

**CONFIDENTIAL ITEMS 2003 – AUGUST 2017**

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
119	7 August 2017	Confidential – Code of Conduct Investigation by the Ombudsman	<p>Section 90 (3) (g) Order</p> <p>1. Pursuant to Section 90(3)(g) Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except Chief Executive Officer, Deputy Chief Executive Officer/General Manager Infrastructure and Projects, General Manager Council Services, General Manager Planning and Development, General Manager Corporate Services, Minute Secretary, Risk and Governance Officer be excluded from attendance at the meeting for Agenda Item Confidential – Code of Conduct Investigation by the Ombudsman.</p> <p>The Council is satisfied that pursuant to Section 90(3)(g) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information concerning matters that must be considered in confidence in order to ensure that the Council does not:</p> <ul style="list-style-type: none"> <li>• breach any law, order or direction of a court or tribunal constituted by law;</li> <li>• breach any duty of confidence, or</li> <li>• breach any other legal obligation or duty</li> </ul> <p>in that the Ombudsman's Final Report has not been made public by the Ombudsman.</p> <p>The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the Ombudsman's Final Report contains</p>	The Council pursuant to Section 91(7) of the Act orders that the Attachment - Final Report from the Ombudsman Own Initiative Investigation of Complaint and the letter of complaint about Cr Susan Hamilton remain confidential and not be placed on Council's website until or if the Ombudsman has determined to publicly release the report on his website or the AustLII website, or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.	The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the Ombudsman's Final Report contains reference to third parties.	Until or if the Ombudsman has determined to publicly release the report on his website or the AustLII website, or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.		Sept 17	<i>Council report and minutes released 7 August 2017 Report, minutes and attachments on Council website 15 August 2017</i>

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			reference to third parties.						
			<p>5. Pursuant to Section 91(7) That having considered Agenda Item Code of Conduct Investigation by the Ombudsman in confidence under 90(2) and 3(g) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the Attachment - Final Report from the Ombudsman Own Initiative Investigation of Complaint and the letter of complaint about Cr Susan Hamilton remain confidential and not be placed on Council's website until or if the Ombudsman has determined to publicly release the report on his website or the AustLII website, or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.</p>						

<b>18.3</b>	<b>REPORT TITLE:</b>	<b>CONFIDENTIAL - CODE OF CONDUCT INVESTIGATION BY THE OMBUDSMAN</b>
	<b>DATE OF MEETING:</b>	<b>7 AUGUST 2017</b>
	<b>FILE NUMBER:</b>	<b>DOC/17/70916</b>
	<b>ATTACHMENTS:</b>	<b>1- DOC/17/70092 - FINAL REPORT BY THE OMBUDSMAN 2 - DOC/16/125047 - LETTER OF COMPLAINT</b>

**Purpose:**

To provide the outcome of a Code of Conduct investigation following a complaint alleging that Cr Hamilton had breached Part 2 and Part 3 of the Code of Conduct for Council Members.

**Summary – Key Issues:**

- A Code of Conduct complaint was received from Ms Neila (Attachment 2) regarding Cr Susan Hamilton alleging a breach-of Part 2 and of Part 3 of the Code of Conduct for Council Members.
- The complaint related to an alleged breach of Part 2 of the Code which was dismissed by Council via the Mayor as no further information was provided by the complainant and mail was returned to Council unopened by the complainant.
- The Ombudsman has concluded his own initiative investigation into an alleged breach of Part 3 of the Code of Conduct and found that Cr Hamilton did not breach the Code.

**Recommendation****Section 90 (3) (g) Order**

That Council: \_\_\_\_\_

1. Pursuant to Section 90(3)(g)  
Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except Chief Executive Officer, Deputy Chief Executive Officer/General Manager Infrastructure and Projects, General Manager Council Services, General Manager Planning and Development, General Manager Corporate Services, Minute Secretary, Risk and Governance Officer be excluded from attendance at the meeting for Agenda Item Confidential – Code of Conduct Investigation by the Ombudsman.

The Council is satisfied that pursuant to Section 90(3)(g) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information concerning matters that must be considered in confidence in order to ensure that the Council does not:

- breach any law, order or direction of a court or tribunal constituted by law;
- breach any duty of confidence, or
- breach any other legal obligation or duty

in that the Ombudsman's Final Report has not been made public by the Ombudsman.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the Ombudsman's Final Report contains reference to third parties.

2. That Council advise the Ombudsman and Cr Hamilton that Council will only place the Final Report and letter of complaint on its website if and when the Ombudsman determines to place it on the Ombudsman SA and/or AustLII websites and that unless and until this occurs, Council will make public the findings as outlined in this Council agenda item but not the entire attached Ombudsman's Final Report.
3. Note that Cr Hamilton has been advised by the Ombudsman that as one of the parties involved she can do as she sees fit with the Ombudsman's Final Report. Therefore any resolution of Council to keep the Final Report confidential will have no legal or practical effect upon Cr Hamilton.
4. Pursuant to Section 91(7)  
That having considered Agenda Item Code of Conduct Investigation by the Ombudsman in confidence under 90(2) and 3(g) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the Attachment - Final Report from the Ombudsman Own Initiative Investigation of Complaint and the letter of complaint about Cr Susan Hamilton remain confidential and not be placed on Council's website until or if the Ombudsman has determined to publicly release the report on his website or the AustLII website, or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.

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**Background:**

1. In December 2016 Council received a Code of Conduct complaint from Ms Neila (attachment 2) alleging a breach by Cr Hamilton that related to Part 2 (Behavioural-Code) and Part 3 (Misconduct), of the Code of Conduct for Council Members.
2. The process identified in the Complaints Handling Procedure – Council Members' Code of Conduct ("the Procedure") for the Code was followed.

3. Following receipt of the complaint in December 2016, Council followed the process identified within the Procedure and forwarded the complaint to the LGA with the intention of the Governance Panel undertaking an investigation in relation to the alleged breach of Part 2 of the Code.
4. The Part 2 complaint related to Cr Hamilton's comments as reported in an article in The Courier newspaper on 9 November 2016.
5. Advice from the preliminary review of the complaint by the LGA was that further information was required from the complainant in relation to exactly what behaviour is alleged to be outside of the Code of Conduct.
6. Mail sent to the complainant requesting further information was returned to Council uncollected. No further contact information regarding the complainant could be found on Council databases or the electoral roll.
7. As a consequence the Council, via the Mayor, dismissed the complaint related to an alleged breach of Part 2 of the Code and advised Cr Hamilton.

### **Discussion**

8. The part of the complaint alleging a breach of Part 3 of the Code of Conduct was forwarded to the Ombudsman who has the responsibility to investigate these matters under the Code of Conduct for Council Members.
9. The Part 3 complaint related to comments alleging Cr Hamilton had breached confidentiality with her comments at a Council meeting regarding the location of a multi-level carpark which were reported in "The Courier" on 19 October 2016.
10. The Ombudsman determined to conduct an 'own initiative investigation' in which Council participated by responding to specific questions from the Ombudsman.
11. Other parties were also involved in responding to the Ombudsman's investigation.
12. The Ombudsman concluded his investigation in July 2017 (Attachment 1) and found that:

*"While I consider that Cr Hamilton should have exercised caution during discussions about the matter before Council, I am not satisfied on the Briginshaw standard, that she disclosed information that was not already in the public domain.*

*Therefore, in light of the above, I consider that Cr Hamilton did not breach clause 3.3 of Part 3 of the Code of Conduct, and did not act in a manner that was unlawful within the meaning of section 25(1)(a) of the Ombudsman Act."*

13. The Ombudsman has authorised disclosure of his report by the parties as they see fit. Legal advice to Council confirms that as Councillor Hamilton is one of the parties, any Council resolution to keep the Final report confidential will not have any legal or practical effect upon Cr Hamilton.
14. Cr Hamilton has requested Council publish the Ombudsman Final Report.
15. The Ombudsman advised that he may publish his report on the Ombudsman SA and AustLII websites. He invited comment about the disclosure and

following a request from Council, has given an extension of time to Council for this until 9 August 2017.

16. As the both the Code and Procedure are silent on reporting to Council where no breach is found by the Ombudsman, legal advice was sought. Based on legal advice and having regard to the involvement of third parties only the nature of the allegations and findings will be made public after the Council meeting and the Final Report by the Ombudsman and the letter of complaint will only be made available to the public by Council if and when the Ombudsman makes the report available on his website or the AustLII website

**Community Engagement:**

Informing only	The released Council agenda item only (not the attachment) will be made public after the Council meeting. If and when the Ombudsman releases his Final Report it will be loaded onto Council's website.
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**Policy:**

There is a Code of Conduct for Council Members.  
There is also a Complaints Handling Procedures under the Council Members' Code of Conduct.

**Budget:**

Legal advice was sought in relation to the Council meeting process and implications for Council of the Ombudsman's Final Report being made public by Council.

**Statutory/Legal:**

S 63 of the Local Government Act 1999 requires Council Members to adhere to the Code of Conduct for Council Members.

**Staff Resource Requirements:**

Code of Conduct investigations can consume considerable staff time.

**Environmental:**

N/A

**Social:**

Reporting the outcome of the investigation by the Ombudsman is an important way for the community to have confidence in the Code of Conduct for Council Members.

**Risk Assessment:**

There is a risk that procedural fairness will not be served if the findings of the Ombudsman's Final Report are not made public.

**Asset Management:**

N/A

**Conclusion**

Council is obliged to investigate all Code of Conduct allegations and to forward allegations relevant to Part 3 of the Code to the Ombudsman. The Ombudsman has concluded his investigation and found no breach of the Code by Cr Hamilton. Given the Ombudsman's report involves third parties only the nature of the complaints and outcome are reported within this report which will be made public after the Council meeting.

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**Key Contact**

Ros McDougall, Risk and Governance Officer, Infrastructure and Projects

**Manager or Sponsor of Project**

Brian Clancey, Deputy Chief Executive Officer/General Manager Infrastructure and Projects  
Andrew Stuart, Chief Executive Officer

RELEASED

**Attachment 1 to Item 18.3**

Enquiries: Mr Romeo Rigon  
Telephone: 08 8226 8699  
Ombudsman reference: 2016/10116  
Agency reference:

Mayor Ann Ferguson OAM  
Mount Barker District Council  
PO Box 54  
MOUNT BARKER SA 5251

Dear Mayor

**Ombudsman own initiative investigation of complaint about Cr Susan Hamilton of the Mount Barker District Council (the council)**

I refer to my provisional report dated 28 June 2017.

I have now concluded my investigation under section 13(2) of the *Ombudsman Act 1972*, and the purpose of this letter is to provide you with my final views about the complaint. They are set out in the enclosed report. I have sent a copy to Cr Hamilton and Ms Neila.

As you may be aware, the Ombudsman Act imposes certain obligations<sup>1</sup> on my Office and others, including complainants, officers and members of the council, to keep information about my investigation confidential. However, if I consider that disclosure of that information is in the public interest, then I may authorise or require its disclosure.

In my opinion, there is a public interest in disclosure of my final reports under the Ombudsman Act. Therefore, I authorise disclosure of this report by the parties as they see fit. I advise that I may publish my report on the Ombudsman SA and AustLII websites. If you have any comment to make about that, please contact me within 14 days.

Yours sincerely

  
Wayne Lines  
**SA OMBUDSMAN**

12 July 2017

Encl

Cc Mr Andrew Stuart  
Chief Executive Officer  
Mount Barker District Council  
PO Box 54  
MOUNT BARKER SA 5252

<sup>1</sup> *Ombudsman Act 1972*, section 26.



OmbudsmanSA

**Report****Preliminary investigation - *Ombudsman Act 1972***

Complainant	Ombudsman 'own initiative' investigation, section 13(2) <i>Ombudsman Act 1972</i>
Council member	Councillor Susan Hamilton
Council	Mount Barker District Council
Ombudsman reference	2016/10116
Council reference	DOC/17/12428
Date complaint received	21 December 2016
Issues	Whether Councillor Hamilton breached Part 3 of the Code of Conduct for Council Members by publicly divulging council information subject to a confidentiality order.

**Jurisdiction**

The complaint alleges a breach of Part 3 of the Code of Conduct for Council Members made pursuant to section 63 of the *Local Government Act 1999* (the **Code of Conduct**).<sup>1</sup> An act of a council member that may constitute grounds for complaint under the Local Government Act is taken to be an 'administrative act' for the purposes of the Ombudsman Act.<sup>2</sup>

As envisaged by Part 3 of the Code of Conduct (misconduct), the council's Chief Executive Officer referred a complaint received by the council about Councillor Susan Hamilton to my Office.

The complaint is within the jurisdiction of the Ombudsman under the *Ombudsman Act 1972*.

**Investigation**

My investigation has involved:

- assessing the information provided by Ms Margaret Neila to the council
- seeking a response from the council
- seeking more particulars from the council
- considered the response from Ms Melissa Keogh, reporter for the Courier Newspaper
- considering the *Local Government Act 1999*
- considering the Code of Conduct
- considering the council's Code of Conduct - Complaints Handling Procedure (**Complaints Procedure**)
- referring to the council's Released Confidential Items register: 22 December 2016
- considering the council's meeting minutes for:

<sup>1</sup> The Code of Conduct was gazetted on 29 August 2013.

<sup>2</sup> Section 263A(4) Local Government Act; section 3, Ombudsman Act.

- 20 October 2003 (Confidential Minutes)
- 6 September 2010
- 16 September 2013
- 23 June 2014 (Special Council Meeting)
- 1 September 2014
- 7 September 2015
- 5 September 2016
- 19 September 2016
- considering the Draft Expression of Interest - Mt Barker Council Offices and Multi-Level Car Parking proposal
- preparing a provisional report and providing it to the parties for comment
- preparing this report.

### Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.<sup>3</sup> It is best summed up in the decision as follows:

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 has been proved  
...<sup>4</sup>

### Response to my provisional report

None of the parties provided a response to my provisional report.

Therefore, in light of the above, my view remains as set out in my provisional report.

### Background

#### *The complaint to the council*

1. In a complaint to the council dated 8 December 2016, Ms Margaret Neila alleged that Cr Hamilton was in breach of the Code of Conduct by divulging information at a council meeting that was subject to a confidentiality order.
2. On 15 December 2016 the council referred Ms Neila's complaint about Cr Hamilton to the Local Government Governance Panel (LGGP). In the referral, the council stated that '...the complaints related to both Part 2 and Part 3 of the Code of Conduct...' however, those related to Part 3 of the Code of Conduct... have been referred to the Ombudsman for investigation.
3. In his letter dated 16 December 2016, Mr Andrew Stuart, Chief Executive Officer for the council, referred to my Office Ms Neila's complaint. Mr Stuart advised my Office that the council intends to deal with aspects of Ms Neila's complaint which were considered to be possible Part 2 breaches.

<sup>3</sup> This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

<sup>4</sup> *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

4. On 16 December 2016 Mr Stuart wrote to Ms Neila c/- the Post Office, Littlehampton concerning her complaint about Cr Hamilton and advised that the council '...shall forward the complaint about the breach of confidentiality to the Ombudsman to Investigate.' In that letter the council sought further information from Ms Neila about her complaint. On 22 February 2017 Mr Stuart advised my Office that:

...further to Council's letter of 13 February 2017, Council received a returned mail envelope containing Council's acknowledgement letter of 16 December 2016 that was sent to the complainant Ms Neila.

The registered mail correspondence dated 6 February 2017 [referred to in paragraph 14] to Ms Neila has also not been collected from the post office.

5. On 6 February 2017 Mayor Ann Ferguson wrote to Ms Neila referring to Mr Stuart's letter dated 16 December 2016 and advised of the following:

As you have not provided any additional information in relation to the behavioural part of the complaint to Council I have determined it is not a valid complaint for the purposes of the Code of Conduct and I have dismissed this part of your complaint.

The Ombudsman may contact you in relation to your complaint regarding Part 3 of the [Code of Conduct] that he has been asked to investigate.

6. The council provided my Office with a copy of the letter dated 7 February 2017 from Mayor Ferguson to Mr Dominic Agresta, legal representative for Cr Hamilton, in which she confirmed the council's decision to dismiss aspects of Ms Neila's complaint alleging a breach of Part 2 of the Code of Conduct.

7. On 19 December 2016 Ms Andrea Malone, Director Legislation, Local Government Association SA advised the council of the outcome of its assessment of Ms Neila's complaint that was referred to the LGGP. In part, Ms Malone advised of the following outcome about the 'leaking of confidential information':

The issue of 'leaking confidential information', as alleged by [Ms Neila], is not a matter that falls into the remit of the [LGGP]. This issue should be referred to the Ombudsman.

8. I note that there has been speculation by Cr Hamilton and Mr David Leach, acting as advocate for Cr Hamilton with her authority, about the existence of Ms Neila. Mr Leach advised my Office that attempts to identify Ms Neila were unsuccessful because in their opinion, Ms Neila 'did not exist'. In support of his and Cr Hamilton's opinion, Mr Leach raised with my Office the following:

- Did [Mayor Ferguson] establish Margaret Neila was a real person prior to forwarding the complaint given that Margaret Neila did not supply a [sic] address, a full signature, a phone number, is not known by any person in the district, does not appear on any ASIC data base, electoral role, lands title database or any of several other regulatory databases.
- Has [Mayor Ferguson] informed the Ombudsman of our concerns about the veracity of Margaret Neila. [Mayor Ferguson] claims, in a letter to Dominic Agresta that she has made the Ombudsman aware of the lack of contact information for [Ms Neila].
- Margaret Neila does not appear on any electoral role in Australia, in fact there is no person in Australia on an electoral role with the surname Neila.

9. On 20 March 2017 my letter dated 3 February 2017 to Ms Neila was returned to my Office 'unclaimed'. Furthermore, the council advised my Office that its letter to Ms Neila dated 16 December 2016 was returned to the council. The council further advised that it had confirmed with the Littlehampton Post Office that its letter to Ms Neila dated 6 February 2017, sent via registered mail, remained unclaimed.

10. Whilst I acknowledge that the identity or existence of Ms Neila remains unclear, I have given consideration to the matter raised in the Courier newspaper article on 19 October 2016 by Ms Melissa Keogh in which Ms Keogh stated that at the public council meeting on 19 September 2016, during discussions under agenda item 13.4 about the council report 'Gawler Street Entrance Statement Update', Cr Hamilton was heard to have divulged information that was considered by Ms Keogh to be the subject of a confidentiality order. Therefore, I consider those issues raised by Ms Keogh are sufficient for me to conduct an own initiative investigation pursuant to section 13(2) of the Ombudsman Act of a potential breach of Part 3 of the Code of Conduct.

*The alleged breach of confidentiality*

11. In support of the complaint, Ms Neila provided a copy of an article by Ms Melissa Keogh, reporter for the Courier Newspaper, in which Ms Keogh stated that at the public council meeting on 19 September 2016, during discussions under agenda item 13.4 about the council report 'Gawler Street Entrance Statement Update', Cr Hamilton was heard to have divulged information that was considered by Ms Keogh to be the subject of a confidentiality order. Specifically, Ms Keogh stated in her newspaper article on 19 October 2016 the following:

The Mt Barker Council is considering building a multi-deck car park near Gawler Street to alleviate parking congestion in the growing town.

The council-owned site is at the corner of Stephen and Mann streets and is already used as an unofficial public parking space.

Plans for a multi-deck car park have been discussed behind closed doors by council staff and elected members since 2013.

The discussions have remained confidential but at a recent general council meeting - which was open to the public - Councillor Susan Hamilton let slip that Stephen Street was where the multi-level car park was likely to go.

Mr Stuart said the council was exploring a number of other locations for the multi-deck car park.

12. On 15 December 2016 Ms Keogh advised the council as follows:

In regards to the October 19 Courier article about the multi deck car park, the council meeting in question was September 19. Councillor Hamilton made the comments during discussions about the Gawler Street Entrance Statement Information report [agenda item 13.4].

13. I note from council documents that in 2013 the council began the process of seeking an 'Expression of Interest' (EOI) from property developers for the proposed council office accommodation and multi-level parking.
14. At the council meeting on 16 September 2013 council members considered the tabled EOI Report (EOI Report) prepared by Leedwell Strategic under agenda item 12.1 - Expressions of Interest for Office Accommodation and Multi-Storey Car Park (the Project). At that meeting, the EOI Report was discussed and the following motion was moved by then Councillor, Mr Robert Heath, that council:
1. Approves the commencement of the EOI (Stage 1) for Office Accommodation and a Multi Storey-Car Park
  2. Approves Stage 1 Assessment Panel Membership of Mayor Ann Ferguson (Chair), General Manager Corporate Services (David Peters), Manager Projects (David Morton) and one other Elected Member to be nominated.

3. Notes that it will receive a report with the Assessment Panel's recommendations on a proposed shortlist of proponents to be selected for Stage 2 Request for Proposals.
15. The EOI Report, which was not confidential at that stage, included Stephen Street as a possible site for the car park.
16. At the council meeting on 16 September 2013, the motion referred to under agenda item 12.1 was carried. At that meeting, council members voted to appoint Cr Hamilton '...as the fourth member of Stage 1 Assessment Panel'.
17. At the Special Council Meeting on 23 June 2014 council members considered agenda item 3.1 Confidential Item: Multi-Deck Car Park and Council Office Accommodation and resolved as follows:

That having considered Agenda Item 3.1 Multi-Deck Car Park and Council Office Accommodation in confidence under 90(2) and (3)(b) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the [Local Government Act] orders that the council report, related documents and all minutes be retained in confidence until a contract is in place or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.

18. At the council meetings on 1 September 2014 (agenda item 11.5) and 7 September 2015 (agenda item 12.1) the council resolved that the confidential orders for certain items, including those which relate to the Project, remain in place.
19. The council's register of 'Confidential Items 2003-September 2016' states that the information for agenda item Multi-Deck Car Park & Council Office Accommodation for 23 June 2014, reviewed by council on 5 September 2016, was to remain confidential for the following reasons:

#### **Confidential Order Details**

...

The Council is satisfied that pursuant to Section 90(3)(b) of the [Local Government Act], the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is:

- proposing to conduct business; and
- would prejudice the commercial position of the Council in that the information to be considered includes detailed plans and other financial information, the disclosure of which could prejudice the Council's commercial position during negotiations.

...the disclosure of the Council's commercial position may severely prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter and in relation to other contract negotiations.

#### **Item being kept confidential - Agenda/Attachment/Minutes**

Council report, related documents and all minutes be retained in confidence until a contract is in place or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.

#### **Reason regarding retention or recommend action to release**

the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is:

-proposing to conduct business; and would prejudice the commercial position of the Council in that the information to be considered includes detailed plans and other financial information, the disclosure of which could prejudice the Council's commercial position during negotiations.

#### Resolution Regarding Action

Until a contract is in place or such lesser period as determined by Chief Executive Officer

Review every 12 months.

20. On 13 February 2017 Mr Stuart advised my Office that:

The confidentiality order was not varied as part of any of these reviews.

As the confidentiality orders are regularly reviewed all Council Members are made aware of the Council resolutions that are still subject to a confidentiality order. If you [Ombudsman] are enquiring as to whether Councillor Hamilton was made aware after the Council meeting on 19 September 2016 where she is alleged to have disclosed the confidential matter - no she was not.

There is no transcript of the meeting on 19 September 2016. Council does record Council meetings but they are deleted once the minutes are completed, so there is no recording of the meeting of 19 September 2016.

21. On 14 February 2017 Mr Leach provided information to my Office about Cr Hamilton's role with the Mount Barker community and with the council including information about proposed council developments over the past 23 years. Mr Leach also provided a copy of the minutes for the council meeting on 20 October 2003, which included a copy of the released confidential items register, and a report from Mr Henry Inat, General Manager, Strategy for the council. At that meeting, the council considered Mr Inat's confidential report for agenda item 12.5 'Carparking within the Mount Barker Township'. This item remained subject to a confidentiality order from 20 October 2003 until lifted by the council on 6 September 2010. In his email, Mr Leach stated that

[Cr Hamilton] rejects the Part 3 allegations[sic] and we attach a copy of a released confidential minute, many years old detailing a multi story [sic] car park in the area mentioned in the Courier.

22. Minutes for the meeting of the council on 6 September 2010 show that Cr Hamilton was in attendance at the meeting during which council resolved to accept the Review of Confidential Reports (File 10/030/003) under agenda item 21.10. I note that the report included the matter referred to in paragraph 13 and identified as item 2 in the Confidential Items 2003-September 2016 register being 'Car Parking within the Township'. The register states that item 2 was released on 6 September 2010.
23. In his response to my letter to Cr Hamilton, Mr Dominic Agresta, solicitor acting for Cr Hamilton, provided responses to those questions raised in my letter dated 3 February 2017 about the alleged breach of confidentiality by Cr Hamilton.

- were you aware that at a special meeting on 19 June 2014 the council resolved to make a confidentiality order in relation to the report titled 'Multi-deck Car Park and Council Office Accommodation' (the report)?

'Yes.'

- did you divulge information about the report that was subject to the confidentiality order at a meeting of the council on 19 September 2016 or at any other meeting?

'No.'

- if so, why and in what context?

'N/A'

- do you consider that in disclosing information about the report that was subject to a confidentiality order you breached clause 3.3 of Part 3 of the Code of Conduct?

'N/A'

- any information relevant to the complaint that will assist with my investigation.

In relation to the last dot point, my belief is that the complaint made against me was malicious and made up, falsely, by a person or persons who are intimately aware of the affairs and activities of the Council, including confidential affairs, and it was a complaint made in an attempt to silence me in respect of my opposition to various projects proposed by the Council.

24. On 23 March 2017 Mr Stuart advised my Office as follows:

- 1) ...I did not pick up on the specifics of the comments made by Cr Hamilton but soon after I was aware that her comments provoked some reaction in the gallery.
- 2) On 16 September 2013 there was a public Council report 'Expressions of Interest for Office Accommodation and Multi-Storey Car Park' exploring the possibility of a Council office and car park in the town centre. The report detailed a precinct area that included Stephen Street (amongst others). The fact that Stephen Street would have been a consideration is not confidential. The report of 23 June 2014 which remains confidential expanded on the possible negotiations related to this site. Cr Hamilton's comments do not reflect a resolution of Council, but speculate on a possibility which could have been ascertained from reading public reports in 2013.  
On balance I do not consider this a breach.
- 3) As stated in 1) I was not aware that Cr Hamilton may have breached confidentiality. Subsequently (days later) I was questioned by The Courier reporter and the alleged breach was proposed to me by the reporter prior to the article on 19 October 2016. I have reflected on the reporter's assertion and the article in the Courier and this process has informed my response to question 2 above.
- 4) I was not approached by other Council Members regarding a possible breach of a confidentiality order.

26 I note that the evidence tendered in support of this complaint is the article in the Courier newspaper by Ms Keogh which included Ms Keogh's opinion that comments made by Cr Hamilton during discussions about agenda item 13.4 at the meeting of the council on 19 September 2016 were about a matter that was subject to a council confidentiality order. Therefore, in consideration of this evidence, I sought from Ms Keogh a response to the following questions about her recollection and opinion of the events at the council meeting on 19 September 2016 and which thereafter, formed the basis of her article in the Courier newspaper:

- 1) Do you know at which meeting of the council Cr Hamilton was alleged to have breached the confidentiality order?

*September 19, 2016.*

- 2) Do you recall what was being discussed by the council members at the time it was alleged that Cr Hamilton breached the confidentiality order?

*Councillors were discussing item 13.4 Gawler Street Entrance Statement Update, which involved a new entrance statement and upgraded pedestrian crossing at the intersection of Gawler Street and Adelaide Road, Mt Barker. Councillors were talking in favor of the project, and also brought up the car park at the corner of Gawler Street and Adelaide Road, owned by the Gilbert family.*

- 3) Did you, at the time Cr Hamilton made those comments, consider she breached a confidentiality order or did someone else alert you to this?

*Yes, I did believe that Cr Hamilton had breached a confidentiality order because I thought that discussions about a proposed car park going behind the town hall on Stephen Street were confidential.*

*I interviewed CEO Andrew Stuart for the Courier story in question and he said that Cr Hamilton had been "a bit naughty" for saying what she said at the meeting. Mr Stuart's comment assured me that Cr Hamilton's comment was information that was not supposed to be known by the public.*

- 4) Are you aware of what information was subject to the confidentiality order?

*I am aware that a multi-deck car park and office accommodation report was/is subject to confidentiality. I am aware that the car parking topic is sensitive information because it involves past and/or present discussions between the council and developers.*

- 5) Are you aware that there was certain information about a proposed multi storey car park within Mt Barker that was and still is in the public domain on the council's website including the proposed location which included Stephen Street?

*No, I was not aware of this information prior to the story in question going to print. However, I learnt much later that the possibility of a car park going behind the Barker Hotel or the town hall was no big secret, and that this information had been lifted from the confidentiality order years ago.*

## Relevant law

- 27 Section 90 of the Local Government Act 1999 provides:

Meetings to be held in public except in special circumstances

...

- (2) A council or council committee may order that the public be excluded from attendance at a meeting to the extent (and only to the extent) that the council or council committee considers it to be necessary and appropriate to act in a meeting closed to the public in order to receive, discuss or consider in confidence any information or matter listed in subsection (3) (after taking into account any relevant consideration under that subsection).
- (3) The following information and matters are listed for the purposes of subsection (2):

...

(a) Information the disclosure of which-

- (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
- (ii) would, on balance, be contrary to the public interest;

(c)-(n) ...

(4) - (9) ...

28 Section 91 of the Local Government Act 1999 provides:

Minutes and release of documents

(1)-(6) ...

(7) However, subsections (4),(5) and (6) do not apply to a document or part of a document if -

- (a) the document or part relates to a matter dealt with by the council or council committee on a confidential basis under Part 3; and
- (b) the council or council committee orders that the document or part be kept confidential.

29 Clause 3.3 of the Code of Conduct provides that a council member must:

Not release or divulge information that the Council has ordered be kept confidential, or that the Council member should reasonably know is information that is confidential, including information that is considered by Council in confidence.

**Whether Councillor Hamilton breached Part 3 of the Code of Conduct for Council Members by publicly divulging council information subject to a confidentiality order.**

30 On 24 February 2017 Cr Hamilton, through her solicitor, Mr Dominic Agresta, advised my Office that she denies disclosing confidential information. While that response was unhelpful in its brevity, Cr Hamilton has maintained to my investigator that she never disclosed confidential information.

31 I note that at a special meeting on 23 June 2014 the council resolved to place a confidentiality order over the report tabled under agenda item 3.1. Furthermore, there is no dispute that the report has remained confidential, for the reasons set out in paragraphs 16 and 17, since 23 June 2014 and was subject to confidentiality from the date of the council meeting on 19 September 2016.

32 I have also considered that on 5 September 2016, being 14 days prior to the meeting during which Cr Hamilton is alleged to have breached the confidentiality order, the council reviewed those items that were subject to a confidentiality order and resolved that certain items should remain confidential, including the item about the Multi-Deck Car Park & Office Accommodation.

33 Mr Stuart further advised my Office that 'Council Members are made [during the annual review of the confidential items register] aware of the Council resolutions that are still subject to a confidentiality order.' It is therefore reasonable to assume that if Cr Hamilton did divulge information that was subject to a confidentiality order, she would have done so in full knowledge that the item was still subject to that order.


- 34 In considering all submissions made to the council and to my Office about the allegations against Cr Hamilton, I consider that there is information available to the public via the council's website that makes reference to a proposed project about a car park in the township of Mount Barker and which is not subject to the confidentiality order. This view is supported by Mr Stuart who, in his response to my Office, states:
- Cr Hamilton's comments do not reflect a resolution of Council but speculate on a possibility which could have been ascertained from reading public reports in 2013.
- 35 In that regard, I note that the EOI Report (tabled at the meeting of the council on 16 September 2013) provided details about an Expression of Interest for Office Accommodation and Multi-Storey Car Park and for which, listed four potential sites, including Stephen Street and Gawler Street. Gawler Street was the subject of discussions under council meeting agenda item 13.4 during which Ms Keogh and Ms Neila allege Cr Hamilton divulged information that was subject to a confidentiality order.
- 36 On 8 June 2017 Cr Hamilton advised my Office that although she could not remember exactly what she said during discussions about agenda item 13.1, she agreed that what she said at the meeting was as 'printed in the Courier and what appears in the Council minutes.' Furthermore, Cr Hamilton denied breaching confidentiality in anything that she said about the car park and queried why, if she did break confidentiality, the CEO did not raise it at the time, or soon after. In support, Cr Hamilton referred to the Courier newspaper article which 'shows myself and Andrew Stuart said pretty much the same thing about the car park.'
- 37 I note that Ms Keogh told my investigator that Mr Stuart said that 'Cr Hamilton had been a "bit naughty" for saying what she said at the meeting.' That said, I have also considered Mr Stuart's response to my Office whereby he states the 'fact that Stephen Street would have been a consideration [as a likely site for the car park] is not confidential.' The confidential council report of 23 June 2014 'expanded on the possible negotiations related to this site'.
- 38 I also note that Mr Stuart, in his response to my Office, stated that he was not aware that Cr Hamilton may have breached confidentiality and that he had 'reflected on [Ms Keogh's] assertion and the article in the Courier and this process has informed my response' that 'Stephen Street would have been a consideration is not confidential' and that the report of 23 June 2014 'expanded on the possible negotiations related to this site'. Cr Hamilton's comments, in Mr Stuart's view, 'speculate on a possibility which could have been ascertained from reading public reports in 2013'.
- 39 In weighing the evidence before me, I note the following:
- On the one hand:
- Ms Keogh suggests that Cr Hamilton disclosed Stephen Street as a potential site
  - Cr Hamilton acknowledged that the Courier newspaper article reported what she said at the meeting
  - Ms Keogh states that Mr Stuart acknowledges that this should not have been disclosed.
- On the other hand:
- both Cr Hamilton and Mr Stuart deny that Cr Hamilton disclosed confidential information
  - the fact that Stephen Street was a potential site is not confidential (given that it was disclosed in the EOI and EOI Report)
  - the council had not resolved that Stephen Street was the site for the council office and multi-storey car park

- Ms Keogh was not aware that information about a multi storey car park within Mount Barker (including Stephen Street as a location) was and still is in the public domain on the council's website
- Ms Keogh is now aware, since the Courier newspaper article, that information about the locality of a car park was no secret and that the information was no longer confidential.

### Opinion

While I consider that Cr Hamilton should have exercised caution during discussions about the matter before council, I am not satisfied on the *Briginshaw* standard, that she disclosed information that was not already in the public domain.

Therefore, in light of the above, I consider that Cr Hamilton did not breach clause 3.3 of Part 3 of the Code of Conduct, and did not act in a manner that was unlawful within the meaning of section 25(1)(a) of the Ombudsman Act.

  
Wayne Lines  
**SA OMBUDSMAN**

12 July 2017

RELEASED

DC Mt Barker  
File No: **FOL/15/1465**  
**Perm 15/20**  
13 DEC 2016

Doc. No: \_\_\_\_\_  
Asses No: \_\_\_\_\_  
Parcel No: \_\_\_\_\_  
Prop. No: \_\_\_\_\_

**SCANNED**

Attachment 2 to Item 18.3

Ms Margaret Neila  
Littlehampton  
District Council of Mount Barker  
SA 5250

December 8, 2016

Mr Andrew Stuart Chief Executive Officer  
• Mayor Ann Ferguson  
Local Government Centre  
Mount Barker Homemaker Centre  
PO BOX 54, Mount Barker SA 5251

Dear Mr Stuart & Mayor Ferguson

**RE: Behavioural issues concerning Cr. Susan Hamilton  
Formal Complaint under Code of Conduct under Clause 2.17 of the  
Code of Conduct for Council Members**

For the past few years I have visited this beautiful country setting and stay for an average 3-4 months at a time. I was lucky enough to inherit a property from an aunt some years passed and I have made the most of my time.

I have watched with amazement as the District of Mount Barker has grown with its community. I see first hand the massive investment, both from a public and private perspective and how it is adding to the local prosperity and future growth of the area. The Council is to be commended for its direction and efforts to improve and future proof the area. The area is flourishing. Well almost.

There do, however, appear to be some damaging forces that are having a negative impact on the future prosperity that may be enjoyed by the community at large. I understand that there are over 30,000 people that live in this community and yet an extraordinary minute minority appears to be setting the scene for the future (un)development of the community, which seems patently wrong.

**Purpose of my letter – lodging of a formal complaint**

I find myself writing this letter of complaint owing to a heightened sense of awareness as to the goings on of Council and in particular one particular elected member who appears to be fuelled the media circus. I am concerned that there are inappropriate measures being taken to manage the behavior and keep Cr.s in check, at any level and feel that left unchecked the behavior will just deteriorate further still.

For a long time, I have been party to conversations in the local community that suggested that Cr. Hamilton was something of a 'rogue Cr.', eager to put herself out there as someone who is not afraid to push the bureaucratic boundaries, siding with select members of the community on issues close to her heart... and theirs. I tend to admire those qualities in people so long as there is observance of the rules of democracy, there are procedures which dictate the proper administration of local government, however, Cr Hamilton appears to be going way too far recently and I feel something must be done.

I will admit never gave much thought to the possibility that the rumours were actually true. I am aware of the published history of investigations involving Cr.s over the years at this Council as well as adjoining councils, in South Australia and interstate.

I was also made aware by some locals of an investigation involving the former Deputy Mayor, Trevor Corbell that was handled by the Governance Panel at the Local Government Association in Adelaide. Mr Corbell has since left local government and this State. I understand he was acquitted of the allegations made against him by the Office of the Ombudsman. I therefore formed the view that *if* Cr. Hamilton was doing something wrong, it would be tackled and handled in the appropriate way.

I am certain that each of you is aware of the headlines that have been recently making the news, with the assistance of Cr Hamilton, in the local newspaper, the 'Courier'. It has at least been keeping the journalist busy. I presume that I am not the only one that has raised concerns with regard to the shocking publicised behaviour of Cr Hamilton. Other members of the community, the staff and even other elected members must be taking the necessary corrective action to address this behaviour. Reading the Code of Conduct, it is clear that for the Council Members there is in fact a positive obligation to report wrongdoings under the Code (*Clause 2.16*), a failure to report such conduct is in fact a breach of the Code itself.

By virtue of one of the more recent media reports, I am perhaps more disappointed that one Cr. could look so gloating in an image alongside others from the minority in the community where the accompanying prose is attempting to coral the support of the community on issues that are intended to be of particular interest and concern; anti-development. What appears to be lost on those busily attempting to 'fight the battle' is that there is potentially more to lose in the long-term. Many of the rural communities across Australia are suffering 'brain-drain'. The younger more promising members of the community see nothing to keep them anchored to the area they have grown up in owing to a lack of progress that inspires investment in the district. This seems to be where the aging mind of Cr Hamilton seems to be. That forked tongue can be quite harsh so it will come as little surprise to many when the bitter realization of what she has wholesomely supported comes to pass. Fighting what is best for the community, having won the compromise, is actually a loss not a win. The community ends up losing out on improvements and developments where confidential information is 'leaked', twisted or thwarted to suit the purposes of novice politicians.

Even more alarming is the possibility that there was a breach of confidentiality (reported in the Courier), a lack of adherence to rules and guidelines and a wilful neglect of duty by Cr Hamilton. This is behavior that cannot go unchallenged. Cr Hamilton must, like all others, be accountable for her transgressions. This is what the new Code of Conduct was introduced for. Why should it apply to some Cr.s and not others.

To date, I have not seen any report or media alert to suggest that Cr Hamilton is under investigation, has apologized for her wanton discretions or has undertaken training at her own cost to address her casual fragrant breaches of the legislative provisions in place to manage local government administrative acts.

**Summary of issues from my understanding of the Code of Conduct**

I refer to the introduction to the Code of Conduct, which provides that "*Council members must comply with the provisions of this Code in carrying out their functions as public officials. It is the personal responsibility of Council members to ensure that they are familiar with, and comply with, the standards in the Code at all times*". In the circumstances, I note that Cr. Hamilton has been quoted in her capacity as an elected member and not a situation where a council member is not carrying out her functions as a public official.

For example, on October 19, 2016, at the full meeting of Council on Monday 17 October Cr. Hamilton's outburst in connection with the proposed multistory carpark, which included confidential information, made the front page of the Courier. I am working on the assumption that the obvious breach of the Code of Conduct for Council Members under Part 3 of the said Code is being investigated or is in the process of being referred for investigation by the Office of the Ombudsman.

Then more recently, as if Cr. Hamilton would not have learned from her experiences in the weeks beforehand, she is pictured gloating with two other vocal members of the community about a development that is earmarked for the future prosperity of our community. This is essentially a public private partnership. A development that will increase the quality of life and amenity for the locals in that area as well as users and passers by. The language quoted as Cr. Hamilton's is simply shocking. That is not how an elected representative is expected to act. The Council is a democracy and is expected to operate and perform as such. If Cr. Hamilton had an issue with the development then the Council chamber is the place to vent that attitude, not air dirty linen in the public domain with a view to canvassing support for the lack luster arguments mounted against the proposed development. I personally found Cr. Hamilton's attack on the Chief Executive Officer to be reprehensible and without merit. This Council area under the direction and management of its current CEO and the Mayor has been outstanding. We have brokered relations with other Councils, the State and the Federal government, contractors, and even more recently China! The District Council of Mount Barker has gone from strength to strength. Mount Barker is, according to the statistics available, one of the fastest growing Councils, pioneering development and infrastructure in the whole of the State. All that, and yet there is one Councillor who, nearing the end of her existence on this earth, is damaging the future prosperity of the area. I could live with the political ramifications of poor decision making but for the flagrant breaches of the local government act and the Code of Conduct.

I was astonished to discover that a veteran of the Council with some 14 years experience in serving the community could 'leak' such sensitive information.

**Which parts of the relevant legislative provisions apply to this type of behavior?**

The relevant legislative provisions that I believe apply to Cr Hamilton's predicament are set out below. I infer this from my reading of reported investigations from the Office of the Ombudsman in South Australia and also Victoria (where I spend the balance of my year) as they refer to councillors:

Section 62(4) of the Local Government Act in South Australia provides:

*A member of a council must not, whether within or outside the State, make improper use of his or her position as a member of the council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the council.*

It is my belief that Cr Hamilton has clearly crossed this line.

Under the Code of Conduct, Council members must:

**General behaviour**

- 2.1 Show commitment and discharge duties conscientiously.
- 2.2 Act in a way that generates community trust and confidence in the Council.
- 2.3 Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.
- 2.4 Show respect for others if making comments publicly.
- 2.5 Ensure that personal comments to the media or other public comments, on Council decisions and other matters, clearly indicate that it is a private view, and not that of the Council.

**Issue:**

- the press reports do not reflect well on Council, the CEO of the Council nor the Council generally. Each of the requirements of the Code of Conduct appear to be breached by the recent actions, that I and the readers of the local newspaper are aware of. The actions of Cr Hamilton demonstrate wanton disregard for authority, office or regulation.

**Responsibilities as a member of Council**

- 2.6 Comply with all Council policies, codes and resolutions.
- 2.7 Deal with information received in their capacity as Council members in a responsible manner.
- 2.8 Endeavour to provide accurate information to the Council and to the public at all times.

**Issue:**

- leaks of information, breaches of the Council policy on towing the 'democratic line', blabbing about confidential motions of the Council in an open forum.
- The possibility that Cr Hamilton has been breaching confidential information in the community owing to the rumours that have been circulating generally
- The lack of information that the public needs to know about issues affecting the future prosperity of the community. The Glebe issue is one such issue. There is clearly a divided council. The issues for the community need to be understood. What is the future of the land if the plans do not go ahead?

*What will happen to the land and its future use? What enjoyment will the children and other members of the community have? What level of amenity will be provided and maintained? Cr Hamilton has been very silent on these questions as I am sure she does not know the answers. As I mentioned above, I am all for political activism but it has to be in the right circumstances when all the facts are known.*

*Relationship with fellow Council Members*

*2.9 Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.*

*2.10 Not bully or harass other Council members.*

**Issue:**

*- I am aware of the 'forked tongue' that Cr Hamilton has. Many members of the community are aware of what Cr Hamilton has to say about some of her fellow Council Members. It clearly can be said to fall into the category of bullying or harassment.*

*Relationship with Council staff*

*2.11 Not bully or harass Council staff.*

**Issue:**

- the recent Courier reports demonstrate the lack of respect and scathing attacks on the Chief Executive Officer. In the absence of additional information, I am not aware if any of the Council's staff have issued formal complaints concerning Cr Hamilton's harassment of their CEO as there been nothing reported in Council's minutes since the newspaper reports.*

Clause 3.4 of Part 3 of the Code of Conduct provides:

*Council Members must:*

*...*

- 3.4 Not exercise or perform, or purport to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform.*

**Issue:**

- speaking to the media in her capacity as Cr. where those views are not the official views of the Council at the material time.*

Clause 3.6 of Part 3 of the Code of Conduct provides:

*Council Members must:*

*...*

- 3.1 Act honestly at all times in the performance and discharge of their official functions and duties;*
- 3.2 Perform and discharge their official functions and duties with reasonable care and diligence at all times;*
- 3.3 Not release or divulge information that the Council has ordered be kept confidential, or that the Council member should reasonably know is information that is confidential, including information*

- that is considered by Council in confidence;
- 3.6 Ensure that relationships with external parties cannot amount to interference by improper influence, affecting judgement, decisions and /or actions.

**Issue:**

- Confidentiality was clearly breached by Cr Hamilton, as reported in the Courier. I am not aware if that will have commercial consequences for the Council (and consequently its ratepayers).

**Conclusion**

I would like to think that the District Council of Mount Barker is capable of doing the right thing at all times. Staff, as well as councillors, have a positive duty to act in accordance with the legislative framework in place in this State. No one is immune or above the law.

I received a faxed copy of the Courier this morning. Much of the recent 'back room' politics have dominated the pages, front to back. The Courier acknowledges the risk that this Council has taken having been persuaded by Cr Hamilton and her utterings. I can only hope the community can forgive such trespassing.

I pray that the necessary actions take place and that proper investigation is undertaken to deal with the formal accusations and allegations against Cr Hamilton that have been outlined here but also confirmed in print in the media. I have faith in our Council and believe that the democratic system can be restored and operate once again within the confines of the legislative scheme governing its operation and administration.

Yours faithfully



Margaret Neila

**CC:**

Cr Roger Irvine  
Cr Greg Morrison  
Cr Carol Bailey, BEM  
Cr Lindsay Campbell, CSM, JP  
Cr Ian Grosser  
Cr Trevor Keen  
Cr Jeff Bettcher, BBus, GDipAcct, FCPA  
Cr Susan Hamilton, BVC, GDipFA  
Cr Harry Seager  
Cr Debs Buchmann

<b>18.3</b>	<b>REPORT TITLE:</b>	<b>CONFIDENTIAL - CODE OF CONDUCT INVESTIGATION BY THE OMBUDSMAN</b>
	<b>DATE OF MEETING:</b>	<b>7 AUGUST 2017</b>
	<b>FILE NUMBER:</b>	<b>DOC/17/70916</b>
	<b>ATTACHMENTS:</b>	<b>1- DOC/17/70092 - FINAL REPORT BY THE OMBUDSMAN 2 - DOC/16/125047 - LETTER OF COMPLAINT</b>

**Section 90 (3) (g) Order**

Moved Councillor Bailey that Council:

1. Pursuant to Section 90(3)(g)  
Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except Chief Executive Officer, Deputy Chief Executive Officer/General Manager Infrastructure and Projects, General Manager Council Services, General Manager Planning and Development, General Manager Corporate Services, Minute Secretary, Risk and Governance Officer be excluded from attendance at the meeting for Agenda Item Confidential – Code of Conduct Investigation by the Ombudsman.

The Council is satisfied that pursuant to Section 90(3)(g) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information concerning matters that must be considered in confidence in order to ensure that the Council does not:

- breach any law, order or direction of a court or tribunal constituted by law;
- breach any duty of confidence, or
- breach any other legal obligation or duty

in that the Ombudsman's Final Report has not been made public by the Ombudsman.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the Ombudsman's Final Report contains reference to third parties.

Seconded Councillor Morrison

CARRIED  
OM20170807.20

Moved Councillor Morrison:

2. That Council advise the Ombudsman and Cr Hamilton that Council will only place the Final Report and letter of complaint on its website if and when the Ombudsman determines to place it on the Ombudsman SA and/or AustLII websites and that unless and until this occurs, Council will make public the findings as outlined in this Council agenda item but not the entire attached Ombudsman's Final Report.
3. Note that Cr Hamilton has been advised by the Ombudsman that as one of the parties involved she can do as she sees fit with the Ombudsman's Final Report. Therefore any resolution of Council to keep the Final Report confidential will have no legal or practical effect upon Cr Hamilton.
4. Note that the allegation that Cr Hamilton had breached Part 2 of the Code of Conduct for Council Members was dismissed as there was insufficient information supplied to conduct an investigation.

Seconded Councillor Seager

CARRIED  
OM20170807.21

Moved Councillor Buchmann:

5. Pursuant to Section 91(7)  
That having considered Agenda Item Code of Conduct Investigation by the Ombudsman in confidence under 90(2) and 3(g) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the Attachment - Final Report from the Ombudsman Own Initiative Investigation of Complaint and the letter of complaint about Cr Susan Hamilton remain confidential and not be placed on Council's website until or if the Ombudsman has determined to publicly release the report on his website or the AustLII website, or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.

Seconded Councillor Morrison

CARRIED  
OM20170807.22

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MEETING DECLARED CLOSED AT 9.16 PM

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MAYOR

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DATE