: none"> NK couldn't remember this specific instance without being shown the article. 	-	Substantiated on the balance of probabilities.	Relevant factual background.
5.	Questions on Notice (June 2018).	<ul style="list-style-type: none"> ■ stated he emailed NK in order to give him the opportunity to see responses before publication as a courtesy, to see if he was comfortable to proceed with the question. This was on instruction from ■. Email supports ■'s version of events (Attachment 1, pg 10-14). 	<ul style="list-style-type: none"> NK says it was an attempt to intimidate him into withdrawing the question, which he did. 	-	Substantiated on the balance of probabilities.	Relevant factual background.
6.	Questions on Notice (June 2018).	<ul style="list-style-type: none"> ■ stated that in the follow up phone call where he tried to explain the above, NK kept saying, "What are you saying, what are you saying" and was rude and defensive, tone was confronting. 	<ul style="list-style-type: none"> Not specifically recalled by ■ who was there. NK says ■ was intimidating him into withdraw, admits saying, "Well what does that mean". 	<ul style="list-style-type: none"> No other ■ were interviewed – these persons could corroborate ■ tone and manner and potentially if they heard any part of NK. 	Substantiated on the balance of probabilities.	Intimidating, undermining conduct.

	ISSUE / ALLEGATION	EVIDENCE		OTHER FACTORS / WEIGHT	FINDING	RELEVANCE
		Facts Supporting	Facts Non-Supporting			
				<ul style="list-style-type: none"> Based on [REDACTED] recollection of [REDACTED] reaction and NK's admissions as to what he was thinking at the time, on the balance or probabilities this occurred the way [REDACTED] described. 		
7.	3 July 2018 (Infrastructure and Strategy Meeting).	<ul style="list-style-type: none"> [REDACTED] states NK stared intimidatingly. [REDACTED] states NK stopped to stare without saying anything for several seconds. 	<ul style="list-style-type: none"> NK denies. 	<ul style="list-style-type: none"> [REDACTED] and RW recollection is broadly consistent without being so identical as to bring their credibility into question (eg collusion). [REDACTED] says it was intended to be intimidating as the meeting was booked for the next day. The conduct is intimidating whether or not there was a meeting booked for the next day. 	Substantiated on the balance of probabilities.	Corroborated intimidating conduct.
8.	[REDACTED] nickname.	<ul style="list-style-type: none"> [REDACTED] stated that NK raised this at his meeting. Notes support [REDACTED] (Attachment 1, pg 15). No other witnesses 	<ul style="list-style-type: none"> NK says he did not make it up. He infers that he does not use the nickname himself. Then said he defended by saying he thinks the nickname is not unreasonable because 	<ul style="list-style-type: none"> At interview NK spoke in martial terms, made various military references, including 'censorship', 'it is a free country' and 	Substantiated on the balance of probabilities.	Undermining conduct even if other Councillors also use this. It is recommended that this matter be followed up.

	ISSUE / ALLEGATION	EVIDENCE		OTHER FACTORS / WEIGHT	FINDING	RELEVANCE
		Facts Supporting	Facts Non-Supporting			
		have heard anyone else refer to [REDACTED] in this way.	it aligns with [REDACTED]'s actions.	<p>'my grandfather died in a communist camp' 'leaking' to the Mayor; reference to 'allies' in Council.</p> <ul style="list-style-type: none"> On the balance of probabilities this nickname was either made up by NK or is at least used by him. 		
9.	Comment made by NK that KH said "When Hitler invaded a country the first thing he did was take over [REDACTED], just like I've done with the [REDACTED]"	<ul style="list-style-type: none"> [REDACTED] said NK said this to him more than once. 	<ul style="list-style-type: none"> NK was silent on whether he said this to [REDACTED] but admitted that KH said this to him once early on in his term. 	<ul style="list-style-type: none"> Substantiated on the balance of probabilities that NK made this comment to [REDACTED]. Whether KH actually made the statement is a separate issue. It was denied by KH and does not appear to be the case that he actually said it. 	Substantiated on the balance of probabilities.	Inappropriate comment to repeat.
10.	Suggestion that [REDACTED] is working for the Mayor.	<ul style="list-style-type: none"> NK states he continues to think this. [REDACTED] states that NK has made this accusation & email notes support this. 	<ul style="list-style-type: none"> [REDACTED] states that NK could not provide any factual example to back up his assertion that [REDACTED] was working for the mayor. NK was silent on this but referred broadly to the 2015 issue ('leaking to the mayor') and perceived attempts to 	<ul style="list-style-type: none"> Substantiated that he made the accusation to the [REDACTED] The accusation constitutes undermining conduct if it was vexatiously raised 	For further investigation / to be verified.	Undermining conduct, subject to verification that NK was aware of the council requirements for what can be published in City Limits and the authority of

	ISSUE / ALLEGATION	EVIDENCE		OTHER FACTORS / WEIGHT	FINDING	RELEVANCE
		Facts Supporting	Facts Non-Supporting			
			<p>'gag', 'silence' or 'censor' NK from publishing his views in the free media or via the Council's publication.</p>	<p>rather than being a genuine concern based on a reasonably held belief.</p> <ul style="list-style-type: none"> Whether it is a reasonably held belief turns on whether he ought to understand the Council requirements for what can be published in City Limits and the authority of Elected Members to speak about matters (and the breadth of those matters) to the media. 		Elected Members to speak to the media.
11.	Phone call on 9 July 2018.	<ul style="list-style-type: none"> █ stated NK made accusations of '<i>leaking</i>' to the Mayor, demanding him to '<i>apologise and confess</i>', back and forth accusing him of being rude and demanding that he be more respectful, accused him of lying, threatened to '<i>take this further</i>', saying words to the effect that the Mayor cannot protect you and there's going to be a new Mayor. 	<ul style="list-style-type: none"> NK admits calling █ and questioning him about leaking to the Mayor, denies threatening him saying the Mayor cannot protect him. He then said that he rang █ because █ apologised for the rudeness but not for leaking to the Mayor and for lying about it. 	<ul style="list-style-type: none"> This is substantiated on the balance or probabilities. It is more likely than not that the conversation occurred in the manner described by █. NK's evidence as to the reason he rang █ indicates that he wanted to get █ to admit wrongdoing, which is consistent with this finding. 	Substantiated on the balance of probabilities.	Intimidating conduct.

	ISSUE / ALLEGATION	EVIDENCE		OTHER FACTORS / WEIGHT	FINDING	RELEVANCE
		Facts Supporting	Facts Non-Supporting			
		<ul style="list-style-type: none"> █'s contemporaneous notes support this (Attachment 1, pg 17-18). █ heard █ end of the conversation which is consistent with what is reported by █. Observed that he appeared to be shaken by the call and that this was notable because it takes a lot to rattle him. Stated █ was speaking clearly. 				
12.	Sneering.	<ul style="list-style-type: none"> █ states this occurs. 	<ul style="list-style-type: none"> No other witness has seen this, though it is possible this occurs when no one is around. 	<ul style="list-style-type: none"> This is not corroborated but also is not expressly contradicted by NK either. █ is credible and this is substantiated on balance of probabilities. 	Substantiated on the balance of probabilities.	Intimidating conduct.
13.	Tries to physically intimidate █ by walking towards him and moving away at the last second.	<ul style="list-style-type: none"> █ states this occurs. 	<ul style="list-style-type: none"> No other witness has seen this, though it is possible this occurs when no one is around. 	<ul style="list-style-type: none"> This is not corroborated but also is not expressly contradicted by NK either. █ is credible and this is substantiated on balance of probabilities. 	Substantiated on the balance of probabilities.	Intimidating conduct.

WITNESS STATEMENT OF [REDACTED]

Statement taken on: 2 August 2018

1. My name is [REDACTED]
[REDACTED]
[REDACTED]
2. My team and I have a professionally close relationship with Elected Members, mainly with the Mayor because [REDACTED]. We also have [REDACTED] for which we seek contributions from Elected Members.
3. I spend a lot of time on the phone with the Mayor, probably once or twice a day, depending on the issue. [REDACTED]
[REDACTED]
4. Councillor Nick Kerry is an Elected Member of Council.
5. The issues I have experienced with Nick are expressed chronologically as follows.

6 June 2017

6. Council had been lobbying for the Oaklands crossing issue to be fixed. I was responsible for [REDACTED]
[REDACTED]
7. On 6 June 2017 there was a confidential Council meeting which I attended. The Council agreed to contribute \$5 million to the project.
8. Nick wasn't happy with the decision. He made some comments to the effect that he thought it sounded like it was a 'done deal' between Kris and the other two tiers of government and that the Council was just rubber-stamping a decision that had already been made.
9. This was not the case. The Council made the decision of its own accord.

5 October 2017

10. On 4 October 2017, there was a Special General Council Meeting over a motion to abolish Australia Day from the Council. The motion failed due to a lack of support.
11. On 5 October 2017, there was a press conference ("presser") about the motion.
12. Nick was there, I believe purely by chance. He arrived and saw the media all there. Nick got out from his car and got incredibly close to Kris.
13. I was concerned that he was going to shove him or otherwise get physical, but I did not feel there was anything I could do because Nick is a big man and the TV cameras were recording. My direct intervention could have 'created' a news story. All I could do was stand there and watch.
14. While Kris was being interviewed, Nick got really close to Kris and started muttering things like, 'ask about the corrupt behaviour.' He kept repeating this in an emphatic yet hurried tone and manner. He was standing very close to both Kris and the journos.
15. I took a photo of how close he was standing.
16. Attached and marked as item "A" (**Attachment 1**, page 1) is a copy of that photo. At some points, Nick actually got closer than what was shown in the photo.

17. Both Kris and I could hear him muttering and, based on his proximity to the journos was the same as to Kris, I presume the journos could hear it also.
18. Nick and I chatted afterwards. He made comments accusing me, Kris, and [REDACTED] f [REDACTED].
19. Nick then went over to the journos and tried to talk to them about it. I heard him mention the funding and I heard him say both [REDACTED] and Kris' name. I hovered around for a little bit. It was apparent the journos did not show any interest so I just went back inside.
20. I would describe his demeanour at the presser as erratic, based on the tone when he was saying 'ask about the corruption' repeatedly. The way he was trying to get that message across made him appear to me as unwell.
21. After that Kris mentioned to me that he thought Nick was going to hit him or shove him in front of the media.
22. A few weeks ago (July 2018) Nick accused [REDACTED] of stopping him from talking to th [REDACTED] d for taking notes about it (see below in this statement). I did neither. He did not raise these claims at the time.

City Limits Issue 1

23. We were preparing the September issue of City Limits, the community magazine. As per normal practice, we sent out a request to Elected Members for their regular submissions.
24. Nick sent his in. We made some suggested changes and sent them to him in draft for his review. The main change was making it clear that the \$5 million was allocated 'in principle'. He did not respond by the deadline so we published the amended version.
25. Attached and marked as item "B" (**Attachment 1**, pages 2 to 6) is a copy of the email exchanges and published article.
26. At the conclusion of a council meeting (I cannot recall the exact date), he came over to me in a highly agitated state and accused me of trying to silence him. He said things like: "You're trying to gag me" (which he has said on a number of occasions) and "I won't be silenced," and "You are being rude, your actions will be brought to the attention of the CEO who will deal with you".
27. I took this as an implied threat to have me fired if I didn't do what he said. Nick is a big man, so when he was talking he was standing over me, pointing at me and raising his voice.
28. I said things like: "We were trying to contact you" and "They were only minor changes, which we sent to you", but he kept going on and on.
29. T [REDACTED] was there and saw it. I don't know if he heard it, but he came over after and asked me if I was okay.

City Limits Issue 2

30. For the next City Limits column (February/ March 2018), Nick's submission was more forthright in his views.
31. I showed it [REDACTED] Having regard to the Elected Members' Publication Policy, we all agreed that the submission overstepped the mark and that he shouldn't be saying those things. We discussed over a few days as to who was going to tell him. The deadline was approaching and I said I would do it.
32. I sent him an email about it but didn't hear back [REDACTED] d me he sent him text messages about the email too. I sent him another email two days later (on the Friday) reminding him and noting that I had got the deadline changed to the Monday. He did not respond.

33. [REDACTED] and I made a further attempt to contact Nick on the Monday morning without success. With [REDACTED]'s approval, we made the change and published it as amended.

34. Nothing happened.

35. Attached and marked as item "C" (**Attachment 1**, pages 7 to 9) is a copy of the email exchanges.

June 2018

36. Three months later, Nick submitted questions on notice to the staff. Any Elected Member can put forward 'questions on notice' and the responsible staff member responds. It is then put to Council as public information.

37. Nick submitted questions to Governance as is the procedure.

38. Attached and marked as item "D" (**Attachment 1**, pages 10 to 11) is a copy of the questions on notice.

39. I prepared a response and put it through to [REDACTED], who agreed it was 100 per cent accurate. In light of the pointed nature of the questions, [REDACTED] suggested that we give Nick the opportunity to withdraw the questions now that he's seen the answers so he doesn't get embarrassed.

40. I then sent Nick a copy of my draft answers by email on [REDACTED]'s instructions. I also called Nick and left a voicemail message asking that he call me. Nick called back a short time later and I verbalised the email message, adding that it was [REDACTED] suggestion. I knew Nick can be unpredictable at times and I wanted to get some 'top cover' for what I was doing.

41. Attached and marked as item "E" (**Attachment 1**, pages 12 to 14) is a copy of the email.

42. In the telephone conversation, Nick said things like, "What are you saying? What are you saying?" He was rude and defensive on the phone. I don't recall in detail exactly what he said. It was more the tone of it that was confronting. My colleagues were around for this. He said he would call me back.

43. He did not call back. However, a short time later he sent me the email reply contained in item "E". Included was that he intended to seek a meeting with [REDACTED] about my behaviour.

44. He mentions that he did not like the tone and manner that I spoke to him on the phone. I asked my colleagues whether my tone was out of line and they said no.

45. I felt that what we did was right because our team has to make sure that the content of the publication complies with the set requirements and is not defamatory on other members, as they would then have recourse against the Council for that publication.

46. [REDACTED] informed me that Nick then sought a meeting with [REDACTED] to discuss his concerns with my behaviour. I was told it was set down for 4 July 2018.

July 2018 - Infrastructure and Strategy Meeting

47. On 3 July 2018, there was an Infrastructure and Strategy meeting. [REDACTED] and I were presenting at this meeting but there was a confidential item underway and we were outside in the foyer waiting during that period. [REDACTED] was also waiting with us.

48. Nick exited the meeting, walked past us and glanced at us, then walked around the corner. About 10-15 seconds later, he popped his head and torso backwards around the corner suddenly and looked directly at me. He stared right at me for maybe about 5 seconds. It was a real stare down as if to say, 'I'm watching you'. He did not say anything, then walked off.

49. In the context that he was having a meeting scheduled the next day to talk about me, it could not have meant anything else. I believe it was meant to be intimidating.

4 July 2018

50. I was told that the meeting went ahead. [REDACTED] made notes of the meeting and gave me a copy for natural justice.
51. Attached and marked as item "F" (**Attachment 1**, page 15) is a copy of the notes given to me.
52. In respect to the fourth item in the notes, he stated that my nickname amongst Councillors is [REDACTED] or who did all the work for [REDACTED]. I do not believe that this is true. I know the other Councillors quite well and I have never heard this mentioned by anyone before that point. I find this label to be highly offensive and a slight on my professionalism.
53. In respect to the fifth item, the accusation that I've been essentially 'working for the mayor' is highly offensive to me. I am employed as an unbiased servant. I am employed by the Council to provide [REDACTED]. This accusation is absolutely untrue. All actions that I and my team undertake are either at the direction of management or through a Council resolution.
54. I met the next day with [REDACTED] and they were supportive. They suggested that to try and resolve the situation that I apologise to Nick for the fact that he was upset. I was not totally comfortable with it, but agreed. I trust [REDACTED] judgement in these matters.
55. I sent Nick an email to that effect.
56. Attached and marked as item "G" (**Attachment 1**, page 16) is a copy of the email.
57. I hoped that would be the end of the matter.
58. The following Monday, I received a phone call from Nick. Four of my colleagues were present and heard my side of the conversation and were quite concerned afterwards. They were [REDACTED], [REDACTED].
59. I was extremely shaken by the phone call. The tone was aggressive and intimidating. He was really getting stuck into me.
60. It sounded like there was something 'not well' about him.
61. I typed the following notes within 20 minutes after the call. I may have missed some things as I was noting so fast and was nervous.
62. My commentary is in square brackets. Everything else is what Nick said.

9 July 2018 – Cr Nick Kerry called at 3.49pm on my work mobile

- 62.1. Opened with: are you still going to deny that you leaked to the Mayor?
- 62.2. I repeated that I don't remember the meeting with him nor commenting to the Mayor.
- 62.3. [The conversation went backwards and forwards for a little with him accusing me of leaking to the Mayor and him repeatedly questioning me. I maintained the comment above.]
- 62.4. [He repeatedly asked if I was going to apologise to him, which I indicated I have done in the email.]
- 62.5. I will leave it at that. [The conversation appeared to conclude.]
- 62.6. Your attitude need to be more respectful to me.
- 62.7. I will leave it at that.
- 62.8. You think you can get away with your attitude to me. [I replied that I have always been respectful to him.]

- 62.9. I will take it further.
- 62.10. You have betrayed me.
- 62.11. BH (Bruce Hull) is after you. If you think Kris Hanna can protect you you're mistaken.
- 62.12. There's going to be a new Mayor.
- 62.13. You've leaked stuff to the Mayor.
- 62.14. Do you want a statutory declaration that you have done that.
- 62.15. You need to apologise and confess.
- 62.16. I'm not going to accept this rubbish.
- 62.17. Apologise and confess now ... to what you've done.
- 62.18. The carry on in recent days has not put you in a good stead in the media.
- 62.19. You need to indicate that you leaked to the Mayor.
- 62.20. You lied and tried to blame [REDACTED]. [I denied this and that I had implicated [REDACTED]]
- 62.21. Are you going to deny that you stopped me from talking to the media in the carpark? [My response was that I never had stopped him from speaking to media.]
- 62.22. Are you going to deny that you took notes? [My response was I never took notes.]
- 62.23. You're going for gold [REDACTED]. I'm bitterly disappointed with your treachery.
- 62.24. Let's be clear about this. I know exactly what you've done.
- 62.25. Do you know what will happen to you?
- 62.26. I indicated that I have apologised to him if he felt I've offended him.
- 62.27. [He repeated the confess and apologise line.]
- 62.28. You've leaked stories about me to the media. [A claim that I denied.]
- 62.29. The story is not going to kill you, it is the lying.
- 62.30. You will not get away with rudeness and abruptness towards me.
- 62.31. Every single thing you've done against me will not be forgotten.
- 62.32. I will take this further.
- 62.33. [I advised him that that is his right.]
- 62.34. What are you saying? Your rudeness has to stop.
- 62.35. I will take this further.
- 62.36. [The call ended.]
63. Attached and marked as item "H" (**Attachment 1**, pages 17 to 18) is a copy of the notes I made at the time, as replicated above.

64. The tone that Nick spoke with and the way that he spat out his words was threatening to me. There was no other way you could interpret it other than a threat that, if there is a new mayor, he was going to make sure I was gone.
65. What rattled me more was the issue of safety, not as much as the threat to employment. The words don't convey the tone. There was a real vindictiveness and intent about what he was saying. I was shaking after the phone call.
66. My colleagues who heard it asked: "Are you okay?". I immediately rushed out, grabbed [REDACTED] from a meeting and met with [REDACTED] and basically 'dumped' on them what had just happened.
67. After that I came back and typed up my notes.
68. As [REDACTED] felt embarrassed and humiliated as my role involves leading my team through difficult situations. I am [REDACTED] and do not expect to be spoken to like that; nobody should expect to be spoken to like that.
69. At the conclusion of the call, I was fearful for my long-term future and fearful for my safety. I was very nervous going to my car. Nick does not normally park where the Elected Members park. He parks near the staff car park. At the time, I knew he was going overseas but I didn't know whether he was still there at the time and I felt quite scared.
70. I have worked as [REDACTED] They are tough industries. I feel I am quite a resilient person, but I was really, really shaken by this call.

General Observations

71. Nick has on occasions sneered at me in the corridor. I cannot recall any date specific instances. It's more general.
72. His demeanour and the way he conducts himself makes me feel uncomfortable generally.
73. For example, when I attend Council meetings, he will often walk towards me and move away at the last second. It is as though he is purposely trying to intimidate me. He's a big guy and this conduct is intimidating, especially because he exercises a degree of power as an Elected Member.
74. He has done this on a handful of occasions, generally at Council meetings when I see him.

Previous Code of Conduct Issue (2015)

75. When Nick first came on board, there was a media story about him because the name he declared himself as was not his actual name. It was actually Nick Korovin. The media story was something about not being honest at the election or something like that.
76. He sought general media advice around that.
77. He also attended a Council meeting intoxicated once. There were general negative stories about him in the media in the first 6 to 8 months of being in office.
78. The advice to me from management was to the effect of 'give him a bit of advice but it's his problem to solve' so we did that.
79. During that period he would phone me at all hours of the day and night and on weekends. He called regularly and was often distressed.
80. On one occasion he rang me around 8.50 pm and was rambling. It was quite chaotic. His partner picked up and said something like, "Sorry about this" and hung up. The whole thing probably went for about 10 seconds and was quite bizarre.
81. The issue raised in his meeting on 4 July 2018 was that he claimed during that period that he told me of plans for an injunction and I told the mayor.

- ### General Comments

- ### Impact of the Behaviour

- ### Outcomes

- 3458-0511-3099, v. 6

- 95.2. an acknowledgement from Nick that the [REDACTED] have at all times acted with the highest standards and professional integrity on behalf of the City of Marion;
- 95.3. a written apology from Nick for his behaviour and acknowledging points 95.1 and 95.2;
- 95.4. this matter remain confidential.
96. The fourth point is most important for me.
97. If my name is released as part of this or is made public as part of a Code of Conduct report, I feel it will reflect very badly on my professional integrity.

I have read and understood the 'Honesty and Confidentiality Obligations' provided to me by City of Marion. I agree that all of the information is true and accurate to the best of my knowledge, information and belief. In the event that further relevant information becomes available or known to me, I will inform City of Marion immediately.

I understand that all matters relating to this statement must remain confidential.

[REDACTED]

[REDACTED]

Date



From:
Sent:
To:
Subject:

Nick Kerry
Monday, 24 July 2017 5:22 PM

Fwd: Dear [REDACTED]

Dear Residents,

As part of my platform I campaigned hard on the issues of rates staying under CPI.

With increased power costs especially in SA & other increase in cost of living pressures residents cannot afford huge hikes in rates

The newly elected Council has tried to keep rates down to around the 2% mark.

Unfortunately the new Council at a secretive closed Special General meeting in June 2017 voted to allocate \$5 million for the Oaklands Crossing issue.

Councillors were not given any options & asked to allocate the funds to allow Mayor Hanna to negotiate with the Federal & state Government.

I voted against this motion & allocation of funds as I thought it is a waste of ratepayers money and puts pressure on the administration & caused rates to go up.

I will continue to campaign to reverse this decision.

Whilst the Federal & state governments committed over \$174 million to fixing the Oaklands Crossing Issue - I see no reason why we should spend a massive \$5 million on the project.

I will continue to campaign on the issue of openness & transparency.

The reasons given for the secrecy & confidence were in my view not satisfactory.

Council must come clean as to why the community & Councillors were not consulted until we were ambushed at 6.20pm at Special Council meeting called by Mayor Hanna

Regards,

Clr Nick Kerry

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For more information please visit <http://www.symanteccloud.com>

Nick Kerry
Woodlands Ward Councillor | City of Marion

| **M** 0418 960 342
E Nick.Kerry@marion.sa.gov.au | **W** www.marion.sa.gov.au

PO Box 21 Oaklands Park SA 5046

From: [REDACTED]
Sent: Monday, 31 July 2017 5:35 PM
To: Nick Kerry; 'n.kerry@hotmail.com'
Cc: [REDACTED]
Subject: City Limits

Dear Nick,

Thank you for sending through your City Limits column. I have made some minor adjustments, adding 'in principle', and editing to be close to the word count of 200.

Could you please get back to me by 9am this Wednesday and let me know this is ok.

Please don't hesitate to contact me with any questions.

Regards,

As part of my platform I campaigned for rates to stay under CPI. With increased power costs, especially in SA, and other increases in costs of living, residents cannot afford huge rate hikes.

The new Council has tried to keep rates down to around 2%. Unfortunately the Council, at a secretive closed Special General Council meeting in June, voted to allocate \$5 million in principle for the Oaklands Crossing issue.

Councillors were not given options and were asked to allocate the funds to allow Mayor Hanna to negotiate with Federal and State governments.

I voted against this motion and allocation of funds. I thought it a waste of ratepayers' money. It puts pressure on administration, and could cause rates to go up. I will continue to campaign to reverse this decision.

Whilst the Federal and State governments committed over \$174 million to fixing Oaklands Crossing I see no reason why we should, in principle, spend \$5 million on the project. I will continue to campaign for openness and transparency.

The reasons given for the secrecy and confidence were in my view not satisfactory. Council must come clean as to why the community and Councillors were not consulted until the Special Council meeting.

Published article September 2017:

WOODLANDS WARD

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Oaklands Crossing

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m Pfeiffer

[REDACTED]

From: [REDACTED]
Sent: Monday, 19 February 2018 9:45 AM
To: Nick Kerry
Cc: [REDACTED]
Subject: FW: City Limits

Dear Cr Kerry

Please find immediately below the edited version of your column to comply with our policies. We are sending it to the printers at midday today.

Regards
[REDACTED]

Dear Residents

I would like to congratulate the clubs associated with Edwardstown Sport Oval.

The \$8.8 million upgrade is funded with about 50 per cent contribution from the Federal Government and 50 per cent from Marion Council.

Construction has started in January

It is also satisfying that rate rises have been kept within the 2 per cent price bracket.

I will continue to campaign for openness and transparency as well as not wasting valuable ratepayers money, and keeping rates low.

From: [REDACTED]
Sent: Friday, 16 February 2018 4:26 PM
To: Nick Kerry <Nick.Kerry@marion.sa.gov.au>
Subject: FW: City Limits

Dear Cr Kerry

Further to [REDACTED] and my previous correspondence, I've spoken to the printer and managed to extend the deadline to receive an updated version of your column.

The new deadline is midday on Monday, February 19. I hope that is of assistance to you.

Unfortunately, I cannot hold the publication beyond that date otherwise we'll miss distribution. If we haven't heard from you our options are to not include your column or edit it to comply with the policy. My preference is the latter but I am in your hands as I don't want you to miss out on an opportunity.

As always, feel free to contact me if you need any support or assistance.

Regards
[REDACTED]

From: [REDACTED]
Sent: Wednesday, 14 February 2018 4:51 PM
To: Nick Kerry <Nick.Kerry@marion.sa.gov.au>
Subject: FW: City Limits

Dear Cr Kerry

Thank you for submitting your column for City Limits.

After reviewing the column, it will need some changes to ensure it is factual and complies with the Publications Elected Member Policy.

The areas of concern to me are:

- Marion's in-principle \$5 million contribution is a "waste of ratepayers' money".
- It was "nothing more than a political stunt, publicity & Mayor Hanna (on leave) needs to explain himself".
- References to the leave arrangements and allowances. Mayor Hanna has subsequently advised Council of his intentions not to accept his allowances between 17 Feb -17 March (see GC130218M04).
- References to being silenced or gagged.

I respect your right to express your view, however, all Council publications have to comply with the policy, which states:

A Council Publication will not contain the personal view of any Elected Member or officer unless authorized by the Council where that personal view may involve a breach of a Council or administrative policy, Code or decision or which otherwise places the Council at risk of legal action (eg defamation).

To meet the printing deadline, could we please have an updated version by no later than midday on Friday, February 16.

Feel free to contact me if I can be of assistance.

Regards
[REDACTED]

From: Nick Kerry [<mailto:n.kerry@hotmail.com>]
Sent: Thursday, 8 February 2018 11:19 AM
To: Nick Kerry <Nick.Kerry@marion.sa.gov.au>
Subject: City Limits

Dear Residents

I would like to congratulate the clubs associated with Edwardstown Sport Oval.

The \$8 million upgrade funded 50% by the Federal Government & 50% by Marion Council.

Construction has started in January

It is also satisfying that rate rises have been kept within the 2% price bracket.

I will continue to campaign against Council waste and extravagance.

The \$5 million Marion Council contribution to Oaklands Crossing is a waste of ratepayers money.

It was a nothing more than a political stunt, publicity & Mayor Hanna (on leave) needs to explain himself.

Mayor Hanna has taken leave to campaign for State Parliament. This leave for 8 weeks should not be paid & ratepayers should not be "subsidising ANY political campaigns ie 20k levies imposed to run for State Parliament."

I will not be silenced. There have been several attempts to gag me.

I will continue to campaign for openness and transparency, not wasting valuable ratepayers money & keeping rates low.

Regards,

This email has been scanned by City of Marion's MessageLabs Email Security System.
For more information please visit <http://www.symanteccloud.com>

**CITY OF MARION
GENERAL COUNCIL MEETING
26 JUNE 2018**

Question Received from: Councillor Kerry
Subject: City Limits Statement
Reference No: GC260618Q0

QUESTIONS:

1. Can the administration explain why my statement to the last edition of "city limits" was replaced with a statement that I did not authorised and was no consultation given?
2. Furthermore can staff give an indication of how much each edition costs to produce?
3. Can staff give an undertaking that there will be no censorship in the future?

COMMENTS: Councillor Kerry

Nil

COMMENTS:

- 1 All submissions to City Limits need to comply with the *Publications Elected Member Policy*, which states:

A Council Publication will not contain the personal views of any Elected Member or officer unless authorised by the Council where that view may involve a breach of a Council or administrative policy, Code or decision or which otherwise places the Council at risk of legal action (eg defamation).

Council received your column on Thursday 8 February and, after reviewing it, believed it needed to be altered to ensure it was factual and complied with the policy.

An email was sent to you on 14 February to highlight the areas of concern and inviting you to update the column by 16 February to ensure it met City Limits' printing deadline. The CEO sent you an SMS about the matter on 15 February. No reply was received.

On 16 February an email was sent to you advising that the printers had agreed to extend the deadline to midday on Monday, 19 February. It was advised that the publication could not be held beyond that date.

No reply was received to any of the correspondence and the CEO attempted to telephone you on the morning of 19 February without success. Your column was edited to comply with the policy and a copy sent to you at 9.45am on 19 February to ensure you had a presence in the magazine.

- 2 The cost of producing each edition of City Limits is about \$26,550, which includes photography, design, printing 43,000 copies, distributing them to the community and posting in online.
- 3 All submissions to City Limits and other publications must adhere to the current policies and be accurate and are reviewed to ensure compliance.

[REDACTED]

From: Nick Kerry
Sent: Thursday, 21 June 2018 4:44 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: Question on Notice - response required - without prejudice and concerns

Dear [REDACTED]

Due to length of time deadline by 5pm I will edit my questions and keep the question "how much does city limits cost each edition"

I will pursue the matter offline or the next council meeting.

I did not like the tone of the manner in which you spoke to me and and you have done this before.

The question I ask you offline is why did it take from 8th to 15th Feb to get back to me?

Why did it take several days after I lodged my question ie from Tuesday afternoon to get back with a question.

The other question why was an article published in my name without authorisation? That has not been addressed.

Maybe a meeting with [REDACTED] is in order to iron out my concerns.

I have some general concerns about censorship and attempts to gag elected members going into an election.

Furthermore an earlier article that I wrote was changed from "Council must explain" which I never said

This seems to contradict the policy of reflecting badly on council certain matters in relation to projects which is wasting money.

Regards

Nick Kerry

I reserve all my rights in this matter and other issues that I have raised.

Sent from my iPhone

Nick Kerry
Woodlands Ward Councillor | City of Marion

| M 0418 960 342

E Nick.Kerry@marion.sa.gov.au | W www.marion.sa.gov.au

PO Box 21 Oaklands Park SA 5046

On 21 Jun 2018, at 2:29 pm, [REDACTED] wrote:

Dear Cr Kerry

Thank you for the Questions on Notice. [REDACTED] drafted the response below. However, before the Council report is published I wanted to provide you with an opportunity to see what we intend to say. Are you still comfortable with proceeding with your question? Can you please let us know by 5pm tonight to enable Governance to finalise the agenda. Can you please copy in [REDACTED]

Thank you
[REDACTED]

QUESTIONS:

1. Can the administration explain why my statement to the last edition of "city limits" was replaced with a statement that I did not authorise and was no consultation given?
2. Furthermore can staff give an indication of how much each edition costs to produce?
3. Can staff give an undertaking that there will be no censorship in the future?

COMMENTS: Councillor Kerry

Nil

COMMENTS:

[REDACTED]

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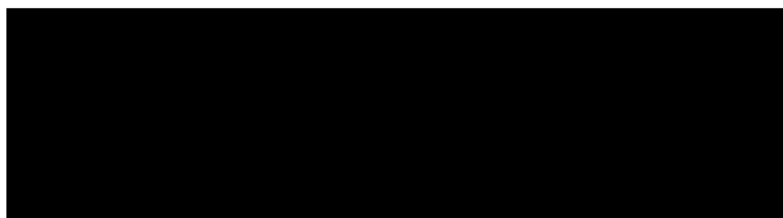
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245 Sturt Road Sturt SA 5047

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We acknowledge we are part of Kaurna land and recognise the Kaurna people as the traditional and continuing custodians of the land.

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[E-talk newsletter](#) - Subscribe to our email newsletter to receive regular news and updates straight to your inbox.

F

Meeting with Cr. Kerry 4 July 2018 re: complaint against [REDACTED]

Present: Cr. Nick Kerry, [REDACTED]

Complaint against [REDACTED]

Cr Kerry's concerns:

1. [REDACTED] attitude – that he is rude and offensive. Example: [REDACTED] stopped Cr Kerry talking to the media on the Australia day matter and when he did speak with them, he stood nearby and took shorthand. Asserts that it is not [REDACTED] job to interfere with a Member speaking with the media.
2. That [REDACTED] censored Cr Kerry's City Limits article and the explanation for that was not satisfactory. Took several days to get back which was (Cr Kerry believes) deliberate. AS noted that [REDACTED] had tried to contact Cr Kerry without success and had come to him (AS) who had also tried to contact him without success.
3. That [REDACTED] and Cr Kerry had a meeting with [REDACTED] and what was said in that meeting was reported to the Mayor (that Cr Kerry was going to take out an injunction on the Mayor. This was before [REDACTED] joined as [REDACTED] and when the Messenger journalist was "Amy"). That [REDACTED] then denied he had told the Mayor which was a lie and blamed [REDACTED]. Claimed that [REDACTED] is undermining [REDACTED]
4. That [REDACTED] nickname amongst Councillors is "[REDACTED]".
5. Claims that [REDACTED] cannot act as [REDACTED] for the Mayor in an election, and that should never declare confidential matters to the Mayor.

Cr Kerry is seeking an apology with a telephone call and in writing "as a starting point" from [REDACTED] by Friday 6th July 2018. Seeking assurance that biased behaviour will not occur in the future and wants [REDACTED] to admit that he told the Mayor about Cr. Kerry's plans to issue an injunction (this against the value of integrity). That [REDACTED] should be neutral, unbiased and working for all Council not just one or two Members.

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 [scribbles]

G

[REDACTED]

From: [REDACTED]
Sent: Friday, 6 July 2018 12:32 PM
To: Nick Kerry
Cc: [REDACTED]
Subject: Apology

Dear Cr Kerry

I understand you met with [REDACTED] on Wednesday.

I am sorry if you feel I have offended you in any way. I want to assure you that my team and I are impartial in our dealings with Members.

Yours sincerely

H

9 July 2018 – Cr Nick Kerry called at 3.49pm on my work mobile

Opened with: are you still going to deny that you leaked to the Mayor?

I repeated that I don't remember the meeting with him nor commenting to the Mayor.

[The conversation went backwards and forwards for a little with him accusing me of leaking to the Mayor and him repeatedly questioning me. I maintained the comment above.]

[He repeatedly asked if I was going to apologise to him, which I indicated I have done in the email.]

I will leave it at that. [The conversation appeared to conclude.]

Your attitude need to be more respectful to me

I will leave it at that.

You think you can get away with your attitude to me. [I replied that I have always been respectful to him.]

I will take it further

You have betrayed me

BH is after you. If you think KH can protect you you're mistaken.

There's going to be a new Mayor.

You've leaked stuff to the Mayor.

Do you want a statutory declaration that you have done that.

You need to apologise and confess.

I'm not going to accept this rubbish.

Apologise and confess now ... to what you've done.

The carry on in recent days has not put you in a good stead in the media.

You need to indicate that you leaked to the Mayor.

You lied and tried to blame [REDACTED] [I denied this and that I had implicated [REDACTED]]

Are you going to deny that you stopped me from talking to the media in the carpark? [My response was that I never had stopped him from speaking to media.]

Are you going to deny that you took notes? [My response was I never took notes.]

You're going for gold, [REDACTED] I'm bitterly disappointed with your treachery.

Let's be clear about this. I know exactly what you've done.

Do you know what will happen to you?

I indicated that I have apologised to him if he felt I've offended him.

[He repeated the confess and apologise line.]

You've leaked stories about me to the media. [A claim that I denied.]

The story is not going to kill you it is the lying.

You will not get away with rudeness and abruptness towards me.

Every single thing you've done against me will not be forgotten.

I will take this further.

[I advised him that that is his right.]

What are you saying? Your rudeness has to stop.

I will take this further.

[The call ended.]

9 July 2018

Was extremely shaken by the phone call, which occurred in the [REDACTED] with the other staff present.

I immediately met with [REDACTED] and informed them.

They were sympathetic with [REDACTED] to contact NK to say any future contact was to go via [REDACTED]

WITNESS STATEMENT OF [REDACTED]

Statement taken on: 8 August 2018

1. My name is [REDACTED].
2. [REDACTED] and I have a good working relationship. He is [REDACTED]. We see each other most work days.
3. I have limited interaction with Elected Members. My interaction is [REDACTED]. Other than this, I occasionally have an ad hoc meeting with an Elected Member or see them at a council event.
4. I do not have any specific interactions with Nick beyond my usual interactions with other Elected Members.

Telephone Conversation

5. I recall a specific phone conversation that [REDACTED] had with Nick but I do not recall the exact date.
6. The phone call was not over speakerphone, so I could only hear [REDACTED]'s side of the conversation. I could hear noise coming through the receiver, so Nick may have been speaking in a raised voice.
7. I recall [REDACTED] saying words to the effect of "I have apologised", "What is going to happen to me? I don't know what's going to happen to me?" and "I'm sorry if that's how you interpreted that". [REDACTED] also suggested that Nick could elevate the issue that they were discussing to the [REDACTED].
8. During the phone conversation [REDACTED] seemed to say everything clearly. Towards the end of the call, his demeanour changed and he appeared to be shaken.
9. I have worked with [REDACTED] and it takes a lot to rattle him.

July 2018 – Infrastructure and Strategy Meeting

10. On 3 July 2018, there was an Infrastructure and Strategy meeting which [REDACTED] and I were presenting at. Before our presentation, a confidential item was to be discussed, so we waited outside the Chamber.
11. I was sat talking to [REDACTED] in the foyer and [REDACTED] joined us. We were having a general discussion about how work was going.
12. Nick exited the chamber and observed us. He walked past us towards the Mayor's Parlour (which is used as a dining room prior to official meetings) without saying hello. He then stopped and stood just past a doorway and observed us for several seconds before disappearing.
13. I found his behaviour highly unusual, which is why I remember it so clearly. I was aware at the time that there was something going on between [REDACTED] and Nick, but I still find it unusual that Nick did not say hello to us when he walked past and that he stopped and stared at us. I assumed that his behaviour was due to a conflict between himself and [REDACTED].

General Observations

14. Nick was intoxicated once at a council meeting. This received media coverage, including in the local newspaper.

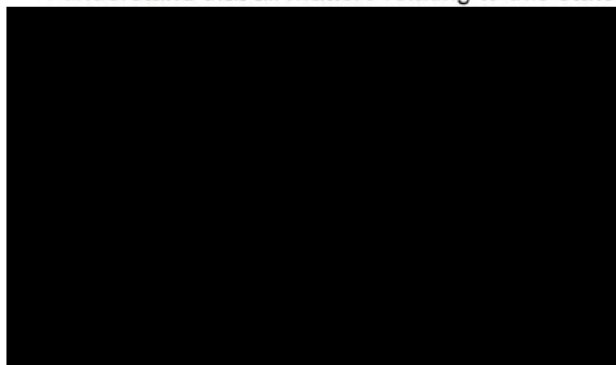
15. I cannot recall any other incidents where Nick has displayed similar behaviour or conduct. My contact with Nick is limited and there are usually other people around when we do meet.

General Comments

16. I have not heard the Mayor make any analogies to [REDACTED]. Nor have I heard Nick make any reference to the Mayor saying such things.
17. My contact with Nick is mostly limited to emails and phone calls when I am chasing him up in relation to his magazine column. The magazine has strict deadlines and Nick is almost impossible to get hold of when I need to discuss one of his columns with him. His columns often contain inaccurate information which I need to discuss with him. This is often escalated to [REDACTED] or [REDACTED].

I have read and understood the 'Honesty and Confidentiality Obligations' provided to me by City of Marion. I agree that all of the information is true and accurate to the best of my knowledge, information and belief. In the event that further relevant information becomes available or known to me, I will inform City of Marion immediately.

I understand that all matters relating to this statement must remain confidential.



Date

WITNESS STATEMENT OF [REDACTED]

Statement taken on: 8 August 2018

1. My name is [REDACTED]
[REDACTED]
2. My day to day responsibilities include looking after [REDACTED]
[REDACTED]
3. I interact frequently with Elected Members of Council, as I attend weekly meetings with them. The Mayor, the other General Managers and the CEO are all present at these meetings, too.
4. Elected Members often come to me with queries they want to follow-up. If they have an issue with another Elected Member, they will ordinarily take that issue to the CEO.
5. I have no interaction with Elected Member Nick Kerry beyond my interaction with the other Elected Members.
6. Prior to 1 July 2017, [REDACTED]
[REDACTED]
7. I interact weekly with [REDACTED] I am the [REDACTED] sponsor for a number of projects and about half of them involve people from the [REDACTED]. I interact and meet with all members of the [REDACTED] at different times, depending on the project or operational requirements.
8. I interact with [REDACTED] more than the other [REDACTED] has more experience and a background in [REDACTED] Politically, he is very astute, which is invaluable, as the City of Marion is highly entrenched in the political system. [REDACTED] knowledge and support is invaluable, so it is not uncommon for us to have chats to work through various things.
9. If [REDACTED] has a personal issue with an Elected Member, he will sometimes come to [REDACTED]
[REDACTED] does and what we do in Corporate Services, so it would be concerning if [REDACTED] did not feel comfortable to bring these issues to us. Depending on the issue, [REDACTED] will instead sometimes go directly to the CEO.

City Limits Issue 1

10. [REDACTED] once came to my office to tell me about a conversation he had just had with Councillor Nick Kerry. I do not remember the exact date of this, but I believe it was toward the end of June 2018. I did not see or hear the conversation, I only know what [REDACTED] told me.
11. [REDACTED] came to me immediately after the conversation as he did not want anything to be distorted or exaggerated and used against him. He said words to the effect of 'I need to cover myself' and explained to me what had occurred. He said that, as the interaction was just between himself and Nick, he wanted to make someone else aware of what had occurred.
12. I cannot remember the exact details of what [REDACTED] told me happened, only that he said he felt uncomfortable and threatened by Nick. I recall that he seemed to be unsettled by it.

13. I was just there to make sure [REDACTED] was okay, support him and give him guidance. I told him that he should make notes of what has occurred, not to worry about it, and that the facts were the facts and all he had to do was play it straight.

General Observations

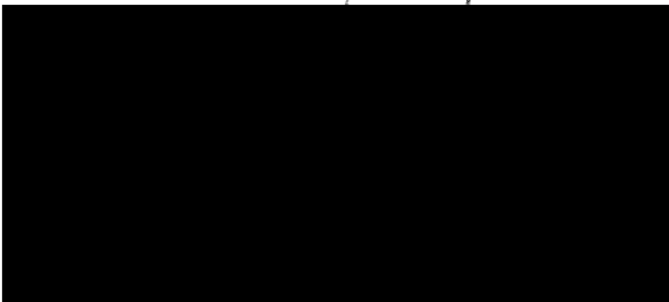
14. Nick Kerry was intoxicated at a council meeting once. I cannot recall when, it was quite some time ago. Two Elected Members (Bruce Hull and Ian Crossland) approached the bench and asked the Executive Team to do something about Nick's intoxication. We responded that it was beyond our power, and that the Elected Members as a body were responsible for taking appropriate action in regards to the conduct of an Elected Member.
15. There was a short intermission and presumably someone convinced Nick to leave as he did not return to the council meeting. I recall there was at least one TV camera there that night and that small components of the meeting may have ended up on Channel 9.
16. There have also been a couple of occasions where during a Council meeting Nick has overtly shown his support for our outdoor staff who have attended to protest their dissatisfaction with the current ongoing EB negotiations. On each occasion he was appropriately reprimanded by the Mayor and on one occasion was "thrown out" of the Council Chamber.
17. I have not personally witnessed any other behaviour or conduct by Nick of this nature encountered by [REDACTED]. I have had feedback relayed to me, but it is usually second, third, or fourth-hand information, so I cannot comment on its accuracy or truth.
18. Some of the feedback I have received is that over emails and phone conversations, Nick is unprofessional, but I have never experienced or seen this first-hand so I cannot comment on the accuracy or truth to such feedback.
19. I am aware that Nick does exhibit some unusual behaviour, but I have not experienced any of it first-hand. I believe he may have some issues with alcohol or drugs, but this is just a feeling and there is no evidence I am aware of to support it.

General Comments

20. I once recall being told of Nick saying words to the effect of '[REDACTED] is here and he is running the show'. This was second or third-hand information, so I am unsure if it was actually ever said.
21. Nick and I have always enjoyed a good professional relationship. He may be an unusual person but he has always been respectful to me.
22. It is not uncommon to hear of issues that people have with each other one on one, such as the issues between [REDACTED] and Nick, but obviously if other people (such as myself) are around, the individuals do not normally exhibit the same behaviour.
23. I am aware of a history of issues regarding Nick. When I was in [REDACTED] Nick was a union representative and was representing one of the staff members. While he was very supportive of his members, he had an unusual approach which resulted in some issues. He changed his surname before being elected as a councilman.
24. I want to be clear that I have personally witnessed almost none of the unprofessional behaviour or conduct that Nick is reported to have been engaged in. All the information I have of this nature comes from other sources, often third or fourth-hand.

I have read and understood the 'Honesty and Confidentiality Obligations' provided to me by the City of Marion. I agree that all of the information is true and accurate to the best of my knowledge, information and belief. In the event that further relevant information becomes available or known to me, I will inform the City of Marion immediately.

I understand that all matters relating to this statement must remain confidential.



14 August 2018
Date

WITNESS STATEMENT OF [REDACTED]
Statement taken on: 7 August 2018

1. My name [REDACTED] employed [REDACTED].
2. [REDACTED] al
3. [REDACTED] in Council is an important part of my job [REDACTED] regularly drops into my office to update me about what is going on or what is being [REDACTED]. I have a close working relationship with [REDACTED].
4. Councillor Nick Kerry is an Elected Member of the Council for the City of Marion.

City Limits Issue 2

5. For the City Limits publication (February/ March 2018), Nick's submission did not comply with the guidelines around what we could publish, as it was defamatory of the Mayor, Kris Hanna.
6. Nick is often difficult to get hold of and it is common that it will take a while before you can talk with him on the 'phone.
7. [REDACTED] had a deadline to get to publishers, which was a Friday. I recall [REDACTED] told me he had tried to get in contact with Nick to amend his submission.
8. I also made attempts to contact Nick. I either left him a voicemail or text message saying we could not publish what he had written. I no longer have a copy of the text if that is the communication means I used.
9. I recall advising to the effect that there was a deadline and requested a call back. I believe I also said that we cannot publish it and reminded him that he needed to say whether he agreed to the amended version that had been sent.
10. The deadline was extended to the following Monday, and I made a further attempt to contact Nick. I believe I left a voice message.
11. We did not hear back from Nick, so I made [REDACTED] go ahead and print the alternative version.

4 July 2018

12. I held a meeting with Nick on 4 July 2018 to discuss Nick's concerns he had raised with me about [REDACTED].
13. Nick had rung me about a week before that date saying that he had issues with [REDACTED]. This was 'out of the blue' because Nick had not previously mentioned any such issues to me. I only knew that Nick had issues with other people.
14. I told him we needed to meet. I involve [REDACTED] in the meeting.
15. I made notes of that meeting and later provided these [REDACTED] in a separate meeting with him.
16. At the meeting, Nick was really upset and mentioned that I knew about the censorship or being 'gagged' in relation to the City Limits article. I had direct knowledge of this and considered that it was incorrect because he had every chance to review the amended version and change it.

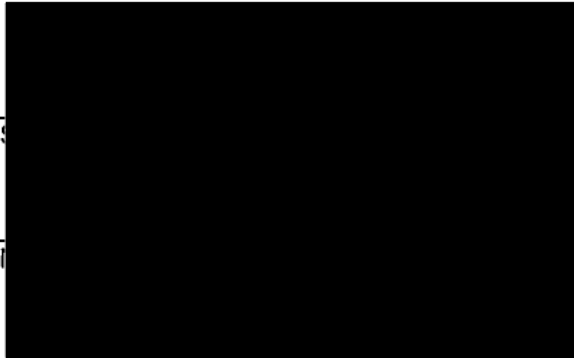
17. Some of the issues Nick raised were events that occurred before I got to Council, where [REDACTED] allegedly lied to a meeting with a Messenger journalist and the Mayor.
18. In respect to the item in the notes referring to '[REDACTED]', I had never heard that before from anybody. I had (and continue to have) no knowledge of any Elected Members having any issues with [REDACTED].
19. Nick is a student of military history, and has talked to me about it on a few occasions before. His knowledge of WW2 is impressive. I believe he is the one making the reference to [REDACTED] rather than any other Elected Members because I had never heard this mentioned previously.
20. Nick also mentioned [REDACTED] being rude and offensive. I have never observed [REDACTED] being rude or offensive. In my experience he is always professional and does a great job. I asked Nick for examples of what he meant, and he talked about Australia Day when the Mayor was being interviewed by the media. He said that afterwards, when he (Nick) was talking to the press [REDACTED] was standing by and taking shorthand.
21. I had no knowledge of that, and it was denied by [REDACTED] when I later met with him. I was not at the press conference, but both [REDACTED] and Kris told me at the time that Nick was trying to get in to talk to the media and that he was muttering during and after the Mayor's interview.
22. When I met with Nick, it was not clear as to why these issues were being raised now.
23. The last point raised was that Nick believed that the Mayor was getting inappropriate support from [REDACTED]. He mentioned that [REDACTED] was helping the Mayor in his re-election campaign.
24. As employees of Council we are all very, very conscious of the limits we have in our behaviour in respect to elections. It is prohibited to use staff or council resources to help a campaign. [REDACTED] would be in trouble if he exceeded those limits.
25. When I asked Nick about his concern, he was not able to provide any examples of why he believed [REDACTED] was acting improperly.
26. Later when I met with [REDACTED] I gave him my notes. We discussed the concerns. [REDACTED] was upset. He said to me words to the effect of, "If Nick puts in a complaint against me, I will put in one against him for bullying and harassment over 4 years in council".
27. I considered it appropriate to advise our Mayor of this, which I did, and he then immediately raised a complaint.

General Observations

28. I have never seen or experienced any intimidating, threatening or undermining conduct by Nick towards myself or other employees.
29. Nick is a physically imposing man however, I have not seen or experienced by him physical intimidation or aggressive behaviour.
30. He and the Mayor have an interesting relationship. They appear to not get on well at all.
31. Nick is an emotional person. At times, he has not articulated well when he is making a speech in Council.
32. The only inappropriate conduct I have witnessed is Nick's outbursts at the Mayor.
33. We have quite a controversial Council. If anything is said that contradicts the Mayor, Nick straight away turns on his microphone and is critical of the Mayor. He has done this a number of times. It is on the public record.
34. I am concerned about [REDACTED] feeling like he is put upon. He is a good, honest and decent professional.

I have read and understood the 'Honesty and Confidentiality Obligations' provided to me by City of Marion. I agree that all of the information is true and accurate to the best of my knowledge, information and belief. In the event that further relevant information becomes available or known to me, I will inform City of Marion immediately.

I understand that all matters relating to this statement must remain confidential.



Date

WITNESS STATEMENT OF KRIS HANNAStatement taken on: 8 August 2018

1. My name is Kris Hanna. I am the Mayor and an Elected Member of the Council for the City of Marion.
2. According to the LGA, the Mayor is the spokesperson for the Council. My understanding is that the [REDACTED]
3. The primary role of [REDACTED]
4. There may also be issues where I might bring a potential [REDACTED] and we will work out a strategy to inform the community in the best way. Interactions could be initiated by myself or [REDACTED] or by other Elected Members who may come to me or [REDACTED] directly.
5. I have a professional relationship with both [REDACTED] in that regard, and our contact is probably on a weekly basis.
6. Councillor Nick Kerry is an Elected Member of Council.

5 October 2017

7. I have been asked about a press conference which took place on 5 October 2017. I specifically recall that occasion because it was the only press conference I can recall when the only Council personnel present were Cr Kerry and [REDACTED]
 8. A TV crew appeared in front of the Council chambers and I went out to do a 'piece to camera'. I was standing there in front of cameras talking to journalists.
 9. As I was presenting the Council point of view to the journalists and being filmed, Nick was hovering about behind me. I did not turn around so I cannot be certain exactly how close he was or what he was doing or saying. I had a sense that he was quite close to me, it felt like he was within inches of me. He was making some disapproving comments or noises. He was standing close enough to me that it felt disconcerting, but I refused to be distracted because the cameras were rolling.
 10. I purposely did not focus on him. I focussed on continuing my presentation. If I had turned around and told him off, it would have been on film and would be embarrassing for the Council. I focussed on the job I had to do.
 11. I was aware with peripheral vision that [REDACTED] was there also. It was [REDACTED] what was happening and to ensure it all went well from a Council perspective.
 12. While I was still talking and being filmed I could see [REDACTED] had taken Nick aside and they were standing about two metres away from me, out of camera range. They were talking.
 13. I finished what I was doing and started to move away. As usual I had a short debriefing conversation with [REDACTED] about my presentation to the media. It was obvious from our conversation that we had both been concerned about the risk of Nick making a scene. I do not recall any specific comment to [REDACTED] about my concerns nor do I recall what [REDACTED] might have said about what words were exchanged between him and Nick. I just recall the intent of the conversation.
 14. I do not know Nick's intention when he positioned himself just behind me but it was not appropriate. On that basis, I believe that [REDACTED] intervention as the [REDACTED] was entirely appropriate.
- 

15. As I was finishing the brief conversation with [REDACTED] and departing the scene, I saw Nick approach and talk to a TV journalist who was getting ready to go. I did not hear their conversation.

4 July 2018

16. I am told there was a meeting between Cr Kerry and [REDACTED]. I was not aware of the issues raised by Cr Kerry.
17. If Cr Kerry is suggesting that [REDACTED] among Elected Members, I can only say I have never heard this name used by Councillors. I have never heard anyone describing [REDACTED] in this way. Without fail, every time I have heard Councillors refer to [REDACTED] it is as [REDACTED] except in a formal meeting I would use [REDACTED].
18. Among Councillors, [REDACTED] or his role would be referred to occasionally, but not regularly.
19. In respect to the assertion that [REDACTED] has been 'working for me' in the sense of acting like an employee of mine personally, with a goal of benefitting me; it is completely false. I have never had a conversation with [REDACTED] from which anyone could infer he has some personal loyalty to me as a person or as an Elected Member.
20. He and I have to work closely together, probably every week. Our communication is about getting out

Inappropriate Comments

21. I have been asked about something I allegedly said to Cr Kerry: "*When Hitler invaded a country the* [REDACTED] comment. Even if I had been thinking such a thing, which I completely reject, Cr Kerry would not be someone in whom I would confide such grotesque thoughts.
22. I can provide some background to the reference I made in the complaint to a previous case of Cr Kerry threatening staff in relation to their employment.
23. In early 2015 [REDACTED] was the manager at the time who handled alleged Code of Conduct breaches by Elected Members. [REDACTED] came to me and said that Nick had said to a senior staff member at the [REDACTED] words to the effect that he was going to get [REDACTED] (staff) sacked.
24. I asked for the call recording. [REDACTED] provided that and I listened to it. I heard that Cr Kerry had made the threat as alleged. I suggested to [REDACTED] that I handle it, as Mayor, rather than bother with a formal process. She agreed with that course of action.
25. Subsequently I spoke to Cr Kerry with words to the effect of 'you can't really say that stuff'. It was a gentle reprimand.
26. I reported that back to [REDACTED] how I had dealt with it. Neither she nor I took it any further. I asked her to keep the recordings.
27. I took a lenient approach because Cr Kerry was a new Councillor and that approach seemed sensible and appropriate. I would have done the same for any Councillor at that time, especially a new one.

General Observations

28. I have never personally experienced or witnessed any threatening or intimidating conduct by Cr Kerry towards [REDACTED].
29. I am aware that Nick has been previously censured for bullying and harassing a fellow Council member.

30. I was not aware of any serious tension between [REDACTED] and Cr Kerry until the [REDACTED] told me about a month ago of the extent of Craig's concerns about Cr Kerry's behaviour. I responded by bringing the motion to Council which has led to this investigation. I considered it my duty to do so.

I have read and understood the 'Honesty and Confidentiality Obligations' provided to me by City of Marion. I agree that all of the information is true and accurate to the best of my knowledge, information and belief. In the event that further relevant information becomes available or known to me, I will inform City of Marion immediately.

I understand that all matters relating to this statement must remain confidential.


Signature

KRIS HANNA
Name

12/8/18
Date

WITNESS STATEMENT OF NICK KERRY

Statement taken on: 22 August 2018

1. My name is Nick Kerry and I am an Elected Member of the City of Marion Council. I have been in this role for about three and a half years.
2. [REDACTED]
[REDACTED] interact with him approximately once every two months and then whenever we have to contribute articles for City Limits.
3. Kris Hannah is the Mayor for Marion City Council.
4. [REDACTED] for Marion City Council.

Issues with [REDACTED]

5. I had concerns that [REDACTED] was rude to me, to the point I considered it to be bullying. My concerns were based on a series of events that occurred since 2015, which caused me to raise them informally with the [REDACTED].
6. I cannot recall the exact details of the various events now, but basically it started in 2015, very early in my term, when [REDACTED] told me there was a media story coming out, but he didn't fully brief me about it. I had asked him whether there was a possibility of putting in a legal injunction in. It became apparent to me he wasn't respecting the confidentiality of the meeting, because he subsequently leaked to the Mayor about it. When I asked him about it, he lied about it by saying he hadn't told the Mayor.
7. In the last 12 months or so [REDACTED] has been trying to intimidate me into not writing the various articles that I wrote. This happened on more than one occasion. When I lodged an article, it took him 8 days to get back to me, then he published an amended version of my article that was not authorised by me and said that it was because I didn't respond by the deadline. He has in effect committed fraud. I have reserved all my legal rights in respect to this statement.
8. This is discussed further below in my statement.
9. I asked a Question On Notice to [REDACTED]. Instead of responding in the normal way, he rang me and made comments to the effect that I should not lodge my Questions based on the answer that I was going to get.
10. This is discussed further below in my statement.
11. There was also a press conference where [REDACTED] tried to stop me from speaking to the media and took shorthand notes of my conversation with the journalist. This was completely inappropriate.
12. This is discussed further below in my statement.
13. This investigation is all a set-up because I launched a Code of Conduct against the Mayor, plus I have lodged an ombudsman's report against him and I have been campaigning against the waste of \$5M on Oaklands Crossing. I will not be distracted nor will I be intimidated by anyone in my campaign.
14. [REDACTED] told me that [REDACTED] never raised any issue with him. If he was being bullied, he would have raised it. It is a complete and utter rubbish and a political manoeuvre by the Mayor because he is concerned he will not be re-elected. The Mayor has no right to raise this matter.
15. This Code of Conduct will not distract me from campaigning against him. He also put one in against Councillor Bruce Hull who has also raised concerns about how the Mayor has conducted himself.

16. This is about Mayor Hanna trying to get payback and distracting all of us in the middle of an election.
17. I am asked specifically about a number of events. My recollection of these events is as follows.

6 June 2017

18. Council was misled by the Mayor.
19. The Mayor called a Special General Meeting without any notice or agenda. The meeting took place around about September 2017.
20. Special General Meetings do get called from time to time, but we are ordinarily aware of the agenda. In addition, every Elected Member should be able to pick up the phone and ask the CEO, 'what is this about?'.
21. I did ask [REDACTED], and his response was, *"I'd like to tell you but I can't"*. In effect he was being censored by Mayor Hanna.
22. At the meeting, Mayor Hanna said words to the effect of, *"Oaklands crossing has been bubbling under the radar"* and *"These things are negotiated behind closed doors"*. He referred to 'Plan B' being the only option. As Councillors, we have never been told of any Plan A, Plan B or Plan C, or for that matter Plan D.
23. Mayor Hanna said, *"What I'm seeking is authority to negotiate with the Federal Government and Minister Fletcher to get the project going"*.
24. We voted on giving that authority, but not on contributing \$5M.
25. I had supported [REDACTED] about the Oaklands Crossing, but I was one of two Councillors who voted against the Mayor's motion.
26. When I raised my opposition and deep concerns, the Mayor's response was, *"You're raining on the parade"*.
27. After the meeting finished, staff members immediately took up all the papers as soon as we were finished. I have never seen such behaviour at a council meeting.
28. I read about it in the Advertiser the next day that the City of Marion was contributing \$5M to the Oaklands Crossing. The delegation we gave was to liaise with Minister Paul Fletcher, not that it was a done deal.
29. If it was proposed to give \$5M, the Elected Members should be able to see all the options before voting, whether it's Plan A, B or C. Instead, we just read about it in the Advertiser the next day and media outlets ie Channel 7, 9 and 10.
30. Subsequently to that, we had another meeting after the fact where a vote was held, and it was agreed to give the \$5M. This is totally unethical and inappropriate.
31. I indicated very rigorously my opposition to the waste of \$5M of ratepayer money on the Oaklands Crossing.
32. I also made comments in my City Limits article in which I've consistently been censored.

5 October 2017

33. Sometime last year there was a motion by Bruce Hull to abolish Australia Day from Council. The motion did not get up.
34. The next day I went to council and saw the Mayor having a press conference.
35. I went and stood behind the Mayor. [REDACTED] kept saying to me, *"Move away, move away, move away"*. That was totally inappropriate.

36. On reflection, as an Elected Member, I'm fully entitled to stand behind the Mayor when he is talking about a Council matter. On reflection, as a public officer I should have put in a Code of Conduct against [REDACTED] then and there.
37. After the interview, a Channel 9 journalist, [REDACTED], came up and said, "Who are you" and "Here's my card". I had a conversation with him about the Oaklands Crossing.
38. [REDACTED] stood there listening and started making shorthand notes about my conversation.
39. I then said to [REDACTED], "Are you going to be reporting this?" His response was, "Are you going to follow up with the journalist?" in an intimidating way.
40. I found this to be inappropriate. It is centralised control of [REDACTED]. If I want to talk to the journalist, I will. It is a free country.
41. I have made my position very consistent. I have always campaigned for lower rates, but to do that you can't waste ratepayers' money, for example spending \$5M on the Oaklands Crossing in a very secretive way.
42. If there was an issue about my conduct at the press conference, it should have been raised then and there. I find it extraordinary that the Mayor has raised this issue almost a year down the track.

City Limits Issue 1

43. I put an article for the City Limits and there was an attempt to censor it. I do not recall the date.
44. To the best of my recollection, I emailed it through to comms and was rung up by [REDACTED] to advise, "We can't put it in".
45. In the end it was changed. I cannot recall who changed it, but I believe it was [REDACTED] people because I would not accept any censorship.
46. I cannot recall having any specific conversation with [REDACTED] about it. I do remember that I was being censored. I categorically deny saying anything like, "I'll take it to the CEO and he'll deal with you". I would never have said that. This is a complete stitch up; a complete lie.
47. I've had a number of conversations with the CEO and have said on a number of occasions that I find it highly offensive that I'm censored. My grandfather died in a communist concentration camp.
48. My interactions with [REDACTED] are limited because at the end of the day it is the CEO that gives the 'okay'.
49. There was one other article that was published under my name that I completely did not write. It may have been the one in December 2017, or the one in March 2018. [REDACTED] put in an article that was not written or authorised by me. He had no authority whatsoever to publish that article under my name.

City Limits Issue 2

50. I cannot recall what happened with the article from February/March 2018.
51. This article could have been one of the censorships but I cannot recall the details.
52. I recall that for one of them I asked [REDACTED] in person after a council meeting, "Well, why has it been changed?" He just said, "Don't do it". He is a [REDACTED] and should know better.

June 2018

53. In around June 2018 I submitted some Questions on Notice to [REDACTED].
54. He rang me and said something like, "I'm just ringing with our response... just seeing whether or not you actually want to go ahead with it?" or "Do you really want to go ahead with it?" I said, "Well what does that mean?" and he said that he'd sent an email and something like, "You probably don't want to

go ahead with it". I hadn't seen the email he had sent and I recall saying something like, "Okay, well let me get onto my email". The conversation ended there.

55. I ended up withdrawing the question.
56. I felt that the tone and manner that [REDACTED] had used was intimidatory, that he was pressuring me or intimidating me into not submitting the questions, which I am completely entitled to do.
57. I did not discuss this with anyone until I had the meeting with [REDACTED]
58. That was probably the final straw with [REDACTED]
59. On reflection, I feel he was not acting as a [REDACTED] Council, but rather he was acting inappropriately, censoring any negative comments that I may be made against the Mayor.

July 2018 - Infrastructure and Strategy Meeting

60. I recall the meeting I had with [REDACTED] on 4 July 2018.
61. I recall the Infrastructure and Strategy meeting that occurred the day before, or around that time. Usually when I leave a meeting I am in a rush to get home.

I did not look at [REDACTED] in any intimidating way. I don't play those games. This allegation is scurrilous, defamatory, and false. **4 July 2018**

62. My concerns were raised based on the consistent censorship I had been receiving from [REDACTED]
63. Going back to 2015, the first incident was a confidential matter about a media article where I asked [REDACTED] about the possibility of a legal injunction on the article, and he leaked that out to the Mayor. He then denied telling the Mayor. On reflection, I should have put in a Code of Conduct then and there but as a first-term Councillor, I was not aware of my rights.
64. Since then it has been a snowball of mounting evidence that I noticed over a number of years that made me conclude that [REDACTED] was not working as a [REDACTED], but rather he was working for the Mayor as a [REDACTED]. He should be aware of whoever the Mayor and Elected Members are of the day and should not be favouring any particular candidates. I have been reassured by [REDACTED] has been advised of this.
65. I had a conversation with [REDACTED] and asked him what to do and he suggested we meet with [REDACTED] manager. It was in informal meeting. [REDACTED] mentioned to me a number of times, "You're doing the right thing" by raising it informally.
66. In terms of the issues discussed at that meeting, I mentioned that [REDACTED] nickname amongst Councillors was [REDACTED]. A number of Councillors have said this to me. I did not make it up. I do not believe it is ever a good idea to compare political players with Nazi Germany. There is a saying by [REDACTED], 'if you tell a lie often enough, it becomes the truth'. On reflection, I believe the reason why he got the nickname is because if you lie often enough, people believe your lies. He is a [REDACTED]
67. As Councillors, we don't talk about [REDACTED] much. I know he has direct interactions with individual Councillors, but these are very limited.
68. The nickname is not unreasonable because it is based on [REDACTED] inappropriate actions. The Mayor took paid leave to run for State parliament under SA Best.
69. I raised with [REDACTED] that there was a rumour going around that [REDACTED] was doing Mayor Hanna's [REDACTED] for SA Best. I raised it with [REDACTED] at the time and [REDACTED] told me that he then specifically told [REDACTED] to stay out of the State election completely.
70. The Mayor is the official spokesman for the Council but Councillors are also entitled to speak to the media if they wish.

9 July 2018

71. After my meeting with [REDACTED] sent me a letter of apology.
72. I had raised these issues specifically about him leaking to the Mayor and for lying about it. He apologised for his rudeness but did not address the leaking to the mayor.
73. I rang him and asked him, "*Did you leak to the Mayor?*" He said, "*No*", which was a lie. I asked him to apologise and confess, and advised that he should be more respectful of me. The conversation was basically about that.
74. I did not use words like, "*If you think the Mayor can protect you*". The CEO is person who hires and fires staff.
75. The conversation took place, but [REDACTED] has put a spin on it. The way it is put is the [REDACTED]

Other Issues regarding [REDACTED]

76. Early in my term, I had a friendly open conversation with Mayor Hanna. This was in January 2015 over a coffee. He said to me, "*When Hitler invaded Poland the first thing he did was take over the [REDACTED]*".
77. I do not recall any context to this comment. It was a long time ago, and he did say it. It's probably a historical fact. I know that Germany did invade Poland in September 1939.
78. Mayor Hanna has made comments like this before. I recall a conversation (I cannot recall the exact date) where we were talking about the giving of colour coding to staff and his comment was, "*By giving staff a yellow star it's going too far*". This is a reference to the star of David. I found this offensive. I rang him the next day and said that I found it offensive. He asked me to email him, which I did, but he never apologised.
79. After visiting Eastern Europe in the last week, I again find his comments grossly offensive.
80. I have never stared at [REDACTED] or tried to intimidate him in any way. I don't do that. Again, I find it offensive, defamatory, and scurrilous. I categorically deny doing anything like that.

Other Issues regarding Kris Hanna

81. This Code of Conduct is not sparked by [REDACTED] It is a political manoeuvre by Mayor Hanna.
82. Mayor Hanna understands all too well that he has been engaging in bullying and harassment over the last several years. This is not a Code of Conduct matter; this is one of his tools to intimidate me.
83. It was launched by an informal comment made by [REDACTED] to Kris about our meeting on 4 July 2018. After it was raised by Kris, [REDACTED] profusely apologised to me and said, "*I didn't realise this was going to happen, that it ended up the way that it did*" and "*I've been played for a fool*". He was very, very apologetic. He said this because we have a good relationship.
84. There is a long history which shows the Mayor is out to get me. This report is just another footnote of his vindictive behaviour.
85. Mayor Hanna talks about transparency all the time, but that culture is not there. Instead it is a culture of secrecy and cover-up.
86. For example, at the January orientation day in 2018, attended by all Elected Members and senior directors, Kris Hanna encouraged people to put in as many Codes Of Conduct as possible against members. The CEO was not there. The Mayor did not say whether it was to put in Codes of Conduct that had merit or about any particular individuals, he just said to put in as many as possible. I found this completely inappropriate.
87. Kris Hanna and I started out on friendly terms. I discovered that he plays mind games. He said to me once, "*You beat a prisoner up and you serve them a gourmet breakfast the next morning*". He said this about the former CEO, Mark Searle, that Mark would stitch him up and then be nice the next morning.

88. Kris did that with me one time. There was a Code of Conduct against me and he used his casting vote to not take the recommendation of the investigator. We had taken the time and effort to engage an investigator and the Council, at the Mayor's choice, can reject the recommendation of the investigator anyway.
89. He rang me up the next morning and said, *"Are you annoyed?"*
90. Kris Hanna is temperamental. He storms out of meetings, abuses members, even allies. If a Councillor makes a point of order, he will rule him out of order and say, *"If you don't like my decision you can move a motion of dissent"*.
91. I've said to Mayor Hanna on more than one occasion, *"I'm concerned with the direction you're leading the Council"*, which has made me an enemy.
92. I found that you will be victimised if you don't side with the Mayor. Anyone who does not side with the Mayor experiences isolation, exclusion, constant attacks and Codes Of Conduct put in against them. This is the third or so that he has tried to inflict on me. One was unanimously rejected by Council in November 2017.
93. After that one he threw a tantrum. He cancelled the Christmas party and didn't talk to anyone for two to three months.
94. He has said to me once before, words to the effect of, *"If you don't toe the line, I won't be inviting you to various meetings anymore"*. He held various secret meetings about Council business at Club Marion. On one occasion I said, *"this is a form of intimidation and bullying if you exclude people."*
95. On the last Saturday of January 2018, Kris Hanna announced his candidacy to run with SA Best in the State election. On the following Monday, he emailed everyone except for me and Nick Westwood (another Councillor who was running against him). Again this is a form of bullying by excluding people.
96. Another Councillor (who I would rather not name) showed me the email and said, *"In the interests of fairness and equity I think you should know about it"*.
97. There is another matter that I am very concerned about it and have an obligation to report to ICAC as per advice from the CEO. When we were talking about development plan (around Oct/Nov 2017), my fellow Councillor (who I would rather not name) called Kris Hanna's actions 'corrupt' in the Elected Members forum. I agreed. That was in relation to Kris giving significant land owners inappropriate advantages (eg opportunity to build eight stories instead of the normal four).
98. The next day Kris Hanna launched a Code Of Conduct against me for some obscure reason, being that he felt I wasn't paying him courtesy, from what I recall. It was unanimously rejected and he threw a tantrum (described above).
99. The CEO advised me that I have no choice but to report Kris Hanna to ICAC as a public officer for giving landowners a furious advantage.
100. There was another matter recently (I cannot recall the exact date) involving an unsolicited bid from a hotel chain that wants to build a hotel at the Marion Cultural Centre. The Mayor wanted to keep it 'commercial in confidence'. He then victimised Councillors for talking to the media about it by launching Codes of Conduct against them. I would rather not name them.
101. There was also a special motion, not on the agenda, that Kris Hanna wanted to leave the LGA. He asked me how I was going to vote and I said I would not be revealing that.
102. I persuaded another Councillor to vote against leaving the LGA, and the Mayor was rolled on what was a very important issue he was championing. He was humiliated by that and became very angry.
103. Last night I found the Mayor to be offensive to Nick Westwood. Nick has a hearing impairment.
104. Kris was being patronising and bullying to him saying, *"I don't care what it takes, hearing aids or whatever, you need to be able to hear what's going on"*. I just left the meeting.

105. This Code of Conduct is a political tool used by Kris Hanna to stop me from campaigning against his re-election. He knows that I speak out against him and is trying to stop that.

Additional Comments

106. I do not believe that this matter should be raised at the next Council meeting.
107. I will not be afforded natural justice if it is raised at the next Council meeting when I am not there. This is a denial of natural justice as I should be able to make a statement to Elected Members about any proposed decision about me.

I have read and understood the 'Honesty and Confidentiality Obligations' provided to me by City of Marion. I agree that all of the information is true and accurate to the best of my knowledge, information and belief. In the event that further relevant information becomes available or known to me, I will inform the City of Marion immediately.

I understand that all matters relating to this statement must remain confidential.

Signature

Name

Date

CODE OF CONDUCT FOR COUNCIL MEMBERS

Local Government Act 1999: Section 63 (1)

NOTICE under Clause 3.10 of the Code of Conduct for Council Members published by the Minister for Planning for the purposes of Section 63 (1) of the Local Government Act 1999.

For the purposes of Clause 3.10 of the Code of Conduct for Council Members adopted for the purposes of Section 63 (1) of the Local Government Act 1999 and published in the *Gazette* on the day on which this Notice is made, the value of \$100 is specified.

Dated 18 August 2013.

JOHN RAU, Deputy Premier, Minister for Planning

Code of Conduct for Council Members

*Published by the Minister for Planning for the purposes of Section 63 (1) of the
Local Government Act 1999.*

This Code of Conduct is to be observed by all Council members.

Council members must comply with the provisions of this Code in carrying out their functions as public officials. It is the personal responsibility of Council members to ensure that they are familiar with, and comply with, the standards in the Code at all times.

PART 1—PRINCIPLES

1. Higher principles—Overarching Statement

This part does not constitute separate enforceable standards of conduct.

Council members in South Australia have a commitment to serve the best interests of the people within the community they represent and to discharge their duties conscientiously, to the best of their ability, and for public, not private, benefit at all times.

Council members will work together constructively as a Council and will uphold the values of honesty, integrity, accountability and transparency, and in turn, foster community confidence and trust in Local Government.

As representatives of open, responsive and accountable government, Council members are committed to considering all relevant information and opinions, giving each due weight, in line with the Council's community consultation obligations.

In the performance of their role, Council members will take account of the diverse current and future needs of the local community in decision-making, provide leadership and promote the interests of the Council.

Council members will make every endeavour to ensure that they have current knowledge of both statutory requirements and best practice relevant to their position. All Councils are expected to provide training and education opportunities that will assist members to meet their responsibilities under the Local Government Act 1999.

Council members will comply with all legislative requirements of their role and abide by this Code of Conduct.

PART 2—BEHAVIOURAL CODE

2. Behavioural Code

In line with 'Part 1—Higher Principles' of this Code, the following behaviour is considered essential to upholding the principles of good governance in Councils.

This Part is for the management of the conduct of Council members that does not meet the reasonable community expectations of the conduct of Council members. It deals with conduct that does not, and is not likely to, constitute a breach of Part 3—Misconduct or criminal matters such as those contained in the Appendix to this document.

Robust debate within Councils that is conducted in a respectful manner is not a breach of this Part.

It is intended that each Council will adopt a process for the handling of alleged breaches of this Part. This process will be reviewed within 12 months of a general Local Government election.

Council members must:

General behaviour

- 2.1 Show commitment and discharge duties conscientiously.
- 2.2 Act in a way that generates community trust and confidence in the Council.
- 2.3 Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.
- 2.4 Show respect for others if making comments publicly.
- 2.5 Ensure that personal comments to the media or other public comments, on Council decisions and other matters, clearly indicate that it is a private view, and not that of the Council.

Responsibilities as a member of Council

- 2.6 Comply with all Council policies, codes and resolutions.
- 2.7 Deal with information received in their capacity as Council members in a responsible manner.
- 2.8 Endeavour to provide accurate information to the Council and to the public at all times.

Relationship with fellow Council Members

- 2.9 Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.
- 2.10 Not bully or harass other Council members.

Relationship with Council staff

- 2.11 Not bully or harass Council staff.
- 2.12 Direct all requests for information from the Council administration to the Council's Chief Executive Officer or nominated delegate/s.
- 2.13 Direct all requests for work or actions by Council staff to the Council's Chief Executive Officer or nominated delegate/s.
- 2.14 Refrain from directing or influencing Council staff with respect to the way in which these employees perform their duties.

Requirement to report breach of Part 3

- 2.15 A Council member who is of the opinion that a breach of Part 3 of this Code (Misconduct)— has occurred, or is currently occurring, must report the breach to the Principal Member of the Council or Chief Executive Officer, the Ombudsman or the Office for Public Integrity.
- 2.16 A failure to report an alleged or suspected breach of Part 3 of this Code is in itself a breach under this Part (Behavioural Code).

Complaints

- 2.17 Any person may make a complaint about a Council member under the Behavioural Code.
- 2.18 Complaints about behaviour alleged to have breached the Behavioural Code should be brought to the attention of the Principal Member or Chief Executive Officer of the Council, or nominated delegate/s.
- 2.19 A complaint may be investigated and resolved in any manner which that Council deems appropriate in its process for handling alleged breaches of this Part. This can include, but is not limited to: a mediator or conciliator, the Local Government Governance Panel, a regional governance panel or an independent investigator.
- 2.20 A complaint may be considered within this process to be trivial, vexatious or frivolous, and accordingly not investigated.
- 2.21 A failure of a Council member to cooperate with the Council's process for handling alleged breaches of this Part may be referred for investigation under Part 3.
- 2.22 A failure of a Council member to comply with a finding of an investigation under this Part, adopted by the Council, may be referred for investigation under Part 3.
- 2.23 Repeated or sustained breaches of this Part by the same Council member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.
- 2.24 A breach of the Behavioural Code must be the subject of a report to a public meeting of the Council.

Findings

- 2.25 If, following investigation under the Council's complaints handling process, a breach of the Behavioural Code by a Council member is found, the Council may, by resolution:
- 2.25.1 Take no action;
 - 2.25.2 Pass a censure motion in respect of the Council member;
 - 2.25.3 Request a public apology, whether written or verbal;
 - 2.25.4 Request the Council member to attend training on the specific topic found to have been breached;
 - 2.25.5 Resolve to remove or suspend the Council member from a position within the Council (not including the member's elected position on Council);
 - 2.25.6 Request the member to repay monies to the Council.

PART 3—MISCONDUCT

3. Misconduct

Failure by a Council member to comply with this Part constitutes misconduct. The provisions within this Part may refer to statutory matters under the Local Government Act 1999. Any breach of these provisions will be investigated under that legislation.

Any person may report an alleged breach of this Part to the Council, the Ombudsman, the Electoral Commissioner (for alleged breaches of Code 3.8) or the Office for Public Integrity. Alleged breaches of this Part made to a Council or to the Office for Public Integrity may be referred to the Ombudsman for investigation under Section 263 of the Local Government Act 1999, by the Council's Chief Executive Officer or by the Independent Commissioner Against Corruption, where he or she so determines.

A report from the Ombudsman that finds a Council member has breached this Part (Misconduct) of the Code of Conduct must be provided to a public meeting of the Council. The Council must pass resolutions, that give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the Council following the receipt of these recommendations.

An investigation under Part 3 of this Code does not preclude an investigation being launched as a potential breach of the criminal matters listed in the Appendix to this document.

Member duties

Council members must:

- 3.1 Act honestly at all times in the performance and discharge of their official functions and duties;
- 3.2 Perform and discharge their official functions and duties with reasonable care and diligence at all times;
- 3.3 Not release or divulge information that the Council has ordered be kept confidential, or that the Council member should reasonably know is information that is confidential, including information that is considered by Council in confidence;
- 3.4 Not exercise or perform, or purport to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform;
- 3.5 Not attempt to improperly direct a member of Council staff to act in their capacity as a Local Government employee for an unauthorised purpose;
- 3.6 Ensure that relationships with external parties cannot amount to interference by improper influence, affecting judgement, decisions and/or actions.

Gifts and benefits

3.7 Council members must not:

- 3.7.1 Seek gifts or benefits of any kind;
 - 3.7.2 Accept any gift or benefit that may create a sense of obligation on their part or may be perceived to be intended or likely to influence them in carrying out their public duty;
 - 3.7.3 Accept any gift or benefit from any person who is in, or who seeks to be in, any contractual relationship with the Council.
- 3.8 Notwithstanding Code 3.7, Council members may accept campaign donations as provided for in the Local Government (Elections) Act 1999.

- 3.9 Notwithstanding Code 3.7.3, Council members may accept hospitality provided in the context of performing their duties, including:
- 3.9.1 Free or subsidised meals, beverages or refreshments of reasonable value provided in conjunction with:
 - 3.9.1.2 Council work related events such as training, education sessions workshops and conferences;
 - 3.9.1.3 Council functions or events;
 - 3.9.1.4 Social functions organised by groups such as Council committees and community organisations.
 - 3.9.2 Invitations to, and attendance at, local social, cultural or sporting events.
- 3.10 Where Council members receive a gift or benefit of more than a value published in the *Government Gazette* by the Minister from time to time, details of each gift or benefit must be recorded within a gifts and benefits register maintained and updated quarterly by the Council's Chief Executive Officer. This register must be made available for inspection at the principal office of the Council and on the Council website.

Register of Interests

- 3.11 Council members must lodge with the Council a complete and accurate primary return of their interests, and subsequent ordinary returns, as required by legislation.

Campaign donation returns

- 3.12 Council members must ensure that following each election an accurate campaign donation return is provided to the Chief Executive Officer of the Council as required by legislation.

Conflict of interest

- 3.13 Council members must be committed to making decisions without bias and in the best interests of the whole community and comply with the relevant conflict of interest provisions of the Local Government Act 1999.

Misuse of Council resources

- 3.14 Council members using Council resources must do so effectively and prudently.
- 3.15 Council members must not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate.
- 3.16 Council members must not use public funds or resources in a manner that is irregular or unauthorised.

Repeated or sustained breaches of Part 2

- 3.17 At the discretion of the Council to which the member is elected, repeated or sustained inappropriate behaviour, as listed in Part 2, may be escalated to an allegation of misconduct under this Part.
- 3.18 A failure to comply with a finding of inappropriate behaviour (by the Council, independent investigator or Ombudsman) under Part 2 is also grounds for a complaint under this Part.

APPENDIX—CRIMINAL MATTERS

The matters within this Appendix are matters for which a criminal penalty attaches. As separate legislation operates to cover such conduct, this part does not form part of the Code of Conduct for Council Members.

Allegations of conduct breaching these matters will be investigated in accordance with the legislation governing that conduct and they are included within this document only in order to provide a complete overview of the standards of conduct and behaviour expected of Council members.

Alleged breaches of matters outlined in this Appendix should be reported to the Office for Public Integrity in the first instance.

Breaches of the Local Government Act 1999

Member duties

A member of a Council must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council (Section 62 (3)).

A member of a Council must not, whether within or outside the State, make improper use of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council (Section 62 (4)).

Provision of false information

A member of a Council who submits a return under Chapter 5 Part 4 (Register of interest) and Schedule 3 of the Local Government Act 1999, that is to the knowledge of the member, false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence (Section 69).

Restrictions on publication of information from Register of Interests

A Council member must not publish information, or authorise publication of information, derived from a Register unless the information constitutes a fair and accurate summary of the information contained in the Register, and is published in the public interest, or comment on the facts set forth in a Register, unless the comment is fair and published in the public interest and without malice (Section 71).

Breaches of other Acts

Acting in his or her capacity as a public officer, a Council member shall not engage in conduct, whether within or outside the state, that constitutes corruption in public administration as defined by Section 5 of the Independent Commissioner Against Corruption Act 2012, including:

An offence against Part 7 Division 4 (Offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:

- bribery or corruption of public officers;
- threats or reprisals against public officers;
- abuse of public office;
- demanding or requiring benefit on basis of public office;
- offences relating to appointment to public office.

Any other offence, including an offence against Part 5 (Offences of dishonesty) of the Criminal Law Consolidation Act 1935, committed by a public officer while acting in his or her capacity as a public officer, or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or to an attempt to commit such an offence.

Any of the following in relation to an offence referred to in a preceding paragraph:

- aiding, abetting, counselling or procuring the commission of the offence;
- inducing, whether by threats or promises or otherwise, the commission of the offence;
- being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
- conspiring with others to effect the commission of the offence.

Elected Member Code of Conduct Procedure For Investigating Complaints



1. POLICY

- 1.1 The Code of Conduct for Council Members is set by regulation and applies to all Elected Members across local government in South Australia. Depending on the nature of an alleged breach of the Code, a matter may be subject to a Council investigation or an investigation by the Ombudsman or Office of Public Integrity (OPI). This procedure applies when the Council receives a complaint against an Elected Member under the Code of Conduct for Council Members as gazetted on 29 August 2013. A copy of the Code is available on the City of Marion's website www.marion.sa.gov.au

2. ALLEGED BREACH

- 2.1 Breaches of the Code of Conduct may relate to behaviour (in Part 2 of the Code) or misconduct (in Part 3 of the Code). Criminal or corruption matters, which are subject to separate legislation, do not form part of the Code of Conduct for Elected Members but are referred to in the Appendix of the Code of Conduct.
- 2.2 Where an alleged breach occurs the complainant should report the allegation, in writing to the Chief Executive Officer. The allegation should:
 - 2.2.1 Be specific
 - 2.2.2 Provide as much supporting evidence as possible to assist an investigation
 - 2.2.3 Provide the name of the Elected Member who has allegedly breach the Code.
- 2.3 Complainants can, at any time, take the alternative option of lodging the complaint with the Ombudsman or Office of Public Integrity (OPI), which will direct the complaint in accordance with the ICAC Act.
- 2.4 On receipt of a complaint, the CEO will be responsible for advising the Mayor and referring the complaint to Council.
- 2.5 When no allegations have been substantiated, Council will consider the matter in confidence.
- 2.6 The Council will consider the matter, in conjunction with legal advice if required, and determine whether the complaint relates to:
 - 2.6.1 Behavioural which falls under Part 2 of the Code
 - 2.6.2 Misconduct which triggers action under Part 3 of the Code, or
 - 2.6.3 Criminal or Corrupt behaviour.
- 2.7 Complaints relating to misconduct or criminal behaviour must be referred to the appropriate authorities immediately.
- 2.8 As soon as practical after the receipt of an allegation and prior to the complaint being referred to Council, the Mayor will advise the Elected Member who is the subject of the

complaint and its substance. If the complaint is about the Mayor, the Deputy Mayor will undertake this function.

- 2.9 A copy of the complaint will be provided to the Elected Member and will also be provided to confidentially Council. This may be done in person, via email and/or a Council report.

3. COMPLAINT ASSESSMENT

- 3.1 In undertaking the preliminary assessment of a complaint, the Council may have regard to the following considerations:
- a) whether the complaint is a “code of conduct complaint”,
 - b) whether the complaint is trivial, frivolous, vexatious or not made in good faith,
 - c) whether the complaint discloses prima facie evidence of a breach of the code,
 - d) whether the complaint raises issues that would be more appropriately dealt with by another agency or body,
 - e) whether there is or was an alternative and satisfactory means of redress available to the complainant in relation to the conduct complained of,
 - f) whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation or apology,
 - g) whether the issue/s giving rise to the complaint have previously been addressed or resolved,
 - h) whether the conduct complained of forms part of a pattern of conduct,
 - i) whether there were mitigating circumstances giving rise to the conduct complained of,
 - j) the seriousness of the alleged conduct,
 - k) the significance of the conduct or the impact of the conduct for the council,
 - l) how much time has passed since the alleged conduct occurred, or
 - m) such other considerations that the Council considers may be relevant to the assessment of the complaint.

4. ALLEGED BREACH UNDER PART 2

Having regard to the seriousness of the allegation and information provided, the Council will:

- a) seek to resolve the matter internally, including through conciliation or mediation,
- b) refer the matter to an independent person of Council's choice,
- c) refer the complaint to the Local Government Governance Panel or
- d) dismiss the allegation.

4.1 Internal Response

- 4.1.1 Only matters which are determined to be of a minor nature will be dealt with internally and only with the agreement of the parties.
- 4.1.2 Council may request that the Mayor facilitate a meeting with the complainant and the Elected Member and may seek mediation and conciliation between the

parties in an attempt to resolve the matter to the satisfaction of all parties. This may be appropriate, for example, where the complainant is also an Elected Member.

- 4.1.3 The Mayor must ensure that the principles of natural justice and procedural fairness are observed.
- 4.1.4 Where the matter is resolved by the Mayor to the satisfaction of all the parties the matter will be closed and no further action will be taken. The Mayor will send written confirmation to all the parties confirming that the matter has been resolved and provide report the outcome to a public meeting of the Council if appropriate.

Where the matter cannot be resolved in this manner, it will be referred back to Council for further consideration.

- 4.1.5 Where the Mayor is the complainant or the subject of the complaint the internal response will be facilitated by the Deputy Mayor or other Elected Member as resolved by Council.
- 4.1.6 If Council determines to resolve a complaint internally, it must be satisfied that it has all relevant facts have been obtained. If Council has outstanding questions, relating to the matter, these must be addressed prior to finalising the complaint.

4.2 Referral to independent person of Council's choice

- 4.2.1 A complaint may be referred by Council to an independent person for investigation.
- 4.2.2 Complaints to an independent person will specify:
 - The grounds of the complaint
 - Set out the circumstances of the complaint
 - Be accompanied by any other material that is available to support the complaint.
- 4.2.3 The independent person must ensure that the principles of natural justice and procedural fairness are observed.
- 4.2.4 Following the investigation, a report will be prepared by the independent person and will be provided to Council. The report may recommend to the Council appropriate action in relation to the matter, including the imposition of any of the sanctions available to a Council under clause 2.25 of the Code of Conduct.

4.3 Referral to the Local Government Governance Panel

- 4.3.1 Complaints referred to the Governance Panel will specify the ground/s of the complaint, set out the circumstances of the complaint and be accompanied by any other material that is available to support the complaint. A copy of the Governance Panel's procedures is available on the Governance Panel webpage on the LGA's website under Rules of Engagement. [www.lga.sa.gov.au]
- 4.3.2 The matter will be assessed initially by the Panel Manager who will determine the process to be followed and the person who will deal with the matter. The matter may be dismissed if it is frivolous, vexatious, misconceived or lacking in substance.

- 4.3.3 A complaint that is forwarded to the Governance Panel will be assessed by the Panel Manager in the first instance. The Panel Manager will consider the applicable facts from the material provided and may form a provisional conclusion that further investigation is unnecessary, as it would be unlikely to result in a breach finding. In these circumstances, Council will consider the recommendation from the Panel Manager and determine whether to proceed to a full investigation.
- 4.3.4 Where a complaint progresses to an investigation, a report will be prepared by the Panel and will be provided to the Council. The report may recommend to the Council appropriate action in relation to the matter, including the imposition of any of the sanctions available to a Council under clause 2.25 of the Code of Conduct.

4.4 Dismiss the allegation.

- 4.4.1 The Council may choose to dismiss a matter only in the circumstances where it is evident that the complaint is frivolous, vexatious, misconceived or lacking in substance. The Council must provide reasoning for undertaking this action.

5. REPORTING TO COUNCIL

- 5.1 At the conclusion of an investigation, Council must resolve if a breach of part 2 of the Code is found, the breach must be the subject of a report to a public meeting of the Council. The Council may, by resolution, take any of the following actions:
 - 5.1.1 Take no action and provide the reasons as to why
 - 5.1.2 Pass a censure motion in respect of the Elected Member
 - 5.1.3 Request a public apology, whether written or verbal
 - 5.1.4 Request the Elected Member to attend training on the specific topic found to have been breached
 - 5.1.5 Resolve to move or suspend the Elected Member from a position within the Council (not including the Members Elected position on Council)
 - 5.1.6 Request the member to repay monies to the Council.

6. APPEALS

- 6.1 The Council will not enter into any process of appeal in relation to Part 2 of the Code. If an Elected Member is aggrieved by the process and or outcome, they may refer the matter to the Ombudsman for review.

7. PART 3 – MANDATORY CODE (MISCONDUCT)

- 7.1 Any person may report an alleged breach of Part 3 of the Code to the Council, the Ombudsman or Office of Public Integrity. Alleged breaches of this Part made to Council or to the Office of Public Integrity may be referred to the Ombudsman for investigation.
- 7.2 Under the Code of Conduct, an Elected Member who is of the opinion that a breach of Part 3 of the Code has occurred, or is currently occurring, must report the breach to the Mayor of the Council or Chief Executive Officer, the Ombudsman or the Office of Public Integrity.

- 7.3 A failure to report an alleged or suspected breach of Part 3 of the Code is in itself a breach under Part 2 of the Code.
- 7.4 A failure of an Elected Member to co-operate with the Council's process for handling alleged breaches of Part 2 of the Code may be referred for investigation under Part 3.
- 7.5 A failure of an Elected Member to comply with a finding of an investigation under this procedure may be referred for investigation under Part 3 of the Code.
- 7.6 Repeated or sustained breaches of Part 2 of the Code by the same Elected Member may be referred, by resolution of the Council, to the relevant authority as a breach of Part 3.
- 7.7 A report from the Ombudsman that finds a Council Member has breached Part 3 of the Code of Conduct must be the subject of a report to a public meeting of the Council. The Council must pass a resolution to give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the Council following the receipt of these recommendations.

8. CRIMINAL MATTERS – APPENDIX TO THE CODE OF CONDUCT

- 8.1 The matters within the Appendix to the Code of Conduct are matters for which a criminal penalty applies. These matters must be reported to the Office of Public Integrity. In addition, allegations of a breach of any of the offence provisions in the *Local Government Act 1999* must be reported to the Office of Public Integrity.
- 8.2 In compliance with the *Independent Commissioner against Corruption Act 2012*, referral of such complaints to the Office of Public Integrity will remain confidential.

9. FURTHER INFORMATION

Adopted by Council:	27 March 2018
Next Review:	November 2019 (within 12 months of general election)
Version:	1.1
Previous Version:	Adopted 24 June 2014
Owner:	Manager Corporate Governance
Applicable Legislation:	Local Government Act 1999 (sections 59-63) Local Government (General) Variation Regulations 2013 Independent Commissioner against Corruption Act 2012
Related Documents:	Code of Conduct for Council Members Directions of Guidelines issued by ICAC
Related Policies:	Caretaker Policy