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The Redland City Council defamation report

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An investigation into the unreasonable threat
of legal action against residents by Redland
City Council

January 2017

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Contents

| | |
|---|------------|
| Dictionary | i |
| Executive summary..... | iii |
| Opinions | iv |
| Recommendations | v |
| Chapter 1: Background..... | 1 |
| 1.1 Comments on social media | 1 |
| 1.2 Council's response..... | 2 |
| 1.3 Complaints to the Ombudsman | 3 |
| 1.4 Ombudsman jurisdiction | 4 |
| 1.5 Procedural fairness | 6 |
| 1.6 The language of the report | 7 |
| Chapter 2: Council's approach to the issue | 9 |
| 2.1 What is defamation? | 9 |
| 2.2 Were the imputations drawn by council reasonable? | 9 |
| 2.3 Was council's approach reasonable? | 27 |
| Chapter 3: How council carried out its approach | 32 |
| 3.1 Form of the letter..... | 32 |
| 3.2 Timeframes for a response | 34 |
| 3.3 Use of public money | 35 |
| Chapter 4: Reporting Complainant B to her employer | 39 |
| Chapter 5: Conclusion | 43 |
| Appendix A: Letter sent by General Counsel to Complainant A | 45 |
| Appendix B: Letter sent by General Counsel to Complainant B | 49 |
| Appendix C: Letter sent by General Counsel to Complainant B's employer | 55 |

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Dictionary

| Term | Meaning |
|------------------------|---|
| CEO | Mr Bill Lyon, CEO of Redland City Council |
| concerns notice | Written notice provided under s.14(2) of the Defamation Act outlining alleged defamatory imputations to a publisher |
| council | Redland City Council |
| Defamation Act | <i>Defamation Act 2005</i> |
| the department | Department of Infrastructure, Local Government and Planning |
| General Counsel | General Counsel for Redland City Council |
| Mayor | Ms Karen Williams, Mayor of Redland City Council |
| the Office | Office of the Queensland Ombudsman |
| Ombudsman Act | <i>Ombudsman Act 2001</i> |

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Executive summary

This report outlines the findings of an investigation into the unreasonable threat of defamation action by Redland City Council (council) against council residents in response to comments published on social media.

The investigation commenced following complaints from two residents, Complainant A and Complainant B, who had received letters from council threatening to commence legal action against them under the *Defamation Act 2005*. The letters were in response to alleged defamatory comments about council, council officers and the Mayor, Karen Williams on social media websites. Both letters demanded the complainants remove their comments and post an apology to council officers and the Mayor.

The letters stated that if the complainants did not comply with these demands within a specified timeframe, council may issue a concerns notice under the Defamation Act. The letters further stated that if the complainants did not comply with the concerns notice, legal proceedings may follow.

The investigation found that council's actions in threatening defamation proceedings against both complainants was unreasonable. The investigation further found that council's actions in threatening to take defamation action against the complainants was:

- based on a lack of clear analysis regarding who, if anybody, was defamed by the comments
- not based on instructions from any of the allegedly defamed parties
- not a reasonable or proportional response to what was relatively minor criticism of council's decisions.

Council also spent public funds in seeking external legal advice in drafting the letters to both complainants. The investigation determined that council did not have a policy to guide decision-making around whether to fund private legal action on behalf of councillors or council employees, and that the decision to expend public money was made solely by the council's Chief Executive Officer.

In addition, council wrote to the employer of Complainant B advising that she had published defamatory material online. This was as a result of Complainant B's professional signature block, which included her employer, job title and work email address, being included in an email which council alleged was defamatory.

However, the investigation determined that the email was not written by Complainant B and that there was no evidence that Complainant B had authorised her signature block be included as part of the email. Council also made no effort to determine whether Complainant B had authorised that her signature block be added to the email before contacting her employer. I have determined that council's action in contacting Complainant B's employer was unreasonable.

I have made recommendations to council addressing the need for training for council officers about what constitutes defamation under Queensland law as well as the development of a policy around whether to fund private legal action on behalf of council employees or councillors.

I have also recommended that council write to Complainant B and acknowledge that the decision to write to her employer was based on the mistaken belief she had published defamatory material using her professional email account, and also that council write to both complainants and withdraw the threat to take legal action in response to the comments published on social media.

During the investigation I wrote to the Director-General of the Department of Infrastructure, Local Government and Planning (the department) to inquire whether the department would provide advice to all Queensland councils about the need for a specific policy on funding legal action for councillors and council employees. In response, the Director-General advised the department would issue a Local Government Bulletin addressing the issue. The Local Government Bulletin will include guidance on the content and scope of such a policy for councillors and employees.

Considering the risk of a recurrence of this type of incident, providing guidance to councils about funding legal action for employees is a positive development to assist councils to navigate complex situations involving public criticism by residents.

Opinions

Opinion 1

The assertion that council had been defamed by comments made by Complainant A and Complainant B was wrong, within the meaning of s.49(2)(g) of the *Ombudsman Act 2001*.

Opinion 2

The approach adopted by council in accusing Complainant A and Complainant B of defaming council officers without any instructions from council officers was unreasonable within the meaning of s.49(2)(b) of the *Ombudsman Act 2001*.

Opinion 3

Council's actions in threatening to commence legal action against Complainant A and Complainant B were:

- (a) based on a lack of clear analysis regarding who, if anybody, was defamed by the comments
- (b) not based on instructions from any of the allegedly defamed parties, and
- (c) not a reasonable or proportional response to what was relatively minor criticism of council's decisions.

The approach adopted by council was unreasonable within the meaning of s.49(2)(b) of the *Ombudsman Act 2001*.

Opinion 4

There is a lack of clarity in council's correspondence with Complainant A and Complainant B as it is not clear whether the correspondence constituted a 'concerns notice' under the Defamation Act. The approach adopted by council was unreasonable within the meaning of s.49(2)(b) of the *Ombudsman Act 2001*.

Opinion 5

The specified timeframes for Complainant A and Complainant B to take action in relation to council's correspondence was unreasonable within the meaning of s.49(2)(b) of the *Ombudsman Act 2001*.

Opinion 6

The decision of council to spend public funds to threaten defamation action against Complainant A and Complainant B, where:

- (a) no individuals raised any concerns with the CEO or General Counsel that the comments were defamatory about them
- (b) the alleged defamed parties did not provide any instructions to seek legal advice

was unreasonable within the meaning of s.49(2)(b) of the *Ombudsman Act 2001*.

Opinion 7

Council's decision to write to Complainant B's employer was based on a mistaken interpretation that Complainant B had published defamatory material on social media using her professional email account. This was unreasonable administrative action under s.49(2)(b) of the *Ombudsman Act 2001*.

Recommendations

Recommendation 1

Council ensures that key officers receive further training about defamation law including what may, and may not, constitute defamation under Queensland law.

Recommendation 2

Council prepare a policy to guide decision-making around whether to fund private legal action on behalf of employees or councillors and disclose any such expenditure in publicly available financial reports.

Recommendation 3

Council write to Complainant B and acknowledge that its action in writing to Complainant B's employer was based on a mistaken understanding that Complainant B had published defamatory material on social media using her professional email account.

Recommendation 4

Council write to Complainant A and Complainant B and withdraw its threat to take legal action in response to the comments published on social media.

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Chapter 1: Background

This report is about how Redland City Council (council) overreacted to comments made on social media by two residents in the local community.

A number of residents in the Redland community strongly opposed development decisions of council and had expressed their views on social media. I have de-identified this report to protect the identity of these residents.

Two residents made complaints to the Office of the Queensland Ombudsman regarding council's actions in response to their comments. I received a complaint from Complainant A on 15 October 2015 and a further complaint from Complainant B on 9 November 2015.

1.1 Comments on social media

In September 2015, Complainant B started a petition on the website Change.org against the Redland City Council Mayor, Karen Williams and unnamed council officers in relation to development decisions made by council (the petition). Complainant B made the following comments on the petition's webpage:

The Redland City Council has sold out to the developers. Small lot housing brings big bucks for developers and more rates for council. Is this the Redlands Lifestyle you voted for? If not SIGN and SHARE this petition. We have gained 50 signatures in a day. Make your voice heard, and share it with others.

...

In her term of office Mayor Williams has established a closed Development Industry Reference Group that places developers' interests before the interests of the community. Mayor Williams has to excuse herself from voting due to conflicts of interests with developers. Mayor Williams support for developers goes against the 2030 Redlands Community Plan for sustainable population growth, environmental protection of koala and marine habitat, and consultative planning decision-making. This is a council out of balance and out of touch with the community.

Complainant A sent an email with a link to the petition's webpage to a number of residents of the local community. It appears that Complainant A copied and pasted Complainant B's work signature block into the email which identified her employer and her position. Complainant B did not provide her employment details on the Change.org petition.

The contents of the email were as follows:

As many of you know, the Redland city Bulletin has axed its editor and this Friday the photographers will be let go. We also discovered today that the journalists can no longer write articles that reflect badly on developers or Council. Therefore the RCB [Redland City Bulletin] has returned to the propaganda machine it was before [former editor of the Redland City Bulletin] gave us freedom of speech. The Dom Perignon will be popping into next week.

We are left with no choice but to petition for an enquiry into our Council officers and Mayor's. Our petition can be signed every Wednesday morning outside Council or online which is just 3 very easy steps when you click the link below.

We have reached 100 signatures and we need a lot of support very quickly. Time is of the essence. You can read more and sign the petition here: [link to petition].

The petition we are asking you to sign states: [name of petition].

Please pass this email to all your contacts and please share the online petition with your FB contacts. Once we have the target number of signatures we will hand deliver to the office of Jackie Trad.

For Any information regarding the petition please contact myself or [Complainant B].

I have attached a hand signed form if you want to get signatures through your community groups and neighbours.

Together we can make this Happen,

[Complainant A]
[Complaint A's phone number]

[Complaint B]
[Complainant B's position]
[Complainant B's employer location]
[Complainant B's employer location]
[Complainant B's employer]
[Complainant B's employer location]
[Complainant B's contact details]
[Complainant B's contact details]

One of the recipients subsequently posted the email on their Facebook page. A direct link to the petition was also posted on Facebook. This provoked commentary from a number of Facebook users who opposed council's development activities. Among these, Complainant B commented:

Sorry to use the C word (corrupt), but sometimes you have to call a spade a spade – right?

1.2 Council's response

After seeing the comments made on Facebook and the petition on Change.org, the Mayor alerted council's Chief Executive Officer, Mr Bill Lyon (the CEO) to the comments. While Complainant A has a history of complaints with council, this was the first time Complainant B had come to the attention of council.

The CEO sought advice from council's General Counsel about whether the comments were defamatory and requested that appropriate action be taken. General Counsel sought advice from an external law firm. General Counsel then sent letters on council letterhead to both Complainant A and Complainant B demanding they remove their comments and post public apologies within a matter of days. The emails sent to both complainants attaching the letters were titled 'Concerns Notice – Urgent Attention – Defamation'. Evidence gathered during the investigation established that similar letters were also sent to four other residents who council identified had also made comments on social media.

Both letters to Complainant A and Complainant B stated that:

If you do not comply with the above request, within the specified time, we have the option to issue a Concerns Notice under section 14 of the *Defamation Act 2005* Qld. The Concerns Notice may request that you make a public retraction and apology in the terms outlined above. If you do not comply with the Concerns Notice, legal proceedings may follow. However, if you do comply with the above request we will not pursue the matter further.

To see a full copy of the letters sent to Complainant A and Complainant B refer to Appendices A and B.

Complainant A did not comply with council's demands. Complainant B removed her comments and posted an apology on the same day she received the letter.

At the same time as seeking advice from the external law firm, the CEO sought advice from council's Human Resources (HR) team regarding the use of Complainant B's employment details in the email and subsequent social media post. As a result of this advice, General Counsel sent a letter to Complainant B's employer on the same day as the letter was sent to Complainant B demanding she remove her comments.

1.3 Complaints to the Ombudsman

Complainant A was the first to make a complaint to the Office of the Queensland Ombudsman (the Office) about council's actions. Complainant A complained that:

As a resident, I am being threatened with legal action by Redland City Council (RCC) and the only reason I can find is I have spoken out against the planning decisions of RCC and voiced my opinion publicly. Apart from me, four others have also been tendered with letters outlining threats of legal action.

...

The threats are severe enough to incite fear in all those who receive a letter and the accusations are poorly and incorrectly researched showing the letters were sent in a rush, most likely to stop the petition.

...

Families do not have the bottomless pockets required to engage private legal counsel against RCC therefore I sincerely request that as an officer of the Parliament, independent of local government you will see the importance of my letter and exam the legalities and motives of the Redland City Council sending letters of concern and contacting employers.

One month later, this Office received a complaint from Complainant B about council's letter and its actions in contacting her employer. In her complaint Complainant B said she felt bullied and that council had been vindictive in its actions:

I was accused of things in the first half of the letter I did not write. I was forced to post a public apology using their words on a change.org petition. I did this on the same day I received council's letter, although I should have had 28 days required by law. I feel as though my freedom of speech was gagged, and that I was bullied into writing an apology.

Complainant B also advised:

Following the posting of the apology - the council ... contacted my employer ... to complain about me ...

...

I believe the council actions were vindictive and have been punitive to my potential [in my chosen career].

I decided to conduct an investigation into both complaints. During the investigation, I considered:

- council's approach to the issue (Chapter 2)
- how council carried out its approach (Chapter 3)
- the need for a policy to guide council decisions around funding legal action for employees (Chapter 4)

- whether council acted reasonably by reporting Complainant B to her employer (Chapter 5).

The investigation included:

- reviewing documents provided by Complainant A and Complainant B
- reviewing documentation provided by council including policies and procedures, briefing notes and correspondence
- interviewing the Mayor, the CEO and the General Counsel.

During the course of this investigation, I became aware that other residents received similar correspondence from council. However, as these residents did not complain to the Office, I have not considered these matters in any detail.

1.4 Ombudsman jurisdiction

The Ombudsman is an officer of the Queensland Parliament empowered to deal with complaints about the administrative actions of Queensland government departments, public authorities and local governments. As council is an 'agency' for the purposes of the *Ombudsman Act 2001*, it follows that I may investigate these complaints.

Under the Ombudsman Act, I have authority to:

- investigate the administrative actions of agencies on complaint or on my own initiative (without a specific complaint)¹
- make recommendations to an agency being investigated about ways of rectifying the effects of its maladministration and improving its practices and procedures²
- consider the administrative practices of agencies generally and make recommendations, or provide information or other assistance to improve practices and procedures.³

In its response to the proposed report, council questioned my jurisdiction to investigate aspects of the complaint.

Council's response to the proposed report

Council advised:

Pursuant to section 14 of the Ombudsman Act 2001 (Qld) (the Ombudsman Act), the Ombudsman has jurisdiction to investigate administrative actions of agencies.

'Administrative action' is defined broadly by section 7 of the Ombudsman Act, but authority suggests that it does not extend to matters of policy.

In *Booth v Dillon* (No 2) [1976] VR 434 (Booth), a distinction was drawn between 'matters of administration', over which the Ombudsman has investigative jurisdiction, and matters of policy, over which it does not. The statutory definition of 'administrative action' under the *Ombudsman Act 1973* (Vic), being the legislation with which that case was concerned, is very similar to that contained in the Ombudsman Act.

The relevant action was the decision taken by the Director-General of the Department of Social Welfare to ensure that prisoners were

¹ Ombudsman Act, s.12(a).

² Ombudsman Act, s.12(b).

³ Ombudsman Act, s.12(c).

not subject to sexual attack by increasing prison staff numbers and seeking funds to renovate sleeping quarters to provide for single cells.⁴ It was held that the sleeping arrangements of prisoners and the provision of funds for the particular purpose of a government were matters of policy, not administration.

The Court held (with emphasis added):

It is clear from an examination of the draft report that the [Ombudsman] embarked on an investigation in "J" Division far beyond the terms of either his letters previously set out, and, in my opinion, beyond the scope of what can properly fall within the definition of "administrative action". I agree with the submission on behalf of the applicant that whether the young prisoners in "J" Division should be required to sleep in dormitories or be locked in individual cells is a matter of policy, and not a matter of administration.

...

In the premises of the above submissions, it is respectfully submitted that the sections of the Proposed Report which are directed towards policy and funding matters, including section 3.3 (entitled '*Use of public money*') and chapter 4 (entitled '*Policy for funding legal action for employees*'), as well as proposed recommendations 2 and 3, are beyond the Ombudsman's jurisdiction.

Council respectfully submits that those sections should be removed from the Ombudsman's report.

**Ombudsman's
comment on the
response**

I do not agree with council's submission. With respect, council has misunderstood the Ombudsman's jurisdiction.

Section 3.3 of the report addresses council's use of public money to threaten defamation proceedings against Complainant A and Complainant B. The section discusses council's lack of a specific policy to guide its decision-making about whether the use of public money for such circumstances was appropriate and also whether sufficient instructions were provided by the Mayor and council officers to the General Counsel to threaten to pursue legal action. These are clearly issues relating to the administrative actions of council and within the jurisdiction of the Ombudsman Act.

Section 4 of the report addresses the need for a policy regarding funding legal action for councillors and council employees. This section does not address the actions of council and Recommendation 3 is directed to the Director-General of the Department of Infrastructure, Local Government and Planning. It is within the jurisdiction of the Ombudsman Act to discuss the need for a policy to address identified administrative failings on a systemic level.

The Ombudsman Act outlines the matters about which the Ombudsman may form an opinion before making a recommendation to the principal officer of an agency. These include whether the administrative actions investigated are contrary to law, unreasonable, unjust or otherwise wrong.

Although the Ombudsman is not bound by the rules of evidence, the question of the sufficiency of information to support an opinion of the Ombudsman requires some

⁴ *Booth v Dillon* (No 2) [1976] VR 434, 437 – 438.

assessment of weight and reliability. The standard of proof applicable in civil proceedings is proof on the balance of probabilities. This essentially means that, to prove an allegation, the evidence must establish that it is more probable than not that the allegation is true. Although the civil standard of proof does not strictly apply in administrative decision-making (including the forming of opinions by the Ombudsman), it provides useful guidance.

'Unreasonableness' in the context of an Ombudsman investigation

In expressing an opinion under the Ombudsman Act that an agency's administrative actions or decisions are 'unreasonable', I am applying its popular, or dictionary, meaning. I am not applying the doctrine of legal unreasonableness applied by the Courts when judicially reviewing administrative action.

1.5 Procedural fairness

The terms 'procedural fairness' and 'natural justice' are often used interchangeably within the context of administrative decision-making. The rules of procedural fairness have been developed to ensure that decision-making is both fair and reasonable.

The Ombudsman must also comply with these rules when conducting an investigation. Further, the Ombudsman Act provides that, if at any time during the course of an investigation it appears to the Ombudsman that there may be grounds for making a report that may affect or concern an agency, the principal officer of that agency must be given an opportunity to comment on the subject matter of the investigation before the final report is made. A proposed report was provided to council for its comment in September 2016.

Section 55(2) of the Ombudsman Act provides that I must not make adverse comment about a person in a report unless I give that person an opportunity to make submissions about the proposed adverse comment. The person's defence must be fairly stated in the report if the Ombudsman still proposes to make the comment.

The investigation was not undertaken with a view to criticising any particular council officer. However, I identified that comments and discussion in this report could be considered as being adverse towards the Mayor, the CEO and General Counsel. Accordingly, pursuant to s.55(2) of the Ombudsman Act, I provided a copy of this report to each of these officers for their comment in September 2016.

On 4 November 2016, I received a submission from council to the proposed report. The submission was titled 'Redland City Council Submission to the Queensland Ombudsman' and was emailed to an Ombudsman officer by the General Counsel. The submission was unsigned and written on council letterhead. I have been advised the submission was prepared by the General Counsel.

I did not receive any separate responses from the Mayor, CEO or General Counsel to the s.55 Notices that were provided to them. I have been advised that the Mayor and the CEO provided instructions to the General Counsel to respond to the s.55 Notices and to provide a response on their behalf.

Accordingly, I have taken the submission received on 4 November 2016 to be council's formal response to the proposed report. I have also taken this submission to be the response by the Mayor, CEO and General Counsel to the s.55 Notices that were provided to them. However, I note that the submission I received from the General Counsel does not address any of the adverse comment and discussion in the proposed report about the Mayor, CEO or General Counsel. I have therefore assumed that there are no specific objections to any of the comments made about the Mayor, CEO or General Counsel in the report.

Where appropriate, I have referred to council's submission throughout this report.

It should be noted that the first eight pages of council's submission referred to the extensive history of complaints and alleged defamatory comment made by Complainant A to council and about council officers.

I accept that Complainant A had an extensive history of complaints about council and council officers and had made numerous comments about council and council officers. However, this report addresses council's response to specific comments made on social media by Complainant A and Complainant B as outlined in the letters council sent to both complainants. While Complainant A's history of complaints with council may have influenced council's actions, this is not relevant to the issues addressed in this report.

1.6 The language of the report

Council provided the following submission with regard to the language in the proposed report.

Council's response to the proposed report

Council advised:

Council submits that the language of the Proposed Report is unbalanced and unduly critical of Council.

For example:

- (a) the covering page of the Proposed Report states that its contents concern '*[a]n investigation into the inappropriate threat of legal action against residents by Redland City Council*'. Council does not accept that characterisation of its conduct given the defamatory nature of Complainant A and B's publications and invites the Ombudsman to reconsider it in the light of this submission;
- (b) the first sentence of the Proposed Report states, '*[t]his report is about how [Council] overreacted to comments made on social media by two residents in the local community.*' Again, Council does not accept that characterisation of its conduct given the defamatory nature of Complainant A and B's publications and invites the Ombudsman to reconsider it in the light of this submission; and
- (c) the Proposed Report does not, in Council's submission, duly consider or accurately set out the information that was provided to the Ombudsman during its interviews with the Mayor, the CEO and the General Counsel. As the above submissions have demonstrated, the Proposed Report:
 - (i) finds that the General Counsel acted without instructions, when in fact there is evidence that the CEO and Mayor provided such instructions;
 - (ii) suggests that Council acted on a mistaken understanding of the law of defamation, when the Complainant A letter and Complainant B letter, properly construed, conveyed no such misunderstanding; and
 - (iii) could be read as suggesting that the Mayor was not concerned by Complainant A and B's publications, when in fact the Mayor made plain that she considered them to be defamatory of her personally and outlined in some detail the distress that they had caused her.

The above is merely a list of examples and does not purport to be

exhaustive. Council respectfully requests that the Ombudsman reconsiders the terms in which the report is written to ensure that it is balanced and appropriately represents the positions of Council and its representatives.

**Ombudsman's
comment on the
response**

I do not agree with council's submission.

I agree that the report is critical of council's actions, but I am of the view that this criticism is justified considering the circumstances of the case. In my opinion, it is inappropriate and wrong for public agencies to use public money to threaten defamation action against residents without appropriate cause and safeguards. My report reflects this view.

I also reject council's submission that I did not accurately set out the information provided by the Mayor, CEO and General Counsel during their interviews with Ombudsman officers. I will address the examples provided by council in its submission throughout the report.

Chapter 2: Council's approach to the issue

Decisions made by government agencies are often not universally accepted by the general public. There are always competing interests and competing views. As a class, council decisions around developments can be particularly contentious.

It is important to our system of democracy that alternate views can be aired and issues discussed within a local government area. Obviously, there needs to be a balance between the importance of the free exchange of opinions and ideas and the right of individuals to protect their reputations from unfair criticism.

The question I therefore considered during my investigation was whether the council's actions were reasonable and whether council gave adequate consideration to the right of residents to publicly share their views about decisions that affected them.

This chapter explores whether the approach adopted by council in responding to the social media comments was fair, reasonable and whether it was consistent with the scope of defamation law.

2.1 What is defamation?

To analyse council's actions it is important to have an understanding of defamation law in Queensland.

The law of defamation protects individual reputation. The person seeking to defend their reputation must be able to show that:

- the material was published to someone other than the person being defamed
- the person was reasonably identifiable from the material, and
- the material was defamatory about the person.

Essentially, material may be defamatory if it could:

- injure the reputation of a person by exposing them to hatred, contempt or ridicule
- cause people to shun or avoid a person, or
- lower a person in the estimation of right-thinking people.

A corporation cannot bring an action in defamation unless it employs fewer than 10 people and is not related to another corporation.⁵ Public bodies, including councils, are specifically excluded from bringing an action in defamation.⁶

While there are a number of defences to actions for defamation, including honest opinion,⁷ innocent dissemination⁸ and triviality,⁹ these are not relevant to my consideration of the administrative actions of council in this matter.

2.2 Were the imputations drawn by council reasonable?

As a starting point to my analysis, I will firstly consider whether the comments made by Complainant A and Complainant B should reasonably have been considered to be

⁵ *Defamation Act 2005*, s.9.

⁶ *Defamation Act 2005*, s.9(2).

⁷ *Defamation Act 2005*, s.31.

⁸ *Defamation Act 2005*, s.32.

⁹ *Defamation Act 2005*, s.33.

defamatory by council.

In both letters sent to Complainant A and Complainant B, General Counsel alleged that council, council officers, councillors and the Mayor had been defamed by their comments. The letters also outlined the alleged defamatory comments and the imputations or allegations that council said could be drawn from these comments.

Extracts from these letters are set out below:

Extract 1: Letter from General Counsel to Complainant A

We refer to an email sent to [the recipient] on 3 September 2015, circulated broadly and published on 3 September 2015 on [the recipient] Facebook page stating that:

"Going to try and cut and paste info on Redland Mayor and some council members...this was an email I got this morning... This IMPORTANT not just for Redlands Residents...what is going on elsewhere?? Australia I am becoming more disappointed with you by the minute!!

As many of you know, the Redland city Bulletin has axed its editor and this Friday the photographers will be let go. We also discovered today that the journalists can no longer write articles that reflect badly on developers or Council. Therefore the RCB has returned to the propaganda machine it was before [former editor of the Redland City Bulletin] gave us freedom of speech. The Dom Perignon will be popping into next week.

We are left with no choice but to petition for an enquiry into our Council officers and Mayor's. Our petition can be signed every Wednesday morning outside Council or online which is just 3 very easy steps when you click the link below.

We have reached 100 signatures and we need a lot of support very quickly. Time is of the essence. You can read more and sign the petition here: [link to petition].

The petition we are asking you to sign states: [petition name].

Please pass this email to all your contacts and please share the online petition with your FB contacts. Once we have the target number of signatures we will hand deliver to the office of Jackie Tradd.

For Any information regarding the petition please contact myself or [Complainant B].

I have attached a hand signed form if you want to get signatures through your community groups and neighbours.

Together we can make this Happen,

[Complainant A]
[Complaint A's phone number]

[Complaint B]
[Complainant B's position]
[Complainant B's employer location]
[Complainant B's employer location]
[Complainant B's employer]
[Complainant B's employer location]
[Complainant B's contact details]
[Complainant B's contact details]."

Imputations

The email contains comments which give rise to the following imputations:

1. that the Mayor Redland City Council and Redland City Council Officers acted improperly and unethically in their role by causing the Redland City Bulletin editor and photographers to be dismissed from their employment;
2. the Mayor and Redland City Council officers are prejudiced and blindly pro-development;
3. the Mayor and Redland City Council incite propaganda;
4. the Mayor and Redland City Council Officers block freedom of speech;
5. the Mayor and Redland City Council Officers acted in breach of conflicts of interest;
6. the Mayor and Redland City Council Officers are unethical and do not act in the best interests of the community; and
7. the Mayor and Redland City Council Officers act in breach of their duties under the *Local Government Act 2009*.

The letter to Complainant A also highlighted four previous publications made by Complainant A that council alleged were defamatory:

Extract 2: Letter from General Counsel to Complainant A

We also note the following previous defamatory material which you have published:

1. an email from you dated 15 October 2014 to [Redland City Councillor], copied to others, which stated: *"There is (sic) only 3 winners. Council and [a developer] and the mayor who benefits from the revenue From [a developer] for her re-election campaign."*
2. a letter from you to the CEO dated 4 November 2014, where you suggest Mr Lyon should edit his letter to residents to say: *"Council are looking after [a developer] here and since I have been CEO of Council they always have and they will continue to until a higher authority takes this on and investigates."*
3. A letter from you dated 19 October 2014 to [Member of Parliament], me and [Redland City Councillors]: *"This is where many of us believe there is a case of dishonesty and exploitation to be investigated." Further in the same letter you stated: "We can't believe for a moment that all this was just coincidental timing between [a developer] who openly sponsors Mayor Karen Williams and the PS changes to allow this application to continue 100% [a developer] way."*
4. a letter to [a developer], dated 24 November 2014, which stated *"Now we understand the implications of a developer funded council and people are suspicious of everything said and written by either the Mayor or the developers. We have to be. Our system is developers fund politicians. It's no secret. [A developer] was one of the 3 main contributors to the mayor's election campaign and as it's been pointed out to Karen, donations, contributions and sponsorship are all tax deductible because it's a legitimate and common cost of marketing business. If there was no return, there would be no funding."*

And further: "I think the letters to Council, yourselves and the paper show the people of Redlands have come to realise quite quickly that they have a mayor who can't be trusted and has a conflict of interest in issues brought before her regarding development applications. It's common knowledge your company's financial support was a major part of Karen's war chest for the mayoral campaign so we were never going to win this case."

"It's Council's job to keep you honest and accountable. However many times we remind them what their job is, they still can't get it right."

This letter was circulated broadly and published on the [website] on 28 November 2014.

I note that the second instance of the alleged previous defamatory material refers to a letter Complainant A sent to the CEO where she allegedly made comments about the CEO. As defamation requires that material be published to a third person other than the person being defamed, I am of the view that it was wrong to identify this letter as defamatory.

Extract 3: Letter from General Counsel to Complainant B

We refer to the following publications made by you:

1. An email sent to [the recipient] on 3 September 2015, circulated broadly and published on 3 September 2015 on [the recipient] Facebook page stating that:

"Going to try and cut and paste info on Redland Mayor and some council members...this was an email I got this morning... This IMPORTANT not just for Redlands Residents...what is going on elsewhere?? Australia I am becoming more disappointed with you by the minute!!

As many of you know, the Redland city Bulletin has axed its editor and this Friday the photographers will be let go. We also discovered today that the journalists can no longer write articles that reflect badly on developers or Council. Therefore the RCB has returned to the propaganda machine it was before [former editor of the Redland City Bulletin] gave us freedom of speech. The Dom Perignon will be popping into next week.

We are left with no choice but to petition for an enquiry into our Council officers and Mayor's. Our petition can be signed every Wednesday morning outside Council or online which is just 3 very easy steps when you click the link below.

We have reached 100 signatures and we need a lot of support very quickly. Time is of the essence. You can read more and sign the petition here: [link to petition].

The petition we are asking you to sign states: [petition name].

Please pass this email to all your contacts and please share the online petition with your FB contacts. Once we have the target number of signatures we will hand deliver to the office of Jackie Tradd.

For Any information regarding the petition please contact myself or [Complainant B].

I have attached a hand signed form if you want to get signatures through your community groups and neighbours.

Together we can make this Happen."

2. An email sent to [the recipient] on 2 September 2015, circulated broadly and published on Facebook on [the recipient] Facebook page stating that:

"Sorry to use the C word (corrupt), but sometimes you have to call a spade a spade – right?"

Imputations

The email contains comments which give rise to the following imputations:

1. that Redland City Council officers and the Mayor acted improperly and unethically in their role by causing the Redland City Bulletin editor and photographers to be dismissed from their employment;
2. the Mayor and Redland City Council officers are prejudiced and blindly pro-development;
3. the Mayor insights propaganda;
4. the Mayor and Redland City Councillors blocks freedom of Speech;
5. The Mayor and Redland City Council Officer acts in breach of conflicts of interest;
6. the Mayor is unethical and does not act in the best interests of the community; and
7. the Mayor and Redland City Councillors acts in breach of her duties under the *Local Government Act 2009*.

3. A statement made on the website Change.Org on 2 September 2015 under the petition titled [name of petition] stating that:

"The Redland City Council has sold out to the developers. Small lot housing brings big bucks for developers and more rates for council. Is this the Redlands Lifestyle you voted for? If not SIGN and SHARE this petition. We have gained 50 signatures in a day. Make your voice heard, and share it with others."

Imputations

The comments made on website Chage.org on 3 September 2015 give rise to the following imputations:

1. the Mayor acted in conflict to the interests of the community and unethically in her role as Mayor by selling out to developers;
2. the Mayor and Redland City Council Officer acts in breach of conflicts of interest;
3. the Mayor is unethical and does not act in the best interests of the community;
4. The Mayor only approved small lot housing to bring in rates for the Council;
5. the Mayor and Redland City Councillors acts in breach of her duties under the *Local Government Act 2009*; and
6. the Mayor and Redland City Council is out of touch with the community needs.

4. A further statement made on the website *Change.Org* on 3 September 2015 under the petition titled [name of petition] stating that:

“In her term of office Ms Mayor Williams has established a close Development Industry Reference Group that paces Developers Interests before the interests of the Community. Mayor Williams has to excuse herself from voting due to conflicts of interest with Developers. Mayor Williams support for developers goes against the 2030 Redlands Community Plan for sustainable population growth, environmental protection of Koala and marine habitat, and consultative planning decision making. This Council is out of Balance and out of touch with the community.”

Imputations

The comments made on website Chage.org on 3 September 2015 give rise to the following imputations:

7. the Mayor acted in conflict to the interests of the community and unethically in her role as Mayor by creating a closed Development Industry Reference Group;
8. the Mayor and Redland City Council Officer acts in breach of conflicts of interest;
9. the Mayor is unethical and does not act in the best interests of the community;
10. the Mayor and Redland City Councillors acts in breach of her duties under the *Local Government Act 2009*; and
11. the Mayor and Redland City Council is out of touch with the community needs.

Comments and Imputations as a whole

These comments and imputations are defamatory, completely false and damaging to the reputation of Redland City Council officers and the Mayor. It is likely that Redland City Council Officers and Mayor Williams may be ridiculed, avoided, shunned, reviled and treated as a pariah within the Council and the broader community as such imputations are likely to create the perception of Mayor Williams and Redland City Council Officers as:

1. dishonest;
2. prejudiced;
3. the type of people who would support or engage in unlawful behaviour;
4. the type of people who unjustifiably wields influence over the Council as a whole;
5. cavalier; and
6. taking advantage of and/or abusing their position as a Council employees;

I note the letter to Complainant B states ‘we refer to following publications made by you’. However, the first publication mentioned in the letter is an email written by Complainant A and posted to Facebook by one of the email’s recipients. While Complainant B’s employment and contact details were included in the email, it is clear from the text of the email that it was written by Complainant A and then posted on Facebook by the email’s

recipient. It is not clear whether Complainant B had any input into the drafting or publication of the email on a fair reading of the text.

The imputations set out in each letter

I considered the comments and imputations set out in each letter and I am of the view that some of the imputations are not a reasonable interpretation of the comments.

For example, in the email sent by Complainant A, which is referred to in both letters, there is no reference to the Mayor breaching conflicts of interest, yet this is included as an imputation in both letters.

Similarly, the fourth publication outlined in the letter to Complainant B alleges that Complainant B stated the following:

Mayor Williams has to excuse herself from voting due to conflicts of interest with Developers.

One of the alleged imputations associated with this publication states:

The Mayor and Redland City Council Officers act in breach of conflicts of interest.

In fact Complainant B's statement that the Mayor has to excuse herself from voting arrangements due to conflicts of interest implies that the Mayor has declared a conflict of interest and acts in accordance with this conflict by excusing herself from voting. It would be entirely appropriate for the Mayor to take this step if a conflict of interest existed. Further, there is no mention of council officers in the publication that could be construed to mean they have breached a conflict of interest.

Accordingly, I question whether adequate time and consideration was taken by council to accurately identify the imputations made by the comments.

Council's response to the proposed report

Council advised:

In the Proposed Report, the Ombudsman expresses the view that '*some of the imputations* [alleged in the Complainant A letter and Complainant B letter] *are not a reasonable interpretation of the comments*'. Importantly, the Ombudsman does not find that Complainant A and Complainant B's publications were not defamatory of the Mayor and Council Officers. The Ombudsman describes the comments as 'inflammatory' on a number of occasions in the Proposed Report.

Whether or not a publication is defamatory is a question that is to be determined objectively. As the learned authors of *Australian Defamation Law and Practice* note:

The test of whether a publication [is] defamatory is an objective one. It is not determined by the fact that the plaintiff understood the publication to be defamatory of him. Nor is it determined by whether the persons to whom it is published understood it innocently or in a defamatory sense. The test is whether the publication would have been likely to cause the ordinary reasonable man or woman to have thought the less of the plaintiff. Because the test is an objective one, evidence cannot be led on the issue of whether or not the publication is defamatory, by for example asking the witness what he understood the publication to mean, and whether he regarded it as defamatory.

The above is significant because the Ombudsman devoted a significant amount of time during its interview with the Mayor questioning the Mayor as to whether:

- (a) she agreed with the imputations that were alleged in the Complainant A letter and Complainant B letter (which, in any event, the Mayor confirmed she did); and
- (b) it would have been reasonable for the General Counsel to consult with her to ensure that she agreed with the imputations set out in the Complainant A letter and Complainant B letter before they were issued.

It is respectfully submitted that the above enquiries have no bearing on whether or not Complainant A and B's publications were defamatory of the Mayor. As the Mayor made clear during her interview with the Ombudsman, she considered the publications to be defamatory of her, and considered the identification of the defamatory imputations to be a matter for Council's external solicitors.

...

In Council's submission, considered objectively, the publications made by Complainants A and B were defamatory. The text of, and imputations arising from, the publications has been set out in the section above entitled 'Background', and Council repeats and relies on those submissions.

In Council's submission, Complainant A and Complainant B's publications to which it has referred above would have been understood by an ordinary, reasonable reader as giving rise to the defamatory imputations that Council has attributed to them.

The conflict of interest issue

The Proposed Report refers to Complainant B's statement to the effect that the Mayor has to excuse herself from voting due to conflicts of interest, and states that:

In fact Complainant B's statement that the Mayor has to excuse herself from voting arrangements due to conflicts of interest implies that the Mayor has declared a conflict of interest and acts in accordance with this conflict by excusing herself from voting. It would be entirely appropriate for the Mayor to take this step if a conflict of interest existed.

In Council's respectful submission, the approach adopted by the Ombudsman does not reflect how an ordinary, reasonable reader would interpret Complainant B's comment. The gravamen of Complainant B's statement, derived from the text and context of her publication as a whole, was that the Mayor was corruptly placing developers' interests before those of the community whom she represents. An ordinary, reasonable reader of Complainant B's publication would not take comfort from the statement that the Mayor was obliged to excuse herself from voting due to conflicts of interest, but would instead regard that statement as confirmation of the broader contention that Complainant B's publication sought to make: that the Mayor improperly and corruptly preferred developers' interests over those of the community.

Ombudsman's comment on the response

I note council's view that the publications made by Complainants A and B were defamatory towards certain individuals. I am of the view that whether or not the comments published by Complainants A and B are defamatory about any person is a matter for a court to determine. For

this reason I have not formed any opinion about whether the comments were defamatory.

However, I can form a view about whether the action taken by council to respond to what it considered defamatory comment was reasonable in the circumstances. With respect to the imputations set out in the letters to Complainant A and Complainant B I reiterate my view that some of the imputations are not a reasonable interpretation of the comments published.

For example, the letter written by Complainant A and published online (see Extract 1) suggests that the editor of the Redland City Bulletin was sacked due to alleged interference from 'Council officers and Mayor's [sic]'. The remainder of the letter encourages citizens to sign a petition calling for an inquiry into the Mayor and unnamed council officers.

However, from this information council has inferred, as defamatory imputations, that the Mayor and council officers are prejudiced and blindly pro-development, that they incite propaganda, act in breach of conflicts of interest, are unethical, do not act in the best interests of the community and have breached their obligations under the Local Government Act. These are not imputations that may be reasonably inferred considering what was published in the letter.

With respect to the imputation that the Mayor and unnamed council officers 'acts in breach of conflicts of interest,' this related to a statement made by Complainant B on the website Change.org (see Extract 3). While a reasonable person may read Complainant B's statement and conclude that the Mayor had an inappropriate relationship with developers, it remains that the Mayor cannot act in 'breach of conflicts of interest' if she has properly excused herself from voting on issues where she may have had a conflict of interest.

I am of the view my commentary in this section is appropriate.

Was it reasonable to allege that council was defamed?

Under the Defamation Act, public bodies cannot bring an action in defamation.¹⁰ This is because defamation is designed to protect the reputation of an individual. Therefore, as a public body, council cannot claim that it has been defamed.

It is clear that council officers have some understanding of this fact. Investigators obtained a copy of a briefing note titled 'Defamation & Public Administration' written by the General Counsel in 2010 which states:

Defamation is essentially a personal injury type claim and cannot be claimed by Council, which has no personal reputation to injure.

During an interview with investigators, General Counsel confirmed his understanding that council did not have a reputation and could not be defamed.

Accordingly, it is abundantly clear that any comments made by Complainant A and Complainant B about council could not amount to defamation. Therefore, I am of the view that it was wrong to reference council as a defamed party in the letters to Complainant A and Complainant B.

¹⁰ *Defamation Act 2005*, s.9(2).

Opinion 1

The assertion that council had been defamed by comments made by Complainant A and Complainant B was wrong, within the meaning of s.49(2)(g) of the *Ombudsman Act 2001*.

Council's response to the proposed report

Council advised:

The Proposed Report suggests that Council asserted that it had been defamed by Complainant A and Complainant B's publications. In Council's submission, that suggestion is unfounded.

The Complainant A letter and Complainant B letter both:

- (a) identify Complainant A and Complainant B's publications as being defamatory of the Mayor and Council Officers; and
- (b) state that such imputations *'are defamatory, completely false and damaging to the reputation of Redland City Council officers and the Mayor'*.

The Complainant A letter and Complainant B letter cannot reasonably be read as alleging that Council itself had been defamed.

To the extent that the Ombudsman is relying on the use in the letters of the pronoun 'we' in support of this proposed opinion, Council respectfully submits that this is not a reasonable interpretation of its letters. In Council's submission:

- (a) the use of that pronoun was a stylistic decision by the author of the letter which was not intended to, and did not, allege that Council had been defamed in its own right; and
- (b) rather, it reflected that Council was writing to Complainants A and B on behalf of the individual Council Officers whom Council alleged had been defamed.

Accordingly, Council disagrees with the Ombudsman's Proposed Opinion 1, and respectfully invites the Ombudsman to reconsider it.

Ombudsman's comment on the response

I note that council has not accepted Opinion 1.

In the letter to Complainant A, council stated that the email written by Complainant A and published on a third party's Facebook page gave rise to the imputation that 'the Mayor and **Redland City Council** [my emphasis] incite propaganda.' Also, in the letter to Complainant B, it was alleged that two statements published by Complainant B on the website Change.org gave rise to the imputation that 'the Mayor and **Redland City Council** [my emphasis] is [sic] out of touch with the community needs'.

On a face value reading of both letters it was implied that council had been defamed by the complainants. I acknowledge the possibility that the letters were simply poorly drafted. Notwithstanding this possibility, the recipients of the letters could have reasonably understood that they were being accused of having defamed council. Accordingly, I have made no amendment to Opinion 1.

Was it reasonable to allege that council officers or councillors were defamed?

Council officers and councillors are individuals and therefore may bring an action in defamation. However, for a council officer or councillor to be defamed, the defamatory comments must be sufficiently narrow for each member of the class to complain that the publication may reasonably be taken to refer to him or her.¹¹

Complainant A and Complainant B did not specifically name any council officers in their comments. Their comments referred to 'council officers' generally. There are no specifics to identify these council officers or their role within council. Even the letters sent by General Counsel to Complainant A and Complainant B did not go as far as to identify which council officers had been defamed. Therefore, I am of the view that it would be difficult to argue that council officers were sufficiently identifiable to have been defamed by Complainant A's and Complainant B's comments.

During an interview with investigators, General Counsel expressed his view that the council officers could be identified as council development officers responsible for reviewing and approving development applications.¹² However, General Counsel also confirmed that he had not spoken to these officers about the comments made by Complainant A and Complainant B. It is not clear whether any council development officers were even aware of the comments.

General Counsel did advise investigators that in previous discussions about other matters, a number of council development officers had stated that comments of this nature were part of the job:¹³

For these, I didn't speak to them about these particular matters. I've spoken to them about other matters similar about them being pro-development, in the developer's pockets, making decisions which are not professional, not ethical. They're making them only to please the mayor, that type of thing, or the developers. And we looked at them and they just said well it's part of the job. It's kind of like we all say.

The CEO also confirmed that no council officer had spoken to him or raised concerns about the comments made by Complainant A or Complainant B.¹⁴ The CEO also stated that he was of the view that it was his duty to defend his staff and he had instructed General Counsel to determine if the comments were defamatory and pursue the appropriate action.

It is clear from the evidence provided by both the General Counsel and the CEO that no council officer was spoken to about the comments published by Complainant A and Complainant B. I question the purpose of commencing a process which could lead to legal action, without first attempting to identify who may have been defamed or confirming with the allegedly defamed parties that they were supportive of taking such action.

At interview, General Counsel said that the matter of who would issue Concerns Notices or bring an action in defamation would be clarified in the event Complainant A or Complainant B did not comply with the terms of the letters. The General Counsel further stated:¹⁵

We'd be seeking advice on if they hadn't retracted and we'd be getting instructions, if you like, going 'Well hang on a minute, they haven't responded, our estimate on proceeding legally is this amount, how do you want to proceed?' and what our risks

¹¹ *Bjelke-Petersen v Warburton* [1987] 2 Qd R 465 at 467.

¹² Interview with the General Counsel, 18 April 2016, transcript p.8.

¹³ Interview with the General Counsel, 18 April 2016, transcript p.15.

¹⁴ Interview with the CEO, 25 May 2016, transcript p.15.

¹⁵ Interview with the General Counsel, 18 April 2016, transcript p.21.

and options are. So one is let it go, one is the next step is section 14 and the next step up is section, is instigation. There'd probably be some sort of conciliation after that and then there'd be a trial, and we'd ask for general cost estimates on those key stages and roles and the role of council and that. So it might just be 'we'll give you advice', and it might be 'look we think it is defamation but we don't think it's a good use of public funds'. In terms of council support, we may issue a public statement about the matters.

In my view, General Counsel should not have taken action to commence a process that may escalate to legal action without having a complete understanding of the basis for the action, that is, who would bring such an action and on what basis. These are matters that should have been established before the letters to Complainant A and Complainant B were sent.

It appears that these comments indicate that the CEO and General Counsel had decided on the approach to adopt in response to the comments by Complainant A and Complainant B and were comfortable with taking this approach even though they had not confirmed that the allegedly defamed parties were supportive of council taking action on their behalf.

I am of the view that adopting this process was unreasonable and a misuse of the legal processes for defamation.

Opinion 2

The approach adopted by council in accusing Complainant A and Complainant B of defaming council officers without any instructions from council officers was unreasonable within the meaning of s.49(2)(b) of the *Ombudsman Act 2001*.

Council's response to the proposed report

Council advised:

The Proposed Report finds that Complainants A and B *'did not specifically name any council officers in their comments. Their comments referred to 'council officers' generally.'* Council accepts that finding.

Council also accepts that in some cases where it alleged that Council Officers had been defamed, it is arguable that Council Officers were not sufficiently identifiable to have been defamed by the relevant publications, if those publications were considered in isolation. Council notes, however, that the comments referred to Council Officers in the context of development assessment activities, and in this context, the identities of senior Council Officers involved with these activities could have been readily deduced from publicly available material.

However, in other cases, Council maintains that Complainant A and B's publications were defamatory of Council Officers.

In particular, in Complainant A's letter to the developer dated 24 November 2014 ... Complainant A specifically named a planner employed by Council and suggested that he had given improper preferential treatment to the developer by placing undue importance on the *'financial profits of business owners'* at the expense of environmental and community considerations.

Despite the above concessions, Council maintains that each of the publications to which it has referred above was defamatory ...

Council relied on external legal advice

Further, Council submits that it obtained external legal advice in respect of Complainant A and B's publications and that its external legal adviser prepared the Complainant A letter and Complainant B letter. Council refers to and relies on its submissions ... in this regard.

Council submits that it reasonably relied and acted on the advice that it received from its external legal adviser when issuing the letters which alleged that Council Officers had been defamed.

The instructions point

Further, Council submits that it was reasonable for it to send the letters without first obtaining instructions from individual Council Officers (other than the Mayor and CEO) given:

- (a) Council's belief, based on external legal advice, that unnamed Council Officers had been defamed;
- (b) Council's legitimate interest in having defamatory remarks about its officers removed from public view ... and
- (c) the fact that the letters were in the nature of warning letters only, and were not the commencement of formal proceedings under the Defamation Act or otherwise ...

Council also notes that it did involve senior members of the development officer team in discussions about the actions taken in relation to the matter. The team was thereby kept informed of Council's actions as the alleged conduct was directed, *inter alia*, against them.

In the circumstances, Council does not accept that its actions were *'unreasonable and a misuse of the legal processes for defamation'* as found by the Ombudsman. Council respectfully invites the Ombudsman to reconsider its Proposed Opinion 2.

Ombudsman's comment on the response

I note that council has not accepted Opinion 2.

The purpose of defamation law is to protect an individual's reputation. A matter will be defamatory only if a person can establish that their reputation has been damaged by the publication of the defamatory matter and that publication of the material has harmed or lowered their reputation in the eyes of reasonable people in the community.

There is no instance in any of the published material referred to by council in its letters to Complainant A or Complainant B where an individual council officer is referred to. It is not sufficient for council to argue that its officers could be 'readily deduced from publicly available material.' The fact remains that the material council relied on in the letters sent to both complainants did not name any council officer.

It is also not sufficient for council to state that it involved 'senior members of the development officer team in discussions about the actions taken in relation to the matter.' While council may have a legitimate interest in having defamatory remarks about its officers removed from public view, defamation is a private action and proceedings cannot be commenced against an individual without proper instructions from a defamed party. It is clear that no council officers provided council such instructions.

Finally, I note that council has relied on the fact that it sought external legal advice with respect to the letters it sent to Complainant A and Complainant B. However, that council sought external legal advice does not absolve it from responsibility to act in a reasonable manner.

Accordingly, I reiterate that council's actions were unreasonable and I have made no amendments to Opinion 2.

Was it reasonable to allege that the Mayor was defamed?

The Mayor as an individual can bring an action in defamation. While the comments made by Complainant A and Complainant B about the Mayor may have been inflammatory, during an interview with investigators the Mayor appeared to be more concerned about the reputation of council than her own:¹⁶

... I just said, "Look this has been going on now for a number of months. I have concerns of the damage it's doing." Bearing in mind this had received exponentially more media coverage for a code assessable application than probably anything else. It had been on radio, it had been numerous times in the newspaper and we'd spend a great deal of time and resources trying to get the correct information out there, and giving the opportunity for them [the complainants] to understand that. And, so when I had that conversation, I basically raised it with the CEO and legal counsel, to say, "Look I have concerns this is starting to damage our reputation as an organisation." And, I think from that point they took legal advice; they went and got further legal advice on that.

It appears the Mayor simply alerted the CEO to the comments and had very little to do with the process beyond that. In fact it was the CEO who provided instructions to General Counsel about pursuing action against the comments made by Complainant A and Complainant B, not the Mayor.

When asked if it would have been reasonable for General Counsel to consult with her to ensure she agreed with the imputations outlined in the letters to Complainant A and Complainant B, the Mayor stated:¹⁷

I saw that as being council's reputation, which I'm obviously a figurehead in the organisation, but it also refers constantly to council officers. So, my understanding would have been the legal advice would have been based on the damage to the organisation. Look, and at the end of the day, this was obviously taken from the e-mail that I'd sent through. I wouldn't expect if they're dealing with the organisation that I would necessarily be the person that would sign off on the letter, if that's what you're saying ... If I wanted to seek my own legal processes, I would have done so.

During an interview with investigators, the General Counsel also noted that the Mayor had previously stated that negative and defamatory comments were part of being a politician and having a public profile.¹⁸

It seems clear on the evidence that the Mayor did not instruct the CEO or General Counsel to take action on her behalf to threaten to commence defamation proceedings in response to the comments. I have already expressed my views and opinion about pursuing legal action in the absence of instructions from the aggrieved parties.

Council's response to the proposed report

Council advised:

During his interview with the Ombudsman, the General Counsel confirmed that he had discussed the publications ... with the Mayor on or about 3 September 2015.

He said that he recalled the Mayor stating that she was unhappy about the publications, and indeed *'sick of these sorts of*

¹⁶ Interview with the Mayor, 25 May 2016, transcript, p.6.

¹⁷ Interview with the Mayor, 25 May 2016, transcript, p.13.

¹⁸ Interview with the General Counsel, 18 April 2016, transcript p.39.

communications'. The General Counsel stated that his recollection was that the Mayor was '*stressed*' about the publications, and that they were '*affecting her home life*'.

The General Counsel's recollection of these discussions was consistent with the Mayor's comments during her interview with the Ombudsman. During the interview, the Mayor confirmed:

- (a) that she considered that Complainant A and B's publications were defamatory of her; and
- (b) that the publications had caused her considerable stress.

During his interview with the Ombudsman, the CEO also confirmed that his recollection was that Complainant A and Complainant B's publications had caused the Mayor distress.

At about 6.14am on 4 September 2015, the Mayor sent an email to the General Counsel, another solicitor in the employ of Council, the CEO, as well as an Executive Officer in the Mayor's office. Attached to the Mayor's email were screen shots that she had taken of the Petition, Complainant B's comments on the Petition ... and Complainant B's comment on Facebook ...

During his interview, the General Counsel confirmed that it was after he had discussed Complainant A and Complainant B's publications with the Mayor and the CEO that he contacted an external solicitor by telephone for advice about the publications ...

...

The solicitor was employed in the position of Special Counsel and was held out as possessing expertise in the area of defamation (among other areas of law).

Importantly, the General Counsel's recollection was that the Mayor was present during the General Counsel's discussion with the external legal adviser, during which the General Counsel recalls that:

- (a) the external legal adviser expressed the view that the publications discussed above were defamatory; and
- (b) instructions were given to the external legal adviser to prepare letters to Complainants A and B in respect of the publications.

Later in the day on 4 September 2015, the General Counsel emailed the Complainant B letter in draft form (the draft having been prepared by Council's external legal advisers) to the Mayor and the CEO for their review before it was sent. The CEO subsequently approved the issuing of the letter with note that executive and senior managers of Community and Customer Service and Development Assessment were involved in those and subsequent communications.

At or about 4.39pm on 4 September 2015, the Complainant B letter was sent to Complainant B by the General Counsel. The Mayor and CEO were blind-copied into the email under cover of which the Complainant B letter was sent.

At or about 5.21pm on 7 September 2015, the Complainant A letter was sent to Complainant A by the General Counsel. Again, the Mayor and CEO were blind-copied into the email under cover of which the Complainant A letter was sent.

In the premises of the above, Council respectfully submits that its decision to issue the Complainant A letter and Complainant B letter was taken with the knowledge and on the instructions of the Mayor and CEO. The Mayor:

- (a) provided screenshots to the General Counsel of some of the publications;
- (b) discussed the publications with the General Counsel and the CEO and conveyed that they were causing her stress;
- (c) may have been present when the General Counsel obtained external legal advice in respect of the publications and the manner in which Council would respond to them;
- (d) was provided with the Complainant B letter in draft form before it was issued to Complainant B; and
- (e) was blind-copied into the emails under cover of which the Complainant A letter and Complainant B letter were issued.

The Proposed Report does not acknowledge these matters. In fact, the Proposed Report states that *'[i]t seems clear on the evidence that the Mayor did not instruct the CEO or General Counsel to take action on her behalf'*.

Council respectfully submits that the above conclusion is incorrect and invites the Ombudsman to reconsider it.

...

In the Proposed Report, the Ombudsman includes the following proposed finding:

It seems clear on the evidence that the Mayor did not instruct the CEO or General Counsel to take action on her behalf to commence defamation proceedings in response to the comments. I have already expressed my views and opinion about pursuing legal action in the absence of instructions from the aggrieved parties.

Council does not accept the above finding. While it is correct that the Mayor did not instruct the CEO or General Counsel to commence formal proceedings on her behalf, that is not what the CEO or General Counsel did. Instead, they issued warning letters to Complainants A and B in which retractions and apologies were sought in respect of the defamatory publications. Council's actions were taken with the knowledge and instructions of the Mayor and CEO.

The Mayor's concern about Council's reputation

In the Proposed Report, the Ombudsman remarks that *'the Mayor appeared to be more concerned about the reputation of council than her own'*. With respect, that is not to the point.

The Mayor made plain during her interview with the Ombudsman that she considered Complainant A and B's publications to be defamatory of her. As Council's figurehead, she was naturally also concerned about the manner in which the publications reflected on Council.

That the Mayor attributed greater importance to Council's reputation than her own is appropriate given her public office. It does not bear on the question of whether, objectively considered, the publications were defamatory of the Mayor.

The Ombudsman goes on to state:

During an interview with investigators, the General Counsel noted that the Mayor had previously stated that negative and defamatory comments were part of being a politician and having a public profile.

Again, with respect, the above is irrelevant to the question of whether or not the publications were defamatory, and whether the steps that Council took in respect of them were lawful and reasonable.

The Proposed Report fails to acknowledge that this question was also put to the Mayor during her interview with the Ombudsman, to which the Mayor responded with words to the following effect:

Yes, people make their opinions known about politicians and what you do, but being called corrupt without evidence is not what you expect, particularly if you have actually provided them with the information and alternative ways for making sure due process is taking place [referring to her previous suggestions to Complainant A that she should refer her allegations to the Crime and Corruption Commission].

The Mayor's comments indicate that she considered Complainant A and B's publications to be exceptional and not *simply 'part of being a politician and having a public profile'*, in that they alleged that she and Council Officers were corrupt without any evidence to support those allegations and had not, despite the Mayor's express suggestions, referred such matters to the Crime and Corruption Commission.

The Proposed Report also fails to acknowledge the significant distress that the Mayor confirmed she had experienced as a direct result of Complainant A and B's publications.

None of the above is, however, relevant to the question of whether the publications themselves were defamatory. A cause of action in defamation is complete on the publication of matters to third parties which (construed objectively) are defamatory of a subject with standing to sue under the Defamation Act. As Council has submitted above, it does not turn on whether the plaintiff understood the publication to be defamatory of him or her.

Conclusion in respect of the Mayor

Accordingly, Council submits that:

- (a) the Mayor was defamed by Complainant A and B's publications; and
- (b) its actions were taken with the knowledge and instructions of the Mayor.

Council invites the Ombudsman to reconsider the conclusions reached in section 2.2 under the heading '*Was the Mayor defamed?*'.

Ombudsman's comment on the response

As I have previously indicated, the question of whether the comments published by Complainant A or Complainant B were defamatory about the Mayor is a matter for a court to determine. I have declined to form an opinion about whether any of the relevant comments were in fact defamatory about any person. However, I have considered whether council's response to the comments was reasonable in the circumstances.

Council has submitted that its actions in sending the letters to both complainants were taken 'with the knowledge and instructions of the Mayor.' Council states that the Mayor was involved with the processes of drafting and sending the letters and that this action was taken on her instructions. However, council denies the Mayor instructed legal action be taken against the complainants and argues that the letters were intended as a warning to the complainants rather than the commencement of legal proceedings.

As discussed further in Chapter 3 of this report, while council has

submitted the letters were intended as a warning, both letters clearly took the form of a concerns notice issued under the Defamation Act. The emails sent to both complainants attaching the letters were titled 'Concerns Notice – Urgent Attention – Defamation' and the letter to Complainant A was titled 'Concerns Notice'. A reasonable person receiving such a letter would consider it to be a concerns notice under the Defamation Act.

During interview with Ombudsman officers, the Mayor stated that she had not had any input into the drafting of the letters including any of the defamatory imputations.¹⁹ When interviewing officers asked the Mayor whether she agreed with the imputations in the Concern Notices setting out how she had been defamed by the comments, the Mayor stated that she had not been responsible for drafting the imputations but she relied and trusted the legal advice that those imputations were accurate.²⁰

Council has submitted the Mayor 'may' have been in attendance when the General Counsel sought legal advice and instructed the external legal firm to prepare the letters. During interview the Mayor was asked whether she recalled attending this meeting. The Mayor recalled speaking to the CEO and General Counsel about the matter in the following terms:²¹

I just recall the three of us. I walked past the office and I raised it and I just said, 'Look this has been going on now for a number of months. I have concerns of the damage it's doing' ... I basically raised it with the CEO and legal counsel, [General Counsel] to say, 'Look I have concerns this is starting to damage our reputation as an organisation.' And, I think from that point they took legal advice; they went and got further legal advice on that.

The Mayor was further asked whether she recalled during that meeting the General Counsel discussing the matter with external solicitors and providing instructions to prepare the letters. The Mayor responded she did not recall that and that the legal advice was sought afterwards.²²

Council has submitted no written documentation, including file notes or meeting requests, to cast doubt on the Mayor's recollection.

During interview, the Mayor was asked whether she was consulted about the defamatory imputations in the letters to confirm that they were reasonable and that she agreed they were accurate:²³

No, not at all. I can only assume that they sought legal advice professionally and that they would have taken that, but if anyone was going to advise them, that wouldn't have been me, that's not my expertise.

The Mayor was also asked whether she had any input into the defamatory imputations that were included in the letter:²⁴

Absolutely not. Let me make it very, very clear that I raised the issue with the CEO and legal counsel [General Counsel] and they sought the proper legal advice as to how to proceed and from that point on I had no input at all into that correspondence. Make it very, very clear.

Finally, the Mayor was asked whether she should have been included in the drafting of the defamatory imputations, as the imputations related to

¹⁹ Interview with the Mayor, 25 May 2016, transcript p.9 and 10.

²⁰ Interview with the Mayor, 25 May 2016, transcript p.10, 11 and 12.

²¹ Interview with the Mayor, 25 May 2016, transcript, p.6-7.

²² Interview with the Mayor, 25 May 2016, transcript, p.7.

²³ Interview with the Mayor, 25 May 2016, transcript p.9.

²⁴ Interview with the Mayor, 25 May 2016, transcript p.10.

alleged damage to her reputation. The Mayor responded:²⁵

I saw that as being council's reputation, which I'm obviously a figurehead in the organisation ... So, my understanding would have been the legal advice would have been based on the damage to the organisation ... If I wanted to seek my own legal processes, I would have done so.

I acknowledge that the Mayor may have suffered significant distress as a result of the published comments, but that is not relevant to whether the Mayor instructed council to threaten to take legal action in response to the comments.

Again, the Mayor's comments to Ombudsman officers during interview indicated that she was primarily concerned that action be taken to prevent further damage to the reputation of council rather than her own reputation. I have relied on the Mayor's evidence given during interview in rejecting council's submission.

Finally, I note that during interview with Ombudsman officers, the General Counsel confirmed that the Mayor did not instruct that the letters be sent to the complainants.²⁶ The General Counsel stated that it was the CEO who made the initial request to provide advice about whether the comments made by Complainant A and Complainant B were defamatory about the Mayor or any council officers and the CEO who instructed that the letters be sent.

I therefore place little weight on council's submissions in response to the proposed report that this is not what occurred.

2.3 Was council's approach reasonable?

Finally, I considered the issue of whether threatening a constituent with potential legal action for expressing a view about council decisions was reasonable and appropriate in the circumstances.

Local governments can and should expect significant discussion and disagreement about their decisions, particularly around development issues. There is a significant amount of comment placed on social media every day about local government decisions.

In my view, threatening constituents with legal action in circumstances such as occurred here is not a reasonable or proportionate response to the situation. This is especially the case if nobody actually believed they were defamed by the comments made, or where the comments made were of a relatively minor nature, could be characterised as being a relatively common occurrence expressing opposition to council decisions and were not substantially attacking an individual.

During the interview with investigators, the CEO expressed the view that it is part of his role to protect the health, safety and wellbeing of council staff:²⁷

As the senior executive I take full responsibility. That is my role as the chief executive officer to represent my staff, to look after their health and safety, their wellbeing and their stress.

...

²⁵ Interview with the Mayor, 25 May 2016, transcript p.13.

²⁶ Interview with the CEO, 25 May 2016, transcript p.45.

²⁷ Interview with the CEO, 25 May 2016, transcript p.21.

I have an obligation to provide for the wellbeing of my staff under the Workplace Health and Safety Act.

I agree that providing a safe workplace is essential. However, it is clear that no council officer had expressed concern about the comments nor was there any indication that the comments had impacted their wellbeing. There is also no evidence that the CEO took any other action in response to his stated concerns about the safety and wellbeing of his staff, such as identifying potentially affected staff and ensuring they had access to counselling or other support services.

Finally, at interview, the CEO suggested that Complainant A had a significant history of making unfounded accusations about council and that the approach adopted by council was necessary to put a stop to this behaviour.²⁸ This does not change my view that council's approach was unreasonable in the circumstances.

I note that council does not suggest that Complainant B has previously made comments about council's decisions, yet a similar approach was adopted in relation to her comments. In fact, Complainant B was further penalised by council contacting her employer.

Opinion 3

Council's actions in threatening to commence legal action against Complainant A and Complainant B were:

- (a) based on a lack of clear analysis regarding who, if anybody, was defamed by the comments
- (b) not based on instructions from any of the allegedly defamed parties, and
- (c) not a reasonable or proportional response to what was relatively minor criticism of council's decisions.

The approach adopted by council was unreasonable within the meaning of s.49(2)(b) of the *Ombudsman Act 2001*.

Recommendation 1

Council ensures that key officers receive further training about defamation law including what may, and may not, constitute defamation under Queensland law.

Council's response to the proposed report

Council advised:

The Proposed Report devotes much attention to the fact that defamation is essentially a private action, and that public bodies such as Council do not have standing to bring an action in defamation.

Contrary to the Ombudsman's Proposed Opinion 1, Council says that it has not previously contended otherwise ...

However, while Council understands the fact that defamation is a private action, Council respectfully submits that the Proposed Report fails to acknowledge the legitimate interest that Council has to protect the reputations of its officers.

²⁸ Interview with the CEO, 25 May 2016, transcript p.5.

Defamatory remarks made about Council's officers have the potential to:

- (a) cause the subjects of the remarks to suffer from stress which may impact on the performance of their professional duties; and
- (b) bring Council itself into disrepute, particularly when the remarks are directed towards its most senior representatives such as the Mayor and CEO and concern their professional conduct.

In Council's submission, Complainant A and B's publications:

- (a) were targeted at senior Council Officers, particularly the Mayor and CEO;
- (b) concerned actions and decisions that such individuals had taken exclusively in the discharge of their professional responsibilities (and not their private conduct);
- (c) were defamatory for the reasons set out in section 8 below; and
- (d) had the real potential to impact on Council's reputation and bring Council into disrepute, given that they suggested that corruption was taking place at the highest levels within Council.

In the circumstances, Council submits that it acted lawfully and reasonably, in the interests both of the parties who had been defamed by the publications (and had standing to sue) and of Council as a whole (of whom the defamed parties were ambassadors, in the sense that their conduct and professional reputations affect Council's reputation), when issuing the Complainant A letter, the Complainant B letter and the Employer letter.

...

Council further submits that it is entirely appropriate that it should provide support to its officers who are defamed as a result of or in connection with the performance of their professional duties for Council.

Council further submits that the Proposed Report does not sufficiently acknowledge Council's obligation to provide its officers with a safe work environment, free from abuse and defamatory material, and the role that these considerations (appropriately, Council says) played in its actions ... the time within which the ongoing defamatory commentary posed a workplace health and safety concern was not insignificant – extending from communications in July 2013 to September 2015. Further, the comments continued despite the Mayor's express written invitation for any evidence of corrupt activity to be referred to the Crime and Corruption Commission.

From at least 2014, as a result of Complainant A's communications with Council, there were discussions between the Council management team and Council Officers about the requirement to maintain a safe work place free from online bullying and abuse. This demonstrates the importance placed on officer safety by Council, and shows this was an ongoing consideration when addressing this particular matter.

In the premises, Council invites the Ombudsman to reconsider its conclusions about these matters.

...

... Council also disagrees with limbs (a) and (b) of the Ombudsman's Proposed Opinion 3. It is also unnecessary, in Council's submission, for its key officers to receive further training about defamation law in light of the above submissions, and Council therefore also disagrees with Proposed Recommendation 1.

Council also disagrees with limb (c) of Proposed Opinion 3, and says that its response to Complainant A and B's publications was reasonable and proportional. Council does so in reliance on the submissions made above and in the balance of this document.

...

Further or alternatively, even if the Ombudsman finds that Complainant A and B's publications were not defamatory, Council submits that its decision to send the Complainant A letter, Complainant B letter and the Employer letter was reasonable because:

- (a) Council received external legal advice to the effect that the publications were defamatory; and
- (b) Council reasonably relied and acted on that advice.

The circumstances surrounding Council's decision to obtain external legal advice have been discussed above. As those submissions make clear, that decision was taken with the permission of the CEO and the knowledge of the Mayor.

The external legal advisers held themselves out as possessing expertise in the area of defamation law, and:

- (a) advised Council that Complainant A and B's publications were defamatory; and
- (b) prepared the Complainant A letter and Complainant B letter for Council to send.

Council was entitled to, and did, rely on the legal advice that it received. It reasonably acted on that advice for the reasons set out ... above.

**Ombudsman's
comment on the
response**

I note that council has not accepted Opinion 3 and Recommendation 1.

I acknowledge that council has a legitimate interest in protecting the reputation of its officers. I also acknowledge the importance of providing a safe working environment for council officers.

However, I do not accept council's submission that utilising defamation law to threaten legal action against residents is an appropriate or justifiable response in circumstances such as these. The evidence I have gathered suggests that council threatened legal action without receiving instructions, or even consulting, with all of those officers who were allegedly the subject of the defamatory comment.

Had the council officers who were allegedly the subject of defamatory comment regarding their official duties made a complaint to council about the comment, council could have then considered what a reasonable response to that circumstance was.

In my view, any decision to provide funding for legal action using public money should, at the very least, have been considered by a full meeting of council. That did not occur in this case. I have discussed this further in Chapter 4.

I reiterate my view that council's actions in this matter were not reasonable. Due to the lack of records kept by council, I am not able to determine the specific instructions which were provided to the law firm or the specific advice that was provided by the law firm to council.

Accordingly, I reiterate my opinion that council's approach in this matter was unreasonable under s.49(b) of the Ombudsman Act.

Having formed this opinion, I am also of the view that the training for council officers addressed in Recommendation 1 is necessary to ensure a similar situation does not occur in the future.

Chapter 3: How council carried out its approach

I have formed the view that the approach adopted by council in response to the comments made by Complainant A and Complainant B was unreasonable in the circumstances.

However, I also have concerns about how council carried out this approach. This chapter discusses these concerns and makes recommendations to council about what could be done differently in the future.

3.1 Form of the letter

Issuing a concerns notice is a process set out in the Defamation Act which can lead to defamation proceedings against a person.

The emails sent to Complainant A and Complainant B, with letters attached, were titled 'Concerns Notice – Urgent Attention – Defamation'. The text of the emails stated:

Please find enclosed a Concern Notice for your urgent attention and immediate response.

The letter to Complainant A was also titled 'Concerns Notice: Facebook comments on [the recipient's] Facebook page on 3 September 2015'.

The letters also took the form of concerns notices as prescribed under the Defamation Act. Accordingly, these elements of the letters could lead the recipients to believe they had been issued with a formal concerns notice under the Defamation Act. However, the content of the letters also contained the following paragraph:

If you do not comply with the above request, within the specified time, we have the option to issue a Concerns Notice under section 14 of the *Defamation Act 2005* Qld. The Concerns Notice may request that you make a public retraction and apology in the terms outlined above. If you do not comply with the Concerns Notice, legal proceedings may follow. However, if you do comply with the above request we will not pursue the matter further.

This paragraph contradicts the titling of the emails and letter as 'concerns notices' as it states that a concerns notice may be issued if the terms of the letter are not complied with. Complainant A and Complainant B would rightly have been confused about whether the correspondence from council was a formal 'concerns notice' under the Defamation Act, and what their options were to respond to it.

During his interview with investigators, the General Counsel stated that the letters were intended to be warning letters rather than a formal concerns notice under the Defamation Act.²⁹ In contrast, the CEO told investigators that the letters had been intended to be a concerns notice under the Defamation Act.³⁰ I note that the CEO has been identified as the decision-maker in relation to the letters.

I am unable to form a view as to whether the letters were in fact intended to be concerns notices under the Defamation Act. There is significant confusion in this regard.

The differing views between the General Counsel and the CEO raises questions about the amount of consultation and deliberation that occurred prior to the letters being sent.

²⁹ Interview with the General Counsel, 18 April 2016, transcript p.20.

³⁰ Interview with the CEO, 25 May 2016, transcript p.13.

Opinion 4

There is a lack of clarity in council's correspondence with Complainant A and Complainant B as it is not clear whether the correspondence constituted a 'concerns notice' under the Defamation Act. The approach adopted by council was unreasonable within the meaning of s.49(2)(b) of the *Ombudsman Act 2001*.

Council's response to the proposed report

Council advised:

The Council acknowledges that the emails under cover of which the Complainant A letter and Complainant B letter were issued contained the words 'Concerns Notice'. The Complainant A letter also contained these words in its subject line.

However, after requesting a public retraction and apology, both letters stated (with emphasis added):

If you do not comply with the above request, within the specified time, we have the option to issue a Concerns Notice under section 14 of the Defamation Act 2005 Qld. The Concerns Notice may request that you make a public retraction and apology in the terms outlined above. If you do not comply with the Concerns Notice, legal proceedings may follow. However if you do comply with the above request we will not pursue the matter further.

The above paragraph makes plain that Council's letters were not intended to be concerns notices under the Defamation Act, and were instead to be seen as comparatively informal warning letters. This is consistent with the General Counsel's comments during his interview with the Ombudsman (whose comments, it is submitted, ought to be preferred over those of the CEO given that it was the General Counsel who instructed the external legal advisers to prepare the letters and actually signed and issued them).

Accordingly, while Council acknowledges that there was some confusion in the drafting of the letters, it submits that the Complainant A letter and Complainant B letter were not concerns notices for the purposes of the Defamation Act.

Ombudsman's comment on the response

I note council's response.

Opinion 4 does not state that the letters were a concerns notice under the Defamation Act, rather that the letters were confusing and that it is not clear whether the letters were intended to be a concerns notice. Council has acknowledged that there was 'some confusion in the drafting of the letters.'

Council has also submitted that I should prefer the evidence given by the General Counsel at interview over the evidence given by the CEO regarding whether the letters were intended to be a concerns notice. While I acknowledge that as council's legal advisor, the General Counsel instructed the external legal advisers to prepare the letters and then signed them, I cannot disregard the evidence of the CEO who council has submitted made the decision about sending the correspondence.

The confusion between the CEO and the General Counsel about whether the letters were concerns notices emphasises my point that

council's correspondence with Complainant A and Complainant B was confusing. Considering the disagreement between the CEO and General Counsel about whether the letters were concerns notices, it is not likely the distinction would have been clear to Complainant A or Complainant B.

3.2 Timeframes for a response

The letters to Complainant A and Complainant B demanded a public retraction and apology within a specified timeframe:

- Complainant B received her letter on Friday 4 September 2015 which requested she provide a public retraction and apology by 4.00pm on Monday 7 September 2015.
- Complainant A received her letter on Monday 7 September 2015 which requested she provide a public retraction and apology by 4.00pm on Wednesday 9 September 2015.

I am of the view that these timeframes were unreasonable in the circumstances. Such tight timeframes would have limited the opportunity for Complainant A and Complainant B to seek legal advice and decide whether or not to comply with the requests by council.

This is particularly relevant for Complainant B who received her letter on a Friday and was required to respond the following Monday. There would have been no opportunity for Complainant B to seek legal advice over the weekend.

Opinion 5

The specified timeframes for Complainant A and Complainant B to take action in relation to council's correspondence was unreasonable within the meaning of s.49(2)(b) of the *Ombudsman Act 2001*.

Council's response to the proposed report

Council advised:

As outlined above, Council's primary position is that the Complainant A letter and Complainant B letter were not concerns notices for the purposes of the Defamation Act.

Further or alternatively, if those letters did constitute concerns notices, Council submits that the timeframes in which it requested that Complainants A and B publicly retract and apologise for their publications were not unreasonable or contrary to the Defamation Act.

In the Proposed Report, the Ombudsman states:

Section 14(1)(a) of the Defamation Act states that a publisher has up to 28 days after receiving a concerns notice to make an offer to make amends. If the letters were considered concerns notices under the Defamation Act then the timeframes prescribed in the letters ... would be inconsistent with the requirements of the Defamation Act.

Council disagrees with the above finding. Section 14(1)(a) imposes a time limit on when a publisher of a defamatory matter may make an offer to make amends. It states that such an offer cannot be made if 28 days have elapsed since a concerns notice was given by the person aggrieved by the publication.

It remains open to the aggrieved party to request a public retraction and apology within a shorter period of time. The Defamation Act does not prescribe how much time is to be given to a publisher to provide a public retraction and apology; it merely permits a publisher to make an offer to make amends within 28 days of receiving a concerns notice.

Given the seriousness of the imputations which were conveyed by Complainant A and B's publications, which included that the Mayor and CEO were corrupt, it was reasonable and appropriate for Council to request that public retractions be made and apologies given within a short period of time.

For the above reasons, Council disagrees with the Ombudsman's Proposed Opinion 5 and invites the Ombudsman to reconsider it.

**Ombudsman's
comment on the
response**

I acknowledge council's submission regarding the requirements and purpose of s.14(1) of the Defamation Act. It seems my reference to this section has caused confusion. Accordingly, I have removed reference to this section from section 3.2 above as my views are not based on the Defamation Act provisions.

However, I remain of the opinion that the requirement that Complainant A and Complainant B respond to council's correspondence within such tight timeframes was unreasonable. As noted in my discussion above, the tight timeframes for retraction and apology demanded in the letters provided no opportunity for Complainant A and Complainant B to seek legal advice in order to determine whether or not to comply with the requests by council.

I do not agree that the content of the published comment was sufficiently urgent or serious so as to negate the requirement to provide each complainant with adequate time to seek legal advice and consider their options.

3.3 Use of public money

In this matter, council sought advice from an external law firm which cost \$2,860. This is a relatively small amount of public money, however it is not insignificant, particularly considering that the CEO and General Counsel did not confirm if anyone felt defamed by the comments before seeking the external advice. Given my concerns with the approach adopted by council, I am of the view that this expense was at risk of being wasted.

The letters to Complainant A and Complainant B indicated that defamation action was a possibility if they did not comply with the terms of the letter. This would be a much costlier exercise than the initial advice. As defamation is a private action designed to protect the reputation of an individual, this raises the question, 'in what circumstances is it appropriate to use public funds to pursue such an action?'

During the interview with investigators, General Counsel said council did not have a formal policy or procedure about council funding legal action for its employees. The briefing note he prepared in 2010 entitled 'Defamation & Public Administration' provides some guidance on this issue, stating:

The private and public nature of defamation creates two issues; the first is an obligation on Council to provide a safe work environment free from abuse and defamatory material and, secondly the limitation of using Council resources and funds in a private capacity. If Council does not act to address the first issue then it could potentially expose itself to workplace health and safety claims. If Council acts

on the second issue, then potentially Council and/or the individuals are exposed to an allegation of misuse of Council public funds and resources for private gain.

The first issue is resolved by Council acting in accordance with Workplace Health and Safety procedures. The second issue is to ensure that any allegation of defamation and use of Council resources to address defamation is in accordance with existing policies and referred to the Chief Executive Officer.

While council does not have a specific policy about funding legal action for its employees, it does have an expenditure policy. This expenditure policy does not specifically address funding legal action for its employees but does state that for requests that fall outside the policy, the CEO must make a decision in line with the policy objective. The policy objective is to:

... ensure the payment of legitimate and reasonable expenses incurred by councillors for discharging their duties and responsibilities as councillors; and to provide facilities to councillors for those purposes. This is to ensure that councillors are not financially disadvantaged as a result of carrying out their official duties. The policy is also aimed at reflecting the community's expectations about the extent of a councillor's duties and responsibilities and its expectations about the resources and reimbursement provided to councillors from the public purse ...

Case law provides some further guidance in relation to when it may be appropriate for council to fund private legal action for its employees. The case of *Comninos v Bedford Borough Council* found that a decision by council to fund legal action for an employee is judicially reviewable. The more 'defensive' the action the easier it would be for council to satisfy the court that the decision was appropriate.³¹

I have already established that the Mayor and council officers did not provide any instructions to council to pursue legal action. It would be extremely difficult to demonstrate that an action in defamation would be defensible without the support of the alleged defamed parties. I acknowledge that General Counsel stated that if the matter was to escalate, he would seek instructions from the individuals on how to proceed. I have already expressed my concerns with this approach.

During the interview with investigators, the CEO confirmed that he had approved the cost of seeking external legal advice.³² However, I have been unable to find any documented decision about this expense. At interview, General Counsel stated that he doubted the CEO would have given formal instructions to seek advice.³³

No, no I doubt it. I would have just, I would have emailed him or emailed, no I didn't take any formal meeting notes. I would have, typically what I do is use that as part of my email so, yeah so it could be in the email notes either back to the CEO saying look I've briefed such-and-such, they're drafting advices, we anticipate them by this afternoon. I typically don't, it's, yeah so with these sorts of matters, if they're moving quickly, my meeting notes, if you like, are contained in my drafting of email.

Without a documented decision it is difficult to determine if the decision was made in line with the expenditure policy objective. The absence of a documented decision is also concerning for the following reasons:

- government agencies should be accountable in their decision-making and documenting decisions is a mechanism to ensure accountability and transparency
- as a government agency council is required under the *Public Records Act 2002* to ensure its decisions are documented

³¹ *Comninos v Bedford Borough Council* [2003] EWHC 121 (Admin) at paragraph 37.

³² Interview with the CEO, 25 May 2016, transcript p.25.

³³ Interview with the General Counsel, 18 April 2016, transcript p.13.

- failing to adequately document a decision makes it very difficult to defend if challenged.

In my view, given the lack of documentation around the decision to take action and the expenditure decision, it is not clear whether the use of public money to threaten to take defamation action against Complainant A and Complainant B was reasonable in the circumstances, because:

- no individuals raised any concerns with the CEO or General Counsel that the comments were defamatory about them
- the alleged defamed parties did not provide any instructions to seek legal advice.

The lack of a specific policy to guide council in its decision about whether to fund private legal action on behalf of its employees has, in my view, contributed to the flaws in the decision-making process in this matter.

Accordingly, during the investigation I wrote to the Director-General of the Department of Infrastructure, Local Government and Planning (the department) to inquire whether the department would provide advice to all Queensland councils about the need for a specific policy on funding legal action for councillors and council employees. In response, the Director-General advised the department would issue a Local Government Bulletin with regard to the issue. The Local Government Bulletin will include guidance on the content and scope of such a policy for councillors and employees.

Opinion 6

The decision of council to spend public funds to threaten defamation action against Complainant A and Complainant B, where:

- no individuals raised any concerns with the CEO or General Counsel that the comments were defamatory about them
- the alleged defamed parties did not provide any instructions to seek legal advice

was unreasonable within the meaning of s.49(2)(b) of the *Ombudsman Act 2001*.

Recommendation 2

Council prepare a policy to guide decision-making around whether to fund private legal action on behalf of employees or councillors and disclose any such expenditure in publicly available financial reports.

Council's response to the proposed report

Council advised:

As to Council's decision to seek external legal advice at a cost of \$2,860, Council:

- repeats and relies on the submissions ... above as to Council's legitimate interest in having defamatory remarks about its representatives and their professional conduct withdrawn; and
- submits that the Ombudsman's comments on this matter are beyond its investigative jurisdiction because they concern matters of policy rather than administration ...

Council also disagrees with the Ombudsman's findings that Council did not seek instructions before issuing the Complainant A letter and Complainant B letter. Council repeats that it acted with the

knowledge and instructions of the Mayor and CEO.

In the premises, Council disagrees with the Ombudsman's Proposed Opinion 6 and Proposed Recommendation 2, and invites the Ombudsman to reconsider them.

**Ombudsman's
comment on the
response**

As outlined in Chapter 1, I do not accept council's submission that I do not have jurisdiction to consider the issue of whether council's use of public money to fund the legal action was reasonable.

I refer to my previous discussion about the reasonableness and lawfulness of council's actions in sending the letters to Complainant A and Complainant B.

I also note that any policy developed by council could address issues of approval, including whether any decisions about funding private legal action should be brought before council.

Chapter 4: Reporting Complainant B to her employer

As previously mentioned, details of Complainant B's employment were published in an email written by Complainant A and then posted on Facebook by one of the email recipients. Complainant B did not write the email, nor was she responsible for posting the email on Facebook.

At the same time as sending a letter to Complainant B demanding that her comments be retracted and that she apologise, council wrote to Complainant B's employer informing them of her alleged comments. This letter advised Complainant B's employer of the email in which her employment details were published and the subsequent comments she made on social media.

To see a full copy of the letter to Complainant B's employer please refer to Appendix C.

The letter was signed personally by the General Counsel. However, investigators were told that the letter was prepared on instructions from the CEO and advice from council's Human Resources (HR) team.

Complainant B stated in her complaint to this Office that:

Following the posting of the apology - the council ... contacted my employer ... to complain about me ...

...

I believe the council actions were vindictive and have been punitive to my potential [in my chosen career].

The letter sent to Complainant B about the defamation matter stated:

If you do not comply with the above request, within the specified time, we have the option to issue a Concerns Notice under section 14 of the *Defamation Act 2005* Qld. The Concerns Notice may request that you make a public retraction and apology in the terms outlined above. If you do not comply with the Concerns Notice, legal proceedings may follow. However, if you do comply with the above request *we will not pursue the matter further* [emphasis added].

It is clear that Complainant B interpreted council's action in contacting her employer as further action taken in relation to the defamation matter.

During the interview with investigators, General Counsel stated that contacting Complainant B's employer was a completely separate matter to the defamation issue.³⁴ General Counsel said the motivation for contacting Complainant B's employer was to confirm whether they were endorsing the comments:³⁵

So we were concerned whether [employer] was somehow behind it or whether it was just a [employee] going off on her personal capacity but using their authority as a [employee]. So that's why got it sent up to HR and then it got sent to [employer].

However, General Counsel's recollection at interview conflicts with the fact that the letter was titled 'Code of Conduct Breach by [Complainant B]'. Further, the letter does not seek to confirm whether Complainant B's employer endorsed the comments she made.

³⁴ Interview with the General Counsel, 18 April 2016, transcript p.31.

³⁵ Interview with the General Counsel, 18 April 2016, transcript p.29-30.

Rather, the letter states that Complainant B was in breach of her employer's code of conduct.

The CEO's view was more consistent with the contents of the letter:³⁶

... I'll continue and believe it's the right process when people use their [employer] or their workplace to express personal views and don't seek to separate themselves from that ... It's the same if I write off to someone using my Redlands City Council email to express a personal view I should make that well and truly clear.

...

I don't think it's right and I think I have an obligation that if I am aware of a [employee] using corruption and claiming corruption on no evidence, I don't think it's inappropriate for us to make the employer aware of that. Because that's their reputation and it's clear in their policies as well.

However, the issue with the CEO's view is that it implies Complainant B intended to make the comments in connection with her employment details. I acknowledge Complainant B did start the petition on Change.org and made comments on Facebook; however, I do not believe it was Complainant B's intention to associate these comments with her employer. As has been demonstrated, Complainant A wrote the email in question and copied and pasted Complainant B's work signature block into the email. It is important to note that Complainant B did not include her employer details in any content that she posted to public sites that council has identified.

In the circumstances, and given that council was writing to Complainant B at the same time regarding the allegedly defamatory comments, I am of the view that it would have been reasonable for council to clarify these issues with Complainant B before writing to her employer.

General Counsel stated that the decision to contact Complainant B's employer was made by the CEO and council's HR team. However, council was unable to provide any documented advice from HR or instructions from the CEO about the letter. As I have already discussed, it is crucial to have documented reasons for decisions to ensure accountability, and this is a reasonable expectation of any government agency as well as a legislative requirement.

Having considered all the circumstances, I do not believe that the CEO could have genuinely believed that Complainant B's employer endorsed the comments she made. The phrasing of the social media posts, along with the forum in which the posts were made (a petition website), clearly gives the impression that the comments were being made in Complainant B's private capacity. A careful review of the email which contains Complainant B's signature block supports my view that the signature block was copied and pasted to the bottom of the email by Complainant A, and this is the reasonable conclusion to be drawn from reading the email.

Therefore, I believe that the decision to contact Complainant B's employer was unreasonable in the circumstances and could be seen as punitive action. This is particularly the case as the contact with Complainant B's employer came at the same time as council wrote to Complainant B advising that it would take no further action against her if she published the required apology.

³⁶ Interview with the CEO, 25 May 2016, transcript p.10.

I am of the view that the decision to contact Complainant B's employer was unreasonable in the circumstances, and inconsistent with council's statement to Complainant B that no further action would be taken if she published the required apology.

Opinion 7

Council's decision to write to Complainant B's employer was based on a mistaken interpretation that Complainant B had published defamatory material on social media using her professional email account. This was unreasonable administrative action under s.49(2)(b) of the *Ombudsman Act 2001*.

Recommendation 3

Council write to Complainant B and acknowledge that its action in writing to Complainant B's employer alleging a breach of the employer's code of conduct was based on a mistaken understanding that Complainant B had published defamatory material on social media using her professional email account.

Council's response to the proposed report

Council advised:

Council submits that its decision to send the Employer letter was:

- (a) made out of professional courtesy ...;
- (b) based on the understanding that Council genuinely held at the time, which was that Complainant B had published defamatory material using her professional email account; and
- (c) not inconsistent with the Complainant B letter.

When the Employer letter was sent, Council's understanding was that Complainant B had published defamatory comments using her professional email account. As the CEO explained during his interview with the Ombudsman, Council therefore considered it appropriate to notify her ... employer of her possible breaches of its code of conduct.

This was done as a professional courtesy and was unconnected with the steps that Council had separately taken (and foreshadowed it would take) in respect of Complainant B's defamatory publications.

It is acknowledged that the Complainant B letter stated (with emphasis added):

If you do not comply with the above request, within the specified time, we have the option to issue a Concerns Notice under section 14 of the Defamation Act 2005 Qld. The Concerns Notice may request that you make a public retraction and apology in the terms outlined above. If you do not comply with the Concerns Notice, legal proceedings may follow. However if you do comply with the above request we will not pursue the matter further.

Properly construed, Council's reference to 'not [pursuing] the matter further' was to the taking of further steps under the Defamation Act and the commencement of legal proceedings, these being the matters that were discussed in the immediately preceding sentences.

Accordingly, Council submits that its decision to send the Employer letter was not inconsistent with the above paragraph of the Complainant B letter.

**Ombudsman's
comment on the
response**

I note council's submission but maintain my opinion that the decision to contact Complainant B's employer was unreasonable, having regard to the circumstances of the case.

In particular, it is important to note that there was no evidence that Complainant B actively or intentionally associated her employer with her comments about council and the Mayor. It is not known whether Complainant B consented to having her employer contact details added to the bottom of the email written by Complainant A. Complainant B may also have been unaware the email would be published online, rather than remain restricted to its original recipients. These factors should have been taken into account by council in determining whether to contact the employer without first clarifying its concerns with Complainant B.

Complainant B acted immediately to remove her online comments as soon as she received council's letter. She acted as council instructed and was entitled to rely on the statement in the letter that council would not pursue the matter further, including contacting her employer. While this may not have been what council intended by this paragraph, it was a reasonable interpretation of the letter by a layperson. Council is surely in a position to draft clearer correspondence to prevent confusion arising in the future.

I also do not accept council's submission that Complainant B's employer was contacted as a 'professional courtesy'. This reasoning was not raised by either the CEO or General Counsel during interview with Ombudsman officers. I remain of the view that council's action in contacting Complainant B's employer was punitive and was therefore unreasonable in the circumstances.

I have amended the wording of Opinion 7 to clarify my opinion that council's decision to write to Complainant B's employer alleging a breach of the employer's code of conduct was based on a mistaken interpretation that Complainant B had published defamatory material on social media using her professional email account. This was not the case.

I have also added Recommendation 3 requiring council to write to Complainant B and acknowledge that its actions in writing to Complainant B's employer alleging a breach of the employer's code of conduct was based on a mistaken understanding that Complainant B had published defamatory material on social media using her professional email account.

Chapter 5: Conclusion

The purpose of commencing this investigation was to explore how council responded to negative comments by its constituents on social media, and to decide whether these actions were fair and reasonable in the circumstances.

To properly consider this matter, investigators considered extensive documentation provided by the complainants and council as well as conducting interviews with the Mayor, the CEO and General Counsel. The investigation identified a number of issues with the approach taken by council in response to the comments made by Complainant A and Complainant B. The letters sent to Complainant A and Complainant B exposed many flaws.

In particular, the letters alleged a number of parties had been defamed by Complainant A's and Complainant B's comments including the Mayor, council officers and council. I have concerns about whether these were reasonable views for council to form in the circumstances.

While I acknowledge the comments may have been considered to be inflammatory, none of the parties identified in the letters to Complainant A and Complainant B provided any instructions to the CEO or the General Counsel to take any action in response to the comments. In fact the Mayor appeared more concerned about the reputation of council than her own and the evidence gathered during the investigation indicated that no council officer expressed any concern about the comments.

Local governments should expect a level of disagreement and discussion within the community around their planning and development decisions. According to the interviews with the Mayor and General Counsel, both the Mayor and council officers have expressed the view that these comments are 'part of the job'.

I am also of the view that the action taken by council was rushed, as evidenced in the drafting of the letters to Complainant A and Complainant B. From the interviews conducted with the Mayor, the CEO and General Counsel, it is clear that no one shared a consistent view about the approach taken by council. The Mayor believed the action was taken to protect council's reputation. The CEO and General Counsel had conflicting views about whether the letters were concerns notices or a warning.

The fact that key decisions were not documented makes it difficult for me to assess these decisions and make a clear determination about many of the issues I identified in this report. Failing to document a decision also undermines its integrity. As a government agency, council is required under the Public Records Act to ensure its decisions are documented to uphold the public sector's values of accountability and transparency.

The errors in the letters sent to Complainant A and Complainant B and the lack of documented decisions leads me to the conclusion that there was only a superficial or rushed consideration of the action taken by council. This is disappointing as it is evident from Complainant A's and Complainant B's complaints that the action taken by council caused significant stress and anxiety to them. Such stress is a reasonably foreseeable response to such an action.

Council also spent public money to obtain external legal advice to determine whether the comments made by Complainant A and Complainant B were defamatory. Given the lack of documented decisions and other significant flaws I have identified in council's approach, it would be difficult to say this was an appropriate use of public funds.

Council also acted unreasonably in contacting Complainant B's employer. It should have been clear to council on the information available to it at the time that Complainant B did

not intend to have details of her employment associated with her comments. In any event, it would have been reasonable for council to confirm this with Complainant B prior to taking any action in this regard. In my view, council's decision to contact Complainant B's employer could reasonably be considered punitive in the circumstances.

I am also of the view that the absence of a clear policy about funding legal action for council employees led or contributed to the significant flaws in the action taken by council. Having a specific policy to guide decisions of this nature may avoid the same situation arising in the future.

In light of the stress and anxiety caused by council to the complainants by sending letters threatening defamation action, I am of the view that council should write to both complainants and formally withdraw the threat of litigation, thereby bringing this matter to an end.

Recommendation 4

Council write to Complainant A and Complainant B and withdraw its threat to take legal action in response to the comments published on social media.

Council's response to the proposed report

Council advised:

In summary ... Council respectfully submits that the actions that it took in response to Complainant A and B's defamatory publications were lawful and reasonable.

For these reasons, Council disagrees with the Ombudsman's Proposed Recommendation 4, which is that Council should apologise in writing to Complainants A and B.

Council maintains that Complainant A should publicly apologise and retract her defamatory remarks about the Mayor and other Council representatives.

Council is satisfied with Complainant B's retraction and apology and does not propose to take any further action in respect of Complainant B.

Ombudsman's comment on the response

I have amended Recommendation 4.

Council did not accept Proposed Recommendation 4 which recommended council apologise to Complainant A and Complainant B for its actions as outlined in the report.

However, I have determined that a more appropriate course of action is for council to write to Complainant A and Complainant B and formally withdraw its threat to commence legal action for defamation, as outlined in the letters sent to both complainants. This action will assure both complainants that this matter is at an end and that they are not at risk of having legal action commenced against them for any comments which still remain on social media.

Appendix A: Letter sent by General Counsel to Complainant A



Redland City Council
ABN 86 058 925 428
Cnr Bloomfield & Middle Sts.
Cleveland Qld 4163
PO Box 21,
Cleveland Qld 4163
Telephone 07 3829 8999
Facsimile 07 3829 8765
Email rcc@redland.qld.gov.au
www.redland.qld.gov.au

7 September 2015

Your Ref: [REDACTED]

Contact: [REDACTED]

[REDACTED]

Dear [REDACTED]

Concerns Notice:

Facebook comments on [REDACTED] Facebook page on 3 September 2015

We refer to an email sent to [REDACTED] on 3 September 2015, circulated broadly and published on 3 September 2015 on [REDACTED] Facebook page stating that:

"Going to try and cut and paste info on Redland Mayor and some council members...this was an email I got this morning... This IMPORTANT not just for Redlands Residents...what is going on elsewhere?? Australia I am becoming more disappointed with you by the minute!!

As many of you know, the Redland city Bulletin has axed its editor and this Friday the photographers will be let go. We also discovered today that the journalists can no longer write articles that reflect badly on developers or Council. Therefore the RCB has returned to the propaganda machine it was before [REDACTED] gave us freedom of speech. The Dom Perignon will be popping into next week.

We are left with no choice but to petition for an enquiry into our Council officers and Mayor's. Our petition can be signed every Wednesday morning outside Council or online which is just 3 very easy steps when you click the link below.

We have reached 100 signatures and we need a lot of support very quickly. Time is of the essence. You can read more and sign the petition here:

The petition we are asking you to sign states: [REDACTED]

Please pass this email to all your contacts and please share the online petition with your FB contacts. Once we have the target number of signatures we will hand deliver to the office of Jackie Tradd.

For Any information regarding the petition please contact myself or [REDACTED]

I have attached a hand signed form if you want to get signatures through your community groups and neighbours.

Together we can make this Happen.



Imputations

The email contains comments which give rise to the following imputations:

1. that the Mayor Redland City Council and Redland City Council Officers acted improperly and unethically in their role by causing the Redland City Bulletin editor and photographers to be dismissed from their employment;
2. the Mayor and Redland City Council officers are prejudiced and blindly pro-development;
3. the Mayor and Redland City Council incite propaganda;
4. the Mayor and Redland City Council Officers block freedom of speech;
5. the Mayor and Redland City Council Officers acted in breach of conflicts of interest;
6. the Mayor and Redland City Council Officers are unethical and do not act in the best interests of the community; and
7. the Mayor and Redland City Council Officers act in breach of their duties under the *Local Government Act 2009*.

While we support your freedom to discuss political matters, your publication was excessive and unreasonable for the following reasons:

1. you did not take proper steps to verify the accuracy of your statements. Redland City Council officers and the Mayor have not at any time acted or interfered with the operations of the Redland City Bulletin to cause the editor and photographers to be dismissed from their employment; and
2. you did not seek a response from Redland City Council regarding your comments and imputations.

As we have previously advised you, should you have evidence of any inappropriate conduct by the Mayor or Redland City Council Officers we invite you to send it to the Crime and

Corruption Commission ("CCC") immediately for investigation. We have attached a link to the CCC. <http://www.ccc.qld.gov.au/about-the-ccc/contact-us>.

Public retraction and apology

As the comments and imputations published by you are defamatory, false and damaging to the reputation of Redland City Council officers and the Mayor, we request that you post an apology in the following terms:

1. the apology is to be posted on your Facebook page available to be viewed as a public post;
2. the apology is also to be posted on [REDACTED] Facebook page as a comment, available to be viewed as a public post;
3. the apologies are to be posted on Facebook by 4.00pm on 9 September 2015;
4. the apology on your Facebook page is to remain on your Facebook page for 48 hours;
5. the apologies are to be addressed to Redland City Council officers and the Mayor; and
6. the apologies are to state:

"The email sent by me and posted on [REDACTED] Facebook page on 3 September 2015 contained incorrect facts and assumptions which may have suggested that Mayor Williams of Redland City Council and Redland City Council officers acted improperly and unethically in their role by causing the Redland City Bulletin editor and photographers to be dismissed from their employment.

I acknowledge that these statements are false and unreservedly apologise to Mayor Williams and the officers of Redland City Council. I withdraw any such comments and suggestions."

If you do not comply with the above request, within the specified time, we have the option to issue a Concerns Notice under section 14 of the *Defamation Act 2005* Qld. The Concerns Notice may request that you make a public retraction and apology in the terms outlined above. If you do not comply with the Concerns Notice, legal proceedings may follow. However, if you do comply with the above request we will not pursue the matter further.

Previous Defamatory Material Published

We also note the following previous defamatory material which you have published:

1. an email from you dated 15 October 2014 to [REDACTED] copied to others, which stated: *"There is (sic) only 3 winners. Council and [REDACTED] and the mayor who benefits from the revenue From [REDACTED] for her re-election campaign."*
2. a letter from you to the CEO dated 4 November 2014, where you suggest Mr Lyon should edit his letter to residents to say: *"Council are looking after [REDACTED] here and since I have been CEO of Council they always have and they will continue to until a higher authority takes this on and investigates."*
3. A letter from you dated 19 October 2014 to [REDACTED] *"This is where many of us*

believe there is a case of dishonesty and exploitation to be investigated.” Further in the same letter you stated: “We can’t believe for a moment that all this was just coincidental timing between [redacted] who openly sponsors Mayor Karen Williams and the PS changes to allow this application to continue 100% [redacted] way.”

4. a letter to [redacted] dated 24 November 2014, which stated *“Now we understand the implications of a developer funded council and people are suspicious of everything said and written by either the Mayor or the developers. We have to be. Our system is developers fund politicians. It’s no secret. [redacted] was one of the 3 main contributors to the mayor’s election campaign and as it’s been pointed out to Karen, donations, contributions and sponsorship are all tax deductible because it’s a legitimate and common cost of marketing business. If there was no return, there would be no funding.”*

And further: “I think the letters to Council, yourselves and the paper show the people of Redlands have come to realise quite quickly that they have a mayor who can’t be trusted and has a conflict of interest in issues brought before her regarding development applications. It’s common knowledge your company’s financial support was a major part of Karen’s war chest for the mayoral campaign so we were never going to win this case.”

“It’s Council’s job to keep you honest and accountable. However many times we remind them what their job is, they still can’t get it right.”

This letter was circulated broadly and published on the [redacted] website on 28 November 2014.

Future Publications

We request that prior to the publication of any material that is likely to damage the reputation of the Mayor, Redland City Councillors and Council officers;

1. that you act reasonably by taking proper steps to verify the accuracy of your information; and
2. seek a response from Redland City Council and accurately publish Council’s response; and
3. only publish comments which you have reasonable grounds for believing are true.

Please contact me should you have any further queries.

Yours sincerely



**General Counsel
Redland City Council**

Appendix B: Letter sent by General Counsel to Complainant B



Redland City Council
ABN 86 058 929 428
Cnr Bloomfield & Middle Sts.
Cleveland Qld 4163
PO Box 21,
Cleveland Qld 4163
Telephone 07 3829 8999
Facsimile 07 3829 8765
Email rcc@redland.qld.gov.au
www.redland.qld.gov.au

4 September 2015

Your Ref: [REDACTED]
Contact: [REDACTED]



Dear [REDACTED]

We refer to the following publications made by you:

1. **An email sent to [REDACTED] on 3 September 2015, circulated broadly and published on Facebook on [REDACTED] Facebook page stating that:**

"As many of you know, the Redland city Bulletin has axed its editor and this Friday the photographers will be let go. We also discovered today that the journalists can no longer write articles that reflect badly on developers or Council. Therefore the RCB has returned to the propaganda machine it was before [REDACTED] gave us freedom of speech. The Dom Perignon will be popping into next week.

We are left with no choice but to petition for an enquiry into our Council officers and Mayor's. Our petition can be signed every Wednesday morning outside Council or online which is just 3 very easy steps when you click the link below.

We have reached 100 signatures and we need a lot of support very quickly. Time is of the essence. You can read more and sign the petition here:



The petition we are asking you to sign states: [REDACTED]

Please pass this email to all your contacts and please share the online petition with your FB contacts. Once we have the target number of signatures we will hand deliver to the office of Jackie Tradd.

For Any information regarding the petition please contact myself or [REDACTED]

I have attached a hand signed form if you want to get signatures through your community groups and neighbours.

Together we can make this Happen.”

2. ***An email sent to [REDACTED] on 2 September 2015, circulated broadly and published on Facebook on [REDACTED] Facebook page stating that:***

“Sorry to use the C word (corrupt), but sometimes you have to call a spade a spade – right ?”

Imputations

The email contains comments which give rise to the following imputations:

1. that Redland City Council officers and the Mayor acted improperly and unethically in their role by causing the Redland City Bulletin editor and photographers to be dismissed from their employment;
2. the Mayor and Redland City Council officers are prejudiced and blindly pro-development;
3. the Mayor insights propaganda;
4. the Mayor and Redland City Councillors blocks freedom of Speech;
5. The Mayor and Redland City Council Officer acts in breach of conflicts of interest;
6. the Mayor is unethical and does not act in the best interests of the community; and
7. the Mayor and Redland City Councillors acts in breach of her duties under the *Local Government Act 2009*.

3. ***A statement made on the website Change.Org on 2 September 2015 under the petition titled [REDACTED] stating that:***

“The Redland City Council has sold out to the developers. Small lot housing brings big bucks for developers and more rates for council. Is this the Redlands Lifestyle you voted for? If not SIGN and SHARE this petition. We have gained 50 signatures in a day. Make your voice heard, and share it with others.”

Imputations

The comments made on website Chage.org on 3 September 2015 give rise to the following imputations:

1. the Mayor acted in conflict to the interests of the community and unethically in her role as Mayor by selling out to developers;
 2. the Mayor and Redland City Council Officer acts in breach of conflicts of interest;
 3. the Mayor is unethical and does not act in the best interests of the community;
 4. The Mayor only approved small lot housing to bring in rates for the Council;
 5. the Mayor and Redland City Councillors acts in breach of her duties under the *Local Government Act 2009*; and
 6. the Mayor and Redland City Council is out of touch with the community needs.
4. ***A further statement made on the website Change.Org on 3 September 2015 under the petition titled [REDACTED] stating that:***

"In her term of office Ms Mayor Williams has established a close Development Industry Reference Group that paces Developers Interests before the interests of the Community. Mayor Williams has to excuse herself from voting due to conflicts of interest with Developers. Mayor Williams support for developers goes against the 2030 Redlands Community Plan for sustainable population growth, environmental protection of Koala and marine habitat, and consultative planning decision making. This Council is out of Balance and out of touch with the community."

Imputations

The comments made on website Chage.org on 3 September 2015 give rise to the following imputations:

7. the Mayor acted in conflict to the interests of the community and unethically in her role as Mayor by creating a closed Development Industry Reference Group;
8. the Mayor and Redland City Council Officer acts in breach of conflicts of interest;
9. the Mayor is unethical and does not act in the best interests of the community;
10. the Mayor and Redland City Councillors acts in breach of her duties under the *Local Government Act 2009*; and

11. the Mayor and Redland City Council is out of touch with the community needs.

Comments and Imputations as a whole

These comments and imputations are defamatory, completely false and damaging to the reputation of Redland City Council officers and the Mayor. It is likely that Redland City Council Officers and Mayor Williams may be ridiculed, avoided, shunned, reviled and treated as a pariah within the Council and the broader community as such imputations are likely to create the perception of Mayor Williams and Redland City Council Officers as:

- 1 dishonest;
- 2 prejudiced;
- 3 the type of people who would support or engage in unlawful behaviour;
- 4 the type of people who unjustifiably wields influence over the Council as a whole;
- 5 cavalier; and
- 6 taking advantage of and/or abusing their position as a Council employees;

While we support your freedom to discuss political matters, your publications were excessive and unreasonable for the following reasons:

1. You did not take proper steps to verify the accuracy of your statements. In response to your statements we make the following comments:
 - a) Redland City Council officers and the Mayor have not at any time acted or interfered with the operations of the Redland City Bulletin to cause the editor and photographers to be dismissed from their employment; and
 - b) The Mayor did not establish the Development Industry Reference Group; and
 - c) The Mayor and Redland City Council officers and not sold out to developers and are not blindly pro-development.
2. You did not seek a response from Redland City Council regarding your comments and imputations.

Should you have evidence of any inappropriate conduct by the Mayor or anyone in Redland City Council, we invite you to send it to the Crime and Corruption Commission ("CCC") immediately for investigation. We have attached a link to the CCC.

<http://www.ccc.qld.gov.au/about-the-ccc/contact-us>.

Public retraction and apology

As the comments and imputations published by you are defamatory, false and damaging to the reputation of Redland City Council officers and the Mayor, we request that you immediately remove the defamatory posts from the website Change.Org and post an apology on the website as an update to the petition titled [REDACTED] in the following terms:

1. The apology is to be posted on the website by 4.00pm on 7 September 2015;
2. The same font and size is used as the posts on 3 and 4 September 2015 under the petition titled [REDACTED]
3. The apology is to be addressed to Redland City Council officers and the Mayor; and
4. The apology is to state:

"The posts by me under the petition titled [REDACTED] on 3 and 4 September 2015 contained incorrect facts and assumptions which may have suggested that:

- a) Mayor Williams of Redland City Council and Redland City Council officers acted improperly and unethically in their role by causing the Redland City Bulletin editor and photographers to be dismissed from their employment.*
- b) The Mayor acted in conflict to the interests of the community and unethically in her role as Mayor by creating a closed Development Industry Reference Group and the Mayor; and*
- c) Redland City Council officers and the Mayor are prejudiced and blindly pro-development.*

I acknowledge that these statements are false and unreservedly apologise to Mayor Williams and the officers of Redland City Council. I withdraw any such comments and suggestions."

If you do not comply with the above request, within the specified time, we have the option to issue a Concerns Notice under section 14 of the *Defamation Act 2005* Qld. The Concerns Notice may request that you make a public retraction and apology in the terms outlined above. If you do not comply with the Concerns Notice, legal proceedings may follow. However, if you do comply with the above request we will not pursue the matter further.

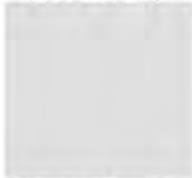
Future Publications

We request that prior to the publication of any material that is likely to damage the reputation of the Mayor, Redland City Councillors and Council officers;

1. That you act reasonably by taking proper steps to verify the accuracy of your information; and
2. Seek a response from Redland City Council and accurately publish Council's response; and
3. Only publish comments which you have reasonable grounds for believing are true.

Please contact me should you have any further queries.

Yours sincerely



General Counsel
Redland City Council

Appendix C: Letter sent by General Counsel to Complainant B's employer



Redland City Council
ABN 86 058 929 428
Cnr Bloomfield & Middle Str.
Cleveland Qld 4163
PO Box 21,
Cleveland Qld 4163
Telephone 07 3829 8999
Facsimile 07 3829 8765
Email: rcc@redland.qld.gov.au
www.redland.qld.gov.au

4 September 2015

Your Ref: [REDACTED]
Contact: [REDACTED]



Dear [REDACTED]

Code of Conduct Breach by [REDACTED]

We refer to the above matter and advise that it has recently come to the attention of Redland City Council that [REDACTED] has sent potentially defamatory email correspondence to [REDACTED] which as subsequently been placed on social media sites.

Of concern to the Redland City Council is the inflammatory comments contained within the email correspondence which contains the signatory signature of [REDACTED] from her [REDACTED] email account.

The email correspondence and subsequent social media posting is as follows:

"As many of you know, the Redland city Bulletin has axed its editor and this Friday the photographers will be let go. We also discovered today that the journalists can no longer write articles that reflect badly on developers or Council. Therefore the RCB has returned to the propaganda machine it was before [REDACTED] gave us freedom of speech. The Dom Perignon will be popping into next week.

We are left with no choice but to petition for an enquiry into our Council officers and Mayor's. Our petition can be signed every Wednesday morning outside Council or online which is just 3 very easy steps when you click the link below.

We have reached 100 signatures and we need a lot of support very quickly. Time is of the essence. You can read more and sign the petition here:

[REDACTED]

The petition we are asking you to sign states: [REDACTED]

Please pass this email to all your contacts and please share the online petition with your FB contacts. Once we have the target number of signatures we will hand deliver to the office of Jackie Tradd.

For Any information regarding the petition please contact myself or [REDACTED]

I have attached a hand signed form if you want to get signatures through your community groups and neighbours.

Together we can make this Happen."



1. **An email sent to [REDACTED] on 2 September 2015, circulated broadly and published on Facebook on [REDACTED] Facebook page stating that:**

"Sorry to use the C word (corrupt), but sometimes you have to call a spade a spade – right ?"

It is the Council's position that the email correspondence contains the following imputations:

1. that Redland City Council officers and the Mayor acted improperly and unethically in their role by causing the Redland City Bulletin editor and photographers to be dismissed from their employment;
2. the Mayor and Redland City Council officers are prejudiced and blindly pro-development;
3. the Mayor insights propaganda;
4. the Mayor and Redland City Councillors blocks freedom of Speech;
5. The Mayor and Redland City Council Officer acts in breach of conflicts of interest;
6. the Mayor is unethical and does not act in the best interests of the community; and

7. the Mayor and Redland City Councillors acts in breach of her duties under the *Local Government Act 2009*.

These comments and imputations are defamatory, completely false and damaging to the reputation of Redland City Council officers and the Mayor. It is likely that Redland City Council Officers and Mayor Williams may be ridiculed, avoided, shunned, reviled and treated as a pariah within the Council and the broader community as such imputations are likely to create the perception of Mayor Williams and Redland City Council Officers as:

- 1 dishonest;
- 2 prejudiced;
- 3 the type of people who would support or engage in unlawful behaviour;
- 4 the type of people who unjustifiably wields influence over the Council as a whole;
- 5 cavalier; and
- 6 taking advantage of and/or abusing their position as a Council employees.

While we support the community's right to freedom to discuss political matters, the publications were excessive and unreasonable for the following reasons:

1. No proper steps were taken to verify the accuracy of the statements.
2. At no time did anyone seek a response from Redland City Council regarding the comments and imputations.

We confirm that correspondence has been sent to [REDACTED] regarding the defamatory comments.

Code of Conduct

Of further concern to the Redland City Council is affiliation of [REDACTED] with the defamatory comments.

In this regard we note that we are of the view that [REDACTED] may have in fact breached [REDACTED] Code of Conduct by sending the email correspondence.

We note that in accordance with [REDACTED] [REDACTED] has, in failing to verify the accuracy of the statement made and not seeking a response from the Council, breached the code in that [REDACTED]

- 1 failed to act independently, objectively and impartially;
- 2 failed to act with the highest ethical standards;

3 failed to act honestly, fairly and respectfully to members of the community;

It is further noted that [REDACTED] may have also inadvertently abused her position within [REDACTED] to validate the contents of the email correspondence in breach of [REDACTED]

While we note that [REDACTED] does allow staff to engage in political activities and comment, the Code of Conduct does require that staff act in a professional and ethical manner which does not defame other persons. Clearly this has not been the case and some concern is again raised with the use of [REDACTED] name.

As advised above correspondence has been sent to [REDACTED] in which an apology was requested. This is of course a separate matter to that of the alleged breach of the Code of Conduct and we trust that this matter will be properly investigated.

Please contact me should you have any further queries.

Yours sincerely



General Counsel
Redland City Council