

Redland City Council

Submission to the Queensland Ombudsman

1 Introduction

- 1.1 This is a submission by Redland City Council (**Council**) in response to a proposed report by the Queensland Ombudsman (the **Ombudsman**) entitled '*The Redland City Council defamation report*' (the **Proposed Report**).
- 1.2 The Proposed Report states that the question to which it is addressed is '*whether the council's actions were lawful and reasonable and whether council gave adequate consideration to the right of residents to publicly share their views about decisions that affected them.*'
- 1.3 Specifically, the Ombudsman is investigating whether it was lawful and reasonable for Council to:
- (a) send a letter to Complainant B on or about 4 September 2015 to demand an apology and retraction in respect of certain publications (the **Complainant B letter**);
 - (b) send a letter to Complainant A on or about 7 September 2015 to demand an apology and retraction in respect of certain publications (the **Complainant A letter**); and
 - (c) write to Complainant B's public sector employer expressing concern about a possible breach by Complainant B of the code of conduct to which she was subject in her employment (the **Employer letter**).
- 1.4 Council respectfully submits that its actions were both lawful and reasonable because:
- (a) **first**, Council has a legitimate interest in seeking to have publications which are defamatory of its officers and which concern their professional (as opposed to their private) conduct removed from public view;
 - (b) **secondly**, the publications that were the subject of Council's letters to Complainants A and B:
 - (i) were defamatory;
 - (ii) further or alternatively, were reviewed by external legal advisers who advised Council that they were defamatory, and Council reasonably relied and acted on the advice that it received;
 - (c) **thirdly**, properly construed, the Complainant A letter and Complainant B letter were informal 'warning' letters rather than the commencement of a formal process under the *Defamation Act 2005* (Qld) (the **Defamation Act**), and were a proportional response to the publications given their seriousness; and
 - (d) **fourthly**, the Employer letter was sent out of professional courtesy from one public body to another, and Council's decision to do so was appropriate.

- 1.5 In addition to the above matters, Council respectfully submits that:
- (a) certain aspects of the Proposed Report appear to exceed the Ombudsman’s jurisdiction; and
 - (b) the language of the Proposed Report is unbalanced and unduly critical of Council, in circumstances where Council’s actions were motivated by a desire to prevent the continuing defamation of its officers and elected representatives.
- 1.6 Unless it is otherwise stated, this submission adopts the capitalised terms in the Proposed Report and their associated definitions.

Background

2 Overview

- 2.1 In this section, Council sets out the background facts that were relevant and material to Council’s decision to write to Complainants A and B.
- 2.2 In Council’s respectful submission, these matters are given inadequate consideration in the Proposed Report.

3 The history

- 3.1 Complainant A has a long history of publishing inflammatory and defamatory comments about Council’s officers. This course of conduct began as early as July 2013 during Complainant A’s opposition to the Wellington Street development. The following is a selection of such publications which were relevant and material to Council’s decision to send the Complainant A letter (and indeed were referred to in it).
- 3.2 On 15 October 2014, Complainant A sent an email to the Mayor and multiple other addressees including Councillors and the State Government Member for the Cleveland Electorate, in which she relevantly stated (with emphasis added):

*There is no positive outcome here so I can’t understand why you send me your best wishes. **There is only 3 winners. Council and [a developer] and the mayor who benefits from the revenue From [the developer] for her re-election campaign.** The rest being residents, wildlife, koala, tourism, they lose everything.*

- 3.3 On 19 October 2014, Complainant A sent a further email to the Mayor and ten Councillors, attached to which was a document described as a ‘Letter of Concern’. In that document, after setting out certain allegations concerning a development approval, Complainant A relevantly stated (with emphasis added):

...

- *Nobody knows when the development was approved or why it got changed from Impact Assessable to Code Assessable*
- *Many residents discovered only Friday there was a ‘minor’ change which completely impacted the block.*

*This is where many of us believe there is a case of **dishonesty and exploitation to be investigated:***

...

We can't believe for a moment that all this was just coincidental timing between [a developer] who openly sponsors Mayor Karen Williams and the [planning scheme] changes to allow this application to continue 100% [in the developer's] way. The only benefit we can find in all the correspondence for the [planning scheme] change was to make the application quicker and easier.

- 3.4 On 4 November 2014, Complainant A sent an email to the Mayor, nine Councillors, the Federal Member for the Bowman Electorate, the Queensland Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef, and the State Government Member for the Cleveland Electorate. Referring to a letter that the CEO had issued to local residents, it relevantly stated as follows (with some emphasis added):

*For goodness sake, we know [the developer] is developing the land and keeping the trees will affect construction. You don't need to say "the developer believes keeping the koala trees will affect his construction" The first thing residents will ask is **Who's looking after who here?***

...

*Paragraph 2 needs to be re-written and say. **Council are looking after [the developer] here and since I have been CEO of Council they always have and they will continue to until a higher authority takes this on and investigates.***

...

*You need to re-write paragraph 3 to say- your employer chose to do nothing when they had the opportunity. **It also needs to say to all the residents (because that's who you sent your letter to, I'm just one recipient) why your employer chose not to act when personal letters were sent to [the Mayor], [a Councillor] and [a Councillor] in January this year saying these trees required protection and the VPO was useless. Paragraph 3 will be a long one as it also needs to say why your employer failed to protect the trees when your boss had the request, the warning, the opportunity and the time. You will have to retract the statement 'we did everything reasonably possible to protect the koala trees' as everyone can prove you did nothing and you don't want to be caught out on a lie.***

- 3.5 It should be noted that in the Proposed Report, the Ombudsman finds in respect of the above publication that 'it was wrong to identify this letter as defamatory' because 'defamation requires that material be published to a third person other than the person being defamed'. As Council has noted above, the letter was in fact sent to the Mayor and 13 other addressees including multiple Councillors. In fact, as the text of the letter makes plain, it was not sent directly to the CEO, the opening sentences stating:

Attention all Councillors and can you please copy [the CEO] and [another individual]

Dear [CEO],

I am sorry I can't respond directly but you gave no email address on your letter and your office tells me you don't have one.

- 3.6 Accordingly, it is respectfully submitted that the Ombudsman's conclusion that the relevant letter was incapable of being defamatory because it was published only to the individual who was alleged to have been defamed by it is incorrect.
- 3.7 On or around 10 November 2014, the Mayor wrote directly to Complainant A and relevantly stated as follows (with emphasis added):

Dear [Complainant A]

I write in response to your emails dated October 15, October 19 and November 4 2014 sent to me and other Redland City Councillors and to Council officers.

[The Mayor then addressed the development that had been the subject of Complainant A's publications]

I note in your correspondence inferences that Council has done some deal to favour the developer.

I refer you to your letter to the CEO, where you suggest [the CEO] should edit his letter to residents to say: "Council are looking after [the developer] here and since I have been CEO of Council they always have and they will continue to until a higher authority takes this on and investigates."

I refer you also to the sentence included in your letter dated 19 October to Member for Cleveland Dr Mark Robinson, me and Councillors Beard, Boglary, Hardman and Bishop: "This is where many of us believe there is a case of dishonesty and exploitation to be investigated."

And later in the same letter: "We can't believe for a moment that all this was just coincidental timing between [the developer] who openly sponsors Mayor Karen Williams and the [planning scheme] changes to allow this application to continue 100% [in the developer's] way."

These inferences are inaccurate, highly offensive and potentially defamatory, to me, to Councillors and to Council officers.

Should you have evidence of any inappropriate conduct by anyone in Council, I invite you to forward it to the Crime and Corruption Commission immediately for investigation. I have attached a link to the CCC for you to seek an investigation by the higher authority you mentioned in your correspondence:

[A link to the Crime and Corruption Commission's website was then included]

- 3.8 Despite the above correspondence from the Mayor, on or about 25 November 2014, Complainant A sent a further letter dated 24 November 2014 to the developer to whom she had referred in the above publications, a copy of which:
- (a) she then forwarded to various parties by email including the Mayor, ten Councillors, the Federal Member for the Bowman Electorate and the Queensland Department of Environment and Heritage Protection; and
 - (b) was subsequently published on the 'Redlands 2030' website with the URL 'redlands2030.net'.

- 3.9 The letter relevantly stated (with some emphasis added):

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

I think the letters to Council, yourselves and the paper show the people of Redlands have come to realise quite quickly that they have a mayor who can't be trusted and has a conflict of interest in issues brought before her regarding development applications. It's common knowledge your company's financial support was a major part of [the Mayor's] war chest for the mayoral campaign so we were never going to win this case. The 2000 plus signatures, the letters, the comments from professors and staff at UQ, principals from leading schools, business owners, visitors, they were all ignored. The

best response we can get is "Council did everything possible to assist" but in all the many times [the CEO] or [the Mayor] has written this, I haven't seen one verb (action word) in their sentences.

*It's common knowledge your block when sold was for impact assessment. When you lodged your application you paid for code assessment. The Council then notified you advising you had made an incorrect payment as the block required impact assessment. The application was returned to you and within a very short time Council changed to code assessment and the DA was approved. **The only reason we have from Council for them changing from impact to code assessment after the initial DA was lodged is "it made the paperwork easier". For who? So now we are on high alert as there appears to us to be a huge combined power of strength we have been dealing with here.***

[A named planner employed by Council] *who you no doubt know but for the record, senior planner for Council, has stated to me that "it would be **unfair** to expect [the developer] to give up 3 blocks of land in his development for trees". From a senior council planner that statement 'it would be unfair' was jaw dropping. It's about getting it right isn't it? I had to assure he needn't stress as [the developer's] financial gain shouldn't be a factor in a senior planners decision or any Council planner for that matter. That's for [the developer's] planners to stress about. [The developer's] financial outcome should not be his concern. For business it's investment, margin, return. I had to remind him his duty is to get the balance and not be concerned about the financial profits of business owners. **That's not his job. Or is it?** To put it very mildly the decision is about has there been due consideration for the koalas or any ecology in the planning process? The answer is quite obviously, No! **You have to ask yourself who these people work for, don't you?***

...

*After the development application was submitted, the council re-categorised the project from "impact Assessable" to "Code Assessable", which negated the normal requirement for environmental impact assessment and public notification/consultation process. The Council have admitted that this was done to expedite the application on behalf of the developer (who was also a contributor to the mayor's election campaign). **This is against the documented wishes of the community and the national conservation interest. Due process was not followed ...***

- 3.10 On or about 4 December 2014, Complainant A's letter was removed from the Redlands 2030 website and the following statement was published in its place:

On 28 November Redlands2030 published an open letter from [Complainant A] to [the developer referred to in Complainant A's letter] about its plans for development at [development site].

It has been drawn to our attention that the publication of the letter contained incorrect assumptions and statements which may have been taken to suggest that [the developer] had acted unlawfully or improperly in its dealings with Redland City Council.

[Complainant A] has confirmed in writing that she made incorrect assumptions and she has unreservedly apologised to [the developer].

It was never the intention of Redlands2030 to suggest that [the developer] or any other of its principals or directors had acted in any way unlawfully or improperly in relation to its development plans. To the extent that the published article may have suggested or implied otherwise we join in extending our apologies to [the developer] and its principals and directors.

The article was removed from the Redlands2030 website on 4 December 2014.

- 3.11 Although it appears that Complainant A may have apologised to the developer to whom she referred in the above publications, Complainant A has not apologised to Council's officers or to the Mayor for her defamatory remarks, nor has she retracted them
- 3.12 Complainant A's letters dated 15 and 19 October and 4 and 24 November 2014 were referred to in the Complainant A letter as examples of defamatory material that Complainant A had previously published. In their natural and ordinary meaning, the above publications by

Complainant A conveyed the following defamatory imputations of and concerning Council's officers:

- (a) that the Mayor had corruptly given preferential treatment to a developer in the expectation that the developer would provide revenue in support of her re-election campaign;
- (b) that the Mayor had corruptly and dishonestly made changes to the planning scheme to allow a development application that had been made by a developer who had 'sponsored' the Mayor to obtain approval more easily and quickly than would have occurred had the planning scheme not been changed and had the application been assessed appropriately;
- (c) that Council's planner referred to by name in the 24 November 2014 letter had given improper preferential treatment to the developer by placing undue importance on the '*financial profits of business owners*' at the expense of environmental and community considerations.
- (d) that the CEO corruptly 'looks after' the interests of a developer in a manner that was unlawful and warranted investigation by a 'higher authority'; and
- (e) that the Mayor and various Councillors had lied to local residents in respect of Council's assessment of a development application.

3.13 On 25 February 2015, an article written by Complainant A was published in the Redland City Bulletin. The article (which is understood to have been circulated to an audience of approximately 47,452 people) relevantly stated:

Councillors and the mayor have a reason to protect those who contribute to election campaigns so they will try to move the blame to residents.

3.14 Although the above publication was not referred to in the Complainant A letter, the imputation to which it gives rise is that Councillors and the Mayor corruptly prefer the interests of developers over those of residents in exchange for monetary contributions to their electoral campaigns.

3.15 Complainant B also had a history of publishing inflammatory and defamatory comments. In addition to those outlined in section 4 below, a further example of such comments is Complainant B's Facebook post dated on or about 2 February 2015 in which she stated:

I hold Mayor Karen Williams directly responsible for not stepping in Her conduct is corrupt, due process was not done – this land should never have been developed without a full environmental study. If you care an iota about the environment, vote Karen Williams OUT!

3.16 Although this publication was not referred to in the Complainant B letter, it was material to Council's decision to act on the publications that were referred to in that letter, and demonstrates that those publications were not isolated incidents of Complainant B publishing statements defamatory of the Mayor.

4 Further publications by Complainants A and B

Complainant A's email

4.1 In or around early September 2015, Complainant A sent an email to various individuals. The email is understood to have stated as follows:

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

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

We have to reach 1000 signatures and we need a lot of support very quickly. Time is of the essence. You can read more and sign the petition here: [a link was then set out]

*The petition we are asking you to sign states: **A vote of no confidence for Redland City Council Officers and Mayor Karen Williams***

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

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

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

Together we can make this happen,

[Complainant A's name and telephone number]

[Complainant B's name, position, public sector employer and professional contact details]

- 4.2 In its natural and ordinary meaning, the above publication conveyed the following defamatory imputations:
- (a) that the Mayor and Council Officers had caused or influenced the dismissal of the Redland City Bulletin's editor and photographers because the newspaper had published articles that reflected badly on developers and Council. This follows from the fact that the letter calls for an enquiry into Council Officers and the Mayor immediately after it refers to the dismissal of the Redland City Bulletin's staff members and suggests that they were dismissed due to adverse comments that they had published concerning Council; and
 - (b) that the Mayor and Council Officers were seeking to stifle freedom of speech among local residents.
- 4.3 On or about 3 September 2015, Complainant A's email was re-published by one of its recipients on the social media website, Facebook.

The online petition

- 4.4 The above publications referred to a petition that had been established by Complainant B on the website with the URL 'www.change.org' in or about early September 2015 (the **Petition**).
- 4.5 The Petition was entitled '*Jackie Trad: Vote of No Confidence for Redland City Council Mayor Karen Williams – Sign the Petition!*'.
- 4.6 Complainant B made the following comments on the Petition's website (with emphasis added):

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

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

- 4.7 In their natural and ordinary meanings, the above publications conveyed the following defamatory imputations of and concerning the Mayor:
- (a) that the Mayor had 'sold out', or corruptly given preferential treatment in exchange for financial gain, to developers (given that the Petition was entitled '*Vote of No Confidence for Redland City Council Mayor Karen Williams*' and its contents would therefore reasonably have been understood to refer to the Mayor);
 - (b) that the Mayor had established a closed Development Industry Reference Group which placed developers' interests before the community's interests; and
 - (c) that the Mayor corruptly supported developers and that her support for developers was such as to give rise to a conflict between her personal interests and public duties.
- 4.8 Complainant B subsequently posted a link to the Petition on her Facebook page with the following comment (with emphasis added):
- Please sign to get **this corrupt mayor** out!*
- 4.9 On or about 2 September 2015, Complainant B sent an email to an individual containing the following comment, which was subsequently published on the recipient's Facebook page in respect of the Petition (with emphasis added):
- Sorry to use **the C word (corrupt)**, but sometimes **you have to call a spade a spade – right?***
- 4.10 In their natural and ordinary meaning, the above publications conveyed the imputation that the Mayor was a corrupt politician.

5 The instructions and the legal advice

- 5.1 During his interview with the Ombudsman, the General Counsel confirmed that he had discussed the publications referred to in paragraphs 4.1 to 4.10 above with the Mayor on or about 3 September 2015.
- 5.2 He said that he recalled the Mayor stating that she was unhappy about the publications, and indeed '*sick of these sorts of communications*'. The General Counsel stated that his recollection was that the Mayor was '*stressed*' about the publications, and that they were '*affecting her home life*'.
- 5.3 The General Counsel's recollection of these discussions was consistent with the Mayor's comments during her interview with the Ombudsman. During the interview, the Mayor confirmed:

- (a) that she considered that Complainant A and B's publications were defamatory of her; and
 - (b) that the publications had caused her considerable stress.
- 5.4 During his interview with the Ombudsman, the CEO also confirmed that his recollection was that Complainant A and Complainant B's publications had caused the Mayor distress.
- 5.5 At about 6.14am on 4 September 2015, the Mayor sent an email to the General Counsel, another solicitor in the employ of Council, the CEO, as well as an Executive Officer in the Mayor's office. Attached to the Mayor's email were screen shots that she had taken of the Petition, Complainant B's comments on the Petition (referred to in paragraph 4.6 above), and Complainant B's comment on Facebook (referred to in paragraph 4.8 above).
- 5.6 During his interview, the General Counsel confirmed that it was after he had discussed Complainant A and Complainant B's publications with the Mayor and the CEO that he contacted an external solicitor by telephone for advice about the publications. The solicitor was employed by a law firm which held itself out as practising in the areas of:
 - (a) environment;
 - (b) planning;
 - (c) resources;
 - (d) land;
 - (e) local government;
 - (f) intellectual property law;
 - (g) commercial law;
 - (h) corporate law;
 - (i) litigation and dispute resolution; and
 - (j) defamation.
- 5.7 The solicitor was employed in the position of Special Counsel and was held out as possessing expertise in the area of defamation (among other areas of law).
- 5.8 Importantly, the General Counsel's recollection was that the Mayor was present during the General Counsel's discussion with the external legal adviser, during which the General Counsel recalls that:
 - (a) the external legal adviser expressed the view that the publications discussed above were defamatory; and
 - (b) instructions were given to the external legal adviser to prepare letters to Complainants A and B in respect of the publications.
- 5.9 Later in the day on 4 September 2015, the General Counsel emailed the Complainant B letter in draft form (the draft having been prepared by Council's external legal advisers) to the Mayor and the CEO for their review before it was sent. The CEO subsequently approved the issuing of the letter with note that executive and senior managers of Community and Customer Service and Development Assessment were involved in those and subsequent communications.

- 5.10 At or about 4.39pm on 4 September 2015, the Complainant B letter was sent to Complainant B by the General Counsel. The Mayor and CEO were blind-copied into the email under cover of which the Complainant B letter was sent.
- 5.11 At or about 5.21pm on 7 September 2015, the Complainant A letter was sent to Complainant A by the General Counsel. Again, the Mayor and CEO were blind-copied into the email under cover of which the Complainant A letter was sent.
- 5.12 In the premises of the above, Council respectfully submits that its decision to issue the Complainant A letter and Complainant B letter was taken with the knowledge and on the instructions of the Mayor and CEO. The Mayor:
- (a) provided screenshots to the General Counsel of some of the publications;
 - (b) discussed the publications with the General Counsel and the CEO and conveyed that they were causing her stress;
 - (c) may have been present when the General Counsel obtained external legal advice in respect of the publications and the manner in which Council would respond to them;
 - (d) was provided with the Complainant B letter in draft form before it was issued to Complainant B; and
 - (e) was blind-copied into the emails under cover of which the Complainant A letter and Complainant B letter were issued.
- 5.13 The Proposed Report does not acknowledge these matters. In fact, the Proposed Report states that *'[i]t seems clear on the evidence that the Mayor did not instruct the CEO or General Counsel to take action on her behalf'*.
- 5.14 Council respectfully submits that the above conclusion is incorrect and invites the Ombudsman to reconsider it.

Council's actions were lawful and reasonable

6 Overview

- 6.1 In this section, Council submits that its actions under investigation were lawful and reasonable because:
- (a) **first**, Council has a legitimate interest in seeking to have publications which are defamatory of its officers and concerning their professional conduct removed from public view;
 - (b) **secondly**, the publications that were the subject of Council's letters to Complainants A and B:
 - (i) were defamatory;
 - (ii) further or alternatively, were reviewed by external legal advisers who advised Council that they were defamatory, and Council reasonably relied and acted on the advice that it received;

- (c) **thirdly**, properly construed, the Complainant A letter and Complainant B letter were informal 'warning' letters rather than the commencement of a formal process under the *Defamation Act 2005 (Qld)* (the **Defamation Act**), and were a proportional response to the publications given their seriousness; and
- (d) **fourthly**, the Employer letter was sent out of professional courtesy from one public body to another, and Council's decision to do so was appropriate.

7 Council's legitimate interest in having defamatory publications concerning its officers and operations withdrawn

- 7.1 The Proposed Report devotes much attention to the fact that defamation is essentially a private action, and that public bodies such as Council do not have standing to bring an action in defamation.
- 7.2 Contrary to the Ombudsman's Proposed Opinion 1, Council says that it has not previously contended otherwise. Council's understanding of defamation actions is evidenced by the Briefing Note '*Defamation and Public Administration*' dated 13 May 2010 that has been distributed to Councillors and management and which was provided to the Ombudsman in the course of its investigation.
- 7.3 However, while Council understands the fact that defamation is a private action, Council respectfully submits that the Proposed Report fails to acknowledge the legitimate interest that Council has to protect the reputations of its officers.
- 7.4 Defamatory remarks made about Council's officers have the potential to:
 - (a) cause the subjects of the remarks to suffer from stress which may impact on the performance of their professional duties; and
 - (b) bring Council itself into disrepute, particularly when the remarks are directed towards its most senior representatives such as the Mayor and CEO and concern their professional conduct.
- 7.5 In Council's submission, Complainant A and B's publications:
 - (a) were targeted at senior Council Officers, particularly the Mayor and CEO;
 - (b) concerned actions and decisions that such individuals had taken exclusively in the discharge of their professional responsibilities (and not their private conduct);
 - (c) were defamatory for the reasons set out in section 8 below; and
 - (d) had the real potential to impact on Council's reputation and bring Council into disrepute, given that they suggested that corruption was taking place at the highest levels within Council.
- 7.6 In the circumstances, Council submits that it acted lawfully and reasonably, in the interests both of the parties who had been defamed by the publications (and had standing to sue) and of Council as a whole (of whom the defamed parties were ambassadors, in the sense that their conduct and professional reputations affect Council's reputation), when issuing the Complainant A letter, the Complainant B letter and the Employer letter.
- 7.7 To the extent that the Proposed Report suggests that because Council does not itself possess standing to sue in defamation, it had no business acting in respect of the defamatory

publications, Council respectfully submits that the Ombudsman's opinion is unduly legalistic and does not take account of the seriousness of the imputations arising from Complainant A and B's publications and their significance to Council.

- 7.8 Council further submits that it is entirely appropriate that it should provide support to its officers who are defamed as a result of or in connection with the performance of their professional duties for Council.
- 7.9 Council further submits that the Proposed Report does not sufficiently acknowledge Council's obligation to provide its officers with a safe work environment, free from abuse and defamatory material, and the role that these considerations (appropriately, Council says) played in its actions. As noted in the section above entitled 'History', the time within which the ongoing defamatory commentary posed a workplace health and safety concern was not insignificant – extending from communications in July 2013 to September 2015. Further, the comments continued despite the Mayor's express written invitation for any evidence of corrupt activity to be referred to the Crime and Corruption Commission.
- 7.10 From at least 2014, as a result of Complainant A's communications with Council, there were discussions between the Council management team and Council Officers about the requirement to maintain a safe work place free from online bullying and abuse. This demonstrates the importance placed on officer safety by Council, and shows this was an ongoing consideration when addressing this particular matter.
- 7.11 In the premises, Council invites the Ombudsman to reconsider its conclusions about these matters.

8 The publications were defamatory

Overview

- 8.1 Section 2.2 of the Proposed Report is entitled '*Were the comments defamatory?*'. Despite its title, it does not answer that question.
- 8.2 Rather, the Proposed Report:
- (a) states that the Ombudsman's view is that '*some of the imputations* [alleged in Council's letters to Complainants A and B] *are not a reasonable interpretation of the* [published] *comments*', and questions '*whether adequate time and consideration was taken by council to accurately identify the imputations made by the comments*';
 - (b) finds that Council alleged that it personally had been defamed by Complainant A and Complainant B's publications, and that such an assertion was '*based on an error of law*';
 - (c) finds that it was wrong for Council to assert that Complainants A and B had defamed Council Officers without first obtaining instructions from those officers;
 - (d) finds that the Mayor did not instruct the CEO or General Counsel to take action on her behalf in respect of the publications; and
 - (e) finds that Council's approach was neither reasonable nor proportional.
- 8.3 Council responds to each of the Ombudsman's proposed findings below.

The imputations

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

8.5 Whether or not a publication is defamatory is a question that is to be determined objectively. As the learned authors of *Australian Defamation Law and Practice* note:¹

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

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

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

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

8.8 The question as to whether a publication is capable of conveying a defamatory meaning is to be resolved by reference to whether it is reasonably so capable to the ordinary reasonable reader. In *Queensland Newspapers Pty Ltd v Palmer* [2012] 2 Qd R 139, Boddice J (with whom McMurdo P and Muir JA agreed) found as follows (with footnotes omitted and emphasis added):²

*Whether words complained of are capable of conveying a defamatory meaning is a question of law. The mode or manner of publication is a material matter in determining what imputation is capable of being conveyed. In deciding whether a particular imputation is capable of being conveyed in the natural ordinary meaning of the words complained of, **the question is whether it is reasonably so capable to the ordinary reasonable reader. The ordinary reasonable meaning of the matter complained of may be either the literal meaning of the published matter, or what is inferred from it.** However, any strained, or forced, or utterly unreasonable interpretation must be rejected.*

***The ordinary reasonable reader is a person of fair, average intelligence who is neither perverse nor morbid nor suspicious of mind nor avid of scandal. However, that person does not live in an ivory tower but can, and does, read between the lines in light of that person's general knowledge and experience of worldly affairs.** The ordinary reasonable*

¹ Butterworths, *Australian Defamation Law and Practice*, vol 1 (at Service 71) [3260].

² At [19] and [20].

reader considers the publication as a whole, and tends to strike a balance between the most extreme meaning that the publication could have and the most innocent meaning. That person has regard to the content of the publication. Emphasis given by conspicuous headlines or captions is a legitimate matter the ordinary reasonable reader takes into account.

- 8.9 In Council's submission, considered objectively, the publications made by Complainants A and B were defamatory. The text of, and imputations arising from, the publications has been set out in the section above entitled 'Background', and Council repeats and relies on those submissions.
- 8.10 In Council's submission, Complainant A and Complainant B's publications to which it has referred above would have been understood by an ordinary, reasonable reader as giving rise to the defamatory imputations that Council has attributed to them.

The conflict of interest issue

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

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

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

Council did not assert that it was defamed

- 8.13 The Proposed Report suggests that Council asserted that it had been defamed by Complainant A and Complainant B's publications. In Council's submission, that suggestion is unfounded.
- 8.14 The Complainant A letter and Complainant B letter both:
- (a) identify Complainant A and Complainant B's publications as being defamatory of the Mayor and Council Officers; and
 - (b) state that such imputations '*are defamatory, completely false and damaging to the reputation of Redland City Council officers and the Mayor*'.
- 8.15 The Complainant A letter and Complainant B letter cannot reasonably be read as alleging that Council itself had been defamed.
- 8.16 To the extent that the Ombudsman is relying on the use in the letters of the pronoun 'we' in support of this proposed opinion, Council respectfully submits that this is not a reasonable interpretation of its letters. In Council's submission:
- (a) the use of that pronoun was a stylistic decision by the author of the letter which was not intended to, and did not, allege that Council had been defamed in its own right; and

- (b) rather, it reflected that Council was writing to Complainants A and B on behalf of the individual Council Officers whom Council alleged had been defamed.

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

Council Officers

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

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

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

8.21 In particular, in Complainant A's letter to the developer dated 24 November 2014, which is discussed in paragraphs 3.8 and 3.9 above, Complainant A specifically named a planner employed by Council and suggested that he had given improper preferential treatment to the developer by placing undue importance on the '*financial profits of business owners*' at the expense of environmental and community considerations.

8.22 Despite the above concessions, Council maintains that each of the publications to which it has referred above was defamatory for the reasons explained in the section of this submission entitled 'Background'.

Council relied on external legal advice

8.23 Further, Council submits that it obtained external legal advice in respect of Complainant A and B's publications and that its external legal adviser prepared the Complainant A letter and Complainant B letter. Council refers to and relies on its submissions in section 9 below in this regard.

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

The instructions point

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

- (a) Council's belief, based on external legal advice, that unnamed Council Officers had been defamed;
- (b) Council's legitimate interest in having defamatory remarks about its officers removed from public view, as discussed in section 7 above; and
- (c) the fact that the letters were in the nature of warning letters only, and were not the commencement of formal proceedings under the Defamation Act or otherwise, as discussed in section 10 below.

- 8.26 Council also notes that it did involve senior members of the development officer team in discussions about the actions taken in relation to the matter. The team was thereby kept informed of Council's actions as the alleged conduct was directed, inter alia, against them.
- 8.27 In the circumstances, Council does not accept that its actions were '*unreasonable and a misuse of the legal processes for defamation*' as found by the Ombudsman. Council respectfully invites the Ombudsman to reconsider its Proposed Opinion 2.

The Mayor

- 8.28 As to the Mayor, Council repeats that the Mayor:
- (a) provided screenshots to the General Counsel of some of the publications which are alleged to have been defamatory of her;
 - (b) discussed the publications with the General Counsel and the CEO and conveyed her distress as a result of the publications;
 - (c) may have been present when the General Counsel obtained legal advice in respect of the publications and the manner in which Council would respond to them (this being the General Counsel's recollection of events, which is not acknowledged in the Proposed Report);
 - (d) was provided with the Complainant B letter in draft form before it was issued to Complainant B; and
 - (e) was blind-copied into the emails under cover of which the Complainant A letter and Complainant B letter were issued.
- 8.29 In the Proposed Report, the Ombudsman includes the following proposed finding:

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

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

The Mayor's concern about Council's reputation

- 8.31 In the Proposed Report, the Ombudsman remarks that '*the Mayor appeared to be more concerned about the reputation of council than her own*'. With respect, that is not to the point.
- 8.32 The Mayor made plain during her interview with the Ombudsman that she considered Complainant A and B's publications to be defamatory of her. As Council's figurehead, she was naturally also concerned about the manner in which the publications reflected on Council.
- 8.33 That the Mayor attributed greater importance to Council's reputation than her own is appropriate given her public office. It does not bear on the question of whether, objectively considered, the publications were defamatory of the Mayor.
- 8.34 The Ombudsman goes on to state:

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

- 8.35 Again, with respect, the above is irrelevant to the question of whether or not the publications were defamatory, and whether the steps that Council took in respect of them were lawful and reasonable.
- 8.36 The Proposed Report fails to acknowledge that this question was also put to the Mayor during her interview with the Ombudsman, to which the Mayor responded with words to the following effect:

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

- 8.37 The Mayor's comments indicate that she considered Complainant A and B's publications to be exceptional and not simply '*part of being a politician and having a public profile*', in that they alleged that she and Council Officers were corrupt without any evidence to support those allegations and had not, despite the Mayor's express suggestions, referred such matters to the Crime and Corruption Commission.
- 8.38 The Proposed Report also fails to acknowledge the significant distress that the Mayor confirmed she had experienced as a direct result of Complainant A and B's publications.
- 8.39 None of the above is, however, relevant to the question of whether the publications themselves were defamatory. A cause of action in defamation is complete on the publication of matters to third parties which (construed objectively) are defamatory of a subject with standing to sue under the Defamation Act. As Council has submitted above, it does not turn on whether the plaintiff understood the publication to be defamatory of him or her.

Conclusion in respect of the Mayor

- 8.40 Accordingly, Council submits that:
- (a) the Mayor was defamed by Complainant A and B's publications; and
 - (b) its actions were taken with the knowledge and instructions of the Mayor.
- 8.41 Council invites the Ombudsman to reconsider the conclusions reached in section 2.2 under the heading '*Was the Mayor defamed?*'.

Conclusion

- 8.42 Accordingly, for the reasons set out above, Council submits that:
- (a) Complainant A and B's publications were defamatory;
 - (b) Council did not assert that it had been defamed in its own right and disagrees with the Ombudsman's Proposed Opinion 1, which it invites the Ombudsman to reconsider;
 - (c) Council's assertion that Complainants A and B had defamed Council Officers was based on external legal advice on which Council reasonably relied and acted, and was therefore reasonably made. The Proposed Report does not acknowledge Council's legitimate interest in having defamatory comments concerning its officers and their professional

conduct removed from public view. Council therefore disagrees with the Ombudsman's Proposed Opinion 2, which it invites the Ombudsman to reconsider; and

- (d) Council held instructions from the Mayor and CEO to take action in respect of the publications.

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

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

9 The external legal advice

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

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

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

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

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

9.4 Council was entitled to, and did, rely on the legal advice that it received. It reasonably acted on that advice for the reasons set out in section 7 above.

10 The nature of Council's letters

Overview

10.1 Council submits that:

- (a) properly construed, the Complainant A letter and Complainant B letter were informal letters and did not constitute concerns notices under the Defamation Act; and
- (b) the time frames that Council nominated in its letters for Complainants A and B to retract their statements and apologise for them were not unreasonable.

The letters were not concerns notices

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

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

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

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

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

Time frames for responding

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

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

10.8 In the Proposed Report, the Ombudsman states:

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

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

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

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

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

Use of public money

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

- (a) repeats and relies on the submissions in section 7 above as to Council's legitimate interest in having defamatory remarks about its representatives and their professional conduct withdrawn; and
- (b) submits that the Ombudsman's comments on this matter are beyond its investigative jurisdiction because they concern matters of policy rather than administration, as submitted in section 13 below.

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

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

11 The Employer letter

11.1 In respect of the Employer letter, the Ombudsman concludes:

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

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

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

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

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

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

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

- 11.6 Properly construed, Council's reference to 'not [pursuing] *the matter further*' was to the taking of further steps under the Defamation Act and the commencement of legal proceedings, these being the matters that were discussed in the immediately preceding sentences.
- 11.7 Accordingly, Council submits that its decision to send the Employer letter was not inconsistent with the above paragraph of the Complainant B letter.

Other matters

12 Overview

- 12.1 In this section, Council respectfully submits that:
- (a) certain aspects of the Proposed Report appear to exceed the Ombudsman's jurisdiction; and
 - (b) the language of the Proposed Report is unbalanced and unduly critical of Council.

13 The Ombudsman's jurisdiction

- 13.1 Pursuant to section 14 of the *Ombudsman Act 2001* (Qld) (the **Ombudsman Act**), the Ombudsman has jurisdiction to investigate administrative actions of agencies.
- 13.2 'Administrative action' is defined broadly by section 7 of the Ombudsman Act, but authority suggests that it does not extend to matters of policy.
- 13.3 In *Booth v Dillon (No 2)* [1976] VR 434 (**Booth**), a distinction was drawn between 'matters of administration', over which the Ombudsman has investigative jurisdiction, and matters of policy, over which it does not. The statutory definition of 'administrative action' under the *Ombudsman Act 1973* (Vic), being the legislation with which that case was concerned, is very similar to that contained in the Ombudsman Act.
- 13.4 The relevant action was the decision taken by the Director-General of the Department of Social Welfare to ensure that prisoners were not subject to sexual attack by increasing prison staff numbers and seeking funds to renovate sleeping quarters to provide for single cells.³ It was held that the sleeping arrangements of prisoners and the provision of funds for the particular purpose of a government were matters of policy, not administration.
- 13.5 The Court held (with emphasis added):
- It is clear from an examination of the draft report that the [Ombudsman] embarked on an investigation in "J" Division far beyond the terms of either his letters previously set out, and, in my opinion, beyond the scope of what can properly fall within the definition of "administrative action". I agree with the submission on behalf of the applicant that whether the young prisoners in "J" Division should be required to sleep in dormitories or be locked in individual cells is a matter of policy, and not a matter of administration.*
- 13.6 The Ombudsman states in the Proposed Report (with emphasis added):

During the investigation, I considered:

³ *Booth v Dillon (No 2)* [1976] VR 434, 437 – 438.

- *council's approach to the issue (Chapter 2)*
- *how council carried out its approach (Chapter 3)*
- ***the need for a policy to guide council decisions around funding legal action for employees (Chapter 4)***
- *whether council acted reasonably by reporting Complainant B to her employer (Chapter 5)*

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

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

14 The language of the Proposed Report

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

14.2 For example:

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

- 14.3 The above is merely a list of examples and does not purport to be exhaustive. Council respectfully requests that the Ombudsman reconsiders the terms in which the report is written to ensure that it is balanced and appropriately represents the positions of Council and its representatives.

Conclusion

15 Summary

- 15.1 In summary, for the reasons set out in this document, and considered in the light of the circumstances surrounding Council's actions, Council respectfully submits that the actions that it took in response to Complainant A and B's defamatory publications were lawful and reasonable.
- 15.2 For these reasons, Council disagrees with the Ombudsman's Proposed Recommendation 4, which is that Council should apologise in writing to Complainants A and B.
- 15.3 Council maintains that Complainant A should publicly apologise and retract her defamatory remarks about the Mayor and other Council representatives.
- 15.4 Council is satisfied with Complainant B's retraction and apology and does not propose to take any further action in respect of Complainant B.
- 15.5 Should any adverse comments be maintained by the Ombudsman in a final report, Council trusts that the report will comply with the requirement in section 55(3) of the *Ombudsman Act 2001* (Qld) to fairly state the defence outlined in these submissions. Should the Ombudsman require any further information from Council in order to finalise its report, Council would welcome the opportunity to assist the Ombudsman further.

Redland City Council
4 November 2016