



Hawkesbury City Council

Attachment 1  
to  
item 44

Review Report by  
Mr S Blackadder  
of Blackadder Associates Pty Ltd

date of meeting: 10 March 2009  
location: council chambers  
time: 5:00 p.m.





**HAWKESBURY CITY COUNCIL**

# **REVIEW REPORT**

## **UNDER THE HAWKESBURY CITY COUNCIL CODE OF CONDUCT**

### **COMPLAINT REGARDING COUNCILLOR LEIGH WILLIAMS**

**Sole Conduct Reviewer:**

Mr Stephen Blackadder  
Director, Blackadder Associates Pty Ltd

**Review Report Date:**

26 February 2009.

**Period of Review:**

4 December 2008 to 26 February 2009.

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## 1 EXECUTIVE SUMMARY

The General Manager of Hawkesbury City Council, Mr Peter Jackson, received a complaint under the Council's Code of Conduct from a member of the public, Mr Ted Books, on 19 November 2008. Mr Books alleged he had been spoken to by Councillor Leigh Williams at a council meeting on 11 November 2008 in a manner that breached the council Code.

Two letters in support of the complaint were provided by residents who had also attended the council meeting and witnessed the remark by Councillor Williams - Messrs Trevor Devine and Mark Bowd.

The General Manager determined under the Code of Conduct that it would be appropriate to refer the complaint to a Sole Conduct Reviewer and Mr Stephen Blackadder, Director, Blackadder Associates Pty Ltd was engaged to undertake the review.

Mr Blackadder examined all information, interviewed Cr Williams, received from Cr Williams a formal written response to the issues, interviewed Mr Books, and clarified a number of issues with the persons who provided letters in support to the complaint, Mr Devine and Mr Bowd.

The complainant and persons supporting the complaint each gave permission for their names to be revealed to the person the subject of the complaint, and generally.

A draft review report was provided to Cr Williams on 26 January 2009 for comment in accordance with procedural fairness principles as the draft review report contained adverse comments about Cr Williams and recommended action adverse or potentially adverse to him. Cr Williams formally responded to the draft report on 25 February 2009.

The final review report was delivered to the General Manager of Hawkesbury City Council on 26 February 2009.

## 2 TERMS OF REFERENCE

By email dated 2 December 2008 the General Manager of Hawkesbury City Council, Mr Peter Jackson, referred a complaint made under the Hawkesbury City Council Code of Conduct by Mr Ted Books to Stephen Blackadder, Director, Blackadder Associates Pty Ltd for review as Sole Conduct Reviewer and to report in accordance with the Code provisions.

Accordingly, the terms of reference require a review of the complaint in accordance with the Hawkesbury City Council Code of Conduct and a report to the Council containing findings and recommendations.

## 3 EVENTS LEADING TO THE REVIEW

Mr Ted Books, a resident and owner of 20 Church Street, South Windsor, lodged a written complaint with the General Manager on 19 November 2008. The complaint alleges that at the Council Meeting held at the Council Chambers in Windsor on 11 November 2008, after Mr Books and Mr Trevor Devine had addressed the council and sat down in the public gallery, Councillor Leigh Williams turned to Mr Books and allegedly said:

*“Ted, why don’t you f.cking shut up and p.ss off”* (Note: as recorded in the letter of complaint).

Mr Books states that he was shocked by Cr Williams’ action and that a number of others in the public gallery had heard the remark.

The General Manager received letters in support of Mr Books’ complaint from two persons who had witnessed the remark by Cr Williams - Mr Trevor Devine and Mr Mark Bowd (Note: the letters were in support of the complaint and not separate complaints).

Mr Books indicates in his complaint that he regards the conduct of Cr Williams as unbecoming of a councillor and has brought the council into disrepute. He seeks a public apology to all those who were offended by the comment.

## **4 MANAGEMENT OF THE REVIEW**

The Sole Conduct Reviewer undertook the review over the Christmas/New Year period, 2 December 2008 to 26 February 2009. The method of evidence gathered by the Sole Conduct Reviewer consisted of interviewing the complainant, Mr Books, interviewing the person the subject of the complaint, Cr Williams, obtaining information from the Council General Manager, obtaining from Cr Williams a written response to the complaint, clarifying issues with the persons who had supported the complaint, Messrs Bowd and Devine, providing a copy of the draft report to Cr Williams under procedural fairness principles, and considering a formal submission from Cr Williams on the draft report.

Notes were taken whilst conducting interviews with the complainant and person the subject of the complaint, and transcribed into a 'record of interview' (ROI). The complainant and person the subject of the complaint were then provided with their copy of the ROI and invited to make any corrections, sign off a hard copy of the ROI as a true and accurate record of the interview and return it to the Sole Conduct Reviewer.

Where relevant, evidence provided in individual statements is referred to in findings and reasons if they have influenced the Sole Conduct Reviewer in making the findings.

The review was conducted in accordance with the Hawkesbury City Council Code of Conduct, in particular Part 3 of the Code – Procedures. The Sole Conduct Reviewer also reviewed relevant Council records, and listened to the recording of the Council Meeting of 11 November 2008.

Attachment 1 outlines the sequence of events comprising the review.

## **5 STANDARD OF PROOF**

As is customary in a review of this type, the opinions offered in this report are formed on the 'balance of probabilities', that is, the civil standard of proof. A fact is proven to be true on the balance of probabilities if its existence is more probable than not, or if it established by a preponderance of probability (*Rejflex v Mc Elroy* (1965) 112 CLR 517).

However, the seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue had been proved to the reasonable satisfaction of the inquirer (*Briginshaw v Briginshaw* (1938) 60 CLR 336).

Where it has been necessary to resolve apparent conflicts in the evidence of the parties on a given issue, the report will indicate on what basis such conflicts have been resolved (eg. consistency, probability, witness credibility, etc). The review process has been documented accurately and the accuracy, specificity, objectivity, relevance, clarity and consistency of the evidence gathered has been considered. Any inferences derived from hearsay evidence are clearly stated.

## **6 ISSUES FOR DETERMINATION**

Fundamentally the nature of the complaint is that Cr Leigh Williams allegedly swore at a member of the public seated in the public gallery during the course of a council meeting held on 11 November 2008.

The standard of conduct required of public officials under the Hawkesbury City Council Code of Conduct can be found in Part 2 of the Code. These are the enforceable standards. In relation to this specific complaint the standard of conduct under the Council Code of Conduct that could be breached include:

### **“General conduct**

*6.1 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.*

*Specifically, you must not act in a way that:*

- a) contravenes the Act, associated regulations, council’s relevant administrative requirements and policies*
- b) is detrimental to the pursuit of the charter of a council*
- c) is improper or unethical*
- d) is an abuse of power or otherwise amounts to misconduct*
- e) causes, comprises or involves intimidation, harassment or verbal abuse*
- f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment*
- g) causes, comprises or involves prejudice in the provision of a service to the community. (Schedule 6A)*

*6.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (section 439)*

*6.3 You must treat others with respect at all times”.*

### **“Obligations during meetings**

*9.6 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”.*

In specific terms the complaint relates to conduct that could be in breach of Clause 6.1 b) – council Charter, particularly community leadership, Clause 6.1 d) – verbal abuse, Clause 6.3 – respect generally, and Clause 9.6 – respect at meetings.

The issues and facts to be determined are:

- Whether the conduct alleged by Mr Books actually happened – that Councillor Leigh Williams, in addressing Mr Ted Books at the Council Meeting on 11 November 2008, used language as described by Mr Books in his letter of complaint to the General Manager.
- Whether the language, if used, would offend a member of the public, and in this particular instance whether it would have offended Mr Books and others who heard it.
- Whether the language, if used, constituted a breach of the Council Code of Conduct.

## 7 EVIDENCE AND ANALYSIS

### ISSUE NO 1

The first issue to be determined is whether the facts alleged by Mr Books actually happened – that Cr Leigh Williams, in addressing Mr Ted Books at the Council Meeting on 11 November 2008, used language as described by Mr Books in his letter of complaint to the General Manager.

#### Evidence on Issue No 1

The allegation by Mr Books is that Cr Leigh Williams made a remark to Mr Books during the conduct of the Hawkesbury City Council meeting on 11 November 2008. The evidence by Mr Books, Mr Devine Mr Bowd and Cr Williams vary in what is alleged to have been said.

In Mr Books' original written complaint dated 14 November 2008 he alleges the words used were *“Ted, why don't you f.cking shut up and p.ss off”*.

At the interview conducted on 13 January 2009 Mr Books further clarified the words used and stated they were *“Ted, will you f..king well shut up, and f..king p..s off”*. Mr Books indicated that Cr Williams spoke in a soft but aggressive manner.

The complaint by Mr Books is supported by two persons who were in attendance at the meeting – Mr Trevor Devine and Mr Mark Bowd.

The council minutes of the meeting held on 11 November 2008 record that Mr Devine was in attendance and that he addressed the meeting on Item 231. Mr Devine does not indicate in his letter the actual words used by Cr Williams, only that in his opinion the words caused embarrassment to all concerned. In a telephone conversation with Mr Devine on 23 January 2009 he advised the Sole Conduct Reviewer that his recollection of the actual words used were:

*“Why don’t you f..king shut up Ted and p..s off out of the place.”*

Mr Bowd’s letter to the General Manager states that he attended the meeting and heard Cr Williams say to Mr Books, *“Ted, will you f#@\*ing shut up and f#@\*ing piss off”* (Note: as stated in the letter). The evidence by Mr Books, and confirmed in a telephone conversation between Mr Bowd and the Sole Conduct Reviewer on 23 January 2009, is that Mr Bowd attended the council meeting and sat behind Mr Books and Mr Devine.

In the statement by Cr Williams dated 1 January 2009 he denies he used the words alleged by Mr Books. Councillor Williams states the exact words used were *“Shut up Ted, you’re a f..king idiot.”* This was confirmed at interview with Cr Williams on 23 February 2009 with Cr Williams claiming that few people would have heard the remark as it was said softly and directly to Mr Books. Cr Williams also indicated at interview that Mr Books’ stated reason for leaving council was his difficulty in hearing and this bears out in Cr Williams’ mind Mr Books’ inability to correctly state what he had said.

#### Analysis of Evidence on Issue No 1

The minutes of the council meeting held on 11 November 2008 record that Mr Books and Mr Devine addressed the council in relation to Item: 231 CP - Rural Industry - S96 Modification to Increase Hours for Production and Loading, Lot 4 DP244901, 3 Putland Place, Oakville NSW 2765 - (MA0380/98A, 95498, 10204).

The minutes also note that Mr Robert Sinclair, proponent, first addressed the meeting on the item, then Mr Books and Mr Devine, followed by another respondent, Ms Michelle Owen.

Cr Williams has not denied swearing at Mr Books – both the written complaint by Mr Books and the submission in response to the complaint by Council Williams agree that swearing was involved. However, there is a clear difference in recollection as to the actual words used. The General Manager advised that the tape recording of the meeting did not pick up the remarks made by Cr Williams. The Sole Conduct Reviewer has listened to the recording of the meeting relating to this item (56 minutes in duration) and confirmed that the recording does not contain any audio of the alleged remarks by Cr Williams after Mr Books and then Mr Devine had addressed the meeting.

For the purposes of this review it is necessary that the Sole Conduct Reviewer make a finding as to facts. It has not been possible to establish the actual words used by Cr Williams. However, all evidence provided, including that by Cr Williams, indicates that at least one swear word was used.

#### Finding on Issue No 1

On the balance of probabilities, based on the evidence provided by the complainant, Mr Books, in letters supporting the complaint by Messrs Trevor Devine and Mark Bowd, and by the person the subject of the complaint, Cr Williams, it can be reasonably determined that Cr Williams did use at least one swear word in addressing Mr Ted Books at the Council Meeting held on 11 November 2008.

## ISSUE NO 2

Whether the language, if used, would offend a member of the public, and in this particular instance whether it would have offended Mr Books and others who witnessed the remarks.

### Evidence on Issue No 2

The complaint by Mr Books states that he was shocked by the remark by Cr Williams. He states in the complaint that a number of others in the public gallery had heard the comment.

In expanding on the complaint at interview on 13 January 2009 Mr Books indicated that the remark by Cr Williams was made in a soft but aggressive manner and came as quite a shock at the time. Mr Books, at interview on 13 January 2009, indicated that after Mr Devine had finished his address Cr Williams asked Mr Devine a question relating to the noise from a forklift. Mr Devine could not answer the question and when he sat down next to Mr Books in the public gallery Mr Books remarked to Mr Devine that if Cr Williams had asked him that question he could have answered it. Mr Books noted that he did not say this loudly but in sitting directly behind the seat of Cr Williams he acknowledged that Cr Williams would have heard the remark.

Mr Books let the incident pass and did not pursue it with anyone from the Council at the meeting. It was only days after the meeting that he considered it serious enough to raise as a complaint to the General Manager. He said that Mr Devine, Mr Bowd and 5 others (including Michelle Owen who had addressed the meeting after Mr Devine) might have also heard the remark.

Mr Books indicates in his complaint that he regards the conduct as unbecoming of a councillor and has brought the council into disrepute. He seeks a public apology to all those who were offended by the comment.

Mr Devine indicates in his letter of support that the remark by Cr Williams “*caused embarrassment to all concerned*”. The Sole Conduct Reviewer telephoned Mr Devine on 23 January 2009 to clarify certain aspects of his letter in support of the complaint. Mr Devine indicated the words were not spoken loudly, but he and Mr Books heard the remark and he assumed the remarks would have been heard by a woman who was sitting nearby. He indicated that during his term of office on the council ending September 2008 he had not heard such words used during the conduct of a council meeting.

Mr Bowd in his letter of support states that he was “*shocked and disappointed at Councillor Williams’ conduct speaking in such a manner in front of a woman*”.

In his written submission dated 1 January 2009 Cr Williams indicates:

*“Granted, those words should not be used in a council chamber but they were used only after long and persistent harassment from Books, they were not spoken out loud, they were said close to Books and softly, and Books is no ordinary member of the public. He is an ex-councillor, only leaving office at the last September elections”.*

And:

*“My words were not without reason, Books had provoked me by calling me a “smartarse” from where he was sitting, and that only after he had talked loudly throughout the meeting, a practice which he often complained about regarding members of the public gallery during his time on council. He was sitting directly behind me, and I believe he had located himself there because both Cr Paine who sits alongside me and I were always his pet subjects for abuse and jibes.*

*I have tolerated abuse, aggressive behaviour, bullying, snide remarks and over-all rude and unpleasant behaviour from Books over the last term and I am, quite frankly, fed up with him and his ways and I am not going to accept any more of that from him.*

*For him to now lodge a complaint about my language is just more harassment. He has used far worse language to me in the past, so I refuse to accept that he could have been offended.*

*I do of course have sincere regrets if some innocent, non-involved member of the public gallery was offended by my words, but I seriously doubt that any one else heard my words except ex-councillor Trevor Devine who was sitting alongside Books. I know Trevor would be only too aware of Books’ attitude towards me and I do not accept he would be offended by my words. If any non-involved member of the public over-heard my statement and suffered offense I regret that of course and I am happy to apologise to them”.*

The General Manager, Mr Jackson, indicates that he did not hear the remark, sitting at the head of the council chamber with the Mayor.

### **Analysis of Evidence on Issue No 2**

The Hawkesbury City Council Code of Conduct in Clause 6.1 outlines the general conduct obligations of a council official. In particular *“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”.*

The Code in Clause 6.1 further outlines specific actions that are unacceptable, including part b) – being detrimental to the pursuit of the charter of a council, and part d) - an action that causes, comprises or involves intimidation, harassment or verbal abuse.

The Code also requires under Clause 6.3 that a council official must treat others with respect at all times.

In relation to the charter of a council, Section 8 of the Local Government Act indicates that part of the charter of the council is to *“exercise community leadership”*. Actions of a councillor detrimental to the pursuit of community leadership would be a breach of the Code of Conduct.

In order to better understand other Code requirements it is perhaps instructive to examine just what is meant by such terms as *“disrepute, verbal abuse and respect”*. The 3 terms are not defined under Clause 2 of the Hawkesbury Code, although Clause 4 of the Code outlines key principles that apply to the standards of conduct council officials are expected to meet.

It is noted, however, that whilst the key principles underpin and guide these standards and may be used as an aid in interpreting the substantive provisions of the Code, they do not themselves constitute separate enforceable standards of conduct. One such key principle in Clause 4 is 4.8 – Respect. It states:

*“4.8 You must treat others with respect at all times. This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision-making.”*

To supplement an understanding of the Code principle relating to “respect”, the Concise Oxford Dictionary has the following definition:

*“Regard with deference, esteem or honour; avoid degrading or insulting; treat with consideration; refrain from offending.”*

To gain a clearer understanding of the other terms – disrepute and abuse - the Concise Oxford Dictionary provides the following definitions:

Disrepute – *“Lack of good repute; discredit”*

Abuse - *“Reviling; insulting or unkind speech; to speak insultingly or unkindly to or of”*.

Abuse can also be a form of bullying, where a person uses strength or power to coerce others by fear.

A further issue to be examined is whether swearing or profanity constitutes verbal abuse or is a derogatory term. The Hawkesbury City Council Code of Conduct does not make mention of swearing or profanity. In practical terms verbal abuse often takes the form of swearing or profanity. It is sometimes used to emphasise the point, or to provide a heightened emotional response to capture the attention of a person. In some situations it can shock a person who is not be expecting that conduct or outburst.

It is also noted that in many Australian workplaces, swearing is commonplace and is an intrinsic part of the language. It can be a common way of communicating; a way of letting off steam or frustration; a way of describing people or situations; and a way of joking or making the workplace informal and friendly.

On a reasonable assessment of conduct under the Code, the action of a councillor swearing at a member of the public at a council meeting would not be displaying community leadership, would not be showing respect to the member of the public, could constitute verbal abuse, could be regarded as a derogatory term, and could bring the council or holders of civic office into disrepute.

Cr Williams claims he was provoked by Mr Books calling him “*the smartarse*”. Mr Books denies he used the word “*smartarse*” but does acknowledge the general animosity between each other built up during their years serving on the council. He Mr Devine, who was sitting next to Mr Books at the time, and was the also indicates in a telephone interview on 24 February 2009 that Mr Books did not use the word “*smartarse*”.

It is not known whether the remark by Cr Williams to Mr Books was heard by other members of council. The evidence is that it was said softly and directly to Mr Books from a short distance (approximately 1 metre). If the remark had been heard by the mayor or other councillor then the issue could possibly have been dealt with as an act of disorder under the Hawkesbury City Council Code of Meeting Practice Clause 4.2.2:

*“1) A Councillor commits an act of disorder if the Councillor, at a meeting of Council or a committee of Council:*

- a) .....*
- b) .....*
- c) .....*
- d) .....*
- 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.*

If brought to the attention of the meeting the chairperson (Mayor) may have required Cr Williams to retract the remark and apologise.

### **Finding on Issue No 2**

On the balance of probabilities, based on the evidence provided by Messrs Books, Devine and Bowd, and Cr Williams, it can be reasonably determined that the language used by Cr Williams in his remarks to Mr Ted Books would have caused a member of the public on hearing the remarks to be offended.

### **ISSUE NO 3**

Whether the language, if used, constituted a breach of the Council Code of Conduct.

### **Evidence on Issue No 3**

It has been determined from the above evidence that Cr Williams used at least one swear word in his remark to Mr Ted Books during the Council Meeting on 11 November, and at least 3 persons - Mr Books, Mr Trevor Devine seated next to Mr Books, and Mr Mark Bowd seated behind Mr Books - heard the remark and were offended by it.

### Analysis of Evidence on Issue No 3

The Hawkesbury City Council Code of Conduct is the place where acceptable standards of conduct are defined. The Code is modelled on the document provided by the Department of Local Government and was adopted by the Council on 8 July 2008. Apart from a reference to the Council policy on Gifts and Benefits the Council Code is largely unchanged from the Department's model code.

The council can supplement the Model Code with provisions that are not inconsistent with the model code. It is noted in the above analysis that some terms could benefit from clarification – for example, by an addition to the definitions under Clause 4 of the Code.

In the absence of any additional provisions in the Code it is necessary to test the conduct of Cr Williams against the current Code.

As noted above, Clause 6.1 of the Hawkesbury City Council Code of Conduct requires a councillor to *“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”*.

The above analysis also noted that Clause 6.1 further outlined specific actions that are unacceptable, including part b) - being detrimental to the pursuit of the charter of a council and part d) - an action that causes, comprises or involves intimidation, harassment or verbal abuse.

Further, the analysis showed that Clause 6.3 requires that a council official must treat others with respect at all times.

Finally, Clause 9.6 of the Code requires that a council official show respect to the chair, other council officials and any members of the public present during council meetings.

The good intent behind the written words within council codes and policies always need to be backed up by appropriate training and education. The Code of Conduct was last amended in July 2008. The current council, of which Cr Leigh Williams is a member, was elected in September 2008. Cr Williams was also a member of the previous council when the current Code of Conduct was adopted.

The council sought to provide appropriate Code of Conduct guidance to the recently elected councillors by convening a Code of Conduct workshop on 3 November 2008. The workshop was facilitated by Mr Jeff Williams of Fraud Prevention and Governance Pty Ltd. The attendance record as attached (ATTACHMENT 2) shows that Cr Williams did not attend. However, the council records disclose that Cr Williams attended the Councillor Induction Course run by the Local Government Association on 27 November 2008. The course addressed the model Code of Conduct issued by the Department of Local Government, and on which the Hawkesbury Code is based.

The conduct of Cr Williams in a most important public forum, a council meeting, can be seen to be detrimental to the council's efforts to provide community leadership, and to constitute verbal abuse of and disrespect to a member of the public. Such an action could bring the council into disrepute. It is not a standard of conduct that is sought by the Hawkesbury City Council Code of Conduct.

### Finding on Issue No 3

1 On the balance of probabilities, based on the evidence provided by Messrs Books, Devine and Bowd, and Cr Williams, it can be reasonably determined that the language used by Councillor Williams in his remarks to Mr Ted Books during the conduct of a council meeting is a breach of the Hawkesbury City Council Code of Conduct, in particular:

Clause 6.1 b) and d) – in that Cr Williams conducted himself at the Council Meeting on 11 November 2009 in a manner that brought the office of councillor into disrepute, being detrimental to the pursuit of the charter of the council, particularly in terms of leadership, and involving verbal abuse of a member of the public

Clause 6.3 - in that Cr Williams did not treat others with respect.

Clause 9.6 - in that Cr Williams did not show respect to members of the public at a council meeting.

2 The council could consider amending the Code of Conduct to provide additional guidelines or definitions, or to adopt policy statements, to assist users of the Code to better interpret the standard of conduct contained within Part 2 of the Code.

3 Having regard to the complexity of the Code of Conduct, and the importance of all council officials clearly understanding its features and obligations, the training and education programme for councillors and staff should be reviewed to ensure that every councillor and every staff member is trained in the features of the Code at least every 2 years.

## 8 NATURAL JUSTICE/PROCEDURAL FAIRNESS

In an administrative matter such as assessment and review of a potential breach of the council Code of Conduct the test of proof is whether or not, on balance, a reasonable person would be led to conclude that a public official breached the Code of Conduct. In so doing the principles of natural justice/procedural fairness, as found in Clause 14.7 of the Hawkesbury City Council Code of Conduct have to be considered:

*14.7 In conducting enquiries, the conduct review committee/reviewer or the person engaged to do so should follow the rules of procedural fairness and must -*

- a) provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation*
- b) provide the person the subject of the complaint with an opportunity to place before the conduct review committee/reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry*
- c) provide the person the subject of the complaint with an opportunity to address the conduct review committee/reviewer in person*
- d) hear all parties to a matter and consider submissions before deciding the substance of any complaint*
- e) make reasonable enquiries before making any recommendations*
- f) act fairly and without prejudice or bias*
- g) ensure that no person decides a case in which they have a conflict of interests*
- h) conduct the enquiries without undue delay.*

*Where the person the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the conduct review committee/reviewer should proceed to finalise the matter.*

Cr Williams was advised of the nature of the complaint by email on 4 and 5 December 2008. Further information was provided on 7 December 2008. Cr Williams was invited to respond in writing within 28 days (by 2 January 2009), and to indicate whether he wished to address the Sole Conduct Reviewer in person (by 12 December 2008).

The Sole Conduct Reviewer emailed Cr Williams on 12 December 2008 to establish whether he wished to meet to discuss the complaint. Cr Williams did not accept the invitation at the time. The Sole Conduct Reviewer telephoned Cr Williams on 22 December 2008 to remind of the written response deadline of 2 January 2009.

As a person affected or potentially affected by adverse findings in the draft review report Cr Williams was provided with the draft Review report findings and recommendations on 26 January 2009 and invited to comment within 14 days. Cr Williams sought an extension of time on 29 January 2009 and this was granted on 30 January 2009 – to 23 February 2009. Cr Williams sought and was granted on 16 February 2009 a personal interview with the Sole Conduct Reviewer. This was conducted on 23 February 2009. Cr Williams responded to the draft review report on 25 February 2009.

The parties to the complaint are considered to be the complainant, Mr Ted Books, and the person the subject of the complaint, Cr Leigh Williams. It is noted the letters received from Mr Trevor Devine and Mr Mark Bowd are in support of Mr Books' complaint and not separate complaints. Notwithstanding, a telephone interview was conducted with Mr Devine and Mr Bowd on 23 January 2009 to clarify certain issues, and with Mr Devine again on 24 February 2009.

In relation to conflicts of interest, the Sole Conduct Reviewer, Stephen Blackadder, was not personally known to Cr Leigh Williams prior to being engaged to conduct the review. Mr Blackadder is professionally known to the complainant, Mr Ted Books, through a meeting of the WestPool Insurance Group in the late 1990's or early 2000 when Mr Blackadder was General Manager of Rockdale City Council, and a member of the MetroPool Insurance Group. Mr Books was a Hawkesbury City Council Councillor representative on Westpool. Mr Blackadder and Mr Books have not met on any other occasion. Mr Blackadder is professionally known to the General Manager, Mr Peter Jackson, through their past roles at Rockdale City Council (Mr Blackadder as General Manager) and Hurstville City Council (Mr Jackson as Director Corporate Services). Mr Blackadder has no social or friendship relationship with any person involved in this review.

Accordingly, it is regarded that the Sole Conduct Reviewer is an impartial reviewer of the complaint.

The review has been undertaken over the Christmas/New Year period.

## 9 PRELIMINARY COMMENTS ON RECOMMENDATIONS

The Hawkesbury City Council Code of Conduct outlines the obligations of the Sole Conduct Reviewer in making findings and recommendations and in reporting results to the council. These obligations are:

### Findings

Clause 12.20 of the Code states:

*“Where the conduct review committee/reviewer conducts enquiries or causes enquiries to be conducted, the conduct review committee/reviewer must make findings on whether, in its view, the conduct referred to it comprises a breach of the code of conduct.”*

In accordance with Clause 12.20 the Sole Conduct Reviewer has found that there has been a breach of the Code by Cr Williams.

### Recommendations

Clause 12.21 of the Code states:

*“Where the conduct review committee/reviewer makes findings, the conduct review committee/reviewer may recommend that council take any actions provided for in this code of conduct that it considers reasonable in the circumstances.”*

The recommendations are outlined below in Part 10.

## Report to Council

Clause 12.22 of the Code states:

*“Where the conduct review committee/reviewer makes findings, the conduct review committee/reviewer will report its findings, and the reasons for those findings, in writing to the council, the complainant and the person subject of the complaint.”*

Clause 12.23 of the Code also states:

*“The conduct review committee/reviewer will report its findings and any recommendations to council only when it has completed its deliberations.”*

Having considered the submission from Cr Williams on the draft report, and having made appropriate amendments to the draft report, the final review report is now reported to the Council.

In relation to the report to council the Code provides under Clause 14.9:

*“Where the conduct review committee/reviewer determines, in its view that the conduct referred to it comprises a breach of this code of conduct it may, in its report to the council, make recommendations, that the council take any of the following actions:*

- a) censure the councillor for misbehaviour*
- b) require the councillor or general manager to apologise to any person adversely affected by the breach*
- c) counsel the councillor or general manager*
- d) make public findings of inappropriate conduct*
- e) prosecute for any breach of the law*
- f) revise any of council’s policies, procedures and/or the code of conduct.*

*Before making any such recommendations, the conduct review committee/reviewer shall have regard to the following:*

- a) the seriousness of the breach*
- b) whether the breach can be easily remedied or rectified*
- c) whether the subject has remedied or rectified their conduct*
- d) whether the subject has expressed contrition*
- e) whether the breach is technical or trivial only*
- f) whether the breach represents repeated conduct*
- g) the age, physical or mental health or special infirmity of the subject*
- h) the degree of reckless intention or negligence of the subject*
- i) the extent to which the breach has affected other parties or the council as a whole*
- j) the harm or potential harm to the reputation of local government and of the council arising from the conduct*

- k) *whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny*
- l) *whether an educative approach would be more appropriate than a punitive approach*
- m) *the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action*
- n) *what action or remedy would be in the public interest*
- o) *where to comply with a councillor's obligations under this code of conduct would have had the effect of depriving the council of a quorum or otherwise compromise the capacity of council to exercise its functions."*

### Clause 14.9 Considerations

Before addressing the actions that could be taken by the council the Sole Conduct Reviewer has had regard for the following relevant considerations under Clause 14.9:

**Seriousness** - the breach of the Code of Conduct is regarded as sufficiently serious to warrant action being taken against Cr Williams as well as action to strengthen the Code and to further educate councillors in its application.

**Contrition** – contrition is sincere remorse for a wrong doing. In his first written response Cr Williams indicates:

*"For him to now lodge a complaint about my language is just more harassment. He has used far worse language to me in the past, so I refuse to accept that he could have been offended. I do of course have sincere regrets if some innocent, non-involved member of the public gallery was offended by my words, but I seriously doubt that anyone else heard my words except ex-councillor Trevor Devine who was sitting alongside Books. I know Trevor would be only too aware of Books' attitude towards me and I do not accept he would be offended by my words. If any non-involved member of the public over-heard my statement and suffered offense I regret that of course and I am happy to apologise to them".*

During the interview between the Sole Conduct Reviewer and Cr Williams on 23 February 2009 Cr Williams accepted that he should not have used intemperate language in the chamber and indicated a preparedness to apologise to Mr Books and Mr Devine and others who have been named if they claim they heard what he said.

It is considered that Cr Williams has shown contrition for his actions.

**Technical or Trivial** - the breach is not a technical or trivial breach. Swearing at a member of the public during a council meeting in a manner that could be designed to bully and intimidate that member of the public is not the standard of conduct that should be on display in a public forum, regardless of the reason or the provocation.

**Repeated Conduct** - from the evidence it appears the conduct of Cr Williams was borne out of frustration and his past, somewhat testy relationship with Mr Books during the last term of office of the Hawkesbury City Council when Mr Books served with Cr Williams as a councillor. Both Mr Books and Cr Williams provided evidence to suggest that their relationship was not one of mutual interest. It is noted, however, that no evidence has been provided to suggest Cr Williams has acted in a similar manner in the past at a council meeting. A repetition of such conduct could be regarded more seriously under the Code.

**Public interest and Public Scrutiny** - Cr Williams acknowledged in his response to the complaint by Mr Books that the words should not be used in a council chamber. He acknowledges the action as wrong. It is in the public interest that the standard of conduct of a councillor in a council chamber should be sufficient to inspire confidence of the community in the council. Cr Williams has indicated his intention to apologise to those persons who heard the remark.

**Educative/Punitive** – a combination of actions is considered appropriate. Additional education in the Code of Conduct would be beneficial to all councillors and the Code might be reviewed to incorporate additional definitions or guidelines to assist users of the Code in better understanding the standard of conduct expected. The conduct of Cr Williams has breached the Code; Cr Williams has accepted his remarks were inappropriate and he has shown contrition and will apologise to those who heard his remark.

#### Clause 14.9 - Council Actions

A council should strive to ensure the standard of conduct in a council chamber is of the highest order. The Hawkesbury Council Code of Meeting Practice adopted by the Council in 2005 contains a number of important principles. In adopting the Code the Council has committed itself to two principles of relevance to this review:

- “1) Meetings should be orderly, efficient and earn the respect of the City's ratepayers, residents and visitors;*
- 2) Meetings shall be conducted consistent with the Council's commitment to supporting the involvement and participation of local residents in issues which affect the City;”*

Local Councillors occupy an important and privileged position in contemporary local government. They are there to exercise community leadership (see section 8 of the Local Government Act), they are expected to model good conduct (as outlined in the council Code of Conduct), they are there to make good decisions as a member of the governing body and they are there to effectively represent the interests of residents and ratepayers (see section 232 of the Local Government Act). Their actions are under close public scrutiny.

The model Code of Conduct and the standard of conduct set for council officials within the code is the standard deemed appropriate by the New South Wales Government. The standards are seen by the Government as the minimum any council should adopt. They have been developed with the benefit of experience gained from past council dismissals. Of course councils can supplement those standards as long as the supplementary provisions are not inconsistent with the State standards.

The review has found that Cr Williams has breached the Code of Conduct. It is therefore appropriate that certain action be taken. The council has to decide on the actions that might be appropriate under Clause 14.9 of the Code. The following are put forward for the council's consideration and determination:

**First**, Cr Williams should apologise for his poor community leadership, verbal abuse and disrespect. He should do this, in writing, to those who have raised the issue with the Council – Mr Ted Books, Mr Trevor Devine and Mr Mark Bowd. Whilst the conduct occurred during a council meeting, the evidence indicates only a small number of members of the public gallery heard the remark. There has been no evidence advanced that the remarks were heard by the council meeting generally.

**Second**, it would be appropriate for the Council to arrange during 2009 an additional training workshop at which all councillors are obliged to attend. Should any councillor fail to attend, a private session should be arranged for that councillor. In general, training should be provided to councillors at the commencement of their term of office and at least on one other occasion during the term.

**And third**, the Hawkesbury City Council Code of Conduct should be reviewed to strengthen any area where supplementary guidelines or definitions, or policy statements, would benefit the understanding of code requirements. The supplementary guidelines, definitions or policy statement must not be inconsistent with the Model Code issued by the Department of Local Government.

## 10 RECOMMENDATIONS

Based on the analysis and findings, the following recommendations are made, along with a statement outlining the reasons for the recommendations:

### Recommendation 1

**A** That Councillor Leigh Williams provide a written apology to Mr Ted Books, Mr Trevor Devine and Mr Mark Bowd for his conduct at the Hawkesbury City Council Meeting on 11 November 2008, such conduct being detrimental to the pursuit of community leadership, constituting unacceptable verbal abuse as well as disrespect to those in attendance at the meeting who witnessed the conduct.

### Reasons for Recommendation 1

**1a** The Council Code of Conduct sets certain standards of conduct of council officials. Poor community leadership, verbal abuse and disrespect are unacceptable actions under the Code.

**1b** The verbal abuse of and disrespect shown to Mr Ted Books by Councillor Williams was not only offensive to Mr Books but also to other members of the public who were seated near Mr Books and heard the remark.

### Recommendation 2

**A** That the Hawkesbury City Council arrange a further Code of Conduct training workshop within 3 months of this recommendation being accepted by the council at a time and place convenient to all councillors, and should any councillor fail to attend, a private session be arranged for that councillor.

**B** Further, Hawkesbury City Council consider including in its Councillor training policy a requirement that Code of Conduct training be provided to all councillors at the commencement of the council term and at least on one other occasion during the term.

### Reasons for Recommendation 2

**2a** The Code of Conduct is a lengthy, complex and involved document, containing numerous standards and requirements. Guidance, coaching and education of councillors is required to ensure the important features of the Code are understood and appreciated by all.

**2b** The Code of Conduct training workshop convened on 3 November 2008, and facilitated by Mr Jeff Williams of Fraud Prevention and Governance Pty Ltd, was attended by 9 of 12 councillors. Councillor Warwick Mackay, Councillor Rex Stubbs and the person the subject of this Code of Conduct complaint, Councillor Leigh Williams did not attend the workshop. A further workshop should be conducted as soon as possible to ensure all councillors can learn from this experience.

2c Regular training and education in standards of conduct should be welcomed by all council officials. A clear understanding and appreciation of Code of Conduct requirements will not only elevate the standing of the Council and council officials in the Hawkesbury community but also avoid code of conduct reviews and potentially damaging publicity and loss of public confidence in council and council officials.

**Recommendation 3**

**That the Hawkesbury City Council Code of Conduct be reviewed during 2009 and where necessary the Code be strengthened by supplementary guidelines, definitions or policy statements in order to benefit council officials in their understanding of code requirements. The supplementary guidelines or definitions incorporated in the Code, or any supplementary policies adopted by the council must not be inconsistent with the Model Code issued by the Department of Local Government.**

**Reasons for Recommendation**

3a The Code of Conduct may not sufficiently describe or explain the standard of conduct expected of council officials. It may not sufficiently define some important terms. Further clarification or explanation would assist in gaining a practical understanding and appreciation of the Code provisions by council officials.

3b The Code of Conduct is a statutory requirement of all councils in New South Wales. Section 440 of the Local Government Act indicates the adopted code may include provisions that supplement the model code but has no effect to the extent that it is inconsistent with the model code as in force for the time being.

**SIGNED:**

.....  
**Stephen Blackadder**  
**Director, Blackadder Associates Pty Ltd**

**DATE OF REPORT:** .....

## ATTACHMENT 1

### MANAGEMENT OF THE REVIEW - SEQUENCE OF EVENTS

- **19 November 2008** - the General Manager received the complaint from Mr Books, and evaluated the complaint as required by Clause 12.9 (d) and 13.1 of the Hawkesbury City Council Code of Conduct. Having regard to the provisions of this clause and associated circumstances, the General Manager determined it would be appropriate to refer the matter to a Sole Conduct Reviewer.
- **2 December 2008** - the General Manager referred the complaint to Stephen Blackadder, Director, Blackadder Associates Pty Ltd, as Sole Conduct Reviewer. The referral was in accord with the council decision of 9 September 2008:

*"Pending the finalisation of arrangements in this regard, the General Manager, or Mayor in respect of a complaint against the General Manager, be given delegated authority to appoint Conduct Reviewers under Council's Code of Conduct on a "one-off" basis if the need should arise as a result of a complaint being received under the Council's Code of Conduct that is determined as requiring referral to a Conduct Reviewer or the Conduct Review Committee, subject to the Conduct Reviewers not being from within Council's area."*

- **3 December 2008** - following receipt of the referral the relevant documents supplied by the General Manager on 2 December were assessed by the Sole Conduct Reviewer. These included:
  - letter of complaint from Mr Ted Books dated 14 November 2008
  - letter in support from Mr Trevor Devine dated 17 November 2008
  - letter in support from Mr Mark Bowd dated 17 November 2008
  - letter from General Manager to Mr Books dated 2 December 2008 advising of referral to the Sole Conduct Reviewer.
  - copy of the Hawkesbury City Council Code of Conduct adopted at the Council meeting on 8 July 2008.
- **4 December 2008** - the Sole Conduct Reviewer and General Manager finalised procedural issues by email on 3 and 4 December 2008.
- **4 December 2008** - the Sole Conduct Reviewer determined under Clause 12.19 (c) and 13.3 of the Council Code of Conduct to review the complaint.

- **4 December 2008** - the Sole Conduct Reviewer provided an initial letter to Cr Williams advising of the appointment by the General Manager and a general outline of the Code of Conduct provisions, including procedural justice provisions, and the issues to be addressed.
- **4 December 2008** – the Sole Conduct Reviewer provided a letter to the complainant, Mr Ted Books outlining the procedure to be conducted during the review and indicating the Sole Conduct Reviewer would be in touch to arrange a meeting.
- **5 December 2008** - the Sole Conduct Reviewer provided a further letter to Cr Williams again reinforcing the procedural justice provisions of the Code of Conduct and inviting Cr Williams to respond to the substance of the allegation by one or other or both of the following means - in writing within 28 days, being 2 January 2009, or orally, that is, by addressing the Sole Conduct Reviewer in person. Cr Williams was invited to respond by 12 December 2008 if a meeting was sought.
- **7 December 2008** - the Sole Conduct Reviewer examined and replied to an email from Cr Williams on 7 December 2008, providing further clarification of the complaint.
- **12 December 2008** - the Sole Conduct Reviewer emailed Cr Williams reminding of the time frames for response as outlined in the letter of 5 December 2008.
- **22 December 2008** - the Sole Conduct reviewer telephoned and spoke with Cr Williams seeking an indication when a written response would be received, and reminding of the expected response by 2 January 2009.
- **1 January 2009** - Cr Williams provided a written response to the Sole Conduct Reviewer by email.
- **13 January 2009** - the Sole Conduct Reviewer interviewed Mr Books at his home, 20 Church Street, South Windsor.
- **23 January 2009** – the Sole Conduct Reviewer conducted separate telephone interviews with Mr Trevor Devine and Mr Mark Bowd.
- **26 January 2009** – the Sole Conduct Reviewer completed a draft review report and forwarded findings and recommendations to Cr Williams in accordance with procedural fairness principles in order to provide Cr Williams with an opportunity to comment on or rebut the findings and recommendations.
- **29 January 2009** – Cr Williams sought an extension of time to respond to the draft review report. On 30 January 2009 the Sole Conduct Reviewer advised Cr Williams that an extension of time to 12 noon on Monday 23 February 2009 is agreed to.

- **23 February 2009** – the Sole Conduct Reviewer interviewed with Cr Williams. Record of interview sent to Cr Williams to verify issues discussed. Verified record of interview received 25 February.
- **26 February 2009** – the Sole Conduct Reviewer finalises review report and forwards the report to the Hawkesbury City Council General Manager.

## **ATTACHMENT 2**

Record of attendance at the Code of Conduct workshop held on 3 November 2008 and facilitated by Mr Jeff Williams of Fraud Prevention and Governance Pty Ltd (see next page).

**Hawkesbury City Council**  
**Code of Conduct Training**  
**Attendance Sheet – 3 November, 2008**

Name	Signature
Clr Bart Bassett	<i>Bart Bassett</i>
Clr Barry Calvert	<i>Barry Calvert</i>
Clr Kevin Conolly	<i>Kevin Conolly</i>
Clr Warwick Mackay	DID NOT ATTEND
Clr Christine Paine	<i>Christine Paine</i> (arrived 7.45pm)
Clr Bob Porter	<i>Bob Porter</i>
Clr Paul Rasmussen	<i>Paul Rasmussen</i>
Clr Jill Reardon	<i>J. Reardon</i>
Clr Rex Stubbs	DID NOT ATTEND
Clr Tiffany Tree	<i>Tiffany Tree</i>
Clr Bill Whelan	<i>W.H. Whelan</i>
Clr Leigh Williams	DID NOT ATTEND
Peter Jackson	<i>Peter Jackson</i>
Chris Daley	<i>Chris Daley</i>
Matt Owens	<i>Matt Owens</i>
Laurie Mifsud	<i>Laurie Mifsud</i>
Joseph Litwin	<i>Joseph Litwin</i>
Sonia Porter	<i>Sonia Porter</i>



**SCANNED**

Code of conduct training conducted by  
 Jeff Williams from Fraud Prevention & Governance M/c  
 from 7.00pm to 8.50pm on 3/11/08.