

Confidential

16 May 2024

Our ref: PSC23003

Telina Webb
PO Box 2280
MARKS POINT NSW 2280

Email

Dear Ms Webb,

Cease and Desist | Posts on NSW Freedom of Information Website

Introduction

- 1 As you know, we are solicitors for Port Stephens Council (**Council**).
- 2 We refer to the media posts published by you on the 'NSW Freedom of Information' website between 25 June 2021 and 24 July 2023 (**Publications**) concerning Council and Council's officers Tony Wickham and Lisa Marshall.
- 3 We note the Publications principally relate to a series of recent decisions in the NSW Civil & Administrative Tribunal (see *Webb v Port Stephens Council* [2020] NSWCATAD 81, *Webb v Port Stephens Council* [2020] NSWCATAP 152; *Webb v Port Stephens Council* [2021] NSWCATAD 180; *McEwan v Port Stephens Council* [2021] NSWCATAD 110, *Webb v Port Stephens Council (No 2)* NSWCATAP 217).
- 4 In particular, we refer to the following Publications:
 - (a) 'Full IPART Submission', dated 3 March 2023,
 - (b) 'NSW Crown Solicitor Evidenced to Collude with a Local Council to Prevent Access to Freedom of Information Training Documents, Adding to Costs Accumulated', dated 24 May 2023,
 - (c) 'NSW Civil & Administrative Tribunal Awards Legal Costs to Local Council Despite Evidence of Collusion Involving the Office of the NSW Crown Solicitor', dated 6 June 2023,
 - (d) *Free Public Service Launches 1300 Smart Number to Provide Improved Services to NSW Community*, dated 27 June 2023,
 - (e) 'Local Council Dodges Breach of Privacy Bullet by Claiming "But the NCAT Published it First!"', dated 7 July 2023, and

- (f) *'Prominent Sydney Law Firm Bypasses Legislated Procurement Processes and Continues to Do Business with Port Stephens Council Despite Legal Services Contract Expiring in Mid-2022'*, dated 24 July 2023.
- 5 Council requests that you cease and desist from publishing any further material on the *NSW Freedom of Information* website (or any other forum) which appears to disparage Council or Council's officers or contains the personal details of those officers. We additionally request that you remove all of the Publications from your website by the Expiry Date.

Defamation

- 6 Council considers that the Publications contain a number of defamatory imputations against Council's officers (particularly Tony Wickham and Lisa Marshall) which are unsupported by any evidence and strongly denied by Council.
- 7 The imputations are defamatory because they disparage Council's officers and could cause ordinary reasonable members of the public to think less of them.
- 8 The Publications include the following defamatory imputations:
- 8.1 Mr Wickham acted unlawfully under the *Government Information (Public Access) Act 2000*, made false allegations against members of the public and exercised his powers as Governance Manager for an improper purpose,
 - 8.2 Mr Wickham made false claims, wrote a false and misleading letter to the Office of NSW Information and Privacy Commissioner and entered into an 'unlawful agreement' with a member of the public to conceal documents,
 - 8.3 Mr Wickham engaged in 'gross professional misconduct', used public monies for his own personal gain and colluded with the Office of Crown Solicitor, and
 - 8.4 Mr Wickham and Ms Marshall committed acts of perjury, perverted the course of justice, abused their public offices and breached Council's code of conduct.
- 9 As the publisher of the Publications containing the defamatory imputations listed above, you may be found liable in defamation and required to pay damages and costs in the event a claim is successfully commenced against you.

'Doxxing'

- 10 We additionally note that the Publications contain lists of the personal contact details of Council's officers, including Mr Wickham, Ms Marshall and Ms Stephanie Posniak.
- 11 The publication of these details constitutes 'doxxing', which is the intentional online exposure of the personal details of individuals without their consent. While 'doxxing' is not currently the subject of an offence under the *Privacy Act 1998* (Cth) (**Privacy Act**) or *Privacy and Personal Information Protection Act 1998* (NSW), the practice may soon be prohibited as part of proposed amendments to the national privacy legislation.
- 12 As a result, should you continue to publish the personal details of Council's officers or fail to remove those details from your website, you risk being prosecuted for an offence under the Privacy Act and liable to pay a pecuniary penalty and costs.

Request to Cease and Desist

- 13 We hereby request that you cease and desist from:

- 13.1 publishing further material on the 'NSW Freedom of Information' website or any other forum, including but not limited to print, any other website or on social media, which disparages Council or Council's officers, and
- 13.2 publishing the personal details of Council's officers on any forum.
- 14 We additionally request that you remove all Publications on your website published between 25 June 2021 and 24 July 2023 (including those identified at paras 4(a)-(f)) which relate to Council or Council's officers, including Mr Wickham and Ms Marshall.
- 15 Please remove the Publications in accordance **Friday, 24 May 2024 (Expiry Date)**. In the event you fail to remove all Publications from your website by the Expiry Date, Council and its officers reserve the right to commence a claim in defamation against you in a court of competent jurisdiction in relation to the Publications and seek damages and costs in the event it is successful.
- 16 Furthermore, Council reserves the right to report your website to the eSafety Commissioner, which may exercise its powers under the *Online Safety Act 2021*.
- 17 If you would like to discuss this matter, please contact Megan Hawley or Nathan Sloan.

Yours Sincerely,



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