



**Warringah Council  
Public Inquiry**

**Inquiry Report**

**Volume 2**

Sections 3 & 4—Evidence

July 2003

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## Introduction

This Volume provides the evidence and analysis that lies behind the Findings detailed in Volume 1. It is a companion Volume to Volume 1, providing evidence, and a commentary on that evidence, that is relevant to each of the topics investigated by the Inquiry. As such, the same Sectional and sub-sectional headings and the same enumeration have been followed in both Volumes. Thus Section 3.1 in Volume 1 (Conduct of the Council and Its Causes) is paralleled by Section 3.1 (with the same title) in Volume 2. The sub-set 3.1.1 in Volume 1 (*The Gallery Problems*) is paralleled by the sub-set (*The Gallery Problems*), 3.1.1, in Volume 2. The same pattern is followed throughout each of the six main Sections that make up this Volume.

The two main sources of evidence are the written Submissions to the Inquiry, and the evidence presented at the Public Hearings. This evidence is supplemented by a large amount of material supplied to the Inquiry by Warringah Council. Some of this material was requested by the Inquiry, and some of it was sent by the Council to help the Inquiry with more detailed information on certain issues. The Inquiry also used evidence from some other sources. The main additional sources were the Department of Local Government, Planning New South Wales, and the Australian Bureau of Statistics.

Volume 4 contains copies of the written Submissions. In this Volume various excerpts from those Submissions, and extracts from the transcripts of the Public Hearings, are used in reference to particular issues. The material in Volume 4 allows for the excerpts to be placed within the context of a whole Submission.

Volume 3 contains five Appendices that cover the main additional material referred to in this Volume.



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SECTION

EVIDENCE

# 3

## The Conduct of the Elected Representatives of Warringah Council

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## 3.1 Conduct of the Council and the Causes of Disputations

### 3.1.1 The Gallery Problems

3.1.1.1 The conduct of the elected representatives at Council meetings is of major concern to the community.

3.1.1.2 The community of Warringah has been made conscious of problems within the group of elected representatives by newspaper reports of disturbances at Council meetings. Submission 267 produced an extensive set of such reports<sup>1</sup>. There were numerous references to such reports in a number of the Submissions, particularly by those that were critical of the Council. Such reports, whether accurate or not, have had a significant influence on the image of the Council formed by members of the public.

3.1.1.3 In reference to disturbances at Council meetings senior elected representatives, and the General Manager, have attributed the problems to the persistent misbehaviour of a small number of people in the public gallery.

3.1.1.4 The theme is articulated by many people. In Submission 288 the General Manager wrote:

<sup>1</sup>Principally from the Manly Daily and the Northern Beaches Weekender, as well as copies of articles in the Sydney Morning Herald and the Daily Telegraph.

## Submission 288

### 4. Disorderly Conduct at Meetings

#### 4.1 Adjournment of Council Meetings due to Disorderly Conduct

Adjournments for disorderly conduct have occurred at 23 meetings during the period from 20<sup>th</sup> September 1999 to 4<sup>th</sup> February 2003.

A total of 39 adjournments were declared by the chairman at these 23 meetings.

The Minutes indicate that 36 of the adjournments were due to disorder in the public gallery, and 3 due to disorderly conduct by a Councillor.

This clearly demonstrates that disorder at Council Meetings has resulted primarily from the behaviour of members of the public gallery, and not Councillors. The recording of the council meeting, however, does not assist to identify this situation as noted in the Mitchell Report - when referring to order within Council meetings and the reactions from members of the public, the report states "*whilst having listened to a sample of recordings of Warringah Council meetings, these are of lesser value, as they do not record comments made by people within the Council gallery*" (page 20).

The persistent interjections by a small number of people in the public gallery at Council Meetings has resulted in the need for action to be taken by the Mayor on a number of occasions.

#### 4.2 Expulsion of A Councillor

No Councillor has been expelled for disorderly conduct from a meeting of the Council during the life of the current Council. Whilst Councillor behaviour at meetings can be described as robust on occasions, it is generally respectful of the Code of Conduct and Code of Meeting Practice. In the two (2) year period, up until the present day, there has only been one censure motion carried by the Council due specifically to the conduct of an individual Councillor at Council meetings.

#### 4.3 Expulsion of a Member of the Public

The Council has not sought to exclude, nor has it excluded, anyone in advance of a meeting, nor from a subsequent meeting or meetings, and the message in the Guidelines and from the Chairman does not do that.

The messages "warn" attendees of the provisions of the legislation, the Council's Code of Meeting Practice and powers able to be exercised by the Council in the event of disorderly conduct, and disruption of the Council meeting.

On the few occasions when members of the public have been expelled from a meeting, they have never been prevented by the Council, nor ever advised that they will be prevented, from attending any subsequent meetings as the Council does not have such power.

Members of the public have been expelled, or ordered to leave the meeting, at 8 meetings since 20<sup>th</sup> September 1999. Only 5 members of the public have been involved; 1 ordered to leave 4 times; 1 ordered to leave 3 times; and 3 ordered to leave once.

I observe that a core group of approximately ten (10) members of the public attend each meeting of the Council. Consideration of matters by the Councillors has often been interrupted by disorder in the public gallery - when members of the gallery try to participate in or interrupt meetings.

#### 4.4 Use of Police Service to remove a member of the Public from Meetings

On at least three (3) occasions the Chairman of the Council Meeting has found it necessary to call for a member of the Police Service to remove a member of the public from the public gallery of the meeting, where that person has been deemed by the Chairman to have engaged in disorderly conduct at the meeting, and has refused to comply with the Chairman's request and direction to leave.

The Mayor, Councillor Julie Sutton, pursued the same theme, in her appearance at the Public Hearings on March 20 2003.

### Public Hearings Transcripts – March 20 2003

THE COMMISSIONER: You have just told me that generally, in your experience, that Council meetings have been held in a manner where both the public and the councillors have been free to [engage in the proceedings] equitably and fairly, why are we getting such a large number of submissions talking about this?

MS SUTTON: Well, that is a very easy question to answer, Mr Commissioner. It is because it is in our Council meetings we have a group of people who have been, I think, to just about every meeting since the last election and their avowed intent is to get rid of the Council. They call it out: we will get rid of you, the Council should be sacked. And what they do, is they call out some sotto voce and some aloud, very derogatory comments, they refer to all the councillors and the General Manager and the Directors and Managers by their first names in a rather derogatory way.

They call out rude, insulting remarks and many times they have had to be brought to order. But bringing a person like to that [sic.] order, Mr Commissioner, is not treating that person unfairly, it is treating that person fairly.

Mr. Michael Darby, a member of the community, who appeared at the Public Hearings on March 21 2003, argued that the deliberately disruptive tactics of people in the Gallery had sullied the public image of the Councillors.

## Public Hearings Transcript – March 21 2003

THE COMMISSIONER: The second issue is the number of people objecting to behaviour of councillors at meetings, particularly Council meetings. Would you like to comment on that?

MR DARBY: Sir, I have attended Council meetings and the chairmanship of two Mayors and I have noticed that councillors conduct themselves quite well. The problem faced by councillors which is quite different from the problems faced by Parliamentarians at either the State or Federal House and indeed the many houses of Parliament I visit around the World, is that there is no protection for councillors from harassment from the gallery. If I were to stand up in the business gallery at Parliament House in MacQuarie Street or in Canberra and start shouting directions or instructions at a Member of the Parliament, I would be quietly and politely removed immediately.

There is no such provision at Council meetings and consequently all that a mayor can do or indeed a chairman of committee can do is invite the councillors to withdraw. On two occasions, two that I'm aware of and I was not present on those occasions, police were called to remove individuals, both of them part of the conspiracy I have mentioned, those individuals having at the time been deliberately disrupting Council business.

Some other members of the community put the same argument. Just one example will suffice. Submission 049 stated that:

### Submission 049

- Anyone who has ever attended a Warringah Council meeting would be aware of a carefully orchestrated campaign carried out by a few core people which has the sole purpose of disrupting Council at every single opportunity.

#### 3.1.1.5

The scale of the gallery problem and its impact on the operations and reputation of the Council led to the introduction of measures to combat the problems.

In Submission 288 the General Manager has provided a succinct description of these measures.



## Submission 288

### 3.2 Council Procedures

In order to assist the Chairman of Council and Committee meetings, and to inform the public attending Council meetings of their expected standard of behaviour, the Council has in place the following:

- A "Welcome to Our Meeting, Guidelines for Council and Committee Meetings" hand out is available at the entrance to the Council Chamber for all attending. The Guide is intended as an aid to assist the public attending to understand and follow the conduct of the meeting and the decision making processes. It also includes the expected standard of behaviour, and the avenues open to the Council in cases of disorderly conduct.
- A Disorderly Conduct advisory statement is read by the Mayor at the commencement of the Meeting. The avenues open to the Council in the case of disorderly conduct are emphasised. The use of the statement is at the discretion of the Chairman.
- A written procedure is available to the Chairman to make reference to in the event of disorderly conduct at Meetings. This ensures the procedures of the LG Act and Code of Meeting Practice are clearly described to the person who might be offending.
- A similar written statement is available to the Chairman in respect of disorderly conduct at a meeting by a Councillor.

### 3. Order at Council Meetings

#### 3.1 Legislative Provisions

Section 10 of the Local Government Act provides that a person is entitled to attend a Council meeting unless excluded by resolution of the meeting on grounds of engaging, or having engaged in, disorderly conduct at the meeting.

A Council can, by resolution, authorise the Chairman (Of the Council or a Committee) to exercise that function. (Res 123 of 6 March 2001 & Code of Meeting Practice Cl 31 and 44.)

Authorised officers for the purposes of the Code are the General Manager, Director of Public Office, and any person appointed as a Ranger.

If a Councillor or member of the public fails to leave the Chamber after being directed by Council resolution or Chairman, a police officer may remove that person (C of M. P. Cl 31)

It is an offence under Sect 660 of the LG Act to wilfully obstruct a Council, a Councillor, or an employee of the Council in their exercise of any function under the Act or Regulation.

A breach of the LG Act under Sect 672 includes a threatened or apprehended contravention or a threatened or apprehended failure to comply with the LG Act.

Proceedings for an offence against the LG Act or the Regulations may be dealt with by the Local Court (Sect 691) – penalty is in excess of \$2,000

Section 673 of the LG Act also enables a Council to bring proceedings in the L & E Court under class 4 for an injunction to restrain a breach of the LG Act

Section 676 of the LG Act also provides that if the L & E Court is satisfied that a breach of the Act has been committed, or that a breach of the Act will, unless restrained by order of the Court, be committed, the court may make such order as it thinks fit to remedy or restrain the breach. Such powers are unlikely to be exercised until a successful prosecution has been undertaken by the Council against the person causing the disorderly conduct.

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- 3.1.1.6 The main cause of the disturbances has been comments made by people in the public gallery attending meetings. The response of the current and previous mayors has been to issue cautions to the people involved, introduce the Disorderly Conduct advisory statement, have Council Rangers attend certain meetings, and, on occasions, call the police. (Volume 3, Appendix 3).
- 3.1.1.7 An explanation of the approach to unruly behaviour was provided by Councillor Jones when he appeared at the Public Hearings on March 27 2003. It is clear from his account that when the measured approach of calling adjournments to allow people to cool down failed, the recourse to calling the police was seen as sending a stern, no-nonsense message to the public.



### Public Hearings Transcript – March 27 2003

MR JONES: Well, you will see that in the main, I think that the behaviour of the councillors, from my experience, over a long period of time, I would regard as acceptable. However, the behaviour of people in the public gallery is unacceptable, and I would like at this juncture, just to - I was the Mayor before Councillor Julie Sutton, and I would like just to table for the Commission's benefit:

Statement to Council meeting by the Mayor in disorderly conduct.

Which is one and a bit pages:

The disorderly conduct by public at Council meetings, expulsion of a member of the public. The disorderly conduct by a councillor - expulsion of the councillor.

These were things that were read to the Council so that people were very well aware of what their obligations were. I had cause to ask people to button up and in the main, that happened. But there were instances where people displayed an element of anti-social behaviour to the extent where the meeting was adjourned. We came back after 5 minutes, to give people the chance just to cool down.

I understand people get a little bit hot under the collar. Calm down. It was put to the Council: do you wish to continue? And the Council agreed to that. And people that were continually - the calling out and just acting - not just little whispers, but the actual calling out. Calling out rude and insulting statements.

Then I had no option to bring orderly conduct to that meeting. To adjourn the meeting, and ask the New South Wales Police to come. Now, you were given an example of that yesterday afternoon. What wasn't said - and perhaps ought to be put on the public record - in that particular instance, the Police came. He was a sergeant. He came to the thing - he spoke to me and he said - I said: there is someone there, they have been asked to leave for breach of disorderly conduct.

He went and spoke to the person concerned and said: you have been asked to leave. Will you leave? And he got a very, "No". That was the response. So the policemen leant forward about 6 inches and said, "If you don't leave, I'm going to arrest you." Well, he would have won the Stawell Gift getting out of the place because he knew what the - what the things were. So I table that there. We might just leave a few things in - perhaps your off-sider can pick them up, but - - -

3.1.1.8 There is no doubt that the behaviour of some people in the gallery has been disruptive. The evidence of some Councillors, the General Manager, and some members of the community cannot be discounted. The evidence of audio tapes of meetings, attested to the problem. The challenge was to find a way to manage unruly galleries that was effective, and to afford the community a sense of inclusion.

3.1.1.9 The strong reaction of some Councillors, and the General Manager, to the public gallery probably inflamed the problems. The placing of Council Rangers in the Council Chambers, and using them to identify alleged trouble-makers certainly did this.

### **Submission 293**

Throughout 1999-2001 Cr Peter Moxham and Mr D Smith ordered that Council Rangers attend the Council meetings to identify alleged interjectors. The presence of two rangers facing the community gallery and then pointing people out publicly was nothing more than a disgraceful act of intimidation and an attempt to stifle public participation and attendance.

3.1.1.10 The announcements about the various steps that might be taken to bring the perceived unruly elements in the public gallery into line were drastic measures. Threats, such as calling in the police, or applying \$2000 fines, were not constructive steps towards conflict resolution.

### **Submission 191**

There have been several occasions when the police have been called to clear the gallery during the hearing of contentious issues such as these inappropriate large developments, the first time that this happened, came as a complete surprise, the packed gallery was quiet, I was standing close to the door when two men ( plain-clothes police we later discovered ) entered and asked if we were "having trouble with this Manly Dam lot" I indicated that most of us present, all respectable well dressed residents, were there on the Manly Dam /Ardel issue. They looked around, shrugged their shoulders and were visibly surprised.

3.1.1.11 There appears to have been little, or no, effort made to identify the causes of the disruptions, and to build constructive solutions. The drastic measures proved to be somewhat ineffectual. Disturbances at meetings continued through to 2003. What the public focused on was the apparent failures of the Councillors in their conduct of the meetings.

- 3.1.1.12 The simplistic cause of the disruptions put forward by those Councillors re-elected at the 1999 elections, was that all the problems were caused by failed candidates. They were said to have attempted to push their agendas on to the meetings, and prevented those who had been elected to get on with the business of the Council. They were supposed to have encouraged others attending the meetings to follow their example.
- 3.1.1.13 The two “failed” candidates (Mr. Parsons and Mr. De Luca) were certainly responsible for a number of disturbances caused by the public gallery (Volume 3, Appendix 3 and audio tapes of the meetings). The information supplied to the Inquiry appears to have overstated their roles in causing disturbances.

## Letter to the Inquiry

*David Parsons  
7 Canea Crescent  
Allambie Heights NSW 2100  
Tel: 9451-1903*

*24 April 2003*

*Att: Commissioner Maurice Daley  
Commission of Enquiry into Warringah Council  
Locked Bag A 5045  
SYDNEY SOUTH NSW 1235*

*Fac: 9289-4099*

*Dear Sir*

### **FURTHER SUBMISSION TO COMMISSION OF ENQUIRY**

*I have to hand a document entitled Briefing Paper Document Number 25 by Warringah Council (undated). A copy of this document is **enclosed** for your reference.*

*I bring this document to your attention, to further illustrate the way in which Council, and particular Councillors have:-*

- 1. Targeted myself and Vincent De Luca in an attempt to mislead the Commission into erroneously concluding:
  - a) That Mr De Luca and myself are sole "dissidents", who attend Council and cause trouble merely for the sake of causing trouble. By failing to enumerate other members of the public in this Document, it is possible that the Commission would arrive at such an erroneous conclusion;*
  - b) That there are no problems of governance and procedure at Warringah Council. By personally attacking individuals who speak out against the misconduct and irregularities of Council, this may somehow divert the Enquiry from its true mission;**
- 2. Harassed members of the public in an effort to downplay instances of genuine misconduct by Councillors in the chamber. An example of this was when a member of the Gallery called police in reaction to the behaviour and threats of an associate of a serving Councillor. In an attempt to avoid having his mate arrested by police, this Councillor also called police and had the member from the Gallery expelled; and*

**Letter to the Inquiry (cont.)**

3. *As a consequence of the above, have misled the Commission.*

Refusal of the Right to Speak

*Paragraph 7 of the Document purportedly enumerates the amount of times Mr De Luca and myself have been refused the democratic right to speak by Council on the usual 5-4 vote. The Document alleges that I have been refused such a right on 17 occasions when in fact I have been refused on approximately 20 occasions. The figure is similar in Mr De Luca's case.*

*Paragraph 7 omits to enumerate the many other members of the public that have been refused the right to speak. To my knowledge, the other people that have been refused this right are:*

1. *Graeme Macey;*
2. *William Williams;*
3. *Chris Thomas;*
4. *Jack Tillburn;*
5. *Ken Higgs;*
6. *David Luff.*

*This list is not exhaustive.*

Persons Expelled or Directed to Leave the Gallery

*Similarly, the Document at Paragraph 6 does not name other members of the public who in my presence have either been directed to leave the Gallery or expelled:-*

1. *Scott Daines;*
2. *Tony Dowden;*
3. *An unnamed male from Brookvale regarding the Brookvale Brick Works site.*

*Again this list is not exhaustive. Moreover, nowhere is it mentioned in the Document whether the person left the Chamber or not. In many instances, Council Meeting carried on with that person still present, eg. Ray Cox.*

*I thank you for this opportunity and ask that you please take this additional submission into account.*

*Yours faithfully*

**David Parsons**



## 3.1.1.14

The ultimate cause of the disturbances appears to be the reluctance of the re-elected Councillors<sup>2</sup> (who controlled the meetings) to allow members of the public to speak at the meetings. The context is the great dissatisfaction of many people in the community with what they saw as a pro-development Council.

<sup>2</sup>Councillors J. Sutton, Jones, Moxham and Caputo.



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Warringah grew rapidly in the 1990's and as the decade progressed so too did the pace of development. The reaction to this was manifest in the 1999 election results: five out of nine Councillors were newly elected. Four of these newly elected Councillors<sup>3</sup> wanted to institute a more cautious approach to development. Their many supporters became frustrated at their inability to have their voices heard when contentious development issues came before the Council. None of this justifies their disruptive behaviour when their frustrations boiled over. Equally, the high-handed attitudes of the pro-development Councillors, and their draconian response to criticism, fuelled a kind of on-going battle between the floor of the Chamber and the public gallery. Had there been more constructive efforts made to allow "dissenters" a voice, then a great deal of the heat might have been removed from the meetings. This was not even attempted. Meetings sometimes were allowed to descend into farcical parodies of debate. The reputation of the Council suffered with each new episode. The frustrations of the anti-development groups grew apace. Mrs. P Parsons (appearing at the Public Hearings on March 27 2003) provided a flavour of the reaction.

<sup>3</sup>Councillors R. Sutton, Forrest, Smith and Colman.

## Public Hearings Transcript – March 27 2003

THE COMMISSIONER: In your comments on Council meetings, you observe that police had been called on occasions. Could you tell us more about that?

MRS PARSONS: Yes. There'd been comments made from the gallery and I'm talking back to the earlier days, not recent days, when comments had been made from the gallery and then police were subsequently called. The police came, they spoke with the people in the gallery. They didn't feel at that point in time there was any concern and subsequently left without - without issuing any warnings or of any concern. I did write to the Police Commissioner at that point in time, simply because I felt that it was futile to write to the Council because I didn't feel that they paid any attention to the concerns or the complaints of the residents.

THE COMMISSIONER: What did you expect the Police Commissioner to do?

MRS PARSONS: I think just to be aware of what was happening. I think that was probably just my main concern.

THE COMMISSIONER: So you are saying that they should not have been called to the meeting?

MRS PARSONS: I honestly don't believe in those early days they should have been called.

THE COMMISSIONER: Why were they?

MRS PARSONS: Because somebody had called out in the gallery. I think I also state in my submission that at no time on the occasions when the police have been called has there ever been any threat to person, to place, to thing. I think my feeling is that this was an intimidatory gesture from the Councillors with the view to hoping that, you know, the people in the gallery would go away.

THE COMMISSIONER: You also suggest that, I assume at a certain time you might tell me when this occurred, Council rangers would sit facing the gallery to report on who may have made a comment at any given time. Could you tell me how often that happened and the reason why you think they were there?

MRS PARSONS: Well, my first comment is could behaviour have been so bad that it couldn't be identified from the floor of the Chamber that we needed to get rangers to sit to watch the crowd to identify who made a noise? If the behaviour was so bad, everyone would have been able to notice it but we had rangers put on over-time to see and to watch the gallery which, from my point of view, was I felt a total waste of the ratepayer's money.

THE COMMISSIONER: I'm a little puzzled.

MRS PARSONS: By watching them saying he did it or he did it or he did it.

THE COMMISSIONER: Saying that to whom?

MRS PARSONS: To the Mayor, to the meeting.

THE COMMISSIONER: How many times did this happen?

MRS PARSONS: The rangers came for a period of - I'm sorry, I didn't count the meetings. Probably - they were for a while. Half a dozen times, 10 times. I don't know for sure how many times.

- 3.1.1.15 Figures provided by the General Manager (Submission 288) do not contain the number of times members of the public have requested to speak at Council meetings. The information does refer to the fact that two members of the public have had their requests denied 35 times in the life of the present Council. Anecdotal evidence given in the Submissions suggests that there have been a number of people who have wished to address the Council, but have had their requests denied. These matters generally have concerned Development Applications. It is not clear whether all the complainants have followed the correct procedures in requesting time to speak at meetings.
- 3.1.1.16 4.8% of the Agenda items handled by the Council in its current term have involved members of the public addressing the Council. In terms of time, however, this has represented 0.05%<sup>4</sup> of the meeting time of the Council during the period.
- 3.1.1.17 The frustration of the public can easily be understood when their voice is limited to such a tiny proportion of the time taken up by Council meetings. The interruptions to the meetings may well have stemmed from the frustration of members of the public in failing to have the opportunity to put their points of view. Something they would argue is their right within democratic institutions.
- 3.1.1.18 According to a number of Submissions, a further frustration has arisen out of the alleged practice of the Council moving to closed sessions to debate contentious issues. On at least one occasion the Public Officer Mr. Symons admitted that due procedure had not been followed. It should be noted that there may be grounds for the reaction from the public since the proportion of meeting time in closed session is 11.8% of the total time compared to 6.6% of the total time spent in closed session during the 1995/1999 Council.
- 3.1.1.19 The denial of two people to speak on a large number of occasions suggests that the Council has regarded them as vexatious objectors. The General Manager took the extraordinary step of requesting the police to take action against one of the two people. He alleged that that person wilfully obstructed a Councillor or Council in the exercise of a function under the Act. The police determined that there was insufficient evidence to establish that the actions (interjection at a meeting) amounted to wilful obstruction. As such it was decided that there was insufficient evidence to commence proceedings for “obstruction” pursuant to Section 660 of the Local Government Act 1993 (Volume 3, Appendix 4).

<sup>4</sup>This is based on an average of 5 minutes being allowed for public members to speak, and assuming just one person speaks per Agenda item. The total time of the meetings is given by multiplying the total number of meetings (129) by the average time of the meetings (2 hrs. 42 minutes).



It is clear that the interruptions to meetings, and disturbances at meetings, have been irritating and frustrating to Councillors and at times to the staff. There is no evidence, however, that such disturbances have prevented the business of Council from being completed. It is also clear that the reactions of the Council were, at times, out of proportion to the scale of the problems.

It would be an enormous leap of logic to consider that the activities of a small number of objectors at Council meetings were responsible for the poor image of Council held by many people in the Warringah community. The evidence presented in the various Sections of this Report suggest that the image problem stems from much more deep-seated problems within the Council.

3.1.1.20 The “Majority” Councillors, aided by the two General Managers between 1999 and 2003, did not attempt to conciliate a hostile public. They allowed the situation at Council Meetings to deteriorate to the point that the reputation of the Council suffered a continuing and drastic slide in the eyes of the community. The people in the public gallery, who reacted so vehemently to an arrogant and high-handed Council, were equally to blame. But the Councillors were elected to govern. This meant managing the processes of the Council so that the people felt that fair and equitable opportunities for the community to participate in its affairs were made available. They had to convince the public that such processes were transparent, and that the interests and benefits of the whole community were being taken into account. They failed dismally to project such an image to the community at large.

3.1.1.21 The ruling Councillors and their supporters repeated time and time again (in Submissions and in the Public Hearings) that the very bad reputation of the Council, derived from the many instances of disrupted meetings, was purely the result of the actions of a small band of miscreants bent on destroying the Council. The reality is that the ruling Councillors could not, and would not, brook opposition. Their aggressive reactions to criticism allowed a bad situation to become progressively worse. The behaviour and mismanagement of the Councillors lies at the heart of the problems.

## 3.1.2 Conspiracy Theories

3.1.2.1 The argument, that the disruptions at Council meetings were exclusively the work of a small band of people desirous of bringing the Council down, is a special case of a more general notion. That general notion is that conspirators have set about destroying the Council immediately after its election in 1999, and have continued their efforts to the present. The disruptions at Council meetings are seen as manifestations of the conspiracy on the public stage.

3.1.2.2 There are two reasons for the conspiracy. The first is the failure of some candidates to be elected to Council in 1999, and their relentless campaign to bring down the successful candidates. Second, there is the allegation of a much broader political attack on Local Government. The following excerpt from Mr. Darby's testament at the Public Hearings provides the flavour of the latter argument.

### **Public Hearings Transcript - March 21 2003**

MR DARBY: Yes, sir. As far as I am aware, all persons calling for administrators to be appointed or for the councillor[sic.] to be sacked or any related action, all these calls are tendentious. The persons involved have their own agendas, their own motives and as I have already indicated to you, sir, there has been a significant political conspiracy directed at the Council. Possibly - and I think this is something you might consider - possibly as a test case to determine whether the same group of conspirators can then set out to knock off Councils around New South Wales one after the other.

Certainly what they have done is establish a formula which could almost be franchise to persons of ill will elsewhere in New South Wales and indeed much more widely. The conspiracy has been enormously effective to the extent that the Minister for Local Government has been deceived into calling for the Mitchell Report and in fact has been deceived about Warringah Council to the extent that he has appointed your good self. So it is a very effective conspiracy and part of that conspiracy is people with their own collateral purposes calling for the Council to be replaced by an administrator.

3.1.2.3 The fact that there was a Section 430 investigation of Warringah Council, and that this has been followed by the Public Inquiry, is seen by some as proof of a political conspiracy against the Council. The reasoning behind this was put by Councillor Jones at the Public Hearings on March 27 2003.

**Public Hearings Transcript - March 27 2003**

MR JONES...

Now, you could be cynical enough to think that the Minister - the former Minister for Local Government - and I can say this, he is the worst Minister for Local Government we have had in the whole time I've been in Local Government - has used those statistics so that he could get a headline. He couldn't get a headline for doing anything constructive so he has used that as a headline to condemn this Council.

Now, again, I would like to table - just give me leave for one second, to inform the Commission of the amount of complaints that have gone in about Warringah Council over the period of time, and that - I will table that. Let me just say this, that '95-96, we didn't rate a mention. '96-97, Byron Bay was the most and we didn't appear in the top 20 Councils, so we weren't - there were a number of Councils - we didn't fall into that category.

'97-98, an the increase of complaints were going up but not as far as Warringah was concerned. We didn't rate in that number at all. In 1998 1999 there was a small decrease in the number of complaints generally to the Department. Bega Valley Council, they had 108 complaints - they were the most complained about Council and Warringah was the 13th most complained about Council, and it was the subject of 23 complaints.

Now, I would suggest to you, Professor, that what we see here, these figures would indicate to me and any reasonable thinking person, that we can see the start of the campaign to try and bring the Council into disrepute; to try and create a political platform for someone to be elected to the Council. Now, a person that stood for the Council that was unsuccessful has been a person touting for objections to be written in to the Department of Local Government.

I don't believe that is even cynical. I believe that it is part of a well orchestrated campaign to have that person elected. The easiest thing in the world is to knock someone. Opposition in Government thrive on that sort of sort of business, but to get them to come up with anything constructive and indeed, even with the 117 complaints and then the whatever the other number is to come up with - 300-odd that I think was being spoken about -

MR JONES:  
187 or something ..... ask yourself - - -

MR BROAD:  
You have referred to some political background. Do you apprehend any concerns in respect of the conduct of this inquiry that it may be biased or acting under a [sic. dictate] or anything like that?

MR JONES: I was cynical enough to think this was going to be a Kangaroo Court and that you blokes had been sent on a mission, you know what the bottom line is, to hang the Council. Now, I say that, because I quote from Mr Barr, who said the Council looking to be dismissed. He is going to dismiss the Council. He is a state Member of Parliament.

This is a man of some influence in the community. You could be, I think, excused for coming to that particular point of view. I will dig that out in a moment. I can refer to where those statements have been made.

MR BROAD: Can I follow that up while you are looking for that?

MR JONES: Yes.

MR BROAD: You gave that statement in the past [sic. tense]. You have been sitting here, just about I think, every day since the public hearings have commenced. Do you currently apprehend any concerns about conduct of this inquiry?

MR JONES: Yes, I do. Yes, I think that some of the questions that are being asked are being left in an open handed fashion that could still cast some doubt. I believe that if someone is going to come before this Commission, they should be required to come up with fact.

Not listen to the stuff we had to listen to yesterday about hearsay and, you know: it could be this and it could be that. I believe that if someone has something of substance to complain to the Commissioner about, then they should put it on the public space.

MR BROAD: So your concerns relate to the standard of evidence which may be accepted?

MR JONES: That is right.

MR BROAD: Any other concerns?

MR JONES: No, I think that would concern me and I think I could be excused in thinking, well, that could tend to be a little bit biased if at the end of the hearing, if the Council is to be hung, it would be hung on unsubstantiated cheap gossip.



- 3.1.2.4 Very few people in either their written or oral Submissions actually phrased their concerns in such grandiose terms. The majority of those who subscribe to the conspiracy theory, focused on one or two failed candidates in the 1999 election. They believed that the failed candidates orchestrated a campaign against a number of the elected representatives, and perhaps that they used contacts in the NSW Parliament to bring their campaign into a broader arena. Other pieces of the conspiracy theory concerned the ability of one of the alleged conspirators to exercise an influence over the political actions of one of the Councillors within the Chamber. There was also the alleged use of pro-forma letters to complain to authorities about the Council. The same people were alleged to have accosted people in the public gallery (whom they considered to be against their ideas). At the same time these people were allegedly encouraging and assisting people in the gallery to oppose various decisions and operations of the Council. Finally, they were accused of having printed and circulated scurrilous material attacking a number of elected representatives. Examples of this material (supplied by Mr. Darby and Councillor Jones) are shown in (Volume 3, Appendix 4).
- 3.1.2.5 Councillor Moxham also referred to the flyers and provided copies to the Inquiry. In his appearance at the Public Inquiry Councillor Moxham introduced a more sinister theme in relation to them.

## Public Hearings Transcript - March 27 2003

MR MOXHAM...

fliers were printed and distributed, highly critical of the five so-called majority block councillors. Now, Mr Commissioner, I did table that with your office and I believe that you and Mr Broad may have had a chance to look at some of those documents.

THE COMMISSIONER: Yes.

MR MOXHAM: Yes. They are dirt sheets in the extreme and in my experience in politics, going back 25 years now, I've never seen such a muck-rake exercise as these fliers purported. They were greatly distressful to councillors and to their families and also I would like to refer a document that was received by a senior councillor from the majority block about 2 years ago. Well, just over 2 years ago when I was Mayor and I wasn't going to deal with this in open session and I wanted to do it in confidence but I think that it is important that the community know a bit about why we are where we are today and this was a death threat that was opened or intercepted by the father of this particular councillor, an elderly man whose health is not good.

The councillor came to me when I was the Mayor into my office in a very agitated manner, which is understandable. I immediately went with him to the Dee Why Police Station. We saw the sergeant who was there at the time that we knew. The sergeant put us in contact with a detective who subsequently took this document and had it fingerprinted and fingerprints were obtained. Now, this death threat was taken very seriously, I have to say that, because normally if you have got a burglary or something unpleasant as a burglary is and you get fingerprints taken you might wait 6 to 8 weeks to get some fingerprints taken I should say or to get them examined and registered and so forth.

This document was fast tracked for fingerprints. It went through very quickly. That is how seriously it was regarded. The author of this document knew in intimate knowledge the councillor and his family, their names, the cars they drove, the makes, the model numbers and the registration numbers and it is interesting or it is rather concerning I should say that with those anonymous fliers that I referred to earlier and the death threat which was taken so seriously and still has not been resolved by the police, that there was a recurring theme and it indicated to me that the author of the death threat was also involved in those anonymous fliers.

And the recurring theme was that in the death threat at one stage the author referred to amongst other things an alleged girlfriend of this particular councillor and the car she drove and where she worked and said: accidents can happen. In the anonymous fliers that went around

MR MOXHAM:

separately to the death threat there was reference to a particular councillor and an allegation of a girlfriend again. So I know it is circumstantial but it indicates to me at least that there is a connection between the fliers and the death threat and I think that we hear from some of the councillors of their victimisation, harassment and intimidation and I think it is on a one-way street.

I think that the reason that we are in such disarray today is manifest in many ways but I think that these documentations gone out has certainly made the situation much more poisonous. I and some of my colleagues and some senior staff members believe we know the author of these documents and the death threat but knowing is not proving and the individual concerned is clever and rat cunning and rat has been the operative word. . . .

- 3.1.2.6 It was beyond the Terms of Reference of the Inquiry to investigate the alleged death threats, and there has apparently been no subsequent follow-up by the police, following the initial report and the follow-up described. The fact that it was reported to the police indicates the level of intensity that was felt within the Council.
- 3.1.2.7 The scope of the conspiracy theory is broadly developed by Submission 142. An excerpt from that Submission, and a letter to the then Minister for Local Government, reveal the kinds of allegations made.

**Submission 142**

By their unruly behaviour and successful efforts to disrupt Council meetings these people believe they can claim that the Council is dysfunctional. The Council is not dysfunctional and has managed to conduct its business successfully despite the difficulties.

I have been so alarmed at the activities of this rogue element, that I have been compelled to write to the Minister for Local Government on several occasions to express my concerns.

## Letter to the Minister for Local Government

George P. Bidder  
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Collaroy, NSW, 2097  
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Mobile: 0419 228 725

The Minister for Local Government in NSW.  
The Honourable Mr. Harry Woods MP.  
Level 34,  
Governor Macquarie Tower.  
1 Farrer Place,  
SYDNEY. N.S.W. 2000.

20<sup>th</sup> of December 2001.

Dear Minister,

This letter is written in exasperation and frustration as a result of continual harassing, intimidating tactics and disguised challenges from a small group of people led by a couple of highly provocative persons (males) who believe that in their furtive manner they have taken over the gallery of Warringah Council. It appears that one or more of these people may directly influence some councillors by sending SMS messages to the councillors during Council meetings.

My first attendance, after an absence of several years, took place around eighteen months ago. In entering the gallery I was approached by a person later identified as David Parsons (a failed candidate in the last Council election) who unashamedly asked me what is my name, what am I doing here and why was I coming to the council meeting? What type of business I am involved with? Am I here to make money as a developer? To this I politely replied, while it is not of his concern and I do not need to make money as a developer and at that point I walked away from this intrusive person. – I have been told that several visitors not yet known to the group have suffered similar approaches by David Parsons.

That evening during Council recess I was standing in the chambers adjacent to the gallery when a massive person surrounded by a group of hangers on made a point of acknowledging my presence by saying "Hello Mr Bidder"! I politely and curtly replied hello. I was uneasy to experience how quickly my presence occupied their attention. Obviously my details seemed to have filtered through. The voluminous person was later identified as Vincent De Luca, another failed candidate at the last Council election.

This realisation enticed a desire in me to give these people a wide berth. Unknown to me at the time, this action was soon to classify me as one of "them" (the people they oppose).



### Letter to the Minister for Local Government (cOnt.)

Soon I was to experience the lashing of their tongues when one of my son's development applications was submitted to Warringah Council. Somehow the details may have been sieved through to them by council personnel. In the gallery that evening Vincent De Luca loudly accused my family of being exploiters and developers.

As I was heading out during recession time and observing a group of people, in the antechamber, comprising Mrs De Luca and son Vincent I approached Mrs De Luca and asked her politely to tell her son to attack the individual if so he wishes, but I will not tolerate my family to be subjected to her son's abuse. A torrential abuse by Vincent soon followed. He was escorted by two diminutive persons, one on each side. Vincent, called on me to get out of his way or his two companions whom he classified as Officers of the Court, they will be witnesses to his charge against me for obstructing his movements. My son quickly called out "This is Council property and not for his exclusive use." My son joined me and we left the antechamber.

One of the "Officers of the court" my son Tim and I later identified is Scot Danes, a resident of Pittwater, during a rainy night was spotted taking from Vincent a sheet of paper, walking out of the council and placing it on the Council notice board and then walked back inside the council. Braving the rain Tim walked to the notice board and reported to me its contents. It urged people to rally and report to the ICAC the majority councillors' corrupt behaviour. A few days later while in Brookvale, on business, I was informed of similar leaflets being stuck to windows of business premises in this locality.

A connection between the minority councillors and this group of people became evident. The latter clapped their hands and very loudly voiced their approval whenever the minority councillors spoke and booed and interjected at the speeches of the majority councillors. They unrelentingly encouraged visitors to the gallery to lodge complaints to the local government authorities and to the ICAC against the running of the "corrupt" Council administration and to the decisions of the majority councillors and offered to write the text for them if they were not disposed to do so themselves. When not responding to these guidelines the visitors would then be subjected to their contempt and intimidation and become the recipient of their sly remarks.

I have no doubt that the various government departments, to which the many complaints were directed to, would by now have an understanding of the complainants and of their objectives. I have learnt to ignore them, but this action seems to aggravate them further as they seek for acknowledgments and responses.

**I trust that my abridged attempt to describe the situation may sustain your attention. I have endeavoured to portray the scene the play and the actors. This would have been entertaining if not for being so very real a play.**

Cordially,

- 3.1.2.8 The tone of the reaction by affected Councillors is shown in the following excerpt from Councillor Jones' appearance at the Public Hearings on March 27 2003.

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## Public Hearings Transcripts – March 27 2003

MR JONES: It is someone that used to sit in the two bob seats; plenty to say; not good enough to get over the line at the last Council election; a failed candidate; couldn't accept defeat and was using whatever influence he may have had with some members of the Council.

- 3.1.2.9 Mr. Bidder nominated Mr. De Luca as one of the key leaders of the 'conspiracy'. He was also the person in the "two bob" seats referred to by Councillor Jones.
- In Mr. De Luca's appearance at the Public Hearings on April 4 2003 the conspiracy theme was explored.

### Public Hearings Transcript – April 4 2003

THE COMMISSIONER: You stood for election for Local Government?

MR DELUCCA: [SIC] In 1999, but as indicated to you I was unable to fight the election as I was struck down with Hodgkins Lymphoma cancer.

THE COMMISSIONER: You stood in the recent State Elections?

MR DELUCCA: Yes.

THE COMMISSIONER: Would you say that in the lead up to the State elections that you were using the Council as a platform to help with your aspirations on the broader political front?

MR DELUCCA: No, I definitely responded to the enormous community concern about Warringah Council, and I think all candidates to a certain degree tried to do likewise. However, my really thrust to stand for that seat was a matter of principle after the Leader of the Opposition told me to: keep my mouth shut about the corruption at Warringah Council until after the State Election.

THE COMMISSIONER: Your interest in Local Council affairs has been attributed by some to your problems of being a failed candidate in elections for the earlier elections for the Council. Would you comment on that.

MR DELUCCA: Well, even despite having to run my campaign from my hospital bed and in isolation due to intensive chemotherapy and radiotherapy, I still achieved a sizeable vote of, I think it was 2600

votes, after preferences and my preferences went to elect a fine man, Kevin Smith, and I'm very proud of that. Yes, I did feel some guilt that I wasn't able to help the community at the times I was in hospital but, no, I don't consider myself a failed candidate, nor do I consider myself a failure in any way. I fought for life and I've won.

MR BROAD: Do you have any bitterness, or adverse feeling in respect of councillors who were successful because you were not elected?

MR DELUCCA: Certainly not. The only adverse feeling I have as documented to you are the several death threats that I have received from Councillor Darren Jones. I was very traumatised by it.

MR BROAD: Are you seen as a dissident?

MR DELUCCA: The only people that have described me as a dissident is Darren Jones, Peter Moxham and Julie Sutton and they have also asked people to write that in their submissions to this inquiry.

MR BROAD: So you are not perceived by people who talk to you as a dissident?

MR DELUCCA: Any reasonable person in Warringah sees me as a community leader who is trying to fight for the interests of the community. That is what I've been received over the years. Lots of correspondence and particularly in this last election, lots of correspondence, and telephone, emails etcetera.

MR BROAD: Do you believe though, notwithstanding that you say you are not a dissident, that you attract the dissident voice? In other words that you attract people to you who are merely dissidents.

MR DELUCCA: No, certainly not.

Please note that De Luca has been misspelt in all the Public Hearing Transcripts

- 3.1.2.10 No great credence can be given to the proposal that Mr. De Luca's critical focus on various aspects of the governance of Warringah Council represents a conspiracy. At the time of the 1999 election Mr. De Luca was fighting for his life in a battle with cancer. On his recovery he became a voice for many people who were dissatisfied with the pro-development path of the Council. He is well versed in the law, is articulate and has a long history of involvement with community affairs. He is dogged in his pursuit of what he believes to be right. He also appears to have a great capacity to antagonise those he opposes. He is also given to making wild and gratuitous claims against his political enemies. Such claims were made at the Public Hearings and in material sent to the Commission. No credence could be afforded to them, as no compelling evidence was produced to support them. Mr. De Luca might be something of a loose cannon, but the notion of him as a grand conspirator is far fetched.
- 3.1.2.11 In his April 4 appearance, Mr. De Luca was specifically questioned about the existence of a conspiracy.

#### **Public Hearings Transcript – April 4 2003**

THE COMMISSIONER: Okay, I move onto another theme. Both in the written submissions and during these Hearings, there - an argument has been put forward that the public image of the Council has been damaged by a small body of conspirators whose sole aim is to bring the Council down. Are you aware of such a conspiracy? Are you one of



**Public Hearings Transcript – April 4 2003 (cont.)**

the conspirators? Are you the conspirator?

MR DELUCCA: No, and I think you, as an intelligent man with the experience you have, could see by the submissions that there is no collusion, there is no organisation of submissions on the - from what I've gathered on the website is that there is a clear message in some of the - for Council and for certain councillors and I understand that was orchestrated by several councillors from the majority faction and several organisations were contacted on 12 February to put in submissions and they were given sheets on what to say, what to do.

And you can compare some of the submissions and you can see the terminology used as well as the sentencing. Now - as well as the sentences. Now, there has been no conspiracy whatsoever. Now, this is the same excuse that has been used in 1967, you can view media reports on that, and the same excuse used in 1985 and at various Royal Commissions over the years into crime you will see that the people who have stood up for what is right are always attacked and made to, you know, cause suspicion on them instead of focusing on the real perpetrators.

MR BROAD: Conversely, in respect of what you said, you spoke about advice given to certain bodies. Did you assist in the preparation of any other person's submission to this inquiry?

MR DELUCCA: No, certainly not. I had enough trouble doing my own because I was so busy.

THE COMMISSIONER: In terms of the topic which has been mentioned several times during the hearing, that is the high level of complaints about Warringah Council to various bodies, have you been involved in preparing pro forma letters that might then turn into complaints?

MR DELUCCA: No. The only thing that I assisted with was I wrote to every Council in the state and tried to write to as many councillors as possible when independent MP for Manly, David Barr, moved the Local Government Amendment Ethics Review Panel Bill and we conducted a petition to have the Ethics Review Panel Bill passed as well as called for a section 430 inquiry into Warringah Council but as you probably note from the petition to the Department, that was well after Council had already resolved, on 6 February, to call for a section 430 inquiry.

MR BROAD: Have you ever advertised for people to complain against Warringah Council?

**Public Hearings Transcript – April 4 2003 (cont.)**

MR DELUCCA: No. In my newsletters I have, like even the Liberal Member has done, I have given the name and address of Ministers relevant. I have said, any concerns - because, at one stage, I was receiving so many telephone calls - in a newsletter and I think in a newspaper article I gave the details of the Minister for Local Government if they wished to raise any concerns then, in my last newsletter recently, I have said I have given my opinion, during the election, that I believe the Warringah Council should be sacked but I have always encouraged people to voice their own opinion, not mine.

MR BROAD: Were you involved in the production of any flyers and there have been some flyers put to the inquiry, such as the Warringah Council Quiz or there is another flyer that has been put: Know your candidate, have you been involved in their production?

MR DELUCCA: The interesting thing about these flyers, Mr Broad, is that those flyers appear at Council meetings whenever there were major issues which were under scrutiny by either Parliament, the ICAC or the Department and I have never met a resident who had received one. I feel, again, that they have been a deliberate conspiracy by certain councillors or their colleagues.

MR BROAD: Can I stop you short there. My question was, whether you had had any involvement?

MR DELUCCA: No.

MR BROAD: Thank you.

THE COMMISSIONER: There was mention of a newsletter.

MR DELUCCA: Yes.

THE COMMISSIONER: What is the circulation of that newsletter?

MR DELUCCA: My electoral newsletters, during my campaign, went out to the entire electorate of Wakehurst.

THE COMMISSIONER: The themes in the newsletter, are they primarily concerning Council affairs?

MR DELUCCA: No. Some were, yes. Some were concerning Council and the results of the Mitchell Inquiry. Most of it was dedicated to equitable expenditure on education.

3.1.2.12 On oath, Mr. De Luca denied being involved in any conspiracy. He denied producing the scurrilous flyers, and in a conspiracy theory of his own, suggested that they were the product of his enemies.

3.1.2.13 During his appearance on April 4 2003 a number of questions were raised about Mr. De Luca's background and his interest in Local Government.

It is clear from the evidence that Mr. De Luca has had a very long and genuine interest in Local Government.

### **Public Hearings Transcript – April 4 2003**

THE COMMISSIONER: . . . You have a background of living and growing up in the Warringah area, is that correct?

MR DELUCCA: Yes, I was born in Manly Hospital and I've lived in North Curl Curl all my life.

THE COMMISSIONER: Thank you. How well known are you in the area?

MR DELUCCA: What do you mean by "well known"? Are you talking about my work in the community or - - -

THE COMMISSIONER: Yes.

MR DELUCCA: My grandmother is the late Marjory Smith RAM [OAM]. My mother is Rosslyn Delucca RAM [OAM]. My family have served the people of the northern beaches for over 85 years. My grandmother was a foundation member of swimming on the northern beaches. My mother was a foundation member of the Manly and Warringah Netball Association and then I have sort of followed in their footsteps in being involved in any of the organisations which my family has formed, as . . .



## Public Hearings Transcript – April 4 2003 (cont.)

MR DELUCCA:

. . . well as serving in a vast variety of youth suicide prevention organisations.

I took my first community officer when I was about 12 or 13 and I've been president of the Curl Curl Youth and Community Centre for 8, going on 9 years. I was appointed to several Warringah Council Management Committees while I was still at high school, so I moved widely around the community, be it as a former Executive Member of the Peoples' Council on Drug Prevention, a former Delegate to the National Peoples' Convention on Youth Suicide. Or, just in terms of helping younger people, as well as their families after the trauma of children suiciding, or helping to prevent suicide.

THE COMMISSIONER: . . . You appear to have a strong interest in Council and its operations. Where does that come from?

MR DELUCCA: When I was 13, I was at Beacon Hill High School and an elder student suicided and that got me involved in convening various forums in the community on what we could do to stop the high incidence of youth suicide on the northern beaches. We also had and we still do have a high incidence of youth drug and alcohol dependency, and my family over many years had formed various organisations, not just fundraising organisations, but grass roots work, where we tried to help the families of those people who were suffering domestic violence, or drug and alcohol addiction.

So therefore I was sort of thrown into the realms of community life at that young age. I soon became very aware of political issues and several councillors, including Councillors Darren Jones, John Caputo, Peter Moxham and others, all encouraged me to get involved in political matters.

THE COMMISSIONER: . . . Do you think you have built up a strong, or adequate knowledge of Local Government processes and principles?

MR DELUCCA: Well, yes, I do, not just on the practical, but I also have a degree in law and my love in life is environmental law and administrative law.

MR BROAD: . . . You work for, as I understand it, the Attorney-General?

MR DELUCCA: Attorney-General's Department, Community Relations Division.



**Public Hearings Transcript – April 4 2003 (cont.)**

MR BROAD: . . . Right. Does that involve you in dealing with environmental matters, matters involving Local Government?

MR DELUCCA: Not really, we get the occasional complaint about the Local Courts decisions on dividing fences disputes, but other than that not many, no.

MR BROAD: So your work does not involve you directly - - -

MR DELUCCA: No.

MR BROAD: - - - in that sphere, but your interest extends outside your work

MR DELUCCA: Yes, and I've also completed a special interest thesis on corruption and the effectiveness of the Independent Commission Against Corruption.

MR BROAD: That answers my question, sorry.

THE COMMISSIONER: Are you a frequent attender at Council meetings?

MR DELUCCA: Well, just before the 1999 Local Government election I was diagnosed with cancer and given 6 months to live so, therefore, I did not attend many Council meetings in 1999, or 2000, but since then I've tried to get to as many as possible. In 2001, I was re diagnosed and had to have a bone marrow transplant, so I was out for about 6 to 8 months, however, I have attended most in the interim.

MR BROAD: Have you attended meetings before 1999?

MR DELUCCA: Yes, many.

MR BROAD: On a regular basis.

MR DELUCCA: Yes.

MR BROAD: Thank you. From what - well, approximately what year did you commence attending Council meetings?

MR DELUCCA: Well, my grandmother was the Warringah Citizen Of The Year in 1983. I attended several functions with her, as well as Council meetings, that is when I was very little. My mother was awarded the Outstanding Community Service Aware in about 1992/93, . . .

## Public Hearings Transcript – April 4 2003 (cont.)

. . . so therefore I would attend various functions with her as she was the guest of Council at various meetings.

MR BROAD: But that was more a social attendance than a - - -

MR DELUCCA: No, no, both, both. We went to Council meetings, as well as ceremonial occasions.

THE COMMISSIONER: Do you have a strong interest in politics beyond the Local Government politics?

MR DELUCCA: Post Local Government, yes, I developed a strong interest because of what was going on at Warringah Council. . . .

### 3.1.2.14

The vital aspect that had to be pursued with Mr. De Luca was whether or not he took the pains to understand Council's position on various issues, and whether he sought to verify the source material that lay behind the numerous allegations made in his written Submissions. The following extracts from his appearance on April 4 suggest that he has both the background and purpose needed to compile material on various issues. He appears to test the veracity of the material he assembles. He therefore emerges as a legitimate critic of the Council. He does not emerge as the master hand in a planned conspiracy.

### Public Hearings Transcript – April 4 2003

THE COMMISSIONER:

In your submissions, which I said at the start with our discussion, there are a large number of allegations, including the one you have just made. What is not always evident is how solid the basis on which you make various allegations. So what I want to explore is the veracity of the material that we have received in terms of your several written submissions.

Now, some of those submissions appear to be responses made by you to things that other people have put before you, or told you, or contacted you about. Would you agree that that appears in a number of submissions?

MR DELUCCA: Do you want me to comment on that?

THE COMMISSIONER: Well, I would like to ask a couple of questions about it, but you agree that some of the material is in response to what people have brought to you - - -

MR DELUCCA: Certainly, the allegations by staff members of pressure and harassment of them by certain councillors are from those staff members, yes.

THE COMMISSIONER: Why do people come to you? How do you attract this kind of information?

MR DELUCCA: I've worked as I said, as President of the Warringah Council Section 355 Management Committee for Curl Curl Youth and Community Centre and several people at Council over many years have gotten to know me since I was a child, and I think I have built a respect by many members of Council staff that they know I'll always act in

hopefully their interests or what would you say honestly, and at least that I will always do the right thing and refer anything or any concerns that they have. . . .

MR BROAD: Do you weigh and balance what people come to you with?

MR DELUCCA: Certainly.

MR BROAD: How do you do that?

MR DELUCCA: I ask for evidence. . .

## Public Hearings Transcript – April 4 2003 (cont.)

MR BROAD: . . . You must be approached by a number of people on a fairly regular basis?

MR DELUCCA: Yes.

MR BROAD: How do you individually assess and weigh their individual veracity? What do you bring to bare? [bear]?

MR DELUCCA: Well, if I am unsure at something, I'll check. . .

MR BROAD: . . . I have asked for generalities?

MR DELUCCA: So for example there, I lodged a Freedom of Information Form and sought advice as to what the issues were.

MR BROAD: Can I go off in a tangent? Do you exercise your rights to information under section 12 of the Local Government Act?

MR DELUCCA: In - during the general managership of Dennis Smith, it was almost impossible to access any document and you would often be threatened with legal action for defamation by Council. However, under the general managership of Stephen Blackadder, I can just write an email and get most information that is required by a person in the community. The communication through Stephen Blackadder has been exceptional. . . .





**Public Hearings Transcript – April 4 2003 (cont.)**

MR DELUCCA: As Mr Broad said to me, it was during the election that much of that documentation was provided and he said that it does not have to be specific and that to just do it on off, you know, what ever I have available at that time. I should say that the submissions I made were as comprehensive as I could make them in view of the extreme pressure of an election and various other deadlines to adhere to. If there is anything that you would like to write to me about to get more details, I'm more than happy to provide them. But I was trying to accord with Mr Broad's directive to assist you, Commissioner.

I wasn't even going to put in a submission, I was just going to present it verbally to get the appropriate times, dates and everything else, but Mr Broad expressed the importance of having documentation in, so that you can start preliminary inquiries or what ever it was that you do, I can't remember the specific directives. But that is why I put them in in good faith to assist you, Commissioner.

THE COMMISSIONER: So you are confident that any allegation that we come across within your written submission, you can then supply us with information that will attest to the veracity of the point you are trying to make?

MR DELUCCA: Well, as you would be aware, I've submitted to you reports to the police, so they can all be substantiated. The - - -

THE COMMISSIONER: No, I don't want to go into that sort of detail. What I'm saying, we've had a lot of different matters which you put in you submissions. Are you confident that you have evidence that will support each of those matters?

MR DELUCCA: Yes, definitely, most of them - - -

THE COMMISSIONER: Okay.

MR DELUCCA: - - - were referrals from minutes of Council meetings, Hansards etcetera.

THE COMMISSIONER: A number of the issues that you deal with concern the internal operations of the Council, you have already mentioned staff in different ways. One of the reasons we have had staff appear at these hearings is because the Council is a very complex organisation and what we have been endeavouring to do is to get the staff to assist us, to understand that complexity better. Associated with that, there is a vast amount of material collected within the Council, some of [which is] of a statistical nature that shows costs of things . . .



**Public Hearings Transcript – April 4 2003 (cont.)**

... expenditures and a whole range of other things.

... Now, let me go to a second point, as well as that statistical information, ... Council is in a process of continually making decisions about how to move from policy into the operational effects of that policy. So there is also a vast amount of material within Council, some of it written, some of it not, that pertains to those operational features of the Council. The question that troubles me a little is how do [sic] someone outside of that very complex and large organisation, know enough about such complexities to make judgment on what is happening?

MR DELUCCA: Well, I think with judgment - on policy matters?

THE COMMISSIONER: On both.

MR DELUCCA: Okay. Well, if you - several community groups have representatives to Council meetings. I attend as well to Council meetings, so therefore you can view and consider the debate at Council meetings. But if you are serious about weighing up the pros and cons, you take the time to search the documents in the library or you assess them on - some policies are on the website. So those - and those can be viewed on the website.

The Thursday before the Council meeting there is often policy documents or notices of motion or DAs. Sometimes they are put on the website, sometimes they're not until Friday. But that is how I would handle going about being informed of what is proposed.

THE COMMISSIONER: Okay, that is what is proposed. I guess I'm talking about the actuality of what happens. You said that for a substantial period of the life of this Council, you in fact had great difficulty in getting information?

MR DELUCCA: On specific information, yes, but that - that - can I - that was on, for example, the credit card issue of the general manager, director of strategy, director of public office and director of services. Any public documents, while sometimes you will face a staff member at Council that perhaps isn't aware of the document and says: well, come back tomorrow, or something like that on the front desk. A lot of things you can access by the internet or at the Council's libraries.

THE COMMISSIONER: Do you think that the written records of Council, various files, various minutes, etcetera, are accurate and reliable?

## Public Hearings Transcript – April 4 2003 (cont.)

MR DELUCCA: No, I have - - -

THE COMMISSIONER: How do you know they are not?

MR DELUCCA: I've been at Council meetings and then seen minutes of Council meetings which are completely incorrect.

THE COMMISSIONER: So you are saying that on the one hand you had difficulty of accessing information, on the other - - -

MR DELUCCA: That is information that you would require in either FOI or certain, you know, you have got to make representations to Council. But if you are talking about minutes, they are a public document as defined under the Act and they are in the library and on the website.

THE COMMISSIONER: . . . Making decisions such as councillors have to do in terms of the overall policy direction of the Council or making decisions such as the senior officers and other staff within the Council have to do on a daily basis, involve a lot of difficult and fairly complicated understandings of a whole range of different issues. I would think that if anyone were to be making judgment on the councillors or on the senior officers about the decisions they were making, they would probably have to talk to those people to get an understanding of the complicated background of a certain issue to then make an informed judgment on it. Have you done that in terms of - - -

MR DELUCCA: Yes.

THE COMMISSIONER: - - - various issues?

MR DELUCCA: Yes.

THE COMMISSIONER: Regularly?

MR DELUCCA: Well, it depends on what the issue is and whether it is of interest to the community or whatever, but yes, often I've sent correspondence particularly to the general manager and councillors on certain issues and then if they phoned - some have phoned, some don't respond, the usual.

THE COMMISSIONER: But you would agree that in assessing - - -

**Public Hearings Transcript – April 4 2003 (cont.)**

THE COMMISSIONER: - - - an issue, that in a sense you are always only partial in your judgment if you haven't been briefed by the people who actually make those decisions and perhaps have a lot more background on them - - -

MR DELUCCA: That is why - - -

THE COMMISSIONER: - - - than an outsider making criticism of them.

MR DELUCCA: - - - that is why an outsider would rely on the Council report which goes up to Council meetings and they would rely on the level of debate at the Council meetings as well as advice by Council staff at the Council meetings. Now, yes, you are correct, sometimes it is hard to make an informed decision when certain councillors will put up a motion to approve a development which is recommended refusal, but refused to debate why they are recommending refusal, yes, that is difficult.

MR BROAD: Council in its submission to the Inquiry, indicated that it has around 150 policies to guide and shape the achievement of its charter, have you got a general familiarity with those policies?

MR DELUCCA: Not all 150, particularly I have familiarity with the management plan which governs the committee that I'm on. I have a full understanding of the code for the conduct of meetings. The code for councillors, members of staff, committee members and also I've read the delegation policy, I've also read policy regarding payment of expenditure of councillors and staff, that sort of thing. Yes, I do have a general gist.

MR BROAD: Do you make it a habit of attempting to familiarise yourself with any policy, whether it be say for the payment of legal expenses before you make a comment on something that has been brought to you by a member of the public?

MR DELUCCA: Yes, definitely.



### 3.1.3 The Statistical Argument

3.1.3.1 The mismanagement and disruptive nature of Council meetings has been a major factor in the poor reputation of Warringah Council. Unruly galleries have been a factor in this. The reaction of Councillors to strong opposition expressed at Council meetings has been another. The large volume of complaints about the conduct of the elected representatives at meetings (in the Submissions and in the Public Hearings) attests to the fact that the sullied image of the Council is caused more by the actions and reactions of the Councillors themselves than by the bad behaviour of people in the public gallery. Neither can it be said that the Councillors are innocent victims of some foul conspiracy. Arrogance and high-handedness explain more than any conspiracy theory. The last line of defence offered by the Councillors is that the people writing critical Submissions, or attacking the conduct of Councillors in the Public Hearings, have got it wrong. The meetings are not as disorderly as they make out, and the business of Council always gets done.

The critics represent a tiny fraction of the community. The number of Submissions and the number of appearances at the Public Hearings do not represent the silent majority of people who have a favourable opinion of the Council and the Councillors. Section 3.1.3 considers, and dismisses this line of argument.

3.1.3.2 The flavour of the argument is given in the following extract from the Mayor's appearance at the Public Hearings on March 20 2003.

#### **Public Hearings Transcript – March 20 2003**

MS SUTTON: Well, let me take and add some other facts. There are 135,000 people in Warringah, 135,000, 67 of them bothered writing in to say that they didn't like the behaviour of councillors and what we are dealing with, Mr Commissioner - - -

THE COMMISSIONER: I am not - please, please. We don't want to go into statistics like that because they are not terribly relevant.

MS SUTTON: But, Mr Commissioner, you are basing your findings on statistics you said 67 per cent of people, that is a statistic which I am refuting. I don't know what 67 per cent - - -

THE COMMISSIONER: I didn't say that, the figure I said was 16 point - - -

MS SUTTON: 67, I beg your pardon.

THE COMMISSIONER: 67 submissions, 16.5 per cent - - -

MS SUTTON: I beg your pardon.

**Public Hearings Transcript – March 20 2003 (cont.)**

THE COMMISSIONER: . . . of the total that the General Manager put up.

MS SUTTON: Well, 16 point . . .

MS SUTTON: Well, we are not allowed to use - I am not allowed to use statistics, I would like to but I can quote - I could have brought in here 200 elderly people who would have thought things were going very well. That person may have been influenced by a bad decision by the Council, but to say he or she was afraid of defamation is absurd. I have made the comment in Council that anything anyone says about me will not be taken to defamation because I haven't got any money and so apart from that I couldn't be bothered otherwise I would have had ample case to take people for defamation and a person just says that because the person is cranky or uncertain.

But once again, Mr Commissioner, there are 135,000 people out there and that is one of them and of the 16 - 67 people out of 135,000 say that they are worried. To me that is a very, very tiny statistic and I wish to say that the awful history of the Council I take great offence at the person who wrote that, I don't who wrote it. This Council has a wonderful history, a wonderful present and a very good future. At the moment, sir, we are in Seniors Week, unfortunately I shall have to miss many functions. . .

A similar theme was repeated by other Councillors.

**Public Hearings Transcript – March 24 2003**

MR CAPUTO:

I mean, you know, if you look at 135,000 residents in Warringah and you look at the small number that - of submissions that you have got, I don't believe there is any justification. I really can't see anything from what was in those complaints that justifies the Council to be sacked. I think it is a good Council overall. We don't get on as well as we could - of course you can get on a lot better and I think if everybody makes an effort it could be done, I mean, I'm happy to talk to everybody and you know - and I do, I discuss things and I think there could be a concentrated effort to get along better and try and resolve some of the issues that we have had before, but I think - I believe it is a concentrated campaign. . .



The Mayor, and other elected representatives, has not understood the structure and purpose of the Public Inquiry. It is not a poll of the popularity of the Councillors. It is an Inquiry with very specific Terms of Reference. Through the process of inviting Submissions from the community, and allowing the community to speak at the Public Hearings, it explores issues surrounding the Terms of Reference. It is dependent on the quality of the material received, not its quantity. The quality of many of the written Submissions was exceptional. They identified themes, dates, places, and reasons for their conclusions about how well or how poorly Councillors might be conducting themselves. The Public Hearings offered an opportunity for enlargement, elucidation, or testing of the ideas contained in the written Submissions.

This provides the primary evidence in reaching conclusions relevant to the Terms of Reference. As explained in the Introduction, this has been supplemented by a very large amount of supporting material; the Council supplied some of this, and some of it came from other sources.

3.1.3.3 Although the Submissions clearly do not represent a random sample of the population, the number of written Submissions, and the number of appearances, is quite substantial. There were over 360 individual written Submissions. A number of people made two or more Submissions. When these are taken into account the number of Submissions received exceeds 400. Many of the Submissions represented a couple or a family, and in some cases groups. The total number of people involved in presenting Submissions would be much larger than the figure of 360.

3.1.3.4 The vast majority of people in the Council area have very infrequent contact with Councillors. A large number have no contact at all. These people have little or no basis on which to judge the conduct of their elected representatives. For others contact might be made when attending large civic or communal gatherings. Their opinion of the Councillors is built around the speech they might make or the handshake that might be given at the start or finish of the proceedings. A smaller group of people have direct contact with Councillors when they have dealings with the Council. Such contacts result from the concerns of people about the processes or outcomes of the issues that underlie their dealings with the Council. Some of these are personal (such as an application to make changes to their property). Some of them are more communal in nature (such as concerns about an environmental problem in a neighbourhood). On such occasions many members of the community come into contact with Councillors and staff, often for the first time. The outcomes of these encounters sometimes breeds a stronger, and longer term, interest in the operations of Council, and the conduct of the Councillors. Sometimes this interest coalesces with others in a particular neighbourhood, or becomes related to more general concerns. It appears that a

large number of people who wrote to the Inquiry, or took the trouble of speaking at the Hearings, had become associated with Local Government in this way. The issues mentioned in the Submissions and the Hearings are focused on a large range of issues, and are geographically spread across the entire area of Warringah. The majority of the Submissions reflect a genuine interest in the affairs of Warringah Council, and the writers are thoughtful about the issues. They collectively reflect concerns about the governance of Warringah Council. If a large number of these Submissions are critical of the conduct of some Councillors, there are good grounds to accept that evidence.

- 3.1.3.5 It is also worth noting that people generally respond to invitations, such as writing to a Public Inquiry, with reluctance. To prepare a Submission takes a good deal of time. To present a Submission that will be scrutinised by the public is daunting. Many people feel they lack the skills to compose Submissions. In the case of Warringah (as will be discussed in 3.5) a number of people were scared to respond to the invitation.
- 3.1.3.6 Only 19.1%, of the 360 plus Submissions received, were favourable to the Council. In fact, almost as many Submissions specifically criticising the conduct of the elected representatives were made. More than four out of five Submissions found cause to complain about the Council and the Councillors. 22% of these focussed solely on the conduct of the Councillors.
- 3.1.3.7 When the proportion of Submissions that cited Councillors' conduct as a collateral issue to other perceived failings of the Council is added, the proportion of Submissions worried about this problem becomes substantially greater than the proportion that are favourable to the Council overall. Few of the latter actually make any reference to the conduct of the Councillors. Overall, these data indicate a very solid body of discontent with the conduct of Councillors within the community.
- 3.1.3.8 The General Manager, in his appearance at the Public Hearings on March 19 2003, forcefully argued that whilst there was a relatively small proportion of Submissions in favour of the Council, they represented a substantial proportion of the population.

## Public Hearings Transcript – March 19 2003

MR BLACKADDER: . . . The second issue from 67 submissions related to the behaviour of councillors at meetings and I won't go into detail but there are a number of aspects raised in that area. Commissioner, there were 57 submissions in support of the Council and its councillors and I should acknowledge at this stage that many of those submissions were from organisations, associations, bodies that were representing a large number of members and if I can just acknowledge the group submissions include the Terry Hills Computer Pals, the Aboriginal Support Group, the Manly Warringah Pittwater Eisteddfod, the Computer Pals for Seniors, Harbord Diggers Club, the RSL War Veterans, Northern Beaches Visitors Association, Pittwater House School, Manly Warringah Netball Association Incorporated, the Sporting Union, the Cubby House Toy Library, the New South Wales Rural Fire Service, the Surf Life Saving Northern Beaches Association, the Beacon Hill Polar Bears, Belrose Rugby League Football Club, Forestville RSL, Cromer Junior Rugby League Football Club and Valley United Junior Rugby League Football Club.

So I just acknowledge that whilst they are individual submissions, I would hope, Commissioner, that you will have regard for the fact that those bodies and organisation represents many hundreds if not thousands of members. . .

3.1.3.9 A breakdown of the Submissions in favour of the Council is made in Table 3.1.3.1.

Table 3.1.3.1 **Submissions Favourable to the Council**

| Type                      | Number | %    |
|---------------------------|--------|------|
| Junior Rugby League Clubs | 7      | 10.3 |
| Other Sporting Bodies     | 10     | 14.7 |
| Institutional Groups      | 15     | 22.1 |
| Business groups           | 9      | 13.2 |
| Personal                  | 27     | 39.7 |

Over 60% of the favourable-to-Council Submissions came from groups.

3.1.3.10 The difficulty of accepting the General Manager's arithmetic, in suggesting that this might represent thousands of people writing in favour of the Council, is that no indication is given of how truly the Submission represents the opinions of all the members of a group. In not one of the group Submissions, generally written by a President or CEO of an organisation, is it explained how they obtained the authority to write on behalf of the members.

3.1.3.11 A typical Submission is Number 064.

### Submission 064

HARBORD  
**DIGGERS**



20 February 2003

Commissioner Maurice Daly  
The Office of the Commissioner  
Warringah Council Public Inquiry  
Locked Bag A5045  
SYDNEY SOUTH NSW 1235

Dear Commissioner Daly

I write in my capacity as President of the Harbord Diggers Memorial Club Limited, in support of Warringah Council.

The Harbord Diggers has enjoyed a long association with Warringah Council.

This successful alliance has seen the establishment of a number of worthwhile community projects, including:

1. The Duke Kahanamoku Statue and Commemorative Surfing Park. Located on the headland at Freshwater Beach, it features a life-sized statue of Duke Kahanamoku and commemorates every Australian World Champion Surfer. This has become a well-known landmark, frequented by bus groups and is a popular area for wedding ceremonies.
2. A Wall of Remembrance located at Jacka Park in Harbord, to commemorate Harbord Returned Servicemen and Woman. This is also the central area where the annual Anzac Day Memorial Service is conducted. Council maintains this area on our behalf.

We have always found our Council Representatives to be extremely receptive to any suggestions or requests for the betterment of facilities and services of our Club Members. It would be disappointing for the Harbord Diggers to lose representation by Councillors in our own Ward.

Should you require any further information or expansion on the above, please do not hesitate to contact me.

Yours faithfully



Hugh Tighe  
President



3.1.3.12 The author, Mr. Tighe, appeared at the Public Hearings on March 25 2003. On the same morning a member of the Board of Directors of that Club asked leave to appear before the Hearings. She repudiated the idea that the Submission represented the views of the Board, let alone the membership of the Club.

### **Public Hearings Transcript – March 25 2003**

THE COMMISSIONER: Thank you. You said that you are a Director of the Harbord Diggers Memorial Club.

MS BOYDEL: Diggers Memorial Club, yes.

THE COMMISSIONER: We've already had both a written submission and now an oral submission from the president of the club. Are there issues beyond that that you wish to raise?

MS BOYDEL: Well, yes. I'm on the board and someone did say to me that Mr Tighe had put in a submission but that was completely unbeknownst to me and other members of the board.

THE COMMISSIONER: So there was no discussion at the board about that?

MS BOYDEL: No, none whatsoever. I did discuss this with three directors yesterday. They also have no knowledge. However Mr Tighe had informed them I think some time I think on Thursday evening that he was speaking this morning. I was not told that but other people did ring me and inform me of that and also when we were handing out how-to-votes on Saturday at the election, someone did say to me then that runs a very well known environmental group in the area who is extremely upset about this and somebody also rang me last night and left a message on my answering machine to say that they thought the members of the club should have been consulted regarding this, which I agree with those statements.

THE COMMISSIONER: So is your main contribution here to say that the views might not necessarily reflect the views of the club?

MS BOYDEL: Yes, that is right, exactly, because it wasn't - and I think someone said they also rang the club and they were informed by a person in management that had it gone through the board that that was not a correct statement. So I was extremely disturbed to learn of this, especially - well, this is a separate issue but I had also sent in a submission which certainly was not - which I think you have it there at the moment - was not in support of Council but I feel that if Mr Tighe wanted to do this he should have done this himself as an individual as I did mine as an individual, not as a Director of the Harbord Diggers Memorial Club. I think that was a very incorrect thing to do.



- 3.1.3.13 Some time later, the Inquiry received a letter from the General Manager of the Club stating that the Board had given the President authority to make his Submission at some time *after* he had sent the Submission, and after he had appeared at the Public Hearings. Since there is evidence of disagreement with the Submission provided by Ms. Boydell, it is difficult to believe that the Submission truly reflects the opinion of the whole Board. More pertinently, there is no proof that the opinions of the Board reflect those of the membership.
- 3.1.3.14 Unless a Club carried out a survey of its members, no inferences about their support (or lack of support) for the Council can be made. Submissions by a Club President, or oral evidence given by such a person, cannot be assessed as representing a support base equivalent to the number of members. In the case of Harbord Diggers any assertion that it does is extremely tenuous. According to Mr. Tighe's evidence, most members use the club for recreation, entertainment, or workouts in the gymnasium. Why such usage should have any connection with forming an opinion about the Council or the Councillors is not clear. As well, at least one third of the members do not live in the Warringah area.

#### Public Hearings Transcript – March 25 2003

THE COMMISSIONER: . . . How many members are there in the club?

MR TIGHE: 30,000, round figures. It rises and falls each year, naturally, with the closing and cutting off but it averages on that in years gone by - I suppose 10 years ago it was close to 40,000, I think, but I think that is just the change in demographics of the community.

THE COMMISSIONER: Yes. What proportion, roughly - I'm not after a specific figure here - but roughly, what proportion of that 30,000 would be residents of Warringah?

MR TIGHE: I would say two-thirds, and Manly, let me extend it to that on that part of the peninsula, within that 5 to 10 kilometre radius, sorry - yes, because there are a number of people from up Chatswood way and a lot of those people from further out who visit our gym daily.

- 3.1.3.15 One quarter of the positive-to-Council Submissions came from sports clubs. Seven of the 27 sports clubs' Submissions came from Junior Rugby League Clubs in the district. One of them reveals that a prominent Councillor has had long associations with Junior Rugby League. Another noted that the author had been recommended to the Federal Government for an honour because of his work with Junior Rugby League.

## Submission 062

... I have had a close relationship with the Warringah Council over the past 35 years. I have been Secretary, President and Patron of the Manly Warringah Junior Rugby League and have for very many years worked as a volunteer for Rugby League catering for the sporting needs of several thousand children and adults of the area. I was honoured in 2001 by Warringah Council nominating me to the Federal Government for an award in recognition of my service to sport in the area. . .

## Submission 177

... During this time the Harbord United Club has formed a lasting relationship with Warringah Council and it's Councilors. Both past Councilor Brian Green and Present Councilor Darren Jones have had boys who have played with the Club. . .

- 3.1.3.16 There is nothing wrong with the Council supporting Junior Rugby League. It is strange, however, that such a large number of Submissions were sent from these clubs when none was received from other significant sports played in the area, such as rugby union, soccer, Australian rules, basketball, hockey and cricket.
- 3.1.3.17 The President of Harbord United Junior Rugby League Club appeared at the Public Hearings. His chief concerns about the possibility of an Administrator being appointed were that the mutually favourable associations between Junior Rugby League and the Council might be disturbed.

### Public Hearings Transcripts – March 25 2003

THE COMMISSIONER: Could you outline the ways in which Warringah Council and its counsellors have assisted the junior rugby league club, yours and perhaps others?

MR BUTCHER: Yes. Over the years that I have been involved with the club, for 20-odd years I have been involved there with - had a good rapport with the Council, not so much as - nothing financially but material-wise if anything had to be done to the Harbord Park, which is our home ground, we have either been in contact with the Council or written to the Council and they have supplied us with materials for different things that we needed to do to keep the upkeep of the park in good state for the players.

THE COMMISSIONER: The Council maintains the park?

MR BUTCHER: The Council maintains the park. The majority of the maintenance we do ourself, anything that might need repairing that we can but any major work, the Council undertakes that.

THE COMMISSIONER: Similar sorts of arrangements exist with other clubs, to your knowledge?

MR BUTCHER: To my knowledge, yes, I think they do with other clubs, yes. Being a non profit organisation we rely heavily on the assistance from Council to help us in those situations in the major parts anyway, the materials and that.

THE COMMISSIONER: ... Your expectation is that this will continue into the future?

MR BUTCHER: Yes, we are hoping so, our concern is that if the Council isn't in there in future as the - well, the near future, our problem is that if an Administrator or someone who is appointed, we as a non-profit organisation will not be able to afford the fees that may be - come into being with the charge of the grounds and lighting and other situations like that and then in that way our sporting club might tend not to exist any more in the future.

THE COMMISSIONER: So you have some expectation that if the Council was not there, that some Administrator or whatever might impose costs that don't exist now?

MR BUTCHER: Well, that is correct, yes, yes.

- 3.1.3.18 The similarity of the themes in the Submissions from Junior Rugby League Clubs suggests that there may have been an orchestrated campaign warning the clubs that they would lose out unless the Council were allowed to run its course.

- 3.1.3.19 The problem in accepting that the views of the individual writers of each of the Junior Rugby League Clubs' Submissions (and indeed of Submissions received from other sporting groups) represents the views of all members of the club is similar to that raised in connection with the Harbord Diggers Submission.
- 3.1.3.20 For a President or Secretary of a club to claim to represent the membership of the club, the matter would have to have been raised at a constitutionally valid meeting, after the membership had been notified of the issue. If the members then voted in favour of the issue, a subsequent letter could claim to represent a valid opinion of the members.
- 3.1.3.21 Exactly the same problem arises with Submissions from Bowling Clubs, RSL Clubs, Surf Life Saving Clubs, Retirement Villages and the like: it is difficult to know how validly the views represented legitimately reflect the views of the members of those groups. The question can be similarly posed in respect of Submissions from educational institutions; they cannot be said to represent the views of the parents of those institutions.
- 3.1.3.22 Nine Submissions favourable to the Council were received from business groups in the area. Seven of the nine came from businesses directly related to the property industry. A very large proportion of the Submissions that were critical of the Councillors complained about their close links to the property industry.
- 3.1.3.23 There were 27 Submissions in support of the Council written by individuals (ie. they were not writing as representatives of a group). Nine of these appeared to be pro forma letters: six were very similar in their phraseology and structure and three were completely identical (Volume 3, Appendix 5). Five of these Submissions were written by acknowledged political colleagues of Councillors, and a Councillor's campaign manager wrote one of these. People who had already written on behalf of one of the sporting groups wrote two of the Submissions. The mother and father of one of the Councillors wrote two. Thus, only nine of the 27 individual Submissions might be considered to have come from people in the general public without direct links to the Council or Councillors.
- 3.1.3.24 The contrast between the pro-Council Submissions and the anti-Council Submissions is stark. The majority of the anti-Council Submissions is focused on specific issues, is extensive in the treatment of issues, and provides strong supporting evidence. Although some of these Submissions consider similar themes, they are highly individualistic in terms of their understanding of the issues and their personal relationship to them. There is very little evidence of collaboration between them, although in relation to a few issues (like John Fisher Park) there is some. The Submissions critical of the Council consider issues that stretch across the entire geographic area of Warringah.

- 3.1.3.25 The pro-Council Submissions are short, general, and repetitive. The only conclusion to draw is that the Submissions that are critical of the Council represent genuine concerns about Council issues and the general governance of the Council. The Council-supporting Submissions do not carry the same level of understanding or conviction.



## 3.2 Behaviour of Elected Representatives at Council Meetings

### 3.2.1 Codes of Conduct and Codes of Meeting Practice

3.2.1.1 Chapter 12 Section 360 (2) and (3) of the Local Government Act 1993 states:

#### **Local Government Act 1993 – Chapter 12, Section 360 (2) and (3)**

##### **360 Conduct of meetings of councils and committees**

- (2) . . . A council may adopt a code of meeting practice that incorporates the regulations made for the purposes of this section and supplements those regulations with provisions that are not inconsistent with them.
- (3) A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by it.

3.2.1.2 The Council is also required under Chapter 14 Section 440 (1–3) of the Local Government Act 1993 to prepare or adopt a Code of Conduct.

#### **Local Government Act 1993 – Chapter 14, Section 440 (1–3)**

##### **440 Code of conduct**

- (1) Every council must prepare or adopt a code of conduct to be observed by councillors, members of staff of the council and delegates of the council.
- (2) The Minister may prepare and issue a model code of conduct. A council may, but need not, adopt the model code.
- (3) A council must, within 12 months after each ordinary election, review its code of conduct and make such changes to it as it considers appropriate.

3.2.1.3 The Code of Meeting Practice derives from Chapter 12 of the Local Government Act 1993, which is titled “How Do Councils Operate”. Directives about the Code of Conduct are within Chapter 14 of the 1993 Local Government Act 1993, which is titled “Honesty and Disclosure of Interests”.

### 3.2.2 Differences between the Codes

- 3.2.2.1 The Code of Meeting Practice is different to the Code of Conduct. Because the Code of Conduct deals with the general theme of honesty, it might be considered as an umbrella under which the Code of Meeting Practice, along with a range of other things, lies. Whilst elected representatives are operating within the Code of Meeting Practice at Council and committee meetings, they are also obliged to operate according to the Code of Conduct at meetings as well.
- 3.2.2.2 There is general confusion amongst the Councillors and the General Manager about this point. When questioned about their adherence to the Code of Conduct at meetings, Councillors persistently answered in terms of the Code of Meeting Practice. The latter enjoins principles and procedures about the way in which meetings ought to proceed. The former describes the ways in which Councillors ought to behave towards each other at those meetings, and in other places.
- 3.2.2.3 Following the Section 430 Report in 2002 a series of amendments were made to the Council's Code of Meeting Practice. These amendments (Volume 3, Appendix 3) were primarily concerned with notification of agenda items, and procedural matters related to Motions, and Notice of Motions.

### 3.2.3 Lack of Respect for the Code of Conduct

- 3.2.3.1 Questioning at the Public Hearings focused on the December 2002 version of the Code of Conduct to some extent, because this represents the agreed pattern of behaviour that ought to be followed by Councillors. Besides the confusion between the Code of Meeting Practice and the Code of Conduct, there is ample evidence that the Councillors did not take the Code of Conduct seriously (this is considered in detail later in this Section). Mr. Barr, an Elected Member of the Legislative Assembly of the NSW Parliament and also a Councillor with Manly Council, summed up the reason for this in his appearance at the Hearings. Mr. Barr argued that because there are no sanctions for violations of the Code of Conduct Councillors tend to ignore it, he argued.

## Public Hearings Transcripts – April 4 2003

THE COMMISSIONER:

One of the major issues that has been raised in various submissions and indeed is part of the terms of reference of this inquiry relates to the behaviour of councillors. The Council has adopted a code of conduct. I don't know whether you are familiar with that code of conduct but in the general context of that do you think the code of conduct as adopted by Warringah Council is adhered to, is sufficient to ensure appropriate conduct by the councillors?

MR BARR: Well, the problem with codes of conduct is there's no sanctions. So that is really the fundamental issue there and so you could say they are not really worth that much because they don't - I mean councillors aren't, I don't believe, looking over their shoulders as to, you know, are they complying with the code or conduct or not. Most people in the sense of better obligation to the community do but I don't think it is - they are not doing in terms of, you know, adhering to the written word on a code of conduct. As I say, there's no sanction so there's no real teeth to a code of conduct at all.

3.2.3.2 Mr. Barr is wrong in his assertion that the Code of Conduct does not contain sanctions. Such sanctions range from requiring an apology, to a formal apology, to counselling, to reprimand, to making the decision public, to referring the matter outward to the Department of Local Government, and to prosecution.

3.2.3.3 Mr. Barr, in answer to a question put by Mr. Broad, pointed to the need for an Ethics Review Panel. In response to the Section 430 Report 2002 the Council resolved the following:

### **Council's Response to 430 Report 2002**

- A Committee, to be known as the Ethics Committee, shall be appointed by the Council.
- The "Ethics Committee" shall comprise external independent people or an external body experienced in the fields of ethical behaviour and managing conflicts of interest.

**Public Hearings Transcript – April 4 2003**

MR BARR:

. . . You may have a code of conduct, you may think it is a wonderful document. It could be as good as the ..... constitution but it is not necessarily going to do the job that you require. Really at the end of the day it depends on councillors and how they behave. The code of conduct becomes almost immaterial. So there needs to be something I think that has more teeth and my proposal was the sanction would not a legal-type sanction but really the sanction would be reports at the end of a year or before, whereby councillors who behaved in an unethical kind of way would be named in the reports and that would then be to their detriment at election time because it wasn't a judicial kind of panel that I was proposing.

But it is a very difficult area, this grey area of councillor behaviour and whether they are acting inappropriately or otherwise and you may draft the best code of conduct in the state and it does not mean to say it is necessarily going to mean much because I don't think it does. . .

- 3.2.3.4 The stark fact is that there have been violations of the Code of Conduct at Warringah Council meetings (see below: 3.2.5). The Councillors have either not recognised the violations, or have ignored them.
- 3.2.3.5 Councillors at Warringah Council excuse this by (1) putting the violations down to the “hurly burly” of debate, and (2) down to an argument that suggests that Councillors behave no differently to elected members of the State and Federal Parliaments. Examples from the Submissions of Mayor Sutton and Councillor Jones illustrate the tenor of these arguments.

**Submission 289**

I acknowledge that each councillor genuinely seeks to make the best decision but often the hurly burly of debate in the Council Chamber, and reported in the Manly Daily, creates an impression in the mind of an ordinary member of the public that the Council is in disarray. . .

We have what has been called robust debate at Council Meetings and it is acknowledged there have been unpleasant moments and verbal spats. However, I witness the same behaviour, and much worse, when I tune into State and Federal Parliament reports on the radio or television, where insults are regularly hurled. What is different? This is our system of government, and we do have a Code of Conduct that can be used if unpleasantries extend into something more serious. But this has not happened.



## Submission 294

... I am unaware of whether you, sir, have been into the NSW Parliament, affectionately known as the "bear pit", but I would suggest that if my children behaved as these so called leaders of society, they would be sent to their room until such time as they learnt their manners. Yet the hypocrisy that stems out of the Minister for Local Government's office is that this council can't get on. If that's not the pot calling the kettle black then I am a poor judge...

3.2.3.6 The Mayor, Councillor J. Sutton, claims that there have been no violations of the Code of Conduct. The evidence does not support this assertion.

The notion that the "hurly burly" of debate supersedes the need to abide by the Code of Conduct is a highly flawed idea.

3.2.3.7 The comparison of Councillors behaviour with behaviour of elected representatives in Parliaments is equally flawed. There is no doubt that intemperate language is sometimes used in those Houses, but this frequently leads to persons being suspended from the House. There is no doubt that serious allegations are sometimes made within those Houses about the behaviour or actions of other Members or of persons in the general public. It must be borne in mind that this is done under Parliamentary Privilege, and the tone of debate in such situations should not be seen as a mirror for debate in Council Chambers where such Privilege does not exist.

3.2.3.8 There are persistent boasts made within Local Government that it is the level of Government closest to the community. In many ways this is true.

Debates at State and Federal Parliaments are primarily concerned with the development or modification of policies, and the actions of Ministers in relation to those policies. Debates may range over several days (if not weeks or months) and debate generally involves both Lower and Upper Houses of the Parliaments. Only a tiny proportion of those within the community, who might be most particularly affected by the policies, hears the debates. Generally, such policies affect all members of society, and the Parliamentary voices of the debate do not, and cannot, be heard by all members of society.

Elected members of Councils do make policy. But, most of the debates that occur in Council Chambers do not concern the development of policy, but its application. Much of the debate that attracts public interest is concerned with development issues and the exercising of regulatory functions, for example determining DAs. These are of prime personal concern to the individuals or groups involved. These individuals or groups frequently attend Council meetings to understand how the elected representatives respond to their issues, and at times to try and convince the elected members to support their particular interest in the issues. Many of those who attend such Council Meetings might do so only once or twice in a lifetime. When members of the community attend Council Meetings, the behaviour of Councillors, therefore, comes under much closer scrutiny than the elected members of other forms of government. It is the Code of Conduct, rather than the Code of Meeting Practice, that should guide the behaviour of Councillors at these meetings.

### **3.2.4 Requirements of the Warringah Code of Conduct**

**3.2.4.1** The 1993 Local Government Act requires that the Code of Conduct be revised within 12 months of the formation of a new Council. The 1996 Warringah Council Code of Conduct was reviewed in November 2000 (a little over the statutory 12 months after the 1999 elections). It was further revised on December 4 2001, and again on May 28 2002. Following the Section 430 Report it was revised again in December 2002. The frequency of the revisions suggests that there have been continuing problems in respect of the Code of Conduct throughout the life of the current Council.

It was again reviewed during the Public Hearings.

**3.2.4.2** A comparison of the 2000 Code of Conduct with the December 2002 Code of Conduct illustrates the way in which the emphasis has changed.

## Warringah Council: Code of Conduct 2000

### WARRINGAH COUNCIL: CODE OF CONDUCT 2000

#### *1.4 RESPONSIBILITIES OF COUNCILLORS, MEMBERS OF STAFF AND DELEGATES*

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##### *1.4.1 Equitable treatment of people and situations*

A Councillor, member of staff or delegate must:

- Always seek to resolve matters in the public interest;
- Not act contrary to the law;
- Not act unreasonably, unjustly or oppressively or in a discriminatory manner;
- Deal with like situations in a like manner, but treating each matter on its merits;
- Take all relevant information into consideration and must not take any irrelevant information or opinions into consideration;
- Take all reasonable steps to ensure that the information upon which decisions or actions are based is factually correct and that all relevant information has been obtained;
- Treat each other and members of the public fairly and equitably and with respect, courtesy, compassion and sensitivity; . .

**Warringah Council: Code of Conduct 2002 (cont.)****1.4 PARTICULAR OBLIGATIONS OF COUNCILLORS, MEMBERS OF STAFF AND DELEGATES.*****1.4.1 Councillors & Delegates***

Councillors and Delegates when conducting themselves must:

- Always act in the public interest and act fairly and impartially;
- Promote the positive image of local government when dealing with the public;
- Refrain from any form of conduct which may give rise to the reasonable suspicion or appearance of improper conduct or partial performance of their public duties;
- Not act in a manner that would bring Council into disrepute or lay the way open for legal action to be taken in any Court to the detriment of Council; and
- Refrain from undertaking site inspections, by themselves, in relation to development applications before the Council by, and/or having individual meetings with objectors, applicants or their representatives.
- Not make public comment in support of, or in opposition to, a development application submitted to the Council, before they have had the opportunity to read and consider any staff report disclosed in an Agenda for a meeting of the Council or any of its Committees.
- Not discuss with, lobby, direct, or influence a member of staff on the content of, or recommendation in or processing procedure or timing of, any report to the Council by a staff member or consultant. This does not prohibit a Councillor from inspecting any material the subject of the report, or in seeking clarification or informed advice from staff on the matter, or on aspects of this professional report.
- Immediately advise the General Manager in writing if they apply to take the benefit of any any bankrupt or insolvent debtors, compounds with his or her creditors or make an assignment of his or her remuneration for their benefit.
- Comply with the Code of Meeting Practice
- Take all reasonable action possible to ensure that Council can make decisions by having a quorum for its meeting and not wilfully and deliberately obstruct a Council in the exercise of its functions by leaving a Council Meeting in order that the meeting has to be abandoned through lack of quorum.
- Conduct themselves in accordance with acceptable standards of behaviour and the following are for guidance:
- Speak to all members of the public in a manner in which you would expect to be spoken to.
- Show respect for the position held by all members of council whether members of the same faction or not.
- Allow other Councillors to speak without derogatory comments, interjections, interferences, derisions or other disruptions



## Warringah Council: Code of Conduct 2002 (cont.)

- Use Council resources effectively and economically in the course of his or her public or professional duties,
- must not use resources for private purposes (except when supplied as part of a contract of employment) unless such use is lawfully authorised, proper payment is made where appropriate, or in accordance with any management direction.
- Not convert to his or her own use any property of the Council; and
- Use computer facilities for acceptable purposes only, and agree to the following principles:-

In the year 2000 Code of Conduct there were 11 items under the heading: Equitable Treatment of People and Situations. By December 2002 this list had increased to 14 items.

3.2.4.3 In terms of indicating which aspects of the Code of Conduct were troubling the Council, the changes are instructive.

The year 2000 instruction to: *Not act contrary to the law* has been replaced by two injunctions:

*refrain from any form of conduct which may give rise to reasonable suspicion or appearance of improper conduct or partial performance of their public duties and not act in a manner that would bring Council into disrepute or lay the way open for legal action to be taken in any court to the detriment of the Council.*

Lurking behind these changes, one can only assume, is the very public debate over the propriety of the actions of certain Councillors. These concerns are expressed in a number of Submissions, and by some persons at the Public Hearings.

These public concerns have to a large degree been concerned with matters related to development applications and other property-related issues. In the revised (December 2002) Code there was inserted three new, and lengthy, items dealing with property issues. These focus on matters to do with site inspections, the making of public comments on development applications, and influencing staff in relation to development applications.

3.2.4.4 The 2000 Code of Conduct stated that Councillors *must treat each other and members of the public fairly and equitably and with respect, courtesy, compassion and sensitivity.*

These injunctions have applied throughout most of the life of the current Council. The evidence presented in 3.3.5 illustrates that as far as many Councillors are concerned they were just hollow words.

The fact that the Code was so repeatedly violated has been recognised, in an oblique fashion, by changes made to the Code. This has led to an enlarged series of requirements in the December 2002 Code. These are that Councillors must:

- *Conduct themselves in accordance with acceptable standards of behaviour and...*
- *speak to all members of the public in a manner in which you would expect to be spoken to*
- *show respect for the position held by all members of council whether members of the same faction or not*
- *allow other Councillors to speak without derogatory comments, interjections, interferences, derisions and other disruptions.*

Had Councillors followed the requirements of the 2000 Code and treated each other with respect, courtesy, compassion and sensitivity there would have been no need for the enlarged, and more pointed, set of requirements in the December 2002 version of the Code. The changes are a tacit admission that violations had taken place.

### 3.2.5 Violations of the Code of Conduct or Code of Meeting Practice

3.2.5.1 Councillors, who have served on the Council for a long time, deny that there have been any violations of the Code of Meeting Practice. If there were a hint of such it is simply put down to things that happen in a political forum. Councillor Jones offered these views (March 27 2003) when appearing at the Public Hearings.

#### Public Hearings Transcript – March 27 2003

THE COMMISSIONER: . . . You would have been [sic] familiar with the Council's code of meeting practice?

MR JONES: Yes.

THE COMMISSIONER: Do you believe that the code of meeting practice has generally been followed in Council meetings?

MR JONES: I believe so.

THE COMMISSIONER: Were there any breaches of the code, in your opinion?

MR JONES: I don't - not that I would - readily spring to mind. There is - there is going to be times that - where someone may take a point of order on someone. If you regard that as a breach of the table, that does happen. But those issues are resolved there and then in the spirit of the meeting.

Again, I repeat the fact, we are in a political forum and I see my job is to be as convincing as I can in putting forward my arguments in support of what I believe in. Sometimes in the head of the moment, things may get a little bit out of thing - but they are brought into line instantly.

THE COMMISSIONER: So you see no real breaches that the code had been - in practice?

MR JONES: No.

THE COMMISSIONER: You would be aware, of course, that under section 672 of the Local Government Act, [if] there were such breaches that would be the [sic a] failure of the Council to [sic] conduct [of its] business. You say there are none?

MR JONES: Look, in the - again in the main . . .

The Mayor, Councillor J. Sutton, is the second most experienced Councillor in terms of length of service. She demonstrated how even such an experienced Councillor confused the Code of Meeting Conduct with the Code of Conduct. During her appearance at the Public Hearings on March 20 2003 the following discussion took place.

#### **Public Hearings Transcript – March 20 2003**

MS SUTTON:

. . . We give effect to the code of conduct. That's my answer to that question.

THE COMMISSIONER I'm asking in what circumstances, [this happens] give me an example of where you would see a breach of the code of conduct?

MS SUTTON: Well, that's - thank you. I'll answer that question now. That question would be - that would be if a councillor refused to sit down when asked to, refuse to finish his or her speech at the time when asked to. Screamed out at the public gallery which I don't - it may have happened once, but I can't remember. What else? Refuse to - I can't think of another example. It would be if they called out, if they refused to sit down, which they always do. If they abused the chairman which I can't imagine anyone ever doing. Sometimes if a councillor sort of has a bit of a go at a member of staff I would ask the councillor not to do that and they would always comply with that. I've never expelled a councillor for that conduct. I've never had any even mild reason, any provocation whatsoever to expel for poor conduct and in 23 years, Mr Commissioner, I have never been expelled for poor conduct.

THE COMMISSIONER: Yes, it wasn't quite my question but thank you.

Councillor Caputo, another very experienced Councillor, expressed strongly his belief that there was no confusion between the two Codes...



### Public Hearings Transcript – March 24 2003

THE COMMISSIONER: Do you think that sometimes there might be some confusion over the code of conduct itself and the meeting practices documents that you have?

MR CAPUTO: No, I don't think so, no.

THE COMMISSIONER: No.

MR CAPUTO: No.

Councillor Caputo appeared to be on less certain ground when the focus settled on the Code of Conduct than he was when the context was the Code of Meeting Practice.

### Public Hearings Transcript – March 24 2003

THE COMMISSIONER: ... you think councillors in general, understand the code of conduct and why are there so many changes to it?

MR CAPUTO: I think most of them do. Well, there is always change in Local Government or in any business that you are in ...

... because we have had - you know, it has been discussed at Council meetings, that if there is a change that is going to happen - I mean, it is discussed with the General Manager and the councillors, so if there are changes and we have discussed changes and it has happened through consultation of the Council and the General Manager and then it comes to the Council for determination and the Council at that time can either agree with it or not agree with it. So I think it is everyone's prerogative to ask questions before and after.

THE COMMISSIONER: There was a substantial change of the code of conduct following the Mitchell Report, ... - why was that needed? Why did it happen?

MR CAPUTO: Well, I would say that to reinforce certain things in the code of conduct that Mr Mitchell had recommended. So, I mean, it is quite simple.

THE COMMISSIONER: Yes, but does it suggest that prior to that ...

... change, there were unsatisfactory parts of the code of conduct that didn't cover certain situations, is that - - -

MR CAPUTO: Well, that might be the case, and I don't think it was unsatisfactory, because I think it is a good code of conduct, you know, it is done through the consultation of Local Government Department and ICAC and also the LGA. So I don't think - I think it was very good actually, I think it is one of the better ones from my experience and of course, you are always going to improve and that is what happened.

3.2.5.2 Councillor Jones, the most experienced Councillor amongst the elected representatives, offered an optimistic view of violations of the Code of Conduct when appearing before the Public Inquiry on March 27 2003.

**Public Hearings Transcript – March 27 2003**

THE COMMISSIONER: . . . [1]  
Would you like to comment on, whether in your view, there have been any breaches of these aspects of the code of conduct during the term of the current Council?

MR JONES: I don't believe there has . . .

3.2.5.3 The General Manager (appearance at the Public Hearings March 19 2003) was confident in his assessment that there were no problems with the behaviour of the Councillors at Council meetings. In the process of doing so there is exhibited some confusion between the Code of Meeting Practice and the Code of Conduct.

**Public Hearings Transcript – March 19 2003**

MR BLACKADDER: Commissioner, in the draft final report by Mr Mitchell, and in my response to that or it might have been the Council's response to that draft final report, it referred to, in item 313, councillor misbehaviour and failure of duty, the Council response indicated:

It has been established in the response to item 3.7 above that whilst Council meetings can be the scene of vigorous debate the

alleged misbehaviour by councillors in Council meetings is not supported by the facts. The draft final report acknowledges in paragraph on page 23, that the alleged misbehaviour is trivial, and certainly less serious than maladministration and corruption.

## Public Hearings Transcript – March 19 2003 (cont.)

THE COMMISSIONER: On pages 16 and 17 of your submission, you deal with disorderly conduct at meetings. You provide figures for the number of adjournments declared by the Chairman during the term of the current Council and that is up to 4 February 2003. You comment on that figure that it clearly demonstrates that disorder at Council meetings has resulted primarily from the behaviour of members of the public gallery and not councillors. Do you believe that adverse behaviour by councillors and by the public is and has been treated even-handedly?

MR BLACKADDER: Treated even-handedly by?

THE COMMISSIONER: Well, in the submissions, people complain about the behaviour of councillors at Council meetings. Other people complain about the behaviour of the public at Council meetings. This [pages 16 and 17 of the General Manager's Submission] seems to exonerate councillors but put the blame on disorderly public galleries.

MR BLACKADDER: I think, Commissioner, as far as the councillors themselves are concerned in their conduct in Council meetings, that really should be a matter for the councillors to determine. They have recourse to points of order. They have recourse to censure motions. They have recourse to other abilities to question conduct within the meeting. So the records seem to indicate or my knowledge of those records seem to indicate the small number of points of order, the small number of censure motions suggests that meetings are conducted largely within order.

3.2.5.4 In contrast to the certainty of the three senior Councillors that there have not been breaches of the Code of Conduct, Councillor Colman in his appearance at the Public Hearings on March 24 2003 stated that he believed that most Councillors did not understand the Code.

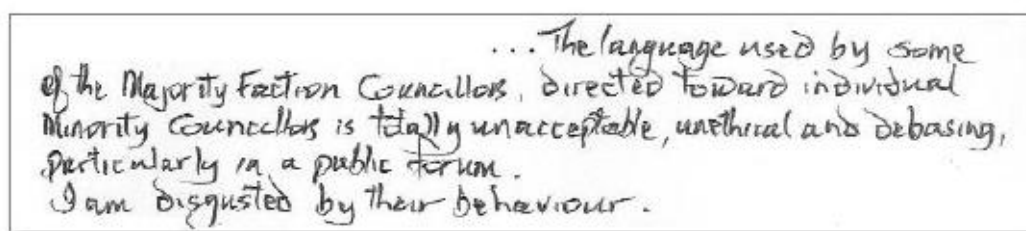
Councillor Forrest (Submission 307) wrote of his concern at the lack of respect and disregard for the Code of Conduct that certain Councillors have displayed. He submitted *“that there are many breaches of the Code of Conduct that has contributed to a lowering of confidence in the Council by the general public”* He cited four particular issues:



- exclusion of Councillors from meeting – physical and verbal abuse (this will be considered in 3.3)
- language
- breaches of privacy (considered in 3.4)
- abuse of members of the public (considered in 3.4)

3.2.5.5 The issue of the use of language is one that has been particularly referred to in the general Submissions and appearances of members of the public at the Public Hearings. The distaste that this engenders is well described in Submission 017 (one of many to refer to it).

#### Submission 017



... The language used by some of the Majority Faction Councillors, directed toward individual Minority Councillors is totally unacceptable, unethical and debasing, particularly in a public forum. I am disgusted by their behaviour.

3.2.5.6 One particular aspect of the use of language appears to have disgusted a large number of people who witnessed it. They claim that Councillor Ruth Sutton was regularly addressed as Councillor Arse Sutton. Councillor Forrest in his Submission also claimed that: *“Early in this term of Council Cr Darren Jones, Cr Peter Moxham, and other members of their faction stated addressing Cr Ruth Sutton as ‘Cr R Sutton’. This was often a source of giggles and amusement by those who used this form of address. Despite the fact that Cr Julie Sutton is not referred to as ‘Cr J Sutton’, and repeated requests by Cr Ruth Sutton to stop offending her in this manner, this behaviour is still continuing”*

3.2.5.7 In his appearance at the Public Hearings on March 20 2003 Councillor Forrest was questioned about this matter.

#### Public Hearings Transcript – March 20 2003

MR FORREST: It happens all the time. It has happened since early in this term under the - back when Councillor Moxon was Mayor, right through to just very recently.

THE COMMISSIONER: So does [it] not happen now?

MR FORREST: It didn't happen on Tuesday night's meeting but it happened the previous one the week before, or the meeting before.

THE COMMISSIONER: And you see that as a breach of the code of conduct?

MR FORREST: Yes, I do, a clear breach.



When Councillor Ruth Sutton appeared at the Public Hearings on March 26 2003 she was questioned about the issue. Like Councillor Forrest she said that it has happened frequently over the life of this Council, and that it continued through into 2003.

### **Public Hearings Transcript – March 26 2003**

THE COMMISSIONER: Okay. But that is not really the question I was asking - - -

MS SUTTON: I'm sorry. Yes.

THE COMMISSIONER: - - - which was breaches of the Code of Conduct but I can leave that there. In the submissions and in other places, there have been allegations regarding the use of inappropriate language, threatening - demeaning terms and there has been particular mention of you in that context. Can you tell us whether that has happened?

MS SUTTON: Yes. Yes, that's happened and it's quite ..... if you listen to the tapes of Council, and it keeps on going on. It's been a little bit better in the last couple of weeks but it's a constant put down, if you like, in the way certain Councillors speak to me and I ask again and again if Councillor Julie Sutton is addressed as Councillor Julie Sutton, could I be addressed as Councillor Ruth Sutton to make that difference but as late as the meeting before last, a particular Councillor turned around and said: yes, Councillor R. Sutton.

3.2.5.8 The following day this produced an angry outburst from Councillor Jones.

**Public Hearings Transcript – March 27 2003**

COMMISSIONER:

The code goes further:

To require councillors to refrain from conduct which may cause a reasonable person unwarranted offence or embarrassment.

There are other points in the code which adopt this general theme. Would you like to comment on, whether in your view, there have been any breaches of these aspects of the code of conduct during the term of the current Council?

MR JONES: I don't believe there has. There have been allegations made against me. It is not the first forum in which this allegation has been made, by Councillor R. Sutton, and the statement attributed to her is that in fact, I call her A-R-S-E. Now, for the Commission's benefit, all the minutes of the Council meeting where we record who has voted for and who votes against, are referred - I'm Jones, Caputo is Caputo, and it is R. Sutton.

Never once - she might not like being called "R", but never once, has that councillor ever risen to her feet and raised the issue what she is complaining to you about. Now, I would suggest to the Commission this morning, that this is an act of skulduggery. A vicious attempt to try and denigrate my good name that I worked hard over a number of years to not only maintain, but to keep the image that the community expects of a councillor.

It is a very poor and feeble attempt, without any justification, to substantiate that, and I absolutely refute any way, shape or form, the connotation that has been alluded to in relation to that.

THE COMMISSIONER: Thank you. I just make sure I've got this clear. You are saying that on not, even one occasion, . . . - in the Chamber - has she stood up and said she does not want to be addressed in that manner?

MR JONES: No. What I said - she does not like being called Councillor R. Sutton, and you heard her say here yesterday, she nearly leapt in front of the table in doing it, trying to mimic one of my colleagues. Never once has she risen to her feet and said: please don't call me A-R-S-E. What she has said, she likes to be called Ruth, but not once - and I say it is an act of skulduggery.

Given the number of references in Submissions and Hearings to the term ARSE being used in reference to Ruth Sutton, <sup>5</sup>Councillor Jones' outburst is at the very least, ingenuous.

<sup>5</sup> The Public Officer, Mr Symons, in a memo to Councillor Jones (February 26 32003) states that he had not "personally heard you address her [Ruth Sutton] as stated ie Councillor "arse" Sutton". Given the weight of evidence to the contrary Mr. Symons must have defective hearing.

### 3.2.5.9

Councillor Ruth Sutton had not specifically referred to Councillor Jones in her appearance, but Councillor Jones seems to have felt that it was an attack on him, and “*an act of skulduggery*”. This show of righteous anger was unconvincing and contrived. It smacked more of a guilty conscience than that of an aggrieved and put-upon person.

Councillor Jones says that not once has Ruth Sutton stood up and asked not to be called ARSE. The reason seems obvious. She is a lady of some refinement and is not prepared to stoop to the level of those who have demeaned her. Instead she has appealed to them to call her Councillor Ruth Sutton, in the same way that the Mayor is referred to as Councillor Julie Sutton<sup>6</sup>. To say that she has not objected to the term is pure obfuscation of the real issue. The woman has consistently, and mercilessly, had her sensibilities attacked. This is a pure, deliberate, nasty, and significant breach of the Council’s Code of Conduct, and no one has done anything about it.

This alone has represented strong grounds for members of the public to repudiate the conduct of the Councillors involved.

The attention given to the Ruth Sutton incidents by the public is a result of her position as an elected member. In a disturbingly large number of Submissions members of the community recorded their general contempt for the behaviour of the elected members at Council Meetings. Volume 3, Appendix 5 provides excerpts from a sample of the Submissions that express such sentiments. Many Councillors defended their conduct at meetings, ascribing any indiscretions to the ‘hurly burly’ of debate. The strong reactions from people who have attended the Meetings suggests that misbehaviour was a frequent characteristic, and that they considered that this brought dishonour on the elected members themselves, and on the Council as a whole.

A phrase in one Submission seems to summarise the feelings of many in the community: “*Meetings are a complete farce*”.

### 3.2.5.12

The litany of complaints about the behaviour of the elected representatives include the following terms:

- appalling behaviour
- crude and inappropriate language
- abuse
- ridicule
- contempt
- dictatorial behaviour
- arrogance
- insults

<sup>6</sup> Analysis of this audio tapes of Council meetings record Councillor Julie Sutton calling her name sake ARSE Sutton.

- mockery
- belittlement
- breaking the Code of Meeting Practice
- disregarding the public
- affording no right of reply for the public

Any Council that behaves in such a way maligns the status and reputation of Local Government. It should not come as a surprise that many in the community feel that the elected members who have allowed this to happen are not fit to hold office.

**Submission 143**

... I have attended council meetings and have noticed certain majority bloc councillors being extremely arrogant and provocative to minority bloc councillors and the public gallery...

**Submission 087**

... I have been constantly appalled with councillors' behaviour (in particular Councillors Darren Jones, Julie Sutton, John Caputo, David Stephens and Peter Moxham).

I feel that they have ridiculed the other four councillors (Councillors Peter Forrest, Ruth Sutton, Kevin Smith, and to a lesser extent Phil Coleman). These four new councillors have been told on many occasions that they do not have the experience of the other councillors, and to more or less take their direction from these councillors (particularly by Darren Jones and Julie Sutton).

Yet on many occasions, I feel that these "more experienced" councillors have shown a blatant disregard for due process and a basic misunderstanding of the rules of debate and council...

**Submission 114**

There is not enough respect for community values. Sometimes community groups are subject to ridicule and derision. Sometimes inaccurate assumptions or accusations are made. This is unfair as individuals and groups cannot defend themselves in a public forum. There is no right of reply by persons in the gallery during the course of debate by councillors. Individuals cannot address the council to correct the misinformation. In fact, those accused may not even be present to witness what is said. A warped impression is created which undermines the reputation of the group or individual.

When some councillors do not focus on issues, it conveys the impression that letters or submissions have not been read...



### **Submission 197**

...I was absolutely astonished by the behaviour of Crs Moxham, Stephens, Jones, Caputo and Julie Sutton. I have never seen anything as unprofessional and undemocratic in my life. I remarked to my wife after the meeting that if the people of Warringah could see these Crs in action and their appalling behaviour, they would never vote for them again...

### **Submission 163**

... When speaking before Council I have personally been abused, ridiculed and treated with contempt by some of the majority block Councilors. The Councils own audiotapes if obtained by this Commission of Inquiry will prove what I have just written. No one, no member of the general community should have to endure the verbal and body language abuse and violence that I and many others, including the minority block Councilors, have had to suffer at the hands of our Elected Local Government Officials – the majority block Councilors. . .

### **Submission 106**

I did write to the council voicing my concerns and asked for an opportunity to speak at the council meeting where this application would be determined. Following my 5 minutes explaining my concerns at the meeting, Councillor Jones spoke in favour of the development, even though it did not meet councils LEP requirements. He not only spoke, but he ridiculed me for voicing my concerns, explaining to all that they (the council), must be wasting their money paying high salaries to their staff, if I can raise issues with the development that their staff have no issues with...

**Submission 147**

When chairing meetings, both Cr Darren Jones and Cr Julie Sutton have often been rude and dictatorial, have interrupted and harassed Community councillors, have refused to accept points of order and urgency motions from the Community councillors and have criticised the Community councillors for the most petty of reasons. However, as far as I can see, they have allowed their Old Guard colleagues to ignore meeting protocol and their Code of Conduct. They have closed or adjourned council meetings without giving adequate reason, sometimes without even voting on the matter. . .

Cr Darren Jones has been particularly rude to Cr Ruth Sutton on many occasions. Normally he refers to councillors by both their surname and first name, but in Ruth Sutton's case he has made a point of referring to her as "R Sutton" and appears to deliberately pronounce this as "Arse Sutton". This is grossly insulting and appears to be a deliberate attempt to intimidate her. Cr Darren Jones appears to ignore input from the community councillors and has read newspapers during their speeches.

An example from Cr Julie Sutton is, that during one meeting she spent most of her speech praising herself and belittling the community councillors. She was supposedly speaking in favour of a DA application, which as far as I could tell, she did not even mention. The Chairman, Cr (then Mayor) Darren Jones at no stage asked her to restrict her remarks to the item under debate, even though he regularly does this to the community councillors.

Cr Julie Sutton frequently interrupts community councillors when they are speaking, to make irrelevant and trivial comments such as to criticise their pronunciation or grammar and challenge them to define words they are using. The Old Guard councillors frequently disrupt meetings by talking, getting up and walking around, or leaving the room, while the community councillors are speaking. . .

**Submission 297**

*Warringah Council meeting 20.3.2002 - Mayor Jones advised members of public, that if they continued to act in a disruptive manner while in public gallery, they would be subject to expulsion and/or fine. This followed an incident at council meeting 19.2.2002 where a member of the public in Public Gallery was yelled at in abusive manner by Mayor Jones.*

**Submission 212**

Meetings are a complete farce and the four minority councillors - Peter Forrest, Kevin Smith, Ruth Sutton and Phil Colman - are ridiculed, insulted and the whole attitude of the five majority councillors is extremely vindictive...

**Submission 191**

... Councilors Moxham, Jones, Caputo and J. Sutton display appalling manners during Council meetings where they insult, mock and attempt to belittle the four newer Councillors, Smith, Forrest, Coleman and R. Sutton, in extremely childish ways . . .

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## 3.3 Factionalism within the Council

### 3.3.1 The Origins of the Problems

3.3.1.1 In the 1999 elections five new Councillors were elected to Warringah Council. This meant that the majority of Councillors were newly elected. In an astonishingly short time the four Councillors who were re-elected<sup>7</sup> appear to have acted in concert against the new Councillors. All but one of the newly elected Councillors received substantial support at the election. The one who didn't, Councillor Stephens (in fact receiving only 19 primary votes) gained his place on the Council through the distributed preferences of the current Mayor. With that background it is not surprising that the Councillor was allied with the current Mayor. That provided a group of five Councillors who had the capacity to win any vote if they chose to act together. This gave rise to a popular perception of a majority group in the Council.

3.3.1.2 The remaining four newly elected Councillors did not enter the Council as a block. They had no strong background of political affiliation with each other. They had not offered the voters a united platform of policies.

The four Councillors, who were re-elected curiously were not united in their political views despite linking to form a majority. One was a former candidate for the State seat of Manly, representing the Liberal Party. Another had once stood for Parliament representing the ALP. Others had close connections to the Liberal Party.

3.3.1.3 In many Councils in New South Wales there are examples of where control of the running of the Council's affairs is held by one faction or another. Mostly these factions represent the political or policy affiliations of the group that gain ascendancy at the polls. In a sense they gain their majority because they have presented a united front to the voters. This does not happen in all cases, and there are examples of majorities being formed after the election. Again the bargaining that might accompany the formation of a dominant group is usually around issues that are enunciated in the public domain.

What seems to be different about the Warringah situation is that the coalition of the dominant group appears to have been initially generated, simply because they had been on the Council before. In the public image they became known as the "old guard".

<sup>7</sup>Councillors J. Sutton, Jones, Moxham and Caputo.

- 3.3.1.4 In a large number of Submissions there is public disquiet about the consequences of this in terms of voting patterns. The issues surrounding the so-called 5/4 voting patterns are considered in 3.3.2. The focus here is on the conduct of the “old guard” Councillors in relation to the new Councillors. There are numerous complaints in the Submissions and at the Public Hearings about the treatment of the new Councillors by the “old guard”. The view of many of those Submissions is that the conduct of the “old guard” has sapped people’s confidence in the decision-making processes of the Council.
- 3.3.1.5 An explanation of why the “old guard” was formed probably lies with the election results. Four of the five newly elected Councillors received substantial support from the voters in the election. The fact that support was strong is illustrated by the following extract from Councillor Ruth Sutton’s appearance at the Public Hearings on March 26 2003. The extract also demonstrates that the four new Councillors who received substantial votes were independent of each other. The political reaction of the “old guard” appears to have been to coalesce against the publicly supported, but unlinked, group of new Councillors.

#### **Public Hearings Transcript – March 26 2003**

THE COMMISSIONER: . . .  
You were elected in Ward A in the 1999 Council election?

MS SUTTON: That's right.

THE COMMISSIONER: Your primary vote in that election was 4424, I think, giving you the second highest primary vote in that ward. [Would] that be correct?

MS SUTTON: I've forgotten. I'm sorry.

THE COMMISSIONER: Was [did] the highest primary vote in your ward[to] going by Councillor Colman of 5724?

MS SUTTON: Yes, that's correct.

THE COMMISSIONER: Did your individual vote, your individual primary vote, exceed that of all the candidates in Ward B?

MS SUTTON: I've no idea.

THE COMMISSIONER: . . . In terms of the final votes after the distribution of preferences, did you and Councillor Colman top the voting in Ward A? . . .



## Public Hearings Transcript – March 26 2003 (cont.)

MS SUTTON: I thought so. Yes.

THE COMMISSIONER: Yes. Did Councillor Forest top the voting in Ward B?

MS SUTTON: I don't know.

THE COMMISSIONER: I think he did.

MS SUTTON: Thank you.

THE COMMISSIONER: This meant that of the four people newly elected to Council, three had gained the largest share of the distributed votes in their wards.

MS SUTTON: Yes.

THE COMMISSIONER: Do you see that as an indication of substantial community support for those Councillors?

MS SUTTON: Yes. I did have the feeling that there was substantial support and those sorts of things validated that.

THE COMMISSIONER: Right. But you were all new to Council?

### 3.3.1.6

The new Councillors very quickly found that they were confronted by antagonistic forces within the Council. The following extract from Councillor Ruth Sutton's appearance at the Public Hearings on March 26 2003 illustrates their experience.

**Public Hearings Transcript – March 26 2003**

THE COMMISSIONER: You mention intimidation, you mentioned that you were told there were certain things that you couldn't do and you found out subsequently you could.

MS SUTTON: Yes.

THE COMMISSIONER: What - can you give me some examples?

MS SUTTON: There was a matter that was brought before Council that the minority of those who have since become known as the Minority 4, we didn't know each other well when we came in at all. But there was some matters the Minority 4 wanted to - there was a matter we wanted to rescind, I can remember, quite early and I rang the General Manager and asked if we could rescind that and he said no, it couldn't be rescinded. Someone else told me it could be rescinded. So I went into Council on the - the next morning to ask about that.

The Mayor came down to see me and said: look, why don't you just put us all into ICAC. That's all you want. You just want to get rid of the General Manager and you want to put the Council before ICAC. Well, I was astounded. I had never heard of that. I had never heard of getting rid of the General Manager and I did not know what the Mayor was talking about. So I said that. I said I didn't want to talk about it and I said I just wanted word from the Department of Local Government as to whether or not, because I'd been told you could appeal to the Department of Local Government on those matters, whether or not we could rescind the matter in hand.

So then we were told we could rescind it and we did and then discuss it at the next meeting.

THE COMMISSIONER: . . . Are you aware that failure to conduct Council and committee meetings in accordance with the Act, Regulation or Council's Code is a breach of the Act under section 672?

MS SUTTON: Well, I have become familiar with that since we were - we have been in the Commission. However, I was not actually aware of the - of that beforehand.

## Public Hearings Transcript – March 26 2003 (cont)

THE COMMISSIONER: . . . Where you perceive breaches to have taken place, what steps were then followed to rectify those?

MS SUTTON: Well, being a teacher, I've always followed a hieratical pattern and could you give me an example, please, of what breaches you are thinking of?

THE COMMISSIONER: Well, you mentioned intimidation, for example.

MS SUTTON: Okay. Yes. Well, it's hard to know what to do about that. . .

MS SUTTON: . . . I was just going to go into the process I went through but if you'd rather have another image, I'd be happy to try and think of that. What I wanted to do and it was my instinct as a teacher to do was to go to the principal or go to another person in another school and discuss the matter. However - so - because I'd only just left - I'd only just retired from school a month or two before, a couple of months. I found I couldn't go to the General Manager.

That was very intimidating in itself, the way the interview was conducted. It wasn't a friendly matter at all and - - -

THE COMMISSIONER: This, of course, is not the present General Manager?

MS SUTTON: No, no. Not the present General Manager. So that was difficult and so I went to the Mayor because we had actually elected the present Mayor - sorry, the Mayor at that time had rung us up and asked us would we support him and had come to a meeting which was held and we had agreed to do that and I, in the general scheme of things, I understood that within the Council the offices of General Manager and Mayor were separate but they cooperated, that the General Manager was in charge of the staff and that the Mayor was there as an assistant to Councillors.

So I went to the Mayor about a number of difficulties but the answer I always got was: well, I'm here for the staff and I would say: well, I can't understand that. I thought you were - the General Manager is here for the staff. No, I'm here for the staff and I can't talk to you or he - I tried - because by then cracks were beginning to appear in the consultation process between the nine Councillors I asked for mediation that if we could all go through a mediation process.

THE COMMISSIONER: How long after you had joined the Council were you asking for mediation?

MS SUTTON: In the November or December, I think, of that first couple of months.



3.3.1.7 Her mention of the Code of Meeting Practice is significant because it was at the Council Meetings that the new Councillors began to decide that the “old guard” was forming a coalition against them. At an early stage Councillor Ruth Sutton considered that there were ethical problems associated with the meetings.

**Public Hearings Transcript – March 26 2003**

THE COMMISSIONER: . . . when were you made aware of the Council’s Code of Meeting Practice?

MS SUTTON: I think I became interested in Council ethics pretty soon after I was elected and I think it was - I’ve no doubt that the Code of Conduct was available but I wasn’t aware of it. I became interested in ethics and I began looking at what was available and the Code of Meeting Practice I was more aware of than the Code of Conduct. So I contacted the Saint James Ethics Centre and did a lot of things there and tried to work something out to put before Council for an ethics group. . .

3.3.1.8 Councillor Ruth Sutton also claimed that there had been breaches of the Code of Conduct.

**Public Hearings Transcript – March 26 2003**

THE COMMISSIONER: Thank you. Let me raise another issue. The Code of Conduct requires in its present form, this is the amended Code of Conduct - - -

MS SUTTON: Yes.

THE COMMISSIONER: - - - that Councillors treat each other and members of the public fairly, equitably and with respect, courtesy, compassion and sensitivity. The Code goes further to require Councillors to refrain from conduct which may cause a reasonable person unwarranted offence or embarrassment. There are other points in the Code which adopt this general theme. Would you please comment whether in your view there have been breaches of these aspects of the Code of Conduct whilst you have been a Councillor?

MS SUTTON: Yes, I think there have been. - - -

3.3.1.9 Councillor Smith in his appearance at the Public Hearings on March 20 2003 gave a strong indication of the sense of alienation, verging on hopelessness, that he felt from the earliest days of his taking up his position as an elected member. He specifically blames the “old guard” Councillors for the problems within the Council.



## Public Hearings Transcript – March 20 2003

MR SMITH: Thank you. If I can state my experience as being a councillor on Warringah Council has been one of disillusionment and disappointment.

THE COMMISSIONER: Could you amplify that?

MR SMITH: Yes. I think that in terms of when the very early months of being on Council, being a rookie councillor for want of a better word, uninitiated green behind the ears, I felt that all councillors, fresh councillors, would be given an opportunity to learn as part of a process and be guided by senior councillor as part of that learning process. It is unfortunate that I found, in representing the needs of the community, very early in the piece, that I was threatened by the then General Manager, that if I did not withdraw a particular statement that I could lose my house.

Legal action would be taken against me to ensure that I would lose my home. That was said publicly, in the Council Chambers, in front of a largely packed gallery. I think from that, that tended to set the tone of the way that, not necessarily the way that I behaved, I certainly was very concerned in that I felt that I representing the community and saying what I felt taken in a way that I learnt, was to perhaps inhibit my - or quash my ability to represent my constituents, people who came to me ultimately. I found that during those early days on Warringah Council, the conduct of certain councillors towards other councillors, including myself, was disappointing to the point of - I felt helpless in some ways - in not knowing how to respond. There were words that were used in a derogatory sense towards myself and I imagine, if it wasn't towards the gallery, to other councillors.

I think that the one that sticks out in terms of the senior councillors, one particular councillor, Councillor Darren Jones, using words like "feral scumbags". Some mother's who don't know - or some children whose mother's don't know who their father's are. Referring to me as, "Sonny". Also: that you have to earn your stripes around here. They're the ones that come to my mind back in those early days as a councillor.

I found that when these were said, and I didn't know how to react in a way, that people in the gallery would contact me afterwards and say: Councillor Smith, why aren't you saying something? Why aren't you in some ways defending yourself? I think it was more out of shock, because I believed that when I became involved in Council that there would be a robustness in debate, but not to the point where personal inferences were made, or derogatory comments, because I had never been - I have never worked in an atmosphere where that has been normal course of events, to the extent in those early days when I was expecting a better process.

I think that when I realised that what was happening to me and to others that were, in a sense, opposing the "old guard" as they were known at the time. They are now known as "the majority block", and I'm part of the "minority block" on Council. I think that for me to gather strength, I needed to seek that strength from people who share a common thread and that is people who - that is on Council - that shared a common threat and Councillors Forrest, Councillors Coleman and Councillors Ruth Sutton and myself share a common thread. That thread is, I believe, as best as possible representing the community. - - -

- 3.3.1.10 In his appearance at the Public Hearings on March 20 2003, Councillor Smith raised the use of language by certain Councillors, and the impact of this on him, and on people in the public gallery. He returned to the same theme in his written Submission to the Inquiry (No. 344).

#### **Submission 344**

The calling of names to Councillors who form the minority on Council such as "Sonny Boy", "seated to my left in two bob alley", "you have to earn your stripes around here" and referring to the public gallery as "losers", "some mothers whose children do not know who their fathers are", "feral scumbags" are remarks uttered by Councillor Jones are disrespectful and contemptuous in the eyes and ears of Councillors and the Public who have witnessed this. I do not have dates for when these remarks were said at Council Meetings.

- 3.3.1.11 The "old guard", or the "Majority" Councillors, have rejected the claims of the newly elected "Minority" Councillors. The most vigorous rejections have come from Councillor Jones. In terms of the use of inappropriate language Councillor Jones claimed that the "Minority" Councillors mistakenly thought that it was directed against them. He claimed that it was directed against people in the gallery who were responsible for the publication of scurrilous pamphlets attacking the "Majority" Councillors. In a Machiavellian twist, Councillor Jones suggested that the Councillors who had taken offence were possibly the authors of the pamphlets.

## Public Hearings Transcript – March 27 2003

THE COMMISSIONER: . . . You would be aware, through the submissions, and you have been at several of the hearings, so you have heard of allegations regarding the use of inappropriate language - "demeaning terms" is another word that has been used - and there has been particular mention of you in this regard. Have you got any comments on that?

MR JONES: Thank you. I welcome the opportunity. I have never heard the word that I took offence at, and I apologise to you, but I was very - I don't like - I've used the word, I know what it means, and all the other sorts of bits and pieces, and I called out from the gallery - I thought it was inappropriate. I heard it used again yesterday.

I've never heard that word used in the Council Chambers in the whole time that I have been there. Reference was made yesterday - and on Friday when Councillor Smith was speaking, that the councillors had been called, "Feral scumbags" and, "Your mother didn't know who your father was". Let us put in its proper and right perspective.

There were unsigned, very derogatory fliers and papers put out, denigrating me and my family and I rose in the Chamber, critical of the persons who weren't prepared to put their name to these documents, and they were referred to as, "Feral scumbags" and I said, "They obviously have a problem because they obviously don't know what their name is because their mother must not have known who their father was".

That was - I make no apologies for that. And it was very interesting now, that we have got a couple of councillors that now have said - in as many words: that it was directed at them. Now, I don't know whether that is an admission from them that they were the authors of these papers, and I'm happy to provide those to you as well so you understand where the vitriol comes from when this sort of nonsense is being peddled around the neighbourhood. . .

### 3.3.1.12

Councillor Jones was undoubtedly angry with some of the language used to describe him in the pamphlets. Yet the number of times his own use of derogatory language has been raised in the Submissions and at the Hearings is so great that it must have taken place. Whether wittingly, or unwittingly, Councillor Jones seems to have blocked the memory of this from his mind. Another interpretation is that that he is so wedded to the concept of "hurly burly" debate that he has lost the ability to discriminate. The end product is that the abuse and derision handed out by some of the "old guard" Councillors from the very start of the current Council has given the Council a very bad image with many in the community.



3.3.1.13 Another issue, which troubled many of the newly elected Councillors, was their perceived marginalisation within the Council. Councillor Jones flatly rejected this idea. Rather than being marginalised, they were, in his terms, “over the top of the ladder”.

### Public Hearings Transcript – March 27 2003

THE COMMISSIONER: . . . It has been suggested that there was some marginalisation for four of the newly elected councillors, in a very short time -perhaps within 2 months of the election. Did this occur?

MR JONES: I don't think so. I mean, the reality of it - and all we can do with this fact rather than people observe a myth - procrastinations, is that there were five new councillors. One of the newly elected councillors was elected as the Deputy Mayor of the Council, Councillor Coleman.

There were two of the Chairmen of the Committees - I think it was two - there was, I think, Councillor Forrest, and Councillor R. Sutton, were elected as Chairmen of - I can't tell you what Committee - but two of the major Committee - two of the major standing Committees of Council.

As I understand it, it wasn't my provenance [sic. province] to be interfering in what the Mayor of the day was doing. As I understand it, that was his executive team and Council went about its business. I didn't detect any difference from that Council to the last Council. I mean, you are in a political forum and people must understand this, that there is going to be a difference of opinion.

Some people want to carry the issues further than the Council Chambers and might I suggest, from my observation, that is possibly the case is related to this particular Council. In the previous Council - I - and it will come out - that I was the Liberal candidate for the last state election 4 years ago, and we had a Labor - there were no - I probably got on as good.

In fact, I saw the former Labor bloke down the road here the other day when I walking back from the luncheon adjournment. He opened the door and yelled out, "Goodday Dazza". So I mean, there was a degree of friendship that was extended. Unfortunately, that does not appear to be the case now.

THE COMMISSIONER: . . . And you said that - at least in terms of roles and appointments to Committees, that rather than being marginalised, these new councillors were in fact, central in the new structure?

MR JONES: No, they - - -

THE COMMISSIONER: Deputy Mayor, Chairs of Committees - - -

MR JONES: A bit more than central - over the top of the ladder.



Councillor Colman held the most elevated position of the new Councillors, serving for one year as Deputy Mayor. He attacked factionalism, and argued that he had been marginalised even when he was Deputy Mayor, during his appearance at the Public Hearings on March 24 2003.

### Public Hearings Transcript – March 24 2003

MR COLMAN:

I can't see any reason for factionalism in the first place, but I am concerned about the fact that we are not doing what the 135,000 people who have voted us in to do. We are - certainly too many in-fights along factional lines. I am aware of and concerned of the fact that the Mayor of the day, whether - whoever it may be, does not pursue what I would have always thought, or what I did think, was a rule of debate in that when there was a tied vote with four all, that the Chairman didn't cast a casting vote but let the status quo stand for future debate.

I don't know whether that has ever happened in my three and half years in Council. It has always been the chance for the Chairman to make that casting vote in favour of the majority. . .

MR BROAD: . . .

Mr Colman, when you were

elected in 1999, you were thrust also into the role as Deputy Mayor?

MR COLMAN: That is right.

MR BROAD: One of the concerns raised by one of the other councillors was that there be an expectation - there was an expectation on his part that he would have some assistance and guidance in fulfilling the role as a counsellor. Can you tell me firstly, whether you found your procedure into Council and the responsibilities and the work involved was something that you anticipated?

MR COLMAN: Well, I do remember having discussions with that gentleman post my election and saying to him many a time, that I would like him to delegate a little bit more authority to me and that I don't think it happened once, or if it did, it was a very minor matter. So it wasn't an attempt on my part. It was an attempt on the other side to not give me the credit which I thought was due to me, only if it was just to cut the workload down on his side. . .

MR BROAD: Do you believe that you have been marginalised in your role as a Councillor on Council?

MR COLMAN: Yes, I certainly do as the years have gone on, not just in that first year, but having one of the so-called minority councillors, there are many areas where I wasn't able to participate in debate in the various sectors of Council, governance and service and whatever. The fait accompli was often the first I knew about an issue without having been able to debate on that issue, so I was certainly marginalised in various areas.

3.3.1.15 The term factionalism as applied to Warringah Council is perhaps different to that used in other contexts. Factionalism at Warringah did not consist of a group following a political agenda that bound them together. It has been more in the nature of a pragmatic factionalism. The electoral success of the four new Councillors of the “minority” group might have shaken the “old guard” Councillors. They might have, even unconsciously, felt that by uniting against the popular, new breed they could somehow safeguard their own futures within the Council. Whatever the reason, their actions were perceived to be a form of factionalism by many people within the community. Their public critics interpreted their actions as being often so aggressive, so demeaning, and so uncompromising towards the “Minority” Councillors that they were considered to have trodden over the basic expectations of democracy. In the process, many in the community began to question the unbiased nature of the governance of the Council.

3.3.1.16 In the statement of Warringah’s Values and Guiding Principles the six key values are defined as: openness, equity, integrity, efficiency, service, and respect. Under respect, the guiding principles are:

- We welcome the opinions of all
- We conduct all our dealings in an atmosphere of mutual respect

It is clear that within the factional atmosphere of the Council since 1999 these principles have been largely ignored.

### 3.3.2 Induction of New Councillors

3.3.2.1 It might be expected that new Councillors would be assisted into working within the Council through a strong induction program. The General Manager discussed this at his appearance at the Public Hearings on March 19 2003. See Volume 3, Appendix 2 for details of the current induction program.

#### Public Hearings Transcript – March 20 2003

MR BLACKADDER: . . . Commissioner, I think in my submission, at some point, I referred to our procedures for inducting councillors, my understanding, not - not having been personally involved in it, my understanding is that when our new councillors were elected in 1999, there was a comprehensive induction process called the features of our provisions, their responsibilities were outlined. In terms of code of conduct and conflict of interest provisions, there was a follow up workshop conducted by, I think, Mr Jeff Williams of Fraud Prevention Services in 2001. . .

3.3.2.2 The new Councillors did not feel that they received adequate help in being inducted into the operations of the Council. Councillor Colman, who was quickly thrust into a senior position, was left stranded.

### Public Hearings Transcript – March 20 2003

MR BROAD: . . . I'm just really asking whether you think it would be of assistance to a newly elected Councillor to have some sort of fostering, some form of guidance, some form of assistance, to help you in the early stage following your election with the work associated with Council and your responsibilities.

MR COLMAN: Yes, that is very correct. I didn't get much of that. I sought it but it didn't come to me. I was not very happy with being put in that position in the first place. I didn't elect - I didn't stand for Council to become a Mayor or a Deputy Mayor. I wanted to do my duty as a Councillor, and I was thrust into that position without really any discussion at all but I didn't have much help. I guess I didn't seek help very much because I was not asked to help. . .

3.3.2.3 Councillor Ruth Sutton missed the formal induction program in 1999, but received an induction from the then General Manager. It was clearly not a very comprehensive induction for the Code of Meeting Practice was not included. It is ironic that within a short time of being inducted Councillor Ruth Sutton felt so intimidated by the General Manager that she was unwilling to take her problems to him.

**Public Hearings Transcript – March 26 2003**

THE COMMISSIONER: . . . Could you lead us through the induction program that you might have gone through when you joined the elected members?

MS SUTTON: Well, after - nothing happened between being elected and - nothing that I can remember happened. Nothing that I can recall at this stage happened between being elected and the mayoral election and I think there was perhaps a couple of weeks in that. I think we were elected - yes. So that was a couple of weeks and then the next morning after that, there was an induction meeting for which a booklet had been prepared, giving a background and photographs of the various - the General Manager and the Directors and various Service Unit Managers.

That was in the morning. However, I was - it was - well, it wasn't unfortunate, it was wonderful. During the mayoral election, my only grandson was born and my daughter was not happy that I wasn't there and so I had to excuse myself from that induction. But the General Manager did take me through the book afterwards.

THE COMMISSIONER: . . . In that induction, you missed the general meeting but the General Manager took you through later. Were you made aware of the Council's Code of Meeting Practice?

MS SUTTON: Not at that stage. . .

THE COMMISSIONER: In the induction process, you didn't specifically  
- - -

MS SUTTON: No.

THE COMMISSIONER: - - - meet the Code of Meeting Practice?

MS SUTTON: No, I didn't.

## 3.3.2.4

The more experienced Councillors did not feel that they had any responsibility to assist newly elected representatives into the Council. They considered that it was the duty of the senior members of staff to do this. Since the strong intention of the 1993 Local Government Act was to separate the roles and functions of Councillors from those of the staff, this is a very curious view. An alternative offered is that the new Councillors could take courses given by bodies outside of Warringah Council.



Some of the more experienced Councillors viewed the idea of assisting the new Councillors as counter-productive. From the very start, they were seen as political enemies. Councillor Jones stated that he tried to assist new Councillors to gain an understanding of procedural matters. He implied that he was rebuffed.

### **Public Hearings Transcript – March 27 2003**

THE COMMISSIONER: Are you of the view that long term councillors - like yourself - should provide guidance and assistance to newly elected councillors?

MR JONES: Thank you for that question. The previous Council was condemned publicly in oral way and in written way, as to the way in which the Council was doing its business. The people standing on the side-lines who were aspirants, had plenty to say.

They had all the answers to how they were perceiving the problems and how they were going to fix it. think it would be wrong and immoral for me, having them being elected, to go up and tell them what to do. It is pretty simple.

THE COMMISSIONER: I guess the focus of that questions was not so much to talk to them about policy, but about procedure?

MR JONES: Well, if anyone would suggest that I haven't tried to offer some assistance and some guidance, well, they are having a lend of you.

THE COMMISSIONER: I'm not saying someone did.

MR JONES: No, no. No, I'm just - - -

THE COMMISSIONER: I'm saying, the general principle - people with experience help - - -

MR JONES: Sure.

THE COMMISSIONER: - - - people learn the procedures of how Councils work internally.

MR JONES: And incidentally, there were courses available - and I understand some of the councillors avail themselves of that to - in fact, I've got some details of - one of the councillors anyway, that availed herself of

**Public Hearings Transcript – March 27 2003 (cont)**

going and being educated in some of the protocols of Local Government. . .

THE COMMISSIONER: You were saying that there is an induction process?

MR JONES: Yes, there is.

THE COMMISSIONER: For new councillors?

MR JONES: Yes. . . .

THE COMMISSIONER: Were you part of that induction process? How does that work?

MR JONES: This time?

THE COMMISSIONER: In '99, yes?

MR JONES: No, I think I've got a bit of a grasp of what happens in Local Government now. I would be a slow learner if I hadn't.

THE COMMISSIONER: No, I don't mean, were you being inducted. Were you helping induct people?

MR JONES: No. That is not my role. It is - - -

THE COMMISSIONER: Who does that?

MR JONES: As I understand, the General Manager, or one of his - - -  
- - - staff that would have expertise in that.

THE COMMISSIONER: . . . So you weren't connected with these new councillors in terms of policies - sort of discussions, but you were willing and able to try and assist them in understanding the processes by which the elected representatives put the 1993 Local Government Act into practice?

MR JONES: On - on occasions. But bearing in mind too, we are - we are all adults. There are some pretty shocking things said about me, in the print, which some councillors had subscribed to by having their name associated with the publication. I couldn't honestly say that I was in the mode ready to start exchanging Christmas cards with them. . .

MR JONES: On - on occasions. But bearing in mind too, we are - we are all adults. There are some pretty shocking things said about me, in the print, which some councillors had subscribed to by having their name associated with the publication. I couldn't honestly say that I was in the mode ready to start exchanging Christmas cards with them.

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3.3.2.5

In reference to induction processes and what a Councillor ought to know, it is surprising that an understanding of the Charter of Local Government was not mentioned. The Mayor said that she was very familiar with it during her appearance at the Public Hearings on March 20 2003, but no other Councillor referred to it during the course of the Inquiry.

The current General Manager gave great weight to the importance of the Charter. It is an axiom of Local Government that both new and old Councillors have an understanding of the Charter. Had the “Old Guard” Councillors understood the Charter, the kind of conduct by Councillors that has disturbed many people that made Submissions or appeared at the Hearings should not have taken place. The General manager proffered his opinions that the Charter is not well-known or understood within Local Government generally.

### Public Hearings Transcript – March 27 2003

MR BLACKADDER: What I decided in my submission, is that I would concentrate very much on the Council charter because the charter, I think, provides a fairly fulsome outline of what the Council should be doing.

...

And that is why I tried to spell that out, it - it covers both councillor and staff involvement. It refers to services and facilities, community leadership, it refers to all - all of these issues, environmental management, staff - staff support. So the charter in my view, is a very important provision in the Act and what I tried to do was to demonstrate the range of things that both the staff, in their governance role and the Council in their corporate role, were involved with.

THE COMMISSIONER: Okay, so you would agree that section of the Local Government Act which is the section that deals with the - - -

MR BLACKADDER: Charter.

THE COMMISSIONER: - - - the charter, is fundamental to the operations in the Council?

MR BLACKADDER: Yes, yes,  
I agree entirely, that is my pretty strong personal view.

THE COMMISSIONER: Yes, thank you. In your opinion, are the elected representatives familiar with these principles, the principles laid out in section 8?

MR BLACKADDER: I think I made a statement in my - well, I will just quote it, Commissioner, under Council charter:

One aspect of the above terms of reference concerns the Council charter, from my perspective the section 8 provision is not widely known or used in Local Government.

I express a personal view there. I don't believe that Councils have a strong knowledge or use of section 8. I have a fundamental belief in it because I think it describes very well what aspects the Council should be involved with and that is why I tried to very comprehensive spell out how Warringah responds to those issues and I'm happy to address any aspect.

THE COMMISSIONER: Right, I'm more interested in the fact that you suggest that the Council not terribly familiar with the

MR BLACKADDER: Throughout New South Wales, yes.

THE COMMISSIONER: Yes. And particularly or not particularly, at Warringah?

MR BLACKADDER: No, not - not particularly at all. I - I must generalise, my - my experience in Local Government tells me that section 8 is not that well known or used generally by staff or councillors.

THE COMMISSIONER: But it is the charter?

MR BLACKADDER: It is the charter.

THE COMMISSIONER: That is strange, isn't it?



### 3.3.3 5/4 Voting Patterns

3.3.3.1 Throughout many of the Submissions, and several times during the Public Hearings, critical reference was made to a pattern of 5/4 voting at Council Meetings. It is alleged that the “Majority” Councillors regularly vote together in opposition to the “Minority” group.

In her Submission to the Inquiry (No. 289) the Mayor succinctly describes the situation. She sets her comments against the fact that growth in Warringah in recent years has been strong, and that that has divided the community over how far growth should be allowed to go. This then translates into the 5/4 voting pattern. She also acknowledges that the debates that surround development have created an image of a Council in disarray.

#### Submission 289

In recent years Warringah has experienced divided opinion in how those different interests should be reconciled. The Council make-up has contributed to that division, with five (5) councillors generally supportive of the changes and four (4) councillors generally opposed to most proposals.

I acknowledge that each councillor genuinely seeks to make the best decision but often the hurly burly of debate in the Council Chamber, and reported in the Manly Daily, creates an impression in the mind of an ordinary member of the public that the Council is in disarray. . .

3.3.3.2 In her appearance at the Public Hearings on March 20 2003 the Mayor qualified the impression of 5/4 voting that has disturbed the public. She makes the very valid point that in matters other than development issues there is no 5/4 voting pattern.

**Public Hearings Transcript – March 20 2003**

THE COMMISSIONER: ... It is well documented and it is referred to in your own submission that there is a group of five councillors who frequently vote as a block, vote together, and a further group of four councillors who frequently vote as a block. Are you are familiar with that? You state that the people in the group of five, that the block of five, are generally voting in favour of change and development and so forth and that those in the group of four are generally against such things. Is that correct?

What puzzles me, is the consistency of this voting in a block of five and a block of five, there must be a huge number of issues that come before Council that don't necessarily relate to the vital issues of change and development and you talk in your submission of the revitalisation of - it's not quite the word you use, but the revitalisation of certain parts of the Council, the area that needed it. Surely, the pattern of voting goes a bit beyond just people with a vision of change and development and people who don't have that vision. Can you comment on that?

MS SUTTON: Yes, that is the easiest question so far. Thank you for that one. Now, if we go to last week's, or this week's meeting on Tuesday, I mean, I don't know what - whether there was some, it have been five, four, one councillor was away, but it would've been a four [four] and [I used] my casting vote a couple of times, but we had seven/one, six/two and so on. We don't always vote five/two, that is just the ones that are written up in the paper, Mr Commissioner. If you go to maybe next Tuesday, which will be for the Strategy Committee and the Works Committee, the Services Committee it is called now. Probably it will go nine/one, nine/nil, nine/nil, nine/nil and I have, in fact, with great pleasure shown people copies of agendas where things go through nine/nil, eight/one, seven/two, but the five/fours are the ones that hit the paper because they are interesting and they're mostly about developments and mostly the councillors who vote for them are doing what we regrettably have been forced to do by the State Government. ...

- 3.3.3.3 The problem is that the public, who scrutinise the actions of the Councillors, issues of development are of prime importance. The Mayor acknowledged as much, later in her appearance. The “interesting” developments, as the Mayor put it, are the ones that many members of the public see as vital to their interests. It is when these developments go before the Council that decisions appear to become 5/4, debate gets heated, and the image of Councillors’ behaviour becomes tarnished.

## Public Hearings Transcript – March 20 2003

THE COMMISSIONER: . . . You made the point that the five/four voting situation tends to occur around interesting developments. What do you mean by that?

MS SUTTON: I'm sorry, I said that. That's a mistake. I don't know why I said interesting.

THE COMMISSIONER: You did. I'm curious as to what that - - -

MS SUTTON: I beg your pardon - the development.

THE COMMISSIONER: I'm just curious as to what that might have been?

MS SUTTON: Interesting development. I don't know, yes - did I say. What did I say?

MS SUTTON: Interesting, that's right, it is in the - thank you. It's the - I said, thank you. I said, that that - they hit the media because they're interesting. Yes. See it's - when I was Mayor last time - - -

THE COMMISSIONER: And you meant interesting in that case?

MS SUTTON: Yes, . . .

Table 3.3.3.1

VOTING PATTERNS ON SUCCESSFUL MOTIONS IN LOCAL APPROVALS COMMITTEE  
FEBRUARY 2000 TO MARCH 2003

| Year                | 9/0   | 8/0    | 8/1   | 7/0   | 7/1   | 7/2   | 6/1   | 6/2   | 6/3   | 5/2   | 5/3  | 5/4    | 4/2   | 4/3   | 4/4  |
|---------------------|-------|--------|-------|-------|-------|-------|-------|-------|-------|-------|------|--------|-------|-------|------|
| 2000                | 23    | 29     | 7     | 7     | 5     | 5     | 2     | 3     | 2     | 2     | 4    | 12     |       | 2     | 8    |
| 2001                | 53    | 16     | 12    | 3     | 3     | 11    | 0     | 1     | 9     | 0     | 8    | 28     | 1     | 4     | 12   |
| 2002                | 28    | 23     | 8     | 10    | 1     | 3     | 1     | 7     | 6     | 1     | 6    | 25     | 0     | 7     | 15   |
| 2003                | 2     | 5      | 0     | 3     | 2     | 1     | 0     | 0     | 0     | 0     | 7    | 2      | 0     | 1     | 1    |
| Total               | 108   | 73     | 27    | 23    | 11    | 20    | 3     | 11    | 17    | 3     | 25   | 67     | 1     | 14    | 36   |
| Percentage of Total | 24.6% | 16.63% | 6.15% | 5.24% | 2.51% | 4.56% | 0.68% | 2.51% | 3.87% | 0.68% | 5.7% | 15.26% | 0.23% | 3.19% | 8.2% |

Total 439

Note: Voting patterns were counted for the final decision only on local approval items.

NO OF RESCISSION MOTIONS LODGED IN LOCAL APPROVALS

| 2000 | 2001 | 2002 | 2003 |
|------|------|------|------|
| 7    | 6    | 15   | 0    |

3.3.3.4 Table 3.3.3.1, provided by the Council, shows that for votes on development applications before the Council (February 2000 to March 2003) that 15.26% were decided on a 5/4 vote. 4/4 votes, where the Mayor uses a casting vote, are in kind the same as 5/4 votes in terms of block voting. Very likely the 4/3 votes also express the same. This would mean that just over one quarter of the votes was decided by block voting. Since, by the Mayor's admission, these are often the "interesting" votes, it is not hard to understand why many people in the community feel that the Council on all the important issues is run along factional lines. It is also with the "interesting" votes that Councillors become more heated in their approaches. It is then that the public begins to censure the conduct of the Councillors.

Factionalism does exist within the elected body and is a major reason for the perceived poor conduct of the elected representatives.

### 3.3.4 Adjournment of Meetings

3.3.4.1 Factionalism of the type found in Warringah Council is perhaps bound to make proceedings more disputatious than the old style of factions that are based on party political lines. The Warringah factionalism contains a volatile mix of obstinate simplification of complex issues related to development (by both factions), and strong personalities who take offence easily, and who have enormous self-belief in their infallibility on Local Government issues.

3.3.4.2 It is not surprising to find that in these circumstances a number of meetings have been disrupted. According to figures supplied by the General Manager (Submission 288) 16 meetings, or 12.4% of all meetings from the 1999 election through to the end of 2002, were disrupted by adjournments for want of a quorum. This underestimates the actual number of adjournments, because on several occasions more than one adjournment has taken place during the course of one meeting. The comprehensive record of disorder, adjournment, lack of quorum, expulsion of members of the public gallery, and denials of requests to speak were provided to the Commission in Briefing Paper No. 25 by Warringah Council. (Volume 3, Appendix 2).

3.3.4.3 The adjournments seem to have often taken place when Council was debating what the Mayor has called "interesting" issues. These meetings have generally attracted a large number of people to the public gallery. They have also been widely reported in the local press. The result is the strong feeling within the community that the Councillors often fail to run their meetings effectively. This theme appeared within many of the Submissions, and also was heard at the Public Hearings.



- 3.3.4.4 The General Manager's summary of statistics on adjournments suggests that the main reason for adjournments taking place is the necessity of a Councillor's leaving because of a pecuniary interest declaration.

**Submission 288**

Ten (10) of those meetings have been adjourned as a result of a number of Councillors walking out during the meeting, and leaving the meeting without a quorum. This has normally occurred when another Councillor, or Councillors, have declared a pecuniary interest in an item and left the Chamber, leaving the Council with only eight (8) or less Councillors present and entitled to vote.

Six (6) of the meetings have been adjourned as a quorum has not been present at the start of the meeting, or the absence of Councillors has left the meeting without a quorum when an item has been reached in which an attending Councillor has had to declare a pecuniary interest. Upon that Councillor leaving the Chamber, others have left the meeting resulting in a lack of quorum.

- 3.3.4.5 The public perception of disrupted meetings is different. The community believes that "walk-outs" have been a major cause of adjournments. Depending on which side of the factional divide they stand, the blame is placed on one or other of the two factions. Most of the blame is directed against the "Minority" faction. Although both factions have used the "walk-out" tactic, the "Minority" faction has used it more often. The most vehement criticism of that faction is that it has used the tactic, and wantonly disrupted the business of the Council.
- 3.3.4.6 One of the reasons the walk-out tactic was used was that the meeting practice did not allow Councillors to abstain from voting on issues. Councillor Forrest explained this in his appearance at the Public Hearings on March 20 2003.

**Public Hearings Transcript – March 20 2003**

THE COMMISSIONER: . . . In a fairly large number of the submissions that have come in, there is an argument running through that one of the major causes of disrupted Council meetings has been walk-outs by we might call the minority group of councillors.

The ones who are the "for" in the five/four voting system we talked about this morning. I believe you are one of those councillors?

MR FORREST: I am one of the group, yes, I am councillor in one of the groups, yes.

THE COMMISSIONER: . . . Are the suggestions that I am seeing in these submission, that one of the major factors in various disruptions that have occurred through . . . the past four years in Council meetings, has been walk-outs by your group?

MR FORREST: No, I don't believe that at all. I see that as part of the democratic process that we all live in. Well, I don't even call it a walk-out, I think this is a term that has been used by those people who criticise the process. Our Council is very clear on how a vote is to be recorded. If you are voting for a resolution you put your hand up and it is recorded as a vote for it. If you don't put your hand up, you are deemed to be voting against a resolution. There is no method of abstaining.

If you sit there and don't vote either for or against a resolution, you are taken to have voted against a resolution, you cannot say "I abstain" and just sit there, and sit through the vote. You have to actually physically leave the Chamber to be counted as an [sic. abstention] from the vote. There is no other method to do it and so I believe that leaving the Chamber on certain occasions and in each case I have done so, I have always made a statement as to the reasons why I am doing it, is part of our democratic process, expressing neither a for or against opinion and stating those reasons why.

- 3.3.4.7 Beyond the particular problems caused by the lack of the option of abstaining from voting, walk-outs have been used as a tactical means of forcing outcomes when confronted by 5/4 block voting. The "Minority" Councillors argue that this is a legitimate tactic when there is the possibility of something being passed which is not in the public interest. Again Councillor Forrest argued this in his appearance at the Public Hearings.

### Public Hearings Transcript – March 20 2003

MR FORREST: I think the main reason why a councillor does remove himself from the Chamber - himself or herself from the Chamber is that they have a human interest or a conflict of interest in the item so they take themselves out having made a declaration. There are other reasons why one would do it as well. . . . The main reason why I have done it is that I felt that what was happening wasn't in the public interest - - -

. . . and I needed more time, more information, more feedback, more support, you know. I need something more at that particular time and I couldn't go through with the vote.

- 3.3.4.8 The reality is that the public interest has consistently been defined in factional terms. Decisions have been made in terms of the broad division between the pro-development and the anti-development factions. This consistency has applied to major developments, the ones the Mayor has called “interesting”. It does not appear that each of these decisions has been made on its merits by individual Councillors. Major developments entail a very complex mix of factors that Councillors have to consider. No two development proposals are ever identical. If individual Councillors were to weigh up all the factors for each major development application, and then reach an individual judgement on merit, a predominant pattern of 5/4 outcomes, is not credible. In these cases the merits of the individual case become subsidiary to the public interest. For the “majority” Councillors the public interest is defined as supporting development. For the “Minority” Councillors it is defined as opposing development.

### Public Hearings Transcript – March 20 2003

THE COMMISSIONER: Right, what the submissions particularly argue or raise is that the whole group of four people had the same opinion about the public interest at the same time, is that true?

MR FORREST: Most of the times, we each made a separate statement, but I guess the content of the statement was fairly similar too. One thing I would say too, and no doubt these submissions have failed to say it, but there has been a time when the other side of Council - the other faction on Council has also walked out as well. So it is not only one side of Council that does it.

- 3.3.4.9 There is one recorded instance where the “Majority” Councillors walked-out of a Meeting. This was when dissent was moved against the Chairperson (a “Majority” Councillor). The group of “Majority” Councillors then walked-out. The tactic of walk-outs has been generally used by the “Minority” Councillors.

Many members of the community have charged Warringah Council with being discordant after viewing, or reading about, meetings stopping, starting, stopping, being moved to closed sessions, or being moved to other days. It has produced an image of a Council that can't govern itself let alone produce policies and decisions that govern the operations and activities of the citizens of Warringah. The "Minority" Councillors do not accept that their tactic of walking-out of meetings has prevented the Council from making decisions, and performing its duties. At the end of the day, it is argued, all the business was eventually done.

### Public Hearings Transcript – March 20 2003

THE COMMISSIONER: At the end of the day was the business done generally?

MR FORREST: Yes.

THE COMMISSIONER: So you could view what happened as a series of maybe tactical movements in one way, or perhaps people needing time to reconsider their views, etcetera, that led to this process of elongated decision-making?

MR FORREST: Yes.

THE COMMISSIONER: But at the end of the day decisions were made?

MR FORREST: Yes.

THE COMMISSIONER: And the Council proceeded?

MR FORREST: That's correct.

THE COMMISSIONER: Okay. So it could be that the public perception of how much the Council's processes were disturbed by some of these happenings which ever side walked out or which ever side elongated meetings or whatever could be exaggerated?

- 3.3.4.10 It is not the task of the Inquiry to weigh up which of the factional views is correct. Despite the fact that walk-outs occurred a relatively small number of times, they were viewed by many people in the community as representing improper behaviour on the part of Councillors. They were counted as evidence of an incapacity for them to work effectively in decision-making forum of Council meetings.



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## 3.4 Belligerence, Bullying, And Intimidation

### 3.4.1 Intimidation of Councillors

3.4.1.1 There is substantial evidence of bullying and intimidation by Councillors. This is both directed at the general public, and is commonly directed at other elected representatives. The “Majority” Councillors are responsible for all of this; there is no evidence that the “Minority” faction has resorted to such behaviour. Given that they are the minority it would be difficult to see how they could do so within the Chamber. There is no evidence, however, that the “Minority” group have ever been belligerent or bullying or intimidating to the public outside of the Council Chambers. There is strong evidence that such behaviour and attitudes have been used towards the public by “Majority” Councillors (see 3.4.2).

3.4.1.2 Intimidation has been used as a weapon by some Councillors against other Councillors. The public has either witnessed examples of this behaviour, or heard reports that it exists. The fact that intimidation does exist, and with it bullying and belligerent behaviour, is noted within the community. It underlies the lack of confidence that some people have in the ability of the elected representatives to freely and fairly carry out their responsibilities of governance.

3.4.1.3 Some examples will suffice to illustrate the intimidation faced by the “Minority” Councillors. It might be noted that such threats were issued early in the term of the Council.

The first concerns Councillor Smith, and a threat of the Council taking legal action against him if he did not withdraw from asking certain questions about the finances of the Council. Councillor Smith gave credible evidence concerning a threat to him made by the then General Manager. Since that person was did not present to the Inquiry it is impossible to make a judgement on whether such threats were made. What is relevant is that the community has heard about the alleged threats. There is a belief held by some in the community that Councillor Smith was asking quite legitimate questions about Council finances at a time when the council was battling a huge deficit. The unrefuted allegations, therefore, have coloured the image of the Council within the community.

**Public Hearings Transcript – April 1 2003**

THE COMMISSIONER: . . . At a Council meeting on 23 November 1999 you submitted a list of questions to be asked at the meeting. The questions were in fact submitted by one of your constituents.

THE COMMISSIONER: The focus of the questions was the Council's financial management and the background to that was that about that time the Council finances seemed to be on a path that ended up creating a deficit of around \$11 million.

MR SMITH: That is right.

THE COMMISSIONER: What I would like to do is read to you the questions that you wanted to be put at that meeting. These take a little time but I think it is important that we know what they were about. The first question said: reported in today's Manly Daily senior man suspended 23.11.99. Is this report true or not true? If true, why weren't the councillors informed before the press release? Will an official report on the same be forthcoming?

Then there's a question about the Y2K compatibility which I don't think is terribly relevant. The third question said: the auditors should be checking the books each 3 months as the financial problem developed over the past 3 months. The next question said: does the general manager meet on a regular basis with the Council department heads? If so, why has this financial problem developed and the auditors cannot do their audit. If not, why aren't these regular meetings going on to keep the finances of the Council under strict control?

The next question said: how many people work in the accounts department? The following question said: how many people are involved in the preparation of the actual Council's financial reports? The following question said: surely someone had an inkling that the department was not functioning correctly. Is there a method of staff reporting problems? The final question was: does the buck stop with the top person, namely the general manager?

These are the questions that you were going to put. According to your submission, written submission, you provided the minuted questions at the Council meeting and you were then threatened by the general manager at the time that Council's solicitors would take legal action against you.

MR SMITH: That is correct.

THE COMMISSIONER: On what grounds were you told that such action could be taken?

MR SMITH: There were no grounds given to me. . .

## Public Hearings Transcript – April 1 2003 (cont.)

THE COMMISSIONER: Having read the questions and having just spelt them out at this hearing, I can find very little in the questions that any individual within the Council or indeed the Council as a body could find particularly objectionable. They seem to me to be relevant questions asked at a time when the Council was in serious financial difficulty. Was there a general feeling in the Council at that time that there were problems with its financial position and perhaps it was starting to become precarious?

MR SMITH: I believe so. I believe that the four newly-elected councillors were aware of the financial difficulties within Council at the time. In fact that was one of my platforms that I used in terms of being elected to Warringah Council was to look at Council's finances. I can't answer for the majority five in terms of where they perceived the Council's finances. I can only quote from where I perceived and I believe my other colleagues there formed a minority faction.

THE COMMISSIONER: Thank you. You state that following the Council meeting the general manager at the time advised you that if you did not withdraw the questions you could lose your home.

MR SMITH: That is correct.

THE COMMISSIONER: Did you then withdraw the questions?

MR SMITH: That is correct.

THE COMMISSIONER: Did you ever pursue questions of a similar nature about the finances of the Council again?

MR SMITH: Certainly not those questions.

THE COMMISSIONER: Is that because you were fearful of a threat that you may lose your home?

MR SMITH: Most certainly.

THE COMMISSIONER: Going back to an earlier question that I put to you, or an earlier comment I put to you, just going back to those questions at the Council meeting I said you were threatened by the general manager at the time that Council's solicitors would take legal action against you. You said you didn't know what the grounds for that action were but somehow you got the impression that the outcome would be that you could lose your home.



**Public Hearings Transcript – April 1 2003 (cont.)**

MR SMITH: That is right.

THE COMMISSIONER: Do you believe that you were asking legitimate questions that an elected representative would ask?

MR SMITH: Yes.

THE COMMISSIONER: At a time of some financial crisis?

MR SMITH: Yes, I believe I was asking what I was elected to do and that was to ask questions that when the community felt that there were issues that were unanswered and to go through their councillor to in fact ask those questions during question time.

THE COMMISSIONER: But you were then threatened that Council's solicitors would take legal action against you. Did you not ask why Council's solicitors would be taking action or possibly taking action?

MR SMITH: This happened during the course of the meeting. If I can recall, the general manager standing, rising to his feet and raising his voice to the extent where I had never experienced that before and I was for the want of a better word, shell shocked. Now, the threat of losing my home came after that meeting in the councillors' lounge where a general discussion took place. During that general discussion on the questions that I had asked the outcome of that was that the worst that could happen was that I could lose my home.

A second example also concerns threats to Councillor Smith if he didn't vote in favour of the granting of the sale a right of way that would assist Councillor Jones' family with a development in Dee Why. The threat to his partner and to his property was so serious that the matter was referred to ICAC. The following provides the mention of this event in Councillor Smith's Submission (No. 344), and the copy of the letter to ICAC.

**Submission 344**

In similar vane was the meeting of the 23<sup>rd</sup> October, 2001 where Councillor Moxham advised me to support an application in the granting of a right of way over Council owned land. This R.O.W. would free up a landlocked property of which Councillor Jones family company Songkal owns. The advice was intimidatory and took the form that if I did not support the R.O.W. I had better ring my partner and transfer all my assets into her name because I was going to lose them.

I wrote to I.C.A.C. about this matter and a copy is attached. . .



## Submission 344 (cont.)

15 November, 2001.

Ms Irene Moss, AM  
Commissioner  
Independent Commission Against Corruption  
GPO Box 500  
SYDNEY NSW 2001

COPY

Dear Commissioner,

**RE: Councillor Peter Moxham - Warringah Council**  
**Councillor David Stephens - Warringah Council**

I hereby wish to submit a complaint regarding the conduct of Councillors Peter Moxham and David Stephens of Warringah Council which I believe amounts to corrupt conduct pursuant to the ICAC Act.

On 23 October, 2001 Warringah Council was to consider a rescission motion dealing with the grant of a right-of-way over St. Davids' Avenue Park Dee Why to the family Company of Warringah Mayor Darren Jones. My community based colleagues and I have previously raised serious concerns as to Council's handling of the matter. In particular the sale price of \$80,000 when independent valuations have estimated its worth \$800,000.

After debate on the Rescission Motion in which I had indicated I was in favour, Councillor Moxham threatened me and said "You'd better ring Lyn Wake (my partner) and transfer all your assets into her name cause you're going to lose them". Cr Peter Forrest witnessed this threat.

Prior to my Community based Councillor colleagues walking out, Councillor David Stephens said "I hope you enjoy your surcharge".

I consider the conduct of Councillors Moxham and Stephens to be conduct amounting to corruption in that they sought to intimidate me from honestly exercising my duties as a public official. They are both members of Cr Darren Jones' faction and were obviously trying to intimidate me into voting against the rescission motion. Cr Jones has also said previously at a meeting that "I'll show you boys and girls what surcharging is about".

Your investigation of this matter is appreciated.

Yours sincerely,

**KEVIN SMITH**  
**B Ward Councillor**

The third example relates to the Ardel site, which is discussed in Section 6. This has been one of the most contentious development issues during the life of the current Council. The "Minority" Councillors were opposed to passing the development. In fact, the development was refused several times by the full

Council. When the final vote was to be taken there was a threat that the developer was to surcharge the Councillors who voted against the development for his losses if the development did not go ahead. Not every Councillor believed that this was possible. The reality of the threat cannot be determined because the former General Manager, who is alleged to have made the threat, declined an invitation to appear at the Public Hearings.

### Public Hearings Transcript – March 24 2003

THE COMMISSIONER: . . . One submission suggested that in September 1999, you and other councillors were asked to meetings with the then General Manager, Mr Dennis Smith. At that meeting you were told that if you did not support the Ardel Development, the Developer would seek to make you personally liable for costs, do you recall such a meeting?

MR COLMAN: Only vaguely, because I was quite surprised, but not very concerned at that threat, because I didn't consider it a threat, I thought that the - I didn't that that the councillors could be individually liable for any issues of that nature.

THE COMMISSIONER: But there was a threat?

MR COLMAN: There was, yes.

#### 3.4.1.4

Actual recriminations were part of the intimidatory environment faced by the “Minority” Councillors. Councillor Colman was acting Mayor in January 2000. During that period he sought legal advice from Ms. Susan Blackah of Messrs Michell Sillar Solicitors. She was selected from a list of recommended accredited specialists furnished by the Law Society of NSW to provide Council with urgent legal advice as to issues of concern related to the agreement between Warringah Council and Songkal Pty Ltd. The Mayor, Mr. Moxham, withdrew these instructions on January 31 2000.

The issue was taken to the Council Meeting on February 1 2000. The motion put by Councillors Colman and Forrest was that the instructions be reinstated, and that the advice obtained from Ms. Blackah be circulated to all Councillors.

Councillor Jones withdrew from the vote (because Songkal Pty Ltd is a family company). The advice concerned the agreement between the Council and Songkal to sell a right of way at St Davids Avenue Dee Why.

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The vote went against Councillor Colman and his supporters. Councillor Colman had to pay the costs of the legal advice out of his own pocket. The vote was 4/4 (with Councillor Jones absent). The Mayor used his casting vote, and was supported by the remaining three “Majority” Councillors. This is the same property issue involving the threat to Councillor Smith, described above. The public image was that the “Majority” Councillors had punished Councillor Colman by making him pay for the legal advice he sought. There was a strong feeling that Councillor Colman was in his rights to seek advice on a highly controversial matter. Forcing him to pay for the legal advice was interpreted as a public demonstration of the dangers of “Minority” Councillors opposing the “Majority” on controversial issues. Refer to Council’s Briefing Paper in Volume 3, Appendix 2.

3.4.1.5 Besides threats of the kind mentioned in these examples, there is evidence of quite belligerent and bullying behaviour on the part of some Councillors.

An illustration is provided in Councillor Forrest’s testimony at the Public Hearings. It concerns an allegation of physical abuse by another Councillor, Mr. Stephens. Councillor Stephens has denied the claim. There is, however, no doubt that there was a heated exchange between Councillors and, intended or not, physical contact was made. This is generally viewed in the public domain as unbecoming conduct by the holders of public office. It severely erodes the public respect for the people involved, and hence the institution. It erodes public confidence in the ability of such people to govern.

**Public Hearings Transcript – March 20 2003**

THE COMMISSIONER: ... We are not going to know that but I get your point.

MR FORREST: I included it in my submission because I thought it was an example of a breach of the Council's code of conduct.

THE COMMISSIONER: Yes.

MR FORREST: Where it says:

Councillors should show respect for the position held by all members of the Council whether members of the same faction or not.

THE COMMISSIONER: Okay.

MR FORREST: I believe that that was breached.

THE COMMISSIONER: Right. There are other issues you raised in relation to the same meeting. Can I move on to those?

MR FORREST: Yes.

THE COMMISSIONER: You say you were subjected to physical abuse metered out by Councillor Stephens alleging that you were twice struck in the stomach. Is that true?

MR FORREST: Yes.

THE COMMISSIONER: Councillor Stephens this morning said it was just an accidental bump as you were passing each other.

MR FORREST: He struck me with his elbow like that. I can't see how, I mean, you'd have to be walking like that to make it accidental but it was quite an overt act, it wasn't accidental at all. It was witnessed by a number of staff.

THE COMMISSIONER: You also allege that Councillor Ruth Sutton



## Public Hearings Transcript – March 20 2003 (cont.)

was also struck by Councillor Stephens with his case.

MR FORREST: Yes, that's correct.

THE COMMISSIONER: Again you would claim that that was not accidental?

MR FORREST: No, that was not accidental.

THE COMMISSIONER: Okay.

MR FORREST: If it was you would get an apology for that sort of thing.

THE COMMISSIONER: You also state that following this physical contact there was a loud outburst of foul language by another councillor.

MR FORREST: Yes.

THE COMMISSIONER: Is that correct?

MR FORREST: That's correct.

THE COMMISSIONER: Is the use of such language common when Councillors are addressing each other or not?

MR FORREST: No, it's not common.

- 3.4.1.6 A survey of Council audio tapes shows that some Councillors adopted a very belligerent attitude during Council meetings: in particular Councillors Julie Sutton, Councillor Jones, and Councillor Caputo. Submission 258 shows the public reaction to this.

### Submission 258

The bitterness within the Council Chambers is vitriolic and I would never take my children to see a debate. Unlike State or Federal parliamentary rivalry, hatred is all too prevalent in our Council Chambers. . .

- 3.4.1.7 Certain Councillors displayed the same sense of belligerence during the Public Hearings. Early on in the Hearings some Councillors (J. Sutton and Jones in particular) were so loud and intrusive from the gallery that by the third day a caution had to be issued that their right to questioning might have to be

withdrawn. There were numerous warnings issued for the gallery, where the Councillors and staff sat, to be quiet. Some Councillors obviously were used to venting their spleen whenever they saw fit. It is easy to see how they did the same in the Council Chambers; a fact that the audio tapes of meetings confirmed.

Three examples illustrate this behaviour during the Public Hearings.

The first concerns a vehement outburst from Councillor Julie Sutton when she sought leave to ask a question of one of the speakers on April 1 2003.

### **Public Hearings Transcripts – April 1 2003**

THE COMMISSIONER: Yes, we are running a little bit over time, but one question would be in order.

MS SUTTON: Mr Commissioner, nearly everyone has had two questions and I think we are running out of time because of the lengthy answers to simple questions, but I will just ask Mr Hamlyn-Harris. As you know so much about the whole business, don't you know that Council's sports rectification policy expressly forbids changing grass courts to bitumen, and don't you know that the Netball Association is paying for it, and then why did you tell the Commissioner under oath that you didn't know that?

MR HAMLYN-HARRIS: I don't - I don't recall saying that.

MS SUTTON: You were asked by the Commissioner if the sports field rectification was paid for and you waffled on that question when you are under oath and you know that the - - - ?

MR HAMLYN-HARRIS: I - - -

MS SUTTON: Please don't interrupt me. That you know that the Netball Association is paying for every cent of it?

MR HAMLYN-HARRIS: Well, if I may clarify to you,

## Public Hearings Transcripts – April 1 2003 (cont.)

Commissioner, about that. I - the statement I made earlier was that I believe that there had been some moneys allocated from the sports field rectification fund for bitumen netball courts back in the previous years in 1999, I believe - in fact, I think I heard someone stating that in here last week - and that the clarification of what this fund could be used for has been made only in recent times and it is only really, I believe in the last year or so, that that clarification has been made that, in fact, it can't be spent on those kinds of things.

MS SUTTON: But we are talking about now. I mean, you know - - -

THE COMMISSIONER: Can I - - -

MS SUTTON: There is no use pursuing it, but I mean I would like to make that point that there is absolutely no truth in the allegation that any money from the sports field rectification is going towards the hard surfacing of the netball courts and I'm very surprised that somebody under oath should make that - - -

THE COMMISSIONER: Well, please, I don't think it helps in any way if the questioning - the allowance of people to ask questions is really just to clarify issues, to help with the Inquiry, I don't think it helps very much if a person is attacked for what they say. If people feel that they have said something wrong there is occasions later to rectify that.

There are many people going to speak on the same sorts of issues, some of them might have different understandings, some of them might be right, some of them might be wrong, but as I said before this is not a trial of individuals. We are interested in processes that lead to certain outcomes through the governance of the Council and I plead with anyone asking questions not to personalise them, but to simply ask them for matters of clarification of amplification and leave it at that. You may stand down.

MR HAMLYN-HARRIS: Could I just clarify - - -

MS SUTTON: I apologise to you, Commissioner, but you must realise I'm very upset, I'm sorry.

THE COMMISSIONER: Yes, but please this is an Inquiry, it is not an inquisition and I want to keep it as an Inquiry.



The second is related to the clash between Councillors Forrest, Ruth Sutton, and Stephens referred to above. When questioned about the incident Councillor Stephens denied that anything untoward had taken place. In so doing he revealed his general belligerence and combative nature.

### Public Hearings Transcripts – March 20 2003

THE COMMISSIONER: Another issue came out of these submissions. 25 October 2000, Councillor Forrest, wrote to the Department of Local Government, alleging that he was struck twice by you in the stomach, the striking having occurred on 23 October. Would you comment on that?

MR STEPHENS: Well, he walked into me and pinned me against a door. I pushed him out of the way.

THE COMMISSIONER: Thank you. In the same letter . . .

MR STEPHENS: If I had struck, I can assure you if I had struck somebody, they would stay struck.

THE COMMISSIONER: In the same letter, he alleges that you struck Councillor Ruth Sutton in the side with your briefcase. Would you comment on that?

MR STEPHENS: That was in the same - where I tripped - when I was in the door way and I was literally off balance and she got - I think she got the briefcase on her back, or on her arm. I was trying to - I was - literally had a foot caught in the door way and I was falling over.

THE COMMISSIONER: Okay.

MR STEPHENS: And I am 15 stone, it takes a bit of stopping. If she calls - that was investigated and dismissed there and then so . . .

The third example is the questioning of a speaker by Councillor Darren Jones. The speaker had criticised the honesty, integrity and professionalism of the Councillors in his written Submission. He subsequently sent a second Submission withdrawing his criticism of their honesty and integrity. Further, he apologised during his appearance at the Hearings for the same thing. He was clearly very contrite. When the speaker had finished his oral Submission, Councillor Jones sought leave to question him. In an extraordinary show of animosity he attacked the man, his voice steaming with belligerence, and his body language likewise expressing some need to intimidate the speaker.



## Public Hearings Transcripts – April 1 2003

THE COMMISSIONER: . . . You say in your submission that elected representatives to Council and I am quoting:

Should at all times display honesty, integrity and a high degree of professionalism.

You go on to say:

With regret this cannot be said of the councillors presently serving on Warringah Council.

I would like you to explain and perhaps provide some examples of that general statement. Before I ask you to do that I would note that in my opening address to the hearing I stressed the fact that what we are concerned about here is the overall governance of Warringah Council. The efficiency and the effectiveness of that. We are not here to conduct a trial of individuals. So if you - when I say can give me examples of what worries you about the elected representatives I am not particularly asking you to name names but just to give the context of things that concern you. You said that the Council lacks honesty. What do you mean by that?

MR NEWMAN: I put another statement in on Friday, I believe, sort of clarifying that in relation to my belief that they were harsh terms, that one on reading that would consider that honesty was a matter of - honesty and integrity was one that - a quantisation which would come forward as hands in the bickie tin or something of this nature. We have certainly no evidence of that and I would say there is certainly no evidence of that impropriety within the Council. So I, in effect, apologise for those words and I hope they will be taken into consideration.

THE COMMISSIONER: Yes, they have been taken into consideration.

Councillor Jones asked the following question.

**Public Hearings Transcripts – April 1 2003**

MR JONES: Good morning, my name is Darren Jones. Mr Newman, you indicated to the Commissioner that you withdrew the comments that reflect not only upon yourself but the other eight councillors. You would be aware that these things have been all on the internet and people have been able to read that and a slur has probably been cast upon yourself and other people. What would have prompted you in the first place, without fact, to put pen to paper? Is it part of a, you know, square off the Council exercise?

MR NEWMAN: No, indeed not. When I looked at the dictionary reference to honesty it talked about character and behaviour and also it talked about acts of, you know, against finances, etcetera. So it was never in the intention that it was going to be against any financial or monetary matter.

MR JONES: On the second page of your submission you make certain statements there. Have you read the transcript?

MR NEWMAN: Of what?

MR JONES: The recent Court case?

MR NEWMAN: No, I haven't, no.

MR JONES: So you selectively reported things again to try and create a feeling of ill will within the Warringah - - -

MR NEWMAN: It wasn't a matter of trying to create a feeling of ill will, it was just a matter of sort of bringing the thing up to date.

MR JONES: Well, if you bring something up to date, surely you would include all that was said rather than be of a selective nature.

MR NEWMAN: The matter is public knowledge, isn't it? That's the way I see it. It's on the record and I was just drawing attention to it.

MR JONES: I would have thought, Mr Newman, that if you were going to quote something that the least you could have done as a representative of the Killarney Heights Progress Association, would have included all that was said rather than a very, very small snippet, and I think it behoves anyone that is making a submission to this Inquiry, if they were going to rely upon newspaper reports, rather than actually reading the details, I think that that sort of evidence bears some doubt in the Commission's mind, rather than having the opportunity, as I say, where things are now being withdrawn, no doubt having been brought before the public eye? Thank you.

3.4.1.8 The matter that Councillor Jones referred to in his tirade was the defamation case he made against Councillor Ruth Sutton. The Judge ruled in Councillor Jones' favour, but dismissed the charge as trivial and had a number of uncomplimentary things to say about Councillor Jones as a witness. There have been aspects of the case on-going during the Public Hearings, and reference to it was disallowed. A number of people had already made mention of the case in the written Submissions. It is ironic that Councillor Jones was the one to bring attention to it in the Hearings.

3.4.1.9 That case, more than anything else, has stimulated feelings of insecurity and intimidation amongst the Councillors, and within the general community. A number of people who were asked by the Commission to speak at the Public Hearings declined. Despite the assurances that were offered through the Royal Commissions Act 1923, they still refused to speak in public. This atmosphere of fright amongst the general community is deplorable. Whatever the motives were for the defamation case, and whatever the outcome, it has left a number of people in the community unwilling to speak their mind, or take a public part in the affairs of the community. This is a situation that should not prevail. Councillor Jones has been singled out as having created this atmosphere, rightly or wrongly, and while he holds his position as a Councillor it will continue to trouble many citizens of Warringah.

### 3.4.2 Relationships with the Public

3.4.2.1 The fear that people have of the threat of defamation, or some other form of recrimination by some Councillors, is very real. It manifested itself with the Public Hearings. A number of people made contact with the Inquiry stating that they had evidence or complaints about particular Councillors, but that they would only be prepared to put forward such material in closed sessions. They were too scared to do so in public. Similarly, a number of people stated that they were not prepared to speak at the Public Hearings because they feared the consequences. The defamation case itself, and the history of belligerent and abusive behaviour by some Councillors, has created what can only be described as an atmosphere of fear amongst many people who oppose particular Council policies. This is a travesty of democracy.

3.4.2.2 The expression of this fear occurred in several ways in the Submissions. The following examples illustrate the mood.

The first example was read to Councillor Julie Sutton, when she appeared at the Public Hearings on March 20 2003. Her reply was a belligerent denial of any sense of threat of defamation, and an attack on the individual (unnamed) who had written the Submission.

**Public Hearings Transcripts – March 20 2003**

THE COMMISSIONER (QUOTING):  
 I have been talking to people in the community about the Inquiry and several of them would have liked to make a submission but they are frightened that they will be sued for defamation. I have tried to tell them this is not possible, but they do not believe me. They have told me they are just too tired, that they have fought for three years and have now run out of energy to try and be heard. They point to the awful history of Warringah Council and say, how can they possibly be heard and make a difference. There is a resigned acceptance that the community is unable to be heard or to make a difference. It is sad to hear elderly people with such fear and resignation.

A second example is provided from Submission 007.

**Submission 007**

3. The sources of my information were people closely associated with Warringah Council who feel too intimidated to submit the information personally. They would expect retaliation. Accordingly, I am not prepared to supply any names as sources of these allegations.

A third example comes from Submission 168.

**Submission 168**

Whilst it is commendable this Public Inquiry offers protection from defamation a climate of recrimination/ defamation does exist in Warringah broadly including Council staff. Self censorship or censorship by omission is an option some people have chosen . This in my view is all the more compelling for the dismissal of this council.

3.4.2.3

Intimidation does not work unless it can be matched by recrimination. The general threat of defamation proceedings has seeped out into the community, and it underlay the reluctance of many people in having their Submissions made public, or in submitting or appearing before the Inquiry at all. There are a number of other ways in which intimidation, or the perception of intimidation, affected people’s dealings with the Council.



#### 3.4.2.4

One of the more bizarre, and pathetically petty, examples was provided in Submission 329. Councillor Jones had moved a motion to have a park opposite the writer's home rezoned. The local community fought the rezoning, led by the writer. At the Warringah Art show two years ago his daughter had had a painting accepted and exhibited. It depicted a development over parkland with the developer holding his plans on one side of the painting and a natural undisturbed area on the other. The developer is saying: "At last my own Jonestown". The painting was withdrawn from the exhibition by the then General Manager. The painting was shown to the Inquiry. The words, which were the apparent cause its being withdrawn, were so tiny that they were hardly decipherable. The artist was 13 years of age. The withdrawing of the painting gained a great deal of negative publicity for the Council. The young girl was then publicly abused.

#### **Submission 329**

We still have the painting and a week after it was withdrawn from the competition, my daughter took it up to the local shopping centre and showed it to all the local people. During this time, Councillor Jones's father went up to my daughter and took a picture of her. I believe this was done to intimidate her. Then Jones's mother went over to my daughter and abused her. I have pictures of this actually happening.

#### 3.4.2.5

The most public display of what many people regarded as intimidation occurred at a public rally on Meehan Reserve Dee Why on Sunday June 16 2002. A large number of people gathered in the Reserve to protest against overdevelopment in Dee Why. A police car sat at the entrance, and inside Council Rangers in uniform took pictures of the crowd. Mrs. Parsons, appearing at the Public Hearings on March 26 2003 reflected the response of the crowd, as did Ms. Bilderbeck-Frost on March 27 2003.

**Public Hearings Transcripts – March 26 2003**

MRS PARSONS: Council rangers arrived just as the meeting was about to start - or just prior to the meeting starting. Two Council rangers arrived in uniform and stood to the right of the front of the meeting. They then proceeded to take cameras out and to photograph the people at the meeting. Following this, there was a lot of discussion as to why this would have been and it was told and complaints went into the Council about it because people felt - people didn't feel comfortable with the fact that they were being photographed.

So various complaints went into the Council and to the Privacy Commission, wanting to know, you know, why were photographs being taken and what was the sum total of these photographs, what was going to happen to them, where were they being stored, who had access to them. On approaching the Council about this, we were told that the Council rangers were in attendance because of public liability concerns. . .

I personally didn't feel quite satisfied with this answer, based on the fact that this meeting was held on the banks of a lagoon. Now, if the concerns were to be aware of the public liability issues, I feel that the Council - the Council rangers would have been moving around to see what the dangers were in regard to the lagoon but they only stood to the right of the gathering, taking photographs.

**Public Hearings Transcripts – March 26 2003**

THE COMMISSIONER: Right. In another part of the submission you refer to a meeting at Meehan Reserve, Dee Why on June 16, 2002. Were you at this meeting?

MS FROST: Yes.

THE COMMISSIONER: At that meeting, did Council Rangers attend?

MS FROST: That's right.

THE COMMISSIONER: Did they take photographs?

MS FROST: Yes, they were taking photographs.

THE COMMISSIONER: Of the residents?

MS FROST: It seemed to be taking photographs of people and coming right up and - - -

THE COMMISSIONER: You regard this as intimidation, why do you do that?

MS FROST: Well, there were two things. As we walked in, there was a police car at the entrance so we thought: what's this about? It seemed that we were being policed and then when the Rangers started taking photographs of us we thought: well, what are they doing? It's almost as if we're not supposed to be here, as if we're committing some sort of crime and this is being recorded.

THE COMMISSIONER: What was the meeting about?

MS FROST: It was a rally on overdevelopment within Warringah Shire.

The incident is still before the Privacy Commission. The Council, according to Briefing Paper No. 40 which it supplied to the Public Inquiry, has yet to send its response to various issues raised by the Privacy Commission. The essence of the Council's defence (Volume 3, Appendix 2) is that the Rangers were present because the Meeting was unauthorised and its organisers did not have public liability insurance. The Council needed evidence in case they later had to face claims of damage or injury in the future. Their further defence to the Privacy Commission revolves around the fact that a faulty camera was used, and no useful photos of the public were gained out of the exercise.

Mr. Corbett gave the following evidence at the Public Hearings on April 3 2003:

### **Public Hearings Transcript – April 3 2003**

**MR CORBETT:** Yes, Mr Broad, part of my conservation land management team, one of the tasks they do for Council is reserves bookings, where the community, or individuals ring up and see: can they carry out certain bookings and we have a lot of bookings that come through. We say "no" to a lot because we have got to balance up the community's interests. In the case of the event you are referring to, a group had approached my reserves booking officer, wishing to undertake a public rally, that is fine, that is great.

We have a list of span of conditions that - first of all we say if that use is permitted. In the case of this rally, yes, the use was permitted with conditions, and the stumbling block was - and this is not the group's fault, I know - public liability insurance. We say to the group - and this could be the same as for a wedding booking, or a lot of issues like that - one of the big issues for us is liability insurance because we can't allow the ratepayers to, you know, have a liability case they might have to pay for when a group wants to use the reserve.

So we say: yes, we are happy to support your request, you must give us the right public liability insurance, details of your insurance. Now, that group was unable to do that, which again is not surprising, given the insurance issues that we are all facing at the moment, but from Council's point of view, we couldn't allow that booking to go ahead, so we have a number of groups in the past 12 months, I have had to say: look, I'm sorry, but you haven't got the insurance.

On the Friday before the rally, the rally was on the Sunday I believe, Mr Broad, we - myself and the Director of Services contacted by phone the organisers of the rally. We had a mobile phone number. Left a message and said: you know, please call us back, you have not got permission because there is no insurance.

We then heard advice that the rally would be taking place and, you know, we weren't going to go down and try and stop the rally but, again, we were concerned about insurance, and when I think of a rally, Mr Broad, I think of extension cords and leads and people standing on platforms and speaking and as a public land manager, I have concerns about some of the things that might happen there.

So we said to the rangers - and the rangers work 7 days a week - guys, I know what the insurance manager is going to ask for on Monday, he will want to know what was there. Were there things there that could come back because the insurance claims can come back 6 months, 12 months later. We need a record, for the public record of what took place there, whether any things that are going to give us some grief.



**Public Hearings Transcripts – April 3 2003 (cont.)**

**MR CORBETT:**

So it was Friday night, we hadn't received a call back from the organisers. We thought: well, okay, we will have to get some kind of - something for the record - and that was the background, Mr Broad, to the Council rangers attending and taking some photographs because of our concerns. I didn't know who this group was - it didn't matter to me who they were - I just knew they didn't have insurance.

**MR BROAD:** Did they take photographs of the equipment, the tables, the cords that might have been there, or did they take photos of the people who were there?

**MR CORBETT:** They took a series of four photographs which are on Council file and which actually didn't come out. We then sent the camera to a photographic expert with the film, who came back and said: your lens is jammed, and he had all the negatives and the whole series of that film didn't come out, but the four photographs were taken, I guess, of the event in general. The rangers' intention was to take a small number of photographs so they could answer my question: guys, what was there. I want to know what was there. So that was the instruction on the Friday night and on the Saturday to the rangers staff and that is the number of photographs that were taken, yes.

The Council's defence is lame. Protest meetings are an integral part of democracy. Because they often attract large crowds they are held in public spaces. Events like the protests against war, or the Reconciliation march, are actually assisted by the public authority in various ways. It maybe inferred that the reason why the meeting was not sanctioned and assisted by the Council is that a pro-development Council did not believe that those who opposed them should be allowed to take to the streets and make public their opposition. The presence of the Rangers was a none too subtle hint that the pro-development Councillors would not take such "defiance" lightly. In this context the extract from Submission 293 is instructive.

**Submission 293**

This misuse of resources by Councillors and the Acting General Manager was again demonstrated earlier this year when a public meeting was held at Meehan Reserve Dee Why and Rangers attended to take photographs of participants and collect material being circulated by the organisers. When I approached the Ranger Jeff, I asked what are you doing? He responded "Jonsey and Moxo have sent us down to keep an eye on you lot, I've got your pamphlet Vince and your photo, don't you worry about that". I am aware that the NSW Privacy Commissioner was flooded with complaints following a publication in the *Manly Daily* of a photo of the two Rangers taking the audiences photographs. . .



3.4.2.6 Bullying and derision of the public who oppose the “Majority” Councillors is rife in Warringah Council.

#### **Submission 184**

This Council is characterised by a favouritism, a bullying attitude, to those who it perceives as not its friends, and decision making that favours sectional interests over the people who live in the area. . .

Several of the “Majority” Councillors have been singled out for criticism of the way that they treat members of the public. The Mayor has denied any wrongdoing in that regard.

#### **Public Hearings Transcript – March 20 2003**

THE COMMISSIONER: Have you, yourself, ever used rude and abusive language?

MS SUTTON: Rude and abusive, I don't think so. I mean, if - there is a cut and thrust of debate and sometimes we're not very nice to each other, but I think that that is the way it is in Council...

THE COMMISSIONER: I'm asking in what circumstances, give me an example of where you would see a breach of the code of conduct?

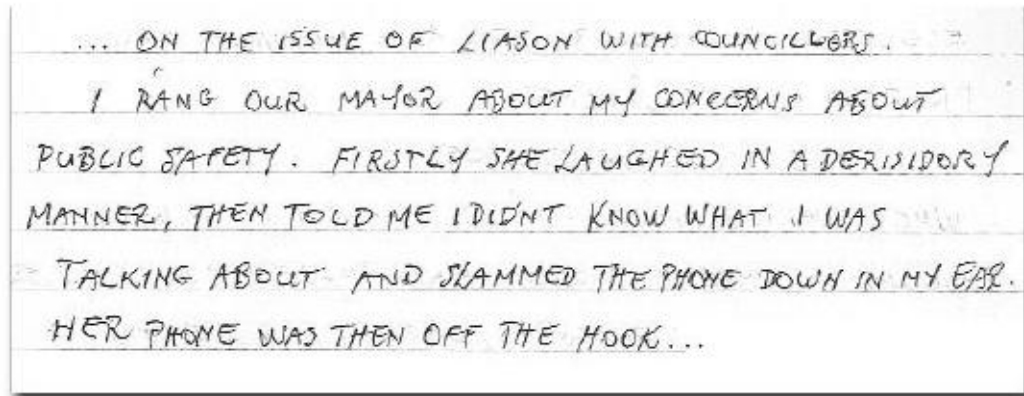
MS SUTTON: Well, that's - thank you. I'll answer that question now. That question would be - that would be if a councillor refused to sit down when asked to, refuse to finish his or her speech at the time when asked to. Screamed out at the public gallery which I don't - it may have happened once, but I can't remember...

3.4.2.7 In contrast Submission 358 is explicit in its depiction of Councillor Julie Sutton's use of language.

#### **Submission 358**

Her swearing and vile use of language is appalling as was witnessed when she left a public meeting at Freshwater High School. Her ability to consider both sides of an argument is seriously lacking and her antics in council chambers are insulting to the gallery.

Others have complained about Councillor Sutton's reactions when they have approached her. An example of this was given in Submission 003.

**Submission 003**


... ON THE ISSUE OF LIASON WITH COUNCILLORS.  
 I RANG OUR MAYOR ABOUT MY CONCERNS ABOUT  
 PUBLIC SAFETY. FIRSTLY SHE LAUGHED IN A DERISIDORY  
 MANNER, THEN TOLD ME I DIDNT KNOW WHAT I WAS  
 TALKING ABOUT AND SLAMMED THE PHONE DOWN IN MY EAR.  
 HER PHONE WAS THEN OFF THE HOOK...

Another example relates to a journalist who had worked at the Northern Beaches Weekender in 1999. In response to the new Mayor (Councillor Moxham) telling him that the support of newly elected Councillors (in his election as Mayor) suggested a mandate to seek change in the Council, the journalist wrote an article to that effect in the newspaper. Councillor Julie Sutton had stood for election as Mayor and failed; and had then stood for election as Deputy Mayor, and failed. She took exception to the article that suggested the Council now had a mandate for change and threatened to withdraw her advertising from the paper. She rang the journalist at his home and left an abusive message on his answering machine. His wife *“was both shocked and offended by its content”* (Submission 226). A tape of the message was given to the Public Inquiry and there is no mistaking its abusive nature.

3.4.2.8 Besides outright abuse of the public, several of the “Majority” Councillors have displayed derisory attitudes towards members of the public when they make presentations to the Council. Such abuse and dismissal of the public is really a form of intimidation. It discourages those who have an opinion that is different from that of the “Majority” Councillors from trying to get their point of view across. The extract from Submission 258 demonstrates the problem.

## Public Hearings Transcript – March 27 2003

THE COMMISSIONER: But when a resident does address the Council, again, to quote your words: some councillors walk around and even leave the chamber. Would you like to comment on that?

MS FROST: Yes, it hasn't happened as much in the last few weeks I have to say but it was happening a lot. It was sort of a demeaning thing that, particularly if they were objecting about something - they would appear to take no notice or if they were listening it was almost as if they were trying to find a chink and get in and say something very clever to belittle them in some way and I thought it was very difficult because those people aren't used to addressing groups or don't quite know how to voice their objections so it took quite a lot for them to be there in the first place so I thought it was really below the belt to do what they were doing.

### Submission 258

John Caputo reads the newspaper while council meetings are in progress and he leaves the chamber during addresses or debates. I believe there are serious allegations directed at him relating to victimisation of Mike Pawley. His property investments in Warringah are huge and along with Darren Jones, they have had to absent themselves from debate regarding developments due to pecuniary interest. This does not give us good local government. Darren Jones has approved DA's with certain criteria and then we find he has submitted a similar DA for his own developments knowing that his DA will go through as the precedent has been set for a previous DA.

3.4.2.9 The frustration that this kind of behaviour breeds lies at the heart of the angst revealed in the Submissions of many people. At times, parts of the community have organised petitions to try and get a collective voice presented to the Council, when they believed that their individual voices were not being heard. More than once such petitions have simply not been accepted. The following example (from Submission 168) illustrates the point.

### Submission 168

Because of the very fragile ecological status of this "Duffy's Forest" remnant bush many hundreds of people protested it's sale advocating Warringah Council buy it as an investment for the future "and thereby save it. Council in it's support for the developers the then mayor Cr Moxham refused to accept a 3000 signature petition opposing this contentious development .

3.4.2.10 In 3.4.2.8 the "Majority" Councillors were accused of paying elaborate attention to the detail of small development applications, seemingly looking for ways to find fault with them, often deriding the views of the public who presented cases

in favour of their approval. In contrast, many people have complained about the way in which the “Majority” Councillors have processed major development applications. They see them as deriding, in these cases, issues that might be raised by the “Minority” Councillors usually representing opposition the development from a group within the community. The derision of the “Minority” Councillors is seen by opposing community groups as derision of themselves. Ms. Bilderbeck-Frost explained the situation, as she saw it, in her appearance at the Public Hearings on March 27 2003.

### Public Hearings Transcript – March 27 2003

THE COMMISSIONER:

Some councillors display appalling manners during Council meetings in that they insult, mock and attempt to belittle other councillors.

Can you amplify that or tell me why you arrive at that sort of judgment?

MS FROST: Well, it is childish derision of what they are saying. When the Council changed and there were four brand new councillors, they were being belittled by the existing councillors all the time and the famous R Sutton which came up and then they would laugh and they had their little private jokes when the new ones were speaking and it must have been very difficult for them to continue.

THE COMMISSIONER: Okay. The kind of debate - this is an issue that you have just raised - the kind of debate that took place over what you call small developments - - -

MS FROST: Yes.

THE COMMISSIONER: - - - as opposed to the kind of debate that took place over big developments - - -

MS FROST: Yes.

THE COMMISSIONER: - - - what were the different characteristics of the two debates that you are suggesting.

MS FROST: The big ones were more or less a fait accompli, that the group, the five existing councillors, the older councillors were going to vote that way and the arguments were pretty compelling that they should vote that way and whilst - - -

THE COMMISSIONER: Whose arguments?

MS FROST: The main block, the five councillors, whereas the small ones would each stand up and speak to a different aspect where it was falling down on the compliance and it seemed to me in the gallery that these should be addressed before it went any further but it - they used to go through on a 5, 4 vote.

THE COMMISSIONER: Thank you. You allege that one councillor was heard to make chicking [sic. chicken] noises at a Council meeting and made an exaggerated display of turning his chair around and reading the newspaper whilst another particular councillor was speaking. Is that correct?

MS FROST: That's right.

THE COMMISSIONER: Did that happen more than once or? . . .



## Public Hearings Transcripts – March 27 2003 (cont.)

MS FROST: Yes, that was a little pattern for a while. It is not happening at the moment. . .

THE COMMISSIONER: - - - You also allege that the councillors in the so called majority group - you distinguish between two groups of councillors - - -

MS FROST: Yes.

THE COMMISSIONER: - - - insult the gallery.

MS FROST: They do.

THE COMMISSIONER: Can you tell me whether this is a reaction to behaviour in the gallery, that taunt the councillors and they reply to that or do you think it occurs without provocation?

MS FROST: I think it is reaction to us being there at all and watching them. . . .

3.4.2.11 Warringah Council has had a large number of cases before the Land and Environment Court. This in itself has been a deterrent for many people when confronted with the decisions and outcomes of a pro-development majority group in the Council.

3.4.2.12 The intimidation and bullying of the “Minority” Councillors, and members of the general public, has extended to the staff according to the evidence of a number of people. Two examples (Submission 130 and Submission 258) illustrate this assertion.

The general issues of the relationship of the Councillors to the staff are covered in Section 8.

### Submission 130

I believe that they [“old guard” Councillors] have not acted in the interests of the public, that the staff is subjected to bullying and that their conduct should disqualify them from holding public office.

**Submission 258**

I am certain you will receive many more erudite and articulate arguments from other community members but there are many more people whom I know who are just so exhausted from the constant correspondence that has been required in an attempt to bring about better local government for our shire and then others who are in fear of the ramifications if going against some powerful on the Warringah Council who look after their mates in many covert ways. I know Warringah Council employees that are not prepared to risk losing their job by putting their name to a submission. One employee said that if he criticised a certain councillor and it was ever traced back to him, he would then be at risk of being attacked on his way home at night because of the criminal mentality of this councillor.

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## 3.5 Conduct Of Councillors: Individual And Group Factors

### 3.5.1 The “Majority” Councillors

3.5.1.1 How well a governing body within an institution has performed may be judged in many different ways. In the case of Local Government, the community makes the ultimate judgement at election times. Occasionally, the public perception of discordance amongst the elected representatives, and concerns about their ability to govern effectively and efficiently becomes so great that calls are made for the elected body to be replaced before the election. In the eyes of many people who wrote Submissions or appeared at the Public Hearings of the Inquiry, Warringah Council has reached such a point of dysfunctionality. A number of people have argued there is no alternative but to remove the Council from office.

The conduct of the Councillors in the current term of the Council is raised as a major factor leading people to make such judgement. Sections 3.2 through 3.4 investigates aspects of this. Here the focus is on the personalities and attitudes of the nine Councillors. Have their personal differences been an element in causing the conduct that many in the community have found wanting? If so, will such differences continue and are they a serious obstacle to creating an environment where the conduct of the Councillors is not likely to hinder the efficiency and effectiveness of the governance of the Council?

The conclusion is that the attitudes and personalities of the Councillors have materially affected the operations of the Council, and its relationship to the community. The interactions between the Councillors have become so volatile and unstable that there is little hope of repairing the damage. Three and a half years of vicious and uncompromising in-fighting amongst the Councillors has sapped community confidence.

In Section 3.5 a brief summary of the personality and attitudinal traits of the individual Councillors is made. The reason for doing this is not to criticise any individual. Instead individual traits are mentioned in terms of explaining group outcomes. It suggests how they have combined to produce group behaviour has become an obstacle to good governance.

3.5.1.2 The Mayor, Councillor Julie Sutton, has served on Warringah Council since 1980. She demonstrated in her appearances at the Public Hearings, and in her Submissions, that she is a woman with a deep attachment to Warringah Council, and treats her responsibilities as an elected representative very seriously.

Her long experience as a Councillor appears to have been translated into a conviction that her views will always be right. She does not brook counter opinions. She appears to be unwilling to enter into reasoned debate, relying instead on her intuitive grasp of issues. For example, she bristled at what she perceived to be an attack on her at the Public Hearings on March 20 2003. When this happened, the focus was on inquiring into her assertion that the poor image of the Council was produced by the actions of a small band of people, who sat in the gallery at Council meetings. The issue was whether this assertion could account for the depth of negative feelings about the Council, demonstrated in the Submissions. Questioned about how sustainable her argument was, in the face of counter evidence, in reply she attacked the questioner.

#### **Public Hearings Transcript – March 20 2003**

MS SUTTON: Well, I'm sorry you feel that way, Mr Commissioner, because what I'm telling you is the truth. I have been to every meeting of that Council for the last 23 years when I have been elected except for one through sickness and one through the death of a friend. So I have been to many more of those Council meetings, Mr Commissioner, than you have. I have sworn on oath to tell the truth, sir, and I am telling the truth. Our Council is well conducted, I have statistics here which I won't bore you with, with how many meetings we have had, how many have been adjourned, they are all in the General Manager's submission. . .

MS SUTTON: Please don't interrupt me, Commissioner, when I am trying to answer a question. I am extremely distressed about the tone of your questions, I really am. You are saying that I'm not telling the truth, sir, and I am under oath and my job is on the line and my Council's future is on the line. It is most unlikely, sir, that I would tell a lie. Now, some of the things that they call out are things like: she is past her use by date, are you too old to understand that, Julie, and some others, sir, that are so vulgar I won't trouble you with them, and I - - -

THE COMMISSIONER: Excuse me, let me address two things you said there. I'm not accusing you of telling lies, I have no doubt that what you are saying has happened, that there is a handful of people who have variously disrupted the meetings. What I was saying is that it is hard to relate that to the very large number of submissions across a wide section of the public who are complaining about that. . . not about the public Gallery behaviour, but the behaviour of councillors.



Councillor Sutton has shown that she can be a conciliator, and her large vote in the Council elections demonstrates that she is well supported by the residents of her ward. She spends a huge amount of time at the Council. In her appearance at the Public Hearings she said: *"I go to Council every single day. I have been every day except Christmas Day and New Years Day since I have been here"*. This hard work and dedication over a long period seems to conflate into a mind-set that no one else could possibly have a real understanding of Council issues; that is, if their ideas happened to be contrary to her own.

This appears to have translated into her relationships with some of the other Councillors, her attitude being shaped by an obdurate insistence of her own correctness about issues. Quick to anger, and fierce in her attacks on those who cross her, Councillor Julie Sutton was not well situated to handle a Council where four of the elected representatives were opposed to her views.

#### 3.5.1.3

Councillor Moxham also presents a complex image. Following the 1999 elections he won over four of the new Councillors, convincing them to elect him as Mayor. In his acceptance speech he stated: *"There is a mandate for change, the message must be heeded"* (Minutes Council Meeting Warringah Council 23 September 1999 p.10). In less than two months he had fallen out with those who had voted him into office. He had sided with the four Councillors who had voted against his gaining the office of Mayor, and in so doing had created the "Majority" faction. He has consistently worked with this faction to the present day.

Councillor Moxham's short flirtation with the mandate for change indicates that his sentiments were, and still are, on the side of the pro-development faction. In his appearance at the Public Hearings on March 27 2003 he gave a cloudy impression of just what his views on development issues were.

#### **Public Hearings Transcript – March 27 2003**

MR MOXHAM: . . . The Councillors at the time, the three ones that you're referring to, campaigned on an anti-development ticket and that's what people wanted and, in fact, I, myself, in 1995 campaigned on an anti-development ticket and was very successful.

So that it's not surprising that the Councillors at the time picked up on this and I think you'll find in the election in September this year, if there are elections, every candidate will be campaigning on an anti development ticket. So this appeals to the population and I can understand that.

Later in his appearance Councillor Moxham strongly supported the actions of the pro-development “Majority” group of Councillors. This apparent changeability has seemingly worked against his capacity to overcome the divisions that have so riven the Council.

### Public Hearings Transcript – March 27 2003

MR MOXHAM: . . . Do we look at the election coming up and think about the number of objectors or do you make the hard decisions and support the staff and try and save the ratepayers money? I know one of the issues raised in the submissions was the cost of our legal expenses over the last 4 years and it is true we have spent a lot, although on a pro-rata basis. If you like to benchmark against other councils it is not all that bad but it is still a lot of money and of course the obvious way to go is to refute all these applications that are recommended for consent.

Then we of course will be popular with the objectors and with the residents, we will be heroes, you know, and we will get re-elected again or do we make the hard decisions? So I think what I'm saying to you, I think that the five so-called majority block councillors have their principles and they believe they have to do the right thing by the community and as much as it hurts them and pains them and they get bad responses from the objectors and residents who jump up and down and wave placards and so forth, we have to make the hard decisions. This is not Arcadia Waters. . . .

Councillor Moxham also took part in the belittling of the “Minority” Councillors. He was described as making “*Chicken noises*” and turning his back and ostentatiously reading a newspaper whilst they were speaking at Council meetings. He did not deny that this happened. Such childish behaviour trivialised debate, and alienated those members of the community who had genuine and serious concerns about over-development (the cause that got him elected to the Council in 1995). His high-handed attitude to petitions and other forms of public complaint, and his recorded jibes and insults to opposition groups in the Council Chambers and in other places, raises great doubts on his ability to change his ways of operating.

## Public Hearings Transcript – March 27 2003

THE COMMISSIONER: What about the newspaper?

MR MOXHAM: The newspaper. I'm probably taking a lead of our recent very successful elected Premier, Mr Carr, who whenever Mrs Chickerovski [sic. Chicarovski] was speaking, the leader of the Opposition, Mr Carr used to read a book. In fact, he used to read book reviews. So I guess if it is good enough for him, it is good enough for me but maybe I had an inkling of what was happening, I was looking in the jobs vacant position for positions vacant.

I certainly took notice of the members of the public who are addressing Council and they certainly had my full and undivided attention but some councillors, and it happens some politicians, wherever you look in all spheres of Government, all tiers of Government will go on and ramble on and waffle on. Sometimes it gets a bit boring when you have heard the same thing about ten times. So you might be diverted and look at something else....

### 3.5.1.4

Councillor Jones was mentioned in the Submissions, and in the appearances at the Public Hearings, much more than any other Councillor. He is the longest serving of the Councillors, having given, in his own words, half his life to Local Government. The frequency with which he is cited in the Submissions is probably in part, a product of his having served so long on the Council.

He presented at the Public Hearings as a person who is dedicated to his work on the Council. He spoke with great confidence, and possessed a huge certainty about the correctness of his ideas. He also appeared to be a person who would brook no criticism, and he demonstrated that he would attack anyone who would criticise him. The fact that he sued a fellow Councillor, and his general demeanour of aggression towards those he classed as his enemies, cast him as a person that should not be trifled with, and one who would give no quarter with people who saw the world differently to himself.

Councillor Jones has a very elevated opinion of his importance within the society, and the good that he has done for society. While on the one hand proclaiming himself to be a carpenter and joiner, he boasts about his achievements stating that he is a "tall poppy". In contrast, his detractors are called under-achievers. He was not one who was going to be swayed by the ideas of new Councillors who opposed his strong advocacy of the virtues of development and growth.

**Public Hearings Transcript – March 27 2003**

MR JONES: . . . If you wanted to believe the urban myth. I built every building from the Spit Bridge to the Barranjoey Lighthouse, and I own half of them. It wouldn't make any difference if I stood naked on the corner of George Street, to try and bring the attention to the fact that it was full of lies and whatever.

People wouldn't want to believe it. There is an element in society. I am a tall poppy, whether I like it or not, and there are people that take great delight in chopping down the tall poppy. Now, I would suggest, those people are under-achievers themselves. They are very jealous of someone that has worked hard. I employ people.

I give people an opportunity to feed their families, but there are still people out there in society that want to deny me that. They want to try and do whatever they have available to them to denigrate me, and my family, and they will use people such as Rhiannon the Upper House of the New South Wales Parliament and Barr in the Lower House of the New South Wales Parliament, under Parliamentary privilege, to slag me, my ailing father and other members of my family.

It is absolutely despicable, however, there is nothing I can do about it because there are people who will want to continue to do that, irrespective of whatever. . .

Councillor Jones' sensitivity is bounding on the extreme. Whether or not this is a result of the volume of criticism he has attracted, the outcome is that he has a driving desire to clear his name from whatever is alleged against him. He prepared the largest Submission in reply in the two weeks after the Public Hearings finished. Volume 3, Appendix 1 contains this reply. His reply underscores his level of indignation at people and issues that he considers to be wrong.

Councillor Jones maintains his hostility against the Minority Councillors (excluding Councillor Forrest). His attack on Councillor Smith, in Councillor Jones' Submission in reply, illustrates this. His unremitting belligerence to Councillor Ruth Sutton is apparent in his reply to a question during the Public Hearings on March 27 2003.

There is no apparent desire to, or capacity of, Councillor Jones to change his uncompromising stance. He appears to rely on bluff and bluster to try to get his way, and this modus operandi is unlikely to change.



## Submission 294 – In Reply

Cr Smith came in and took me a little while what he was even talking about and trying to get to, but he made reference to coming in and looking for help. It would be of interest to the commission that prior to his election to council, Cr Smith and his mates were full of criticism of the then council and that he was going to fix everything. So from that I can only deduce that Cr Smith had all the answers. Obviously he didn't. It would have been so wrong for me to suggest ways of doing things and handling issues, as he had already made statements that I and the other members of the council were doing everything wrong.

Cr Smith made reference to me having referred to the four now known as minority councillors as "feral scumbags".

"Some people's mothers don't know who their father is."

Council records will verify that those terms were used and only used in a critical way to people that were responsible for putting out unsigned leaflets which were highly defamatory, high insulting, and indeed very contemptible. Is this then an admission by Cr Smith that he was behind the publications that I was referring to, and I believe will be presented if not already done so, to the Commissioner.

Cr Smith when on at great lengths talking about all these people contacting him, and by his own admission he was part of the minority block. Surely if there were such a thing as block voting, if people were seeking to have something changed you would tend to go to the ones where the numbers were, not go to an ineffectual councillor. Cr Smith talked about he and his colleagues were discriminated against in regards to sharing council responsibilities. Cr Colman has been the deputy Mayor, Cr Smith was chairman of the Sportsfield Rectification Committee. Cr Smith claimed that he wasn't offered any help regarding the Slip proposal he mentioned at Collaroy. When help was offered, he didn't want it. . . .

## Public Hearings Transcript – March 27 2003

MR JONES: . . .The complaint has been levelled at me. Right? I stand before you, under oath, and say that I have never ever said that word to her. Right? Pretty clear. Now, she has never ever raised that. I call her Councillor R. Sutton. Right? Which I'm entitled to do. She has raised the issue. She would rather be called Ruth.

Well, she can ask what she likes. I'm not compelled to do what she asks me to do. . . .

### 3.5.1.5

Councillor Caputo is a long-serving Councillor. In his Submissions, and in his appearance at the Public Hearings, he did not adopt the same belligerent tone as the other long-serving Councillors. He presented a great deal of evidence concerning his work in the community. His Submission in reply contained a lengthy Appendix with letters from prominent people in the State and Federal government spheres, and in the community, extolling his work in community affairs at the time he was being recommended for an OAM. He pointed out that he did not follow the factional 5/4 voting pattern every time, and the records attest to that.

At the same time, he was the second most complained about Councillor in the complaints sent to the Department of Local Government, and in the Submissions to the Inquiry his name was mentioned a number of times. Mostly, the complaints concerned his associations with the property industry in Warringah, and the number of times he (and Councillor Jones) had to absent themselves because of Pecuniary Interest issues.

Councillor Caputo has a much softer approach, shown in his Submissions and in his appearance at the Hearings, than his long-serving colleagues. He is just as strong, however, in his defence of the pro-development stand of his faction. His arguments in favour of this stand are very similar to those of his colleagues. He appears to be equally hurt by the behaviour of people in the public gallery at Council meetings, and in other places. Councillor Caputo's recollections appeared to be selective, showing little recall of some matters but, conversely absolute recall of others. It is highly unlikely that Councillor Caputo would change his stance. He is committed to the beliefs of his faction.

### Public Hearings Transcript – March 24 2003

MR CAPUTO: . . . I think the ones that are five/four, are the applications that comes before Council that are contentious, that there are a lot of objectors and it is really - it is good to be popular as a councillor.

I mean, I love to be popular and I love everybody to love me, but I don't think - I don't think the residents really elected me to be popular. They elected me to make a decision on behalf of them and you have got to stand up and make decisions if you are a councillor and when there are applications before Council, there are a lot of residents' objections. The application complies with all the regulations, all the policies of the Council, I vote for it. I support the staff recommendation and if the other four councillors want to be popular and they want to support the residents, it is up to them but - and they are the basis most of the time that the vote was taken.

3.5.1.6 Councillor Stephens was the one Councillor in the "Majority" group who was newly elected in 1999. He gained only 19 primary votes in the election. He explains that low support by being coaxed into standing with Councillor Julie Sutton under a guarantee that he would not be elected. In his Submission he lists a large number of community organisations he has worked with, and boasts of a close connection with the community. His place on Council, and his present position of Deputy Mayor, was made possible by the large flow of preferences from Councillor Sutton. The evidence suggests that he has followed a consistent pattern of voting in harmony with Councillor Julie Sutton on major and contentious development issues.

Councillor Stephens is a strong advocate of the school of thought that the image of a dysfunctional Council has been created by “a small bunch of malcontents” (Submission 290). These are blamed for having conspired to attack the Council. He also argued strongly that the walk-outs were less serious than the public image of them, and were certainly not an indicator of dysfunctionality. He argues forcefully that the Section 430 report produced no evidence on the alleged misbehaviour of Councillors. He firmly believes that the Inquiry is a political exercise. But, he offers no reason why the then Minister for Local Government would be interested in taking sides between the elected representatives and the “malcontents” (“failed candidates”) when he had no personal contact with either side. Neither is there evidence of a relationship of any of the “malcontents” to the Minister’s political party: indeed the contrary appears to be true.

Councillor Stephens clearly has a vigorous, somewhat combative, approach (illustrated in the following excerpt from his appearance at the Public Hearings, March 20 2003). Combined with that is the certainty he expresses about his conclusions: the Council is not dysfunctional, and has community support, and that the decisions of the “Majority” Councillors in relation to development matters are right. There is nothing to suggest that Councillor Stephens is likely to change his attitude or his convictions.

### **Submission 290**

... Because the terms of reference for the inquiry are purely based on perceptions, which are open to interpretation, it makes it easy for the Minister to do what he likes. I find this totally unjust in the light of the fact that his own investigator over eight months found nothing wrong with the walkouts or behaviour of councillors. . .

I believe this investigation is a political exercise. Although those that wish to say that using the expression “political exercise” is an example of our intransigent attitude, and evidence that we don’t accept the reality of a lack of confidence vote, I think I have comprehensively debunked that argument through my interaction with the community alone. . .

## **3.5.2 The “Minority” Councillors**

### **3.5.2.1**

Councillor Forrest was one of the newly elected representatives in 1999 who ended up within the group commonly called the “Minority” Councillors. Councillor Forrest has used the term “Community” Councillors to describe them.

This nomenclature reflects his perception of what the group represents. They, he argues, present to Council the views of the community as opposed to what he would call the pro-development views. By implication these are non-communitarian. From the evidence of the Submissions, the community in the Forrest context usually refers to one group or another concerned with opposing development and change in a particular place (a theme that is examined in Section 6). The “Minority” Councillors picture themselves as taking up the issues of these various groups, and by amalgamation they believe to be representatives of the community at large. Councillor Forrest is a very articulate promoter of this view.

In his Submission (No. 307) Councillor Forrest focused on two sets of issues: breaches of the Code of Conduct, and matters related to Conflicts of Interest and Pecuniary Interest. He claims that in both areas there have been Conflicts of Interest by the “Majority” Councillors.

Councillor Forrest has taken the high moral ground, and it would be difficult to imagine that he would fundamentally relinquish this in relation to the “Majority” Councillors. He gives indications, however, that he may be willing to accept a truce within the Council Chamber so that meetings can be conducted in a better fashion.

### Submission 307

Many examples of Councillor breaches of Council’s Code of Conduct over the past 3 and half years exist. I have listed some of these in this submission. I would be prepared to elaborate on these and other examples during my oral submission. I believe it is breaches such as these which create the perception of bias and partiality of the Council in the eyes of the public. This has the potential to seriously undermine the confidence of the community in local government and prejudice effective decision-making...

3.5.2.2 Councillor Ruth Sutton’s background as a school teacher appears to have led her into community affairs at Warringah. She started a group called the Warringah Environmental Action Group, a movement emanating from her role as teacher in charge of the environment for the area. She also belonged to other community organisations, and the focus of these seems to be a concern with over-development. She was first connected with the No Tall Storeys group, which later coalesced with other groups to form the Dee Why Residents Action Group. Her approach to Local Government has been built around the protection of the environment and the limitation of development. In these areas she appears to be quite passionate, and the many mentions of her in Submissions suggests that she has a close contact with those groups in the community who share her views.



## Public Hearings Transcript – March 26 2003

MS SUTTON: . . .

Particularly within the period of the time that I was - I'd been in Warringah, I've belonged to various groups. One or two I've started myself but in the main, they've been groups that other people have started but I've been invited to join.

THE COMMISSIONER: These are community groups, are they?

MS SUTTON: Yes. Well, I started the - sorry, I started the Warringah Environmental Action Group and we obtained grants to the value of \$24,000 to help to rehabilitate the Dee Why wetlands and of course being - I was the teacher - I was the teacher in charge of the environment for the area so that I was responsible to the person at the education centre and we began by celebrating World Environment Day on June 5 where we brought a whole lot of schools together and worked on the Dee Why wetlands and then those schools and my school also worked individually during the year.

So we used the money in that way. Then we didn't do what we had aimed to do and I was not allowed to do a little of what we aimed to do. So that was a pity but we then - at some stage, I - somebody rang me up and asked - and said that there a difficulty in Dee Why, would I join a group that they had formed called the Dee Why - no, they called it the No Tall Storeys Group. I was asked to go to that. That was a group of very clever residents who had some marvellous - you know, one was a lawyer - a librarian for a large firm of lawyers. All of that sort of thing.

THE COMMISSIONER: Yes.

MS SUTTON: In other words, I'm trying to say it wasn't just an ordinary group. It was a group of very thoughtful people.

THE COMMISSIONER: Right.

MS SUTTON: Then - but later on that term, that was discussed and we - nobody wanted a proliferation of groups. Too many groups. It's hard to go to the meetings and that became the Dee Why Residents Action Group and out of that, there was a coalition of groups formed when I decided to try to enter Council.

Councillor Ruth Sutton has clearly been distressed by the conduct of her opponents in the Council. She is the widow of a clergyman, as well as being a teacher, and her demeanour reflects that background. She states that she is used to hierarchies of authority and ways of behaving towards people. In her

appearance at the Public Hearings she gave the impression of a person who is not only dedicated to her causes, but is willing to speak long and hard about issues. She might follow through perhaps to the point where some people might react adversely to her persistence. It is very difficult to conceive that her relationships with those who she sees as her political foes can improve.

- 3.5.2.3 Councillor Smith, according to the evidence of Councillor Jones (presented above), was a vocal critic of the pre-1999 Council, and was elected to the Council because of that. He came into the Council with a ready-made set of opponents who were angered by his opposition to the Council before he was elected. Councillor Smith was clearly distressed by his experience when confronted by his opponents. He believed that he was representing the needs of the community (a phrase he used more than once in his oral evidence), and he felt hurt and bewildered by his incapacity to represent them as effectively as he desired. His hurt was such that it does not seem likely that he will ever interact and communicate with the “Majority” Councillors in a way that would lead to smoother operations.

#### **Public Hearings Transcript – March 20 2003**

MR SMITH: . . . I certainly was very concerned in that I felt that I representing the community and saying what I felt taken in a way that I learnt, was to perhaps inhibit my - or quash my ability to represent my constituents, people who came to me ultimately. I found that during those early days on Warringah Council, the conduct of certain councillors towards other councillors, including myself, was disappointing to the point of - I felt helpless in some ways - in not knowing how to respond. . .

- 3.5.2.4 Councillor Colman is a retired zoologist who stated that he had spent 30 years working amongst the community on environmental issues. He did not appear to have the same kind of intensity of feeling, about how the current Council has operated, as the other “Minority” Councillors. He was not ready to accuse his opponents as readily as his colleagues did.

## Public Hearings Transcript – March 24 2003

THE COMMISSIONER: Do you think there have breaches of the code of conduct?

MR COLMAN: I think there have, but again, I'm not really a political animal and I couldn't pin point any particular issues.

THE COMMISSIONER: If there were breaches, and you say you think there have been, generally, how are they handled? What happens if there is the perceived breach?

MR COLMAN: There is generally a rather robust discussion in the Chamber and having one councillor point out to another, where the breaches have been.

THE COMMISSIONER: What about breaches outside of the Chamber?

MR COLMAN: I'm afraid I couldn't answer that directly, I can't think of one off hand.

Councillor Colman praised the environmental work done by the staff of the Council. He stated that the environmental outcomes produced by the staff were achieved despite the behaviour and focus of the Councillors. Since the environment is Councillor Colman's prime focus, his milder approach to the troubles of the Council might be explained by the compensation of having effective staff working in the field.

**Public Hearings Transcript – March 24 2003**

MR COLMAN: Well, I think first of all, I need to not claim too much honour for the awards we have been given. I think that despite what we councillors have done. I have a very, very full and impressive regard for the staff of Council who, despite many issues which have come up over the years while I was a councillor and before I was a councillor, they kept on doing what they were employed to do without - or trying not to be worried too much with what happened in the Chamber on a Tuesday night, and I say that with all sincerity here.

I have known Council for, as I said, 20 or 30 years. I have been long involved in certain issues. I like the way they go about - the staff go about what they want to do, what they are trained to do and what they are trying to do and so despite what we might do on a Tuesday night, they go ahead as much as they can and I give them full credit for that. I think at times we have all - we councillors have all played our part in helping that area, but in certain other places we haven't helped at all. We have hindered through procrastination, through various other reasons, so that they battled on without the help that they could have had.

His main disappointment appears to be a personal one: that he has not been able to use his own skills and understanding of environmental issues to effect as a Councillor.



## Public Hearings Transcript – March 24 2003

THE COMMISSIONER: When you stood for Council, did you believe that you could therefore bring special skills to the operations of the Council?

MR COLMAN: I was hoping I could. I had been fighting for or against Council for 30 years on various issues, mostly friendly fights, of course, but when I retired I thought perhaps instead of yelling and screaming, I should join them and see if I can do anything that way. I also had been closely involved with Council on various issues, particularly the Narrabeen Lagoon Committee, and I felt that there was still room for work to be done there, and I hoped that I could add my bit to that.

THE COMMISSIONER: In terms of that long period of association with various issues in the Warringah Council area, were you elected as a representative of one or more of those groups?

MR COLMAN: Well, I stood on my own name. I didn't call myself an independent or anything else. I had a little party which I called Treasure Our Future which was really just me, and that was what I stood for - to try to keep what we had as far as possible.

THE COMMISSIONER: Thank you. Do you think your particular skills which we have very briefly outlined, do you think that that has led to successful applications of those skills in your time on Council?

MR COLMAN: In places and at times, yes. I've been frustrated many a time through not being able to pursue what I wanted to pursue through lack of voting power on my side but in other areas, I was able to help a bit. . .

He appears to be more laconic about his experience as an elected representative than his colleagues.

## Public Hearings Transcript – March 24 2003

THE COMMISSIONER: ... Councillor Colman, you didn't put a written submission in. Was there any particular reason for that? You didn't have to. I'm just curious.

MR COLMAN: I think it was just because I put it off until the next day every time.

THE COMMISSIONER: Yes.

MR COLMAN: I don't have a real issue to grind in this area. I think the areas that I would cover now would be - would have been covered by others elsewhere.

- 3.5.2.5 The short summaries of the nine elected Councillors reveal a volatile mixture of personalities and backgrounds in Local Government and community affairs. It is this mixture, on top of such specific issues such as development levels, that has created a critical image of the actions and reactions to each other manifested in the behaviour of Councillors. This has been a prime factor in creating the image of dysfunctionality held by many in the community.

## 3.6 The Future Behaviour Of The Elected Representatives

### 3.6.1 The Outcomes of the Section 430 Investigation

3.6.1.1 In 2002 Mr. Jim Mitchell, the Assistant Director General of the Department of Local Government, conducted a Section 430 investigation into Warringah Council. The trigger for the investigation was a request from Warringah Council itself. This fact demonstrates the level of concern about the Council held by the elected representatives. It was they who passed a resolution to request the investigation. Mr. Mitchell explained this in his appearance at the Public Hearings on March 19 2003.

#### **Public Hearings Transcript – March 19 2003**

MR MITCHELL: Before I do so, Mr Commissioner, you asked me earlier about - and not using your words but you asked about the commencement of the investigation and the forerunners and in answering that question I mentioned that the number of complaints as it were from constituents being a trigger for an investigation but in the case of the Warringah Council, and I forgot to mention it earlier because it is often a discounted factor that a trigger for that investigation was the request by Council itself at its meeting on 6 February 2001, the Council resolution at that day requested the Minister for Local Government to commission investigations in terms of section 430.

3.6.1.2 There were criticisms in some of the Submissions of a lack or relationship between the Section 430 investigations and the Section 740 Public Inquiry. These criticisms indicated a misunderstanding in the minds of some in the community about the two processes.

Section 430 investigations are authorised by the Director-General, and may apply to any aspect of a Council or its works and activities.

**1993 Local Government Act No 30 – Section 430, Chapter 13****430 Director-General may authorise investigation of councils etc**

(1) The Director-General may, at the request of the Minister or on the Director-General's own initiative, authorise any person (referred to in this Part as a *Departmental representative*) to investigate any aspect of a council or of its work and activities. . . .

. . .

(3) The functions of a Departmental representative are as set out in the authority.

(4) The Director-General is, by virtue of holding office as Director-General, a Departmental representative with power to investigate all matters.

The Terms of Reference for the Warringah Council Section 430 Investigation were different to the terms for the Public Inquiry. The Section 430 terms, in reference to the conduct of the elected representatives (the theme of this Section of this report), made specific mention of meeting procedures, and the conduct of Councillors in relation to Conflicts of Interest and Pecuniary Interest.

There is no specific mention of Conflicts of Interest and Pecuniary Interest in the terms of this Inquiry (nonetheless they are considered in Section 7 of this report that deals with property-related issues).

Mr. Mitchell in his appearance at the Public Hearings on March 19 2003 supplied the terms of reference to the Section 430 Investigation.

**Public Hearings Transcript – March 19 2003**

MR MITCHELL: Let me then quote to you, Mr Commissioner. The terms of reference were three. Firstly, Council's effectiveness in the efficient administration of its local area, including but not limited to meeting procedures, conduct of councillors including conflicts of interest and pecuniary interest, as well as planning related processes but not the merits of particular applications or proposals. Secondly, whether the Council's administration and management is such that it engenders community confidence and support, and it is able to meet its charter under the Local Government Act (1993) and to otherwise fulfil its statutory functions. Thirdly, any other matters ..... which warrants mention particularly where they impact on the effective administration of the area and all the work relationships between the Council, councillors, and its administration.

3.6.1.3 Section 430 Investigations fall within Chapter 13 of the 1993 Local Government Act dealing with the manner in which Councils are made accountable for their actions.



Section 740 falls within Chapter 18 of the Act. The decision to hold a Public Inquiry is made by the Governor or the Minister. It relates to any matter or any act or omission relating to the carrying out of the provisions of the Act concerned, or to the office or position held by a member, employee or person under the Act concerned, or to the functions of that office or position.

### 1993 Local Government Act No 30 – Section 740, Chapter 18

#### 740 Public inquiries

- (1) The Governor or the Minister may appoint a person as commissioner, or two or more persons as commissioners, to hold a public inquiry and to report to the Governor or the Minister with respect to:
  - (a) any matter relating to the carrying out of the provisions of this Act or any other Act conferring or imposing functions on a council, and
  - (b) any act or omission of a member of a council, any employee of a council or any person elected or appointed to any office or position under this or any other Act conferring or imposing functions on a council, being an act or omission relating to the carrying out of the provisions of the Act concerned, or to the office or position held by the member, employee or person under the Act concerned, or to the functions of that office or position.
- (2) For the purposes of any inquiry under this section, any person appointed to hold the inquiry has the powers, authorities, protections and immunities conferred on a commissioner, and:
  - (a) if the person is the only person appointed to hold the inquiry—on a sole commissioner, or
  - (b) if the person is one of two or more persons appointed to hold the inquiry and has been appointed as chairman of the inquiry—on a chairman of a commission,by Division 1 of Part 2 of the *Royal Commissions Act 1923*.
- (3) The provisions of section 152 (Contempt of court) of the *Justices Act 1902* apply to any witness or person summoned by or appearing before the person so appointed in the same way as they apply to witnesses and persons in proceedings under that Act.
- (4) The provisions of the *Royal Commissions Act 1923* (section 13 and Division 2 of Part 2 excepted) apply, with any necessary adaptations, to and in respect of any inquiry under this section and to and in respect of any witness or person summoned by or appearing before the person or persons holding the inquiry.
- (5) The Minister is to cause the report of the person or persons who have held an inquiry under this section to be laid before both Houses of Parliament. If neither House of Parliament is sitting, section 14B of the *Royal Commissions Act 1923* applies.

The powers of the Public Inquiry are much more buttressed in law and the ordering of an Inquiry is made at a higher level. In the case of the Public Inquiry the Terms of Reference very specifically require a focus on “the conduct of elected representatives of Council (whether individually or collectively as the governing body of Council)”. Issues to do with the conduct of the elected representatives

have cover a much broader canvas than those mentioned in the Section 430 Investigation.

3.6.1.4 Mr. Mitchell, at the Public Hearings, supplied an outline of his recommendations to the Council in the Section 430 report. In the recommendation there are three areas that are most closely connected with the Terms of Reference of this Inquiry. These concern the Council's Code of Conduct, its meeting practices, and the behaviour of people in the gallery of the Chambers. They are set out in the following extracts from Mr. Mitchell's Report.

It should be noted that Mr. Mitchell indicated that he was not convinced that the revision of the Code of Conduct, made in December 2002, had begun to work, because the Warringah community had continued to express their concerns to the Minister and the Department of Local Government. He also noted that the Council had not provided detailed mechanisms to enable the measurement of performance in relation to the Code of Conduct. Mr. Mitchell advised that following his report, the Council had reviewed and amended the Code of Meeting Practice. Appropriate training was to be provided to familiarise Councillors and staff with the new provisions of the Code, and to reinforce expected behaviours. As of writing this report, these training processes were not yet in place.

### Public Hearings Transcript – March 19 2003

MR MITCHELL: ...

Further, the Department of Local Government circular '99/55, issued to all Councils on 16 August 1999, advised the Councils of the statutory requirement that they review the code of conduct following the September 1999 elections. Warringah Council recently amended its code of conduct and indicates that it reviewed and updated the code on 21 November 2000, 4 December 2001 and 28 May 2002. It is my view, that despite the guidelines issued in March 1997 and Warringah's Council's reviews of its code of conduct, the Warringah community has continued to express their concerns to the Minister and to the Department of Local Government, regarding the ability of councillors to manage conflicts of interest.

Mr Commissioner, I have noted that Warringah Council has not provided detailed mechanisms it proposes to introduce to enable the measurement of performance in this area by councillors, nor for mechanisms for advising the Warringah community of the results. The second recommendation contained within the report stated:

In an endeavour to earn the confidence of the Warringah community, elected councillors should ensure that Council and Committee Meetings are held in an orderly and efficient manner, displaying open Government and maximising access and

## Public Hearings Transcript – March 19 2003 (cont.)

MR MITCHELL:  
participation by the community.

In its response:

Warringah Council have advised the Director-General of the Department of Local Government and the Minister that Council had reviewed and amended their code of meeting practice and is committed to making every effort to improve meeting procedures and the conduct of those in attendance at those meetings.

Council has advised that appropriate training will be provided to familiarise councillors and staff with new provisions of the code and to re-enforce expected behaviours. Council have stated that the training measures will include adjournments of meetings for lack of quorum and loss of a quorum. Adjournments for disruption in the public gallery and by councillors. Exclusion of members of the public and councillors for disorderly conduct. The irrelevant and non-genuine points of order, rescission motions and matters of urgency....

3.6.1.5

Mr. Mitchell urged the Council to go beyond amending its meeting practices, with its concentration on meeting procedures, and adopt supplementary provisions to address the particular problems and needs of Warringah Council. Easier access to the agenda and business papers of the Council was one suggestion. Another (see extracts below from Mr. Mitchell's appearance at the Public Hearings on March 19 2003) suggested the introduction of reference groups and open consultation meetings with local residents. There has been no information provided concerning these suggestions.

## Public Hearings Transcript – March 19 2003

MR MITCHELL: ...

A code of meeting practice consists of the meetings regulation, plus supplementary provisions adopted by Council. It appears from the information provided that Council may be relying predominantly on the provisions of the meetings regulation, rather than adopting supplementary provisions in an attempt to address particular problems and the needs of Warringah Council. The Council's response to the report following the section 430 investigation, does not specify how, or when the agenda and business papers of Council meetings will be made available to members of the public who do not have access to the Internet.

In an effort to improve community participation and consultation, Warringah Council could also give consideration to introducing reference groups, or regular open consultation meetings with local residents. Such has been introduced recently by Mudgee and Campbelltown Councils. Again, no information has been provided by Warringah Council regarding proposed mechanisms for measuring performance of these changes....



- 3.6.1.6 Mr. Mitchell also recommended that the Council re-examine its Code of Conduct to ensure that appropriate measures are contained therein to assist Councillors' understanding of appropriate forms of behaviour in their representational roles. Mr. Mitchell reports that this has happened, but the evidence of the Submissions and the Public Hearings suggest that some councillors have not yet understood the implications of the Code for their behaviour beyond the Council Chamber.

### Public Hearings Transcript – March 19 2003

MR MITCHELL: ...

The third recommendation suggested that Warringah Council re-examine its current code of conduct to ensure appropriate measures are contained therein to assist councillors' understanding of appropriate forms of behaviour in their representational role. Warringah Council have formally advised the Minister and the Director-General that Council has amended the code of conduct and included sections relating responsibility and obligations of councillors, members of staff and delegates, particular obligations of councillors, inappropriate interactions, access to Council records and information, interaction between councillors and members of staff. In their advice Warringah Council have stated that:

The effectiveness of the code of conduct will be reviewed and performance measured. As I stated earlier, 6 months after operation....

## 3.6.2 Promises about the Future Conduct of the Elected Representatives

- 3.6.2.1 The Mayor, Councillor Julie Sutton, in her right of reply at the end of the hearings gave top priority to improving Councillor conduct. However, she seemed to be in two minds about whether that conduct was really something that had to be taken seriously. She made references to Manly and Ku ring gai Councils where, apparently, there are *“very entertaining insults and things that people say”*. There is a feeling almost of disappointment in the Mayor's words; a sense that the fun is over, and we will have to do better. She appeared to be resigned to attempt to do something to improve the conduct of the Councillors, without being a hundred per cent sure that it was all necessary.



## Public Hearings Transcript – March 20 2003

MS SUTTON: ...

So in my right of reply I'm going to stick to only two things. The first one is going to be councillor conduct, and the second one is going to be community confidence. Now, I accept that our conduct can and should improve. I was thinking of all the anecdotes I could tell about things that people have said in other Councils to each other, very entertaining insults and things that people say - you know it is called the Bear Pitting State Parliament - and I thought of some very entertaining anecdotes I could tell and then I thought: well, nothing to do with Warringah, they are not here, there is not a public Inquiry into them, it is into us.

It does not really matter what they do down at Manly, or up at Ku-ring gai and, amusing and entertaining as that may be, it has got nothing to do with it...

Her emphasis is on training. She dismisses the Code of Conduct as something under the desk that does not really make Councillors behave better. The focus appears to be on training for the Chairmen of Committees so that they know exactly what the rules are, and she also promises a few extra rules. There are non-detailed suggestions of sanctions. She also indicates that they will run training for people in the gallery. This, of itself, is a rather bizarre concept in a democratic institution.

Her general emphasis is on rules, and her focus is on behaviour at meetings, even making a curious reference to the fact that she and others had to be warned about their behaviour during the Public Hearings.

None of this is too convincing. There is no doubt that the Mayor has a genuine intention to try and make the meetings of Council run better, with less acrimony.

Training alone, however, will not achieve these results. There has to be an underlying conviction to the Code of Conduct. The expectations of behavioural modes within the Code of Conduct are clear and explicit. They are especially pointed about the way in which Councillors should behave in relation to each other, and the public, whether at a meeting or not, whether within the Council Chambers or not. It does not appear, from the Mayor's words, that she is aware of just how fundamental the change must be if the conduct of the Councillors is to reach standards acceptable to the community. Councillors ought not to need training to abide by the basic requirements of the Code of Conduct.

**Public Hearings Transcript – March 20 2003**

MS SUTTON: ...

We have got to see how we can be better, so we have thought of a few things we can do. We know that just having a code of conduct under the desk does not really make us all behave better. We have talked about sanctions for people who don't behave. We will have to think about that and one of the things I think that we really can do is to have training for councillors. We did have some training for new councillors last time. We need training for old councillors too.

We need training for the Chairman of Committees. We need training for councillors to know exactly what the rules are and we need to have a few extra rules about: you break the rule, this is what is going to happen, not have a bun fight about it, this is what is going to happen to you, mate, stick to it and we will all be better, and I think we have learned that from this Commission. As soon as we all stuck to the rules it went a lot better and I thank you for your role in that, which I didn't appreciate at first, but I do now.

The other thing I think we must do is to have some workshops for the gallery. Now, if the gallery who come to the Council meetings were the same as the gallery were here, I would be a very happy woman. It would be great, but they're not. So we've got to work out what is the reason. Do they not respect us? Do they think we are doing a bad job? Why are they so aggro to us? It is not just about decisions, it's about all sorts of things. They clearly don't like some of the councillors, well, that is fair enough, we clearly don't like some of them, but we need to have a getting-together sort of workshop about how we can get the gallery and the councillors to work out what we do find irritating about each other. It's not as if there are hundreds of people, Mr Commissioner, there aren't. You know, we could get it down to probably 10 or 20.

I think that would be a very, very useful thing and we could have the General Manager there or maybe we could have a facilitator, I don't know, and see how we could sort that out. I can assure you, Mr Commissioner, that if there is an election in September there will be a very strong policy in place to - not just for the new councillors by the way but any old councillors who survive - to go in there and find out what it's all about, how the meetings should be run, how you should address residents, what you should say to people, the role of the community committees and all of those things and I think that would be a very good point....

- 3.6.2.2 In his final oral Submission on April 10 2003 the General Manager, Mr. Blackadder, advised the Hearings of the range of measures he was proposing to introduce in relation to Councillors' conduct. These included a monitor of

behaviour relating to the responsibilities in the Code of Conduct. Unlike the Mayor, who questioned the relevance of the Code, the General Manager has recognised the need to monitor behaviour in relation to it. He has also flagged training sessions to identify the standard of conduct required and expected. He is going to work with the St. James Ethics Centre to develop an automatic referral system, and he is exploring automatic sanctions.

All of this, if it were to be put in place, would address many of the problems associated with the conduct of Councillors. The fact that such a set of measures is mooted is strong proof that the General Manager believes that there have been serious flaws in the behaviour of the Councillors in the past. It should also be noted that these measures are primarily related to conduct at Council meetings. The evidence of the Submissions and of the Hearings indicates that the conduct of some Councillors outside of the Chambers has been a significant factor in the diminished reputation of the Council within the community.

### **Public Hearings Transcript – April 10 2003**

MR BLACKADDER: ...

Commissioner, I turn to conduct. My submission on the evidence provided by Mr Jim Mitchell of the Department of Local Government on day one, indicated this about measures to be introduced to monitor councillor behaviour and I quote from the briefing paper that I have provided to you.

We will work on mechanisms and advise the Department accordingly. At this stage, it is proposed to introduce a monitor of behaviour relating to the responsibilities in the code of conduct, in particular:

1. The equitable treatment of other councillors, staff and delegates.
2. Bribes, gifts and benefits.
3. Use of Council resources.



MR BLACKADDER:

4. Use of information.

The particular obligations of councillors in the code shall be monitored and measured, such as acting fairly and impartially, refraining from undertaking site inspections by themselves, or having individual meetings with objectors or applicants. Not making public comment about a development before a report is submitted to Council. Not lobbying, or influencing a staff member as to the content of their report. Not abandoning a Council meeting wilfully to leave it without a quorum. Speaking courteously to members of the public. Showing respect for other councillors. Allowing other councillors to speak without interjections. Not making misleading, inaccurate, or biased comments. Ignoring interjections from members of the public and allowing the Chairman to deal with such disorder.

Commissioner, the Mayor has already mentioned to you this morning that training will be provided to identify the standard of conduct required and expected. We will follow that up with referral of breaches to the St James Ethic Centre and I stress that we have not finalised that arrangement yet, but that is well under way. In fact, we are exploring with the Centre the establishment of an automatic referral system that does not rely on a Council decision. This will remove the political discretion.

At the same time, we will explore automatic sanctions for conduct found in any breach of the code, again to avoid the political discretion. . .

- 3.6.2.3 The other move foreshadowed by the General Manager to improve conduct is to hold one or more workshops with interested members of the public who regularly attend Council meetings. This appears to be an extraordinary suggestion. In a democratic institution it is the natural right of any citizen to attend meetings at which public policy is debated. It is a sign of the extreme situation in Warringah that such workshops are proposed. The purpose, Mr. Blackadder explains, is to identify Councillor and gallery conduct considered unacceptable. If the General Manager has to go to such lengths to negotiate some form of “truce” between the Councillors and the gallery, it has probably gone too far to be salvageable.



## Public Hearings Transcript – April 10 2003

MR BLACKADDER: . . .

Commissioner, the Mayor this morning has also mentioned to you that we propose to hold a workshop, or series of workshops with interested members of the public who have regularly attended Council meetings. The purpose will be to identify councillor and gallery conduct considered unacceptable. We will also seek to agree on standards of conduct for the future and how those standards might be implemented....

3.6.2.4

Councillor Forrest has in the past been very critical of the behaviour of some Councillors, providing in his Submission (No. 307) a number of examples of what he saw as breaches of the Code of Conduct. When he appeared at the Public Hearings he acknowledged that recently the disruptive behaviour at Council meetings was not as big a problem compared to the past. He confessed to being unsure about whether it was really moving down the track such that it could be classed as a permanent improvement. In his Submission in reply, after the Public Hearings, he suggested that the behaviour of the Councillors had continued to improve, and that this should be taken into account. He considers that it has taken the ending of the defamation case, the Section 430 Investigation, and the Public Inquiry to achieve this outcome. It seems a plausible explanation of the improvement. It immediately throws doubt on the long-term commitment to change amongst the Councillors, however. When the Inquiry has passed by, will they revert to their old acrimonious ways?

### Submission 307

I refer to my evidence before the Inquiry and note that on Thursday March 20<sup>th</sup>, you asked me if the signals were there that "the Council is moving down the track to get itself away from the kinds of public perceptions of disruption and so forth within the governing group"? I answered your question saying "it is too early to tell ...but I do believe there has been a change in the way – in Councillor behaviour, to some extent, not to the extent that I would like to see, but to some extent." (Transcript of Proceedings p. 67)

Since my oral submission was made there have been four Council meetings, and I can genuinely say that at each Council meeting, Councillor behaviour (interaction between each other and the public gallery) has continued to improve to levels where I can actually find the meetings a pleasure to attend. It is a pity that it has probably taken the Section 430 investigation, the conclusion of a defamation case between Councillors, and the Public Inquiry to get Council to this point, but I ask that you take this actual state of improvement into account when you consider your findings. Council has also introduced a new approvals system involving an Independent Hearing and Assessment Panel which although it is early days, I believe will reduce friction and help improve the public perception of council.

## 3.6.2.5

In their Submissions to the Inquiry each of the “Majority” Councillors were at pains to state that they did not believe there were any real problems with the behaviour of the Councillors. They squarely put the blame for disruptive meetings on the behaviour of people in the gallery, and on the tactics of the “Minority” group using rescission motions and walk-outs to cause problems. If there was any hint of a problem it was simply a natural outcome of the “hurly-burly” of debate. The General Manager originally placed most of the blame on the gallery as well. Both the Mayor and the General Manager have revised their opinions during the Hearings. The Mayor has acknowledged that it was the evidence given in public during the Hearings that convinced her that they had to do something to deal with the public perceptions of the Councillors’ behaviour.

What is not clear is whether there has been a similar transformation in the views of the other Councillors. Certainly, Councillor Caputo does not seem to have altered his stance very much (Submission in reply). He says that conduct at meetings can be improved, but that the Council does its business efficiently and effectively in the interests of the Warringah community. He gives a personal commitment to make improvements, and to work more productively and more cooperatively with his fellow Councillors. Councillor Caputo’s commitment should not be doubted, but it appears that he is being pushed into considering how improvements might be made, rather than being convinced that it is really needed.

### Submission 291 – Conduct Of Councillors

Commissioner, I want to state at the outset I have a good relationship with each of the other eight Warringah Councillors. I bring an independent mind to the Council Chamber when I consider and vote on matters before the council. If you were to check the voting records you will find that on numerous occasions I have voted with the so-called minority councillors. A recent example was in February 2003 when I voted to overturn a previous decision seeking to amend the Tree Preservation Order. You have already been provided evidence to show that the so-called 5/4 voting block is largely the perception of those who oppose many of the good initiatives pursued by Warringah Council. I am proud to say that I have voted for many positive initiatives which today has given Warringah a high reputation in many areas. I have voted for a number of developments that will soon rejuvenate the Dee Why and Collaroy Town Centres.

As for the conduct of Councillors at Council Meetings, yes, it can be improved but such conduct should not be a reason for you to suggest in any way the dismissal of the Council. The Councillors work well together and discharge the business of the Council on most nights before 10pm. Commissioner, in my view, the Council efficiently and effectively conducts its business at meetings in the interests of the Warringah community. The areas where we can improve have been mentioned in evidence. The Councillors will meet together soon to workshop where those improvements can be made. Commissioner, I give you my personal commitment that I will seek to make those improvements and to work more productively and cooperatively with my fellow Councillors. ...

Councillor Jones does not seem to be convinced that there is any problem at all to be overcome. In his final appearance at the Public Hearings on April 10 2003 he makes the point that ridicule has always been part of the process of debate at Warringah Council, and that there is nothing particularly wrong with that. He pinpoints personality differences as lying behind the fact that people don't relate to each other all that well. Like Councillor Caputo, he believes that the business always gets done.

### **Public Hearings Transcript – April 10 2003**

MR JONES: ...

In conclusion, I would just say this. Whatever public forum you are in, there is always going to be conflicts of personalities between different people. Different people have different emphasis on what they see as quality of life issues and so forth. Warringah Council is no different. This is the seventh Council I have been on. I can recall the very first council where I was only a young fellow and there were some dominant people that have been around for a while that, in their own way, I suppose, tried to put me down by ridiculing things I said. I said what I believed was the way, you learn in the job but there was - at the end of the time, there was always the will to serve the electorate.

I would be of the very firm belief, this is the case with this particular Council now. Again emphasising the point there is always going to be difference of opinion. People's personalities might not necessarily make people relate to one another all that well but when the business of the day is on, the councillors sit around the Council table. They discuss the issues in an adult way and decisions are made. Contrary to this urban myth, not on a five-four basis as we would be lead, it is less than a quarter of the time. ...

3.6.2.6 Councillor Moxham has also not shifted his ground. He subscribes the behavioural problems of the Council to forces outside of the elected representatives. He believes that the outcome is an atmosphere of vitriol and poison within the community. Councillor Moxham stated these views in his appearance at the Public Hearings on March 27 2003. He vigorously argued that the only solution is to dismiss the Council and to allow time to pass before new elections so that the atmosphere can clear. In his Submission in reply on April 24 2003 he restates his conclusion.



**Public Hearings Transcript – March 27 2003**

MR MOXHAM: ...

So it is great concern to me and as I said in 25 years being involved in politics that this sort of thing should happen and, Mr Commissioner, I would put this to you if I could respectfully suggest that the best thing that you could do, the best legacy you could leave the people of Warringah is to dismiss the Council, recommend the dismissal of the Council, let the dust settle, let the heat get out of this because I can almost certainly say this with some certainty, that in the end of this year in September if elections are held, the vitriol and the poison will remain.

It will remain because the same characters that are out there undermining the Council for some 2 or 3 years now will be there, maybe on the inside and councillors who are presently there will be there as well and nothing is going to go away. I suggest that the elected positions be declared vacant and an administrator put in for a couple of years at least. I'm saying this with the greatest respect, Mr Commissioner. ...

**Submission 337 – In Reply**

Mr Commissioner, I honestly believe that two years under an administrator will allow the Council to consolidate and reinvigorate itself. This break would enable Council staff to refocus on their work without the morale sapping sensationalism witnessed on a day-to-day basis in our local newspaper. Two years will allow the heat to dissipate because the vitriolic and poisonous atmosphere that exists today will settle only with appropriate time out.

3.6.2.7 Serious doubts must be held over whether or not the conduct of the Warringah Councillors is going to improve to the point that they will again have the full confidence of the Warringah community.

The “Majority” Councillors do not believe that the conduct of the Councillors is the real issue. Forces beyond the elected representatives have caused the diminished reputation of the Council. The adverse press reporting of some Council meetings has not recognised this. Any direct imputation of poor behaviour by individual Councillors has failed to realise that this is simply part of the cut and thrust of politics, evident in many other forums.

The focus of the arguments about the reality and scale of poor conduct by Councillors is almost entirely restricted to what has happened in Council meetings. The accusations of poor behaviour extend to public forums far removed from the Chamber, and in the way that some Councillors have dealt with people, either in person or via the telephone.



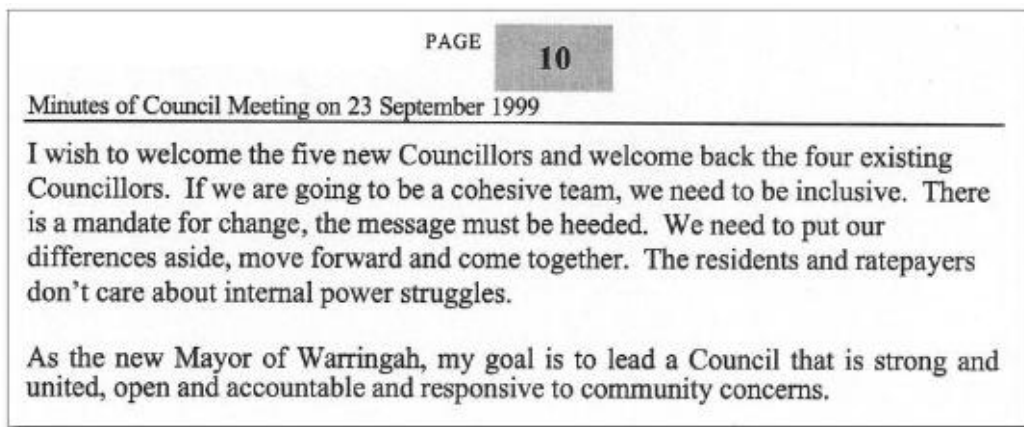
The promised changes are somewhat dramatic (training sessions, workshops), and somewhat draconian in tone (external referral of breaches, imposition of sanctions). The Councillors seem to be being forced into behaving in a manner that the community finds acceptable, rather than willingly adopting more acceptable modes of behaviour.

Despite some evidence of better behaviour at Council meetings, there is doubt that the fundamental elements that have given the Council a poor reputation have changed. The enmity between the factions still exists. It is this enmity that produced the disruptive behaviour of both Councillors and sections of the public gallery at Council meetings. It has been behind the unsatisfactory behaviour by some Councillors and some members of the community in other places. Despite the changes that are taking place (the adoption of new Codes, for example), and changes that are foreshadowed, the will to act may not be there.

3.6.2.8 The pessimistic view expressed above is partly based on the experience of the past. Many promises have been made about cohesive governance, and these goals have not been achieved. The fundamental divide within the Council has been too great a hurdle to overcome.

3.6.2.9 When Councillor Moxham was elected Mayor (September 23 1999) he stated that he wanted to lead a Council that was both strong and united, and responsive to community concerns.

### **Minutes of Council Meeting – 23 September 1999** **Welcome by Mayor, Cr Peter Moxham**



A year later, when Councillor Moxham was standing for re-election as Mayor (September 26 2000), he lamented not achieving more, and he blamed pointless disruption of Council meetings, and a lack of goodwill between members of the Council.

**Minutes of Extraordinary Council Meeting  
26 September 2000  
Welcome by Mayor Cr, Peter Moxham**

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| Minutes of Extraordinary Council Meeting on 26 September 2000   | p. 8 |
| <p>I believe we can achieve a great deal if we work harmoniously together. As we review the past year and the range of environmental, social and other achievements of Council, I would like you to reflect on just how much more could have been achieved if there had been less pointless disruption of Council meetings, and more goodwill between members of Council. As our State and Federal parliamentary members well know, disruption of sessions of Parliament is not tolerated in those chambers, and democratically elected members of government should not be exposed to the level of animosity seen from time to time in this Chamber. I believe the way ahead lies in a constructive, rather than a destructive approach to resolving our differences.</p> <p>I hope there is no more waste of energy, or of ratepayers money, on futile, destructive behaviour, pointless rescission motions and expensive legal advice.</p> <p>I believe that I still have a lot to offer Council as Mayor such as stability for the organisation, enthusiasm and initiative to lead Council in a positive manner and to work in a harmonious manner with the General Manager and Senior Management and for these reasons I will be standing for Mayor and ask for your support."</p> |      |

After another year in office as Mayor, Councillor Moxham presided over the meeting where a new Mayor was to be elected. Once again he mentioned the problems that existed: *"the constant undermining of the Council from within and by a small number outside"*. Nothing had apparently been achieved in improving the goodwill of the elected representatives.

**Minutes of Extraordinary Council Meeting  
27 September 2001  
Welcome by Mayor, Cr Peter Moxham**

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| Minutes of Extraordinary Council Meeting on 27 September 2001  | P.4 |
| <p>MR MOXHAM<br/>Despite niggling negativity from some quarters within the community and the constant undermining of the Council from within and by a small number outside, the majority of the Councillors have remained focussed and committed on achieving positive outcomes and have delivered to the community a number of outstanding results.</p> |     |

Councillor Jones was elected Mayor at that meeting (September 27 2001). He too called for a united Council.

## Minutes of Extraordinary Council Meeting 27 September 2001 – Page 10

Minutes of Extraordinary Council Meeting on 27 September 2001

### NOTE 1:

After being declared Mayor, Cr Jones thanked all Councillors for the confidence shown by electing him Mayor and stated that he understood the responsibility that goes with the Office. He knows that this Council can move forward progressively to serve the needs of all ratepayers and ensure we work well with governments. He hopes to see the Council united for the benefit of those people whom they were elected to serve and feels we are lucky to live in a democracy where freedom of speech, religion and political views are allowed to be practiced. He complimented Cr Peter Moxham on his achievements, initiative and drive during his two year Mayoral term, noting that he had served the community well and was looking forward to his support together with the rest of the Council for the next 12 months.

Councillor Forrest had stood against Councillor Jones in the election. Afterwards he made a statement in which he castigated the *“politics of exclusion”* that he said was now almost absolutely dominating the Council at the midway point of its term. He said that this was designed to break the spirit or dent the pride of the “Minority” Councillors. He proclaimed that it actually made them stronger and more determined. Clearly, at the midpoint of the life of the Council, relationships between the two factions had deteriorated to a point from which it might be impossible to recover.

## Minutes of Extraordinary Council Meeting 27 September 2001 – Page 10

### NOTE 2:

After Cr Jones was declared Mayor, Cr Forrest made the following statement which he requested be recorded in the Minutes:

As the unsuccessful candidate tonight I rise to congratulate you on your election as Mayor, however in doing so I wish to remind you of your responsibilities as Mayor and have some additional comments to make.

Two years ago during his acceptance speech for his first term of Mayor, Cr Moxham made some comments which were inspiring and full of promise. He said:

*“If we are going to be a cohesive team, we need to be inclusive. There is a mandate for change, the message must be heeded. We need to put our differences aside, move forward and come together.”*

In that first year you would have to say that it didn't take long for the “old guard” and “minority group” pattern to emerge, but there was some change and some inclusiveness. Some of us were elected onto important positions on Council including Deputy Mayor and most of us went off to the Local Government Conference in Dubbo. This was a good start but throughout the difficult decisions and issues this Council faced in that first year, the cohesion and inclusion didn't last long.

Issues such as Manly Dam, that invalid Songkal contract, the Residential Development Strategy and the adoption of the LEP are examples of where we, the community-based Councillors fought hard to do the job we were elected to do – to serve and protect the interests of the ratepayers of Warringah.

One must say at the halfway point through the term of this Council that the politics of exclusion now almost completely dominates Council. Christmas dinners have been cancelled. Now even the soldiers facing off against each other in the trenches of France shared Christmas together.

Maybe the politics of exclusion was designed to break our spirit or dent our pride. It doesn't. It makes us stronger and more determined, and is therefore self-defeating. It only serves to harm the people of Warringah and that is evidenced by the 117 complaints received in the last financial year by the Department of Local Government about Warringah Council, more than any other Council in the state.

A year later the situation appears to have been the same. Councillor Forrest again stood for Mayor (September 26 2002) and was defeated by Councillor Julie Sutton. He again issued a statement. He pleaded with the new Mayor to heal old wounds, and to avoid the ridiculous politics of exclusion. By January 2003, less than four months later, the complaints to the Minister and the Department of Local Government had continued at such a rate that the Minister proclaimed the Public Inquiry into Warringah Council.

This history of bitter relationships between the Councillors (a root cause of the reputation for poor behaviour by Councillors) does not throw up much hope of a sudden transformation. The enmity, caused by three and a half years of divisive factional politics, and the strong personal animosities, will not dissolve easily. Perhaps they cannot be dissolved at all.

### **Minutes of Extraordinary Council Meeting 26 September 2002 – Page 7**

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| Minutes of Extraordinary Council Meeting on 26 September 2002  | p.7 |
| <p><b>NOTE 11:</b> After Cr J Sutton was declared Mayor, Cr Forrest made the following statement which he requested be recorded in the Minutes:</p> <p>“Mayor, I rise as the unsuccessful candidate to congratulate you on being elected Mayor of Warringah Council.</p> <p>In speaking tonight I am mindful of the fact that we are in the middle of a three week secrecy period brought on by the impending release of the Report of the Section 430 Investigation into this Council.</p> <p>While I am disappointed but not distraught at missing out by 1 or 2 votes for the 2<sup>nd</sup> year in a row, I can't help thinking that at some future stage we may look back on tonight and wonder if things could have been different if we had made a different decision. Only time will tell.</p> <p>Mayor, this will not be an easy year for you.</p> <p>But you will go a long way towards healing old wounds, by avoiding the ridiculous politics of exclusion that has dominated this Council since that day back in September 1999 when you yourself were defeated by one vote the Mayoralty.</p> <p>So from the minority four – good wishes for the best year possible.”</p> |     |