CONFIDENTIAL ITEMS 2003 – JUNE 2013

#	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
25	15 Jun 09	Ombudsman's Report	**Reason:** S 90(3)(a) Information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any persons (living or dead) 2.Pursuant to Section 91(7) That having considered Agenda Item 16.2, in confidence under 90(2) and 3(a) of the Local Government Act 1999, the Council pursuant to Section 91(7)(b) of the Act orders that the reports, attachments and all minutes regarding the Ombudsman's reports dated: 20 October 2008 15 December 2008 15 June 2009 be retained in confidence until the staff members are no longer employed by Council and that this order be reviewed every 12 months.	Discussion, Agenda, Attachment & Minutes **(other than Code documents & Minutes)**	Matter relates to personal affairs of a staff member. **Under delegated authority release attachments Policy document – Code of Conduct Employees**	Be retained in confidence until the staff members are no longer employed by Council and that this order be reviewed every 12 months. The Chief Executive Officer be delegated the authority to revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked. **SUPERSEDED – Refer to Document #75**	17 Jun 13	3 Sept 13	On web 29/8/12 – Policy Document attach only Minute released Report item released Omb report part released Letter to Omb part released 17/6/13 on web 20/6/13

CONFIDENTIAL ITEMS 2003 – SEPTEMBER 2011

#	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
25	15 Jun 09	Ombudsman's Report	Reason: S 90(3)(a) Information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any persons (living or dead) 2.Pursuant to Section 91(7) That having considered Agenda Item 16.2, in confidence under 90(2) and 3(a) of the Local Government Act 1999, the Council pursuant to Section 91(7)(b) of the Act orders that the reports, attachments and all minutes regarding the Ombudsman's reports dated: 20 October 2008 15 December 2008, 15 June 2009 be retained in confidence until the staff members are no longer employed by Council and that this order be reviewed every 12 months.	Discussion, Agenda, Attachment **(other than Code documents) & Minutes**	Matter relates to personal affairs of a staff member. **Under delegated authority release attachments Policy document – Code of Conduct for Employees**	Be retained in confidence until the staff members are no longer employed by Council and that this order be reviewed every 12 months. The Chief Executive Officer be delegated the authority to revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked.	5 Sept 11	4 Sept 12	29/8/12 Policy Doc Att only.

4.5 TITLE: Code of Conduct for Employees

RESPONSIBLE DEPARTMENT:	CEO
ASSOCIATED PROCEDURE(S) AND POLICY(S):	Disciplinary and Termination of Employment Procedure Media
ASSOCIATED LAW(S) AND ACT(S):	Section 110 of the Local Government Act 1999 Criminal Law Consolidated Act 1935
REFERENCE(S):	Local Government Association HRM Code of Conduct Guidelines
ASSOCIATED DELEGATION(S):	
DATE OF LAST REVIEW:	October 2008

1 Introduction

This Code of Conduct is a public declaration of the principles of good conduct and standards of behavior that the District Council of Mount Barker have decided it's community should reasonably expect Council employees to demonstrate in the performance of their duties as a Public Officer, and in the representation of the Council.

The codes and standards contained in this document are developed in accordance with Section 110 of the Local Government Act, the Criminal Law Consolidated Act 1935 and other relevant legislation, Policies and Procedures, and are in addition to any statutory requirement of the Local Government Act 1999, Industrial Awards, Enterprise Agreements and other relevant Acts, Regulations, and Codes of Practice that apply to and govern public responsibilities and duties of the Local Government Industry.

All employees are required to comply with the provisions of this code.

Failure to comply with the Code of Conduct requirements may result in disciplinary action (as per Disciplinary and Termination of Employment Procedure).

2 Our Approach

Strategic Direction

Our Values
Council aims to achieve a sense of mutual respect by focusing on collective outcomes to deliver quality services to the community. We embrace the following values on a daily basis:

- Accountability and transparency
- Respect for diversity
- Delivery of quality customer service
- Enriching the standard of living
- Best work practice
- Commitment to social inclusion
- Listening to community needs
- Protection and development of natural and built environments

The general duty of Council employees is to act honestly and with reasonable care and diligence in the performance and discharge of their roles and responsibilities to generate community trust and confidence in them as individuals and enhance the role and image of the Council and Local Government generally.

3 Scope and Objectives

The requirements within this Code of Conduct extends to all employees engaged to provide services on behalf of The District Council of Mount Barker. In addition to all relevant legislative requirements, employees of the District Council of Mount Barker recognise the requirements of this Code of Conduct as the standards that will be adopted in the performance of their functions and duties.

This Code:

- informs all parties of their rights and obligations.
- identifies standards of behaviour.

4 Definition(s)

'Employee' – a person engaged directly with Council to provide a service on behalf of Council. This includes paid employees, volunteers and casual staff. For the purpose of this Code the definition of Employee will also encompass 'Contractor' - the provider of physical, managerial, administrative or consultancy tasks and/or the provision of machinery, equipment and associated goods.

'Resources' – all property of Council including consumables, plant (eg vehicles), equipment (eg computers) and facilities (eg internet, telephones).

'Gift' – token received to a value greater than $50.00.

'Benefit' – any immediate or future gain received for completing the duties of your office or position, includes vouchers, invitations, discounts, financial reward.

5 Key Principles

According to the law and this Code, Council employees must act in a fair, honest and professional manner in their dealings with individuals and organisations.

BEHAVIOUR
In undertaking their duties employees will:

- exhibit reasonable, just and non discriminatory behaviour in all aspects of carrying out their roles and responsibilities.
- behave in a manner that maintains and enhances the image of the Council and does not reflect adversely on the Council.
- provide accurate, complete, unbiased and professional responses to all reasonable requests for information.
- always comply with Equal Opportunity legislation.
- undertake their duties impartially, without fear or favour.
- act fully and promptly on all policies and decisions of Council, displaying respect for the decisions of the Council.
- willingly obey all lawful and reasonable work instructions (if you believe a Council decision or work instruction may be unlawful, speak to the Chief Executive Officer).
- contribute to the effectiveness and efficiency of activities and service delivery for which they are responsible or contribute.
- display courteous and sensitive behavior that does not discriminate against people or cause offence and embarrassment.

PERSONAL BENEFIT

Employees must not seek or accept:

- any financial or other benefit for completing the duties of office or position.
- any benefit for a friend or close associate from any other person who wants to do business with Council including gifts, hospitality, discount or free travel or any other benefit, whether it is for now or some time in the future. It is essential that employees immediately advise Council or the Chief Executive Officer if offered any such gift, reward or benefit.

Employees will:

- properly and responsibly use Council resources (including facilities, equipment, money or employees), avoiding waste, damage and misuse – following policy and/or procedure where relevant.
- ensure that travel, accommodation and meal expenses claimed relate directly to Council business.
- not use any information obtained through work with Council for personal or financial gain. In particular employees must not make investments or other business dealings based on confidential information that might give the employee or someone they know an unfair advantage.

If refusal of a gift would cause embarrassment, the gift can be accepted and given to Council to determine distribution.

INFORMATION, CONFIDENTIALITY AND CONFLICT OF INTEREST

Information obtained by employees in the course of their duties and functions must be respected and used in a careful and prudent manner.

All intellectual property developed or enhanced through the course of employment relationship with The District Council of Mount Barker, either through the use of resources or during hours of work will remain the property of The District Council of Mount Barker.

Employees must:

- obey the laws dealing with conflict of interest (Conflict of Interest, Local Government Act 1999 Chapter 5 Part 4 and Chapter 7 Part 4).

- respect and maintain confidentiality.
- not make investments or other business dealings based on confidential information that might give the employee or someone known to the employee an unfair advantage. It is illegal for employees to use any information obtained through your work with Council for personal or financial gain.
- reveal any financial interests in contracts being negotiated by either the employee or someone else on their behalf on any land, building or service within the district.
- not make comments to the media unless instructed by the CEO or General Manager (refer to Council's Media Policy).
- not talk outside of work about Council business.
- complete 'Primary or Ordinary Return' document available from Governance Officer
- declare interests, including if hold office in interest groups involved in local politics within Council's area, as they occur to their Manager in writing.
- accurately maintain records.

CORPORATE OBLIGATIONS

Council employees will seek to achieve a team approach in an environment of mutual respect, trust, and acceptance of their different roles in achieving the Council's objectives.

Employees will:

- facilitate mature and constructive working relationships based on mutual trust and respect.
- conduct working relationships with courtesy and respect, avoiding any conduct or behaviour that may cause offence or embarrassment to others.
- accept and respect the different but complementary roles in achieving the Council's objectives.
- respect Elected Members' roles in policy and planning and the employees' role in providing professional opinion, guidance and expertise.

6 Compliance with this Code of Conduct.

All employees are required to comply with the provisions of this Code.

- Questions of compliance raised by employees or the community regarding the Code will be considered by the CEO or his/her nominee.
- Employees are entitled to representation in the consideration of a question of non-compliance against them and investigation and management of the matter will have regard to the principles of fairness, equity and natural justice.
- Investigations undertaken regarding compliance with the Code will be kept confidential.
- The CEO has responsibility for ensuring compliance with the Code occurs.

The consideration of questions raised regarding compliance with the Code by the CEO may need to be reflected in a different manner, for example:

- If a question of compliance with the Code by the CEO is raised the Presiding Member will determine, with Council, the manner in which to address the matter. Where Council or the Presiding Officer or a Committee of Council addresses the matter, principles of fairness, equity and natural justice will apply and the matter will be handled confidentially.

7 Availability of Code

This Code shall be provided to all employees of The District Council of Mount Barker via the intranet and the Council's Internet site www.dcmtbarker.sa.gov.au

Members of the public may inspect this Code of Conduct for Council Employees at the District Council of Mount Barker Local Government Centre located at 6 Dutton Road, Mount Barker and, on payment of a fee obtain a copy.

8 Officer Responsible for The Code of Conduct

Any enquiries in relation to this Code of Conduct should be directed to General Manager Corporate.

9 Statement of adoption

This Code of Conduct was adopted on October 2008.

10 Review of the Code of Conduct

This Code of Conduct will be reviewed by the District Council of Mount Barker in consultation with employees.

CONFIDENTIAL ITEMS 2003 – JUNE 2013

#	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
75	17 June 2013	Review of Confidential Orders Associated with Ombudsman's Report provided to Council on 15 June 2009	Section 90 (3) (a) Order 1. Pursuant to Section 90(3)(a) Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer, General Manager Corporate Services, General Manager Council Services, General Manager Infrastructure & Projects, Minute Secretary and the Risk and Governance Officer, be excluded from attendance at the meeting for Agenda Item 16.5 Confidential Report – Review of Confidential Orders Association with the Code of Conduct Report 15 June 2009. The Council is satisfied that pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of staff members and complainants in that details of staff performance and personal details of residents' complaints will be discussed. 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 majority of staff subject to the report still work with Council and the information relates to their performance; and also includes matters personal to the complainants and will be	Redacted information as shown remaining confidential: Attachment 3 – Ombudsman investigation report; and Attachment 4 – Mayor's response to Ombudsman's report. Attachment 3 – page 231 at 1.4.2.4 and page 234 at 3.7.1.5 be amended to redact the identity of individual.	The redacted information within attachment 3 & attachment 4 be retained in confidence until relevant staff are no longer employed by Council or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.	Release: Attachment 1 - Council Minute 117.2 dated 15 June 2009; Attachment 2 - Council report 17.2 15 June 2009 'Confidential Ombudsman Report' Release with redacted information as shown remaining confidential: Attachment 3 – Ombudsman investigation report with redactions; Attachment 4 – Mayor's response to Ombudsman's report with redactions. Attachment 3 – page 231 at 1.4.2.4 and	17 Jun 13	2 Sep 13	Att 1 released Att 2 released Att 3 part released Att 4 part released 17/6/13 on web 20/6/13

CONFIDENTIAL ITEMS 2003 – JUNE 2013

#	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
			discussed. Section 91(7) Order Pursuant to Section 91(7) That having considered Agenda Item Confidential Report – Review of Confidential Orders Association with the Code of Conduct Report 15 June 2009 in confidence under 90(2) and 3(a) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that: - The redacted information within Attachment - Ombudsman investigation report (attachment 3 to this report) ; - The redacted information within Attachment – Mayor's response to the Ombudsman's report (attachment 4 to this report) be retained in confidence until relevant staff are no longer employed by Council or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.			page 234 at 3.7.1.5 be amended to redact the identity of individual.			

- The redacted parts of the letter from the Council to the Ombudsman dated 14 November 2008 (attachment 3 to this report)

be retained in confidence the life of the confidential agreement; and until all staff members are no longer employed with Council or such lesser period as may be determined by the Chief Executive Officer; and that this order be reviewed every 12 months.

Seconded Councillor Irvine and CARRIED

100.11 REPORT TITLE: CONFIDENTIAL REPORT – REVIEW OF CONFIDENTIAL ORDERS ASSOCIATED WITH AN OMBUDSMAN REPORT PROVIDED TO COUNCIL ON 15 JUNE 2009
DATE OF MEETING: 17 JUNE 2013
FILE NUMBER: 13/046279

Moved Councillor Irvine that Council:

Section 90 (3) (a) Order

1. Pursuant to Section 90(3)(a)
Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Chief Executive Officer, General Manager Corporate Services, General Manager Council Services, General Manager Infrastructure & Projects, Minute Secretary and the Risk and Governance Officer, be excluded from attendance at the meeting for Agenda Item 16.5 Confidential Report – Review of Confidential Orders Association with the Code of Conduct Report 15 June 2009.

The Council is satisfied that pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of staff members and complainants in that details of staff performance and personal details of residents' complaints will be discussed.

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 majority of staff subject to the report still work with Council and the information relates to their performance; and also includes matters personal to the complainants and will be discussed. .

Seconded Councillor Westwood and CARRIED

100.12 Moved Councillor Irvine that Council:

2. Release:
   - Attachment 1 - Council Minute 117.2 dated 15 June 2009; and
   - Attachment 2 - Council report 17.2 15 June 2009 'Confidential Ombudsman Report'

3. Release **with redacted information as shown remaining confidential:**
   - Attachment 3 – Ombudsman investigation report; and
   - Attachment 4 – Mayor's response to Ombudsman's report.
   - Attachment 3 – page 231 at 1.4.2.4 and page 234 at 3.7.1.5 be amended to redact the identity of individual.

Seconded Councillor Bettcher and CARRIED

100.13 Moved Councillor Westwood

Section 91(7) Order

4. Pursuant to Section 91(7)
   That having considered Agenda Item Confidential Report – Review of Confidential Orders Association with the Code of Conduct Report 15 June 2009 in confidence under 90(2) and 3(a) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that:
   - The redacted information within Attachment - Ombudsman investigation report (attachment 3 to this report) ;
   - The redacted information within Attachment – Mayor's response to the Ombudsman's report (attachment 4 to this report)

   be retained in confidence until relevant staff are no longer employed by Council or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.

Seconded Councillor Irvine and CARRIED

16.5 REPORT TITLE: CONFIDENTIAL REPORT – REVIEW OF CONFIDENTIAL ORDERS ASSOCIATED WITH AN OMBUDSMAN REPORT PROVIDED TO COUNCIL ON 15 JUNE 2009

DATE OF MEETING: 17 JUNE 2013

FILE NUMBER: 13/046279

Strategic Plan 2012-2017 Ref:

Governance and Leadership

Purpose:
To provide Council with relevant documents that were reported to Council on 15 June 2009 regarding an Ombudsman complaint to determine if confidential orders should remain.

Summary – Key Issues:
Council conducts an annual review of confidential items however a preliminary Ombudsman's investigation has prompted an earlier review of some confidential items.

Recommendation:

That Council:

Section 90 (3) (a) Order

1. Pursuant to Section 90(3)(a)
Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the Acting Chief Executive Officer, General Manager Corporate Services, General Manager Council Services, Minute Secretary and the Risk and Governance Officer, be excluded from attendance at the meeting for Agenda Item 16.5 Confidential Report – Review of Confidential Orders Association with the Code of Conduct Report 15 June 2009.

The Council is satisfied that pursuant to Section 90(3)(a) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of staff members and complainants in that details of staff performance and personal details of residents' complaints will be discussed.

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 majority of staff subject to

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the report still work with Council and the information relates to their performance; and also includes matters personal to the complainants and will be discussed. .

2. Release:

   - Attachment 1 - Council Minute 117.2 dated 15 June 2009; and
   - Attachment 2 - Council report 17.2 15 June 2009 'Confidential Ombudsman Report'

3. Release **with redacted information as shown remaining confidential:**

   - Attachment 3 - Ombudsman investigation report; and
   - Attachment 4 – Mayor's response to Ombudsman's report.

Section 91(7) Order

5. Pursuant to Section 91(7)
That having considered Agenda Item Confidential Report – Review of Confidential Orders Association with the Code of Conduct Report 15 June 2009 in confidence under 90(2) and 3(a) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that:

   - The redacted information within Attachment - Ombudsman investigation report (attachment 3 to this report) ;
   - The redacted information within Attachment – Mayor's response to the Ombudsman's report (attachment 4 to this report)

   be retained in confidence until relevant staff are no longer employed by Council or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months..

Background:

1. The Council last reviewed the confidential orders associated with these items in September 2012.
2. The Ombudsman's is conducting a preliminary investigation into the reasons for maintaining confidentiality on this item.
3. The Ombudsman's office agreed that it would be prudent to undertake a further review prior to beginning the investigation.

Discussion:

4. The 4 relevant confidential documents are:
    1. The Council minute of 15 June 2009
    2. The Council report of 15 June 2009
    3. Attachment – Ombudsman investigation report
    4. Attachment – Mayor's response to Ombudsman's report

5. It is recommended that items 1 and 2 be released.
6. Attachments 3 & 4 to this report can be released with the redacted information being the names of staff and complainants remaining confidential.

Community Engagement:

Informing only	Released information is provided on Council's website

Policy:
Code of Practice – Access to Meetings and Documents

Budget:
N/A

Statutory/Legal:
This review is additional to the annual review required under the Local Government Act S91(9).

Staff Resource Requirements:
This will be accommodated within existing resources

Environmental:
N/A

Social:
The review of confidential information and release of any matter that is no longer required to be kept confidential is a demonstration of transparency in local government.

Risk Assessment:
There is a risk that information could be released that should remain confidential however by carefully considering the detail within the documents the risk is reduced

Asset Management:
N/A

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Conclusion:
This confidential item has been reviewed and 2 items recommended for release.

Key Contact
Ros McDougall, Risk & Governance Officer, Corporate Services

Manager or Sponsor of Project
David Peters, General Manager Corporate Services

Attachment

1. The Council minute of 15 June 2009
2. The Council report of 15 June 2009
3. Attachment – Ombudsman investigation report
4. Attachment – Mayor's response to Ombudsman's report

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Attachment 1 to Item 16.5 17 June 2013

DISTRICT COUNCIL OF MOUNT BARKER
CONFIDENTIAL MINUTES OF THE COUNCIL MEETING HELD ON 15 JUNE 2009.

b) Authorises the Chief Executive Officer to execute relevant contract documents; and

4. Orders pursuant to Section 91(7) and (9) of the Local Government Act 1999 that only the financial amounts contained in Attachments 1 and 2, with the exception of those for Veolia Water Solutions & Technologies (Australia) Pty Ltd, are kept confidential until 1 June 2010 given they include commercial information of a confidential nature.

5. That subject to Section 90 of the Local Government Act 1999 as amended, the public be readmitted to the meeting at the conclusion of the item.

Seconded Cr Balls and CARRIED

117.2

REPORT TITLE:	**CONFIDENTIAL - OMBUDSMAN REPORT**
DATE OF MEETING:	**15 JUNE 2009**
AUTHOR:	**ANDREW STUART**
AUTHOR'S TITLE:	**CHIEF EXECUTIVE OFFICER**
REPRESENTORS:	**NIL**
FILE NUMBER:	**32/015/052**
DEPARTMENT:	**CHIEF EXECUTIVE'S UNIT**
DEPARTMENT MANAGER:	**ANDREW STUART**

Moved Cr Zanker it is recommended:

1. That pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 the Committee orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding:

   (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

2. That the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development & Communities and the General Manager Corporate be permitted to remain in the room.

3. That the Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports, attachments and minutes relating to this item be kept confidential until 15 June 2010.

Seconded Cr Irvine and CARRIED

COPY NOT FOR SALE

Moved Cr Irvine

4. That Council note the receipt of the Acting Ombudsman's Report dated May 2009 – *"Investigation of the actions of the District Council of Mount Barker and its officers in the management of barking dog complaints and the issuing of Expiation Notices and Dog Control Orders against dog owners".*

5. That Council notes the response to the Acting Ombudsman's Report and Recommendations from the Chief Executive Officer dated 26 May 2009.

6. That Council notes that significant change that has occurred in the General Inspectorial Section to date with the development of a number of Standard Operating Procedures and that this will continue to be improved on an ongoing basis.

7. That Council notes the District Council of Mount Barker's participation in the Local Government Association Pilot Project to develop a series of Regulatory Services Standard Operating Procedures for use across local government.

8. That subject to Section 90 of the Local Government Act 1999 as amended, the public be readmitted to the meeting at the conclusion of the item.

Seconded Cr Campbell and CARRIED

MEETING DECLARED CLOSED AT 8.54 PM

MAYOR DATE

Confidential

Attachment 2 to Item 16.5 17 June 2013

17.2	**REPORT TITLE:**	**CONFIDENTIAL - OMBUDSMAN REPORT**
	DATE OF MEETING:	**15 JUNE 2009**
	AUTHOR:	**ANDREW STUART**
	AUTHOR'S TITLE:	**CHIEF EXECUTIVE OFFICER**
	REPRESENTORS:	**NIL**
	FILE NUMBER:	**32/015/052**
	ATTACHMENTS:	**1 – CONFIDENTIAL**
	DEPARTMENT:	**CHIEF EXECUTIVE'S UNIT**
	DEPARTMENT MANAGER:	**ANDREW STUART**

PURPOSE

To provide the Council with a copy of the Introduction and Recommendations of the Acting Ombudsman's Report and Council's response provided to the Acting Ombudsman in relation to the report received from the Ombudsman's office in accordance with the Ombudsman's Act relating to the *"Investigation of the actions of the District Council of Mount Barker and its officers the management of barking dog complaints and the issuing of Expiation Notices and Dog Control orders against dog owners", May 2009".*

RECOMMENDATION

It is recommended:

1. That pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 the Committee orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding:

   (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

2. That the Chief Executive Officer, General Manager Infrastructure & Projects, General Manager Strategy, Development & Communities and the General Manager Corporate be permitted to remain in the room.

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3. That the Council orders pursuant to Section 91(7), (8) and (9) of the Local Government Act 1999 that the discussion, reports, attachments and minutes relating to this item be kept confidential until 15 June 2010.

4. That Council note the receipt of the Acting Ombudsman's Report dated May 2009 – *"Investigation of the actions of the District Council of Mount Barker and its officers in the management of barking dog complaints and the issuing of Expiation Notices and Dog Control Orders against dog owners".*

5. That Council notes the response to the Acting Ombudsman's Report and Recommendations from the Chief Executive Officer dated 26 May 2009.

6. That Council notes that significant change that has occurred in the General Inspectorial Section to date with the development of a number of Standard Operating Procedures and that this will continue to be improved on an ongoing basis.

7. That Council notes the District Council of Mount Barker's participation in the Local Government Association Pilot Project to develop a series of Regulatory Services Standard Operating Procedures for use across local government.

8. That subject to Section 90 of the Local Government Act 1999 as amended, the public be readmitted to the meeting at the conclusion of the item.

BACKGROUND

In late 2007 the Acting Ombudsman advised Council that they had received a complaint from a ratepayer in relation to a barking dog matter. In January 2008 the Council was advised that this matter was now to be formally investigated by the Ombudsman's Office.

The claim from the ratepayer and the subsequent investigation of the Acting Ombudsman relates to the manner in which Council officers have exercised their public powers in relation to the Dog and Cat Management Act 1995 and Council's By-Law No 5 – Dogs.

This investigation has been ongoing for some time and was extensive in nature. On 19 May 2009 the Mayor and senior management met with the Acting Ombudsman, Mr Ken MacPherson, to discuss the Proposed Report relating to this matter to enable a Final Report to be presented to the Mayor for finalisation of the matter.

The Mayor received a Final Report (the Report) of the investigation of the Acting Ombudsman, dated May 2009 on 27 May 2009. A copy

of the Introduction and Recommendations of the Report is now forwarded to the Council (Attachment 1). Due to the size of the report (86 pages), the confidential nature of its content and the impending actions resulting from the recommendations of the Acting Ombudsman, a full copy of the Report has not been provided. If any Member of the Council wishes to inspect the Report you may do so by request to the Mayor, which will be subject to undertakings regarding maintaining confidentiality of the Report until and unless it is published (in the Parliament) and the full Report attracts the protection of Parliamentary Privilege.

The Ombudsman is required under the Ombudsman Act 1972 to provide a copy of the report to the Minister for Local Government.

DISCUSSION

Upon consideration of the Final Report of the Acting Ombudsman it is considered that in general terms, the Report:

- Reflects a thorough investigation
- Records an unacceptable failure in appropriate standards of public administration on the part of one of Council's General Inspector
- Identifies an unacceptable lack of supervision and accountability of the General Inspector
- Provides recommendations for future improvement

There are three key areas to this matter which are briefly outlined below.

Complaint

A complaint was made to the Ombudsman's Office that Council had failed to respond in a timely manner to a complaint that dogs from a neighbour's property were barking such as to cause a nuisance.

Two additional complaints were also received that Council failed to respond in a timely manner that the dog owners were keeping up to four dogs on the property without Council approval in contravention of Council By-law No 5 setting a maximum of two dogs per property.

The Acting Ombudsman on investigation found that Council officers did not follow due process in relation to the application of the Dog and Cat Management Act 1995, Council's By-Law No 5 and the Local Government Act 1999.

Staff Issues

As identified by the Acting Ombudsman of the events relating to this complaint, the actions of specific Council officers have not been in

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accordance with their legislative requirements, delegated authority or Code of Conduct for Employees.

Some of the matters canvassed in the Report require an internal investigation to be undertaken to determine appropriate disciplinary action. This process has commenced.

General Inspectorial Section – Change Program

The Acting Ombudsman's Report has identified culture, personnel and process deficiencies in Council's General Inspectorial Section. The processes of the Council officers utilized in relation to this matter are consistent with the deficiencies that have previously been identified by the Acting Ombudsman and Council management.

Significant change has occurred in the General Inspectorial Section following this and the previous investigation by the Acting Ombudsman. This includes:

- the development of approximately 18 Standard Operating Procedures which have been reviewed by legal professionals and perused by the Acting Ombudsman's office
- change to the management of the Section with Mr Terry Nicholas employed on a contract basis to provide the required supervision and technical expertise
- review of the management of this area of Council's operations as part of the Organisation Review.

These changes have been acknowledged by the Acting Ombudsman in this Report and his resulting recommendations.

Additionally, a pilot program is in development by the Local Government Association, which this Council is participating in, which will further address the issues highlighted in the Acting Ombudsman's investigation.

Acting Ombudsman's Recommendations

Attached to this report at Attachment 2 is the response provided to the Acting Ombudsman, Mr Ken McPherson, addressing each of the recommendations listed in the Report.

As part of the response to the recommendations raised by the Acting Ombudsman the following key actions are occurring:

1. Council will review its SOPs to include:

    - the importance of and the process for collating relevant/probative evidence and flexibility/discretion in the issuing of Expiation Notices.

    - further detail on the process to access and analyse information provided by a third party lodging a complaint

and on what grounds formal proceedings should or should not be instituted.

- prosecution guidelines with reference to the SA Office of the Director of Public Prosecutions.

- that Certificate of Enforcements must only be signed once the authorising officer has checked that all the material elements of that certificate are correct.

2. Council is currently developing a Records Management Policy and Procedure. As part of the development of these documents the need to record messages and field notes in Council's records management system will be incorporated into the policy and procedure.

3. Senior Management will review and consider appropriate disciplinary action to be taken in relation to the actions of the relevant Council officers involved in this matter.

It is to be noted that at the meeting with the Acting Ombudsman in May 2009 all outstanding complaints with the Ombudsman's Office were finalised with the Acting Ombudsman recently providing written advice to the Mayor accordingly.

A report on the Final Report of the Acting Ombudsman on this matter will also be provided to Council's Audit Committee.

POLICY IMPLICATIONS

1. **Financial/budget**
   There has been no impact on the budget of Council in relation to this investigation.

2. **Legal**
   Council needs to ensure that it complies with its legislative responsibilities and that staff are aware of their responsibilities in accordance with Council's Code of Conduct for Employees.

3. **Staffing/Work Plans**
   Mr Terry Nicholas is currently employed on a contract basis to manage the day to day responsibilities of this section and implement the Acting Ombudsman's recommendations.

4. **Environmental**
   Not applicable to this report.

5. **Social**
   As part of the implementation of the changes in the General Inspectorial area will be the improvement to the level of service

delivery and confidence of the community in Council's activities and that of its staff.

6. **Strategic Plans**
Goal 6 - Governance.

7. **Risk Assessment**
As part of the change management process for this area a risk assessment process will be undertaken to ensure that Council's policies and procedures are in accord with the relevant legislation.

8. **Asset Management**
Not applicable to this report.

COMMUNITY CONSULTATION

1. **Customer Needs Analysis**
The implementation of the change management process and the Standard Operating Procedures will provide for improved service delivery.

2. **Promotion/Communications**
Not applicable to this report.

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[redacted]

Attachment 3 to Item 16.5 17 June 2013

1 Introduction

1.1 Background

1.1.1.1 This report, in my opinion, raises a number of matters of public interest importance concerning the Regulatory Services functions of the Mount Barker District Council. For the reasons discussed in this report there has, in my opinion, been serious administrative failures in the matter of the issue of expiation notices based on a third party complaint, the procedures associated with the execution of Certificates of Enforcement for court proceedings, and the issue of Proposed Dog Control Orders based on a third party complaint.

1.1.1.2 Further, for the reasons discussed in this report, notwithstanding the fact that on an earlier occasion this office has raised concern regarding the understanding of these officers in the Regulatory Services group concerning their responsibilities as public officers, comments that have recently been made to this office indicate that there continues to be a failure to understand the basic principles associated with the exercise of public powers under legislative authority in circumstances that invoke the initiation of a criminal law process.

1.1.1.3 The evidence is clear that in this matter there was a barking dog problem. It was the responsibility of the council to respond in an appropriate way to this problem. The issue was also raised by some residents of possible breaches of By-law No 5 relating to the number of dogs permitted to be registered at the one property without council consent.

1.1.1.4 Whilst council took steps to resolve the complaints made through the issue of expiation notices and Proposed Dog Control Orders to the dog owners, I was concerned over the practices adopted by council staff in the exercise of their delegated authority in so doing. This concern was exacerbated by the initial review of this matter indicating that these practices were institutionalised within the Regulatory Services group of the council and that the management of this group was seriously unaware of its statutory and public law responsibilities. For this reason I determined that it was in the public interest that I conduct an own initiative investigation into the council's operations in this matter.

The significance of an expiation notice

1.1.1.5 In issuing an expiation notice, a public officer, makes an allegation that the recipient has committed a criminal offence. Such an action can have a serious consequence for a member of the community against whom such an allegation has been made. An expiation notice must only be issued where there is evidence to establish a prima facie case and for the purpose of bringing an alleged offender to account. It is a serious matter to issue such a notice in circumstances where there is no evidence to support the allegation against the individual concerned and when the public officer has not undertaken a proper enquiry. Conduct of this type has the tendency to undermine confidence in the administrative integrity of public authorities and public officers. As discussed in this report there is evidence that these matters are not properly understood by officers, within the Regulatory Services group.

1.2 A Matter of Emphasis

1.2.1.1 This report has been prepared in the knowledge that the council has recently developed Standard Operating Procedures and reporting requirements across a range of matters within the responsibilities of the General Inspectors. A copy of the procedures was provided to my office on 29 December 2008 and a revised and updated version on 23 April 2009. Notwithstanding these recent developments, important as they are, the matters that are

the subject of this report, in my opinion, raises issues of public interest importance that necessitate immediate attention by the council administration.

1.2.1.2 These issues include the need to ensure that those persons exercising public power as public officers (i.e. council authorised officers) are fit and proper persons to be entrusted with that authority.

1.2.1.3 Each of the expiation notices referred in this Report was issued following a third party complaint to the council that was in general terms and lacking the particularity to enable the identification, without further inquiry, regarding the offending dog at the time specified in the expiation notice.

1.2.1.4 Notwithstanding that there was a legitimate issue for proper investigation regarding the barking by a dog(s), the council response was to issue "a spray" of expiation notices without any proper inquiry. This, in my opinion, was to use the instrument of an expiation notice as a form of social control and not for the specific purpose of bringing an alleged offender to account. The consequences of this action by the council was that certain persons were made the subject of a criminal law process initiated against them by the council in circumstances where there was an insufficiency of evidence to establish a prima facie case.

1.2.1.5 It is important to clarify that an expiation notice can be issued on a third party complaint subject to the need to ensure that there is evidence to establish a prima facie case and that there is a reasonable and probable cause to suspect that a named individual is the offender. For the reasons discussed in this report that was not, in my opinion, the case in this matter for any of the expiation notices that were issued. The fact that one dog was the alleged offender, the issuing of expiation notices to all persons who could possibly be responsible, without any inquiry as to who was or was not responsible is, in my opinion, a high handed and grossly improper method of discharging a statutory power involving criminal law consequences.

1.2.1.6 The commentary and analysis in this report on this matter is to be understood in the context of this synopsis.

1.3 The Complaint

1.3.1 Outline of complaints made to council

1.3.1.1 A complaint was made to my office that council had failed to respond in a timely manner to a complaint that dogs from a neighbour's property were barking such as to cause a nuisance. The complainant was [redacted] a Mount Barker resident. It was also claimed that council failed to respond in a timely manner that the dog owners were keeping up to four dogs on the property (without council approval) in contravention of council By-law No 5 setting a maximum of two dogs per property.

1.3.1.2 [redacted] complaints were raised with council on 28 July 2006, however, I note that council had received an anonymous advice from another neighbour on 6 March 2006 that there were four dogs on the property.

1.3.1.3 On 14 March 2006, a written complaint was received from another resident, [redacted] about excess number of dogs on the property and barking.

the product of careful consideration of the submissions which were made to me by council and by one of the two officers to whom I provided a summary of my concerns with an invitation to comment.

1.4.2 Issues

1.4.2.1 The issue of twelve (12) Expiation Notices by [redacted] to the three dog owners on the basis of a third party complaint in relation to the alleged barking by their three dogs at specified times on 30 October 2006, 31 October 2006 and 1 November 2006 was, in my opinion, without substantiated evidence for each of the alleged breaches having occurred. These actions by [redacted] were, in my opinion, improper having regard to all the relevant circumstances;

1.4.2.2 The Proposed Dog Control Orders signed by the Registrar of Dogs without consideration if any evidence existed that supported the issue of the order was, in my opinion, improper;

1.4.2.3 The exercise of purported authority without the appropriate delegations by persons exercising those powers was, in my opinion, a failure of the internal control within the council;

1.4.2.4 The Registrar of Dogs signing a Certificate of Enforcement against [redacted] without ensuring compliance with legislative requirements and council procedures was, in my opinion, improper;

1.4.2.5 The failure to record the legal advice received by council was, in my opinion, a failure of the internal controls within the Regulatory Services group;

1.4.2.6 The cancelling of certain Expiation Notices without authority as a result of misunderstanding of the legislative requirements, was, in my opinion, a failure of the internal controls within the Regulatory Services group;

1.4.2.7 The failure of staff to comply with council procedures and polices was, in my opinion, a failure of the responsible management of the relevant council staff;

1.4.2.8 The lack of internal control ensuring compliance with operating procedures and good public administrative practices was, in my opinion, a failure of the internal controls within the Regulatory Services group;

1.4.2.9 The failure to ensure that proper records are maintained within the Regulatory Services group was, in my opinion, a failure of the internal controls within this group of the council;

1.4.2.10 The failure to correctly refer to the appropriate legislative authority for the issue of Expiation Notices and in correspondence informing the public of alleged breaches of legislation was, in my opinion, a failure of the internal controls within the Regulatory Services group;

1.3.1.4 These issues were resolved when the dog owners vacated the premises in late May/early June 2007.

1.3.2 Overview of conclusions

1.3.2.1 Broadly, the evidence that has been obtained in the course of this investigation has exposed systemic defects in the administrative processes of the council's Regulatory Services group in these matters that are the subject of this report.

1.3.2.2 The evidence is incontrovertible that the defective performance of officers, within the Regulatory Services group, in this case was not a one-off. It was, in part, a reflection of their fundamental misunderstanding of their responsibilities and powers.

1.3.2.3 The evidence is also incontrovertible that those misunderstandings were engendered, and then allowed to persist without any proper guidelines, operating procedures, and reporting practices for its regulatory functions.

1.3.2.4 There has been administrative failure in administering the power to issue expiation notices based on third party complaints where there is an objective insufficiency in the evidence demonstrating that further enquiry should have been made.

1.3.2.5 The consequence of that failure has been that officers in the Regulatory Services group this council has in this matter issued expiation notices without proper evidence to support the allegation of the offence. There is evidence that this may have been done as a means of social control or for some other collateral purpose.

1.3.2.6 There has been administrative failure in administering the power to issue proposed Dog Control Orders based on third party complaints without a proper review of the facts that substantiate the lawful authority to issue the Order.

1.3.2.7 There is evidence that Certificates of Enforcement were executed in circumstances where, on the evidence available, it was, in my opinion, improper to do so. This is a serious matter as a court is reliant on the integrity of the internal administrative processes and internal control within the council to make the enforcement order against the party concerned.

1.3.2.8 The abovementioned matters are unacceptable within the administration of a public authority entrusted with governmental responsibilities. In my opinion, for the reasons discussed in this report, immediate remedial action is required.

1.4 Summary of Main Issues

1.4.1 Preliminary note

1.4.1.1 In summary, these are some of the main issues which emerge from this investigation. I emphasise that the following statements, while expressed in summary form, are the product of a careful consideration of all the evidence, and an analysis of that evidence. They are also

1.4.2.11 The failure to ensure that pro-forma Expiation Notices reflected legislative requirements was, in my opinion, a failure of the internal controls within the Regulatory Services group.

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3.7.1.3 Council also advised the "Working Alone" procedure is still to be development and that a copy will be provided to my Office when completed. Expiation Notices and Expiation Reminder Notices have been updated and are currently being printed. Copies of these are to be provided to this Office.

3.7.1.4 I wish to make a general comment on these SOPs. I believe those relating to the issue of Expiation Notices and Dog Control Orders need to include a greater emphasis on the discretion/flexibility an officer has not to issue the notice, and the evidence required to justify issuing a notice.

3.7.1.5 In reviewing the file I noted that nine Expiation Notices were issued to [redacted] for exceeding the limit of number of dogs to be held on a property in the period 7 September 2006 until 25 May 2007. From the file notes it was apparent that in relation to the Expiation Notices issued on 7 September 2006 and 22 November 2006, [redacted] was acting on information received that the number of dogs exceeded the limit. Further [redacted] visited the property and noted that the limit had been exceeded and held discussions with [redacted] and [redacted] about the number of dogs at the property. Clearly she had evidence that the dogs at the premises exceeded two.

3.7.1.6 There were no notes on file to indicate any reports being made that there were more than two dogs on the property nor any notes of visits to the property, nor any indication that [redacted] had any evidence that the dog limit had been exceeded when she issued the other seven Expiation Notices on 22 January 2007, 5 February 2007, 16 February 2007, 18 March 2007, 13 April 2007 and 25 May 2007. The inference is open to be drawn that the then Standard Operating Procedure was interpreted to mean that once contact had been made and the dog owner did not address the issues raised that Expiation Notices needed to be issued until the behaviour changed. In my opinion, this action is using Expiation Notices as a social control and is retaliatory against the dog owner for failing to comply with council directions. The issue of Expiation Notices must be evidence based for each alleged offence.

3.7.1.7 The SOPs do not provide any instructions about notes in message books and field note books being transcribed onto the records in the council's files. However, multiple expiation Notices may, in certain circumstances, be regarded as manifestly excessive, unreasonable, unjust, and oppressive, particularly where there are other appropriate courses open to be taken by the council.

3.7.1.8 The SOPs do not provide any instructions about copies of signed outgoing documents being placed on the file and recorded in the records management system.

3.7.1.9 If council is proposing a paperless office, it must ensure that it has an integrated complaint management system that can provide a history of actions taken and correspondence in and out. Currently the file examined by this office was incomplete in that not all correspondence sent was included and it was sometimes difficult to determine if unsigned letters were drafts or copies of correspondence actually sent.

3.7.2 Recommendation

3.7.2.1 In my opinion, council should add to SOPs information emphasising the importance of relevant/probative evidence and flexibility/discretions on issuing Expiation Notices. Council should also, in my opinion, review the adequacy of its internal records management

including the need to accurately record messages and field notes. Further, in my opinion, council needs to include information on how to assess and analyse information provided by a third party lodging a complaint. It is acknowledged that council has included a reference in the SOPs regarding these matters. However, in my opinion, this reference should be expanded so to as to make it clear that there is an inherent discretion regarding the question as to whether formal proceedings should or should not be instituted in the circumstances associated with a particular matter. Such a decision is dependent on the facts of the individual case. I set out hereunder some principles that officers should, in my opinion, take into account when assessing and responding to third party complaints.

Action by way of third party complaints is to be distinguished from those situations where the relevant officer, within the Regulatory Services group, has directly observed the offence in question, for example unlawful parking, etc.

In the case of third party complaints it is important to understand that the relevant officer, within the Regulatory Services group, must satisfy himself/herself regarding each of the elements that constitute the offence arising out of the complaint. It is also important that no Expiation Notices and/or prosecutorial process be commenced without due regard to the following matters:

- ◊ Has there been a proper investigation of the case?
- ◊ Has the admissible evidence against the person been fully analysed?
- ◊ Are any material inconsistencies in the available evidence reasonably explicable or understandable?
- ◊ Has the alleged offender been interviewed?
- ◊ Had the alleged offender made any admissions?
- ◊ Has consideration been given to evidence, if any, that would tend to show that the case against the alleged offender could not be proved beyond reasonable doubt?
- ◊ Has consideration been given to the need for seeking professional or other advice as might usefully bear upon the case?
- ◊ Has the mind of the person responsible for issuing the Expiation Notice/prosecution prudently and cautiously been brought to bear on the above mentioned matters, separately and in combination?

3.7.2.2 It is only following a consideration of issues such as those referred to above that it is possible to answer the further question of whether a prima facie case, on the general grounds of justice, may be brought against an alleged offender.

3.7.2.3 In all matters, the third party complainant should be interviewed and a signed statement obtained detailing the facts of the complaint. I understand that this has now been included in the SOP.

3.7.2.4 In many matters dealt with by officers, within the Regulatory Services group, the issues referred to above will often not require a detailed analysis, but, nonetheless, must be borne in mind to protect the council against a claim for malicious prosecution.

3.7.2.5 As discussed in the course of the meeting held with the Mayor and the Chief Executive on another matter, the issue of an Expiation Notice is an allegation by a public officer that a member of the community has committed a criminal offence.

3.7.2.6 An Expiation Notice should not be issued other than for the purpose of requiring an alleged offender to be accountable for that offence and must not be issued for any collateral purpose. Issuing an Expiation Notice against a person without having made proper enquiries of the type referred to above and for the purpose of placating a complainant and/or succumbing to the demands by other officers within the council can constitute malice. Any action taken on such a basis would be grossly improper.

3.7.2.7 In summary, the issuing of an expiation notice must be only for the purpose of the enforcement of the law and certainly not as an act of retribution because an alleged offender does not agree to some demand from the council for which the council has no lawful power to make.

3.7.2.8 The SA Office of the Director of Public Prosecutions, in its prosecution policy guidelines writes on the topic Decision to Prosecute:

> *A prosecution should not proceed if there is no reasonable prospect of a conviction being secured. This basic criterion is the cornerstone of the uniform prosecution policy adopted in Australia.*

3.7.2.9 As set out above, this guideline applies equally to the issue of Expiation Notices as it does to the prosecution of criminal offences. Perhaps council should consider adapting these prosecution policy guidelines as its benchmark for best practice in its issuing of Expiation Notices and or initiating a prosecution. It should also be noted that prosecution action must also have regard to public interest considerations.

3.7.2.10 In my opinion, a practice of executing a Certificate of Enforcement before checking that all the material elements of that certificate are correct is an unsafe administrative procedure. In my opinion, it is imperative that that an instrument of this nature should be only signed when the authorising officer is satisfied that it is appropriate to do so. If this is the practice that is adopted within the council, in my opinion, a direction should be given to reverse this practice.

3.7.2.11 Council has advised that [redacted] signed the certificate on face value that the requirements had been met. In my opinion, he had a duty to be satisfied that all conditions precedent to issue the Certificate of Enforcement had been satisfied. The internal administrative procedures of the council should be structured so as to ensure compliance with all legislative requirements.

Attachment 4 to Item 16.5 17 June 2013

THE DISTRICT COUNCIL OF MOUNT BARKER

P.O. BOX 54, Mount Barker S.A., 5251 - Telephone: 8391-7200 Facsimile: (08) 8391-7299
DX address: DX 51708, Mount Barker web site: www.dcmtbarker.sa.gov.au

Reference: 09/19590

28 May 2009

Mr K MacPherson
Acting Ombudsman
PO Box 3651
Rundle Mall
ADELAIDE SA 5000

Dear Mr MacPherson

Re: Meeting Tuesday 19 May 2009: Management of Barking Dog Complaints – Complaint by [redacted] – Proposed Report (Report)

Thank you for your letter received by Council on 18 May 2009 enclosing your Report and giving me an opportunity to comment before it is finalised.

Thank you for also meeting with me and Council's Officers on Tuesday 19 May 2009. The meeting was useful and has assisted me in the preparation of this response.

It is my view, and the view of those Senior Officers that have been granted access to the Report for the purposes of preparing this reply that, in general terms, the Report:

- Reflects a thorough investigation
- Records an unacceptable failure in appropriate standards of public administration on the part of Council's General Inspector, [redacted]
- Identifies an unacceptable lack of supervision and accountability of the [redacted] in her role as General Inspector.
- Provides recommendations for future improvement that are accepted by me and the Chief Executive Officer.

The Chief Executive Officer and I both accept that the process undertaken thus far has been fair, the conclusions are in the main reasonable and the recommendations are appropriate.

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The Report has been reviewed by Senior Officers who have provided me with the following suggested clarifications in relation to specific details of the Report.

- Page 6 of the Report – item 13.2.3 – the wording *"...in part because of the failure of the council at the relevant time, in breach of section 132A of the Local Government Act 1999 to develop and maintain....."* to be deleted. The paragraph then to read:
  "The evidence is also incontrovertible that those misunderstandings were engendered and then allowed to persist without any proper guidelines, operating procedures, and reporting practices for its regulatory functions."

- Page 6 of the Report – item 13.2.5 – the words *"this council"* to be changed to read *"...officers in the Regulatory Services Department..."*.

- Throughout the document the term "*Council officers*" has been used. I would like this reference to be specific to the Regulatory Services Department officers as they are the officers involved in this matter.

- Page 13 of the Report refers to Council's Code of Conduct. For information Council has since updated this Code of Conduct for Employees (Attachment 1), however, the Code referred to in the Report was the Code in place at the time of this incident.

- Reference is made throughout the document that *"there is systemic failure in Council's internal administration and internal controls"*. This implies, particularly if the content of the Report is taken out of context of the whole and complete Report, that there is systemic failure of all of Council's administration processes and internal controls. I believe these references should be specific to the systems and processes as it relates to this matter of the dog complaint and are specific to the functions of the Regulatory Services Department.

Recommendations of the Report
The following actions in relation to the recommendations of the Report, have been provided to me by Council's Senior Officers, of which I concur.

- Council will review its SOPs to include:
  - the importance of and the process for collating relevant/probative evidence and flexibility/discretion in the issuing of Expiation Notices.
  - further detail on the process to access and analyse information provided by a third party lodging a complaint and on what grounds formal proceedings should or should not be instituted.
  - prosecution guidelines with reference to the SA Office of the Director of Public Prosecutions.
  - that Certificate of Enforcements must only be signed once the authorising officer has checked that all the material elements of that certificate are correct.

- Council is currently developing a Records Management Policy and Procedure. As part of the development of these documents the need to record messages and field notes in Council's records management system will be incorporated into the policy and procedure. A copy of these documents will be forwarded once completed.

- Council will review and consider appropriate disciplinary action to be taken in relation to the actions of [redacted] and [redacted] in this matter.

As indicated in the Report, Council has undertaken a number of improvements in the Regulatory Services Department since the appointments of Mr Bill Chandler and Mr Terry Nicholas.

Council, with the assistance of Mr Chandler and Mr Nicholas, will continue to make improvements to the manner in which the Regulatory Services Department functions and Council's authorised officers undertake their duties.

Additionally, Council, as per previous advice to your office, is developing a comprehensive internal control environment and framework which will include the governance and compliance responsibilities to be audited on a regular basis and reported to management and Council. Council's Audit Committee has accepted the role of defining and implementing the framework, of which I am the Chairperson.

I appreciate the opportunity to comment on the Report and advise you of the steps that Council administration is taking to implement the recommendations to ensure that this type of situation does not arise in the future.

Yours sincerely

Ann Ferguson
Mayor

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