

**Australian Workplace Training &  
Investigation**

***STRICTLY PRIVATE AND  
CONFIDENTIAL  
FINAL  
INVESTIGATION REPORT***

**INVESTIGATION REPORT FOR THE NEWCASTLE CITY COUNCIL INTO CODE OF  
CONDUCT COMPLAINTS AGAINST COUNCILLOR ALLAN ROBINSON**

**Prepared by:**

**Phil O'Brien**

This document is intended to provide general information about its subject matter. It is not legal advice and is not intended to cover all aspects of the laws referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions. For more information, please contact us at [REDACTED]

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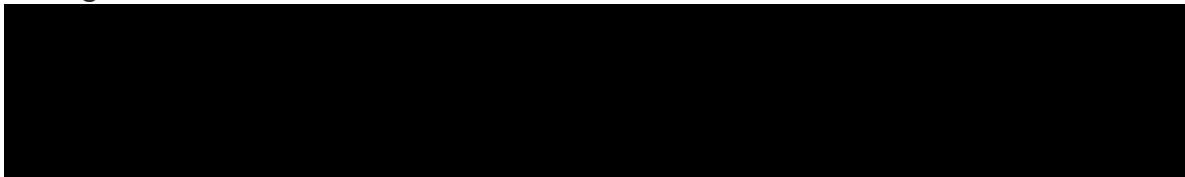
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Government Information (Public Access) Act 2009

## 1. Instructions & Executive Summary

1.1 On 30 July 2019, Councillor Declan Clausen, Deputy Mayor of Newcastle made a formal Code of Conduct complaint against Councillor Allan Robinson.<sup>1</sup>

1.2 Councillor Clausen's complaint related to an email<sup>2</sup> sent by Councillor Robinson to a resident on 27 June 2019, in which Councillor Robinson wrote,

*"I've spoke to Grahame about this something needs to be done if it was in fleet st where fatsos parents live it would have already happened."*

1.3 Councillor Clausen alleged that Councillor Robinson breached s3.1 (a), (e) and (g) of the Newcastle City Council Code of Conduct.

1.4 On 15 August 2019, a written complaint against Councillor Robinson was received from [REDACTED]

[REDACTED]<sup>3</sup>

1.5 [REDACTED] complaints related to comments made by or attributed to Councillor Robinson in the Newcastle Herald on 25<sup>4</sup> and 26<sup>5</sup> July 2019 and the Guardian on 26 July 2019.<sup>6</sup>

1.6 The basis of [REDACTED] complaints was that the comments which appeared in the media that were allegedly made by or attributed to Councillor Robinson were derogatory, homophobic, and sexist.<sup>7</sup>

1.7 Following a review of the complaint from [REDACTED] and of the material provided in the complaint relating to articles published in the Newcastle Herald<sup>8</sup> on 25 and 26 July 2019, and in the Guardian on 26 July 2019<sup>9</sup>, a subsequent review was conducted of the video recording of the Ordinary Council meeting on 23 July 2019, the meeting that was referenced in the

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<sup>1</sup> Annexure 1

<sup>2</sup> Annexure 1

<sup>3</sup> Annexure 2

<sup>4</sup> Annexure 7

<sup>5</sup> Annexure 8

<sup>6</sup> Annexure 9

<sup>7</sup> Annexure 2

<sup>8</sup> Annexure 7 & 8

<sup>9</sup> Annexure 9

articles provided as attachments to [REDACTED] complaint. A transcript of the relevant part of the meeting was created.<sup>10</sup>

- 1.8 The complaints were referred to Australian Workplace Training and Investigation (AWPTI) to conduct a Code of Conduct review.
- 1.9 The review was conducted by Mr Phil O'Brien, Principal Investigator from Australian Workplace Training and Investigation (AWPTI).
- 1.10 This review is required to consider if the behaviour of Councillor Robinson breached the Newcastle City Council Code of Conduct.
- 1.11 The review was conducted as per cl 6.12 of the Procedures for the Administration of The Model Code of Conduct for Local Councils in NSW adopted by the Newcastle City Council in June 2019.<sup>11</sup>

*The conduct reviewer is to undertake a preliminary assessment of a complaint referred to them by the complaints coordinator for the purposes of determining how the complaint is to be managed.*

- 1.12 The complaints assessment criteria was reviewed and it is considered that the following components of cl6.31 of the Newcastle City Council Procedures for the Administration of The Code of Conduct 2019<sup>12</sup> apply;
  - a) *The complaint is considered to be a Code of Conduct complaint for the purpose of these procedures*
  - b) *The complaint has been made in a timely manner in accordance with clause 4.4*
  - c) *The complaint does not appear to be trivial, frivolous or vexatious and was made in good faith*
  - d) *The complaint appears to disclose prima facie evidence of conduct that, if proven, would constitute a breach of the Code of Conduct*
  - f) *There does not appear to be an alternative and satisfactory means of redress available in relation to the conduct complained of;*
  - i) *There have been previous proven breaches of the Council's Code of Conduct by Councillor Robinson*

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<sup>10</sup> Annexure 10

<sup>11</sup> Annexure 13

<sup>12</sup> Annexure 13

- l) the seriousness of the alleged conduct (having regard to the criteria specified in clause 6.23);*
  - m) the significance of the conduct or the impact of the conduct for City of Newcastle;*
- 1.13 A determination has been made under cl 6.22 to investigate the matter as it is considered that the following is satisfied;
  - a) that the complaint is a Code of Conduct Complaint for the purposes of these procedures; and*
  - b) that the alleged conduct is sufficiently serious to warrant investigation; and*
  - c) that the matter is one that could not or should not be resolved by alternative means.*
- 1.14 The complaint was determined as sufficiently serious to warrant investigation, when considering the following under cl6.23;
  - a) the harm or cost that the alleged conduct has caused to any affected individuals and/or the City of Newcastle*
  - b) the likely impact of the alleged conduct on the reputation of the City of Newcastle and public confidence in it*
  - c) whether the alleged conduct was deliberate or undertaken with reckless intent or negligence*
  - d) any previous proven breaches by the person whose alleged conduct is the subject of the complaint and/or whether the alleged conduct forms part of an ongoing pattern of behaviour.*
- 1.15 Due to the serious nature of the complaints it was recommended that the matter proceed to investigation.
- 1.16 Due to the serious nature of the alleged breaches, it was considered that this matter was not suitable for resolution by alternative means.
- 1.17 Eight specific allegations against Councillor Robinson were identified and investigated.
- 1.18 Allegation 1 made by Councillor Clausen related to a derogatory comment about the Lord Mayor Nelmes that Councillor Robinson made in an email. **This allegation was substantiated.**

- 1.19 Allegations 2, 3, 4, 5 and 6 related to Councillor Robinson's behaviour in an Ordinary Council meeting on 23 July 2019.
- 1.20 Allegations 2, 3, 4 and 6 are **substantiated**. Allegation 5 is **not substantiated**.
- 1.21 Allegations 7 and 8 related to complaints made by [REDACTED] [REDACTED]<sup>13</sup> relating to comments made or attributed to Councillor Robinson published in the Newcastle Herald on 25 and 26 July, and in the Guardian on 26 July 2019.
- 1.22 Allegations 7 and 8 are **substantiated**.
- 1.23 Councillor Robinson has been provided with a copy of the draft report and has been invited to make written submissions in relation to the draft report within 14 days<sup>14</sup> in accordance with clause 7.26 of the Procedures for the Administration of the Model Code of Conduct.<sup>15</sup>
- 1.24 Councillor Robinson has been advised that should he choose to make a written submission, the submission received on the draft report will be considered prior to the finalisation of the report in relation to the Code of Conduct and Code of Meeting Practice Complaints made against him.<sup>16</sup>
- 1.25 Councillor Robinson has been advised that after consideration of all written submissions received in relation to the draft report, further enquiries into the matter could be made.<sup>17</sup>
- 1.26 Councillor Robinson has been advised that as a result of making further enquiries, if any material change was made to the draft report that makes new adverse comment/s about him, he would be provided with a further opportunity to make a written submission in relation to the new adverse comment/s.<sup>18</sup>
- 1.27 Councillor Robinson has been advised that should he not wish to provide written submissions within 14 days of the date of this letter, the final report will be issued without receiving such submissions.

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<sup>13</sup> Annexure 2

<sup>14</sup> Annexure 13

<sup>15</sup> Annexure 13

<sup>16</sup> Annexure 13

<sup>17</sup> Annexure 13

<sup>18</sup> Annexure 13



- 1.28 Recommendations in relation to this matter are contained in section 16 pages 39 to 44

## 2 Allegations as a result of Councillor Clausen's complaint.

### Allegation 1

- 2.1 That on 27 June 2019, Councillor Robinson may have breached cl 3.1 (a) (e) and (g) of the Newcastle City Council Code of Conduct by the comments he made in an email to a resident.

It is alleged that in an email Councillor Robinson sent to a resident he stated,

*"I've spoke to Grahame about this something needs to be done if it was in fleet st where fatsos parents live it would have already happened."*

It was alleged that Councillor Robinson was aware that the Lord Mayor Nelmes' parents lived in the vicinity of Fleet Street..

**It has been found that this allegation is substantiated.**

## 3. Allegations as a result of [REDACTED] complaint.

### Allegation 2

- 3.1 That on 23 July 2019, Councillor Robinson may have breached cl 3.1 (a) and (e) and cl3.3 and cl6.6 of the Newcastle City Council Code of Conduct when he became argumentative with the Lord Mayor, continually interjecting and making comments in an aggressive tone.

**It has been found that this allegation is substantiated.**

### Allegation 3

- 3.2 It is alleged that on 23 July 2019, Councillor Robinson may have breached cl4.5.1 of the Newcastle City Council Code of Meeting Practice when he became argumentative with the Lord Mayor, continually interjecting and making comments in an aggressive tone.

**It has been found that this allegation is substantiated.**

#### **Allegation 4**

3.3 It is alleged that on 23 July 2019, Councillor Robinson may have breached cl4.5.1 of the Newcastle City Council Code of Meeting Practice when he became argumentative and spoke to Cr Duncan in a disrespectful manner when he said, "Tea is nearly ready Mrs Duncan, so we'll get going soon."

**It has been found that this allegation is substantiated.**

#### **Allegation 5**

3.4



**It has been found that this allegation is not substantiated.**

#### **Allegation 6**

3.5 It is alleged that on 23 July 2019, Councillor Robinson may have breached cl76.1.4 of the Code of Meeting Practice when he referred to Cr Clausen as 'custard, a homophobic slur.

**It has been found that this allegation is substantiated.**

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## **4. Allegations as a result of comments made or attributed to Cr Robinson in Newcastle newspapers.**

### **Allegation 7**

4.1 It is alleged that Councillor Robinson may have breached cl 3.7 and cl 3.8 of the Newcastle City Council Code of Conduct by the comments he made or that were attributed to him in the Newcastle Herald on 25 and 26 July and in the Guardian on 26 July 2019.

**It has been found that this allegation is substantiated**

### **Allegation 8**

4.2 It is alleged that Councillor Robinson may have breached cl 3.9 and cl 3.10 of the Newcastle City Council Code of Conduct by the comments he made or that were attributed to him in the Newcastle Herald on 25 and 26 July and in the Guardian on 26 July 2019.

**It has been found that this allegation is substantiated**

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## 5. Documents considered

### 5.1 **Newcastle City Council Code of Conduct** that states specifically;<sup>19</sup>

#### Code of Conduct

*cl3.1 - You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute*

*a) is likely to bring the council or other council officials into disrepute*

*e) causes, comprises or involves intimidation, harassment or verbal abuse;*

*g) constitutes harassment or bullying behaviour under this code, or is unlawfully discriminatory*

*cl3.3 You must treat others with respect at all times.*

*cl3.7 You must not harass or unlawfully discriminate against others, or support others who harass or unlawfully discriminate against others, on the grounds of sex, pregnancy, breastfeeding, race, age, marital or domestic status, homosexuality, disability, transgender status, infectious disease, carer's responsibilities or political, religious or other affiliation.*

*cl3.8 - For the purposes of this code, "harassment" is any form of behaviour towards a person that:*

*a) is not wanted by the person*

*b) offends, humiliates or intimidates the person*

*cl3.9 3.9 - You must not engage in bullying behaviour towards others.*

*cl 3.10 - For the purposes of this Code, "bullying behaviour" is any behaviour in which:*

*a) a person or a group of people repeatedly behaves*

*unreasonably towards another person or a group of persons*

*cl6.6 You must show respect to the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council*

<sup>19</sup> Annexure 11

5.2 **Newcastle City Council Code of Meeting Practice** that states specifically;<sup>20</sup>

*cl4.5.1 Councillors and Council Officers have an obligation to conduct themselves at Meetings in accordance with the Code of Conduct and accepted standards of behaviour.*

*cl16.3 Councillors must put questions directly, succinctly and without argument or discussion on the question.*

*cl76.1 A Councillor commits an act of disorder if the Councillor at a Meeting:*

*76.1.4 insults or abuses any other Councillor or person*

5.3 **Local Government (General) Regulation 2005** that states specifically;<sup>21</sup>

**182 Acts of disorder**

*For the purposes of section 490A of the Act, a councillor commits an act of disorder if the councillor, at a meeting of a council or a committee of a council:*

- (a) contravenes the Act, this Regulation or any provision of the code of meeting practice adopted by the council under section 360 (3) of the Act, including any provisions incorporated in the adopted code that are prescribed by this Regulation as mandatory provisions of the model code of meeting practice, or*
- (b) assaults or threatens to assault another councillor or person present at the meeting, or*
- (c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the council or committee, or addresses or attempts to address the council or committee on such a motion, amendment or matter, or*
- (d) insults, makes unfavourable personal remarks about, or imputes improper motives to, any other councillor, or*
- (e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the council or committee into contempt.*

<sup>20</sup> Annexure 12

<sup>21</sup> Local Government (General) Regulation 2005 -

<https://www.legislation.nsw.gov.au/#/view/regulation/2005/487/part8/sec182>

5.4 **Local Government Act 1993** that states specifically;<sup>22</sup>

#### **490A Acts of disorder**

*For the purposes of this Chapter and the code of conduct, a councillor commits an act of disorder if the councillor, at a meeting of the council or a committee of the council, does anything that is prescribed by the regulations as an act of disorder for the purposes of this Chapter and the code of conduct.*

5.5 **Office of Local Government** - Circular No 19-25 / 2 October 2019 / A671874<sup>23</sup>

## **6. Summary of Interviews**

6.1 As part of the investigation the following people were interviewed. The interviews were digitally recorded:

- Councillor Declan Clausen<sup>24</sup>
- Councillor Carol Duncan<sup>25</sup>
- Lord Mayor Nuatali Nelmes<sup>26</sup>
- Councillor Allan Robinson<sup>27</sup>

<sup>22</sup> Local Government Act 1993 -

<https://www.legislation.nsw.gov.au/#/view/act/1993/30/chap14/part5/sec490a>

<sup>23</sup> Annexure 15

<sup>24</sup> Annexure 3

<sup>25</sup> Annexure 4

<sup>26</sup> Annexure 5

<sup>27</sup> Annexure 6

## 7. Analysis of evidence – Complaints made by Cr Clausen

### Allegation 1

That on 27 June 2019, Councillor Robinson may have breached cl 3.1(a) (e) and (g) of the Newcastle City Council Code of Conduct by the comments he made in an email to a resident.

It is alleged that in an email Councillor Robinson sent to a resident he stated,

*“I’ve spoke to Grahame about this something needs to be done if it was in fleet st where fatsos parents live it would have already happened.”*

It was alleged that Councillor Robinson was aware that the Lord Mayor Nelmes’ parents lived in the vicinity of Fleet Street.

#### Evidence of Councillor Clausen

7.1 In his Code of Conduct complaint against Councillor Robinson, dated 30 July 2019, Councillor Clausen stated,

*“I wish to make a formal complaint under City of Newcastle’s ‘Code of Conduct for Councillors’ regarding the conduct of Councillor Allan Robinson.*

*On 7 July 2019, I received an email from a resident (Mr Grahame Murland) regarding a traffic related issue (attached). The email from Mr Murland included a trail of previous correspondence with CN officials, including the following email from Councillor Allan Robinson*

*I believe that Cr Robinson’s email is a clear breach of a number of sections of the Code of Conduct.*

*Cr Robinson is aware that the Lord Mayor (Cr Nelmes) parents live in the vicinity of Fleet St, New Lambton. He is aware of this connection as the Lord Mayor previously excused herself from a discussion in Council’s Development Application Committee (DAC) for a DA near her parent’s property. Cr Robinson had a particular interest in that DA.*

*It was memorable as during the meeting he advised the chamber that his own demolition business had been working on a property nearby.*"<sup>28</sup>

7.2 During his interview on 7 November 2019, Councillor Clausen stated that he had been a Councillor on the Newcastle City Council since 2015.<sup>29</sup>

7.3 When asked about the email subject of his Code of Conduct complaint, Councillor Clausen stated,

*"so, it was an email chain with a constituent. The constituent forwarded the email chain to myself and other councillors with the entirety of the previous interactions that he'd had with Councillor Robinson, amongst others included*

*So, that's an email chain documents the - it's a complaint around an intersection and the resident advocating for some upgrades to intersection; a very run of the mill standard local government style of issue."*<sup>30</sup>

*"Councillor Robinson forwards a copy of the email and make some comment to the effect of implying - well, he uses the word Fatso to describe the Lord Mayor I believe and implies that this intersection would have been fixed had the Lord Mayor intervened or had it been - apologies - had it been located in proximity to the Lord Mayor's parents' property.*

*Essentially implying that there's some favourable deal and corruption that exists in local government. And the intersections are only upgraded according to Councillor Robinson, if they're located in proximity to, quote unquote Fatso, the Lord Mayor's parents' house. It's pretty disgusting actually. And then pretty remarkable that somehow in the email trail, it's come full circle and other councillors have now received a copy of this denigrating email where he's describing the Lord Mayor in pretty unfavourable terms."*<sup>31</sup>

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<sup>28</sup> Annexure 1

<sup>29</sup> Annexure 4 p 1

<sup>30</sup> Annexure 4 p 2

<sup>31</sup> Annexure 4 p 3



7.4 Councillor Clausen stated that Lord Mayor Nelmes had previously in relation to a Development Application declared a significant non-pecuniary interest in relation to her parents living in Fleet Street.<sup>32</sup>

### Evidence of Councillor Robinson

7.5 Councillor Robinson did not deny sending the email<sup>33</sup> although he did not recall sending it.<sup>34</sup>

7.6 When asked if he recalled the email subject of this complaint Councillor Robinson stated that he didn't.<sup>35</sup>

7.7 When Councillor Robinson was shown a copy of the email, he stated,

*"I don't but if I spoke to Graham, I don't remember a Graham about this. Something needs to be done. If it was in Fleet Street where Fatso's parents' lives, I would say that. But I think this Graham is something about traffic. He was something about a bad intersection and he said nothing's ever been done. I think someone got killed there and I said, all right I'll get onto it and I don't email Council. I don't do nothing. I ring the CEO and he does whatever I ask, Jeremy Bath. He's very good."<sup>36</sup>*

7.8 When asked who he was referring to as "Fatso" Councillor Robinson replied,

*"The Lord Mayor."<sup>37</sup>*

7.9 Councillor Robinson stated that he was aware of where the Lord Mayor's parents lived.<sup>38</sup>

7.10 When asked why he referred to the Lord Mayor in that manner, Councillor Robinson stated,

*"Yeah, well I don't talk highly of her. You know, she's never had a job. The only job she's had, she's a dressing room attendant for a union*

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<sup>32</sup> Annexure 4 p 3

<sup>33</sup> Annexure 1

<sup>34</sup> Annexure 6 p 1

<sup>35</sup> Annexure 6 p 3

<sup>36</sup> Annexure 6 p 3

<sup>37</sup> Annexure 6 p 3

<sup>38</sup> Annexure 6 p 3

side. Yeah and I've watched her sack people. I've watched her employ people that should never be employed. Yeah, so I'm not going to talk anything about her. And whenever you see her on tele, have a look at her. She's - I don't know what it costs Council to have the makeup done every time. She's on the news every night. She has her makeup done. Without the makeup she looks like a spotted dog, a hyena sort of thing.

She's got that many marks on her. She's just a fake person. The whole persona. She's a pretty awful person."<sup>39</sup>

## Discussion & Analysis

7.11 Councillor Robinson did not deny sending the email, although he did not recall sending it.

7.12 The email in question was headed,

*"From: Cr Allan Robinson  
Sent: Thursday, June 27, 2019 7:51:06 PM."*

7.13 Councillor Clausen provided evidence that Lord Mayor Nelmes had previously made a declaration in regard to her parents living in Fleet Street.

7.14 Councillor Robinson stated that he was aware that Lord Mayor Nelmes' parents lived in Fleet Street.

7.15 Councillor Robinson admitted that he was referring to Lord Mayor Nelmes when he made the comment "Fatso".

7.16 It was apparent from Councillor Robinson's responses that there were significant difficulties in his relationship with Lord Mayor Nelmes.

7.17 Using the standard definition of 'disrepute', "*the state of being held in low esteem by the public*" it is considered based on the evidence of Councillor Clausen and Councillor Robinson that the sending of this email to a member of the public by Councillor Robinson was in breach of cl3.1 (a) of the

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<sup>39</sup> Annexure 6 p 3

Newcastle City Code of Conduct in that it was likely to bring the Council into disrepute.<sup>40</sup>

7.18 It is considered based on the evidence of Councillor Clausen and Councillor Robinson by referencing Lord Mayor Nelmes as “Fatso” in the email Councillor Robinson was in breach of cl3.1 (e) of the Newcastle City Code of Conduct in that it caused verbal abuse.

7.19 It is considered based on the evidence of Councillor Clausen and Councillor Robinson by referencing Lord Mayor Nelmes as “Fatso” in the email Councillor Robinson was in breach of cl3.1 (g) of the Newcastle City Code of Conduct in that it constituted harassment or bullying under the Code.<sup>41</sup>

7.20 It is considered that there is sufficient evidence to substantiate that the behaviour of Councillor Robinson in this instance constitutes a breach of cl3.1 (a), (e) and (g) of the Newcastle City Council Code of Conduct.<sup>41</sup>

7.34 It is considered that there is sufficient evidence to substantiate this allegation.

### **Finding**

7.21 Having regard to the evidence of Councillor Clausen and Councillor Robinson and on the balance of probabilities this allegation is **substantiated**.

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<sup>40</sup> Annexure 11 p 7

<sup>41</sup> Annexure 11 p 7

## 8. Allegations as a result of [REDACTED] complaint.

### Allegation 2

**That on 23 July 2019, Councillor Robinson may have breached cl 3.1(a) and (e) and cl3.3 and cl6.6 of the Newcastle City Council Code of Conduct when he became argumentative with the Lord Mayor, continually interjecting and making comments in an aggressive tone.**

#### Background

- 8.1 On 15 August 2019, a written complaint against Councillor Robinson was received from [REDACTED]  
[REDACTED].<sup>42</sup>
- 8.2 [REDACTED] complaints related to comments made by or attributed to Councillor Robinson in the Newcastle Herald on 25 and 26 July 2019 and the Guardian on 26 July 2019.<sup>43</sup>
- 8.3 The basis of [REDACTED] complaints was that the comments that appeared in the media that were allegedly made by or attributed to Councillor Robinson were derogatory, homophobic, and sexist.<sup>44</sup>
- 8.4 In his complaint [REDACTED] provided copies of articles<sup>45</sup> that were published in the Newcastle Herald on 25 and 26 July and in the Guardian on 26 July 2019 that directly referenced the ordinary Council meeting held on 23 July 2019.
- 8.5 As a result of the complaint from [REDACTED] a review was conducted of the video recording of the Ordinary Council meeting held on 23 July 2019.
- 8.6 A transcript of the meeting with reference to time stamps 01:03:58 to 01:13:56 was ordered and reviewed.<sup>46</sup>

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<sup>42</sup> Annexure 2

<sup>43</sup> Annexure 2

<sup>44</sup> Annexure 2

<sup>45</sup> Annexure 7, 8 & 9

<sup>46</sup> Annexure 10

- 8.7 This part of the meeting in part related Lord Mayor's appointment to the Board of the Newcastle Airport.<sup>47</sup>
- 8.8 As a result of the review of the video and transcript, a number of interviews were conducted.

### **Evidence of Councillor Clausen**

- 8.9 During interview when asked about Councillor Robinson's behaviour during this meeting and in particular in regard to the Lord Mayor's appointment to the Board of the Newcastle Airport Councillor Clausen stated,

*"Councillor Robinson entered the debate in relation to this discussion. We should just keep in mind that the particular item before us was about indemnification of directors. Something that council has done ever since we've been the joint owner of the airport which was since the 1990s*

*Councillor Robinson led the debate in a pretty sensationalist, negative way criticising the Lord Mayor, described herself as plonking herself on the Board and making quite a few unfavourable comments. Again, removing the fact that Council had actually resolved about the Board appointments for the airport and had been consistent since the 90s that the Lord Mayor or the General Manager or CEO were shareholding representatives."*

- 8.10 Councillor Clausen stated that Councillor Robinson was frequently interrupting the Lord Mayor.<sup>48</sup>
- 8.11 Councillor Clausen also stated that Councillor Robinson ignored points of order.<sup>49</sup>

### **Evidence of Councillor Duncan**

- 8.12 Councillor Duncan was interviewed on 7 November 2019. She stated that she has been a councillor since September 2017.<sup>50</sup>

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<sup>47</sup> Annexure 10

<sup>48</sup> Annexure 4 p 8

<sup>49</sup> Annexure 4 p 9

<sup>50</sup> Annexure 3 p 1

- 8.13 When asked about Councillor Robinson's behaviour in the Council meeting on 23 July 2019, Councillor Duncan stated,

*"Councillor Robinson, during that meeting was aggressive and abusive of the Lord Mayor and myself and Councillor Clausen in various ways. But I considered his behaviour to be towards the three of us in particular to be unacceptable and inappropriate for a Councillor."<sup>51</sup>*

- 8.14 When asked about calling Points of Order, Councillor Duncan stated,

*"I think it was Councillor Clausen and I that continually called for a point of order during this exchange. The Lord Mayor was incredibly patient, far more patient than I think a Chair over any meeting should be required to be. And she continued to tolerate and deal with what seemed to me to be an unacceptable stream of vitriol and abuse."<sup>52</sup>*

- 8.15 Councillor Duncan stated that Councillor Robinson continually interrupted the Mayor.

- 8.16 In regard to her Point of Order, Councillor Duncan stated,

*"I felt that Councillor Robinson's behaviour is not fitting of an elected official of the city because I felt that he was probably insinuating that the Lord Mayor had been part of some dodgy deal in having herself, to quote him or to paraphrase him, plonked on a Board. He also used the terms at some point that alluded to what I felt may have been inferring an inappropriate behaviour of not just a councillor or a Lord Mayor, but of a company director. And I think he used the words or alluded to stealing."<sup>53</sup>*

- 8.17 Councillor Duncan went on to say,

*"I found him to be continuously abusive, disrespectful and belligerent and I found a lot of it to be insinuating that she had in some way behaved improperly as Lord Mayor or improperly as a company director. And that insinuation concerns me. You asked me earlier if I felt that there was any problem with her having an appointment on that*

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<sup>51</sup> Annexure 3 p 2

<sup>52</sup> Annexure 3 p 3

<sup>53</sup> Annexure 3 p 4

Board or being paid for that role. That's a very serious asset of the city, a major asset of the city.

*I think it's important that we're well represented on that Board. And I think it is important that Board members, particularly at that level, are remunerated for the efforts they take, but also the risk that they take as company directors."*<sup>54</sup>

## **Evidence of Lord Mayor Nelmes**

8.18 Lord Mayor Nelmes was interviewed on 7 November 2019. She stated that she has been the Lord Mayor of the City of Newcastle for five years.<sup>55</sup>

8.19 When asked about Councillor Robinson's behaviour in the Council meeting on 23 July 2019, in particular her appointment to the Board of the Newcastle airport, Lord Mayor Nelmes stated,

*"So, when this item came up, which was just about indemnity, not about an appointment, he took the second opportunity to have a - tear shreds off me. So, when he does this at a Council meeting, there's not much, as the Chair, there's not much I can do about it. Other councillors feel very uncomfortable and you can see the staff feel very uncomfortable because he's not talking about the substantive item. He's in breach of the code of meeting practice, potentially in breach of the Code of Conduct. I would say yes, definitely.*

*And he doesn't follow - he just stands up and screams in his microphone and I - you can't turn him off. He just comes to make a giant media statement. To take political skin off me. To, I don't know, to bully me."*<sup>56</sup>

8.20 Lord Mayor Nelmes stated that a number of Points of Order were raised in regard to Councillor Robinson's behaviour.<sup>57</sup>

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<sup>54</sup> Annexure 3 p 7

<sup>55</sup> Annexure 5 p 1

<sup>56</sup> Annexure 5 p 3 & 4

<sup>57</sup> Annexure 5 p 5



8.21 Lord Mayor Nelmes went on to say,

*"Well, what he did was turned his bullying, anger, rage and rant onto those two councillors. So, the deputy Lord Mayor is a young councillor, I think he's only 26 or 27 and he's also openly gay. So, I think he just, I - don't even know if it's ever caught on - is picked up on the audio recordings, but he often makes like weird comments during meetings and I'm a bit - because I sit on a chair, a bit away from them higher up. Unless they're miked up, I can't hear them or unless someone complains to me properly. So, it's - I know that the staff have said that they feel a little uncomfortable."<sup>58</sup>*

8.22 When asked if she felt that Councillor Robinson was ignoring or interrupting her, Lord Mayor Nelmes stated,

*"Yes. Yeah. But that's what he always does. Yeah, he doesn't show any respect for the code or meeting practice, but he doesn't speak at council meetings very often. In all his time. It's normally only to do something like this. So, he, yeah, he doesn't abide by the code of meeting practice and because he just screams into his microphone there's - I can't even try and guide him to take his seat and not scream and let somebody else talk. And I guess I could try and scream over the top of him, but then that's just looks - that's just not helpful either. So, I just sit there and get abused."<sup>59</sup>*

### **Evidence of Councillor Robinson**

8.23 When asked if he recalled his interaction with Lord Mayor Nelmes at the Council meeting on 23 July 2019, Councillor Robinson stated,

*"Yeah, I did yeah. I did get up her that night, yeah."<sup>60</sup>*

*"Because she tried to slide through her plonking herself - she plonked herself on the Board and paid herself an extra \$1,000 a week. That is so wrong. I'm a ratepayer times how many I don't know but a lot more than her. She's a ratepayer times one or two. So, I'm in it for a lot more than her. I might be 14 or 15 ratepayer and these grubs who just spend Council money like they do, have charity dinners, have all this shit. And*

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<sup>58</sup> Annexure 5 p 5

<sup>59</sup> Annexure 5 p

<sup>60</sup> Annexure 6 p 4



*before you do make your - finalise your report, I don't know how long I've been on Council but ask how much of Council money have I spent."*<sup>61</sup>

8.24 When asked if he interrupts at Council meetings, Councillor Robinson stated that he did<sup>62</sup>,

*"Because it just - I just try to let them know that they're over their time and they're talking shit. They're talking absolute shit. They've got no respect for their own time so how can I expect them to have respect for my time, which is precious."*<sup>63</sup>

## Discussion & Analysis

8.25 Councillor Clausen, Councillor Duncan and Lord Mayor Nelmes all provided evidence that Councillor Robinson interrupted, ignored Points of Order and spoke in an aggressive manner towards Lord Mayor Nelmes and other councillors during the Council meeting on 23 July 2019.

8.26 Councillor Robinson did not deny the behaviour attributed to him.

8.27 A review of the video of the meeting and the transcript of the relevant timeframe supported Councillor Clausen, Councillor Duncan and Lord Mayor Nelmes' evidence.

8.28 It is considered based on the evidence that the behaviour of Councillor Robinson in this instance was in breach of cl3.1 (a) and (e) of the Newcastle City Council Code of Conduct.<sup>64</sup>

8.29 It is considered based on the evidence that the behaviour of Councillor Robinson of failing to treat Lord Mayor Nelmes and other councillors with respect in this instance was in breach of cl3.3 of the Newcastle City Council Code of Conduct.

8.30 It is considered based on the evidence that the behaviour of Councillor Robinson of failing to treat Lord Mayor Nelmes and other councillors with

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<sup>61</sup> Annexure 6 p 4

<sup>62</sup> Annexure 6 p 5

<sup>63</sup> Annexure 6 p 5

<sup>64</sup> Annexure 11 p 7

respect during the Council meeting was in breach of cl3.6 of the Newcastle City Council Code of Conduct.

8.31 It is considered that there is sufficient evidence to substantiate this allegation.

### Finding

8.32 Having regard to the evidence of Councillor Clausen, Councillor Duncan, Lord Mayor Nelmes and Councillor Robinson and the video and transcript of the Council meeting on 23 July 2019 and on the balance of probabilities this allegation is **substantiated**.

## 9. Allegation 3

**It is alleged that on 23 July 2019, Councillor Robinson may have breached cl4.5.1 of the Newcastle City Council Code of Meeting Practice when he became argumentative with the Lord Mayor, continually interjecting and making comments in an aggressive tone.**

### Evidence

9.1 Refer to evidence detailed at Allegation 2

### Discussion & Analysis

9.2 Refer to discussion at Allegation 2.

9.3 It is considered based on the evidence that the behaviour of Councillor Robinson in this instance was in breach of cl4.5.1 of the Newcastle City Council Code of Meeting Practice.

9.4 It is considered that there is sufficient evidence to substantiate this allegation.

### Finding

9.5 Having regard to the evidence of Councillor Clausen, Councillor Duncan, Lord Mayor Nelmes and Councillor Robinson and the video and transcript of the Council meeting on 23 July 2019 and on the balance of probabilities, this allegation is **substantiated**.

## 10. Allegation 4

**It is alleged that on 23 July 2019, Councillor Robinson may have breached cl4.5.1 of the Newcastle City Council Code of Meeting Practice when he became argumentative and spoke to Cr Duncan in a disrespectful manner when he said, "Tea is nearly ready Mrs Duncan, so we'll get going soon."**

10.1 A review of the transcript of the Council meeting revealed that in response to a Point of Order called by Councillor Duncan, Councillor Robinson replied;

*"Tea is nearly ready Mrs Duncan, so we'll get going soon."*<sup>65</sup>

*"You need a trough"*<sup>66</sup>

### Evidence of Councillor Robinson

10.2 During interview when asked about these comments, Councillor Robinson stated,

*"Because I think she makes - she half makes smart remarks that I'm always first in for tea. You've seen what time I got home tonight."*<sup>67</sup>

10.3 Councillor Robinson made reference to councillors taking home leftover food at the end of a meeting. He stated,

*"Councillor Duncan fuck me mate. I'm flat out, you couldn't carry what she takes home.*

*She's a big chunky woman. She's got fucking legs like Blocker Roach. She's a fucking big unit. You've got no idea what she takes. It's embarrassing what she takes home."*<sup>68</sup>

### Discussion & Analysis

10.4 Based on the evidence of the video and transcript of the 23 July 2019, Council meeting it is considered that the comment made by Councillor

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<sup>65</sup> Annexure 10 p 4

<sup>66</sup> Annexure 10 p 5

<sup>67</sup> Annexure 6 p 6

<sup>68</sup> Annexure 6 p 6 & 7

Robinson to Councillor Duncan was disrespectful and not in accordance with acceptable standards of behaviour and a breach of cl4.5.1 of the Newcastle City Council Code of Meeting Practice.<sup>69</sup>

10.5 It is considered that there is sufficient evidence to substantiate this allegation.

### Finding

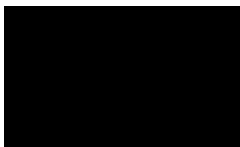
10.6 Having regard to the evidence from the video and transcript of the Council meeting and the evidence of Councillor Robinson and on the balance of probabilities this complaint is **substantiated**.

## 11. Allegation 5

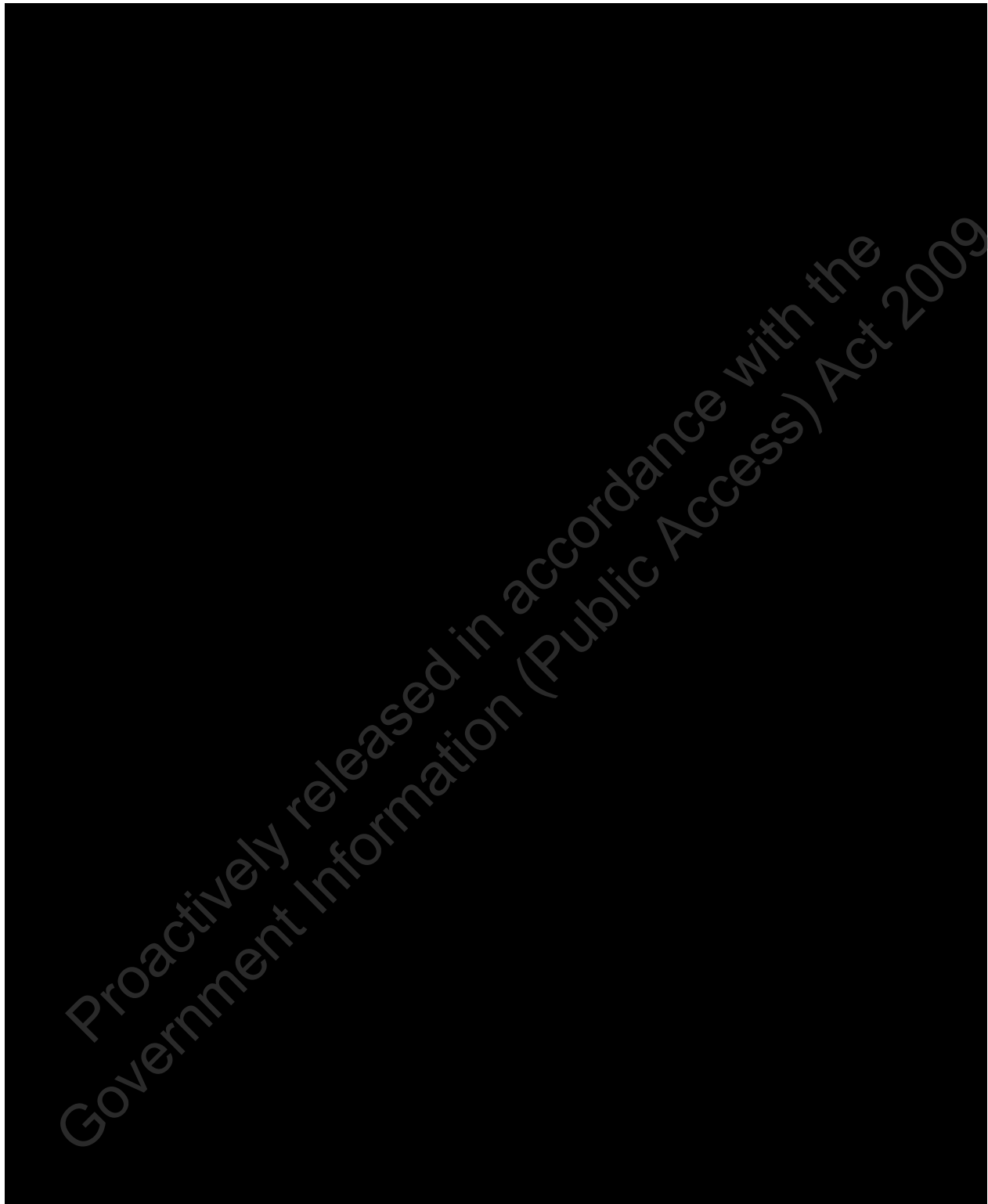


<sup>69</sup> Annexure 10









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## Finding

11.19 Having regard to the evidence and on the balance of probabilities this complaint is **not substantiated**.

## 12. Complaint 6

**It is alleged that on 23 July 2019, Councillor Robinson may have breached cl76.1.4 of the Code of Meeting Practice when he referred to Cr Clausen as 'custard', a homophobic slur.**

12.1 A review of the video and transcript of the Council meeting on 23 July 2019, revealed that Councillor Robinson said,

*"I think we had this argument before with custard."*

### Evidence of Councillor Clausen

12.2 During interview when asked about the comment made by Councillor Robinson, Councillor Clausen stated

*"He used the term which, The Herald then raised with me to describe me as previously used in Council meetings, the word custard. It's a term that that has certain homophobic ramifications and it's a term that he's used now on a number of occasions during a Council meeting to describe me."<sup>84</sup>*

<sup>84</sup> Annexure 4 p 6



## Evidence of Councillor Duncan

12.3 Councillor Duncan stated that she recalled Councillor Robinson using the term 'custard' towards Councillor Clausen.

## Evidence of Councillor Robinson

12.4 When asked if he recalled using the term 'custard' Councillor Robinson stated that he did.<sup>85</sup>

12.5 While discussing a previous Point of Order Councillor Robinson stated,

*"Oh, might have been, yeah that was custard arse wasn't it?"<sup>86</sup>*

12.6 When asked who he was referring to as 'custard arse' Councillor Robinson replied "Declan Clausen."<sup>87</sup>

12.7 When asked "why custard" Councillor Robinson replied,

*"Well, he's a poofter. And I heard someone call - I heard someone years ago, say - called this - like, there's poofters and there's poofters. I've got some mates that are poofters. Good blokes. Good blokes. There's two up on the corner who now brown eye me when I go past because they - what is it - what's a homophobic basher or something. So, now these two old blokes who are 65 and fucking 60, brown eye me and muck around. I'm good mates with Phil Carnell, who would be probably the most famous poof in Newcastle. I've got Steve Davies and Bob and they're my best mates.*

*But, this bloke who wants to fucking paint pedestrian crossings rainbow at the cost of \$60,000 to \$70,000 of mine and your money Phil. You're a ratepayer and - of our money to paint a rainbow, a pedestrian crossing rainbow because you're a gay. And fucking equal marriage. If his dad fucked his mate, how would Declan ever be born?"<sup>88</sup>*

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<sup>85</sup> Annexure 6 p 9

<sup>86</sup> Annexure 6 p 9

<sup>87</sup> Annexure 6 p 9

<sup>88</sup> Annexure 6 p 9

12.8 Councillor Robinson stated that he recalled calling Councillor Clausen 'custard' in the meeting.<sup>89</sup>

12.9 When asked how Councillor Clausen reacted, Councillor Robinson replied,

*"I think he sat down on his loose arse after I called him that. And he was relaxed."*<sup>90</sup>

## Discussion & Analysis

12.10 The evidence from Councillor Duncan supports the evidence of Councillor Clausen that Councillor Robinson used the term 'custard' towards him during the Council meeting on 23 July 2019.

12.11 Councillor Robinson admitted that he used the term 'custard' towards Councillor Clausen.

12.12 It is considered that the term 'custard' used by Councillor Robinson was meant as a homophobic term directed towards Councillor Clausen.

12.13 It is considered that the term 'custard' used by Councillor Robinson was meant as an insult to Councillor Clausen and as such constitutes an Act of Disorder as defined,

The Local Government (General) Regulation 2005 that states specifically,

182 Acts of disorder<sup>91</sup>

*For the purposes of section 490A of the Act, a councillor commits an act of disorder if the councillor, at a meeting of a council or a committee of a council,*

*(d) insults, makes unfavourable personal remarks about, or imputes improper motives to, any other councillor*

<sup>89</sup> Annexure 6 p 9

<sup>90</sup> Annexure 6 p 9

<sup>91</sup> <https://www.legislation.nsw.gov.au/#/view/regulation/2005/487/part8/sec182>

- 12.14 It is considered based on his own evidence that Councillor Robinson was aware that the term 'custard' was a homophobic slur against Councillor Clausen.
- 12.15 It is considered that in this instance the behaviour of Councillor Robinson was a breach of cl76.1.4 of the Newcastle City Council Code of Meeting Practice.
- 12.16 It is considered that the behaviour of Councillor Robinson in this instance constitutes an Act of Disorder and a breach of the Local Government (General) Regulation 2005 section 182.
- 12.17 It is considered that there is sufficient evidence to substantiate this allegation.

### **Finding**

- 12.18 Having regard to the evidence and on the balance of probabilities, this complaint is **substantiated**.

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## 13. Allegations as a result of comments made or attributed to Cr Robinson in Newcastle newspapers.

### Allegation 7

It is alleged that Councillor Robinson may have breached cl 3.7 and cl 3.8 of the Newcastle City Council Code of Conduct by the comments he made or that were attributed to him in the Newcastle Herald on 25 and 26 July and in the Guardian on 26 July 2019.

#### Evidence provided by [REDACTED]

13.1 In his complaint [REDACTED] provided copies of newspaper articles<sup>92</sup> published in the Newcastle Herald on 25 and 26 July 2019 and the Guardian on 26 July 2019 that contained comments attributed to Councillor Robinson.

#### Evidence of Councillor Robinson

13.2 During interview Councillor Robinson stated that he did not recall having conversations with journalists.<sup>93</sup>

13.3 When asked,

*"They quoted you as saying, I have no problem with poofs. I have one work for me. I'm very good friends with three poofs. Do you recall saying that?"<sup>94</sup>*

13.4 Councillor Robinson replied,

*"Yeah. What's wrong with - I'd rather call them poofs than fucking, what do they call them, nudgers and shit shovers. I think I'd rather be called a poof than a fucking shit shover. What's wrong with the word poof? If you're a poof you're a fucking poof. You can't be half a poof can you Phil? Phil, can you be half a poof?"*

<sup>92</sup> Annexure 7, 8 & 9

<sup>93</sup> Annexure 6 p 10

<sup>94</sup> Annexure 6 p 10

*If you're a fucking poof, you're a poof."*<sup>95</sup>

13.5 When asked,

*"Do you recall having these interviews with the Newcastle Herald?"*<sup>96</sup>

13.6 Councillor Robinson replied.

*"Fucking no. I don't recall nothing but I'm not - I don't say - that's exactly what I would have said. Fucking oath."*<sup>97</sup>

### **Discussion and analysis**

13.7 Having regard to the evidence detailed and discussed at the previous allegations and Councillor Robinson's responses during interview, it is considered that the articles published in the Newcastle Herald on 25 and 26 July and in the Guardian on 26 July 2019 contained accurate representations of Councillor Robinson's comments to the journalists and during the Council meeting on 23 July 2019.

13.8 It is considered that Councillor Robinson's comments as reported in the Newcastle Herald on 25 and 26 July and in the Guardian on 26 July 2019 constitute breaches of cl3.7 and 3.8 of the Newcastle City Council Code of Conduct.

13.9 It is considered that there is sufficient evidence to substantiate this complaint.

### **Finding**

13.10 Having regard to the review of the articles and the evidence from Councillor Robinson and on the balance of probabilities, this allegation is **substantiated**.

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<sup>95</sup> Annexure 6 p 10

<sup>96</sup> Annexure 6 p 10

<sup>97</sup> Annexure 6 p 10

## 14. Allegation 8

It is alleged that Councillor Robinson may have breached cl 3.9 and cl 3.10 of the Newcastle City Council Code of Conduct by the comments he made or that were attributed to him in the Newcastle Herald on 25 and 26 July and in the Guardian on 26 July 2019.

### Evidence

14.1 Refer to evidence detailed at allegation 7.

### Discussion and analysis

14.2 Refer to the discussion of evidence at allegations 7

14.3 It is considered that Councillor Robinson's comments as reported in the Newcastle Herald on 25 and 26 July and in the Guardian on 26 July 2019 constitute breaches of cl3.9 and 3.10 of the Newcastle City Council Code of Conduct.

14.4 It is considered that there is sufficient evidence to substantiate this complaint.

### Finding

14.5 Having regard to the review of the articles and the evidence from Councillor Robinson and on the balance of probabilities, this allegation is **substantiated**.

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## 15. Overall findings

- 15.1 As a result of the investigation relating to the allegations made against Councillor Robinson the following is found,
- Allegations, 1, 2, 3, 4, 6, 7 and 8 are **substantiated**
  - Allegation 5 is **not substantiated**
- 15.2 As a result of allegation 6 being substantiated, it was found that Councillor Robinson breached s182(d) of the Local Government (General) Regulations 2005 and s490A of the Local Government Act 1993.

## 16. Concluding comments

- 15.3 On 10 March 2020, Councillor Robinson was in accordance with clause 7.26 of the Procedures for the Administration of the Model Code of Conduct adopted June 2019, provided with a copy of the draft investigation report into Code of Conduct and Code of Meeting Practice complaints made against him.
- 15.4 In accordance with clause 7.27 Councillor Robinson was advised that he may choose to make a written submission on the draft report that will be considered prior to the finalisation of the report.
- 15.5 Councillor Robinson was advised that after consideration of all written submissions received in relation to the draft report, further enquiries into the matter could be made.
- 15.6 Councillor Robinson was advised that if, as a result of making further enquiries, any material changes that are made to the draft report that make new adverse comment/s about him, he will be provided with a further opportunity to make a written submission in relation to the new adverse comment/s.
- 15.7 Councillor Robinson was advised that in accordance with clause 7.31, should he not wish to or fail to provide written submissions within 14 days of the date of the provision of the draft report, the final report will be issued without receiving such submissions.
- 15.8 As of 25 March 2020, no submissions or communication had been received from Councillor Robinson.

## 16. Recommendations

### Allegation 1

That on 27 June 2019, Councillor Robinson may have breached cl 3.1(a) (e) and (g) of the Newcastle City Council Code of Conduct by the comments he made in an email to a resident.

It is alleged that in an email Councillor Robinson sent to a resident, he stated,

*"I've spoke to Grahame about this something needs to be done if it was in fleet st where fatsos parents live it would have already happened."*

It was alleged that Councillor Robinson was aware that the Lord Mayor Nelmes' parents lived in the vicinity of Fleet Street

**It has been found that this allegation is substantiated.**

### Discussion

- 16.1 It is considered that the behaviour of Councillor Robinson in this instance constituted a breach of cl3.1(a) (e) and (g) of the Newcastle City Council Code of Conduct.
- 16.2 No evidence was forthcoming that Councillor Robinson has remedied or shown contrition for the breach.
- 16.3 No evidence was forthcoming of any mitigating circumstances in this matter.
- 16.4 No evidence was forthcoming that this matter was trivial or technical.
- 16.5 It is considered that the behaviour affected other members and staff of the Council and had the potential to harm the reputation of Council or Local Government.
- 16.6 Having regard to the content of the Office of Local Government Circular No 19-25 / 2 October 2019 / A671874 the following recommendations are made:



## Recommendations

16.7 Due to the repeated and serious nature of the matters detailed in this report and as per section 7.37(c) ii of the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW it is recommended that;

*ii. that the matter be referred to the Office for further action under the misconduct provisions of the LGA.*

16.8 It is further recommended that;

- That Councillor Robinson be formally censured for the breach under s440G of the Act
- That to ensure public accountability, the Council should,
  - Name Councillor Robinson in its resolution and
  - Provide details in its resolution of the conduct that has been found to be in breach of the Newcastle City Council Code of Conduct

## Allegation 2

That on 23 July 2019, Councillor Robinson may have breached cl 3.1 (a) and (e) and cl3.3 and cl6.6 of the Newcastle City Council Code of Conduct when he became argumentative with the Lord Mayor, continually interjecting and making comments in an aggressive tone.

**It has been found that this allegation is substantiated.**

16.9 As per discussion at recommendations - allegation 1 - 16.1 to 16.6

## Recommendations

16.10 As per allegation 1

### **Allegation 3**

It is alleged that on 23 July 2019, Councillor Robinson may have breached cl4.5.1 of the Newcastle City Council Code of Meeting Practice when he became argumentative with the Lord Mayor continually interjecting and making comments in an aggressive tone.

**It has been found that this allegation is substantiated.**

16.11 As per discussion at recommendations - allegation 1 - 16.1 to 16.6

### **Recommendations**

16.12 As per allegation at 16.8.

### **Allegation 4**

It is alleged that on 23 July 2019, Councillor Robinson may have breached cl4.5.1 of the Newcastle City Council Code of Meeting Practice when he became argumentative and spoke to Cr Duncan in a disrespectful manner when he said, "Tea is nearly ready Mrs Duncan, so we'll get going soon."

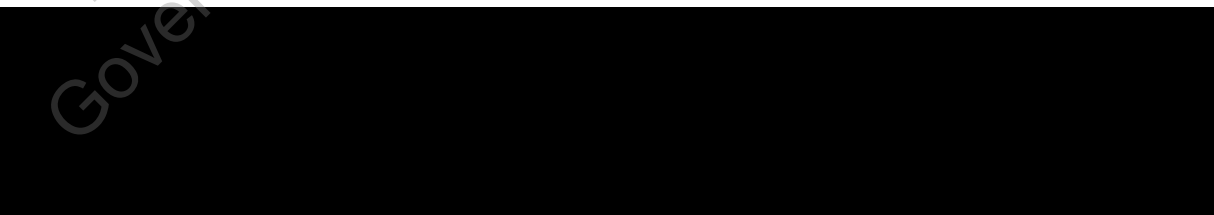
**It has been found that this allegation is substantiated.**

16.13 As per discussion at recommendations - allegation 1 - 16.1 to 16.6

### **Recommendations**

16.14 As per allegation at 16.8

### **Allegation 5**



**It has been found that this allegation not substantiated.**

## Recommendations

16.15 No further action.

### Allegation 6

It is alleged that on 23 July 2019, Councillor Robinson may have breached cl76.1.4 of the Code of Meeting Practice when he referred to Cr Clausen as 'custard' a homophobic slur.

#### **It has been found that this allegation is substantiated.**

16.16 As per discussion at recommendations - allegation 1, 16.1 to 16.6

## Recommendations

16.17 Due to the repeated and serious nature of the matters detailed in this report and as per section 7.37(c) ii of the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW it is recommended that;

*ii. that the matter be referred to the Office for further action under the misconduct provisions of the LGA*

16.18 It is further recommended that;

- That Councillor Robinson be formally censured for the breach under s440G of the Act
- That to ensure public accountability, the council should,
  - Name Councillor Robinson in its resolution and
  - Provide details in its resolution of the conduct that has been found to be in breach of the Newcastle City Council Code of Conduct

16.19 As a result of complaint 6 being substantiated, it was found that Councillor Robinson breached s180(e) of the Local Government (General) Regulations 2005 and s490A of the Local Government Act 1993.

- That the matter be referred to the Office of Local Government for further action in accordance with the misconduct provisions of the Act.

## **Allegation 7**

It is alleged that Councillor Robinson may have breached cl 3.7 and cl 3.8 of the Newcastle City Council Code of Conduct by the comments he made or were attributed to him in the Newcastle Herald on 25 and 26 July and in the Guardian on 26 July 2019.

**It has been found that this allegation is substantiated.**

16.20 As per discussion at recommendations - allegation 1 - 16.1 to 16.6

### **Recommendations**

16.21 As per allegation 1

## **Allegation 8**

It is alleged that Councillor Robinson may have breached cl 3.9 and cl 3.10 of the Newcastle City Council Code of Conduct by the comments he made or were attributed to him in the Newcastle Herald on 25 and 26 July and in the Guardian on 26 July 2019.

**It has been found that this allegation is substantiated.**

16.22 As per discussion at recommendations - allegation 1, 16.1 to 16.6

### **Recommendations**

16.23 As per allegation 1

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## 17. Final Comments

- As per clause 7.38 of the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW and as result of the recommendation at 16.7. 16.10, 16.17, 16.21 and 16.23, this report was forwarded to the Office of Local Government for consultation.
- On 2 October 2020, the Office of Local Government responded in writing to the report sent for consultation.<sup>98</sup>
- With regard to the recommendation made at 16.7. 16.10, 16.17, 16.21 and 16.23, the Office of Local Government concluded the matter did not reach the requisite threshold of seriousness to warrant referral to Office of Local Government for action under the misconduct provisions of the Act.<sup>99</sup>
- The Office of Local Government advised that should Council determine to censure Councillor Robinson under section 440G of the Act and make the decision public, the Office of Local Government considers that this would constitute appropriate remedial action.<sup>100</sup>
- The Office of Local Government also stated, that under section 440G(4) of the Act, should a council determine to exercise its power of formal censure, it must specify in its resolution the grounds on which it is satisfied that the councillor should be censured. To ensure public accountability, a council should also name the censured councillor in its resolution.<sup>101</sup>
- It is now recommended that in relation to all of the substantiated allegations that;
  - Councillor Robinson be formally censured for the breach under s440G of the Act
  - That to ensure public accountability, the Council should,
    - Name Councillor Robinson in its resolution and
    - Provide details in its resolution of the conduct that has been found to be in breach of the Newcastle City Council Code of Conduct

<sup>98</sup> Annexure 16.

<sup>99</sup> Annexure 16

<sup>100</sup> Annexure 16

<sup>101</sup> Annexure 16

Forwarded for consideration.

A handwritten signature in black ink, consisting of a stylized 'P' and 'O' followed by a long horizontal line.

Phil O'Brien  
2 October 2020

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Proactively released in accordance with the  
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